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OLD SAYBROOK PUBLIC HEARING

THE PRESERVE SPECIAL EXCEPTION
FOR OPEN SPACE SUBDIVISION

WEDNESDAY, DECEMBER 8, 2004, 7:00 P.M.

OLD SAYBROOK MIDDLE SCHOOL
60 SHEFFIELD STREET
OLD SAYBROOK, CONNECTICUT

PLANNING COMMISSION MEMBERS PRESENT:

- ROBERT MCINTYRE, CHAIRMAN
- H. STUART HANES, SECRETARY
- JUDITH GALLICCHIO, REGULAR MEMBER
- RICHARD TIETJEN, REGULAR MEMBER
- JANIS ESTY, ALTERNATE MEMBER
- SALVATORE ARESKO, ALTERNATE MEMBER

ATTENDING STAFF:

- MARK BRANSE, LEGAL COUNSEL
- BRUCE HILLSON, TRAFFIC ENGINEERING SOLUTIONS
- RICHARD SNARSKI, CPWS, WETLAND SPECIALIST
- GEOFF JACOBSON, TOWN ENGINEER
- CHRISTINE NELSON, TOWN PLANNER
- KIM MCKEOWN, RECORDING CLERK

1 CHAIRMAN MCINTYRE: I would like to open the
2 meeting of the regular -- the Old Saybrook Planning
3 Commission regular meeting -- special meeting agenda.
4 Is this regular or special?

5 MS. NELSON: Special.

6 CHAIRMAN MCINTYRE: Special, okay. Special
7 meeting agenda Wednesday, December 8, 2004 at seven
8 p.m., Middle School Auditorium, 60 Sheffield Street.

9 First order of business is call to order, second
10 is roll call. At the end of the table is Mark
11 Branse, attorney; Janis Esty, alternate who will be
12 seated tonight for Kathleen Smith. Next is Kim
13 McKeown, our clerk. I'm Bob McIntyre, the chairman;
14 Stuart Hanes, the regular member; Judy Gallicchio,
15 regular member. And the town planner has vanished on
16 me, and that's Christine Nelson.

17 The next order of regular business is minutes.

18 Anybody --

19 MR. BRANSE: Mr. Chairman.

20 CHAIRMAN MCINTYRE: Yes.

21 MR. BRANSE: You should also note the
22 commission's traffic consultant, Bruce Hillson, is
23 present and Mr. Snarski, the commission's soil
24 expert.

25 CHAIRMAN MCINTYRE: Okay. Bruce Hillson, the

1 traffic consultant, is here and Mr. Snarski is also
2 here. He's the wetlands specialist.

3 Next order of business as I said is minutes.
4 Anyone have anything on the minutes?

5 MS. GALLICCHIO: Are we discussing the
6 November 17 minutes?

7 CHAIRMAN MCINTYRE: No. Let's wait for -- do
8 you want to do that tonight or let's wait until the
9 next meeting.

10 MS. GALLICCHIO: Okay. Those are the ones we
11 didn't complete at our last meeting.

12 CHAIRMAN MCINTYRE: Right.

13 MS. GALLICCHIO: Okay.

14 CHAIRMAN MCINTYRE: I still don't have all of
15 mine done.

16 Anybody else have any -- did we get the minutes
17 from your site walk?

18 MS. GALLICCHIO: I handed them in to Christine,
19 but I don't know if --

20 CHAIRMAN MCINTYRE: Christine, did we get the
21 minutes from the site walk? We are going to hold off
22 on doing anything on the minutes from the 17th until
23 the next meeting.

24 MS. MCKEOWN: Christine, I think they are one of
25 the things on the end that you had to pass out.

1 MS. NELSON: Oh, I see site walk minutes and
2 they are in your packets for next Wednesday.

3 CHAIRMAN MCINTYRE: Okay.

4 MS. NELSON: So if you want to pull them out.

5 CHAIRMAN MCINTYRE: We can wait until next
6 Wednesday. It's just the site walk. We better get
7 right into the meeting tonight so we might get
8 everybody home at a reasonable hour tonight.

9 Being that we are not going to review any
10 minutes, all minutes will be reviewed at the next
11 meeting. That will be the minutes from the site walk
12 which was Saturday -- what was the date on that?

13 MS. NELSON: The 4th.

14 CHAIRMAN MCINTYRE: The 4th, December 4th.
15 And then the minutes for November 17 will also be
16 reviewed at the next meeting.

17 Public hearing number four, public hearing seven
18 to eleven p.m. The Preserve Special Exception for
19 Open Space Subdivision, 934 acres total, open space
20 542.2 acres. Ingham Hill and Bokum Roads, Map 55,
21 56, 61; Lots 6, 3, 15, 17, 18. Residence
22 Conservation C District, Aquifer Protection Area.
23 Applicant: River Sound Development, LLC. Agent:
24 Robert A. Landino, P.E. Action: Continue public
25 hearing or close public hearing no later than 12-15.

1 Deliberate and act.

2 I would like to open up tonight's public hearing
3 with -- see if Chris has anything to say, and then
4 from there we'll move on to the applicant for a few
5 opening statements, and then the commission will be
6 asking questions of the applicant, and then I will
7 open it up to the public.

8 Christine, do you have anything?

9 MS. NELSON: Mr. Chairman, the exhibit list is a
10 little out of date and it will be transmitted to you
11 after tonight's -- the exhibit list will be
12 transmitted to you in your next packets.

13 CHAIRMAN MCINTYRE: Okay. Is that all you have?

14 MS. NELSON: Yes.

15 CHAIRMAN MCINTYRE: Okay. The applicant,
16 Attorney Royston.

17 MR. ROYSTON: Thank you, Mr. Chairman. I will
18 be brief, because I understand --

19 CHAIRMAN MCINTYRE: The other one is up there if
20 you want it, Dave -- I mean Attorney Royston. That
21 one doesn't turn off. It's not long enough. The two
22 switches have to be up. No. It's a remote. There
23 you go.

24 MR. ROYSTON: Thank you, Mr. Chairman. First,
25 we just wanted you --

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CHAIRMAN MCINTYRE: Could you state your name for the record, please.

MR. ROYSTON: Sure. David Royston, attorney for the applicant.

We do want to just cover some housekeeping items. And we understand that the commission at this point would like to make inquiry of the applicant, but before doing that I wanted to let the commission know that we have received staff comments since the meeting of November 17. And we received some of them the latter part of last week, some in the early part of this week. And there may be one, possibly two more staff comments with respect to our application responses to come. And we have made some responses to those items that we had received on or about December 1st.

What we would like to request of the commission is an extension of time for the completion of this public hearing which we had previously extended through your meeting of December 15, to extend it to your regular meeting of January 5th, 2005. And rather than attempt to incorporate the information received tonight and respond to it, we would be prepared to submit all our final written responses to comments from staff, from the commission and matters

1 that are raised at tonight's meeting and any plan
2 changes or refinements that may be required by virtue
3 of those comments, to have all that material filed in
4 the land use office on or before December 23rd,
5 2004 so that it will be part of the public record,
6 available for public inspection. And to document
7 that request I will provide you this letter which
8 essentially makes that request on behalf of the
9 applicant and consents to an extension of time for
10 completion of the public hearing to January 5th,
11 2005.

12 One of the primary reasons, as we have
13 indicated, is that we would be able to respond to
14 matters in a full and comprehensive way. And we have
15 attempted also not to be deluging you with massive
16 plan changes coming in sequentially. We want to do
17 it in a full and complete manner and a comprehensive
18 way, and that's the basis for that request.

19 Also, I want to make note of the fact that at
20 the conclusion of the site walk which was held on
21 Saturday, Mr. Cryder, who was one of the persons
22 present at the site walk, indicated that he would
23 want to conduct an additional walk on the property.
24 And in a conversation with Mr. Cryder, I advised him
25 that the owner of the property did object to that,

1 because it was private property and it wasn't part of
2 the meeting. However, we did want to make available
3 to the commission as a meeting an additional site
4 walk, if it is interested and willing to do so. And
5 that site walk would specifically include the area of
6 Old Ingham Hill Road. It would also include the area
7 of what would be the area of the proposed nature
8 center in the open space plan. It would also show
9 you the location of the main spine road or access
10 road as it would intersect Old Ingham Hill Road. We
11 would also like to be able to show you the area to
12 the -- let's call it the Schoolhouse Road site. Some
13 of that area of the property.

14 And what would be shown on that site walk is the
15 area that is proposed as open space and not to be
16 disturbed. It occurred to us that after the site
17 walk we were showing you the present condition of
18 areas that were going to be disturbed. And the other
19 side of that coin, really, is what are those areas
20 which are in the open space plan would be preserved.
21 And that's what we would like to be able to show you.

22 We understand that you have plenty of meetings
23 and sidewalk -- site walks. We also understand that
24 there would be -- there's a charet regarding the
25 Boston Post Road which is scheduled for the pavilion

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Saturday morning, concluding at 12:30. If the commission is desirous in doing it, we would suggest a site walk which would commence at 1:30 or thereabouts, meeting at approximately the same location, but this time looking at the open space. We would also be prepared to provide you in advance a map showing where we were looking at. Those who attended the site walk noted that we were showing you as we went along. We will be prepared to provide that sort of map in advance so you would be knowing where you're going, be able to look at it as you were traveling. So we offer that to the commission as an opportunity.

We also have assembled tonight some of the people, as many as we could actually have at this meeting that provided testimony previously, including Dr. Klemens, Dennis Goderre from BL Companies, Bob Landino from BL Companies; Ernie Hutton, who's the planning consultant, who hasn't testified, but who is here; Sam Stern, who is the owner's representative; Michael Klein, Stuart Cowen, Sam Haydock from BL Companies who have previously testified. They are available here to answer questions of the -- particularly of the commission or staff or the public that is addressed in it.

1 And finally, I would like to submit for the
2 record material which we would just submit. And
3 obviously you would need time to digest it, but I
4 will identify what we are putting into the record.
5 The first item is a letter from Sam Stern, who is the
6 owner's representative, regarding the -- basically
7 the application.

8 We also have -- I am going to ask Dennis if you
9 can help me with the other items. We have prepared,
10 as we have done in the past, a volume of responses.
11 This is response number three. It's kind of in the
12 same format as material that's been presented. This
13 is basically for -- as much as we could do for
14 material received. As I said this is not the final
15 response, but we have provided copies for you. And
16 with that, with these copies I'm also going to give
17 you -- thank you, Christine.

18 MS. NELSON: You're welcome.

19 MR. ROYSTON: You can carry them away.

20 Some of these materials, particularly -- and
21 Mike -- in Michael Klein's response to matters that
22 have been raised, he has made reference to four other
23 publications. And we have given you copies of those
24 other publications.

25 We also have a memorandum and attached material

1 regarding a reference to golf courses designed and
2 maintained according to organic standards in Sharon,
3 Massachusetts. I would submit that.

4 And finally, there is an update to The Lesser
5 financial impact analysis. And I would ask Dennis to
6 distribute that for the record. We understand that
7 the original report was submitted by staff as part of
8 the record and was responded to by CFE. And this
9 basically is responding to that material. And we
10 place it into the record mainly as a response to
11 information that has been submitted. That concludes
12 the mainly housekeeping items and things that we --
13 our requests, our offer to the site walk, the
14 information we wish just to be submitted for the
15 record.

16 And we would like the opportunity -- Mr.
17 Chairman, when the commission has concluded its
18 inquiries, if we could have the opportunity to have
19 some of the gentlemen who have prepared written
20 responses to give a brief summary of any testimony
21 they want to give which has not been covered in the
22 inquiries you may have. So I would just make that
23 request, also. Thank you very much.

24 MR. BRANSE: Attorney Royston, did you say there
25 was a letter from Mr. Stern, the owner's

1 representative?

2 MR. ROYSTON: There's one letter, yes. There
3 were not copies of it made. There's a single letter,
4 and the clerk has it right here.

5 MR. BRANSE: Thank you.

6 CHAIRMAN MCINTYRE: Thank you, Attorney Royston.

7 On the issue of the continuation of the public
8 hearing, we'll wait until towards the end of the
9 meeting as normal and we'll take a vote at that time
10 when we have a better idea if that's what the
11 commission wishes to do. At this time I think it
12 would be a little premature to continue -- you know,
13 commit to continuing the public hearing until we see
14 what happens. And also, the site walk. We'll wait
15 to make a decision on the site walk after -- towards
16 the end of the public hearing.

17 At this time I would like to open the public
18 hearing to the commission members. I think tonight
19 I'll start with Janis. If you have any questions of
20 the applicant or any other things you wish to
21 address.

22 MS. ESTY: First of all, I want to inquire
23 whether you've gotten permission for the right-of-way
24 across the railroad tracks.

25 MR. ROYSTON: Can I have the question? I didn't

1 hear it.

2 MS. ESTY: Have you gotten permission to cross
3 the railroad tracks right-of-way?

4 MR. ROYSTON: Mr. Landino.

5 MR. LANDINO: Good evening. I'm Bob Landino of
6 BL Companies.

7 We have not yet even applied for that. We would
8 expect that any approval by this commission and other
9 commissions would be conditioned on that occurring.
10 The basic differences between this application and
11 the previous applications were twofold. First, we
12 are proposing a grade separation. We are proposing
13 an overpass over the existing Valley rail line with
14 the proper distances in accordance with the Federal
15 Railroad Administration. So there should be no
16 technical reason why that request should be denied as
17 opposed to the original application which proposed an
18 at-grade crossing which is against most of -- all the
19 design criteria currently established by the FRA.

20 Secondly, there was some concern by the DEP in
21 the original design that there would be an impact on
22 sensitive environmental areas, particularly I believe
23 an orchid that was possibly endangered, I guess. I'm
24 speaking out of school a little bit. And that orchid
25 was another reason why at the time the at-grade

1 crossing located in the eastern portion of the site
2 was not supported by the DEP. Our proposed crossing
3 is almost entirely in the opposite direction of that
4 original location. So we don't believe there's an
5 issue or an obstacle that would prevent that from
6 happening. We have not pursued that, quite honestly,
7 because we want the review to take place so that
8 there would be some level of endorsement by the town.
9 And at that time if the town did endorse the plan,
10 then we would move forward with the process of
11 getting the approval.

12 CHAIRMAN MCINTYRE: Thank you.

13 MS. ESTY: Could you explain to me why you had
14 Ingham Hill as a gated access as opposed to a regular
15 roadway.

16 MR. LANDINO: Sure. Well, I think the first
17 reason was that there was concern expressed by some
18 residents of the Ingham Hill Road corridor for
19 traffic to ingress and egress from that location.
20 And quite honestly, from a purely operations
21 standpoint, from a capacity standpoint it wasn't a
22 necessary drive to achieve reasonable levels of delay
23 at each location.

24 What we proposed was an emergency access gate
25 controlled ingress and egress. But we have also said

1 along the way that we would remain flexible with the
2 commission if it desired to make it full way. There
3 have been views expressed by the public on both sides
4 indicating that perhaps for economic development
5 reasons for the town that there may be a desire to
6 have that access be two way. It also provides a good
7 planning tool from a planning standpoint. It sure
8 seems to make sense to provide a third means of
9 ingress and egress. But for the time being as it's
10 proposed, it's proposed to be a controlled gated
11 access.

12 MS. ESTY: Would you give me the approximate
13 undisturbed open space in the conventional plan as
14 opposed to the undisturbed open space in the open
15 space plan.

16 MR. LANDINO: Dennis.

17 MR. ROYSTON: Could we defer that until Dennis
18 Goderre gets back? He is the one that has those
19 figures, and we would rather not mistake them.

20 MS. ESTY: That leads to my second question.
21 I'll pass it down the line.

22 CHAIRMAN MCINTYRE: I'll just go ahead now and
23 then we can just move the mike down the row.

24 Mr. Landino, on the last meeting I had asked
25 questions about the economic data, the \$108 million

1 replace/maintenance fee earlier at the last meeting.
2 And you -- I believe you responded that you were
3 going to come back -- you know, you gave a brief
4 explanation. Did you get an opportunity to address
5 that issue?

6 MR. LANDINO: Yes, we do, except that the person
7 who prepared it left the room and I don't know why.

8 CHAIRMAN MCINTYRE: That's okay.

9 MR. LANDINO: I could give you a paraphrase, but
10 he was prepared to make that presentation.

11 CHAIRMAN MCINTYRE: No problem. It can wait.

12 My next -- I guess the last question I had at
13 the last meeting also was the one for the Connecticut
14 Fund for the Environment. They had presented a
15 diagram showing -- it was outlined in blue. And my
16 question to them was how much of the space -- it was
17 a map. I wish I had it with me. I should reference
18 it. But it is on record from the last meeting. And
19 I had asked them to define how much developable land
20 was outside of The Preserve area I guess my question
21 was. They indicated that there was a lot of land
22 that was adjacent that was also undisturbed, but
23 however that land may be possible developable land at
24 any point in time. And I just want a clarification
25 on how much of that acreage was there. Is there

1 anyone here from the Fund?

2 MR. ROTHENBERGER: For the record, Charles
3 Rothenberger.

4 CHAIRMAN MCINTYRE: Could you step up to the
5 mike, please.

6 MR. ROTHENBERGER: Sure. For the record,
7 Charles Rothenberger with the Connecticut Fund for
8 the Environment.

9 I did pass the commission's inquiry along to
10 Patrick Cummins, the director of bird conservation
11 for Audubon Connecticut, who had prepared the
12 original maps that were sent to the commission in
13 that testimony. He's been working on that analysis,
14 and I expect that probably we would have it by the
15 end of this week. But as of the date of tonight he
16 wasn't able to provide those figures to us. But he
17 is -- I did pass your inquiry along and he's working
18 on it.

19 CHAIRMAN MCINTYRE: That's fine. Just before
20 the public hearing closes, you know, if we go to the
21 5th, you know, I think it will give him a little bit
22 more time if he wants to finalize those figures or
23 anything. Thank you.

24 MR. LANDINO: Mr. Chairman, with regard --

25 CHAIRMAN MCINTYRE: Please state your name for

1 the record.

2 MR. LANDINO: Bob Landino, BL Companies.

3 With regard to the bridge question - then I'll
4 go back to Miss Esty's open space question - all
5 local bridges that are town owned are funded as part
6 of the Local Bridge Replacement Program. And it's an
7 80 percent/20 percent federal/municipal match. So to
8 the extent that -- since I have been alive that
9 program has virtually been intact. And bridges are
10 replaced in accordance with regular inspection
11 programs where the town makes an application for
12 funds to replace bridges. And we actually do that in
13 a dozen or so towns currently where we are the agent
14 for the town that actually prepares the application
15 for bridge replacement.

16 So to the extent that these roads remain public,
17 those bridge replacements would be 80 percent funded
18 by federal dollars and 20 percent funded by local
19 dollars, local and state. But for local bridges it's
20 typically local dollars. That program would have a
21 devastating effect if it was ever changed simply
22 because of the number of bridges most towns own
23 throughout the United States. So I don't expect in
24 the foreseeable future that that would ever change.

25 With regard to the open space, I think I know

1 the numbers, but, Dennis, I just wanted --

2 MR. GODERRE: Four hundred thirty-seven acres.

3 MR. LANDINO: The conventional subdivision plan,
4 going back to Miss Esty's question, is 437 acres of
5 undisturbed open space. And the open space plan is
6 514 acres. And that is the difference between the
7 open space and the conventional. The conventional is
8 obviously broken up into smaller slices, if you look
9 at the graphical depiction on each plan.

10 MS. ESTY: Those are undisturbed.

11 MR. LANDINO: Undisturbed, yes.

12 CHAIRMAN MCINTYRE: Janis, if you would like
13 to -- I know you had a second question in
14 relationship to that, if you wanted to ask any other
15 questions at this time. I thought you had a
16 follow-up question.

17 MS. ESTY: Well, basically, it had to do with
18 open space. With the -- I know there's going to be a
19 debate, but there were 50 lots that may or may not be
20 suitable for sew -- excuse me, sewage which could be
21 on the conventional plan. Now, I know that's rather
22 debatable, but I noticed that they were spread out
23 and would give additional open space. I know it's a
24 wild guess, but approximately how much would that add
25 to the open space if those 50 lots were subtracted?

1 Because I noticed the total was on one slip of
2 paper here -- if you deducted those 50 lots, the
3 total number for each, open space and conventional,
4 ended up the same.

5 MR. ROYSTON: I think I understand the question.
6 But one of the things -- if you're talking about a
7 conventional subdivision and if there were a
8 reduction in the number of lots, the likely result
9 would not be that that land would then go into open
10 space. It would be more likely a result that that
11 land would be incorporated into other lots in order
12 to obtain a conventional lot yield, because it has to
13 do with minimum areas of buildable land.

14 So once you get into that, one of the
15 difficulties is, as we've indicated in the response,
16 it is the conventional subdivision requirement to
17 have more area, to have within that area minimum
18 areas of buildable land, which does have a tendency
19 to increase individual lot sizes and then takes up
20 areas within the site. So you can't really say, gee,
21 once we take that out, we necessarily then get back
22 open space.

23 And the second part of that, too, is that -- and
24 this is an acknowledgement on our part. The
25 criticism of the conventional subdivision is that the

1 open space becomes very small chunks and is
2 fragmented, and that's the big difference. Yes, you
3 do have a gross total in acreage which would be open
4 space, but where is it, how large is it, what
5 functioning does it serve? So that's the big
6 difference.

7 MR. BRANSE: Mr. Chairman, Mark Branse for the
8 record.

9 I want to be sure that the questioner and the
10 answerer are speaking the same language, and I'm not
11 sure that they are.

12 Commissioner, you had asked what was the number
13 of acres of disturbed and undisturbed open space.
14 Did you mean acreage undisturbed within open space
15 areas or were you inquiring about total --

16 MS. ESTY: Total.

17 MR. BRANSE: -- undisturbed land in the whole
18 development between the two?

19 MS. ESTY: Right.

20 MR. BRANSE: The latter.

21 MS. ESTY: The latter.

22 MR. BRANSE: Is that what you thought you were
23 answering, Mr. Goderre?

24 MR. GODERRE: No. Dennis Goderre for the
25 record.

1 The number of 437 acres was open space, would be
2 undisturbed open space and undisturbed landscape. It
3 would be protected in the conventional plan. The
4 total open space or the undisturbed in the open space
5 plan is 514 acres, but we would be also preserving,
6 through the conservation easements, 575 total acres.
7 So there is a difference of approximately 140 acres
8 more in the open space plan that would be protected
9 than in the conventional open space plan.

10 MR. BRANSE: Excuse me. Correct me if I'm
11 wrong. I understood Commissioner Esty's question was
12 in the two plans what is the difference between total
13 undisturbed land? Forget whether it's designated
14 open space or not.

15 MR. GODERRE: Total undisturbed land within the
16 open space subdivision plan is 573 acres. Total
17 undisturbed land in the conventional plan is
18 437 acres.

19 MR. BRANSE: Thank you.

20 CHAIRMAN MCINTYRE: For the record, Dick is
21 here.

22 Did you finish, Janis?

23 MS. ESTY: (Nods head)

24 CHAIRMAN MCINTYRE: Dick, I didn't see when you
25 came in, so I don't know -- how long have you been

1 here? I didn't see you come in. Have you been here
2 a while?

3 MR. TIETJEN: I just had a question about why we
4 were discussing the conventional plan, which I
5 thought was out of the picture completely.

6 CHAIRMAN MCINTYRE: No, no. It's the basis of
7 all -- it's the basis for the start of the open space
8 application. It's what we derive our density or
9 yield from.

10 MR. TIETJEN: There's no chance that it would be
11 presented for adoption though, right, for approval?

12 CHAIRMAN MCINTYRE: That's not -- I do not
13 believe that the conventional subdivision is for
14 adoption. It is just for -- to look at as a
15 comparison between open space. What you can yield
16 under conventional versus what you're going to be
17 able to yield under an open space and gives you
18 numbers for the open space based on the number of
19 lots you can get from the conventional subdivision.
20 And that's why we discussed the conventional
21 subdivision.

