

NEWINGTON CONSERVATION COMMISSION

Special Meeting

February 28, 2013

I. CALL TO ORDER

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

II. ROLL CALL

In attendance:

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

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

III. ACCEPTANCE OF MINUTES

Chairman Block: A call for a motion on the acceptance of the minutes of February 19th. Anybody have any corrections or additions.

Commissioner Igielski moved to accept the minutes of the February 19, 2013 regular meeting as written. The motion was seconded by Commissioner Zelek. The vote was unanimously in favor of the motion, with six voting YES.

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

V. OLD BUSINESS

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

Chairman Block: We are at the crux of the matter. The first thing I would like to confirm is, are we finished with reviewing the proposed conditions. There was some missing information last Tuesday and there was some things that needed to be resolved in the intervening day, so what do we have? You have a copy in front of you of the revision, dated 2-28-13.

Chris Greenlaw: I would suggest that we read through, make sure that everyone has the same copy because there have been a few revisions and it should end with M, as in Mary, so you may want to make sure that everyone has the appropriate numbers and letters first to be sure that we are all reading off the same sheet of music.

Chairman Block: Okay, do we have confirmation on that?

Chris Greenlaw: Just in the general sense globally, we have our standard thirteen, one through thirteen, on the first sheet, and then it goes to twenty six, and then we start with Additional Conditions, and that will be large A, B, C, D, E, with sub sections, F, G on page four and page five, I, J, K, L, M. That should be the latest revised sheet.

Chairman Block: Let us take about five minutes to read through and confirm that your concerns have all been resolved.

Commissioner Paskewich: Under the water quality sampling program, item number three, piezometers to be installed (per report/plan) for ground water analysis. This probably was addressed before but I would like to have someone bring it up again and kind of reflect on when they would be installed and where, and I think there was a number count.

Chairman Block: Chris, was that specified in the report that you are referencing?

Chris Greenlaw: Mr. Chair, again if I will, Commissioner Paskewich the recommendation is from our expert Mr. Logan and it's from a report on the 24th, and it coincides, and again, this plan, I brought it with me, it's not in color but we have the plan with recommendations from Mr. Logan on the shallow ground water sampling stations, this again is a plan, this is something that can be refined, and I refer you back to this plan.

Commissioner Paskewich: And I'm seeing it, and I guess the definition of piezometers is the stations? The station is the same as a piezometer?

Chairman Block: It would be the piezometer at the station, but it's a different station from the blasting station. Those are two different procedures.

Commissioner Paskewich: We are talking about the surface water sampling stations and the ground water sampling stations and there is another one, I don't have the map in front of me, and piezometers are going to be placed at all of those stations, or which....

Attorney Boorman: Maybe I can help a little bit, if you look at H, it says water quality sampling program and under A, it says Developer's ecological consultant to prepare a water quality monitoring program for both during construction and post construction and it reads for twenty-five years, the plan to be in accordance with REMA, and what Chris has told you, the January 24th, so the ecological consultant comes in, will provide the plan which will be in accordance with REMA's and the actual number will be determined as part of that plan.

Commissioner Paskewich: So what you are saying, and I'm reading this also, in accordance with REMA.

Attorney Boorman: Right.

Chairman Block: So instead of a report, should it be per the January 24th plan?

Chris Greenlaw: I would include both, because....

Chairman Block: Report and plan.

Chris Greenlaw: Correct, because his report is identifying specifically some of the methodologies to be utilized, to achieve shallow ground water sampling station, so he's telling you in the report to use a piezometer. At least at this time he has a certain number located strategically on this plan, but it's the report that tells you how that will be achieved. In other areas where he wants the sample the surface flow, he tells you in the report that it will be done with grab samples. So they are in conjunction, that's why I referred back to them.

Chairman Block: Then the sloping line needs to be replaced with an ampersand, so it's and report, report and plan, because I was reading it as report or plan.

Chairman Block: Now does that resolve your issue?

Commissioner Paskewich: Well it brings up another area directly related to it which was stated, grab samples and piezometers are not one and the same, but they are related in their use?

Chairman Block: Well, they are designed for two different functions. The piezometer as I understand it is the measure the upswell of ground water, a grab sample is taking a sample for analysis at the lab.

Commissioner Paskewich: And they are done at different stages. The grab samples are....

Chairman Block: One is apples and oranges.

Commissioner Paskewich: Pardon.

Chairman Block: One is apples, one is oranges.

Commissioner Paskewich: Well, not completely, they are both being done for the same purpose, is analysis of minerals?

Chairman Block: No, not that I, piezometers just the amount and direction of flow.

Commissioner Paskewich: Just the ground water.

Chairman Block: Just the ground water.

Commissioner Paskewich: Okay. And the grab samples are for nutrients, metals and minerals.

Chairman Block: Right. The chemical constituents.

Commissioner Paskewich: I didn't have an opportunity to read these (inaudible) reports or to refer back, that's why I'm asking. So I'm hearing that it's being taken upon in accordance with REMA's specifications.

Attorney Boorman: It's very specific, it says that the plan has to be in accordance with REMA's and if they decide that they want fifty piezometers there will be fifty, and if they decide they want ten, there will be ten.

Commissioner Paskewich: Okay.

Attorney Boorman: It has to be in accordance with what is there so it allows again the Town to have input relative to that, as that matter proceeds, so I think it is the way that you want it.

Commissioner Paskewich: Now that we read it together I can see the point in direction.

Commissioner Clark: Does that mean that REMA is going to be involved ongoing, or are we just referring back to the report?

Attorney Boorman: I would suggest that REMA not be involved ongoing, if there was an issue that the Town had where they wanted a consultant and they didn't want to use REMA, then they would hire that consultant to do that. As part of the oversight that is allowed under the conditions in the various parts of the conditions that would be relative to that, but no, REMA would not be on site if that is what you are asking.

Commissioner Clark: Why I'm asking that is your comment about if they want five piezometers versus fifty, who is they, and at what point in time?

Attorney Boorman: Well again, it's right in H, if you read section a, small a, the developer's ecological consultant to prepare a water quality monitoring program for both during construction and post construction to be in accordance with the REMA plan, okay?

Commissioner Clark: So we start with the REMA and then this, the new developer's ecological consultant works off of the REMA plan.

Attorney Boorman: Right, and we talked about this the last time, you cannot micro-manage what these professionals are doing in the field, whether it's the blaster or the ecological consultant. They have to have the ability to say, I'm finding this in the field we have to make the adjustment accordingly to accomplish what the overall conditions said.

Chairman Block: I'd like to propose where capital E sub e, the next to the last line, additional sites, minimum of six stations, cross out may and put in shall, and on M, the last one, Chris, the second line, cleaning of the drainage system including all retention basins. Does that term adequately include all of the bio-swales and other structures that we are concerned with?

Chris Greenlaw: Yes, as discussed at the last meeting, I believe it was the last meeting, but either way, this was one of the additional comments that I added as redundancy in addition to the notes that are on GN1 and GN2 as far as the maintenance, the specified maintenance and those will be one of the addition.....

Chairman Block: I just want to make sure that there isn't a structure that isn't included in the term retention basin, as against a treatment basin, as against the bio-swales, as against the up and down, whatever, it's all of the systems that are cleansing the water that are going into the wetlands.

Chris Greenlaw: What I would add to that is, you high lighted the word retention, I'm actually going to propose that we change that to detention, that's a typo.

Commissioner Paskewich: Also speaking to that statement, is this overall looking towards the storm water treatment train, or above that and more, or is the storm water treatment train all of it?

Chairman Block: No, the storm water treatment train as we have been told, a separate system which will deliver its flow into the storm water drainage, leaving the project and going into the municipal system. This is the surface water treatment system that is going to recharge the wetland aquifers, correct Chris?

Chris Greenlaw: I agree with that and again, this is redundant, this is just a condition on the plan to really kind of point them, what's this about again, I'm going to go back to GN1, I'm going to go back to GN2, I'm going to read these notes, so you have it in two areas of the plan. This conditionally becomes a requirement more, point them in the direction of researching responsibility for maintenance.

Commissioner Sadil: Mr. Chairman, my notes from last Tuesday, in section G, we would add a sub j for maintenance of species at the edge of the development. It's not there.

Chairman Block: Oh, something fell off, what was it?

Commissioner Sadil: Basically conduct a program of early detection, removal of widely scattered invasive shrubs and vines from the forest interior. That was basically at the edge of the development in the wetlands. I don't know, it was a comment to add, i was going to prohibit homeowners from engaging in landscaping, and sub j. was going to be the invasives which was in the REMA recommendation.

Chris Greenlaw: Mr. Chairman, I will prepare a condition, and it will be come N.

Chairman Block: No, Andreas was saying that it was sub j.
The home owners association shall develop an early detection program to remove widely scattered invasives.

Chris Greenlaw: Mr. Chair, if you would repeat....

Chairman Block: The H.O.A. shall develop a program for the early detection and removal of invasive plants. Is that agreeable to everyone?

Commissioner Clark: Mr. Chairman, wouldn't it be appropriate for the development's ecological consultant to be part of that condition, or that it might better belong redundantly in two places, one of which involves the ecological consultant, other than that, I feel that it has no teeth.

Chairman Block: Well, if you remember last meeting we had that discussion and the practical aspects are that the environmental consultant is not going to be a permanent position. By putting it on the H.O.A. as a permanent responsibility if they don't have the training for this, they have to periodically they will hire somebody to go through and look at it, it's their burden, and we don't necessarily want to be requiring a specific employee of theirs. How they accomplish it is going to be up to them and if it's not going to be adequate, they will come back to the Town and this Commission sooner or later.

Attorney Boorman: I might also add, if you go to the beginning of G, which is the area which oversees, we are talking about the H.O.A. to provide copy of integrated turf management program as well as an integrated pest management program, which you talked about the last time, which is a different subject, I'm sure you are going to want to chat about that, but it does set up an overall plan which includes that and has that confirmation to the Town Engineer's office, and so I think you do kind of have that overall arching comment made at the beginning of that paragraph, and the specifics are related through j.
If you are concerned about that, you might say, Home Owners Association and developer, you might just include developer so it would take that time line from the beginning all the way through. That should make you more confident.

Commissioner Clark: The more, yeah, that says it.

Chris Greenlaw: Mr. Chair, if I will, section j, excuse my Microsoft word skills, somehow any should be any document, if document.

Chairman Block: Where are you looking now?

Commissioner Paskewich: Large J

Chairman Block: Well, not any, all documents.

Attorney Boorman: I think it's clear that we are talking about a conservation easement so you can use all or any documents.

Commissioner Paskewich: I'd like to refer to Large F, page 4. We spoke to this at the last meeting and I just want to clarify something. The developer shall consult with the Town Engineer in the selection of the ecological consultant with a field of expertise in vernal pools. I thought we spoke to not saying specific expertise in vernal pools, there as some discussion about that.

Chairman Block: My recollection was that it was going to be too restrictive to say an expert in vernal pools, but that because of the concerns of the Commission, that we did want to make sure that he was somewhat knowledgeable of that field.

Commissioner Paskewich: So by saying field, it's....

Chairman Block: It's part and parcel but it's not the whole of it.

Commissioner Paskewich: I see your point there. I just wanted to bring it up because it was a matter of discussion and verbiage.

Commissioner Clark: I'm kind of kind of back to what I read in F again, I think I would like to see something about invasive plants under F. I mean, you have the developer, well, we have this ecological consultant looking at all aspects and I think he is on board right from the beginning, whereas putting it under J is putting it in the hands of the H.O.A. which is going to come in several years down the road, so that's the only place we have somebody being the invasive plant police, whereas I think the developer would be working with their ecological consultant to look for early invasions if you will, of invasive plants, so that's put somebody at the fore front and then you put it in later with the H.O.A. and they continue to police the situation.

Chairman Block: What happens then in F, sub d, provide regular reports and methods to mitigate stress and protect obligate wetland animals and plants including the detection and/or removal of invasives.

Commissioner Clark: That's a good place to put it.

Commissioner Igielski: So that would be after the word plants to just have the phrase, early detection and removal of invasives. Then that would result in the deletion of what we had previously set up as small j, under G.

Chairman Block: No, leave it there.

Commissioner Igielski: Leave it there, okay. Just want to be clear.

Commissioner Clark: Again, it's two different things, it's preventing the initial colonization and long term, two different populations and two different areas of expertise.

Commissioner Paskewich: Looking at large G, page 4, small d, in the event that green initiatives cannot be achieved, the D.E.C will specify chemicals, (herbicide, pesticide and fertilizer for variety application availability. Who is going to determine that they are not being achieved?

Chris Clark: Mr. Chairman, you asked me to look into this condition. Our expert, in his testimony of the 22nd, page 35, he talks about the turf management program and he goes on to say, now I'm not one hundred percent sure that one can achieve one hundred percent no pesticides

application, however, you can do, you can limit broadcast pesticide, herbicide application, you can go to spot treatments, and there are a lot of things that you can do before we get to the need to have harsh chemicals that would remain in the environment for some time. So that being read, in conjunction with his report, I put that in there such that, this is what you are shooting for, but you know, even as the expert indicated, if you can't you should have them develop a plan and have that in place. Have them analyze chemicals that are appropriate, methodologies that are appropriate, have them have that plan as a backup so that if you go one hundred percent everything on black (inaudible) and you say, I want to have no pesticides and then the expert said, he's not one hundred percent sure, that's why I worded it in that fashion.

Chairman Block: How about in d, after the D.E.C., he will specify chemicals.

Attorney Boorman: So in the event that green initiatives cannot be achieved by the D.E.C, he will specify the chemicals. We can put he/she.

Commissioner Clark: May I say something there. I see the intent of that, I just feel that opens things up wide, way beyond the recommendations of REMA and also we had an opinion that Sigrun obtained from Mr. DeBaros about, and I think back to the CERT, CERT mentioned no pesticides. I mean, no.

Chairman Block: We deal in the real world. Let's say for example that there is an invasive and it is being very tenacious, which is the greater good, to control the invasive or to omit the stronger herbicide?

Commissioner Clark: I think you could spend hours working with the Connecticut Invasive Plant Working group to answer that.

Chairman Block: That's why we are going to leave it to the ecological consultant who supposedly has the same priorities that you and I would like to have, to find out the balance between what he would like to achieve and what he can achieve.

Chris Greenlaw: Mr. Chair, if I can also, you had asked me to look into the comments of Commissioner Clark as it pertained to, I believe at the time you weren't sure when the testimony was between Sigrun and Mr. DiBaros at DEEP, and I found an e-mail on the 18th, and want to point out, that is January 18, 2012. In her correspondence she says, he too is concerned that increased surface water runoff from storm water basins, post construction, would harm the population. In particular that frequent larger pulses of storm water would reduce recruitment of young cottonwoods. Regarding chemical impacts from storm water constituents leaving the basin, we agree that this probably would not happen right away, but after a lag of ten or fifteen years, and I think that is where you had made the reference to the ten or fifteen years. I want to point out, this was one January 18, 2012. They were looking at the plans dated January 16th,

Commissioner Clark: Is that when the new plan was introduced?

Chris Greenlaw: It should be 13, but it says 12. If you look at the e-mail, it's actually, the e-mail is correct, it says 2013, but she types 2012. The point being when she has this correspondence time frame, they are looking at the plan on record at the time which is January 16th, so the consultant at the time had, if you remember, wetland pocket area two had a very large storm water area to the north of it, and additionally to the south there was a storm water management area that had an outlet structure with a level spreader, and you as a Commission had made comments, such that the DEP said the grade was too steep on the level spreader, they wanted that moved, additionally from the correspondence between Sigrun, she collaborated with Mr. DiBaros, stating that they were concerned with the storm water basin water and pollutants from

that. So what they did was, the next revision of plans, they, to the south took the level spreader and outlet pipe and sent it straight and what they did, they kept that water from going into wetland area two, and to the north, where the large storm water detention area was, they actually pushed that whole structure, all the storm water included, piped it down the street, put it north of wetland area three without an outfall to any wetland areas. That would then go to another storm water management area and to Russell road. So they heeded the warning, changed the plans after these comments were made. That's shown again on this plan on the 24th. Storm water management area two was here, and they had level spreaders with water going into here, and this level spreader was pointed directly at this, so they orientated this one to the west, they took all this water here, does not go into wetland area three, or two, goes into a storm water management area and then is attenuated and slowly released into the state road drainage structures.

Chairman Block: Is there anything further on the conditions?

Commissioner Paskewich: I see notes were added regarding the last meeting, large F, small g, it was discussed the ecological consult shall engage a hydro-geologist for purposes of assessing any interference with an aquifer during the construction (e.g. drilling blast holes, excavation, etc.) of the project. So the etcetera means what?

Chris Greenlaw: Mr. Chair, one of the Commissioners wanted to not only encompass sort of, let's just say the drilling operation, but any operation that be called excavation, so what I did, instead of using the term construction, I used a couple of examples, such that.....

Commissioner Paskewich: So do we all feel that that is adequate in the statement? Just referring back to what we spoke to before.

Chairman Block: Is there a reason for the term found in wetlands, in small f.

Commissioner Clark: We're on big F, little g?

Commissioner Paskewich: Yeah, big F, little g, and we were trying to get a consensus to the language, amongst us.

Commissioner Clark: Then I have a question as I read this. At which point in time would the hydro-geologist be hired at the consultant, before things happen, or the minute water is seen?

Commissioner Paskewich: Good point.

Commissioner Clark: During digging, drilling, blasting, I think those were the three. I think it is unclear to me whether this individual would be only in the event of an emergency, or a perceived emergency, or a question, and I know that Mr. Greenlaw made a statement that he didn't think you could drill any place in town without hitting water.

Chairman Block: Kathy, would the problem be resolved if after purposes in the first line, it's of discovering and assessing?

Commissioner Clark: No, that still doesn't answer my, my question is, I would start with a description of what is happening on site and then turn that into a condition instead of taking it backwards. In other words, who is where, what happens, and what individuals do we need there to keep damage from being done.

Chris Greenlaw: I would agree with some (inaudible) just to revise this condition.

Attorney Boorman: Are you all set with this condition?

Chairman Block: No, no, no, the question in mind is whether or not it is clear that the hydro-geologist would be on board at the start of the blasting process, correct?

Commissioner Clark: Yes, that's my question. I feel that hydro-geology is one of the topics that there has been a lot of debate about, experts seemed to have different opinions along the way, and I feel that to me is a very unclear, and not resolved in my mind situation as to people who say, we don't know what is down there, so if our opportunity to engage a hydro-geologist is way after the fact, what are we going to use them for and are they going to be on site, and maybe evaluate the situation before things start.

Chairman Block: How does this work then? The ecological consultant shall engage a hydro-geologist prior to blasting for the purpose of discovering and assessing any interference with an aquifer blah, blah, blah....

Commissioner Clark: And now I'm going to pose a question to Mr. Boorman and say, do you feel that that is one of those conditions that would not stand up in court.

Attorney Boorman: Well the problem that I have with it, and you can correct me if I'm wrong, but you don't have any expert who said there was going to be an issue with aquifers period. So you are pushing this condition already, by saying that you are going to condition about aquifers and then to push it to say that you are not going to bring in the type of geologist when there is an interference with the aquifer, instead you are going to start doing it before they start blasting, I find that to be not a realistic, reasonable condition. Maybe if I can summarize it, what you have again, you have the developer, who is going to consult with the Town Engineer for the selection of the ecological consultant who has a special expertise in vernal pools. His job is to monitor ecological activities and recommend plan changes. The ecological consultant will provide the following: and here we are saying there is an ecological consultant that is going to be on site, their consultant is going to say, okay, we think we found an aquifer here, so we're going to stop immediately, we're going to bring the hydro-geologist in to tell us if we have one or not. I think where you are going now is you're going to say, well, you're bringing an ecological consultant but that's not enough, you're going to bring the hydro-geologist in to sit there before you even have anything for him to do. So I just, I think you have to decide if it's sufficient to say that you are going to have input on who chooses the ecological consultant, who that is going to be, and that he is given directions specifically, he runs into an aquifer, then he's got to get a hydro-geologist and everything stops until they do that, so I think that is pushing the envelope already. That's what I'm saying to you.

Commissioner Sadil: I think Commissioner Clark would like somebody like an on call situation? Is that more your intent, that somebody would be on call?

Chairman Block: Well let me play devil's advocate for a minute, we have been told that the basalt is already fissured in various ways. We've been told that the wetlands are there because of the imperviousness of the rock and the materials filling the various crevices. We've been told if the blasting is done improperly that those fissures can be shattered and opened and whatever. The question is, and the reason that we are having the seismic station is because we want to make very, very sure that within this very limited watershed that we have, that that blasting is not going to cause any drainage diminishing the flow of water to these wetlands. Kathy's concern, and I believe Jeff articulated it too last week, is that when they start blasting, unless there is somebody there from the get go, looking at the drilling, seeing if there is a substantial seepage, seeing if

there is some strata that is discovered prior to blasting that is likely to be affecting the total limited aquifer feeding these wetlands, that we want somebody to be able to try and detect that to avoid a catastrophic bleed off of the water from this very limited watershed. Am I stating it properly?

Commissioner Clark: And I'm also going to use as a reference and this is in the REMA report, which states on page 6, another critical discovery and one that appears to still be contested has to do with the geo-hydrology of wetland two. It is REMA's contention that the hydro-geomorphic classification of this wetland is ground water depression. And then they go on to quote an article from 1993 which I won't read unless anyone wants me to, well, I think I will read it. These wetlands occur when a basin intercepts a local ground water table, so that ground water discharge as well as precipitation and overland flow feeds the wetlands. Classic ground water depression wetlands have no surface drainage leaving the site, however occasional stream flow out may occur from basin over flow. Ground water inflow may be continuous, or seasonal depending on the depth of the basin and the degree of fluctuation of the local water table. During periods when the wetland water level is higher than the local ground water table, e.g, after major precipitation events in dry season, ground water recharge may occur. Ground water may enter the wetland basin from all directions or it discharge in one area and recharge in another. I feel like this statement was here and it contradicted what the applicant's specialist had stated up to that point. They seemed to come to some agreement where they agreed with Mr. Logan because they included ground water in the water budget which honestly didn't make sense to me since there was, is that what balanced it? So I think that that sitting there, so when I say likely, here's my question, is the water table, I know what the water table is, but if you admit that there is a water table in that area, do you admit that an aquifer is quite likely or possible?

Chairman Block: The water table is the aquifer. Water table means that there is a body of saturated soils containing water that is either there because it is the low point or there is an impervious membrane below it. The water table is the surface of the captured water within the soils.

Commissioner Zelek: The aquifer, and also the one that is cited in the CERT report which is also sub straight that goes to the bedrock.

Chairman Block; The reference, the record that I call to mind is that they said that within the twelve feet of the top of the bedrock, the fissures contain water. Now, so we have different levels if you will, of ground water. We have the water flowing across the top of the rock under the soil, we have the water going through the fissures of the rock, mostly through the top twelve feet or so, and then below that the basalt is quite tight, the fissures are filled with fines over geological time, and that's sealed, so it is I think appropriate that the hydro-geologist be there from the get-go in order that while they are starting their blasting program that if there is any (inaudible) that the blast hole is going to be interfering with one of those water tables that he be able to deal with it so that so that we don't have a catastrophic risk of diverting or draining a substantial amount of water away from our wetlands.

Commissioner Zelek: Given the concerns that we have repeatedly stated regarding that, I don't think the Commission would be unreasonable to prearrange for a geologist to be there.

Chairman Block: So again, I offer you this language, shall engage a hydro-geologist prior to the start of blasting for the purpose of discovering and assessing any interference with an aquifer during the construction, blah, blah, blah of the project.

Commissioner Clark: I have two questions, one is you mentioned the depth that you remember from all the millions of documents that we have, that I don't, and when Mr. Bachand showed us

the photograph of the cliff face, with the water coming out which I just drove by the other day and saw the water coming out. How far down do you think.....