22 MR. BRANSE: And Mr. Chairman, for the record,
23 Mark Branse.

24 It's possible that the commission could reach
25 the conclusion we don't want an open space

1 subdivision for this parcel. We want it developed in
2 accordance with conventional zoning. That's a
3 possible outcome. Obviously I'm not making the
4 recommendation either way. But the applicant -- the
5 applicant's position is and the argument they are
6 making is that a typical conventional subdivision
7 that complied with conventional zoning, minimum lot
8 sizes, minimum frontages and so on, is not the
9 optimal pattern. Their whole argument is that an
10 open space subdivision and specifically the one that
11 they propose is better. But that's the only way you
12 can compare two things is by looking at both of them.
13 So that's why they've presented you with a
14 conventional plan and that's why if you don't think
15 it's representative of what could really be built
16 there, it's worth inquiring.

17 MR. TIETJEN: Thank you.

18 CHAIRMAN MCINTYRE: Dick, right now we are in
19 the commission portion of the questions. Do you have
20 any questions for the applicant at this time?

21 MR. TIETJEN: Do I have any questions?

22 CHAIRMAN MCINTYRE: For the applicant.

23 MR. TIETJEN: Hang on a second. Not many.
24 After all that effort if I don't have them here.

25 MR. LANDINO: While he's getting his questions

1 out, could I just add to the answer regarding the
2 bridge replacement?

3 CHAIRMAN MCINTYRE: Yes. Go ahead.

4 MR. LANDINO: As I indicated it's an 80/20
5 program. If it's a state-owned road, like Route 153
6 or Route 1, the 20 percent is paid for by the state.
7 If it's a town-owned road, it's typically paid for by
8 the town during the life cycle of the bridge. All
9 maintenance and inspections are paid for by the state
10 of Connecticut, by the DOT.

11 If you take an analysis -- we dispute the \$108
12 million analysis that Selectman Peace outlined. But
13 even if you used his numbers as a basis of discussion
14 and you resulted in an obligation to the town of 20
15 plus million dollars in the year '51, if you just
16 look at the normal growth of the town and what the
17 town government budget will be at the time, what the
18 property taxes will be at that time, it really is
19 commensurate with reasonable expectations for
20 maintenance over the life cycle of any bridge in
21 town. And it's really not a burden beyond what any
22 other overpass would be in the town of Old Saybrook.

23 CHAIRMAN MCINTYRE: So in essence if a town
24 proposes a road with bridges, is there a permitting
25 process through the DOT that the town or -- the

1 applicant or the town has to go through?

2 MR. LANDINO: If the town owns a bridge in
3 Connecticut, you request inspections and a
4 maintenance program through your Department of Public
5 Works or engineering department. The state DOT pays
6 for maintenance inspections through the life cycle of
7 the bridge. So there's no cost to the town virtually
8 for 50 years or whenever the replacement design cycle
9 which is proposed to be, which is typically 50 years.

10 When a replacement is required, the current
11 program results in the Federal Highway Administration
12 paying a 80 percent match to a 20 percent town cost
13 for that replacement. And even though the numbers
14 appear high, just through explanation and any
15 economic analysis that I believe Lesser will propose
16 in the revised report as you review it, you'll see
17 that the cost is nominal when you relate it to what's
18 going to happen to the entire revenue structure of
19 the town in 50 years.

20 CHAIRMAN MCINTYRE: I think the question I was
21 asking was more -- I kind of redirected on you. And
22 I wasn't so much worried about the financial issue o
23 it. I'm talking about at the initial -- say with th
24 open space as with the bridges, and they are there t
25 protect the environment or cross the railroad. So

1 when -- is there a possibility that the DOT would
2 deny the application for a bridge?

3 MR. LANDINO: I've never seen it. I mean I
4 guess there's always the possibility. We have a
5 bridge department in our firm.

6 MR. BRANSE: DOT or DEP?

7 CHAIRMAN MCINTYRE: DEP.

8 MR. LANDINO: DOT.

9 CHAIRMAN MCINTYRE: DOT.

10 MR. LANDINO: The program is administered
11 through the DOT and ultimately funds come from the
12 Federal Highway Administration. But the town doesn't
13 receive that money directly from the FHWA. It's
14 received through a reimbursement by the DOT.

15 So I have been in this business for 20 years,
16 and it's really about public safety. And the Federal
17 Highway Administration has taken a public policy
18 since its inspection to ensure safe transportation
19 for the entire country, including local bridges. The
20 local bridge program is designed to give the town the
21 least burden possible. And that's as a result of
22 this part of the 80/20 program and the fact that the
23 state is part of that program and pays for all
24 maintenance and inspections along the way.

25 CHAIRMAN MCINTYRE: Thank you. Dick.

1 MR. TIETJEN: Can you hear me?

2 CHAIRMAN MCINTYRE: Well, too much.

3 MR. TIETJEN: Too loud. That's unusual.

4 CHAIRMAN MCINTYRE: There you go.

5 MR. TIETJEN: Now, Bob, this one is for you, I
6 guess. Do you have any ideas about preparation
7 for -- the provision for public transportation to,
8 within, and from The Preserve either now or sometime
9 in the future when the thing is actually functioning?

10 Are the roads, the spine roads especially in
11 certainly but around the villages, the clusters are
12 going to be big enough? Are they going to be
13 adequate to take something bigger than a regular
14 extended automobile?

15 MR. LANDINO: All the roads would be designed to
16 accommodate emergency vehicles, fire trucks. And we
17 have -- in the old days we used to use templates, but
18 now we use computer programs to make sure that the
19 roads are designed in such a way so that all the
20 turning radii and all the geometry will accommodate
21 single unit vehicles that require large radii to make
22 turns. Fire trucks, buses and other large vehicles,
23 moving vans are all a part of that analysis.

24 But to answer your question about public
25 transportation, we haven't gotten that far since we

1 are in the conceptual phase. I don't believe there's
2 any real public transportation in town. But we
3 certainly would think a shuttle service or some type
4 of a stop that would accommodate a future system to
5 link The Preserve development with shoreline east,
6 with high speed rail, and with the center of town
7 would absolutely be appropriate. We just haven't
8 really thought that through at this stage of the
9 game.

10 MR. TIETJEN: Thanks. Here's an ecological
11 question, I guess. Is there anything anyone can tell
12 us about -- more about the other forms than the
13 spotted salamander, the larger four-footed presumably
14 mammalian species, tell us anything about their
15 situation, their range, their choice of feeding
16 grounds, et cetera?

17 I know somebody has in the past mentioned that
18 they would like -- the deer would like the edge of
19 the golf course, but I wonder if they would like the
20 middle of it better. But, anyway, that's a general
21 question that you might be able to answer.

22 MR. LANDINO: I'll turn that over to Michael
23 Klein.

24 MR. KLEIN: Michael Klein. I'm a biologist and
25 soil scientist. My office is in West Hartford.

1 We did a detailed survey for mammals at the
2 site. We did not identify any large or unusual
3 critters like bears and so forth. It's probably just
4 a matter of time before they get to this part of the
5 state.

6 I guess two points I would like to make or
7 three. One, mammals are very adaptable critters.
8 For the most part their habitat requirements are
9 fairly broad. So you generally see a pretty large
10 suite of mammals either using a site or potentially
11 using a site. The amount of open space that's
12 preserved on this site is sufficient to allow all the
13 mammals that have used the site in the past to
14 continue to use it in the future. And some of them,
15 like deer, would certainly increase as a result of
16 this project.

17 MR. TIETJEN: So I was thinking about partly in
18 terms of this enormous golf course, which the size I
19 heard different estimates of. But depending on
20 everything that you would include in the area covered
21 there labeled golf course, can you give me a size
22 estimate? How much habitat we are going to lose or
23 they are going to lose, such things as --

24 MR. KLEIN: I'm just looking for the right
25 graph. The area within the golf course is 150 acres

1 Okay.

2 MR. TIETJEN: That's fairways and the rough and
3 the whole works.

4 MR. KLEIN: Fairways, tees, greens, and rough,
5 and it also includes the driving range. Not all of
6 that area is manicured turf. But it's also important
7 to note that -- and this is addressed in a fair
8 amount of detail in the response that we have given
9 you, that the old notion that some would have you
10 still believe that golf courses are larger sterile
11 landscapes or glorified ornamental gardens just
12 doesn't hold anymore. There's a whole new school of
13 golf course design of which Arthur Hills is a leading
14 proponent, which is called naturalistic golf course
15 design.

16 And the U.S. Fish and Wildlife Service and
17 various university biologists are now looking very
18 carefully at those kinds of designs and have found
19 that while there's obviously some impact from the
20 change in landscape, in certain circumstances that
21 impact can be positive and in other circumstances it
22 can be minimized. But, for example, the U.S. Fish
23 and Wildlife Service has done research in South
24 Carolina over the years 2000 and 2001 and found that
25 woodland birds, including the so-called

1 area-sensitive vireo tropical migrant birds, continue
2 to breed at golf courses with low to moderate levels
3 of habitat alterations. In other words, the more
4 modern, naturalistic golf course designs.

5 I've spoken to one of the coauthors of this
6 report, and he indicated to me that the two things
7 that are the most important are preservation of
8 forested areas and preservation of scrub/shrub. Our
9 plan maximizes the preservation of forested habitat.
10 There's really not a lot of scrub/shrub on this site
11 other than the utility right-of-way. Of course that
12 will all be maintained as scrub/shrub, but in some
13 areas where the golf course plays over the wetlands
14 or in areas that will be converted to scrub/shrub so
15 that the open space plan and the golf course plan
16 maximizes the preservation of wildlife habitat.

17 We've given you in the packet that you just
18 received an Ohio State University extension document,
19 The 12 Steps to Increase the Wildlife Habitat and
20 Maintain a Healthy Environment in Golf Courses. All
21 of the aspects of that program are consistent with
22 the conceptual design, and we would be incorporating
23 them into the final design and the operational plans.

24 Max Termnate from Tabor College in Kansas looked
25 at the bird communities in a championship quality,

1 naturalistic golf course in various natural, passive
2 recreation areas. He found they both supported
3 complex bird communities. The golf course had a
4 similar number of species that was statistically
5 insignificant in terms of the difference to the
6 natural, passive recreation area. They found a
7 higher density of birds throughout. Some differences
8 in relative abundance, some difference in diversity
9 and dominance, but they both supported a complex
10 avian community. And in addition determined -- also
11 reported that he had additional unpublished data that
12 documents the fact that these naturalistic designs
13 support more diverse, more stable bird communities
14 than conventional golf courses.

15 So that there are a whole variety of design
16 measures that were incorporated in the golf course
17 design and of course in the open space subdivision
18 layout that will minimize the impacts of this
19 development on wildlife, mammals, birds. You've
20 heard a lot from Michael Klemens about the reptiles
21 and amphibians. But there's also something that you
22 get in a golf course and in an open space subdivision
23 that you don't get at all in a conventional
24 subdivision, which is the ability to have active
25 management for the wildlife habitat.

1 You can have restrictions on the use of evasive
2 plants and landscaping on the site. And that's a
3 very important element to preserve wildlife habitat,
4 and we plan to do that. You can have a specification
5 of using native plants for landscaping within the
6 golf course area. Those native plants provide food
7 or shelter for the wildlife. You can include and we
8 plan to include installation of nesting structures
9 for birds and mammals, brush piles for mammals. You
10 can design --

11 MS. MCKEOWN: Excuse me.

12 CHAIRMAN MCINTYRE: Can we interrupt you for a
13 minute. We need to change the tape.

14 MR. KLEIN: I'm sorry.

15 CHAIRMAN MCINTYRE: That's all right. Go ahead.

16 MR. KLEIN: Well, we don't have a detailed
17 design at this point. We are way ahead of that. But
18 we are obviously making a commitment to you and to
19 the zoning commission that those elements will be
20 included in the design. That's been our goal from
21 day one.

22 MR. TIETJEN: Do we get to see that before we
23 have to decide whether we approve of it or not or is
24 that -- or are we taking it on faith?

25 MR. BRANSE: Mr. Chairman, let me answer that.

1 I think I'm better to answer this than Mr. Klein.

2 This commission won't approve or deny the golf
3 course. The zoning commission will do that. Because
4 it's a special exception by the zoning commission.
5 So the only thing this commission will look at in
6 terms of golf course is whether you like the pattern
7 of an open space subdivision with golf course better
8 than conventional or if you like an open space
9 subdivision and whether you think a golf course
10 should be part of it. But you'll be working
11 conceptually. You'll be working in terms of a
12 planning exercise, not the details of what types of
13 chemicals they'll use or how they'll landscape it or
14 exactly how they'll grade, because those are things
15 that the upland wetlands commission has been
16 reviewing. And as far as the golf course design, and
17 the club, and the parking lots and all of that, that
18 will be going to the zoning commission.

19 MR. TIETJEN: So we really have no authority in
20 that regard, the golf course and its components, its
21 protection and so forth.

22 MR. BRANSE: Well --

23 MR. TIETJEN: Because a lot of this is
24 downstream from the golf course. And it seems to me
25 that gives us a reason to be interested in it in any

1 case.

2 MR. BRANSE: Oh, you definitely have a right to
3 be interested in it, because one of the conclusions
4 you might make is that you want the development --
5 the property developed as an open space subdivision,
6 but that you would like it clustered without a golf
7 course. So of course it's important for you to
8 understand what types of impacts there might be,
9 habitat and otherwise.

10 As far as the details of design and chemicals
11 used, those aren't things that -- they don't have
12 that now and they don't really need to have that now.
13 So I mean they are addressing it conceptually. They
14 actually have addressed it in a little higher level
15 of detail than I think they really needed to. But
16 they are doing that because they want you to have a
17 comfort level with what they're proposing.

18 MR. TIETJEN: Well, I think they have. I
19 appreciate that, because a lot of us aren't qualified
20 to make that kind of a judgment ourselves.

21 I have just one quick --

22 MR. ROYSTON: Could I add to the response on
23 that same question? Same question that you had.
24 Just add to --

25 CHAIRMAN MCINTYRE: Could you state your name

1 for the record.

2 MR. ROYSTON: Attorney Dave Royston, attorney
3 for the applicant.

4 When you say do we have the authority, we --
5 that's the planning commission as Attorney Branse
6 says, says no. But the town and its agencies do have
7 the authority to require that that -- what is
8 provided here, what is committed here is part of the
9 final design. They do have the authority. The
10 zoning commission are a part of the special exception
11 process for the golf course, has that authority. The
12 wetlands commission in reviewing protocols for
13 related activity has that authority. So in a way, in
14 a more general sense does the town have the ability,
15 and the answer is yes.

16 MR. TIETJEN: Thank you. I just want to -- I
17 have more questions, but I want one definition. You
18 mentioned the operational plan. Now, what's that in
19 comparison to the proposed conservation district?

20 MR. KLEIN: The operational plan of the golf
21 course would include issues such as -- address issues
22 such as --

23 MR. TIETJEN: As what?

24 MR. KLEIN: I'm just trying to clear my
25 thoughts. Irrigation frequency. It would address

1 such things as water conservation plan. Under
2 drought conditions it would address such things as
3 the application of fertilizers and pesticides. It
4 would address such things as mowing, a high frequency
5 in timing. It would address such things as
6 installation of active habitat management measures.
7 Those can all be incorporated in an operational plan
8 for the golf course, and we would expect that they
9 would be. And we would certainly expect that your
10 staff, which is highly qualified in this manner,
11 would make us do that at the appropriate time.

12 Some of this comes under the purview of the
13 wetlands commission, and we would need a wetlands
14 permit. Some of it comes under the purview of the
15 zoning commission, and we will need zoning permits.

16 MR. TIETJEN: That's this.

17 MR. KLEIN: That's what your attorney tells you.
18 I'm not an attorney.

19 MR. TIETJEN: Another question, and this will be
20 close to what I just asked in a way, because it will
21 depend on more than what we have.

22 Do you have anything to say about the
23 probability, not to say possibilities, about noise
24 and other forms versus dust, diesel smoke, water
25 pollution and so forth? All the stuff that is

1 attended upon the construction that will go on here.
2 Now, is that part of your operational plan or can we
3 make a judgment about that? Or hope that or expect
4 something, some kind of authority about that.

5 MR. KLEIN: I'll say a couple of words just to
6 keep you from jumping up and down, but if somebody
7 needs to fill in, please do so.

8 The -- a number of those issues that you talked
9 about in terms of pollution are sort of water
10 pollution related. And as part of the construction
11 of the golf course, the site will be subject to a
12 storm water pollution prevention plan and a
13 registration for a permit for construction at the
14 Connecticut DEP. Those factors are addressed in
15 quite a bit of detail in that kind of a document.
16 Sediment, erosion control and pollution from that
17 regard are addressed in both the zoning approvals,
18 your wetland approvals, and the DEP document.

19 As far as dust control, that's typically
20 addressed in that pollution prevention plan. Noise
21 from equipment operation I'm not sure about, although
22 I expect the town has ordinances.

23 MR. TIETJEN: I was talking more in terms of say
24 when you're constructing the villages and when you do
25 the clusters.

1 MR. KLEIN: All of that will require the storm
2 water pollution plans and the permits for discharge
3 of construction and grading wastewaters from the
4 DEP.

5 MR. TIETJEN: Do we have to address some other
6 agency then to make that judgment or do we get to see
7 it?

8 MR. KLEIN: I'll let your attorney answer that
9 legal question.

10 MR. TIETJEN: I have more.

11 MR. LANDINO: Just to follow up on that
12 question.

13 CHAIRMAN MCINTYRE: Could you state your name
14 for the record, please.

15 MR. LANDINO: I'm Bob Landino, BL Companies.

16 It's a multi-pronged answer, but I'll try to be
17 brief. First of all, if you're comparing the open
18 space plan to the conventional plan, just simply
19 intuitively if you look at the cluster nature of the
20 plan as opposed to the conventional plan, if you were
21 to measure construction impacts, I think you would
22 reach the conclusion that the construction impacts in
23 terms of dust, and noise, and all issues related to a
24 sedimentation and erosion control would be
25 significantly less with the cluster plan. The

1 development envelopes as defined are tightly spaced
2 as opposed to the conventional subdivision which are
3 disbursed throughout the site.

4 If you look at the length of road that would be
5 constructed in either case, there's more than a mile
6 less of road with the open space plan. So if you
7 quantify those impacts in any way, the impacts will
8 be significantly less with the open space plan. We
9 are required to file a permit application with the
10 DEP and comply with their and the town's regulations
11 as it relates to construction impacts, sedimentation
12 and erosion control, sequence of operations, dust
13 control, et cetera. And to the extent, and I don't
14 know that it does, but to the extent that Old
15 Saybrook has a noise ordinance, we would be
16 responsible for adhering to that as well.

17 In addition to that, because of the size of this
18 development, I would expect that the DEP will request
19 an individual review of that application. Typically
20 those applications fall under a national permit which
21 do not require an individual review of the site. But
22 what I have found in my experience with that permit
23 process, which has been in place for five or six
24 years now, is that for larger development proposals
25 the DEP has actually designated a person that makes

1 the determination on whether an individual permit is
2 required. And if so, they will go to a fairly
3 lengthy review process to determine how to control
4 all of the issues that you identified. And it gives
5 them a wholesale enforcement right to the extent that
6 those controls and conditions are violated during
7 construction. It's typically a complaint-activated
8 process so that if there is monitoring on the site by
9 the town and there is an exceedance of certain
10 conditions, then the DEP in addition to the town has
11 enforcement rights over the development.

12 MR. TIETJEN: So you really can't predict
13 anything substantial about all that. I'm thinking
14 about the dwelling places, not the golf course.

15 MR. LANDINO: If you're asking us to measure it
16 currently, we don't have the level of detail at this
17 point in time to give you specific answers about how
18 we are going to solve or address issues. All I can
19 tell you generally is what I just described. And
20 that if you're in a decision-making process that
21 compares open space to conventional, no matter how
22 you measure it the open space will have less impact
23 and will require less controls. But the detail of
24 how we do that we'll arrive at the next level of
25 design.

1 MR. TIETJEN: This has to do -- in my mind it
2 has to do with what this is going to be like over the
3 long haul, among other things. This is going to go
4 on a long time. You're not going to be able to build
5 it in a week.

6 MR. LANDINO: No. I don't mind answering that.
7 I would think the construction period for the
8 infrastructure will be two years or so.

9 MR. TIETJEN: How many?

10 MR. LANDINO: Two. And then the housing itself
11 will take about two years beyond that. The big
12 construction, the roads, the grading, the structures,
13 et cetera, the golf course is probably a two-year
14 process. And then the balance of the construction
15 will depend on the demand for housing.

16 MR. TIETJEN: These development effects that you
17 mentioned and then some, of course we'll have both
18 short-term and long-term results. There are going to
19 be effects that carry on for a long time. A lot of
20 the runoff from say when you bulldoze the high
21 ground, a lot of stuff is going to go right down into
22 the valleys, go to the ponds or houses or where the
23 golf course is going to be. Some of them have --

24 MR. LANDINO: Not if it's designed and
25 maintained properly.

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MR. TIETJEN: Pardon?

MR. LANDINO: Not if it's designed and maintained properly. The key is the design will be a part of the review process. So normally towns do a good job in making sure that the controls are in place at the point of approval. Typically the weakness in any development is enforcement, in making sure that the contractors selected adhere to the design conditions. And assuming that there are conditions in place to ensure that, and I would guess that given the level of controversy and the size of this development, that this and other commissions will make sure that those conditions are in place, that there likely will be very little opportunity for a contractor to stray from the original design intent or the maintenance requirements for the sedimentation and erosion control measures.

MR. TIETJEN: What about the neighbors? One of the reasons that I am concerned about this is that the tour we took last week, it was quite obvious that there were houses cheek by jowls and more which we didn't consider because we weren't there. But I know and you know there's more stuff down below that swale where the big houses sit up on the top. Now, that's part of my long-term effects. The question, because

1 you're going to be blasting, and earth moving, and so
2 on now.

3 Another thing is you're going to be removing a
4 lot of the forest. Now, that would be maybe more
5 radical in the case of the villages, at least at the
6 upper level, and the golf course. But a lot of trees
7 are going to have to come out of there. A lot of
8 forest will be diminished as a result. And I would
9 like to know what your thoughts are about how that
10 can be mitigated, if it can, and what the effects are
11 going to be.

12 MR. LANDINO: I mean I think -- again, I hope
13 I'm answering your question. But the mitigation
14 quite simply is to remove and disturb the least
15 amount of land as possible. And when you look at the
16 open space plan as compared to the conventional
17 subdivision, which would be a proposal under the
18 current zoning regulation, the amounts of disturbance
19 are significantly less, and capital less, and
20 substantially less.

21 There are some isolated displays where the
22 development comes close to existing homes. I have
23 actually spoken to one neighbor about meeting with
24 them to talk about that. But by and large most of
25 the development is thousands of feet from the nearest

1 existing neighborhoods, completely contrary to any
2 development I've ever been involved with. So if you
3 measure noise, dust, and other issues that would be a
4 nuisance to neighbors, I think there are a few areas
5 where we could probably improve on our plan to try to
6 mitigate or eliminate those potential impacts. But
7 by and large the development is surrounded by
8 hundreds of acres, and there's substantial distances
9 between the areas of disturbance and the
10 neighborhood.

11 Now, when you get to the entrances of the
12 roadways that entered -- that access Ingham Hill, and
13 Bokum Road, and 153, certainly there will be some
14 construction in the immediate vicinity of homes. And
15 in one area of the upper reaches of the Ingham Hill
16 Road corridor, we come pretty close to a couple of
17 homes and we're going to try to correct that moving
18 forward. But that being said overall the plan stays
19 away from most people's neighborhoods.

20 MR. TIETJEN: Now, you've already given me some
21 idea about how long this is all going to take, but
22 I'm still worried about the long-term effects of all
23 of this.

24 Now, what do the forestry authorities say about
25 the effects of clear-cutting or other kinds of

1 cutting of this forest to make room for villages
2 particularly and this forest absolutely? There's no
3 doubt that you have an issue.

4 MR. LANDINO: I mean I don't know what foresters
5 say, but maybe Michael Klein -- where did he go? He
6 ran home. There you are. Do you want to talk about
7 forestation?

8 MR. KLEIN: Michael Klein. I'm a biologist and
9 a soil scientist.

10 Our position I think from the beginning has been
11 consistent in this regard. There's obviously going
12 to be a change in the vegetation type, the amount of
13 forest at the site, and the wildlife utilization at
14 the site associated with the development of this
15 parcel. That's an unavoidable consequence of land
16 development. It's an unavoidable consequence of a
17 change in vegetation types.