Chairman Block: Well, there's two factors, first of all the majority, in my opinion is again within that twelve foot surface margin but beyond that, as a cut face, you have the affects of blasting which is what cut the face, so it is not unusual for it then to have opened up the fissures, the same ones that we are concerned about at a deeper depth and drain some water table from above.

Commissioner Clark: That's what I'm asking, you said it, and you said it was not any deeper than twelve feet.....

Chairman Block: The majority of them aren't.

Commissioner Clark: But our cuts are going to be as deep as twenty-five to thirty, is that correct, for trenches?

Commissioner Paskewich: That's a utility trench.

Commissioner Clark: A utility trench would be twenty-five to thirty feet, so REMA has stated that they believe that there is an aquifer, and you are stating that the aquifer is twelve feet deep, isn't it likely that the trench would cut into the aquifer.

Chairman Block: Yeah, but when we put this to them both, they came up with the, first of all that the majority of those deep cuts, and please confirm if I am correct, are outside of the actual watershed for wetlands two, but more importantly the use of the water stops, the sealing materials at the top of the rock cut, was intended to prevent the diversion of a lot of that. So hopefully, again, it's a balance reviewing with something that is, to a great extent an art, rather than a hard science, but the, our blasting consultant did say that this is as much of the safe guards as they could come up with, but again, I want to be concerned, but I don't want to be concerned to the point of appearing ridiculous to a lay person in a dark robe.

Commissioner Paskewich: I'm going to speak to Chairman Block's statement and I agree with what he said only because until something is opened up, you can't sense an aquifer or ground water flow, it's nearly impossible. I don't know of any detection devices currently. So I think what is written here I think is adequate for the purposes.

Chairman Block: Engage a hydro-geologist prior to the start of blasting for the purpose of discovering and assessing any interference, that should be the possibility of any interference with an aquifer, blah, blah, blah during construction.

Commissioner Clark: Could you repeat that?

Chairman Block: Shall engage a hydro-geologist prior to the start of blasting for the purpose of discovering and assessing any interference with an aquifer during the construction of the project.

Commissioner Paskewich: For the purpose of again?

Chairman Block: Discovering, assessing, assessing any interference. You might want to throw in, minimizing, prohibiting or preventing, but again....

Commissioner Paskewich: That's all assessing. It's one and the same.

Commissioner Clark: So we all agree that there is no way to know if there is an aquifer under this?

Attorney Boorman: I would just ask you to go back to the testimony and I think there is no expert that said that there was an aquifer, in fact, I think they said there wasn't.

Commissioner Zelek: The CERT team included a geologist and on page 14 of the August 2011 CERT report clearly states that they believe that the existence of aquifers in the eastern slopes, and that is where the site is proposed and that is where the blasting is going to take place.

Attorney Boorman: I don't recall that, I don't know if anybody has the CERT reports, because that might be something that would be helpful to have on the record.

Chairman Block: If any of us start to fade out, and you can't hear us clearly enough, raise your hands, I'll use that as a signal that you are having trouble hearing, so that we don't have to go without.

Audience: Will the public be allowed to speak before you vote?

Chairman Block: No, there is no public participation at this point. Let's put F sub g to bed. Are we in agreement about the hydro-geologist being there prior to blasting, for the purpose of discovering and assessing any problems with the aquifer. We'll go on from here.

Commissioner Sadil: My question do we enter into the record now the question that Commissioner Zelek had?

Chairman Block: Oh, the...

Commissioner Sadil: That the aquifer was found, and enter it into the record?

Chairman Block: No, it has to be done now if you want to make it part of the record.

Commissioner Zelek: So I believe that all we left off was there was a question about whether or not a geologist had been involved as a witness for this project. If you look at the CERT report, and I have it open in front of me here, the geologist for the State of Connecticut was Randolph Steinhem, DEEP, State Geologist and Natural History Survey and goes on and gives his phone number, etc. Would you like me to read page 14?

Attorney Boorman: The relevant section.

Commissioner Zelek: Okay. I will get to it, the relevant section begins on page 13, the CERT report of 2011, which was entered into the record, the Title of Page 13 is Ecology and Geology of Cedar Mountain. There are two or three pages here and I'll just go right to the one that, the passage that we are most interested in, and I did refer to this during our earlier discussions. In the middle of page 13 it is described that basalt is highly fractured, containing both coolant fractures and Teutonic fractures parallel to the faults as shown in Figure 3. Some of the teutonic fractures have been mineralized, with quartz, calcite and barria. The fractures form core space for ground water and the basalt under the eastern portion of the parcel may form an aquifer that could yield potable water for domestic and agricultural use.

Chairman Block: Thank you. I think that resolves the basis for our proposal of this condition. Are we all in agreement?

Commissioner Sadil: The only question that I had when you talk about watershed, that's not included when you talk about watershed. Watershed is only the quick flow at the top and that infiltrates down into the bedrock, is that correct?

Chairman Block: In this particular geology, I would say yes, on a larger scale....

Commissioner Sadil: For this application.

Commissioner Zelek: For this application as we heard, in some of the testimony, yes, but of course this is a very unique site as described in the CERT report.

Chairman Block: All right, is there anything further in the conditions.

Commissioner Clark: I just have another devil's advocate question. So a hydro-geologist has not evaluated this site since August of 2011 and the next hydro-geologist said will end up at this site after construction has begun, does this hydro-geologist have any input other than if there is damage done, and water discovered, other than them showing up and saying, why are you digging here?

Chairman Block: Dr. Clark, they, Mr. Holsley, our blasting expert also has credentials as a geologist and to an extent he did talk about the issues as well. Quite honestly, again, it's a concern, I think we have addressed it adequately without putting the whole project back and starting over again. I am just not sure that there is really a good basis for going beyond the precautions that we talked about here. Again, the question is, which is the horse and which is the cart. If you want to go further with that, we certainly can, but I really don't want to focus in on one particular aspect and make it a vulnerability as to the validity of the entire decision making process. You follow me, all?

Commissioner Zelek: I totally agree with you, I believe this is just one of many challenges that this site faces.

Chairman Block: Let's go on, anything further with the conditions? Okay, if that's the case, we now have to start in with the decision making process....

Commissioner Clark: I think I do have a question, and this is something that is not in the conditions, but I didn't know if it was in the plans, so I'm addressing this to Mr. Greenlaw. We began a discussion at one point about crushed trap rock, trap rock that was going to be crushed during the process and kept on site I think, I think that was the deal, that it was going to be kept on site, and I believe at one point we raised the question of what kind of dust, not blasting dust, this is crushing dust, is going to be released during such a procedure, and I couldn't find that in the plans as to how that would be mitigated.

Commissioner Paskewich: I just want to expand on your question because it is a good one. I also had brought that up during prior meetings and we were told I believe that, by the applicant's engineers that this would be brought into the specifications of the control of dust and sedimentation, and I'm not sure that it was, and now that you are referring to it, I don't know how you control columnar dust coming off from a grinder into the air, and I don't think that has ever been answered.

Chairman Block: Well I think it was answered to the degree that the applicant agreed that they would control it.

Commissioner Paskewich: How?

Chairman Block: Well, that's.....

Commissioner Paskewich: I don't see any measure written, I don't know of any measures that could be written and it's going to be in the wind, it's not a static movement and it can be carried anywhere at any point in time, so....

Commissioner Zelek: So my best recollection was to move the crusher as far as way as possible.

Chairman Block: Well, that was part of it, I remember that, but Chris....

Chris Greenlaw: That was one, we talked about the phasing plan and we talked about moving that crusher as far away from the wetlands as possible. I believe the common mitigating effort is such as water, and we kind of have to reflect on sites that are similar that we have had. Rockledge and Sterling, we had a lot of rock crushing there, Waverly we had this done very similar, Rockledge, in it's name we've had this done, so we know that it can be done, but some of the things that we have asked them to do to mitigate that is exactly what you have requested. Location, such that we moved those as far away as we can, from the wetlands.

Commissioner Paskewich: How do we know how far, when wind carries?

Commissioner Clark: And my question is, did REMA address that? I didn't find that in the REMA report as far as suggesting mitigation or commenting on damage to the wetlands from this particular matter coming in large quantities, and is there any prohibition about crushing on a windy day, and other things. I mean, we talked about blasting, and that made sense but, the matting, that made sense to me. This does not.

Chairman Block: We are talking about adding a condition that requires the applicant to maximize control of the air borne dust, and if the wind is blowing towards the wetlands they have to stop.

Commissioner Paskewich: How are you going to detect that?

Chairman Block: Well, you know which way the wind is blowing.

Commissioner Paskewich: Who is going to watch the wind blowing?

Chairman Block: Well again, if there is evidence of the dust getting in there, they've got a problem. Again, you have to deal with these things within the limits of practicality.

Commissioner Paskewich: We're really looking at wetlands here.

Chairman Block: We are looking at our two particular wetlands. We're protecting them, so the fact of the matter is, if the wind is blowing towards the wetlands and there is any dust leaving the oppression site, they are supposed to stop. That's as much as I think you can reasonably ask.

Attorney Boorman: If I could interject, you remember the provision under the law to determine conditions as well as accept or deny to have a reason, we must for these types of questions have information on the record, some expertise that indicates that there is an issue, you must have expertise that says that it is a significant issue, and I would suggest, and I stand corrected if any of you find it, but as Kathy said REMA did not address it in their report, they did not indicate that there was any issue with it in their presentation, quite to the contrary, in terms of any discussion, they said under general construction practices which will be monitored by the Town, by the Town Engineer, but that would be a normal practice to minimize those kinds of things. I'm suggesting

from a legal point of view, you have to be careful, it may happen, as has been put into the record already, not that it might happen, first off it has to be likely to happen, as we discussed what the definition of that was, and there must be damage to the wetland as defined by an expert, and that hasn't happened either, so I'm suggesting that you are in an area now, in which there is not a record to support this issue at all, and you can't just go on supposition, you have to have something in the record.

Chairman Block: And again, I am strongly advising you to take Attorney Boorman's comments very carefully, but I do recall that the applicant himself said yes, he is aware that crushing creates dust, our REMA associate, I can't pronounce her name, did say that the crushed rock acts as an additional nutrient, and also total solids, so I think there is a balance between them, and I think that the applicant's proposal to keep the crushing away from the wetlands is fine, and if he can control the dust, that's also fine, with normal procedures, but if he doesn't and it's reaching the wetlands, I think it's fair of the Commission to say he stops crushing. I think it's a balance between our concern over the providing the maximum benefits of the wetlands and being practical for the applicant and under the law, so with that, I leave it to you gentlemen and lady, what do you want to do?

Commissioner Paskewich: Well, the engineer did refer to it himself and said that they would look into and provide measures in the document, but I don't know if they did. I don't read it.

Chairman Block: I heard them making assurances, but our concern is, Kathy's concern is that it is not reflected in their plans, and the question is, do we want to add it as one of our conditions.

Attorney Boorman: Maybe I can interject here, if you look under F, once again, the developer who would consult with the Town Engineer in the selection of the ecological consultant, he's going to monitor the wetlands, supervise the wetlands methods, I would suggest to you again, this is a routine part of construction. You are not going to be able to find every single thing that happens on a construction site. You can define the general plan that says if the environmental, the ecological consultant comes back and says there is a problem with the wind blowing in the wrong direction, you have to stop, and that would be part of the plan that would be associated with it. I really think you are in dangerous waters here looking to, not to be I don't have the word, but I really think it would be a mistake to try to nit-pick this again. You need to have on site situations in which you have your experts who are going to be in the field that will address any issues that come up. It's really not a good idea to sit and try to nit-pick something off of a general construction matter.

Commissioner Zelek: So I would like to agree with Attorney Boorman that the ecologist being there will be aware of that situation, such as dust.

Commissioner Paskewich: And he will be there during blasting and grinding process. Yes?

Chairman Block: Look to our conditions for the duration of his services.

Commissioner Paskewich: Where is that located?

Chairman Block: Capital F.

Commissioner Clark: Would it be burdensome to add a statement about dust crushing in G, because e.g., drilling, blast holes, excavation, crushing rock.

Chairman Block: Wait, what G are you talking about?

Commissioner Clark: Big F, little g.

Attorney Boorman: That little g is carrying a lot of, you're talking about the aquifer situation, this is entirely different.

Commissioner Clark: I'm sorry, I'm focusing on the word ecological consultant.

Chairman Block: Let's resolve it by adding h, sub h, The ecological consultant shall ensure that that dust control measures are placed to protect the wetlands.

Chris Greenlaw: Mr. Chair, would you repeat that please?

Chairman Block: F, sub h, The ecological consultant shall ensure that the dust control measures are in place to protect the wetlands throughout the project.
Anything further? Have we reached the bottom of the well?

Commissioner Clark: I just can't help myself. So we are accepting CERT report number one and CERT report number two as relevant. At one time earlier we had some discussion that wondered if the last minute change in design, if that was not the design that either, the people from CERT came and they looked at a particular plan. They made their recommendations, some of it was general and would apply to wetland in general irrespective of the development plan, but some which might be changed, and we don't know how, by the change in the plan. Do we consider, and I guess I'm addressing this to both the Chairman, and Mr. Boorman, do we consider that these CERT reports are still relevant?

Chairman Block: It's a question as to what the statement in the report is referring to. If it's referring to the geology, that's not changing. If it's referring a particular part of the project structure, that indeed did change from one report to the other, then it may not be. It's up to us to balance the information in total that we have been given to believe which parts we want, what testimony we want, to dispute what we want, and then to come up with a decision to the best of our own personal beliefs and abilities. So again, in this particular instance, as far as the geology is concerned, the rock structure and all, that's eternal to the earth, so we can rely and should rely on both of those reports.

Chris Greenlaw: Mr. Chair, I just want to add, that's exactly what this process is. Whether it's TPZ or Inland Wetlands, as you know, Mr. DiBarros made a lot of recommendations late in the game, and when he did, I think within twenty-four hours there was a drastic change based on the fact that he wanted a larger buffer, so they changed lot configuration, changed where lots were and reconfigured them because of comments like that, so you have to keep that in mind, that this is a process such that when, it's almost a living document itself as far as the plan, you get these considerations from the ERT which is composite of U.S.D.A. and DEP officials and the Coastal Conservation District and they try to make those changes in kind with those recommendations along with yourselves and staff comments all the way along the line.

Commissioner Zelek: And for Kathy's benefit, the 2011 August CERT report also describes the Best Development Practices for vernal pools, so in there they describe the 750 foot buffer, they describe water discharges within that area, and they also describe the amount of percentages of area to be disturbed, and what those limitations are and what the impact is going to be on the obligate species, so it goes far beyond just looking at this one application. It describes some things in very general terms which is very beneficial to this Commission.

Chairman Block: Again, conditions, going once, going twice, going three times and done.

Chairman Block: I believe we are now ready to consider a motion. John, will you do the honor please?

Commissioner Igielski: At this time it would be appropriate for the Chair to ask the Town Engineer, Mr. Greenlaw if the application is complete?

Chairman Block: Mr. Greenlaw, is the application complete?

Chris Greenlaw: Yes, Mr. Chair.

Chairman Block: Then we go on to a motion.

Commissioner Igielski: I'll make a motion that the Commission after review of the application and supporting documentation, Public Hearing held on October 16, 2012, November 13, 2012, December 4, 2012, January 8, 2013, January 17, 2013, January 22, 2013, January 24, 2013 and closed on January 24, 2013. Plans dated January 16, 2013 as amended January 22 and 24, 2013, subsequent discussion by Commission members in meeting the goals outlined in Section 10.2 of the Inland Wetlands and Watercourses Regulations of the Town of Newington issue a permit by plenary ruling for application 2012-22 subject to the following conditions: 1,2,3,4,5,6,7,8,9,10,11,12,13 and 26. And subject to the following additional conditions:

- A. Prior the Chairman signing this plan(s) the applicant shall provide written proof that the following requirements have been met:
 - a. An Indemnification Agreement executed with the Town of Newington holding the town harmless from any claims arising from the granting of this permit.
 - b. Prior to issuance of a Certificate of Occupancy, the applicant will submit to the Commission, written certification signed by a Connecticut Licensed Professional Engineer confirming that all required drainage improvements have been installed in accordance with the approved plans.
- B. No construction or installation work shall be performed on the site until the Town Engineer has received written certification from a Connecticut Licensed land surveyor that:
 - a. No clearing has occurred on the site except in accordance with the approved plan.
 - b. All soil and erosion control measures are completed in accordance with the approved plan.
 - c. A perimeter/boundary extending 150' (D.E.E.P. recommendation) from the boundary of Wetland area #2 will be staked out for placarding. Additionally, wetland area #3 will also have the perimeter of the Upland Review Area staked out for placarding. A Connecticut licensed Land Surveyor shall certify that the placards are placed in accordance with the plan of record.
- C. Any disturbed areas as specified by L.O.D limit of disturbance as indicated by the plans and contract documents shall be stabilized by restoring grass cover prior to initiating work on the next phase. These plans shall show seeding details, both temporary and permanent. The information must include site treatment and preparation, seed mixtures, rates, dates and mulching materials. The disturbed areas shall be covered before the onset of winter, either by seeding permanent tuff grass, installing sod or hydroseeding, on

- a properly prepared surface prior to October 15th. If that is not possible, temporary seeding shall be done prior to November 1st of the calendar year with permanent cover to be provided the following spring.
- D. All drainage calculations as to the detention capacity of all proposed pond areas or bio-retention basins are to be submitted to the Town Engineer for review.
- E. Blasting Conditions:
- a. The developer shall allow the Town to participate in the selection and approval of the blasting consultant to monitor blasting activities and recommend blast plan changes.
 - b. The developer's blasting contractor and consultant will determine the location and installation of a minimum of six seismic monitoring stations seismographs prior to test blasts but will include, but not be limited to, at least one monitoring location set up at a distance of 150 feet from each blast. The developer's blasting contractor and consultant will monitor, review, document and recommend changes pursuant to test blast analysis in a nature that will limit heave, overbreak and flyrock as necessary to protect wetlands and adjacent structures. All monitoring documentation will be made available to the Town or the Town's representative for review.
 - c. The developers consultant will provide their blast/monitoring plan including all pertinent contact information outlining owner's representative, contact person, etc. The developer's consultant will provide the Town Engineering Department with any and all reports as required, prior to commencement of blasting.
 - d. Prior to any blasting the contractor and consultant will fully develop a blasting plan. The blasting plan will include but not be limited to the requirements listed in the Blasting Notes; refer to notes on plan sheet GN1 specifically 11, 14 and 15. An accumulation of particle velocity/frequency data on site from the test blast and from concurrent production blasts at a far field location from the wetlands, as blasting migrates closer toward the wetlands to provide referenced support of a peak particle velocity/frequency vibration threshold limit designed to protect the wetlands from heave and overbreak. This will be accomplished by comparing vibration readings to actual heave and overbreak results possibly utilizing a combination observed, excavated, measured and photographed support to establish the site specific limit.
 - e. Requested vibration monitoring stations: at front, street side of Lot 28, at street, curb north end of lot 17 in proposed bioswale areas of lots 34 and 36. At the street, curb of lot #9 and rear yard of 31. Additional sites, a minimum of 6 stations shall be required as specified per developer's blasting contractor and consultant.
 - f. Prior to test blasts being performed, the blasting contractor and applicant's consultant will concur on the maximum parameters (limits) of any and all datum which could cause deleterious or harmful effects to the basalt bedrock within the found wetlands and/or upland review area 150 feet from the wetlands boundaries. Said harm being defined at a minimum to be any heave, overbreak, flyrock or other alteration of the bedrock characteristics is deemed capable of

causing increased porosity or fissures to develop within the designated wetland and upland review area bedrock 150 feet from the wetland boundaries.

- g. Test blasts will be conducted prior to start of work in each of the 4 phases which shall be monitored at all stations. Data collected will be reported by blasting contractor to the applicant's consultant prior to start of blasting work and receipt of written comments and approvals by applicant's consultant to the Commission. Said consultant will report to the Commission within seven days of receipt of said test blast data, as to their finding and opinions as the blasting parameters and techniques, utilized per d above and any and all alteration to the blasting plan for that phase which they deem necessary to insure that the wetlands are not damaged by adjacent blasting.
 - h. Each of the blasting plans and techniques to be used in each of the four phases, shall be amended if necessary to protect the wetlands in accordance with all of the data, findings and opinions obtained from the test blasts and the knowledge gained as the phases and work of the blasting shall continue.
 - i. The applicant upon first obtaining information from the test blasts monitoring and/or the initiation of the blasting work or during said blasting work, that said parameters or techniques have exceeded the parameters as originally stated, or found to have or to be likely to disturb the bedrock within the wetlands and/or the upland review area, 150 feet all blasting work shall be halted until such time as the developer's consultant shall have gained permission to implement an altered blast plan from this Commission.
 - j. The developer's blasting contractor shall conduct their activities in accordance with State Regulations, the Regulations of the Town of Newington Fire Marshal, the Regulations of the Town of Wethersfield Fire Marshal and this Commission.
 - k. It is anticipated based on the test pit results included in the project design report, that there is shallow soil to bedrock, ledge, at the site and that controlled blasting will be required within trenches for utilities within the limits of the road section, and within the limits of the proposed building foundations.
- F. The developer shall consult with the Town Engineer in the selection of the ecological consultant with a field of expertise in vernal pools to monitor ecological activities and recommend plan changes. The ecological consultant will provide the following:
- a. Monitor the obligate wetland species, animals, and plants during and after project completion for twenty-five years to determine population, recovery, etc.
 - b. Provide regular reports and methods (proposals to mitigate stressors and protect obligate wetland animals and plants including early detection and removal of invasive plants.
 - c. Provide necessary remediation plan to address any failure of Best Management Practices, BMP's, during the time period specified above.
 - d. Coordinate time of phase construction with mitigation and breeding period of obligate species.
 - e. Monitor placement of exclusive devices, barriers, during construction.

- f. Monitor and recommend maintenance schedule/reports to bio-retention/bio-swale areas.
 - g. The ecological consultant shall engage a hydro-geologist prior to the start of blasting for the purpose of discovering and assessing any interference with an aquifer during the construction e.g. drilling blast holes, excavation, etc., of the project. If such evidence of interference to an aquifer is found, the developer's consultant shall immediately cease and desist construction activities until such time as the developer's consultant and the town review and address the report from the hydro-geologist.
 - h. The ecological consultant shall ensure that dust control measures are in place to protect the wetlands throughout the construction project.
- G. Developer/Home owner's association, H.O.A. to provide a copy of integrated turf management plan ITMP and Integrated Pest Management Plan, IPM to the Town Engineer. The I.T.M.P./I.P.M. plan will follow the guidelines as recommended by REMA Associates outlined in the report referenced in condition H section a, below.
- a. Developer's ecological consultant DEC is to prepare I.T.M.P/I.P.M program pursuant to F above for the project utilizing a recognized facility to perform all appropriate lab testing.
 - b. The D.E.C. will review plans and soils specific to site and develop protocol, document for turf, vegetation and chemical application recommendations.
 - c. The D.E.C. will specify variety of turf and native trees, swamp cottonwood used as test specimen.
 - d. In the event green initiatives can't be achieved the D.E.C., he/she will specify chemicals, herbicide, pesticide and fertilizer for variety application availability.
 - e. The D.E.C shall include proper uses, timing of treatment, application methods e.g. spot versus broadcast for H.O.A. management company.
 - f. The D.E.C. to monitor and review results and make recommendations to the turf and I.T.M.P./I.P.M. plan as necessary in accordance with the plan guidelines.
 - g. Developer to include I.T.M.P./I.P.M as a required provision of any H.O.A. created for this project; to include reference in all deeds of conveyance of lots from developer.
 - h. The H.O.A. shall be responsible for all management of the landscaping within the project.
 - i. The H.O.A. shall prohibit homeowners from engaging in any landscaping and/or yard maintenance activities.
 - j. The H.O.A. and developer shall develop a program for the early detection and removal of invasive plant species.