18 I think your counsel has framed the question in
19 the way that we -- that we are trying to answer it
20 and in a way that we think is most appropriate, which
21 is the amount of disturbance of the landscape, the
22 amount of the removal of forested cover, the change
23 in wildlife habitat potential is substantially
24 greater under a conventional subdivision than an open
25 space subdivision with or without a golf course. I

1 am not sure how else I can answer that question
2 specifically.

3 MR. LANDINO: The last piece - thanks, Michael -
4 was if the land were undeveloped and as the previous
5 developer actually conducted significant land
6 clearing, a property owner can clear trees without a
7 permit. And if the land were to be forested for the
8 purpose of using the timber and converting it to
9 value, that can be done today. You know, unless
10 you're into a wetlands impact, that activity does not
11 require a permit I don't believe.

12 Dennis, did you want to say something?

13 MR. GODERRE: Yes.

14 MR. TIETJEN: Can you reforest that area?

15 MR. LANDINO: If reforestation is something that
16 this commission desires, that would be fine. If
17 there's an opportunity to reforest on our site, you
18 know, that again is a detail for the next level of
19 design. Right now we are in the concept phase, and
20 we haven't looked at the whole aspect of the clearing
21 and whether or not it had a forestation mitigation
22 associated with it.

23 Dennis Goderre.

24 MR. GODERRE: Dennis Goderre, BL Companies.

25 To elaborate on that you may recall on Saturday

1 during our site walk we started along Ingham Hill
2 Road, came up along to where the central village is.

3 CHAIRMAN MCINTYRE: Mr. Goderre, could you
4 identify what map you're talking about.

5 MR. GODERRE: I'm looking at the map Open Space
6 Subdivision - Preservation Plan. We started to look
7 at the central village. We worked our way over to
8 where the water tank is and then the beginnings of
9 the eastern village. When we got to the point, the
10 vantage point of where the clubhouse is located,
11 where it opened up and we got out into some of the
12 evergreen grove, you can take a look and see what
13 type of vegetation was there. And while it wasn't a
14 narrative tour, one of the things I would have
15 pointed out and now I have an opportunity to do that,
16 is that there was not significant mature vegetation
17 in that area. There was a lot of scrub grove
18 saplings that are not part of reforestation I guess
19 you could say. But there were no substantial
20 specimen trees or large field canopy trees in that
21 area.

22 And as we walked over through you will notice --
23 you could have noticed that there had already been a
24 lot of forestation that had occurred in the past
25 prior to this applicant's participation. And this is

1 another reason why we are inviting you to a site walk
2 along with the public's interest. On that site walk
3 you'll be able to see some of those areas that we
4 will be preserving and that probably we will meet on
5 the site.

6 MR. LANDINO: One last comment which is, again,
7 comparing open space to conventional. The
8 conventional subdivision has one residential product,
9 attached single-family home, and has a longer
10 absorption period. No matter how you analyze it,
11 it's going to take longer to sell the same product
12 than it will to sell the various products that we are
13 proposing in this development as part of the open
14 space plan. Given that and if you're looking at a
15 comparison of absorption at the time of construction,
16 clearly this will have a significantly less
17 absorption rate. We estimate somewhere between three
18 and five years. But a conventional subdivision might
19 be as much as eight to ten. You build a section of
20 the road, build homes, sell the homes, build another
21 section of road and continue on until the development
22 is completed.

23 MR. TIETJEN: Thank you. No more questions,
24 Your Honor.

25 CHAIRMAN MCINTYRE: Thank you, Mr. Tietjen.

1 Could I have the microphone back, please. No, no,
2 not that one. The desk mike.

3 At this time, Stuart, do you mind if I skip over
4 you --

5 MR. HANES: Fine.

6 CHAIRMAN MCINTYRE: -- and let Judy ask her
7 questions? She has a time issue.

8 MS. GALLICCHIO: Great. Thank you. I didn't
9 have a chance to review, obviously, the reference
10 that you gave us this evening, volume three of the
11 responses. Can I assume that in that volume are
12 responses to the planning commission's questions of
13 the last meeting?

14 MR. LANDINO: Yes. I believe they are answered
15 in that package.

16 MS. GALLICCHIO: Thank you. I did not see in
17 any of the reference materials, and perhaps I'm
18 mistaken, a report from the state archeologist. Has
19 there been one?

20 MR. LANDINO: No, there hasn't.

21 MS. GALLICCHIO: Is that not usually a referral?

22 MR. LANDINO: I'll leave that to Michael. I
23 don't believe so, but I'll leave that to Michael or
24 one of the attorneys. Anybody? Dave. We don't
25 believe that that's a requirement. Would you like to

1 answer, Attorney Merriam? We certainly could look
2 into it for you, but we don't believe that that's a
3 requirement.

4 MR. ROYSTON: It wasn't part of the application
5 process in here, but there was a -- there was a
6 report from the state archeologist previously. And
7 we would be able to submit that, put that into the
8 record before the 23rd.

9 MS. GALLICCHIO: That would be helpful. Thank
10 you.

11 MR. ROYSTON: My recollection is the primary
12 identifying archeological site is the Ingham Hill
13 homestead and that foundation. And I think there
14 were two other items that was mentioned in that
15 report. So we will be able to provide that.

16 MS. GALLICCHIO: Thank you.

17 MR. ROYSTON: Thank you.

18 MR. LANDINO: Thanks for the clarification.

19 MS. GALLICCHIO: The roads in the areas of the
20 two village centers, is there any on-street parking
21 for visitors?

22 MR. LANDINO: The roads are not designed to have
23 on-street parking but rather be wide enough so that
24 parking can occur on one side and cars can travel
25 around it. Since the residents will typically park

1 in the back lane areas in garages or in driveways,
2 the roads will not typically be occupied by vehicles
3 owned by the residents. So we'll likely provide --
4 we won't regulate parking. We'll likely allow for
5 parking to occur on one side of the street so that
6 vehicles can travel around it.

7 MS. GALLICCHIO: How would it be determined if
8 you don't mark it in some way what side of the street
9 is for parking?

10 MR. LANDINO: Again, it's more of a planning
11 issue. We would be happy to do that, but from our
12 point of view the regular parking -- the overnight
13 parking occurs on the interior roads that visitors
14 and people that are traveling through will not be a
15 part of. So we believe that it should occur. And I
16 hate to say this in a big meeting, but randomly as
17 people come to visit a home, they'll find a spot on
18 the road. They'll park off to the side and take
19 between seven and eight feet to do that. We have a
20 22-foot road and there will be well over 14 or 15
21 feet for a vehicle to move around in. If the town
22 chose to regulate it with signs in parking areas, we
23 surely could do that. But from our point of view it
24 changes the character of the neighborhood, which is
25 what we are trying to do our best to create.

1 MS. GALLICCHIO: All right. In reviewing the
2 reference that was submitted in volume two of the
3 responses regarding safety on golf courses, I noted
4 that there are concerns regarding -- or were listed
5 concerns regarding pedestrians walking on the
6 cartways as part of a trail system, for example. And
7 I'm wondering -- my thought was that part of the
8 trail system was going to be incorporated into the
9 golf course itself. And I'm wondering how it will be
10 possible to accommodate both golfers and pedestrians
11 in a safe manner.

12 MR. LANDINO: Dennis Goderre will answer that
13 question.

14 MR. GODERRE: Dennis Goderre, BL Companies.

15 One of the plans in the plan set does depict a
16 conceptual, if you will, trail system. We had
17 located that based on locations of existing wood
18 roads from past logging operations where there's some
19 history of the site to minimize the amount of
20 disturbances that would be required. Also, it was
21 coordinated with the trails or the cart paths, if you
22 will. And we had attempted at this stage to locate
23 connections of some of the open space trails
24 strategically so a hiker or somebody walking in the
25 open space could enter onto the golf course in a

1 location that was a safe location.

2 Now, it's open in some communities and it's been
3 our experience and Art Hills's experience that the
4 full golf course is opened up. If there are
5 locations that isn't safe because of visibility, they
6 can be posted for no walkers certainly. But there
7 are methods of controls of that, but at this stage we
8 would like to see that it is opened. And if we can
9 balance that in a way that we feel we can, that it's
10 safe for everybody, that would be the plan.

11 MS. GALLICCHIO: So there would be pedestrians
12 on the golf cart paths at some points.

13 MR. GODERRE: That has been a vision of ours.

14 MS. GALLICCHIO: Okay. That's all I have.

15 MR. LANDINO: Thank you.

16 CHAIRMAN MCINTYRE: Stuart.

17 MR. HANES: At the last meeting I believe the
18 panel asked if we could get an overlay of the golf
19 course on the conventional standard plan. Has that
20 been provided?

21 MR. LANDINO: Dennis. We have not provided
22 that. Have we been working on that? Yes. I believe
23 that will be provided for the 23rd. It just took
24 some time to do it. So we'll have that for
25 submission on the 23rd.

1 MR. HANES: Okay. Have there been any approvals
2 from Westbrook as far as the entrance road off of 153
3 at this point?

4 MR. LANDINO: No. Actually, we originally made
5 application to the town of Westbrook, to their inland
6 wetlands commission, and we actually have a scheduled
7 public hearing. We are considering withdrawing that
8 application, because we believe, based on the reviews
9 and the discussions that have happened here over the
10 course of this process, that there likely will be
11 some changes to the plan. So what we are considering
12 doing at this stage of the game is pulling back from
13 Westbrook, waiting to hear your response, modifying
14 the plans and then going forward on a single front.
15 So we have an active application, but I don't believe
16 we will actually pursue that at this time.

17 MR. HANES: In the event that you do not pursue
18 that, then you would be looking at a main access to
19 your area from --

20 MR. LANDINO: I didn't mean to confuse you.
21 Absolutely not. Primary access is always proposed at
22 Route 153 in Westbrook. It's a regional arterial
23 state road. It has access to both Route 9 and I-95.
24 And while we have proposed alternate ingress and
25 egress to distribute the traffic properly on a

1 development of this magnitude, we would ultimately
2 need permits from the town of Westbrook.

3 MR. HANES: Oh, okay. In the area of recreation
4 in your town development there center, there is no
5 provision for any kind of recreational park, for
6 playgrounds, for -- because I understand that
7 originally you said that it's mainly going to be
8 occupied by the elderly, and they would not expect to
9 have children in the area.

10 MR. LANDINO: Not so much elderly. This is
11 proposed to be an unrestricted development. But the
12 design of the villages are targeted to single
13 professionals, married professionals without
14 children, and active-age seniors that typically like
15 to golf and want to be part of a maintenance-free
16 community with a club connected to it within walking
17 distance. So a playground and facilities related to
18 a significant number of school-age children were
19 things that we tried to avoid in the planning
20 process, because our target market for two-thirds of
21 the development is really about folks without
22 children. And we believe once they have children
23 they could even go to a product like our attached
24 residential products or move to a different
25 neighborhood ultimately.

1 MR. HANES: I'm thinking of families that would
2 have grandchildren and other children visiting. And
3 I see this as being an area where they are really not
4 welcome.

5 MR. LANDINO: I think that's a reasonable
6 comment. We perceive that they would be involved
7 with activities within the club itself. So that if
8 the folks that own the home joined the club either as
9 a social member or the golf member, that the
10 activities connected with that club would provide
11 outlets for children that were visiting,
12 grandchildren, et cetera. We did not envision an
13 off-site public active playground that would create
14 an environment that would encourage children to an
15 environment that we didn't think was a part of the
16 targeted market. But that was our thoughts at the
17 initial inception of the development.

18 MR. HANES: But you don't anticipate that all of
19 the members or all the residents there would be
20 members of the club.

21 MR. LANDINO: No. It's a choice. Hang on. I
22 have some people jumping up. Dave, do you want to
23 add something before I finish?

24 MR. ROYSTON: Just one addition to that.

25 CHAIRMAN MCINTYRE: Can you identify yourself

1 for the record.

2 MR. ROYSTON: David Royston, attorney for the
3 applicant.

4 Within the village area there is a requirement
5 for the cluster area to have 50 percent open space
6 and which excludes those things which are dedicated
7 for use by the residents. There is within the
8 cluster three acres of area which is green area,
9 which is undesignated for its use. Right now it's
10 just an open green area. But that area is available
11 for whatever sort of recreational type of use that
12 the residents might decide they want to have it made
13 use of. So there is an area that could be used for
14 that purpose within the village, and that is an area
15 which is not part of its open space.

16 MR. HANES: Okay.

17 MR. LANDINO: Thank you.

18 MR. HANES: One question came up by our
19 engineers, Jacobson & Associates. They identified
20 certain soil types where evidently the drainage is
21 not such that all of the homes would find the ability
22 to be placed in those locations. And I believe they
23 came up with a 40 percent of the HPE soil types and
24 30 percent of the CRC soil types which were admitted
25 as undesirable or unbuildable. Is that a standard

1 percentage? Is that something that is agreed upon?

2 My question I guess is I see there are a lot of
3 these soil types in the area, and I wonder how you
4 picked those 30 and 40 percent.

5 MR. GODERRE: Dennis Goderre, BL Companies.

6 There's been two memos issued by Jacobson's
7 office, both referencing the 30 percent and the
8 40 percent methodology. Mr. Jacobson has -- we
9 received his memo on this past Monday. And we are
10 really just getting an understanding of its meaning
11 to us. And we have not responded to that nor have we
12 agreed to that. And because he still uses that
13 methodology now, as he did in the past in his first
14 memorandum, then we didn't agree with it and now we
15 still don't necessarily agree with it. But we are
16 considering his recommendations at this stage. And
17 in our next response in revisions for the plan we
18 will then address that in our revised submission.

19 MR. HANES: I see.

20 MR. GODERRE: But there isn't an agreement on
21 that. And maybe Michael, if he needs -- I don't
22 think Mr. Jacobson is here this evening. But Michael
23 Klein might be able to give a little bit more of an
24 understanding of Jacobson's methodology. But it
25 isn't necessarily something that we agree with it.

1 MR. HANES: One of the things that I attempted
2 to do was to identify those lots. And if you find
3 them clustered, so you wonder how you pick 30 percent
4 out of this cluster versus the 70 percent.

5 MR. GODERRE: Okay. The way we take a look at
6 that is we take an acre lot and we minus out
7 30 percent. And with the other 70 percent you have
8 an opportunity to get an on-site septic system. And
9 there's another way of looking at it. Instead of
10 looking at all 100 acres that might be within that
11 one soil plan, you can look at that one acre, acre
12 and a half within that soil type and say 30 percent
13 or 40 percent of that lot may not be able to support
14 a septic system, but the remaining 70 percent or 60
15 percent likely could. That's part of the methodology
16 that we look at, but it's not -- hasn't been
17 addressed in that fashion with the town's people.

18 MR. HANES: I see. I see by their figures they
19 come up with a 62-lot decrease from the original 298.
20 But I guess that is something that you're going to
21 address in the future.

22 MR. GODERRE: Correct.

23 MR. HANES: Okay. Thank you. That's all.

24 CHAIRMAN MCINTYRE: I've got a couple of
25 questions for the applicant, and I would like to

1 address a couple of questions that were raised to
2 Attorney Branse. Attorney Branse, when we have a --
3 when we are talking about the golf course and the
4 commission and our role in that, being you stated
5 that was a special exception, is that one of those
6 special exceptions that would be forwarded to the
7 planning commission for review for consistency with
8 the plan of conservation and development?

9 MR. BRANSE: Yes. That's correct.

10 CHAIRMAN MCINTYRE: So we would at one -- at one
11 point in time, we would have the ability to put input
12 into the zoning commission on how the planning
13 commission stands on the issues of the proposed golf
14 course.

15 MR. BRANSE: Yes. But you would actually have
16 two opportunities. The way that this application is
17 foreseen is that depending on what your decision is
18 in this application - if it's positive, however,
19 that's defined - there would be a special exception
20 application for the golf course. There would also be
21 the PRD application, which would also be referred to
22 you for comment.

23 The PRD -- just as this open space subdivision
24 has been designed around a golf course and therefore
25 it's a component of your review at least from a

1 planning standpoint, likewise, the PRD plan will also
2 depict the golf course and will be designed around
3 it. And so, again, when and if the PRD application
4 is filed, that will also be referred back to you.

5 CHAIRMAN MCINTYRE: Thank you. Then there was a
6 couple of other issues about the expected site work
7 and the blasting. I have the I guess fortunate to be
8 on planning and wetlands, also. And I kind of -- it
9 kind of gets muddled together at times. But I do
10 know that in other applications that we have, that we
11 have addressed that the access of where -- I think
12 it's a planning commission does have during the
13 final -- you know, the actual application to address
14 the issues of blasting hours, things of that nature,
15 and what access we would want them to use. That's
16 when that time comes in. We do have say-so during
17 the planning process.

18 MR. BRANSE: That's correct. Depending on
19 whatever pattern you settle on, the applicant will
20 still have to return for a subdivision application.
21 And as with all subdivision applications, you will
22 review detailed erosion control, grading plans, plan
23 and profiles, construction, all of the things that
24 you would do in any subdivision. The only thing
25 that's unusual is in this case you would all get

1 reviewed again at the PRD stage and at the golf
2 course special exception stage. So there would be --
3 and hopefully with consistent results, whatever that
4 may be. But yes, those types of things would
5 certainly be before you as they are in all
6 subdivisions.

7 CHAIRMAN MCINTYRE: Thank you. This is for the
8 applicant. When Stuart was addressing active
9 recreation, it brought to mind that we had a letter
10 from our parks and rec commission addressing the
11 issue that they would like to see some -- and when
12 they were talking active recreation, ball parks and
13 things of that -- you know, real active recreation,
14 ballpark, fields, soccer fields. Has the applicant
15 looked into that at all or thought about that?

16 MR. LANDINO: We have and it's really to be
17 guided by the planning commission. We can carve out
18 areas of the site that are proposed to be undisturbed
19 open space. And if it's the desire of this
20 commission moving forward that 20 or 25 acres be
21 designated as an area for active recreation, we could
22 provide options to the town and in the next level of
23 planning make a proposal. It has always been our
24 goal to preserve the maximum amount of open space as
25 possible, but if that's a desire collectively of the

1 community leaders and the town regulatory, we
2 certainly have an opportunity to do that.

3 CHAIRMAN MCINTYRE: I guess the definition -- to
4 clarify the definition of open space isn't just for
5 passive.

6 MR. LANDINO: Absolutely not.

7 CHAIRMAN MCINTYRE: There's -- a ballpark can be
8 identified and defined as open space also.

9 MR. LANDINO: Absolutely. And if that were a
10 desire of this commission as part of a
11 recommendation, we certainly would consider that in
12 the next level of design.

13 CHAIRMAN MCINTYRE: Thank you. This is for
14 Attorney Branse. My question that I just asked about
15 the active space recreation, would that be more
16 appropriate for the applicant to address during the
17 conceptual stage or being that there is open space
18 that we could manipulate during the actual process
19 when it came? Being that this is all conceptual,
20 would that be a better time to address that for the
21 applicant? Just knowing that we could do it is --
22 suffices for me.

23 MR. BRANSE: It could be addressed in a number
24 of ways. One is you could ask the applicant to --
25 between now and the next hearing; if the hearing is

1 continued, to designate an area where it's going to
2 be appropriate topographically, and soil, and so on.

3 And the other thing is that if the commission is
4 generally -- I take that back. If the commission
5 elects to go with an open space plan of the general
6 type that is before you without major modifications
7 or with major modifications, either way, one of the
8 conditions that you could impose is that an active
9 recreation area be created in a suitable location. I
10 mean that could be a condition in which case when
11 they return with their final subdivision, it will be
12 up to them to show that they met that condition in
13 some appropriate location and suitable form.

14 CHAIRMAN MCINTYRE: Thank you. This question is
15 for the applicant. When Stuart was talking about
16 the -- or excuse me. Judy Gallicchio was talking
17 about the parking issue in the village, about the
18 road on alternate sides. I would like some
19 clarification. And you probably said this before,
20 but I just can't remember it right at the moment.
21 The roadways within the village district are -- they
22 are not public roads, correct?

23 MR. LANDINO: No. They are private roads.

24 CHAIRMAN MCINTYRE: Okay. Then who would do --
25 who regulates the parking restrictions, and speed

1 limits, and things of that nature on a private road?

2 MR. LANDINO: I think it's a lawyer question.

3 Mr. Royston.

4 MR. ROYSTON: Generally your cluster housing
5 under PRD has been of units without the numbers that
6 are here. And in the ones that have been approved,
7 Banberry and the like, there is no specific control
8 other than by the association. Because of the
9 numbers of the units in the village, first of all,
10 the roadways are proposed and in the documentation to
11 be built to local residential street standards,
12 number one.

13 Secondly, the configuration of the streets with
14 respect to turning radius and the like has been
15 designed in accordance with consultation with the
16 fire marshal and the fire department to make sure
17 that those things are covered. If you're going to go
18 beyond that in terms of regulating specific parking,
19 it would seem to me that that would have to be done
20 within the PRD process, where the zoning commission
21 would grant a special exception for the cluster
22 housing. And that could be -- if felt and deemed
23 necessary, that could be incorporated into a
24 condition of that design.

25 CHAIRMAN MCINTYRE: So if the residents of that

1 area -- say if it was designated one way -- say it
2 was left to be natural to parking. At some point in
3 time, what would be the process of the homeowners
4 within that area to change any sort of regulatory
5 process of parking or would that be the normal town
6 process or would it be through an association?

7 MR. ROYSTON: The first regulatory control would
8 be whatever terms the zoning commission special
9 exception PRD, PRD application required. That would
10 be the first one. The second one would be the
11 homeowners' association. And whatever they did would
12 have to be consistent with the special exception
13 zoning approval. But they -- assuming that it did
14 not violate the requirements or was an addition to
15 those requirements, it would be up to the homeowners'
16 association to establish those requirements.

17 CHAIRMAN MCINTYRE: I have just one more
18 question. And this may be for Attorney Royston, so
19 don't sit down yet. When we talked about the park
20 within the village district, and this goes back to
21 Stuart's question about the type of activity, who
22 regulates the activity -- who owns that land in the
23 park and the village district and who would regulate
24 that activity?

25 MS. MCKEOWN: Before you answer that let me

1 change the tape, please. Thank you.

2 MR. ROYSTON: The answer is somewhat similar.
3 First, within this special exception application, you
4 would have certain restrictions or requirements. And
5 one of those -- one of the requirements of the
6 regulation is that you provide the management
7 documents for the management of the PRD, including
8 documentation as to the ownership and control of
9 common areas. The common areas, the green, would
10 likely be a common area. That common area would be
11 subject to two controls. Number one, whatever the
12 restriction requirements, the special exception
13 imposed; and secondly, control by the homeowners'
14 association: To control it, maintain it, operate it.
15 And they can do so as long as it was consistent with
16 the requirements of the special exception
17 application.

18 CHAIRMAN MCINTYRE: So what could occur would be
19 that during the zoning -- during the zoning process
20 they could require maybe swing sets and play sets
21 within that area.

22 MR. ROYSTON: I can give you an example of a
23 special exception for a cluster development that was
24 recently approved which had a pool. And one of the
25 requirements in the special exception was that the

1 management document provide for the safe, separate
2 maintenance of the chemicals that were going to be
3 used in the pool. So A, the condition in the special
4 exception provided for that and said you have to have
5 it in your management documents. So the same site
6 type of process could be applied here and probably in
7 a larger and a more significant manner.

8 CHAIRMAN MCINTYRE: So basically if the issue
9 of, you know, active recreation on the green would be
10 addressed by the zoning commission.

11 MR. ROYSTON: Yes, it could.

12 CHAIRMAN MCINTYRE: Okay. That's all the
13 questions that I have.

14 Did I spur any other thoughts? I know your
15 questions spurred me on here. So if there's --
16 anyone else want -- have anything to address?

17 MR. TIETJEN: Is he asking me for questions?

18 CHAIRMAN MCINTYRE: Yes. Yes, Dick.

19 MR. TIETJEN: A small one, but I noticed in the
20 town planner's review of this proposal that there
21 would be no motorized vehicles in The Preserve; that
22 is, not automobiles obviously, but in the open
23 spaces, on the trails and so on other than golf
24 carts. Who's going to monitor that or enforce it?

25 Could that be -- or should I ask -- would that

1 be a source of embarrassment to people who would like
2 to make sure that it doesn't happen and there's got
3 to be some rough stuff?

4 MR. ROYSTON: I think that to the extent that
5 the primary trail system is within the open space,
6 The Preserve open space, that acreage, almost all of
7 that acreage is proposed to be deeded in fee to the
8 town subject to the requirement that it be preserved
9 and maintained as open space. The town would then
10 have the authority to control the use of its land
11 just as it has the right to control the use of Clark
12 Park, Schoolhouse Road and the like to prevent
13 motorized vehicles and the like going onto the trail
14 system.