H. Water Quality Sampling Program

- a. Developer's ecological consultant to prepared a water quality monitoring program for both during construction and post for twenty five years, the plan to be in accordance with REMA Ecological Services, LLC REMA recommendations outlined in the January 24, 2013 memo entitled Guidance on landscaping plan/turn management/I.P.M, invasive plant species monitoring control and pre to post construction biological and water quality monitoring Newington Walk/ Russell Road, Newington, Connecticut, and in accordance with plan entitled Figure 1: Recommended water quality sampling stations for baseline and post construction monitoring, dated January 24, 2013.
 1. D.E.C shall evaluate the swamp cottonwood stands and prepare report with recommendations necessary for the preservation of the population.
 2. Grab samples method per report to analyze for nutrients, metals minerals, tss.
 3. Piezometers to be installed per report and plan for ground water analysis.
 4. Data to be collected by electronic meter: as to specific conductivity, redox, potential, pH, dissolved oxygen, salinity and temperature.
 5. Records of water depth with gauge.
 6. Shallow groundwater sampling.
 - b. D.E.C to periodically monitor the installation of the bio-retention areas including the bio-swales and monitor condition bio-swales for a period of twenty-five years post construction and prepare report and recommended alterations.
 - c. All results recommendations to be reported to municipal Inland Wetlands Commission via Town Engineer.
- I. Provide locations of proposed snow storage areas on the plans. Snow storage areas are not to be located in the bio-retention and/or bio-swale areas.
 - J. Any document proposing a Conservation Easement is to be submitted to the Town Engineer for review and approval and shall be recorded in the Town Land Records.
 - K. Increase water budget by 0.23 AC-FT to Wetland #3 by collecting additional surface water from lots 14 and 19.
 - L. Wetland soils are not to be disturbed or impacted by construction activities. In the event that wetland soils are disturbed or impacted, these soils are to be stockpiled.
 - M. The by-laws of the H.O.A shall include its responsibility for periodic maintenance and cleaning of the drainage system including all detention basins. Prior to ratification by the H.O.A. any proposed by-law change relevant to this permit shall be submitted to the Commission for approval.

Chairman Block: A second to that please.

Commissioner Zelek: I second the motion.

Chairman Block: Are there any discussion or amendments to them? If you will look at F, small d. to coordinate the time of phased construction, with mitigation. Insert after construction, to avoid interference with mitigation and breeding periods.

Commissioner Igielski: Coordinate time of phased construction to avoid....

Chairman Block: Interference with migration.

Commissioner Igielski: And breeding period of obligate species?

Chairman Block: Right.

Commissioner Igielski: So just adding words, to avoid interference.

Chairman Block: Right. And on L, after the word stockpiled, add or replacement. So if they are disturbing it they can stockpile it and put it back.

Chairman Block: Is there a second to.....

Attorney Boorman: You just have to go to John and ask him to accept that. John as the mover of the motion can accept those changes.

Commissioner Igielski: Yes I can.

Attorney Boorman: And as the second, can accept those changes?

Commissioner Zelek: Yes I can.

Chairman Block: Anything further? All in favor of accepting the conditions?

Attorney Boorman: No, no, all in favor of the motion.

Chairman Block: All in favor of the motion with the condtions.

The vote was unanimously in favor of the motion, with six voting YES.

Chairman Block: Thank you.

Commissioner Zelek: It passes how?

Chairman Block: Unanimously. Congratulations all, and John, I give you yeoman's service, I didn't think you would have such a marathon session. I really appreciate it.

Commissioner Zelek: So now we have accepted the motion....

Chairman Block: You have accepted it and agreed to issue a permit for the project.

Commission: No, no, no, hold on.

Commissioner Zelek: We are supposed to discuss our reasons for our vote.

Chairman Block: Yes.

Commissioner Zelek: And that was not done.

Commissioner Sadil: We just accepted the conditions.

Commissioner Zelek: We just accepted the conditions.

Attorney Boorman: We need to clarify things, okay, the motion was, as John read it, for purposes of issuing the permit, now if that hasn't been understood, then.....

Commissioner Clark: That has not been understood.

Commissioner Sadil: I accepted the conditions as amended.

Chairman Block: Right.

Attorney Boorman: The language that he specifically read was he made a motion to the Inland Wetlands Watercourse Regulations on the issue on plenary ruling for the application, so if there is misunderstanding of that, we need to put that on the record now.

Commissioner Zelek: That has not been the way that we have operated in the past. We have typically voted to accept the conditions, as part of the application, and then we vote on the application itself.

Chairman Block: Well again, I don't think we are at cross purposes. It is appropriate I think that we do make sure that our reasons for our vote are clear on the record, and after we have presented our reasons, if there is any confusion or issue, as to the vote, then I believe that Attorney Boorman is saying that we would need to reconfirm our vote.

Attorney Boorman: Let me try to be clear about this. You are only supposed to be taking one vote. One vote was to approve in accordance with the motion that was there. However, if there are issues about that, no one is looking to do something that they were not intending to do. So therefore, we should not be taking (inaudible) one vote, if the indication is that there was some misunderstanding relative to that, we would have to look to the record to do that and go back and hope quite frankly that we can rectify that error that was apparently made by at least one or more Commissioners. So I guess what I would say, it's on the record, we'd have to make clear from Commissioners that they thought that they were voting on something different than what they actually voted on. That is problematic, but I don't know any other recourse that would be available to the Commission.

Commissioner Zelek: I think you should ask each of the Commissioners if they fully understood what they were voting on and.....

Commissioner Sadil: Because whenever we change something, everybody has to approve it. If it comes with meeting minutes or anything, when you make a change, it's my understanding that you accept the changes as amended because he finished reading them already.

Commissioner Zelek: And we were told, repeatedly, to prepare ourselves, our comments and provide those reasons for our vote.

Chairman Block: Yes, and again, in order to clarify our vote, if there is any confusion, if you want, you can state your reasons on the record, and if there is any confusion then we will have to deal with a vote as it would, but everybody has voted and voted their conscience and I think that if we give our reasons, those that have them, it should settle the matter. The other choice is that we

can recess for a couple of minutes and rethink our situation, see what you want to do, so it's at this point, it's up to the Commission. Are you prepared to state your reasons why you voted and be done with it, or is there some other.....

Commissioner Clark: I move that we have a recess.

Commissioner Paskewich: Second.

Chairman Block: Ten minutes. The meeting was recessed at 9:03 p.m. and resumed at 9:20 p.m.

Commissioner Zelek: Chairman Block, I believe that we have made a procedural error, I believe that the Commissioners were under the impression that we were simply agreeing upon the finalization of the conditions for this application and we were not voting on the application. My vote, I did not intend to vote in favor of this application with the vote that we have just taken. I was waiting for opportunities to state our reasons for our vote, and then after that, we were going to vote. That is how we have operated in the past, so I just want to make it clear that I was not voting for an approval of the application, I was voting just to say that I agree that these conditions are ready for the application, and I'll ask each of the other members of this Commission to state what they thought they were voting on also.

Commissioner Paskewich: Commissioner Paskewich concurs with Vice-Chairman Zelek on the matter of the misinterpretation, or an error in this protocol, and I also was not aware of what we, the motion to vote on, per the conditions was our vote. I also thought that we were going to vote after per person and speak our piece to denial or approval of this application.

Commissioner Sadil: I concur, the changes were made, we read the conditions and a change was made. I was just going to say that we would accept those conditions. Maybe some people were for or against them, I was just trying to accept that those conditions were final, especially with all of the changes made at the last minute, and secondly as you said, at the last Tuesday meeting, we were going to have our decisions on the record, individually, we were told to make prepared comments to that effect, and I was waiting for that moment where we poll each person.

Commissioner Clark: Commissioner Clark states that I also thought I was just voting on the fact that these conditions had been designed and accepted and approved and that we were hearing them all together for the first time and that we were only approving the conditions, and not making a vote, either Yea or Nay on the entire permit.

Commissioner Igielski: Commissioner Igielski, I was the Commissioner who read the motion in it's entirety and it was formatted in such a way that has been read the way motions have been made for the length of time that I have been on the Commission which I believe has been in excess of twenty years, so I was fully aware that it was a motion with conditions to approve the application with the resulting vote being for or against that position.

Commissioner Zelek: So Chairman Block and myself spoke and we are in agreement that in past meetings we have followed the same procedure where we agreed upon the conditions prior to going to a vote. I'll give Chairman Block an opportunity to confirm that.

Chairman Block: There has been a difference in our proceedings from our past practice which has actually been a little bit more informal. We were being advised by our Town Attorney and the drafting of the motion, I must confess I was also expecting individuals to be able to state their reasons in order to create a more complete record. I am hopeful that there will not be any further

surprises, but I certainly do think that each of us should be allowed to state our reasons for our vote. So now that we are on thin ice, I'll ask the Town Attorney how to proceed.

Attorney Boorman: This whole thing is highly irregular and does present legal issues that I will not go into here. The general consensus seems to be, from the Commission, that they believe a procedural error was made, that they were not normally voting for, the motion as read, and I would leave it to the Commission to agree to rescind that vote, and look to proceed as has been described by some of the Commissioners. I'm not indicating that that is a legal opinion by any means, I'm only indicating that based on what has happened here this evening, it is irregular and that is the only course of advice that I can give you in trying to rectify what this Commission's intent is.

Commissioner Zelek: What he said, I am in agreement that we should rescind our prior actions, the intent was not to put this to a vote at this time. I would then like to move forward and read my reasons for a decision, and then cast my vote on the application.

Chairman Block: Well, let me offer an alternative because I don't want to confuse the record if it doesn't need confusing. Therefore I would suggest that we state our reasons and then after what is on the record, consider whether or not the vote needs to be rescinded, because.....

Commissioner Zelek: I think we prejudice the vote if we go on and the individuals start to read their reasons, I think we prejudice the vote, I think we should rescind now before we hear those reasons from each of the Commissioners.

Attorney Boorman: Let me just suggest on how to proceed at this point. Through you Mr. Chairman, is there a consensus that you would look to rescind the vote at this time. We can just say there is a consensus at this time. I'm going to note that it is a consensus that is not unanimous, but it is a consensus by a general tone in that direction. I'm going to suggest at this point that you deal with the issue of conditions as many of you Commissioners have indicated, so therefore if you go on the record now, indicate about the conditions, that you are satisfied, that you want to conclude just the conditions, that there are no further changes to be addressed to the conditions at this point.

Commissioner Zelek: I will be the first to say I am accepting the conditions as submitted.

Chairman Block: And voted upon.

Attorney Boorman: No, let's leave the voted upon out of it. Again, through the Chair, if that is the pleasure of the Commission, to indicate that the conditions are complete, no further discussion on them, then you just need a consensus about that. You don't need to vote on conditions, the only thing you need to vote on is the application, so is there a consensus that there is nothing further on the conditions? There is a consensus on that. So what I'm hearing from the Commission is that they are going to feel comfortable about individuals stating for the record what direction they are leaning in, now that we have reached the time to make a decision. So, before any motion is read at this point, I'm going to recommend that each Commissioner starting with Commissioner Zelek, start with whatever input they want to have on the record relative to reasons for doing whatever it is they want to do, not necessarily asking you to tell us how you are going to vote, because that motion will come up, it's up to you to decide what you are going to say, so I'm not asking you to tell us how you are going to vote, because that vote will be reflected when the motion comes up and there is a vote, but I am asking you to put reasons on the record for whatever action you do.

Commissioner Zelek: Very well, my pleasure to begin. First of all I would like to thank the applicant's civil engineer Raymond Gradwell from BL Companies. I found him to be very

cooperative, straight forward, his responses were clear, he was always professional and he is always a pleasure to deal with when he comes before the Wetlands Commission. Secondly I'd like to thank Attorney Boorman for his expert legal guidance and Chris Greenlaw, our town engineer for his ability to organize these meetings and to act as a librarian for the tones of evidence that has been submitted, and for articulating our concerns into legible conditions for the application. And to Norine Addis for providing us hundreds of pages of verbatim meeting minutes, I don't know how she does it, because it took me an entire day just to prepare a few sheets of paper.