15 MR. TIETJEN: Thank you. It's a great idea. I
16 just hope it works.

17 MR. ROYSTON: So do we.

18 MS. NELSON: Can I just add one thing?

19 CHAIRMAN MCINTYRE: Dick, are you done? Go
20 ahead, Christine.

21 MS. NELSON: For the record, Christine Nelson.

22 The only exception to that would be where the
23 trails and the cart paths are the same, and then
24 there would be golf carts on those small portions. I
25 just want to make sure that that was clarified.

1 MR. ROYSTON: Yes. And as I indicated that most
2 of that area on which the trail system would go would
3 be town owned. There would be easements over those
4 portions which coincide with golf carts or where
5 there is a crossing proposed. Part of the trail
6 system is Old Ingham Hill Road. So yes, under those
7 easements there would be a private right of the golf
8 course to have carts.

9 CHAIRMAN MCINTYRE: All set, Christine.

10 MS. NELSON: Yes. Thank you.

11 CHAIRMAN MCINTYRE: Anyone else with any
12 questions from the board or any of our consultants?

13 MR. BRANSE: I have one.

14 CHAIRMAN MCINTYRE: Attorney Royston -- I mean
15 Attorney Branse. Excuse me.

16 MR. BRANSE: I knew who you meant. Just one
17 just procedural question for Christine Nelson.

18 Ms. Nelson, Mr. Goderre indicated that
19 Mr. Jacobson's memorandum was not available to him
20 until Monday of this week. I thought I had
21 understood that it was available last week. Could
22 you clarify that.

23 MS. NELSON: The land use department received
24 the report on Thursday morning last week.

25 MR. BRANSE: Did you advise the applicant that

1 it was available for them at that time?

2 MS. NELSON: I don't know. I'm not sure that I
3 was in the office that day. No, I don't think so. I
4 just -- I transmitted it as a courtesy on Monday by
5 e-mail to the applicant.

6 MR. BRANSE: Has the applicant been in the habit
7 of checking with your office for newly-arriving
8 documents?

9 MS. NELSON: Yes, yes.

10 MR. BRANSE: And were they aware that another
11 report was coming from Mr. Jacobson?

12 MS. NELSON: I had made them aware that I had
13 asked for staff to submit the reports by Wednesday.
14 And this came in the next morning.

15 MR. BRANSE: The next morning, okay. Thank you.

16 I have a question for either Attorney Royston or
17 Attorney Merriam, whoever wants to address it. I
18 recall case law to the general -- general theme that
19 a land use agency cannot approve an application
20 subject to a condition that involves the action of
21 some independent agent. It's contingent on the
22 decision of some other agency. And if I recall the
23 case law correctly, it's that unless there's some
24 indication that that action is probable.

25 Mr. Landino was asked about the permission to

1 cross the rail line from, I guess -- well, it's
2 really DEP to do the crossing, if I understand
3 correctly. There was a question about DOT
4 reimbursement, but that's not what I am asking about.
5 Permission to cross state land to build that bridge
6 from Bokum Road. And I guess my question is -- and
7 Mr. Landino said the commission could approve it
8 subject to our -- we have not approached the DEP at
9 this time. The commission could approve it subject
10 to that permission to grant it.

11 So my question is, one, do you see that as
12 something you can do? And second, since I believe
13 part of the law was that there has to be some
14 indication that that approval is forthcoming, do you
15 have some indication that you can place on the record
16 that indicates that, based on whether that approval
17 is probable or is possible or something of that
18 nature?

19 Do you understand my question?

20 MR. MERRIAM: We are sending in the players.

21 MR. LANDINO: I'll let Mr. Royston respond, but
22 just to review the permits that are required for this
23 assignment, as are with almost every development that
24 I have ever been involved with, we have a DEP dam
25 permit likely, a DEP diversion permit, a DEP permit

1 for septic systems, on-site sanitary treatment
2 disposal, state traffic commission permit from the
3 Department of Transportation, likely review by the
4 Corps of Engineers, the town of Westbrook will have
5 access to the regulatory permits connected with it.
6 In almost every development I've ever been involved
7 with, the process is typically in Connecticut to
8 pursue local permits first. The implicit endorsement
9 of those approvals gives the state regulatory
10 agencies the ability to objectively evaluate, without
11 creating a fingerpointing or a conflict between it
12 and the town. What I would like --

13 MR. BRANSE: Let me clarify my question. I
14 realize that you need multiple permits. What I'm
15 asking about is not a permit. If I understand
16 correctly the State of Connecticut is a property
17 owner that owns this land and needs to give you a
18 property owner's consent to cross it. So that's not
19 the typical situation. And that's why -- I mean if
20 there's something in the record that indicates that
21 that's probably occurring and therefore is not a
22 speculative condition, I think we need to hear that.

23 MR. ROYSTON: Attorney Merriam will probably get
24 up and either contradict me or clarify me as the case
25 may be.

1 I think the law that you make reference to is,
2 my understanding, is that commission cannot delegate
3 an issue to another agency for a decision. And where
4 we have multiple permits, particularly in this
5 application -- this application is one in which the
6 planning commission essentially will allow, within a
7 six-month period of time, to have an actual final
8 subdivision approval -- a final subdivision
9 application, six months within which to apply for
10 that which has been approved by them as a conceptual
11 preliminary open space plan. I think we are
12 preliminary to obtaining the current. Even when we
13 get to that process, we may not be at a point where
14 we actually have that permit in hand. I think it is
15 premature at this stage of the proceeding to be going
16 to get those approvals.

17 I would also point out that there was a kind of
18 special exception approval for a country club at one
19 time, and that was predicated upon there being access
20 through 153. So it's simply said that you needed to
21 have that as part of our approval. In other words,
22 that was another permit, another approval we are
23 going to have to have in order to implement what we
24 have approved.

25 And I think we are in a similar situation. They

1 are not delegating to someone else to give us a
2 crossing. They are simply saying we would approve a
3 preliminary open space plan with that crossing, and
4 you've got to come in six months later and apply for
5 a plan which is substantially in accordance with what
6 we have approved here. But I don't think we've
7 reached that issue in this application.

8 MR. BRANSE: So if I understand correctly the
9 idea is that whatever happens in this process, you're
10 not going to be able to build a road either way.
11 You'll still have to come in for a subdivision
12 application which will depict the roads, correct?
13 And at that time you will need to show that you can
14 construct those roads by whatever rights may be
15 relevant at that stage; is that a fair statement?

16 MR. ROYSTON: Yes.

17 MR. BRANSE: Thank you. And I have one other
18 question. And I don't know if it's for Mr. Goderre
19 or Mr. Landino. I'll let them decide. In a number
20 of points in the presentation, you have said --
21 several of you have said that the goal of the open
22 space subdivision is to disturb as little land as
23 possible. And at one point Mr. Landino said -- was
24 asked about mitigation. And you said the mitigation
25 is to disturb as little as you can, and the open

1 space subdivision would involve dramatically less
2 than the conventional design. And that's pretty much
3 a quote. But Mr. Goderre said that under the open
4 space plan, the total disturbance would be 573 acres,
5 whereas under the conventional plan the total
6 disturbance would be 437 acres. Did I --

7 MR. LANDINO: You reversed the numbers. Dennis.

8 MR. BRANSE: And I'm not talking about in open
9 space. Total disturbance.

10 MR. GODERRE: The --

11 CHAIRMAN MCINTYRE: State your name for the
12 record, please.

13 MR. GODERRE: Dennis Goderre. The total open
14 space area was 437. That's not disturbed land.
15 That's open space in the conventional plan. The --
16 whether it's open space or conservation easement,
17 that would be protected land. The total protected
18 land in the open space plan is 567 acres that would
19 be protected through open space or conservation
20 easements. So my calculator in my head doesn't work
21 that fast, especially with a cold. But if you look
22 at the difference of 130 acres, there's certainly
23 less disturbance in the open space plan.

24 MR. BRANSE: But I'm not asking you about the
25 amount perserved as open space. I'm asking you total

1 disturbance. And I think that's the question you
2 were asked several times.

3 MR. LANDINO: We would have to do the
4 calculation. But if you're asking for total
5 disturbance, it's the total area of the parcel minus
6 the area that's preserved as undisturbed open space.
7 So Dennis would just have to do that subtraction.

8 MR. BRANSE: But I don't think it is. I'm
9 asking -- disturbance to me means changing the
10 natural condition of the soil, of the land. This
11 question was asked I think two public hearings ago.
12 The question is disturbance between the two designs.
13 Forget whether it's in open space or not in open
14 space. And I thought I heard Mr. Goderre answer that
15 question, but apparently he misunderstood that.

16 MR. LANDINO: No.

17 MR. BRANSE: That was a different question you
18 answered.

19 MR. LANDINO: We didn't understand. I
20 understand the response. Dave, do you want to -- you
21 looked like you had something.

22 MR. ROYSTON: David Royston again.

23 I think I understand the question. Let me make
24 sure, because it is a question that we will provide
25 the answer for on or before the 23rd of December.

1 But I want to make sure that I understand the
2 question and if I can, Mark, ask you to take a look
3 at it this way.

4 If I'm looking at the conventional subdivision
5 plan, it shows areas for roadways and house sites and
6 the like. And what I think you're asking me could
7 you calculate the area of disturbance, the area of
8 disturbance and implementing that plan which would
9 include roadway infrastructure, lot -- essential lot
10 grading for reach of the lots and the like.

11 MR. BRANSE: That's correct. For each plan.

12 MR. ROYSTON: Yes, for that plan.

13 MR. BRANSE: For example, if you presume the
14 clearing of 100 percent of all lot areas in one, then
15 you need to assume 100 percent of the other.
16 Although, in fact, that wouldn't be realistic,
17 because I don't think the specifications ever allowed
18 100 percent clearing of every lot in a subdivision.

19 MR. ROYSTON: Correct. We would have to take --
20 you're asking us to give you a realistic estimate on
21 the conventional plan for the total area of those
22 lots and infrastructure disturbance. Do the same
23 thing for the open space subdivision preservation
24 plan. What is the area of actual disturbance. You
25 aren't asking us what is open space and what is

1 preserve, exactly the opposite. What is disturbed in
2 each one of those plans.

3 MR. BRANSE: That's correct. Because what I
4 keep hearing in the public hearing is that -- at
5 least the allegation, all right. That if you add in
6 the disturbance of your infrastructure and of the
7 golf course in the open space subdivision, you will
8 net out more than a conventional subdivision. And I
9 think we need to know if that inference or allegation
10 is true.

11 MR. ROYSTON: We will provide that answer.

12 CHAIRMAN MCINTYRE: Attorney Branse.

13 MR. BRANSE: I'm all set.

14 CHAIRMAN MCINTYRE: You're all set. Okay.

15 Are there any -- let the record know that town
16 attorney, Mr. Jacobson, has arrived at 8:50.

17 MS. NELSON: Engineer.

18 CHAIRMAN MCINTYRE: Oh, Engineer.

19 MS. NELSON: Town engineer, not town attorney.

20 CHAIRMAN MCINTYRE: Town engineer. It's getting
21 late again. So being now that Mr. Jacobson just
22 arrived, is there anyone on the board that might want
23 to address any questions to Mr. Jacobson?

24 Okay. Hearing none, right now I would like to
25 open it up to our consultants, if any of our

1 consultants have anything they want to add tonight or
2 anything they have heard they want to address.

3 Mr. Snarski, anything?

4 MR. SNARSKI: No.

5 CHAIRMAN MCINTYRE: No. Okay. Hearing no
6 comment from our -- of any of the board members or
7 any of our consultants, at this time I would like to
8 open up the public hearing -- Attorney Royston.

9 MR. ROYSTON: If the commission doesn't have any
10 objection, briefly and it probably wouldn't take too
11 long, there is written materials submitted by some of
12 the people here. We've got them here. And we would
13 like to just let them summarize the material they've
14 provided.

15 PUBLIC SPEAKER: Let the public speak.

16 MR. ROYSTON: Not more than 20 minutes.

17 CHAIRMAN MCINTYRE: Twenty minutes, okay.

18 PUBLIC SPEAKER: Come on.

19 MR. ROYSTON: Thank you. First is Sam Haydock
20 of BL Companies, a biologist.

21 CHAIRMAN MCINTYRE: Can I just state something
22 for the record. The reason I'am doing this, so the
23 public understands, that many times when we have the
24 applicant come up and speak, two things occur. One,
25 they answer the questions that you would have; and

1 secondly, they may spur some more questions that you
2 have. And we'll have sufficient time for the public
3 to ask questions tonight. Thank you.

4 MR. ROYSTON: It's going to go quick.

5 MR. HAYDOCK: Thank you. Sam Haydock from BL
6 Companies for the record.

7 I'm going to just touch briefly on two issues.
8 The first relates to irrigation, water supply, and
9 quantity of water used. During the last testimony we
10 heard several members of the public discuss annual
11 water usage for irrigation. And we heard numbers in
12 the range of 220 to 290 million gallons per year.

13 MR. BRANSE: Excuse me, Mr. Chairman, I'm going
14 to stop at this point. Irrigation water is part of
15 the special permit. I realize it was raised by the
16 public. If you've made a written response, let's not
17 spend hearing time on that. This commission will
18 never review irrigation waters.

19 CHAIRMAN MCINTYRE: That does it for us.

20 MR. ROYSTON: That's going to shorten that part
21 of it.

22 He also gave response to the community sewage
23 disposal system. If that is part of the component of
24 the open space plan, I think that would be probably
25 appropriate for consideration of the commission in

1 evaluating the open space plan, because that's the
2 difference between septic systems, individual septic
3 systems in a conventional plan and a community septic
4 system on an open space plan. So again, quick, we
5 still won't use up more than five minutes.

6 MR. HAYDOCK: Once again, Sam Haydock, BL
7 Companies.

8 We have also heard concerns regarding the
9 community septic system that is proposed for the site
10 and that it will pollute the watershed. I just want
11 to state briefly that we will be using a
12 state-of-the-art and a proven wastewater treatment
13 system that is proven technology, that is far more
14 protective of the environment and the same flow rate
15 through individual septic systems. Whatever the
16 flows, whatever the unit count, the system that we
17 are proposing will introduce a fraction of the
18 nutrient parameters, such as nitrogen or phosphorus,
19 than individual septic systems would. In many cases
20 the difference in these -- in the quantities of these
21 nutrient parameters being introduced into the
22 environment range from 10 to 50 times less than would
23 be introduced through conventional septic systems.

24 A few of the benefits of a wastewater treatment
25 system and the community septic system. The affluent

1 and the sewage is treated in the plant, not in the
2 ground. The water quality criteria are -- the
3 treatment is such that the state water quality
4 criteria that we are required to meet is met before
5 the affluent is even discharged into the affluent
6 system. Furthermore, there is ongoing inspection and
7 maintenance by a licensed professional who will
8 operate that plant. With individual septic systems
9 there is typically none. There is redundant
10 treatment or redundant design in that that treatment
11 plant will have two individual trains, each one
12 capable of providing the waste treatment. So for
13 some reason if the pump fails with one train, we have
14 a second train as backup. It can be immediately made
15 operational.

16 Lastly, the wastewater treatment system and the
17 community leaching field is permitted by the
18 Connecticut DEP. And we are required to conduct
19 quarterly water quality monitoring of the
20 groundwater, downgrade it from the leach field to
21 ensure that those water quality standards are met.
22 That type of monitoring does not happen with
23 individual systems.

24 So hands down this system is far more protective
25 of the environment than individual systems would be.

1 Thank you.

2 MR. ROYSTON: Stuart Cohen, again, we want to
3 add his testimony relevant to the issue before the
4 commission. And this has to do -- his expertise is
5 in the area of herbicides, pesticides and the like.
6 And we have an open space plan with the golf course
7 where that is an issue. But also, there is a
8 proposal which is part of this application that
9 within a PRD, that there be an expansion of these
10 controls to the -- to individual home sites. And
11 he's going to speak briefly on that. Thank you.

12 CHAIRMAN MCINTYRE: And that only.

13 MR. ROYSTON: And that only.

14 MR. COHEN: The lawn care management plan that I
15 mentioned back on November 10, because this is being
16 submitted as an open space plan pursuant to PRD, that
17 gives the zoning commission control over the
18 homeowners' regulations and the homeowners'
19 association. The lawn care management plan --
20 there's two of them that I've actually prepared
21 drafts, but they will be reviewed at the site plan
22 stage or whatever the next stage is. One is for
23 homeowners that want to take care of their own
24 property and second is the contractors that are
25 brought in to address this. So that's the difference

1 between the normal subdivision regulations that
2 don't -- if there's not a submittal pursuant to the
3 PRD, that this wouldn't be covered. This wouldn't be
4 enforced. But under this open space provision, which
5 is under PRD, the zoning commission will have
6 authority over this.

7 Also, we compared -- a lot of questions were
8 raised tonight about water quality impacts by
9 Mr. Hanes and some witnesses. So in response to that
10 we put the analysis in the text. So I'll just
11 summarize about two sentences. That we looked at
12 nitrogen fertilizers, and we found that nitrogen
13 fertilizer under this open space provision loaded to
14 the environment would probably be somewhere in the
15 neighborhood only about 60 percent of the nitrogen
16 fertilizer loading in a conventional housing
17 development as submitted here. We went ahead and
18 assumed maximum rates of nitrogen both on the golf
19 course and on the houses. So you couldn't
20 necessarily use the absolute numbers, but the
21 comparison is still valid. A lot more nitrogen would
22 be loaded to the environment in the case of the
23 conventional subdivision plan.

24 There were also general questions about
25 pesticide impacts. And I submitted in -- as an

1 attachment here we did a study, an extensive study of
2 16,000 data points from 36 golf courses around the
3 country and published it in the peer review
4 literature and submitted that paper. And basically,
5 it showed that water quality impact by golf courses,
6 although it does occur, is infrequent and impacts
7 above any kind of health guidance approval for
8 bacteria are infrequent. And there's information in
9 there.

10 And finally, we dealt specifically with
11 amphibian impacts. We developed some cutting edge
12 risk assessment methodology to ensure that the
13 amphibians wouldn't be harmed. And that's described
14 in a very general sense in here, but in a more
15 detailed analysis that will be done later.

16 And I'm sorry, second finding. And this is the
17 final. The first witness last time raised some good
18 points. I think his name was Mr. Cryder was asking
19 about water quality monitoring, that we should care
20 about the frequency, and the anabolites, and the
21 sampling points. And he sort of went down a
22 checklist that my firm uses. And we have done all of
23 that. And that's in the protocol. And at the next
24 stage movement, highly detailed documents that
25 describe exactly how we are going to be doing water

1 quality monitoring of this project for surface water
2 and groundwater. And that summarizes in very
3 general terms any written responses that we have
4 submitted.

5 MR. ROYSTON: Michael Klein again simply to the
6 relevancy of the comparison between a conventional
7 plan and the open space plan with respect to wildlife
8 protection issues, which is one of the -- habitat
9 protection issues, which is one of the criteria for
10 the open space subdivision.

11 MR. KLEIN: Mr. Cryder also -- Michael Klein.

12 Mr. Cryder also presented an analysis of bird
13 observations by Dexter Chaffee at Essex Meadow. I
14 just wanted to point out to the commission that that
15 wasn't a breeding bird survey, which is the proper
16 standard. It didn't distinguish between birds that
17 were observed actually using the property or Essex
18 Meadows for that matter and those that might have
19 just been seen flying overhead. It included a large
20 number of species for which no suitable breeding
21 habitat exists at the site. It also included a large
22 number of species that we already confirmed were
23 breeding at the site. It included species such as
24 eastern blue birds, which would not breed at The
25 Preserve site in its present condition but which have

1 been documented to thrive on an open space/golf
2 course subdivision. And we would anticipate that we
3 would include habitat measures for not only blue
4 birds, but purple martins, tree swallows, bats and
5 other species of wildlife.

6 The list includes some nuisance species. In
7 other words, Mr. Chaffee documented nuisance species
8 in the area, such as house sparrow, Canada goose, and
9 mute swan. Again, in an open space subdivision, the
10 ability to manage and control those species is very
11 limited. I'm sorry, the conventional. In an open
12 space subdivision and golf course project, we would
13 institute management practices to reduce or eliminate
14 the likelihood that those species would become a
15 nuisance on the property. The list included
16 grassland birds. The Essex Meadow property includes
17 grassland habitat. But there are no grasslands on
18 The Preserve site.

19 However, the golf course element can be and
20 would be and it's always planned to include areas of
21 native grasslands at the perimeters of the golf
22 holes. And an interesting aspect of grassland birds
23 is they frequently require fairly large areas of land
24 to nest in, but -- and you'd never get that in a
25 conventional subdivision. But on an open space and

1 golf course subdivision where you have the ability
2 to manage the vegetation, you can trick them into
3 thinking they are in a really large grassland,
4 because they see the turf areas of the golf course,
5 for example, or the driving range as a grassland
6 habitat. As long as they have a small patch that's
7 got the appropriate conditions for them to breed in,
8 they then see this area as larger than it actually
9 is.

10 Dr. Craig talked about sort of some
11 biogeographical arguments about the importance of
12 heterogeneous areas for preservation of avian
13 diversity. We agree. We just wanted to point out to
14 the commission that, first of all, his study area was
15 on the east side of the Connecticut River, eastern
16 Rhode Island and north to Massachusetts. And he also
17 mostly talked about the coastal forest vegetation.
18 And while there's been some characterization, and we
19 would argue mischaracterization, of this site as a
20 coastal forest, Dr. Craig showed pictures and he
21 described what is true coastal vegetation types.
22 They were very dense vines, green briars, and
23 bittersweet and so forth. That really isn't present
24 at this site. But most importantly there's no doubt
25 that the dedication of the -- not only the 510 or 15

1 or 30 or 70 acres, whatever it is, of open space
2 would be a significant conservation benefit, but also
3 recognized there's about 200 acres in the golf
4 course. All of that is available for wintering
5 habitat or for wildlife with no winter use out there,
6 but also a substantial portion of that is available
7 for wildlife habitat during the growing season as
8 well.

9 And again, on the subject of comparing a
10 conventional subdivision to an open space subdivision
11 with a homeowners' association and a golf course, we
12 do have the ability to include a substantial amount
13 of active management measures. Eric Davison from --
14 my bird wildlife biologist has experience in managing
15 large parcels of land on the order and magnitude of
16 500 acres or more in the town of Windsor. And we
17 would expect that the final design measures would
18 include a very substantial amount of active
19 management for wildlife.

20 MR. ROYSTON: Finally, and we are still well
21 within the time period I indicated, Dr. Klemens with
22 respect to his area of expertise, ecology a/k/a
23 salamanders and the like. But, again, specifically
24 with respect to the comparison that this commission
25 needs to make between a conventional subdivision and

1 the open space subdivision as proposed. Dr. Klemens.

2 MR. KLEMENS: I would like to raise several
3 points. I would rather first respond to Bob Craig's
4 testimony where he discussed basically the merits of
5 open space versus conventional plan. And what I
6 would like to share with you are some of my
7 philosophies and my sense of where this is from my
8 professional experience.

9 But the discussion really here at hand is not
10 about whether the site being preserved through
11 acquisition left undevelopment -- or left
12 undeveloped, excuse me. Members of the team,
13 including myself, it was really quite clear said that
14 complete protection of the site, basically the
15 no-build alternative, would indeed be the best
16 conservation solution for the site. But in the
17 absence of such a solution, conservationists such as
18 myself face a very different set of issues and a
19 difficult set of issues. That if the site is to be
20 developed, what methodology is a preferable manner to
21 design such a development? Which methodology,
22 basically the conventional plan or the open space
23 plan, will allow us to incorporate the best available
24 science with the decision-making process?

25 Now, much of the public testimony that you have

1 heard advocated that the site be protected in its
2 totality. I did not focus really on the question
3 before the Old Saybrook Planning Commission that if
4 development occurs, how should it occur. How should
5 it be designed. And I would like to be quite clear,
6 also, that my support of the open space plan as
7 stated in the following remarks does not mean that I
8 personally choose this approach over total protection
9 of the site. Quite clearly I choose this approach
10 over conventional development options of the site.