Thanks to the public for their participation for providing some information which may prove to be very important in the future. My greatest thanks go to Chairman Block and Commissioners Sidal, Paskewich and Clark, for their insightful and probing questions. They have renewed my confidence that the Wetlands Commission is seated with caring, competent individuals with the sheer goal of protecting the precious natural resources. I also applaud the courage of the past Commission and the help of Commission Igielski for revising the regulations to include the ability of this Commission to hire it's own experts to advise on complex applications such as the one before us. To explain the basis for my decision, I would like to begin by saying if this application is denied and is appealed, on claims that this Commission was being unreasonable or acting outside of our jurisdiction, that would be an insult to the Town of Newington, this Commission and our town's attorney who provided this Commission, from the onset with expert guidance in helping us to reach our decision. The Commission has expended immeasurable time and energy reading through thousands of pages of information and listening to and questioning days upon days of testimony in order to derive a final finding of fact. At no time did the Commission act arbitrarily or capriciously. Also, the applicant may appeal the condition and point to a twenty-five year monitoring of obligate species and plants as being an unreasonable condition. The twenty-five year period is based on testimony by our expert witnesses and not an arbitrary figure created by the Commission. In particular I will cite the REMA memos dated January 23, 2013. This is a memo to the Wetlands Commission. After reviewing the latest revised site plan, REMA responded with a recommended condition on page 3, item 3, and I quote, a robust monitoring program for the proposal which includes both biological monitoring and water quality sampling. This would run during construction of the phases as well as post construction for a number of years. The objective would be to catch any short term and long term occurrences or trends that could result in impacts on site, wetlands and buffers, allowing for corrective actions, remediation and mitigation. End quote. I intentionally place emphasis on the words robust and long term. Also, if this application is appealed, I ask that the court verify that Dr. Ron Abrams of Dru Associates was fully licensed by the State of Connecticut at the time that he performed the obligate species trapping and submissions of his report on behalf of the applicant, and determine if his report was lawfully submitted. A member of the public has stated during our public hearing that she contacted the DEEP and they replied that Dr. Abrams did not carry the required permits and used trapping techniques no longer recommended by the State of Connecticut. Please see the meeting minutes of January 17, 2013 and the public comments made by Allison Clark on pages 39 through 41. I will further address Ms. Clarke's concerns later in my comments. All activities occurring as part of this application are outside of the wetland review area. So why are we here. According to page 13 of the December 2012 Connecticut Environmental Review Team report there is a quote, in this application there are no activities proposed within the wetlands, water courses, or regulated area identified. Although there are no direct impacts to these areas, there is the potential for indirect impacts caused by construction activities in land development that alters the hydrology and habitat of the site. End quote. The applicant may appeal that this Commission acted beyond its own review area of one hundred feet. To be clear, we are reviewing activities outside of the one hundred foot buffer to insure that they not impact conditions in the review area or the wetlands themselves, so what we must evaluate is the impact on hydrology and habitat. We spoke at length of the 750 foot vernal pool buffer during our discussions. During the public hearing the August, 2011 Connecticut Environmental Review Team aka CERT report was included as evidence and is just one of the sources of reference to

this unique buffer. The wetlands that we are most concerned about on the site is referred to as wetland number two, and has been rated as a tier one, or highest ranking possible. As a tier one wetland, it requires the highest standard of protection. I will now read directly from the August 2011 CERT report starting on page 28, Title: Review of Landscape Ecology. "Landscape ecologists review recommended vernal pool, best development practices, for obligate vernal pool species. The typical fifty to one hundred foot regulatory buffer around vernal pools protects water quality for amphibian breeding and for the aquatic larvae stage, but they do not provide enough habitat to maintain healthy populations of obligate amphibians such as wood frogs and spotted salamanders that spend their adult lives in upland habitat. In a study that looked at data of 32 amphibian species, the core terrestrial habitat, the area encompassing 95 percent of the adults in the population extended on average 522 to 951 feet from the breeding site. Cited Harper et al, 2008. Buffer recommendations on Northeast Vernal Pools. Recognizing the development will happen in undeveloped areas, regardless whether or not vernal pools are present, Calhoun and Clemens, 2002 recommend the following. Number one, no detention or bio-filtration ponds within 750 feet of a vernal pool because they serve as decoy wetlands whose water quality and variations in quantity do not provide good breeding habitat. Number two, less than twenty five percent of the area should be developed, and development should be subject to a variety of limitations. Calhoun and Clemens believe that the above suggested limitations within the critical terrestrial habitat area will likely lesson such losses. Continuing with the 2011 CERT report, the section is Town Wide Vernal Pool Inventory to help in plan of conservation and development. Calhoun and Clemens, 2002 make the point that not all vernal pools are equal in conservation value and it is not to be expected that a town protect every vernal pool. They recommend that towns inventory all their vernal pools and prioritize them, generally focusing conservation efforts on ecologically significant pools with intact critical terrestrial habitat and long term conservation opportunities. The ecological significance of a pool has two components. Number one, species found in the pool. Number two, the conditions of the critical terrestrial habitat. The large wetland basin two in the July, 2011 herpetological assessment ranks tier one highest by the criteria of Calhoun/Clemens 2002 with 154 spotted salamander egg masses and twenty three wood frog egg masses. It presumably had a total of 25 egg masses regardless of species present in the pool by the conclusion of the breeding season. It also presumably would meet the revised criteria for southern New England of 40 to 60 egg masses suggested by Calhoun/Beller and Clemens, 2004. In addition to meeting the within pool biological criteria the large central wetland far exceeds the tier one terrestrial habitat criteria. Reviewers do not know how basin two compares to other areas within the town, but it is clear that few undeveloped areas as large and also have the presence of trap rock ridge habitat in the same tract. Some consideration should be given to the acquisition of the parcel as town open space if possible. Continuing with the 2011 CERT report, section titled, Comments on July 2001 herpetological assessment by Dru Associates. Flawed discussion of conservation needs for spotted salamander. In the July 2001 July herpetological assessment the discussion of conservation needs for spotted salamanders is inaccurate for several reasons. First, in table four, estimates of model conservation needs for spotted salamanders at Newington Walk. The acreage given for a pool buffer radius appears to have been calculated using a formula for a circle, treating the pond as a point. This grossly under estimates the acreage that would be included in buffers beginning at the edge of the large central wetland complex. Much more important is the discussion of the buffer distances and areas in relation to caring capacities represents an inappropriate use of numbers that were task specific to the population of Harper et. al of 2008. Therefore the conclusions about radii, buffer distance and caring capacities at Newington Walk, pages 4 and 5 are unwarranted. End quote. So we hear on the CERT report from Clemens and Calhoun for the need to prevent long term risk. I emphasize long term as it refers to this importance again as a condition. Clemens and Calhoun is again referenced in REMA report titled Application Review of Newington Walk, January 17, 2013 and submitted into the record. In that report, REMA included a section entitled Attachment C, Vernal Pool Habitat Related and it contains extracts from Clemens and Calhoun Best Development Practices. Highlighted for the Commission by Mr. Logan of REMA are all the critical points that

we need to focus on. Point number one, critical terrestrial habitat, area with one hundred to 750 feet of the pool's edge. Quote from page 16, maintain or restore a minimum of 75 percent of the zone in continuous, i.e. unfragmented course, with undisturbed ground cover. End quote. Point two, critical terrestrial habitat, page 16, recommended guide line, quote, less than twenty five percent development within the critical habitat areas, end quote. This is important, since the applicant wishes to develop thirty-two percent and the recommended Best Practices is not to exceed twenty-five percent. Point three, storm water management, page 22, quote, detention and bio-filtration ponds should be located at least 750 feet from vernal pool, they should never be sited between vernal pools or in an area that are primary amphibian overland migration routes. End quote. This is important because there are two detention pools proposed on site and both of those pools are within 750 feet of wetland number two, and are a very short distance from vernal pool wetland number 3. Point number four, Conservation Issues, quote, storm water detention basins and bio-filtration ponds serve as decoy wetlands intercepting breeding amphibians moving towards vernal pools. If amphibians deposit their eggs in these artificial wetlands, they rarely survive, due to sediment and pollutant loads, as well as fluctuations in water quality, quantity and temperature. End quote. Although the two storm water basins drain to Russell Road, and may not be a source of pollution to the wetlands, they will act as decoy wetlands. Again, these two basins are within 750 feet of wetland number two and within a few hundred feet of breeding pool number three. During the review of the revised plan on January 24, on page 28 of the meeting minutes, it states that the total area to be developed is thirty-two percent, well above the twenty-five percent maximum best practices recommendation. Then on page 33, Attorney Regan questions Mr. Logan quote, Attorney Regan: I just want to ask George if he can clarify one question. With regard to the current 750 foot Calhoun/Clemens recommended practice, that is not now all undisturbed property, correct? For instance, the bottom of wetland number two, if you measure 750 feet you're in the middle of Russell Road. George Logan: No. The 750 feet is completely on the property. End quote.

During the public hearing it was explained to us by Sigrun Gadwa, our expert from REMA that the physical characteristics of the wetland are directly related to the species that habit them, and that any detrimental impact to the obligate species that use the vernal pools will lead to a degradation of the physical characteristics of the wetland. Later in the meeting of January 24th, we asked the experts again if there would be any impact. Page 41 of the meeting minutes, quote, Commissioner Zelek, I just want to hear from you one more time, your opinion is that the impacts on the salamanders would have eventually have an impact on the wetlands, the characteristics. Sigrun Gadwa: Yes. End quote. So it's quite clear that there is going to be an impact on the obligate species which in term would have an impact on the wetland characteristics. So we have testimony and supporting documentation that this plan does not meet the best development practices for vernal pools and there will be an impact on the characteristics of the wetlands. Point number two I would like to make regarding the wetlands, the application first appeared on the agenda of the September 18, 2012 regular meeting. The public hearings began on October 16, 2012. Considerable time and energy was expended by the CERT team, hired consultants and the Commission reviewing this original site plan during lengthy meetings held on October 16, November 13, December 4, January 8, January 17th, these meeting sometimes going until nearly mid-night. Then at a penultimate public hearing meeting of January 22nd, the applicant submitted a major revised site plan in an attempt to address the concerns raised by Mr. George Logan of REMA, the town's hired consultant. The Commission had only January 22, and 24th to digest the revisions and the responses of the experts to those revisions. Although appreciative of the applicant's attempt to mitigate impact on the ecology and the physical characteristics of the wetlands, the lateness of these revisions did not give the Commission adequate time to thoroughly review and question the expert witnesses. The public hearing phase was closed on January 24th. The Commission then held special meetings to discuss the application on January 31st, February 7th, February 14th, February 19th, and February 26th without the benefit of experts. I for one did not realize until the post public hearing of February 19th, while we were in discussion,

that there is a major sewer line excavation that is proposed between wetlands two and three. Although pointed out during the public hearing, it did not appear to be of significance until the topic of subterranean aquifers was vetted. The sewer line requires a north to south trench excavated to depths of 25 feet or more. My concern is that, on page 14 of the August, 2011 ERT report the possible aquifers within the bedrock are mentioned. Quoting from the August 2011 report, the basalt is highly fractured, containing both coolant fractures and tectonic fractures, parallel to the fault shown in figure 3. Some of the tectonic fractures have been mineralized with quartz, calcite and berri. The fractures form core space for ground water and basalt under the eastern portions of the parcel, may form an aquifer that may yield potable water for domestic and agriculture use. End quote. Now that was by a geological expert, and we cited that expert earlier in this meeting, as a geologist from the State of Connecticut who served on this team. Wetland number two has been described as a ground water fed basin by both the applicant's ecologist, Jodi Chase and George Logan of REMA. The proposed sewer line runs through the eastern portion of the site that CERT reports has a possible location of these aquifers. My concerns are that the trenching required for the sewer line could bisect an aquifer that may be a ground water source for wetland number two. Unfortunately since we only had two sessions to review the major revisions, and the public hearing has been closed, I can no longer seek expert testimony to evaluate the situation and ask them how to mitigate impact if one of these aquifers is disrupted or worse yet, destroyed. CERT report was conducted on the original site plan. No time was allowed for a CERT review of the revised plan, again, the revisions differ quite significantly from the original design that we invested a substantial amount of time in. It is not fair to the applicant, the public, or this Commission to attempt a decision without adequate time to review the revised site plan and discuss it with the experts. I have grave concerns that the project will disrupt an aquifer and impact the physical characteristics of the wetland. Unfortunately because of the late submissions of the revisions these concerns can not be addressed.

Regarding the admissibility of Dr. Abrams report, during our meetings I asked our Town Attorney and our Chair if the comments made by Ms. Allison Clark regarding the possibility that Dr. Abrams was not properly permitted was something that this Commission is obligated to pursue. We were told that was not a matter for this Commission and is beyond our jurisdiction. I want the public to know that we have a condition, it's number nine, attached to this application, and it reads as follows: The Agency has relied in whole or in part on information provided by the applicant, and if such information subsequently proves to be false, deceptive, incomplete or inaccurate, the permit may be modified, suspended or revoked. Since we are told that this is not a matter for this Commission, I would encourage the public to pursue this issue further with the DEEP or whatever other enforcement agency is responsible. This issue may well extend beyond this application at hand, and may have a cascading affect on both past and present applications in other towns. In summary, because this application does not meet the Best Development Practices for vernal pools and it has been stated that there will be an impact on the obligate species which in turn will have a detrimental impact on the characteristics of the wetland, I have been told that I shouldn't say how I will vote, but I think you can pretty much assume where I'm going with my vote.

Chairman Block: Another Commissioner has something to say?

Commissioner Sadil: The comments made in the previous sessions, I think in this particular wetland, what goes on beneath the wetland is just as important, more important than what we see. An issue that I had was that is basically, what is the proper buffer associated with this particular wetlands. I think it's a very tight fit to see what is involved at that particular site. So there was one testimony from the applicant's testimony of January 22nd, of the professional scientific data supports the buffer of 250 feet, not the 150 feet that was laid out by the applicant in his last proposal. There is also conflicting testimony as far as the Calhoun/Clemens that Commissioner Zelek was referring to, the 750, so by that, even if I take away the Calhoun/Clemens testimony in this article, the current plan does not meet the applicant's experts plan of 250 feet in the wetland. I think that is very important when you have a wetland that is

supported from beneath the ground, not just a watershed, but the ground water, it's important when it is filtering up and supporting wetland number two. I think it was just extraordinary what was done to this parcel of land back in the '30's, that this parcel of land is flourishing, it has to be for that reason. So that is the prime reason, based on what I have read, I think the buffer is not adequate, as planned out. I'm also very concerned about the blasting in phase three, I remember seeing a plot where quite a bit of blasting will be done in phase three, of this project which is very close to wetland number two, which I feel will disturb the underground water that feeds that wetland, so those are two prime reasons I question. I realize this is an all or nothing application, cannot be adjusted, so I have deep concerns about not meeting the 250 foot requirement that their expert laid out, as well as adequate based on scientific literature today. That is a very special place.

Commissioner Clark: I'm going to start with, we've had a lot of information over many months, but on January 16th, this Commission was presented with a significantly altered plan. Mr. Gradwell admitted that they rushed and they worked into the night. George Logan, the next time that he spoke with us said that he just got the report, and I believe that the expert testimony that we had expected to rely on taking the REMA was rendered confusing to us, and how to interpret it. Go back to the CERT report which has been cited repeatedly tonight and given more credence I believe. We have the REMA report which was well researched and an easily referenced report, but after the new plan, what we had was Mr. Logan making a presentation that we can refer to in the minutes and bringing some graphs, but to me it just didn't stand up to the initial documents that took more time to present, because it was put together under very short circumstances. I think some of it is difficult for we lay people to interpret, large volumes of material, in a short period of time, and I think that the substantial design change just made it difficult for us to take all this, as I think has been demonstrated repeatedly by seeming to ask the same questions over and over and having to have maps and areas outside our expertise explained to us again. May I also state that I think that the procedural error committed tonight just spoke to the same short term needs to put all these conditions together in a short period of time. We've got 92, I may have lost track of how many documents we have to review. We Commissioners are volunteer private citizens with jobs and lives and with few exceptions we attended all the regular meetings and all the special meetings. The normal time frame set out by the legislature, which we have stuck to, and which were presented with an application that we have the time, in their infinity wisdom that they set, makes sense to them. However, I'll use the word penultimate, on the penultimate meeting on February 26th, and not to mention tonight, February 28th, Commissioners are asking questions that betray our confusion based on having to absorb so much material in such a short time. Our duty is to review every document, listen attentively at every meeting and review the minutes of these meetings, including the marathon five hour, forty page meeting. It's turned into a snowball, gathering mass as it rolls down hill. I truly appreciate the legal training given us along the way by Mr. Boorman, I think we learned a lot and did our best, but obviously at the last minute we betrayed our lack of legal training. We learned as we went, not until February 26th, did I and presumably we, learned that we would not have the ability to view of the covenants of the home owners association. I kept waiting for this document, I had no idea that this was something that was going to be created way down the line, and we would never get to review it and that it really fell to Mr. Greenlaw revising the conditions, and along the way he continued to call it a living document and it was revised up to this very minute, and again, approving these conditions, I feel like we were put to the test and found lacking. Again, some of those revisions were based on last minute discussions. We had to listen to these conditions and we realized that these conditions were designed to guide the contents of the eventual home owner's covenants but because they are conditions, we are cautioned by Mr. Boorman that they must stand up to the court's definition of reasonableness. So although we approved the conditions, if the permit is approved then we really have no way of knowing if these conditions are going to be fulfilled. What members of the Commission might consider reasonable such as a change of a five year monitoring program to a twenty-five year plan, and I would say twenty-five years is a drop in the

bucket time wise, which any of us over the age of forty can attest to. I would also like to say, when you take that time of twenty-five years and you consider it compared to how long we have been told that this wetland has been present, I guess I can use another water term and say, that's just a drop in the bucket. It's still likely to be called unreasonable by the court. We have no way of knowing if these conditions are capable of protecting the physical characteristics of the wetlands. Because of the time constraints and because the public hearing was closed, I had no opportunity to pose further questions to Mr. Reagan, about the intent of the home owner's association document and Toll's commitment to setting up the home owners association so that they would act in a manner that is guaranteed to ensure the integrity of the physical characteristics of the wetlands in perpetuity, or at least long term. Section 22-A,-41, the 2004 amendment which was put in place after a court case which I think upset many ecology minded people, says, the commission shall take into consideration all relevant facts and circumstances, included but not limited to, and I'm jumping to item 3, the relationship between the short term and the long term impacts of the proposed regulated activity on wetlands and water courses and the maintenance and enhancement of long term productivity of such wetlands or water courses. I believe the time constraints of the application, and the late alteration of the plan have prohibited the applicant from presenting all of the data that they might have to assess the impact on the herpetofauna and subsequently its effect on the physical characteristics. The REMA requested time information from Mr. Abrams, why wasn't the population sampled at this time of year, and that time of year, and I think we go forward with saying that the ecologists would have preferred and recommended sampling these populations during a longer time frame, like in the spring and the summer to really evaluate them. Good science takes time, but we're out of it, and the cumulative changes in this sink form wetland is quite unique, I think have been left up in the air. I wish we could change plants in the spring, not only the plants, but the herpetofauna was again a common theme. If we could see we could find out that there were maybe threatened species than the swamp cottonwoods. On page 37 of REMA it states that subacidic soil is the key criteria in the DEEP definition of trap rock critical habitats, the citing was Kay Metzler, Connecticut eco.uconn.edu at Swamp cottonwood is just one of Connecticut rare species, but the competition of the plant community in and adjacent to a wetland is not known, because it has not been inventoried during the growing season. Although our purview is not threatened species per se, although a threatened specie is part of the habitat and it is physical characteristic as is this very unique stand of trees, of wetland two, which again we will all agree is a unique wetland, I think it behooves us to at least be cognizant that Connecticut has an endangered species act that states, and this is Chapter 495 of the act of the General Assembly, Section 26-310; Actions by State Agencies which affect endangered or threatened species or species of special concern or essential habitats of such species, A. each state agency in consultation with the Commissioner shall conserve endangered and threatened species in their essential habitats, and shall ensure that any action, authorized, funded or performed by such agency does not threaten the continued existence of endangered or threatened species or result in the destruction or adverse modification of habitats designed as essential to such species, unless such agency has been granted an exemption as provided in sub section C of this Section. In fulfilling the requirements of this section, each agency shall use the best scientific data available. I believe we have not received the scientific data that we need because of the time frame imposed upon us by the change of the conditions and coming late to the table. I think that we did not have time to allow the science to be done right, we also learned too late that there are experts in hydrology of trap rock ridge whose opinions differ from those experts seemed to have evolved during the course of the application, and I stated that Mr. Slayback initially made little of ground water and eventually did refer to it. In trying to make a decision on this application, we are expected to be thoroughly familiar with the documents and the minutes and when I reviewed the REMA reports, I may need to find a reference by Dr. Abrams, but by the time we got new information there just simply was not time to go back into the length record and review it properly, especially considering we are volunteers and this is not our full time job. I think it is just a temporal impossibility. I think that I

did not have the opportunity to thoroughly cross reference this large volume of documents, and I feel that I would be letting down this Commission, the concerned participatory citizens, and

indeed the applicant. The applicant is to be applauded for their diligence. Had the design submitted been (tape change) alas, we were expected to absorb what was essentially a new application, inserted or shall we say leap frogged right over the old at what I would consider zero hour. In particular I believe we need more information on geology, we have conflicting information, I quoted earlier in this discussion tonight that I spoke about REMA on page six speaking about the geo-hydrology of wetland two, it is REMA's contention that the hydro-geomorphic classification of this wetland is ground water depression, I will not define that because it is in the REMA report, but I believe that we need to have more investigation of the geology of this area and going forward I believe we need more information, in particular, more geologists than we just had in that original CERT report. We were promised a hydrologist from the original CERT report, and I believe I asked in the record, did we ever get the hydrology report and at the moment, I don't even know the answer to that question. If we got it, it was never discussed, but that was missing from the original CERT report. I think those are my reasons.

Chairman Block: Thank you.

Commissioner Paskewich: I concur with everything that Commissioner Clark has stated and also the other Commissioners that spoke to all of their concerns, issues and qualifying data that they insightfully looked at, and took the time and means of support of their concentrated efforts. On the basis of myself, looking towards the following statement, I would like to say for the record, that during my attendance at all these sessions that I tried to attend, I have concentrated on being conscious, being fair, and impartial to my decision making process. In referencing application 2012-22 Russell Road, North of Old Highway, and on the merits of testimony presented by experts recognized by the Commission, George Logan and Sigrun Gadwa find thus, referring to the General Statutes of Connecticut revision January 1, 2012, Volume 8, Section 22A-41, Item 3, the relationship between the short term and long term impacts of the proposed regulated activity on wetlands or water courses and the maintenance and enhancement of long term productivity of such wetland or water courses, and in referring to that statute, according to REMA's testimony and having also reviewed the most current building development site plans and documents and revisions as they have in PDF and put on our computers day and night, at all hours of the evenings and morning, I've been looking at them at two in the morning, at six in the morning, midnight, trying to refer to them, and get a little bit of sleep and napping in between. I still find that according to REMA's testimony the physical characteristics of the wetland will reach a critical point of degradation between, they did state, ten to fifteen years, based on the wetlands being confined within the development and no longer in a natural state. It allows them to handle a natural flow of water containing viable natural nutrients to support them and this confinement which will no longer have natural outlets and will accumulate named nomenclature of toxins and pollutants that will not be able to escape and will stay in solution and hence cause an adverse impact to the wetlands.