11 The conservationist might see a gradation of
12 options available on the site ranging from total
13 protection to conventional development. And of those
14 options the one that will ensure the ecological
15 destruction of much of the site's biological
16 diversion is the conventional plan, which while
17 protecting the wetlands will not protect the wildlife
18 that occur within the wetlands and the watercourse
19 systems of which vernal pools are an integral part.

20 This is a difficult time to be talking about
21 vernal pool protection in Connecticut. We have had a
22 set of recent court decisions, and we have provided
23 information on that in the written submission.
24 Basically have left commissions with much reduced
25 capacity to protect in a discretionary basis vernal

1 pools.

2 The open space subdivision that's before you is
3 really, in my professional opinion, the best and
4 legally supported pathway to conserve vernal pools.
5 Under the conventional plan all wetlands and
6 watercourses have a 100-foot regulated area around
7 them. And this includes vernal pools. And this is
8 not an area that actually prohibits intrusion under
9 permitting. It's a regulated area. And in fact,
10 past practices in the town of Old Saybrook have
11 allowed intrusions into that wetlands regulated area.

12 Now, under current law the regulated area around
13 the vernal pool in a conventional subdivision is 100
14 feet. And there has been considerable confusion both
15 by the public, by some of the town's consultants in
16 many of the remarks I have heard about, well, we
17 should protect the vernal pool envelope in a
18 conventional subdivision. That is a vernal pool
19 envelope being the 100 feet around the vernal pool,
20 first 100 feet.

21 And if you've read the material that I've
22 submitted into the record, the publications and much
23 that I've written about vernal pools, vernal pools
24 occur in three zones. You have the pool itself. The
25 wetland depression. You have the vernal pool

1 envelope, the 100 feet around the vernal pool. And
2 then you have the critical upland area, which is the
3 100- to 750-foot zone. And there's really no ability
4 in the conventional plan to protect that critical
5 100- to 750-foot zone.

6 And if you talk about vernal pool protection as
7 it's been suggested, protect the vernal pool envelope
8 in the conventional subdivision, I have tried to
9 think of an analogy that would perhaps try to make
10 some sense of it. It would really be like protecting
11 the heart and not protecting the veins, the
12 capillaries, the entire system. There is a way,
13 though, that you can do it. And that is because you
14 did have the foresight in this town to pass
15 legislation that allowed for a conservation
16 subdivision, conservation open space subdivision.
17 That really gives you the ability to protect vernal
18 pools on the site, gives you the ability to look at
19 open space that assembles in a meaningful manner that
20 actually protects vernal pools and protects them in a
21 network.

22 And I think that gets back to, again, you sort
23 of had this discussion this evening, earlier this
24 evening. And it got to be a numbers game again about
25 how much open space we had, one versus the other, or

1 the converse, how much disturbance do we have on one
2 or the other. But I think the important thing it's
3 not just a numbers game. It's basically how that
4 land is arranged, how that open space is arranged,
5 and whether that's ecological resonance. Whether it
6 actually works and functions. And that's the beauty
7 of an open space plan in my professional judgment.
8 It does provide the protection of a significant
9 portion of the site's biological diversity by
10 maintaining the vernal pool assemblage with the
11 critical upland habitat around those pools. And that
12 concludes what I have to say about that issue. Thank
13 you.

14 CHAIRMAN MCINTYRE: Thank you.

15 MR. ROYSTON: Mr. Chairman, thank you very much
16 for allowing us to do that. And we are well within
17 our time period.

18 CHAIRMAN MCINTYRE: That's fine.

19 MR. ROYSTON: I do want to say it does emphasize
20 I think the need for a review of the written material
21 we have provided. And also, we certainly would want
22 to respond fully and comprehensively. And I don't
23 think this commission would expect anything less of
24 us than to do so in writing, to answer the questions
25 that have been posed tonight. Also, to answer the

1 issues that have been raised in some of the review
2 comments which we have received this week.

3 And again, so I would just renew our request
4 that we be allowed to submit that material on or
5 before the 23rd for the public record and to extend
6 the hearing to the 5th. Thank you.

7 CHAIRMAN MCINTYRE: Thank you. Okay. At this
8 time I would like to -- okay. We are going to take a
9 five-minute break.

10 (Recess)

11 CHAIRMAN MCINTYRE: I would like to call the
12 meeting back to order. I'm calling the --
13 reconvening the meeting. For the record, Sal Aresco,
14 alternate member, has arrived.

15 Christine, I understand we have a video
16 presentation.

17 MS. NELSON: Yes.

18 MR. BRANSE: This video will be submitted into
19 the record presumably.

20 CHAIRMAN MCINTYRE: Yes. Can I ask a question
21 first? How long is this video?

22 MR. CRYDER: Approximately four minutes.

23 CHAIRMAN MCINTYRE: Four minutes. That's the
24 best thing I have heard all night. Okay.

25 For that reason why don't we proceed by watching

1 the video and then we'll get public comment. Not on
2 the video, but on the matter at hand. Okay.

3 Who's -- Mr. Cryder, you have the floor.

4 MR. CRYDER: Was there a handheld?

5 CHAIRMAN MCINTYRE: Do you have an audio/visual
6 specialist to assist you?

7 SPEAKER: No. But I just push the buttons.

8 MR. CRYDER: I need a few minutes on some
9 previous comment before I introduce the video.

10 CHAIRMAN MCINTYRE: State your name for the
11 record, please.

12 MR. CRYDER: My name is Chris Cryder. I live on
13 3 Merritt Lane in Old Saybrook.

14 First, Mr. Branse, you had asked me in my
15 previous meeting for a list of my questions, and here
16 they are. And I have listed the ones from the last
17 meeting as well and some new questions. I need one
18 of those back.

19 MR. BRANSE: They need one. Thank you.

20 MR. CRYDER: First, I would like to start off
21 and thank the commission and the members of The
22 Preserve for taking the walk this past Sunday. Was
23 it Sunday? Yes. It was an excellent walk. And I
24 think all the members of the commission went on it.
25 We had a chance to see the property.

1 I am going to hand out a map. If you would pass
2 that down, Mr. Tietjen. And I would ask that people
3 looking at this map -- some are going out to the
4 audience. I think I had about 40, so you might have
5 to share in the audience both the questions and the
6 map. You have to put the north on the top. I know
7 it's not exactly in alignment with actual true north,
8 but it's close.

9 The map shows a number of things. First, in the
10 blue area is primarily where we took the walk. I may
11 not be exactly exact, but primarily we took the walk
12 in that location, which is Ingham Hill, the highest
13 point, flattest point, the point with no ledge, no
14 wetlands primarily. And then we took a right-hand
15 turn down into one minor wetland area and upper ridge
16 to go see the east village. And so it was very
17 limited. It's probably about one-tenth of the entire
18 acreage of The Preserve.

19 I'm very happy to hear that The Preserve folks
20 are going to offer another public walk. I think they
21 mentioned, however, that they would probably limit
22 that walk to the main road through and primarily
23 seeing the open space and the development of the
24 homes along the major road. I would also ask the
25 members of the commission to request even additional

1 walks if you need to see the entire property. Look
2 in black. Black are the wetland areas. Even though
3 you were up where the main village was, the central
4 village, you really didn't get to see Pequot Swamp
5 and sort of the significant ledge that goes down from
6 holes 10 and 18 down to the Pequot Swamp. You did
7 not get to see the wetlands on the eastern valley or
8 the western valley. You did not get to see a lot of
9 the significant ledge, nor the vernal pools, nor the
10 streams, nor the springs. I implore you to please
11 also look at these areas, because they are
12 significant in your decision-making process.

13 I highlighted the holes in green on this map.
14 And you'll see red spaces on that map. And this is
15 where the holes will traverse the wetlands and where
16 it's planned by The Preserve to cut the trees down in
17 those wetland areas. Of course they are going to cut
18 all the trees down for the golf course, 150 plus
19 acres, but they are also going to cut the trees down
20 over the wetland areas on those holes.

21 Keep in mind this is the dome of Old Saybrook;
22 the crest of Old Saybrook where 90 percent of the
23 headwaters rest for the Oyster River. Pristine
24 water, pristine groundwater that feeds the
25 groundwater system, aquifer system that leads to

1 groundwater wells for the residents in nearby
2 neighborhoods, including Essex, Westbrook, and Old
3 Saybrook.

4 If you follow the black wetland areas in the
5 eastern valley, they feed the Ingham Pond system that
6 leads to the Chalkers Mill Pond system that leads to
7 the Oyster River. You need to go down to that
8 eastern valley and follow the stream path to the
9 Chalkers Mill -- to the Ingham Hill and Chalkers Mill
10 Pond system.

11 If you go down the western side and see the
12 stream that pours out of Pequot Swamp that feeds the
13 western wetland system, that western wetland system
14 feeds the fishing brook, the trout brook that then
15 feeds into the Oyster River. It also feeds -- you'll
16 see, going to the sort of northwestern section of
17 this, a significant wetland that heads towards Essex
18 and the Mud River system. It's a huge wetland
19 system.

20 It's been said that in those red areas they'll
21 cut the trees down and that there will be scrub bush
22 there and light will come in. But if you follow the
23 river continuum concept that is embraced by the Tide
24 Water Institute here in Old Saybrook, that's not
25 what's supposed to happen in headwaters. Headwaters

1 are very important to the whole system. They are to
2 be shaded. The microorganisms which chew and eat the
3 leaves thrive in shaded areas. By cutting down the
4 trees it raises the water temperature. Those
5 organisms will not be as sufficient in the breakdown
6 of nutrients. The best habitat is shaded for the
7 headwaters where it's cool.

8 Anyway, my main point is please ask, when you go
9 on the next walks, also to see these significant
10 wetland areas which will impact your decision-making
11 process.

12 There's some amazing ledge. I think we were
13 over towards the water tower. And it was noticed I
14 think by Mr. Aresco, Judy, there was a point in the
15 path where they said, oh, is that going to be a road
16 up there? Yes. Well, there's going to have to be a
17 lot of blasting along that whole road area, because
18 there's many, many other areas of ledge that you did
19 not see. Please ask to see all the ledge areas to
20 get an understanding of the amount of blasting that
21 will need to occur on this property. I just can't
22 even fathom the amount of construction traffic,
23 construction roads that will be in here and the
24 amount of sedimentation fencing that will be needed.

25 I hope the town is ready to commit a zoning

1 enforcement officer, almost a full-time person to
2 manage and maintain the integrity of the
3 sedimentation fences that will be needed throughout
4 this property to protect the wetlands and not to
5 allow sedimentation to go downwards through the
6 system, through the Oyster River system if this goes
7 forward.

8 Just a few things. So I do suggest that you may
9 even need more than one walk, if you're just going to
10 see the open areas that they take you on and the
11 development areas in order to see the entire wetlands
12 system.

13 I personally believe that the golf course is not
14 consistent with the original intent of the open space
15 regulations. I don't think that was really the
16 intent of your open space regulations. I won't go
17 into all the legal issues there and reasons behind
18 it. I don't think it fits the original intent.

19 I also disagree -- and there's been discussion.
20 I disagree with the methodology on unit counts. I
21 don't believe the Lehman Brothers can -- I don't
22 believe they can get credit for units on the
23 conventional plan that are occupied by golf course
24 space on the open space plan, if that makes sense
25 what I just said.

1 Getting back to water quality. And I know this
2 commission won't talk about irrigation and other --
3 won't address irrigation and other matters, but I do
4 want to address this a minute, because it's so
5 important. I get back to quality of water. Water,
6 water, water. It's my understanding the inland
7 wetlands commission at the most recent meeting
8 approved the golf course. Is that correct,
9 Mr. McIntyre?

10 CHAIRMAN MCINTYRE: I'm not going to comment at
11 this time.

12 MR. CRYDER: Okay. It's my understanding that
13 it was approved, that essentially they allowed the
14 permit to roll forward, taking the \$300,000 bond off
15 of the project. That's when it went to the Supreme
16 Court, was remanded to come back. The inland
17 wetlands commission approved the application
18 essentially submitted by Mr. Taylor in the original
19 application. That's my understanding legally that is
20 permitted, although I think there's some procedural
21 issues that may be problematic. But if that is so
22 within the Taylor application, and if that's an
23 approval, they submitted a long list of chemicals
24 that were going to be used on the golf course.

25 The last time I was here I gave the commission a

1 list from the U.S. Geological Survey website. It was
2 titled Pesticides Used on Protected and Groundwater
3 Beneath Golf Courses. And this gets to Mr. Cohen's
4 statement that often -- that groundwater
5 contamination is very infrequent. Well, you see from
6 that list that I gave you that it's more than
7 infrequent. That you can argue what's infrequent and
8 frequent. But a chemical engineer went through, took
9 that original list of the chemicals permitted by the
10 inland wetlands commission in the Taylor
11 application --

12 MR. BRANSE: Excuse me, Mr. Cryder. For the
13 record, Mark Branse.

14 You're confusing me and I think maybe you're
15 confusing the record.

16 MR. CRYDER: Okay.

17 MR. BRANSE: I don't think the wetlands
18 commission could have or did approve any chemicals,
19 because that's outside their jurisdiction. Only the
20 DEP can do that or theoretically the zoning
21 commission.

22 MR. CRYDER: Okay. Then I'll just say that
23 within the Taylor application were chemicals to be
24 used. If you compare that list to the list I gave
25 you where in many other states they have found these

1 chemicals in groundwater, 39 of the chemicals on the
2 list that were found under -- found in contaminated
3 golf courses across the country on the U.S.
4 Geological website were also on the list to be used
5 in the Taylor application. I understand -- and I
6 just don't know. I'm not an attorney and I don't
7 understand the application process. But that they
8 plan -- The Preserve plans on using an IPM integrated
9 pesticide management process. Something different,
10 something improved. But it still is not an organic
11 plan. And they have said that. And that if they
12 need to they'll use traditional nonbiosensitive
13 chemicals, if they need to do that.

14 If you are compelled to approve a particular
15 plan, I submit that you approve an open space plan
16 with fewer units, as I believe was suggested by one
17 member of the town staff, and no golf course. I
18 don't believe the golf course is consistent with the
19 original intent of the open space regulations. If
20 you do so you would have more protected,
21 uninterrupted forest area, less edge, which I talked
22 about last time. If the golf course happens, there
23 will be at least eight miles of new edge, which
24 Mr. Arendt mentioned would benefit some species of
25 animals and bird life and hurt others.

1 I believe you should require protection of all
2 the vernal pools. Under the current plan the lesser
3 productive vernal pools may be eliminated. Also, I
4 do remember and I'm not sure which commission member
5 asked for a vernal pool layover planned over the golf
6 course. Has that been done, showing the vernal pools
7 as they would lay over on the golf course? That's
8 been done?

9 CHAIRMAN MCINTYRE: It's not been.

10 MR. CRYDER: You would save the wetland areas by
11 removing the golf course. You would have less
12 traffic for both construction and residential by
13 having an open plan, open space plan with no golf
14 course. You would protect the groundwater well from
15 golf course pollutants and you would reduce the
16 possibility of wells drying up in periods of drought.
17 And ultimately, you would protect the Oyster River
18 watershed in Long Island Sound and the new oysters
19 that were recently seeded. You would have less
20 blasting. You would perhaps have a smaller water
21 treatment plant with fewer leaching fields, which
22 would lessen future risks that the town would have in
23 terms of maintaining them. And there would be less
24 zoning enforcement officer time monitoring some of
25 the sedimentation fencing, et cetera, et cetera.

1 At this point -- also, I would like to mention
2 additionally if planned well an open space plan
3 without a golf course would have fewer roads, i.e.
4 less cost to the town ultimately, fewer bridges, less
5 cost to the town, fewer fire station operational
6 expenses, less cost to the town. That would then
7 mitigate the negative tax consequences as submitted
8 by the Connecticut Fund for the Environment tax
9 study, which I personally believe has -- the sums
10 used are much more realistic than those used in the
11 study submitted by The Preserve.

12 The best option, however, in my opinion is to
13 leave it in its natural state. The town could
14 consider -- again, I do believe through -- and there
15 are discussions with the Nature Conservancy and the
16 land acquisition portion of the Department of
17 Environmental Protection and the various agencies
18 that perhaps we can come to an agreement to purchase
19 the land. The town could consider making this into a
20 park, working with the state of Connecticut to get
21 tax revenue, taxes through the pilot program that
22 they have, payments in lieu of a tax base, which is
23 available through the state of Connecticut is my
24 understanding.

25 Of course the town is always interested in

1 increasing their tax base, but I would suggest that
2 the town of Old Saybrook do that by looking at their
3 current industrial zone and looking at that to
4 increase the tax base rather than anything that may
5 be up there. But I do think the Connecticut Fund
6 study is much more reasonable and the assumptions
7 used which currently show a negative tax consequence
8 to the town of Old Saybrook.

9 I would now like to introduce the film which is
10 a few -- two news clips from the evening news going
11 back 1,800 days or about five years ago, in 1999, on
12 Long Island, the two golf courses, about what can
13 happen on a golf course in relation to pesticides.

14 (Video is being played.)

15 CHAIRMAN MCINTYRE: Is that the conclusion of
16 that presentation?

17 MR. CRYDER: There's one more news clip there.
18 Just let it go on. It's another two-minuter.

19 (Video is being played.)

20 CHAIRMAN MCINTYRE: That's the completion of
21 that presentation. Is there anyone else from the
22 public wishing to speak?

23 MR. REDAK: Danny Redak, Old Saybrook.

24 CHAIRMAN MCINTYRE: Mr. Redak, could you use the
25 microphone, please. Thank you, Mr. Cryder.

1 MR. REDAK: Two thousand years ago there was a
2 man who rebuked the many changes for defying sacred
3 land. In his Arabic language that he spoke, he
4 said, it is harder for a rich man to enter heaven
5 than it is for a bloke to go through the eye of a
6 needle.

7 This past Saturday we took a walk through sacred
8 land. And I witnessed a confrontational Dave
9 Royston, attorney, try to stop us, a few, wanting to
10 see the great Pequot watershed.

11 Today I heard on the radio Essex voted no to The
12 Preserve, because it contaminates the real
13 Connecticut River. It is your duty to vote no. And
14 if you don't and protect the wildlife, endangered
15 species and the residents, in lieu of that if you
16 don't this time get together, because there are going
17 to be trucks and trucks going up and down the --
18 violating that land. It is time to get together with
19 Attorney General Blumenthal. If we can't buy it,
20 take it by eminent domain as in New London, but not
21 like Pfizer throwing people out of their homes at
22 Fort Hill. What greater cause than to preserve the
23 land, the last untouched forest in Connecticut. When
24 it's gone, it's gone.

25 CHAIRMAN MCINTYRE: Thank you, Mr. Redak. Yes,

1 sir.

2 MR. SCHWARTZ: My name is Douglas Schwartz. I'm
3 currently a New London resident. I formally did
4 reside in Saybrook for seven years back in the 1980s.
5 I'll be very brief. I'm the state coordinator for
6 the New England Antiquities Research Association, a
7 40-year-old organization with about 500 members. And
8 I happened to review a document produced by the town
9 planner on open space. And in it she mentions there
10 are numerous walls on the property. And she
11 speculates that some of them are early border
12 demarcations of the town. I would urge that that be
13 verified by deed research. And I am not -- I'm
14 sorry, I'm not conversant when Westbrook and Essex
15 split off with Old Saybrook.

16 But my principal point in talking tonight is --
17 one of the things I am going to submit into the
18 record is just a straight local map which encompasses
19 almost all of the proposed development area. And
20 this is the type of area which -- for lack of a
21 better term I am going to call marginal lands in
22 which we very often find Native American stone
23 structures. The most frequent of which are carens
24 or -- a caren is a ceremony stone or stone walls.
25 The natives built many stone walls. One of the other

1 things I am going to submit for the record is Some
2 Early Accounts of Native Stone Walls in New England.
3 And I would urge this commission, encourage you to
4 have a careful survey, a very careful survey of the
5 walls on the property. Native walls can often be
6 readily discerned from agricultural walls.

7 This land is not, except for a couple of areas,
8 Ingham Hill and the ridge of the eastern side of the
9 property look like it ever was amenable to farming.
10 It's a lot of wetlands and a lot of steep peaks with
11 sharp contour intervals between those peaks. And
12 this was -- I don't know what's in there, but it
13 could well have a lot of native stone constructions.

14 And another document that I am going to submit
15 for the record is the state statutes dealing with
16 Native American Cultures, Section 10-381 through 391
17 inclusive, concerning, among other things, Native
18 American sacred sites, including archaeological
19 sites. And I would urge that you insist on a survey
20 of all stone features within the property to be sure
21 you're in compliance with both your own regulations
22 as they relate to your archaeological concerns and
23 the state statutes.

24 And the final point I'll make is that last
25 Tuesday, November 30, marked the 350th anniversary of

1 what I believe is certainly the first one I'm aware
2 of, of reference in the New England literature to
3 native stone walls. It was a letter from John
4 Pinchon, the founder of Springfield, to John
5 Winthrop, Junior. I'm sure you don't need to know
6 anything -- you know who he is. And he's the one
7 who's to blame for us being here tonight. And I'll
8 submit that, too. And that's the close of my
9 comments. Thank you.

10 CHAIRMAN MCINTYRE: Thank you, sir. Yes.

11 MR. ROTHENBERGER: For the record, Charles
12 Rothenberger, Connecticut Fund for the Environment.

13 We heard a little bit about how the majority of
14 the public comments have really been focusing on
15 total protection of this parcel rather than simply
16 trying to figure out the best way to preserve it
17 under the Old Saybrook open space subdivision
18 regulations. Actually, I think that's probably not
19 completely accurate. Certainly I think everybody in
20 the room would prefer that the site be preserved in
21 its entirety, at least from an environmental and
22 ecological perspective.

23 However, I think a number of comments that we
24 have heard throughout the course of these public
25 hearings have been focusing quite properly on the

1 issue of habitat fragmentation. It's one of the
2 goals of the open space subdivision regulations,
3 something that the commission is really charged with
4 evaluating about whether the particular proposal
5 meets those goals or not. And it probably bears with
6 heeding, although it was said a couple of times that
7 really the central issue before the commission -- it
8 is not one about whether a conventional subdivision
9 or an open space subdivision is appropriate for this
10 parcel.

11 Considering the underlying zone here, the
12 Conservation C District, really the open space
13 subdivision is the only option to develop this
14 property, unless the commission at some point in the
15 future should make an expressed determination that,
16 for whatever reason, they didn't think that was
17 appropriate and actually gave permission to develop
18 this at a higher -- as a traditional subdivision. So
19 a traditional subdivision is really just a
20 theoretical construct to determine the lot yield.
21 And then really the commission should be focusing on
22 whether the open space plan presented is the one that
23 it feels best meets the underlying goals of the open
24 space subdivision regulations.

25 We heard Mr. Landino say, in response to one of

1 the commissions -- commission member's questions,
2 that the closest development was thousands of feet
3 away from present homes. And I would submit that
4 really that's a problem, not a solution. And it sort
5 of indicates the amount of fragmentation and division
6 of this property; the isolated pockets of open space
7 that really don't provide a great deal of
8 connectivity.

9 I would like to introduce Curt Johnson from our
10 office, the senior attorney who's going to provide
11 the commission with some general comments about the
12 charge before you.

13 MR. JOHNSON: Good evening. For the record Curt
14 Johnson, senior attorney with Connecticut Fund for
15 the Environment.

16 I am just going to take a few minutes and then I
17 know Charles is going to be bringing forward George
18 Logan, an expert, just to rebut a few things that
19 were said this evening.

20 But the two main points, one is included in a
21 letter that's going to be submitted to you right now
22 by Mr. Rothenberger. It's a summary of the legal
23 reasons for rejecting the applications. The legal
24 reasons for rejecting it. And the second one is a
25 more general list of social concerns and very

1 realistic concerns that are on all of our minds here
2 this evening.

3 We are going to start with the legal reasons.
4 As you know you are governed by regulatory criteria
5 and by state statute. Your decisions have to be
6 based on that. And these are in fact the measuring
7 sticks by which you have to make a decision. I think
8 every lawyer in the room would agree with that. The
9 commission would certainly agree with that.

10 The -- I want to talk about the major areas
11 where this application fails your regulations and
12 where you have power to reject. And I want to just
13 build on several of the recent speakers as well as
14 what you're going to hear from Mr. Logan, which is
15 the issue before you is not, is not whether this is
16 better or worse than a conventional subdivision. The
17 issue is are you going to -- going to say yes or say
18 no to a specific open space plan.