Commissioner Igielski: I noted this application, and it started with the applicant saying that there was going to be no activity in the wetlands and no activity in the hundred foot upland review area of the town. As comments came in from both the public, the Commission, and experts, it was suggested that that activity be held to beyond 150 feet of the wetlands and the applicant agreed to that and changed plans, and throughout this process alternatives were made available. Different designs to accommodate the various comments that people were saying. An area that was a concern to me was the blasting, what was the likelihood that it would affect the wetlands, and Russ Slayback on January 8th, on page 14, his comment talks about that the blasting will not cause damage to the rock more than ten feet away, and the Town blasting expert, Richard Hosley on January 8th, 2012 on page 33, makes a similar comment saying that he is comfortable

concluding the blasting can be performed without compromising the geology underlying the wetlands area adjacent to the site and of course all of this is predicated on people doing and following the blasting plan. To assist in this matter, to oversee it, there were discussions regarding plan monitoring stations, and we have included information in that respect in the various conditions that we developed in regarding this application. Another area was the water budget, how much water was flowing into these wetlands, mainly wetlands two and three, both before and after the project being proposed. On January 24th, on page 2 and 3, Mr. Gradwell talks about wetlands two and three, pre and post being approximately the same. George Logan of REMA during that time period talks about, agrees with the information that Mr. Gradwell presented and a handout during the meeting of January 22nd, information was on a graph for both wetland two and three showing again that the pre and post conditions were approximately the same. The Commission took a step towards helping one of the wetlands ensure to have an adequate amount of water by asking the applicant to add more flow from the development directed towards that wetland and one of our conditions reiterates that comment that was made during the public hearings. The plan that we looked at towards the end of the public hearing shows where, to help the quality of the water that would go into the wetlands, shows the roads and driver water being directed towards Russell Road by a storm water management basins, flows from other areas directed towards bio-retention basins and bio-swales before the water would sheet flow over the ground and the upland review area before even reaching the wetlands. Water would also be absorbed into the ground further providing natural filtration. These areas that I considered in my decision.

Chairman Block: I just tore up all the reasons that I had prepared in the past and the reason that I am going to speak ad hoc is because the whole process and the conditions and the issues raised by the fellow Commissioners, by the public, by the applicant and by our experts, and theirs has all been ruminating through my mind through this very long period. I came to this application with two primary concerns. The first is my basic on that as an American that people should be allowed to use their land as they see fit, within the controls of government. The Town chose to always considered this land to be unusable and ignored it. And we reap the benefit of that neglect. Somebody bought it, somebody proposed using it within the law, and since I don't want to be robbed of my rights any more than anybody else, I have to acknowledge that they have that right. On the other hand, I've been appointed a member of this Commission and have been charged with applying the law, the statutes, our regulations and indeed my understanding of how the courts have interpreted those things, in considering what to do with this application, and there is no dispute in my mind that the application that was originally presented to us was inadequate, (inaudible) the general concerns of the town, and specifically to the wetland habitats that it contained. As the other Commissioners have said, the experts, cite the applicant in great detail has come to accept our concerns and our opinions as to the unique features of this wetland, these wetlands. They are special in many different ways, one being that they are one of the very few wetlands that I have every heard about with the entire watershed is contained within the project area. Another is the fact that they are home to a unique species of plants which according to federal and state statute those agencies are charged to protect. I consider the Municipal Wetlands Commission to be an agent of the state, and therefore I cannot find it within myself to say that we should not also be concerned with protecting this threatened species. So I have been trying to balance this, and as my other fellow Commissioners have said, it has been complicated in so far as we have been torn by the heart felt efforts of the applicant to try and meet the goals and proofs that have been presented to us all. On the other hand, we all do not want to prolong a struggle or create legal issues if they can be avoided, and this applicant has gone far beyond an additional mile in my mind in trying to accommodate what we have learned through this process and I do hold the courts and the legislature responsible for creating an artificial and inappropriate deadline, ignoring the impact of seasons of the year, of the ability of an applicant to change a project, and all of the other things that my fellow Commissioners have said, and I think it has been invaluable for the other Commissioners to be able to articulate their

reasoning before we took this final vote. It is a very hard decision I think for myself, and I suspect for the other Commissioners to balance all these factors and try and recognize that we are dealing with a natural feature that is, has to be judged on a geological basis. By eons, not years, by the diversity of the species and how it affects the very physical presence of the ecological feature. And has been stated, has the applicant demonstrated to our satisfaction that as a permanent neighbor, development will be able to enable this biotic component of our world to survive? Because for us to say that we shall limit our concern for this wetlands to a discreet, finite short period of time, is to belabor the intent that I chose. So the question that each one of us is considering when we vote, is has this applicant demonstrated to our satisfaction that these wetland will co-exist with this development into the future, or will it eventually foreseeably, likely, be degraded and lost. And with that, I think we are now in a position to cast our votes. Is there any further discussion for the Commissioners on this?

Commissioner Clark: I'm just going to ask a legal question. At which point in this process would we find out that we had a large legal problem, seriously, as far as the vote, this vote will be recorded as the true vote as of the end of tonight, and then it is up to further action to say that this is not a true and accurate vote.

Attorney Boorman: The legal process is such that anyone who has appropriate standing can bring any challenge to anything that this body decides to do and so I can't predict in the future what will happen, I don't know if that answers your question, but.....

Commissioner Clark: Thank you.

Commissioner Zelek: If there is any question regarding the vote, I for one will be more than willing to go before any appellate judge and tell them exactly what happened and what we intended to do. We did not intend to vote on that application when we did, we were simply stating that we approved the conditions that we had created, and we were not intending to vote at that time.

Commissioner Sadil: And the change that was made, after all the conditions, a change was made at the last minute, that's what I have a beef about, that's what I thought that vote was for.

Commissioner Zelek: So if this is part of the record, summon me before any judge and I will tell them exactly how this should have gone down.

Chairman Block: Again, as Attorney Boorman said, after the vote, it will be up to the applicant and/or a qualified member of the public to decide what they want to do.

Attorney Boorman: You now have to go back and have the motion. He doesn't have to read the whole thing.

Chairman Block: John, for continuity's sake, would you like to restate the motion, but you don't have to read the whole thing.

Commissioner Igielski: Couple of questions before I read the motions. Should the Town Engineer be asked if the application is complete again?

Attorney Boorman: Yes.

Chairman Block: Chris, is the application complete?

Chris Greenlaw: Yes, Mr. Chair.

Commissioner Igielski: And what I would propose is just in the areas of where there is reference to conditions and conditional conditions, I will just make mention as to, as previously read into the record.

Chairman Block: As approved.

Attorney Boorman: No.

Commissioner Igielski: As previously read into the record.

Attorney Boorman: As previously read into the record would be the appropriate way to do that.

Commissioner Igielski: At this time I will make a motion of the Commission, after review of the application and supporting documentation, public hearing held on October 16, 2012, November 13, 2012, December 4, 2012, January 8, 2013, January 17, 2013, January 22, 2013 and January 24, 2013 and closed on January 24, 2013, plans dated January 16, 2013 as amended January 22 and 24, 2013, subsequent discussion by Commission members in meeting the goals outlined in Section 10.2 of the Inland Wetlands and Water Courses regulations of the town of Newington issue a permit by plenary ruling for Application 2012-22 Subject to the following conditions; these conditions, these condition having been read into the record this evening and subject to the following additional conditions, these conditional conditions having been previously read into the record this evening.

Commissioner Zelek: I would second that motion and I would also ask that we do a poll vote.

Commissioner Clark: By seconding that motion, this may sound naïve, but I just want to make sure we're not going to do the same thing that we just did, by error.

Chairman Block: This is the final vote on accepting or denying the application. Is there a consensus on taking a poll vote.

Commissioner Zelek: Poll meaning individual names called out.

Commissioner Sadil: I'm against.

Commissioner Zelek: Again in summary, the application does not meet the best development practices for vernal pools, it has been stated that there will be an impact on the obligate species, which in turn will have a detrimental impact on the characteristics of the wetlands, I vote to deny this application.

Commissioner Clark: I vote to deny this application both based on my previously discussed reasons as far as timing and inadequate ability to take the materials presented and review them properly and I also want to state that I agree with Mr. Zelek as far as this application does not fulfill the best development practices for vernal pools.

Commissioner Paskewich: I deny the application being fair and impartial to everything that we have listened to and spoken to, including tonight and I feel that it is a short term look at wetlands and their activity continuing in a natural state without being degraded by the means of being confined in a fragmented close area.

Commissioner Igielski: I vote in favor of the application.

Chairman Block: I'm going to vote in opposition to the application. It's, I find that it is unfair to everyone, the Town, the applicant, us, that the process that the law has put us through has led us to this situation, but given the total information that we have been provided and the over riding need to be concerned with the protection of this unique habitat which physical presence I feel that I have to go along with my vote. I thank you all.

VI. PUBLIC PARTICIPATION (For items not listed on the agenda. Each speaker limited to two minutes.

Gail Bedrako, 21 Isabell Terrace: I'd like to thank the Commissioners and the Chair for the work that they have done over the past several months, on anything that has come before this body and an effort to do their jobs fairly and impartially with the best knowledge they have. We know it wasn't easy, we know that Your time went well beyond these meetings, and as I resident of Newington I just want to say, not that I wasn't before, but I really have confidence in the process. You listened and you learned and you researched and whatever. I'd particularly like to thank you for your professionalism and your patience, the Chair and the Commissioners listening to the public when we spoke, treating us as informed residents, listening to our concerns, and acknowledging the fact that we, the public, can bring something to the table. You respected us rather than dismissing our comments as irreverent, or minimizing the value of our input. This really just upholds the validity of a public hearing process and you really restored our faith in it and gave us confidence that we can make a difference and unlike others who try to diminish or minimize the integrity of what we did, I'd like to thank you on behalf of all of us.

Holly Harlow: Everyone at this table is the most awesome human being on the face of the earth tonight. This was a Herculean task for all of you, and you could easily be any of us out here, volunteers, citizens, the concerned and intelligent wanting to do the right thing. God bless you, you did a fantastic, awesome job, Thank you, thank you, thank you.

Gary Bolles, 28 Burdon Lane: I want to thank the Commissioners for doing the right thing. You are conservationists and you did the right thing. The mountain is very important to us....

Chairman Block: Please, not on the application.

Gary Bolles: Well, all of you together, you emulate what we are trying to put across. Thank you.

John Bachand, 56 Maple Hill: I just want to echo what everyone else said, I do want to talk about things on the record, but I won't tonight, so I'll come to your next meeting, because I would like to adjust a few things, but this want to echo what everyone said, it's incredible, an incredible burden that you had and I think you did a good job and it wasn't easy. I could just say, wow, what happened before. Thanks.

Myra Cohen: I want to add to the, the hours that you put in and the effort that you put in, it's just phenomenal. You guys worked really hard. I just can't thank you enough for the time, effort and sincerity, and you really meant what you were doing, you were very concerned. I also want to thank staff, my God, this is in addition to all the other projects that you've got, and Peter, and I don't think any of you counted on what was needed to go through this application, but I have to thank the public. It just shows what the citizens of Newington can do, how informed they are, how concerned they are and God bless you people because you certainly were a large part of what has been going on. Thank you.

Beth McDonald, 56 Elton Drive: I won't speak about tonight, but to future business I would just encourage you to remember that we are a small town, that some would argue that is very over developed as it is, and where there are organic, natural opportunities to continue conservation

efforts in the community that are supported by state statutes and federal laws, I encourage you to please consider conserving what we can in our community. Thanks.

Brian Skivo, Newington: It's a beautiful town and I'd like to thank all you guys and ladies for helping out tonight. And looking at these smiling faces, we're the happiest town. We did a lot of work, you guys did a lot of work, and I really appreciate all that you have, you care about nature and our well being and also the future of the woods itself, and I'm really glad to see that, I just don't know what to say, so happy right now, thank you very much, and these are my family right now, we've been coming here every night, every other night, and this is a great, great community here and we thank you very much for what you have done. Thank you.

Chairman Block: With that....

Ron Corcoran: Congratulations you guys, you did a very good job. I was ready to call out the citizens and get the pitch forks, but I don't think we have to do that. Congratulations once again.

VII. COMMUNICATIONS

None

VIII. ADJOURNMENT

Commissioner Sidel moved to adjourn the meeting. The motion was seconded by Commissioner Paskewich. The meeting was adjourned at 10:20 p.m.

Respectfully submitted,

Norine Addis,
Temporary Recording Secretary