19 And the reality of this plan that I am now
20 pointing at, the BL Open Space Subdivision - Preserve
21 Plan. If you look at it, the reality of it is this
22 plan cuts the open space into very small rivets, very
23 small areas. You've heard a lot about that. You're
24 going to hear more about that. This is covered in
25 your regulations. You may reject if there is not a

1 reasonable amount of contiguous open space; if in
2 fact it has negative impacts on wildlife; if it has
3 negative impacts on forests. That's all the power
4 that's before you. So you have every power to just
5 look at this application and say it's too much. It's
6 simply too much cutting up of an important resource
7 in your town.

8 And I would point out to you that under the
9 Connecticut Environmental Protection Act, which is
10 what this organization intervened under, you need to
11 look at the impacts and make a determination if there
12 is a reasonable likelihood of unreasonable impairment
13 to wildlife, to other natural resources on this
14 property. And there has been absolutely adequate
15 evidence that's been put in not only by Connecticut
16 Fund for the Environment. You heard several
17 gentlemen this evening. You heard from a variety of
18 experts. You'll hear more from George Logan. You
19 have heard from Patrick Cummins, Audubon Connecticut,
20 Robert Craig, Jeff Hammerson. You have before you
21 the concerns in the original study that was done on
22 this property some time ago. So there's an adequate
23 basis to make that determination. And once you make
24 that determination, then you have to make a
25 determination whether there's a feasible and prudent

1 alternative. You've heard about this already this
2 evening.

3 The issue here, as I think was very well put by
4 Dr. Klemens, is that in a -- the preference is to
5 maintain as much of this as contiguous open space in
6 its natural conditions for all kinds of wildlife
7 reasons and all kinds of forest continuity reasons.
8 So you have the power to reject it on that basis.

9 An obvious alternative is to eliminate all of
10 the golf course links which chop this up and also to
11 move the density out to the edges of this property.
12 What that would do is imagine all of these light
13 green areas not being golf course, not being cut up
14 from the woods. And imagine the central sort of
15 major development right down the heart of the
16 property being moved back off to the edges in this
17 area. That would leave approximately seven, eight,
18 900 -- 750 to 850 acres of this property as a single
19 whole contiguous property. That is something that's
20 completely in your power to do.

21 I want to just touch on a couple of other legal
22 points very quickly in terms of your power. Attorney
23 Branse asked some questions about this. I think it's
24 extremely relevant. It's the question of the
25 easement of the state of Connecticut that's going to

1 be required to provide the access to Bokum Road that
2 is being shown to you conceptually. I would maintain
3 that that accessway is an integral part of this whole
4 plan, all right. It requires an easement being
5 granted.

6 MS. MCKEOWN: Can you stop for just a minute.

7 MR. JOHNSON: Sure.

8 MS. MCKEOWN: Thank you.

9 (Changes tape.)

10 MR. JOHNSON: As I was saying this access road
11 over to Bokum Road crosses Railroad Valley Branch,
12 which is property of the state of Connecticut. It
13 will require an easement. Very different than a
14 permit. An easement, a right to cross that property.
15 I would maintain that that is entirely different.
16 And on the record it is evidenced that it was
17 rejected once before. It was rejected under the
18 authority of the state and the responsibility of the
19 state to look, when it is granting permission and use
20 of its property under the Connecticut Endangered
21 Species Act. It made a determination that there were
22 species of concern on the entire property that were
23 going to be affected by development of this scale and
24 scope. We have heard new evidence that in fact not
25 only are those species of concern still out here,

1 special concern species out here, but also there's
2 been discussions about box turtle, which is another
3 species of concern, as well as red bat, another
4 species of concern.

5 All I'm suggesting to you is that this
6 application is incomplete, because it is requiring,
7 first of all, another entity to grant permission to
8 cross its property and an entity that once before
9 rejected that request. So this is an incomplete
10 application. And to place the condition of this
11 approval upon granting that property right of access
12 would be illegal.

13 And the third point is a very simple one, that
14 in all deference to Attorney Branse, I think we have
15 a difference of opinion on this. But this is a
16 special exception. You've heard it's a special
17 exception. The state statute is absolutely perfectly
18 clear that when there is a special exception, there
19 is a requirement that the applicant place a wetlands
20 application before the wetlands authorities in your
21 town at or before the same time that they place this
22 special exception application before you. The law
23 could not be clearer on that. It shows up in several
24 places in the statutes and we talk about it within
25 our letter.

1 Now, I want to move on to just very briefly the
2 social context of what we are looking at. First of
3 all, as has been stated before, this is in some ways
4 from an ecological point of view indeed sort of
5 sacred ground in the sense that it is - you've heard
6 this before - part of a -- the last remaining large
7 forest area in Connecticut this close to Long Island
8 Sound. We can have quibbles about is this a, quote,
9 coastal forest. That's not the issue. The reason
10 the Nature Conservancy has placed this as its highest
11 priority for conservation in the state of Connecticut
12 is because of its close proximity to Long Island
13 Sound, its vastness. The reason the Department of
14 Environmental Protection has placed it as its highest
15 conservation priority is that reason. You have
16 something extremely unique here in the state. And
17 what happens with this application is all the forest
18 qualities, all the wildlife qualities that are in
19 your regulations are violated by that proposal.

20 Just from a social point of view I want to make
21 one comment about the tax analysis and why it's
22 different between the two. As you know the tax
23 analysis we submitted shows a very, very substantial
24 loss, very substantial tax loss to the tune of close
25 to three-quarters of a million dollars a year. The

1 reason the difference exists is, quite frankly, we,
2 Connecticut Fund for the Environment, hired a
3 consultant who called your Department of Education,
4 asked them for their estimation of what the tax
5 burden would be on a per bedroom or per unit basis
6 for this development and got one answer. And that's
7 the number that they used for the calculation.

8 Now, I can tell you that Lehman Brothers has
9 hired other people and they have all kinds of high
10 pollutant theories about how that's wrong. But we
11 relied on your people to come up with that answer.
12 That's my main point. We relied on the town's
13 information. And I suggest, you know, from my point
14 of view, I have never heard a developer come forward
15 with a large plan that didn't suggest to the town
16 that it was the best thing since, you know, roast
17 beef. So I just sort of point that out from a
18 perspective of where did the numbers come from. Did
19 they come from your town or did they come from an
20 expert who views something differently?

21 And I think the last question, which is a really
22 critical question that all of us are worried about,
23 what if, what if you were to deny, under all the
24 powers that you have, this subdivision application?
25 What's next? What's going to happen? I know there's

1 those who are very concerned that what will happen is
2 it could become a regular standard subdivision. What
3 we have seen in the past is once that was tried, it
4 was rejected soundly by a variety of regulatory
5 agencies. Frankly, it was a lousy investment to go
6 that way. That's the reason why the Lehman Brothers
7 now owns the property through a bankruptcy process.
8 That is the reason. That was a poor plan, a poor
9 concept.

10 And what I will end up with in conclusion is
11 that I have been told by two individuals, one, the
12 executive director of the Nature Conservancy; two,
13 the head of land acquisition for the state of
14 Connecticut, that this is the highest priority
15 property they have for acquisition. And I have been
16 told that an appraisal has been done on this property
17 to determine its fair market value.

18 Now, I want to just point out one thing which is
19 important I think to recognize is that when an
20 appraisal is done by either of these entities, it's
21 done by an independent appraiser for the highest and
22 best use of the property. What that means is what
23 would a developer pay for this property. Not what
24 would the Nature Conservancy like to pay or what, you
25 know, a land trust would like to pay. What is the

1 highest value to a developer that they would pay.
2 That work has been done. I don't know the answer to
3 it, but I do know this. I have been told that they
4 will make an offer to Lehman Brothers for that value
5 of the property.

6 So what will happen if you reject this? I
7 suggest that what's going to happen is one of a
8 number of things. If you told Lehman Brothers that
9 in fact a prudent and feasible alternative was just
10 develop the edge and to actually maintain the
11 contiguity and the sort of sacredness of this forest,
12 then they would have one of two possibilities. They
13 might say, okay, we'll come back with another plan or
14 they might say that's not feasible for us.
15 Economically that's not feasible. All I'm pointing
16 out is it was a bad investment by Lehman. There will
17 be an offer that is made to them to purchase this
18 property at fair market value based on an independent
19 appraiser --

20 MR. BRANSE: Excuse me, Attorney Johnson.

21 MR. JOHNSON: Yes.

22 MR. BRANSE: For the record, Mark Branse.

23 I presume you're not suggesting that this
24 commission should base its decision --

25 MR. JOHNSON: Absolutely not.

1 MR. BRANSE: -- by attempting to secure its value
2 for purchase by the state.

3 MR. JOHNSON: Absolutely not. What I pointed
4 out, what I pointed out before, Attorney Branse, was
5 the legal determination, the legal reasons for what
6 is going on for this decision are all included in the
7 letter.

8 MR. BRANSE: Yes. But --

9 MR. JOHNSON: They are absolutely regulatory.

10 MR. BRANSE: Yes. But now you're talking about
11 offers from other buyers based on appraisers. How is
12 that relevant to this process?

13 MR. JOHNSON: I would suggest to you as a
14 citizen all of these things are contextual issues of
15 what's good for the town; what's bad for the town.
16 That's all.

17 MR. BRANSE: I think you --

18 MR. JOHNSON: It's just general. General
19 issues.

20 So I have concluded my section of the
21 presentation. And you know, I know that Attorney
22 Rothenberger is going to be working a bit closer with
23 George Logan.

24 MR. ROTHENBERGER: Again, for the record,
25 Charles Rothenberger.

1 And I'll just briefly introduce Mr. George Logan
2 of REMA Ecological Services. Mr. Logan has had an
3 opportunity to review the report of submissions of
4 the applicant and has prepared a number of comments
5 specifically related to those reports. So Mr. Logan.

6 MR. LOGAN: It seems I always do this at around
7 this time. So deja vu.

8 Pleasure again to be before you. Again, for the
9 record, George Logan. I forgot to bring my CV. The
10 next time that I will be here before you, if not
11 someone will bring in my full CV to you and also the
12 CV of a Miss Sigrun Gadwa who has assisted me.

13 I had the pleasure of going through the entire
14 package as far as the ecological submission that was
15 put into the record much to my chagrin, because I
16 basically locked myself up in a room for about five
17 hours. And I have made some I think interesting and
18 important observations which are too many to the
19 process that's here before you and to you folks at
20 this time and based on your regulations and the facts
21 as to whether this is acceptable.

22 I guess as I prefaced the last time is this is
23 an unusual situation in that you have a relatively
24 large piece of property. I am used to dealing with
25 large pieces of property. Usually the average ones

1 that I have to deal with similar issues are in the
2 range of 100 to 200 acres. And it's very rare that I
3 have to deal with something of this magnitude. And
4 my experience and my education tell me that when
5 you're dealing with a very large piece of property
6 like this, some of the issues get magnified. So when
7 I talk about fragmentation on a 100- or 200-acre
8 parcel, I'm talking in the local level. When I'm
9 talking about fragmentation of habitat of a
10 1,000-acre parcel, I'm talking about a regional
11 impact if not of a portion of the state.

12 In the landscape setting that we have around us,
13 we know that it's undergoing steady suburbanization.
14 We are building things. We are fragmenting the
15 environment. And usually what happens is that when
16 open space subdivisions or open space tracts are
17 considered, we have only moderate-sized wood lots and
18 open space tracts that are being set aside. And
19 therefore very large forested tracts are regionally
20 of high importance from a conservation -- for all
21 species, not just for the species that are rare or
22 common. It is my opinion that this proposed
23 development design fails to set aside at least one
24 substantial large tract. And I think I mentioned
25 that at the last time that I was before you, that

1 where I was to be doing some of this work I would
2 likely come to the conclusion that a very large
3 portion of the property, contiguous, whole should
4 have been set aside, instead of what we have before
5 us in this plan which I have referred to as the open
6 space subdivision and preservation plan prepared by
7 the Bob Landino Companies is to me a Swiss cheese
8 open space subdivision.

9 Now, some of the things that we talk about as
10 biologists when we talk about fragmentation, there
11 are things that probably are going to go slightly
12 over your head. But bear with me and then I will get
13 back to some of the more factual components. We talk
14 about very large tracts being reservoirs of genetic
15 diversity, for regional metapopulations of fauna and
16 flora. And this is a widely known principle of
17 population genetics and landscape ecology and it is
18 the tendency for small, isolated populations to
19 become increasingly homogeneous, genetically losing
20 their means of genetic diversity again by way of
21 random drift.

22 Where small populations often suffer genetic
23 problems due to inbreeding. So for instance, when we
24 have some of the larger mammals, such as the
25 mustelids, the weasels which occur at low densities,

1 they seem to be suffering from inbreeding.

2 Small populations are less able to adapt to
3 environmental changes. I guess that's another lesson
4 that we take from landscape ecology, population
5 genetics. An example here that I put and there's
6 others is adaptation to global warming. Things are
7 happening climatologically in our region. And so the
8 large areas are the ones that are able to allow
9 animals to adapt to environmental changes.

10 Large tracts are especially important for
11 preserving genetic diversity of species that
12 naturally occur at low densities such as the wood
13 warblers that we talked about. Here on this site we
14 have the worm-eating and hooded warblers are a couple
15 of examples or possibly for plants such as orchids,
16 which are also documented on the site.

17 A very large undeveloped tract of land such as
18 this or a portion of this site is a source for
19 repopulation in the larger landscape. Again, smaller
20 populations are more likely to go extinct or reach
21 dangerously low levels in the face of environmental
22 changes such as dry summers. So if there is
23 emigration from a nearby source, population loss of
24 biodiversity can be prevented.

25 Now, on birds. And I am going to tell you that

1 I have heard and I have read in these reports there
2 seems to be sort of an overemphasis - and please, Dr.
3 Klemens, don't take this wrong - on amphibians and
4 reptiles. And I think that's a good thing, but some
5 of the other wildlife assemblages are also important
6 and also have to be considered in conjunction with a
7 conservation of amphibians and reptiles. If you only
8 look at amphibians and reptiles, then you're really
9 not doing a good job as far as conserving the
10 biodiversity and limiting the fragmentation of this
11 particular piece of property.

12 So with avians the presence of source
13 populations -- and again, remember the last time I
14 talked about sources and sinks. These large pieces
15 are especially critical, because suburban wood lots
16 have become sinks and the open spaces that we're
17 providing have become sinks for a large proportion of
18 our resident songbirds, for breeders. Many migratory
19 songbird species, ranging from say the common
20 red-eyed vireo to the rare hooded warbler, which has
21 been found on the site, experience elevated rates of
22 predation and nest parasitism near forest edges in
23 small- to moderate-sized wood lots. Estimates of the
24 distance that increased rates of nest failure extend
25 from the forest edge range from 190 feet by some

1 people to 600 feet or more by others. A forest such
2 as The Preserve or a portion of The Preserve will
3 replenish the depleted populations in the smaller
4 tracts in the region, not just Old Saybrook or Essex
5 or Westbrook.

6 Now, some of the birds here, such as the hooded
7 warbler, have behavioral avoidance of even
8 moderate-sized tracts. And I'm giving you here a
9 number that's based on my own experience. It would
10 put a warbler as less than 400 acres. They don't
11 seem to do very well unless there's specific
12 conditions that might allow them such as ravines, and
13 very wet areas, and evergreens, et cetera. We have
14 included this based not only on our experience, but
15 also Sigrun Gadwa has a paper in the back that she
16 has submitted which I'm also going to use as
17 something else. These species disappear from the
18 local landscape unless a very large tract is
19 preserved. The population levels of wooded -- of
20 wood warbler species or of other forest migrants at
21 this site are also entirely consistent with REMA
22 experience and not unusually or surprisingly low as
23 suggested by the applicant.

24 Now, what has happened here is that I have read
25 through the avian species studies. It seems that

1 there has been -- the applicant's tried to diminish
2 the amount of habitat and the amount of diversity
3 that's out there. And so comments such as it's
4 unusually low diversity or surprisingly I think, as
5 you will find out in a few moments, are not correct.

6 Now, one of the things that I did is I
7 noticed -- I went through that big study. And in
8 there there was imbedded -- I think it was a 2002
9 study by an ornithologist who went around The
10 Preserve and did what he should have done, and that
11 is a few specific point sensor surveys with breeding
12 birds where you go to a specific point and you try to
13 follow a protocol. And this protocol is used -- he
14 called it a modified protocol, the protocol that's
15 commonly used in Connecticut. And that's true,
16 however, in our experience if you don't follow the
17 protocol to the T, it's doesn't help you compare it
18 with other studies that are happening in the area and
19 be able to come to some conclusions. So, for
20 instance, he did his point surveys once. He's
21 supposed to come back and do them again in the same
22 point after a period of time within June. So that
23 was not done.

24 The other thing that was not done, which was
25 kind of interesting, was that if you look at the

1 report, you will find out that there's no -- there's
2 a table only of latitude and longitudinal coordinates
3 of the bird survey points. And there's no analogy of
4 the distribution of the avian populations. And
5 there's no map whatsoever. There's no breakdown of
6 the raw survey data by point that was provided by EPS
7 or others. And we have done so and we have attached
8 this.

9 And one of the big things that you might want to
10 look at in the second figure, figure two. Put your
11 finger in there. Those are the plots that bird --
12 birding burrow survey points used by the
13 ornithologist for The Preserve. And basically, he
14 did those on consecutive days, I think, where he
15 followed a tract and did several points along there.
16 Anywhere from five to seven points per tract and did
17 a survey protocol.

18 Now, if you were to go to route number three
19 which has been computed there for you in Table 1,
20 what you will find out is with the largest numbers of
21 area-sensitive forest songbirds, including the hooded
22 warbler, the worm-eating warbler, and the American
23 redstart, is located on the ridge bordering Pequot
24 Swamp Pond and going north which would become now a
25 narrow forested strip sandwiched between the pond and

1 the proposed housing cluster and also the fairway.
2 So in this particular area --

3 CHAIRMAN MCINTYRE: Could you state for the
4 record what map you're pointing to.

5 MR. LOGAN: Open Space Subdivision -
6 Preservation Plan by Robert Landino. Looking at the
7 center of the site along the area of the ridge and in
8 a direction that's north and northeasterly of Pequot
9 Swamp Pond. And then these areas are where the high
10 diversity of some of these very area-sensitive
11 species such as the hooded warbler were discovered.

12 Should this development happen in here, unless
13 they can tell us that there's other areas that are
14 good for the hooded warbler, which I guess they
15 didn't find, I suspect that we are going to lose this
16 species from this site. And that's not the only
17 reason. Again, it's because the fragmentation is a
18 behavioral thing that the hooded warbler has is
19 smaller tracts and fragmentation.

20 Now, the interesting part is -- again, whenever
21 I have been called upon in tracts probably up to
22 900 acres -- and I have done -- actually, I did a
23 1,500 one for the state once. What I try to do is to
24 basically look at the entire site. I try not to
25 leave holes. Because if I leave holes I'm sure

1 someone is going to accuse me that I'm trying to pull
2 something. And I'm not accusing the applicant of
3 trying to pull something, but it's curious to me that
4 if you look at Figure 2, you see there's a large
5 hole. There's -- more than a third of the site has
6 not been properly covered with bird surveys, first of
7 all. And more importantly, if you look at the
8 eastern and southeastern portion of the site, there's
9 about a 300-acre parcel lot forested with significant
10 wetlands and with significant proposed development,
11 nine holes plus a bunch of housing that has not been
12 surveyed, at least by using this proper protocol.

13 If you also look at the mammalian data provided
14 by EPS, Environmental Planning Services, which also
15 includes the bat surveys that were done, and you will
16 find that. And the bat surveys had specific areas
17 where they found four species. One of them was the
18 species of special concern, which is the red bat.
19 And so they surveyed where those points are probably,
20 which is included in those maps. Same hole. No
21 mammal species surveyed there. At least they weren't
22 put on the map. And no bat survey locations also
23 looking at that area. It seems that they
24 concentrated in the area of the -- more of the
25 western and southwestern portion of the site, which

1 we know have some significant resources. But why the
2 hole? And that to me is a big problem when someone
3 like myself is trying to make sense if they are doing
4 the right job.

5 I'm sorry, I have to put my glasses back on now.
6 The other thing that I also noticed - and this is,
7 again, based on my experience with doing the bird
8 surveys - is that there's an underrepresentation of
9 breeding bird data points at or near the edges of
10 forested wetlands where typically, again, based on
11 our experience, both diversity and abundance of avian
12 species and other wildlife is much higher.

13 I know of recent examples where that has been
14 the case and it's always surprised me. And if you
15 look at their own data, you will see that the couple
16 of points that had the highest diversity and
17 abundance is actually the edges of wetlands. And yet
18 you have that 300-acre hole with a lot of edges and
19 wetlands there and there's nothing there. And they
20 noted that vireo, there's only one sighting. It was
21 not part of a breeding point. Well, that's the
22 answer for you. The answer is you are not looking at
23 the right places. And I bet you if you went down to
24 the lowland area, the hole, you would find a couple
25 more vireo at least.

1 Again, the applicant has said that they found
2 that there's -- this site does not support a high
3 diversity of these area-sensitive tropical migrants.
4 But if you -- the question that came immediately when
5 I said that is, well, what do they compare it to?
6 Just for you to say that doesn't mean that it's
7 necessarily the case. So we looked at the data that
8 was available, including data that we have, including
9 that study that I put in the back by Sigrun Gadwa
10 that was published. And you will see that it's very
11 consistent. The diversity and abundance of some of
12 these species that we are concerned about is about
13 one we would expect. And I think if they did a
14 better job as far as the avian survey, they might
15 have discovered that the diversity abundance was a
16 little higher.

17 Now, let me talk a little bit about the
18 herpetological studies done by Dr. Michael Klemens,
19 whom I respect a lot. But I must say that I'm
20 wondering why this is happening and whether he has a
21 good answer for it. In his report he mentions that
22 he has done the bulk -- he and his people and under
23 the supervision of other people from EPS has done the
24 bulk of the ecological studies with particular
25 emphasis on vernal pools. And he admits that there

1 has been other studies that were done on this site.
2 And he referred to the evidence Environmental
3 Consultants Report, a 1999 report I think I might
4 have seen at some point. But I also know that Bob
5 Russo, in 1999 and 2000, also did some limited vernal
6 pool studies. And finally, in 2002 Edward Pawlak
7 spent a lot of time out on the site inventoring the
8 vernal pools. So I'm not clear to what extent this
9 data, which will be a beneficial thing to have more
10 than one year of data when you're trying to make
11 sense of a diverse vernal pool assemblage, to what
12 extent this data has been used by Dr. Klemens. And
13 we would recommend that all the data be included into
14 the record, particularly Mr. Pawlak's raw data. And
15 I haven't seen any of Mr. Pawlak's data.

16 Now, the other thing that I have a slight
17 criticism - maybe it's just a matter of what was
18 decided to be presented and some of this other
19 information exists - is the specific lack of
20 information or the lack of information specifically
21 in each of the 31 vernal pools. Apart from egg mass
22 counts and species presence, yes/no, we know little
23 or nothing about the hydrology specifically of a
24 particular vernal pool, cryptic or otherwise,
25 substrate, vegetation structure and diversity, water

1 quality, invertebrate base and the like. These are
2 all important things and typically we are -- at least
3 we are used to, and this is our experience, when we
4 are inventoring a vernal pool, to basically put a
5 form together that has all that information so that
6 in a quick glance you can say, okay, there's this,
7 there's that, there are pictures. None of that
8 information is there. So I can't make sense of the
9 procedure whereby Dr. Klemens has assigned a high
10 priority to some and a low priority to others is
11 actually correct.

12 I also didn't see in the record, and maybe it's
13 happened, but it hasn't been put in the record that
14 these vernal pools were not visited in the summer to
15 document productivity of obligates, particularly
16 spotted salamanders. That's important. You might
17 go -- when you have clusters of vernal pools,
18 sometimes that happens. You go and you see a bunch
19 of egg masses and you go back in the summer and you
20 realize it didn't work, because the hydrology of this
21 particular vernal pool wasn't right maybe for this
22 year. So you don't have the productivity. And I
23 think having ideas on what happens and they are
24 coming out. We have emergence of spotted
25 salamanders, wood frogs, et cetera that would be

1 important information.

2 Now, I guess the thing that bothers me, and I've
3 talked about that the last time, is that there are
4 actually nonconservative vernal pools proposed. We
5 have proposed nonconservative pools. A bunch of
6 them. Fifteen out of 31 are preserved. The rest are
7 not. And so you have vernal pools such as number
8 five, number nine, number 19, number 23, 3, 22 that
9 are all clearly Tier 1 pools according to Dr.
10 Klemens's chronology and therefore they are worthy of
11 conservation. But that's not what's happening here.
12 And I think this brings into question the future of
13 this particular methodology, and that is -- and I'm
14 sure you won't like that to happen.

15 Several of the nonconserved vernal pools, such
16 as 3, 4, 21, 24, and 26, have comparatively moderate
17 numbers of spotted salamander egg masses and wood
18 frog egg masses, but also --

19 COURT REPORTER: Excuse me. Could you go a
20 little bit slower.

21 MR. LOGAN: Certainly. I usually do.

22 Again, they have comparatively large numbers --

23 MR. BRANSE: Do the numbers.

24 COURT REPORTER: I got the numbers.

25 MR. BRANSE: You got the numbers.

1 COURT REPORTER. Yes.

2 MR. LOGAN: Of spotted salamander and wood frog
3 egg masses, but also contain, guess, the marbled
4 salamanders. So you have the vernal pool that might
5 have 20, 30 spotted salamander egg masses. Five,
6 six, ten wood frog egg masses, and then there's a yes
7 for marbled salamanders. But because of the lack of
8 specific information, it's impossible to ascertain if
9 any of these pools are important marbled salamander
10 pools.

11 In my experience very often productive marbled
12 salamander breeding pools have lower numbers of the
13 other obligates, since the former predate on the
14 latter. Makes sense. So they keep the spotted
15 salamanders and the wood frogs under check, because
16 they predate them, but they might have high numbers
17 of marbled salamanders. And I have no indication if
18 a particular pool is high for marbled salamanders or
19 not. Just a yes.

20 Earlier on we saw Stuart Cohen, Ph.D., come in
21 and say a few things regarding earth management,
22 pesticides and the like. And I think that that's
23 good. He was specifically retained, according to Dr.
24 Klemens and his report, to address specific issues of
25 amphibian conservation as it relates to golf course

1 design, turf management, and emissions. Now, there
2 is a program here. The program is we have decided to
3 conserve certain pools. We have decided to implement
4 certain best management practices in order to make
5 sure that these pools maintain populations. The
6 issue of whether or not we are losing a bunch is
7 separate. But part of an integral part of the best
8 management and conservation program for these pools
9 has to do with Dr. Cohen. And his reports and
10 recommendations have not been specifically submitted
11 in the public hearing record. I wish I had the time
12 to go on the record for us to review them, because
13 what you will find is that there are a great variety
14 of toxic chemicals. And they have a variety of
15 effects not only to amphibians, but also on other
16 species.

17 One of the phenomenon that has been documented
18 lately is that the insects and arthropods that seem
19 to find themselves at the edges of some of these
20 roughs, there's a little bit of maybe residue.
21 Something gets there from overspraying or from
22 pesticides that are not going to move further maybe,
23 but they are there right at the edge. And the
24 insects, and the arthropods, and worms and whatnot
25 are taken up by the animals and thereby accumulate.

1 So it might not get into the groundwater, it might
2 not get into the stream, but it gets to the animals.
3 And of course they are not around to talk about it.
4 And I can give you specific studies on that. Okay.

5 So there is no discussion about the expected
6 population size, and structure, and distribution of
7 the eastern box turtle. Yeah, we did document I
8 think it was five or six. They have been tagged,
9 marked, measured, sexed, released. And that's the
10 end of the discussion, except that Dr. Klemens says
11 in there -- he points out this species is in decline
12 due to habitat fragmentation and loss of long-lived
13 adults to mortality -- road mortality and collection.
14 Okay.

15 And should we stop there? I don't think not.
16 If this is a true open space subdivision -
17 preservation plan such as we have here at the BL
18 Companies, then I think part of that would be for us
19 to know what's happening out there with the box
20 turtles. How big is the population? What's its
21 structure? From some of the data there seems to be
22 doing okay. They're relatively cunning individuals,
23 so this must mean that's a good point. So maybe we
24 should have a box turtle management plan for this
25 site. Something that tells us what we are going to

1 do to avoid undue fragmentation and undue impact upon
2 this species of special concern in the Connecticut
3 listing. And any open space subdivision should
4 account for such a fragmentation-sensitive species in
5 my opinion.

6 Now, here's another opinion. In my opinion none
7 of the productive Tier 1 vernal pools should be
8 sacrificed to development. I think we need further
9 analysis and substantiation. Maybe some of the
10 site-specific data that I requested. And based on
11 that data that has been provided so far, I would say
12 that the golf course proponent layout is
13 inappropriate in an open space at this large site,
14 which the applicant -- by the applicant's own
15 admission is a relatively intact forest habitat.

16 Another thing, the floristic inventory. We have
17 to remember there are plants out there, too. I don't
18 want to be accosted by an angry plant on the way out
19 that I didn't talk about.

20 MR. BRANSE: Mr. Logan, would you spell
21 floristic.

22 MR. LOGAN: F-L-O-R-I-S-T-I-C, I think.

23 So here it is, the list that Jim Cohen, my
24 colleague here, has put together is very good. I
25 think he's done an admirable job. It's a complete

1 list. I think they're a little skimpy in the
2 comprehensiveness, but so am I usually. And the
3 problem here is not that it's not comprehensive. It
4 shows that there's a fairly good job done here. But
5 the problem is that there's insufficient
6 distributional data, particularly regarding rare and
7 common flora, such as the various orchids, mikworts
8 and the like that they observed. Moreover, there's
9 little or no description on the potentially
10 botanically more diverse areas with uncommon and rare
11 species, such as hilltops with bedrock outcrops,
12 headwater wetland seeps and the like.

13 Interestingly enough and in our experience when
14 you go and do floristic inventory, you will find that
15 everything is not the same throughout. There are
16 some of these areas that need a little more
17 attention. They are a little bit more open; the
18 canopy's open; there's a little more light that comes
19 in; it's a little more drought, droughty kind of
20 species. And they seem to be different. And we need
21 to know where these are, because that's a critical
22 part of the biodiversity and the natural features of
23 the site. And they might need to be also protected.

24 And finally, I leave you with this. And this is
25 not because I just decided to pull this out of my

1 hat, just to throw another obstacle in the
2 development process. Because this is something that
3 I have had to do before on large pieces of property.
4 I'm thinking of one a few years back in Meriden. We
5 had about 850 acres, Cathole Mountain, and we were
6 supposed to site a power station. And where do we
7 put it. So I had to do all these studies. And of
8 course I'm not an entomologist, but I realized
9 quickly that this is a large, mostly unfragmented
10 piece of land. And by the way, there was a hooded
11 warbler there, too. And so I decided I was going to
12 hire a subconsultant, an entomologist. Maybe my
13 client now regrets it. But it's not unusual for a
14 large piece like this to find listed insects and
15 arthropods. And I think that's one thing that's
16 missing, also, is some kind of entomological survey
17 of the property.

18 And that's all I have for tonight and maybe
19 forever, unless you folks have specific questions. I
20 really appreciate being able to take some of these
21 issues. They are kind of glossing over them in a
22 sense.

23 One last point. I want to be sure that you know
24 this, but -- I'm sure you know it. There's no
25 comparison between an unfragmented forested habitat

1 that's relatively intact and a golf course. I like
2 golf courses, too. I permit golf courses, also. I'm
3 not a golfer, but I realize that they are not a bad
4 thing in the appropriate setting and where the
5 fragmentation is not undue. As I said, again, one to
6 100 acres is what a golf course will usually take up.
7 But the site some are used to usually that's all
8 there is there. This is a 1,000 acres plus if you go
9 off site. And yes, there will be an increase of
10 edge. Someone said about eight miles. I believe it.
11 And there's definitely going to be an increase in the
12 abundance and the diversity of some wildlife species,
13 because they are attracted to these ecotones, even if
14 they are man-made. But that's not what I'm talking
15 about. I'm talking about the species that are the
16 denizens of this area that are critically in trouble,
17 because this is the kind of habitat that they all
18 live by. And those definitely are not found on golf
19 courses. So I think you realize that there's a vast
20 difference between this and the golf course.

21 I wish you the best in making your decision. If
22 you have any questions, I'm here to try to answer
23 them. Thank you.

24 CHAIRMAN MCINTYRE: Thank you very much. Is
25 there anyone else from the public wishing to speak

1 tonight? Yes, ma'am. Both of them are on. You can
2 use either one.

3 MS. CONNOLLY: My name is Kathy Connolly. I
4 live on North Cove Road in Old Saybrook.

5 This is a brief comment on road access issues.
6 There is an item that's come to my attention that it
7 seems potentially an outrageous future liability for
8 Old Saybrook taxpayers. And I haven't heard much
9 about it throughout the hearings. It's an item of
10 such significance that I think it has to be brought
11 into the public discussion.

12 The current plan, as I understand it, has no
13 access on Ingham Hill Road. And the road is paved up
14 to the edge of the proposed development. And even
15 though the pavement ends, the undeveloped and
16 unmaintained road that goes through the current
17 forest is a road that the town never legally
18 abandoned and it continues as an Old Saybrook
19 right-of-way throughout the property.

20 Now, is it true that Old Saybrook is obligated
21 to provide safe and reasonable road access to any
22 abutting property owner on the undeveloped portion of
23 the Ingham Hill Road who, by petition, might request
24 it?

25 In other words, when there are residents there

1 in The Preserve development, can they petition the
2 town of Old Saybrook for a finished road to go up to
3 their properties on the current right-of-way called
4 Ingham Hill?

5 And if that's true how will that be paid for?
6 It's my understanding that Old Saybrook would be on
7 the hook to develop and maintain Ingham Hill Road,
8 including responsibility for all health and safety
9 issues, if the new preserve residents petition for
10 it.

11 Now, please correct me if I'm wrong. Do I
12 understand correctly that this would occur at the
13 expense of all Old Saybrook taxpayers, not just the
14 residents who request the road access and certainly
15 not of a developer?

16 And was this expense, both initial and ongoing,
17 figured into Lehman Brothers's rosey picture of tax
18 benefits to Old Saybrook?

19 Can anyone seriously believe that the new
20 homeowners won't request such feasible and prudent
21 access to the town where they were paying taxes and
22 sending their children to schools, to the parks and
23 rec programs, using the senior center and getting
24 their fire and emergency services?

25 And how will the parents of children who live in

1 The Preserve feel about their children having to
2 catch the school bus on Route 153 and going to Old
3 Saybrook schools?

4 School buses don't typically travel on private
5 roads. Will there be an exception made for The
6 Preserve?

7 If this plan is to be approved at all, it has to
8 carry a contingency, in my opinion, that the
9 developer will pay for the Ingham Hill Road
10 development and also plan for the health and safety
11 issues that will come with it. Otherwise, we're just
12 paving the way for a huge future tax liability for
13 the town's residents.

14 And finally, what about Bokum Road access. It's
15 my understanding that in the current application
16 there is no real access on the current application to
17 Bokum Road. It has a connection through another
18 undeveloped property, the Pianta property. And
19 that's not part of the current application. So as
20 far as this application is concerned, the roadway
21 ends at the property line. And I don't see how this
22 can be considered a complete application without
23 being able to consider a completed access plan.

24 I request the commission to very heavily weigh
25 these access issues and the future liability for

1 Saybrook taxpayers in your deliberations. Thank you.

2 CHAIRMAN MCINTYRE: Thank you, ma'am.

3 MS. MCKEOWN: Can you stop for just a second?

4 CHAIRMAN MCINTYRE: Yeah, we're going to hold.
5 We are changing the tape.

6 MR. BRANSE: Mr. Chairman, before we continue
7 with public comment, I would like some sense from the
8 commission as to whether you anticipate continuing
9 the public hearing until January 5th as requested.
10 The reason is if not, there are certain things that
11 have to be said and done tonight.

12 CHAIRMAN MCINTYRE: I'll poll right now. I feel
13 that we should continue. Anybody else have an
14 opinion?

15 MR. HANES: I feel there are answers that we
16 need returned and we haven't read all of the
17 material at this point. I feel that we should
18 continue.

19 MS. ESTY: I agree.

20 CHAIRMAN MCINTYRE: The consensus is -- Dick.

21 MR. TIETJEN: What am I being asked?

22 MR. BRANSE: The consensus to continue the
23 hearing until January 5th as requested.

24 MR. TIETJEN: Yes.

25 CHAIRMAN MCINTYRE: The consensus is we will

1 continue it. Anyone else from the public wishing to
2 speak? Yes, ma'am.

3 MS. MCMAHON: I don't know if I'm working this.
4 Is it on?

5 MR. TIETJEN: It's working.

6 MS. MCMAHON: My name is Diana McMahon. I live
7 at 19 Barley Hill Road.

8 And my concern is just that I honestly don't see
9 much benefit to the town of Old Saybrook or to the
10 landowners. I directly abut The Preserve property.
11 And what I am not hearing at all is what happens when
12 the developers are back wherever they came from and
13 we are having problems with our foundations being
14 cracked or having problems with chemicals in our
15 wells? What recourse do we have as homeowners? This
16 is what worries me.

17 And I don't mean to be antidevelopment or
18 progress, but I'm just wondering what great benefits
19 accrue to us as citizens. Thank you.

20 CHAIRMAN MCINTYRE: Thank you, ma'am. Anyone
21 else wishing to speak at the moment? Yes, sir.

22 MR. O'NEIL: I'm Mark O'Neil. I live on 153 in
23 Westbrook, about .27 miles away from the main
24 entrance to The Preserve. I was going to read this.
25 I'll probably just summarize, because you all have a

1 copy of it. I just thought maybe the public should
2 hear some of it.

3 CHAIRMAN MCINTYRE: Can we have a copy of that
4 letter on the record presently?

5 MR. O'NEIL: Yes. The letter is from the town
6 of Westbrook to the Old Saybrook first selectman.

7 CHAIRMAN MCINTYRE: I don't think that
8 microphone is on.

9 MR. O'NEIL: Is that better?

10 CHAIRMAN MCINTYRE: There we go.

11 MR. O'NEIL: The letter is from the town of
12 Westbrook to the Old Saybrook Planning Commission
13 dated December 7, 2004 from the board of selectmen.
14 I'm sure you all have it, because it's -- well,
15 basically for lack of time I'm not going to read the
16 whole thing. But the letter basically outlines the
17 fact that the Town of Westbrook Board of Selectmen
18 have vehemently opposed the entire project as far as
19 the traffic, as far as water pollution, as far as any
20 part of it. As far as Westbrook is concerned and --

21 MR. BRANSE: Excuse me, Mr. Chairman.

22 Mr. O'Neil, I have to stop you. Have you been
23 authorized by the town of Westbrook to speak for
24 them?

25 MR. O'NEIL: No.

1 MR. BRANSE: I think the Westbrook letter needs
2 to speak for itself, whatever it does say or doesn't
3 say. The commission does have it.

4 MR. O'NEIL: You don't believe that it should be
5 read into the record before the commission?

6 MR. BRANSE: Any member of the commission can
7 review it, but my concern is by having anyone
8 characterize it --

9 MR. O'NEIL: I'm going to -- I was at the board
10 of selectmen meeting. I can characterize what I
11 heard at the meeting?

12 MR. BRANSE: I would say you can, yes.

13 MR. O'NEIL: So at the meeting what I was told
14 was that they were vehemently opposed to all aspects
15 of this development and that they see absolutely no
16 benefit to the town of Westbrook. And we will --
17 anyhow, I'm not going to read the whole letter,
18 but -- anyhow, Westbrook doesn't want this.

19 How do I put this. I was surprised when
20 Mr. Landino tonight says that he would not be -- he
21 would be pulling for the time being the application
22 or think about pulling the application for the
23 wetlands in Westbrook. And I don't know really where
24 that would go from there. I imagine that means there
25 would have to be some plan modifications. So I would

1 be skeptical about where this is going as far as
2 Westbrook's concerned. The town doesn't want it. It
3 could go up to a public meeting, but I guaranty you I
4 have been in public hearings, and this room would
5 hold just about the amount of people that would turn
6 out to it. So if it did go to a public vote, then my
7 guess, speaking as a citizen, resident, that it would
8 not even come close to being accepted.

9 One other alternative they would have as far as
10 getting this road through the two-acre piece of
11 property. I don't know exactly, but from what I
12 gather it's not -- it's a very difficult task should
13 the town accept the property first and then put in an
14 application to have it turn into a road. But so that
15 leaves another entrance that is incomplete as far as
16 I'm concerned at this point anyhow. The northern
17 route over the train over the Essex Valley Railroad
18 is in possible dispute. One fifty-three, the main
19 entrance. Sixty percent of all traffic is in
20 dispute. So where does that leave all the traffic
21 going into this?

22 So apparently the plan is at this point pretty
23 much incomplete and it just seems like to even --
24 it's almost like you're being asked to accept one
25 plan or the other when neither plan really even has a

1 way to enter this at this point. It's just mind
2 boggling that it's this far at this point. I just
3 don't see it.

4 The other thing that I was -- I walked this
5 site, you know, years -- many years ago and I know it
6 a little bit. I own a 1730 colonial. I own an
7 antiques business. I have respect for the early
8 houses and the culture and of course the antiques.
9 There's a very good chance what Mr. Schartz was
10 saying is true, that there's some very important
11 pieces of the history of Old Saybrook that lies there
12 within the walls and the structures of this land.

13 There's a reason why this land has not been
14 developed for 300 years. Even the names of the
15 swamps, you know. You have the Patharol
16 (phonetically) River and the Pequot Swamps. These
17 didn't get picked out of a hat somewhere. So as far
18 as the chances for American Indian relatives or
19 communities and their lifestyles being on that
20 property, I think it's as good as gold as far as I'm
21 concerned. I have looked at some of the structures
22 on there years ago. And from what I can remember, it
23 certainly didn't like look colonial -- America
24 colonial Yankee farming, that's for sure.

25 So apparently this board has a daunting task

1 ahead of them. No doubt about it. You're the
2 snapshot of the present. You have been handed this
3 job from the past, all the way down to Winthrop to
4 you on how this community is going to be developed.
5 And right now it's totally in your corner.

6 Because once this is gone, the culture, just
7 believe me there's no question that 1,000 acres that
8 are unspoiled with -- in this community is the most
9 important cultural aspect to the town of Old
10 Saybrook. There's no question about that. So once
11 it's gone, it is gone. And only to the regrets of
12 our future generation, because the past generation
13 from John Winthrop on has saved this property. And
14 it's been saved for a reason. It didn't happen by
15 accident that no one built on this property. They
16 built all around it. I'm two miles away in a 1730
17 colonial. I know all about old early colonial
18 history.

19 I have also heard this is going to be some kind
20 of look like Essex Village or something I think I
21 remember hearing. Essex Village. Essex Village
22 consisted of houses of 1800 and under, similar to
23 mine. And I know that they didn't build duplexes
24 back then. That I'm sure of.

25 So anyhow, I guess it all boils down to where

1 the cultural history of Old Saybrook is going to end
2 up. It's in your hand. It's passed on to you. Your
3 forefathers passed it on to you and it's your
4 responsibility to do what you think is right. Save
5 the culture of Old Saybrook. Thank you.

6 CHAIRMAN MCINTYRE: Thank you. Anyone else
7 wishing to speak from the public? Yes, sir.

8 MR. RANELLI: Good evening, Mr. Chairman,
9 Members. I'm Matt Ranelli from Shipman & Goodwin.
10 And I am here behalf of the town of Essex.

11 I will be brief in the interest of the fact that
12 I am losing my voice and it's late at night. And
13 most of what I have to say has already been touched
14 upon, but, please, I would ask that you not mistake
15 my brevity for -- as a measure of the concerns that
16 the town has.

17 We have sent to the town, to the commission a
18 resolution from the town of Essex. As a housekeeping
19 I want to make sure that's been received and into the
20 record.

21 MS. NELSON: Yes.

22 MR. RANELLI: And I have some copies if that
23 would be helpful. I have three other quick points I
24 will touch on. And again, they have been touched on
25 already, so I will try to be brief.

1 I agree with the comments that were in Attorney
2 Branse's I think latest letter to the commission and
3 touched on by CFE this evening that this issue of the
4 fee property owned by the DEP, that the railroad
5 property I think is a real issue. I think in
6 Attorney Branse's letter it brought up in the context
7 of whether this commission could issue an approval in
8 it that is conditioned upon gaining that access. But
9 I think there's a more fundamental question, and that
10 is whether the application is properly before the
11 commission, because this is not a situation where the
12 applicant will be looking to get an administrative
13 approval or some sort of permit which they would
14 ostensibly have a right to if they comply with all
15 the permit requirements. This is more of a
16 negotiation between property owners. So that's
17 different in kind.

18 For example, this issue is distinguished from
19 the Westbrook access on 173 (sic), which is more of
20 an administrative proceeding or the community septic
21 approval, which is, again, more of an administrative
22 proceeding. So there is I think, as the applicant
23 has suggested, a hierarchy of order in which you do
24 these things. But I would submit to you that getting
25 the approval of a property owner whose property is on

1 your development is predicated on -- falls again on
2 that natural order, not after the local approvals as
3 would be the case beginning with the administrative
4 permits and the like which you're more familiar with.
5 I think you can ask yourself in your own experience
6 do we often get applications that require the use of
7 a neighbor's property without the neighbor either
8 signing the application or submitting a letter
9 consenting to the application being brought or some
10 other evidence, like an option contract or a contract
11 to purchase in this case. None of those things are
12 in evidence. And I think none of those things are in
13 place based on my discussions with the DEP. So I
14 think the applicant -- I think that's an issue the
15 applicant's aware of this evening and one that should
16 be addressed and maybe the commission's counsel could
17 advise them on.

18 I would also just add that can be distinguished.
19 This is not a situation where the commission is being
20 asked to determine property rights, something a
21 commission would avoid doing where there's a dispute.
22 In this case there's no dispute. Maps show it as a
23 fee that's owned by another entity. So there's
24 really no property dispute. It's not the kind of
25 thing where the commission would -- well, we are not

1 going to get into it. That's private property
2 rights. There is no -- there is simply a lack of
3 consent of the property owner. And this plan
4 necessitates or is predicated on being able to cross
5 that property. It also sets a dangerous precedent.
6 This commission does not want to waste its precious
7 time reviewing applications if that first order of
8 business isn't taken care of. And that's
9 fundamentally the reason why obtaining property
10 rights or at least option contracts or the like is
11 usually prerequisite to bringing an application.

12 So I agree with Attorney Branse and the other
13 speakers this is a problem, but I think it's a
14 problem different in kind from the type of problem
15 you would get of what order do we get our permits in.

16 The other issue -- and I would be happy to take
17 any questions, but I'll just move along, because I
18 think you have heard enough on this. The other issue
19 is the yield analysis. The town is obviously
20 concerned with the number of -- town of Essex with
21 the number of units here and the fact that they are
22 outletting to Bokum Road or to 153. And there is no
23 residential or regular access through Ingham Hill
24 Road. So we would support, obviously, the sort of
25 lot-by-lot analysis the staff has been going through

1 to determine whether the conventional plan is in fact
2 a realist -- you know, shows lots that could
3 realistically be approved. And I think you're
4 familiar with the regulations. And that is the
5 standard in your regulation that they have some
6 reasonable subdivision of lots. So you should look
7 at those to see if those lots really are a realistic
8 subdivision.

9 But what I would just repeat from my discussion
10 last time we met is that -- the golf course issue.
11 Again, I've heard it couched a few ways about how do
12 we handle the golf course. And I have heard, well,
13 you can consider not approving the golf course or
14 treating the golf course in another way. And I think
15 that there is a third way of handling the golf course
16 that hasn't been addressed or hasn't been given a lot
17 of attention, and that is that the regulations
18 contemplate a comparison of like uses. Not the
19 addition of a different kind of use after the
20 conventional subdivision plan and in the open space
21 plan. So what I would suggest is you could also take
22 the golf course and lay it over the conventional plan
23 and determine how many lots the yield analysis would
24 have yielded if you had reserved out the 151 plus
25 acres that represent the golf course.

1 I think one of the members earlier this evening
2 asked if the applicant could -- would provide such an
3 overlay. And I suspect that was the reason, but I
4 think that is also an option well within your
5 authority if you look at the regulations and the
6 consideration you have to make. I believe it's in
7 Section 52. And also, your regulations provide that
8 you have the authority to ask them for additional
9 information. So I think that I ask that you not lose
10 site of that option, that you simply take a look at
11 the open space plan. If you think the golf course is
12 a good idea, lay it over the plan and see what the
13 yield analysis would bring at that rate or any of the
14 other options that have been presented. Certainly if
15 you think that the quality of the open space is
16 higher and better service the standards set forth in
17 the regulations, then you could condition or modify
18 your approval on eliminating the golf course. But I
19 didn't want you to lose site of that other option.
20 And that's really it. That's my presentation unless
21 there are other questions.

22 CHAIRMAN MCINTYRE: Thank you. Is there anyone
23 else from the public wishing to speak? Seeing no
24 other hands raised I want to close the -- yep. Okay.
25 Just close the public portion of the public hearing

1 and Attorney Royston would like to say something.

2 MR. ROYSTON: Just to conclude, David Royston
3 for the applicant.

4 As we indicated that we would file written
5 comments to materials we received plus we will
6 respond to issues that have been raised at this
7 meeting. And as we have indicated that will be filed
8 by December 23rd.

9 There was one matter which we would like to give
10 testimony tonight because of its nature, and that was
11 the video. And simply I would like to have Stuart
12 Cohen, if he may just give five minutes of testimony
13 with respect to the video that was shown.

14 CHAIRMAN MCINTYRE: Sure.

15 MR. ROYSTON: Thank you.

16 MR. COHEN: Am I allowed to address the other
17 pesticide-related item that Mr. Cryder also brought
18 up at the same time as the video?

19 MR. ROYSTON: Just do the video at this point.
20 We'll respond to the rest in writing as we indicated.

21 CHAIRMAN MCINTYRE: Fine.

22 MR. COHEN: Okay. The video was discussing a
23 course that was implying -- was inferring to a course
24 under construction called the Bridge Golf Course when
25 it was referring to contamination. There was a

1 chemical that was in the groundwater in Long Island
2 as a result of a variety of uses, which includes
3 turf, also vegetables and potatoes, referring to a
4 course. And there was people speaking on the video.

5 First, contamination just came down the hill to
6 the trout pond. Well, we spearheaded the
7 environmental study for that course, designed the
8 course called the Bridge Golf Course. We put in 14
9 monitoring wells. And the analysis on this has been
10 very intensive. It's reviewed by the Suffolk County.
11 Doom and gloom predictions are not accurate. In
12 fact, of the hundreds of analyses that have been done
13 since 1998, I believe that the only times we found
14 any detections were two in one well that had a sump
15 system draining right next to the well. And that was
16 after the lab lowered its point for contamination.
17 It hasn't been found on the golf course despite what
18 was shown on the videos they predicted.

19 The other thing the video said one of the Beth
20 Page golf courses is going to phase out the
21 chemicals. I'm not sure of the source of that
22 information, but I was just in a meeting where some
23 of this was discussed. The Beth Page Golf Course is
24 where the U.S. Open was held. Cornell has been doing
25 a study there of one of the golf courses. And they

1 tried the all organic approach. They have 18 greens
2 at that golf course. They treated six of them like
3 U.S. Open style, six of them with integrated pest
4 management, which is our approach, and six of them
5 with the all organic approach which was discussed in
6 the video. And the six greens with the all organic
7 approach, that program was a failure the first year.
8 And then the second year when they tried to improve
9 some things, it was a failure. So they had to
10 abolish the all organic approach. And so as a result
11 of that feedback, Cornell has been able to educate
12 the people in Long Island that it's not feasible, but
13 an organic with IPM could work with great care.

14 The -- there were -- just to say -- not to give
15 a response, but there was grossly misleading
16 statements about U.S. geological survey data. The
17 data quoted one of my papers, and it was a colleague
18 of mine that wrote the website. But you were only
19 handed a portion. They deleted the last two columns.
20 And the numbers were way, way off. And that's
21 addressed in tab six in this handout that we gave to
22 you today.

23 CHAIRMAN MCINTYRE: Thank you very much. Yes,
24 ma'am.

25 MS. MCCUIN: Can I say one final thing?

1 CHAIRMAN MCINTYRE: Yes, you may. This is the
2 last person.

3 MS. MCCUIN: My name is Suellen McCuin, 24
4 Ingham Hill Road, Essex.

5 And my -- among other concerns, grave concern is
6 the golf course. I just wanted to point out one
7 thing. There's been lots of great testimony tonight
8 about a myriad of issues. One thing about the golf
9 course. One thing that strikes me about all the
10 professionals. They are -- all the money that's been
11 spent on this, is even in the paper, the newspaper
12 that The Preserve sent around. They talk about and
13 they have told this commission that there's not a
14 better environmentally sensitive project. And I even
15 saw in a letter to the editor by one of their folks
16 that I think they claimed in all of New England.

17 I see a huge flaw, because they say they started
18 with the environment. That's why they hired all
19 these experts. They didn't start with the
20 environment. They started with Tim Taylor's plan.
21 And Tim Taylor's plan everyone said as far as the
22 golf course it was flawed. It had problems. And
23 that's where they started. And that's why, you know,
24 that is the plan. And I actually asked if I was
25 correct in that this is the same plan going forward.

1 The plan that was recently reapproved by inland
2 wetlands. And I was told that, you know, there
3 definitely were some things found. And we have
4 tweaked some holes, but still there's a few greens
5 that go right down into Pequot Swamp. And so I just
6 wanted to state for the record that whenever this
7 group says they are giving you the most
8 environmentally sound plan for that property, they
9 have not. Because, you know, with the fact that they
10 have started with Tim Taylor's golf course plan
11 which, you know, just literally is like on the banks
12 of Pequot Swamp and affecting all of our, all of our
13 watershed. So anyhow, I just wanted to say that.
14 Thank you.

15 CHAIRMAN MCINTYRE: Thank you very much. Okay.
16 As I stated before that will be the last speaker for
17 tonight.

18 We do have some decision that we'll need to vote
19 on. Talk about the site walk. The first thing on
20 the site walk -- I guess it's been recommended this
21 Saturday.

22 MR. ARESCO: Saturday again?

23 CHAIRMAN MCINTYRE: I'm just throwing it out. I
24 know it's a decision that the board has to make. So
25 anybody on the commission going to be available for a

1 site walk on Saturday?

2 MR. ARESCO: Let's take a look at our busy
3 social calendar.

4 MR. HANES: Judy will not be able to.

5 CHAIRMAN MCINTYRE: Neither will I.

6 MR. BRANSE: The question is to have an
7 additional site walk as requested this Saturday.

8 CHAIRMAN MCINTYRE: This Saturday and then we'll
9 go on to where we can have it. Right now there's
10 three.

11 MR. ARESCO: I'm available.

12 CHAIRMAN MCINTYRE: Three people that can't be.

13 MR. TIETJEN: Go for it.

14 CHAIRMAN MCINTYRE: I have been out to the site
15 before previously and I have walked Ingham Hill Road
16 before. I don't see anything wrong. As far as the
17 applicant goes, if we have a site walk, if say
18 myself, three members can't make it, that wouldn't
19 kill it, right?

20 I mean we could still have it or would it not be
21 a good thing to do?

22 MR. BRANSE: For the record, Mark Branse.

23 The problem becomes then that some commissioners
24 have seen some parts of the site and other
25 commissioners have seen other parts of the site. And

1 now you're going from different information bases. I
2 suppose the commission could walk the next 12
3 Saturdays. It's almost 1,000 acres. I guess the
4 question is have you seen enough of it? Do you feel
5 you need to see more of it? And if you do, then you
6 all need to do it. Because it's going to have to be
7 noted again as another hearing and -- not hearing.
8 It's a continuation of this hearing. It will again
9 be open to the public. Photography is allowed at
10 meetings of the commission just for future reference.
11 That's the Freedom of Information Act. That's a
12 requirement.

13 CHAIRMAN MCINTYRE: Okay. My feeling is myself,
14 that when I heard that we wanted to have another site
15 walk, that being we are not doing a final subdivision
16 approval, what we are doing is a conceptual issue.
17 And everything we are doing is basically conceptual,
18 and that the -- all the wetlands are depicted on the
19 maps, all the Ingham Hill Road is depicted on the
20 maps. We all know where it is. We know it's going
21 to be preserved. Right now myself personally, I
22 don't really see another need to go out to the site.

23 And to address what the public had asked
24 earlier, the only reason we went out to the one site,
25 that we went to that particular site -- and I would

1 state that the applicant did not try to avoid
2 going -- the question proposed last time we went on
3 the site walk was where did we want to go, the
4 commission. And the commission determined where we
5 would go. And during that site walk on Saturday, all
6 of the commission members had made an initial plan
7 when we went in how far we were going to go. And at
8 the recommendations of some of the commission
9 members, we even went further than previously -- than
10 we intended to, because we had the additional time.
11 So we did. And we did get to see Pequot Swamp. We
12 saw some wetlands. And I don't know if because of
13 the issue that our attorneys just raised of getting
14 everyone together again to go on another site walk.
15 And we could go -- how many site walks should we go
16 on? And based on the conceptual issues of this
17 project and what the application really is, we have
18 gone way beyond the scope in many arenas of this
19 application. I myself -- I can't make it Saturday.
20 There's three other people. So I don't know.
21 Saturday I would say is out as a site walk.

22 Attorney Royston, it looks like you want to say
23 something.

24 MR. ROYSTON: Mr. Chairman, certainly any other
25 day that was acceptable to the commission, I'm sure

1 we would be able to make arrangements for it. So
2 it's not our demand or requirement that it be
3 Saturday. That was a suggestion. Any other day
4 would be fine. Any other mechanism that your counsel
5 can assure you wouldn't involve a meeting, that would
6 be fine also. But I would suggest any other day that
7 the commission can decide upon we could accommodate.

8 CHAIRMAN MCINTYRE: How many people on the board
9 feel the necessity that they have to go out there?

10 MR. ARESCO: Definitely. Lines on the map don't
11 tell you everything.

12 MR. TIETJEN: This would be -- sorry to have to
13 ask stupid questions, but I assume from what you're
14 saying this would be part of The Preserve or at least
15 part of a preserve that we have not seen yet. It
16 seems to me that we have had other site walks to
17 which not everybody on the commission went, and yet
18 they were all qualified more or less to vote on
19 whatever application it may have been that they
20 didn't get to. Is that without nothing or is it
21 possible to have part of the commission go --

22 CHAIRMAN MCINTYRE: Couple of things.

23 MR. TIETJEN: -- and report to the rest?

24 CHAIRMAN MCINTYRE: Attorney Branse brought up
25 to walk the 1,000 acres. You could if -- the

1 commission members could say we want to walk the
2 whole 1,000 acres, but what are you accomplishing and
3 are you going to be able to do it? And what
4 benefit -- what does it prove? We know that there's
5 wetlands out there which are going to be -- you know,
6 we have regulatory protection. We know there's a
7 road out there that's in dispute of the town. We
8 know the makeup of this area. And I would fully
9 support, if I was in an application stage where we
10 were approving specific locations on a map where we
11 know we are making permanent decisions, where that
12 size per lot or per area. We are not making those.
13 This site walk is just to go out and look at a
14 general road, to see where the road is. And that's
15 all this site would be to accomplish. And unless the
16 applicant thinks there's more than that to be
17 accomplished, I don't know.

18 But the point I think I am trying to make
19 without rambling this late at night, when the
20 application does come before us -- the commission
21 needs to keep this in mind. When the application
22 comes before it, there will be plenty of time to go
23 out. And if in fact it does -- I shouldn't say when
24 it does. But if it does then there's plenty of time
25 to go out and review anywhere that we want to do.

1 It's another process. And it could be more site
2 specific and interest specific, but I'm willing to
3 entertain -- I mean I'm just one person on this
4 commission just trying to run this thing. It just
5 means what -- your vote means one. If you want to
6 figure out a time to go out on the site walk and I'm
7 available, I will be more than happy to go. I can't
8 make it Saturday and I can't make it the next
9 Saturday. I have to work. That's my paying job.

10 MR. TIETJEN: Let's go for it.

11 CHAIRMAN MCINTYRE: But when?

12 MR. ARESKO: I want to go.

13 CHAIRMAN MCINTYRE: Who wants to go and when?

14 MR. ARESKO: Well, let's get a time.

15 CHAIRMAN MCINTYRE: Throw something out there.

16 MR. ARESKO: We have Mondays, Tuesdays,
17 Wednesday, Thursday, Fridays. Let's pick one.

18 CHAIRMAN MCINTYRE: I can't go during the week.
19 The only time I can go is on a Sunday probably right
20 until Christmas.

21 MR. TIETJEN: What's the motion?

22 CHAIRMAN MCINTYRE: There is no motion. It's a
23 discussion. We are trying to determine when it would
24 be a good time that the commission as a whole --
25 Attorney Branse, basically -- correct me if I'm

1 wrong. Attorney Branse, you basically said that the
2 best scenario is everyone from the commission goes on
3 the site walk.

4 MR. BRANSE: That's correct. Because you'll all
5 be working from the same base of information when you
6 start to deliberate.

7 CHAIRMAN MCINTYRE: Right. And then if we
8 cannot come to a consensus on a good date for
9 everyone to go, I would highly recommend that we do
10 not go on the site walk. I have laid out my time
11 tables. I'm not available any Saturdays until
12 Christmas. And after Christmas I'm going away. And
13 during the week I work, so I can't get off. It's a
14 high season. So the only days I'm going to be
15 available is on Sundays.

16 MR. ARESCO: Then Sunday.

17 CHAIRMAN MCINTYRE: I would be glad to do it on
18 a Sunday, if that's when the rest of the commission
19 wants to do it.

20 MR. ARESCO: Let's do it on Sunday.

21 MS. ESTY: I have a problem with Sunday.

22 MR. TIETJEN: I'm game.

23 CHAIRMAN MCINTYRE: I hope we are not mixing
24 church and state.

25 MR. TIETJEN: Call it a religious experience.

1 MR. ARESCO: Sunday? Pick it out.

2 MR. BRANSE: Then it is a continuation of the
3 hearing. Can we have a meeting on a Sunday?

4 MR. MERRIAM: This is Dwight Merriam, co-counsel
5 for the applicant.

6 In a side conversation here with David Royston,
7 I can't recall a hearing being conducted on a Sunday
8 or a state holiday. Doesn't mean there couldn't be,
9 but I don't recall it. And obviously we are not
10 going to research it on the spot, but as I suggested
11 to you, Attorney Branse, it's not necessary that a
12 site walk be a continuation of a public hearing. And
13 it's also not necessary for all of the commissioners
14 to go at the same time. So that subject to your
15 consideration and approval, it is possible for
16 individual commissioners to go on a guided tour so
17 they go at the same place, that there is no
18 discussion of evidentiary matters and come in and
19 out. And as I understand it the objective here is a
20 rather limited tour on the extension of Ingham Hill
21 Road to see a completely different part of the site
22 which will be preserved in its present natural state.
23 So I do think you have some alternatives here.

24 MR. BRANSE: I guess I don't agree. The
25 public -- I have seen site walks that precede the

1 opening of a public hearing where people just sort of
2 go out and wander and look and stuff like that. I
3 think the problem here is that the public hearing is
4 open. And wherever a quorum of this commission goes,
5 until the public hearing closes, the public hearing
6 goes with them. And I don't know -- and it's your
7 risk more than the commission's. I mean if there's
8 an appeal on this basis, it's you and Mr. Royston who
9 will have to defend that aspect of it. So I'm going
10 to put it right on you. But I tell you I think it's
11 a bad idea.

12 MR. MERRIAM: I would like to check the limits
13 of my errors and omissions coverage first.

14 Well, back to you, Mr. Branse. Are you willing
15 to opine that a public hearing can be conducted on a
16 Sunday or a state holiday?

17 MR. BRANSE: No. I don't know. I mean my
18 recommendation, if they are looking for one, is they
19 walked it once and once is enough. They've got maps.

20 MR. TIETJEN: We didn't walk all of it, though.

21 MR. BRANSE: And you never will.

22 MR. TIETJEN: Well, then how can we make a
23 decision if we don't know what the left-hand side is
24 saying to the right-hand side?

25 We have over half of the project.

1 MR. BRANSE: A Saturday is perfectly fine. But
2 if the chairman's not available, then you're back to
3 a partial commission again and the hearing is open.
4 If you close the hearing tonight, all right, then I
5 suppose you can walk anywhere. But no one's asking
6 you to do that.

7 MR. MERRIAM: Dwight Merriam again.

8 Two other alternatives. One is to continue the
9 hearing to a site walk, and maybe not all the
10 commissioners can attend. You made a comment earlier
11 about the value of having everyone there. But I have
12 certainly seen site walks both within the hearing and
13 outside of a hearing in which not all voting
14 commissioners were able to attend. That's one
15 alternative.

16 And the other is to wait until after the close
17 of the hearing on January 5th, assuming it closes
18 that night, and for any commissioners that are
19 interested in a subsequent site walk prior to their
20 deliberations and vote can then have one outside of
21 the context of the hearing.

22 MR. BRANSE: I think that second option is
23 safer. The only thing I would say is then I would
24 want the site walk conducted by the town engineer. I
25 would want no party speaking even to the point of

1 orientation. I want the town engineer to be totally
2 the one leading the walk. But the idea of a part of
3 the commission going -- I suppose you can call it a
4 subcommittee. How do you have a subcommittee while
5 the public hearing is open and it's a commission
6 matter? Like I said, it's your risk. It's your
7 risk, not the commission's. But I think it's a very
8 bad idea for your sake.

9 MR. ROYSTON: Attorney Royston, who also will
10 check his errors and omissions policy. But I have
11 another inquiry as to whether or not if the site is
12 designated, marked along Ingham Hill Road and it is
13 not conducted as a meeting, can the applicant give
14 permission to any individual members with no more
15 than two going at one time to direct them as to where
16 they can go up on Ingham Hill Road, Old Ingham Hill
17 Road along a marked route without being accompanied
18 by the applicant?

19 MR. BRANSE: I would say no. I would say what
20 you could do -- I think you can flag anything you
21 want. And if you want to waive any claims of
22 trespass, I suppose anybody can go out there whenever
23 they want to and follow the flags. After all, it's
24 not posted no trespassing, is it?

25 MR. GODERRE: Yes, it is.

1 MR. BRANSE: It is. So you would have to say --
2 and then if you flag an area, any member of the
3 public or any member of the commission can go out
4 there anytime they want as long as they stay along
5 that line of flags.

6 MR. ROYSTON: Again, David Royston.

7 Could we produce a combination of the two, have
8 a continued site walk as part of the public hearing
9 for such members of the commission as can go? Those
10 members of the commission who are unable to attend
11 who would wish to enter onto the property to take
12 their own look would be given permission to do so.

13 MR. BRANSE: As long as they follow that route
14 that you've flagged, I think that's workable, too.

15 MR. TIETJEN: Not the one that we have just
16 done.

17 MR. BRANSE: No, no, no. We are okay on that.

18 MR. MERRIAM: It's virtually commissioner absent
19 of hearing, listening to the transcript -- reading
20 the transcript, listening to the tape.

21 MR. BRANSE: That's why Mr. Landino's idea about
22 flagging is important. Then you'll know an absent
23 member is seeing the same thing that other members
24 did.

25 CHAIRMAN MCINTYRE: Can I just throw something

1 in here, add another twist. What -- I'm hearing
2 underlying conversations going here which we
3 shouldn't be having, but they are going on, that I
4 get the feeling from the board that -- I am happy
5 with seeing Ingham Hill Road if I can, but I really
6 don't think in my opinion, because I'm dealing with a
7 conceptual plan and I have plans in front of me to
8 make decisions. I have enough information to make a
9 decision. A site walk would be in addition to that.
10 And it would be nice, but I hear there's several
11 members that would like to go see -- I mean other
12 site walks. So I don't know. My question to the
13 board is how many site walks do you people want to go
14 on?

15 MR. ARESCO: Three. Well, there are sections
16 mentioned tonight that I would like to see that were
17 mentioned by -- so at least two more. Up on that
18 eastern edge. I mean up in there, specifically the
19 areas that were mentioned tonight and suggested by
20 the public. I think they were suggested by the
21 public and we should see them. So there were two
22 sections I think suggested by the public. So one if
23 not maybe two, two more walks will do it.

24 MR. TIETJEN: One. You really want to know I
25 would be willing to go on. I would be willing to go

1 on whatever number you designate or you invite us to
2 go on. Certainly one. I mean I wouldn't even go to
3 church.

4 CHAIRMAN MCINTYRE: From the conversation the
5 attorneys were having, I have a feeling Sunday is not
6 a day that we are going to go; is that correct?
7 Sunday. All the attorneys pretty much now assumed
8 that Sundays or holidays is not an appropriate day.

9 MR. BRANSE: I don't think you can do a meeting
10 that day. We are going from memory. David.

11 MR. ROYSTON: David Royston for the applicant.

12 If I could amend our request. I would amend our
13 request that the site walk still be conducted on this
14 Saturday, assuming that the number of members you've
15 indicated wanted to go could go this Saturday.

16 CHAIRMAN MCINTYRE: Right now there's only three
17 members that can go. Three out of the four that --
18 three out of the five that are here? Plus Judy
19 cannot go either.

20 MR. ROYSTON: And our request would be that we
21 would conduct that site walk. We would designate the
22 areas for it and they would be flagged. And that we
23 would give permission for any other member who wished
24 to go along the same site, to provide them with the
25 location map and would give them permission to take a

1 look at it on their own.

2 CHAIRMAN MCINTYRE: I would assume there would
3 be a very strong stipulation that they are only --
4 and Attorney Branse suggested make it clear for all
5 board members that anyone that went out on their own
6 would be restricted to those specific areas. And if
7 they did wander out of those areas, they would not be
8 able to bring any of what they saw outside of the
9 flagged areas into testimony.

10 MR. BRANSE: That's correct.

11 MR. ARESCO: Can we ask a question?

12 MR. ROYSTON: If I can expand on that, I think
13 this would be consistent with what we are discussing.
14 That at the time of the public hearing continuation
15 to that site walk, we would provide a map which would
16 show the location of where the meeting was going.
17 That map which would then be part of the public
18 hearing record.

19 MS. MCKEOWN: Sorry.

20 (Changes tape.)

21 MR. ROYSTON: So that as part of the public
22 hearing record, there would be the interpretive
23 location back showing where that site walk was going
24 would be in the record. That map would be available
25 to nonattending commission members as part of the

1 record who could use it if they chose to go
2 individually along that site. And I believe that
3 would be acceptable.

4 So I am going to ask Attorney Branse if he would
5 feel that that would be an acceptable alternative.

6 MR. BRANSE: I think that's being as safe as we
7 can be to protect the rights of parties who want to
8 know what the commission saw. And so the
9 commissioners are operating from the same basic
10 information. I think that's the best that I can come
11 up with and you can come up with.

12 MR. ROYSTON: That would be our request.

13 CHAIRMAN MCINTYRE: Right. And then the other
14 thing is that how many -- if we went out -- if the
15 commission members went out there, they could only go
16 one at a time or could they go two? I mean is there
17 a limit?

18 MR. BRANSE: As long as it's less than -- no
19 more than two.

20 CHAIRMAN MCINTYRE: No more than two, because
21 then it's not a quorum.

22 MR. BRANSE: Right.

23 CHAIRMAN MCINTYRE: Okay. So two can go as a
24 maximum.

25 MR. BRANSE: Other than Saturday when any of you

1 can go. Other than this Saturday date, which would
2 be your continued hearing with any of you.

3 CHAIRMAN MCINTYRE: Everybody can go.

4 MR. BRANSE: Everybody can go.

5 CHAIRMAN MCINTYRE: Right. We're just going for
6 orientation then.

7 MR. BRANSE: Right.

8 MR. ARESCO: I have a question. May I ask it,
9 Mr. Chairman?

10 CHAIRMAN MCINTYRE: Yes.

11 MR. ARESCO: The sites -- Attorney Royston, I
12 have a question for you. The sites, the areas that
13 are going to be mapped out, will they be the areas
14 that the public has mentioned? I'm specifically
15 interested -- the public raised areas that they felt
16 we should see. And I think we owe it to the public
17 to see those areas. So will those be the areas that
18 are flagged?

19 MR. ROYSTON: What we have identified is --

20 MR. ARESCO: Up in that eastern part.

21 MR. ROYSTON: Our offer was to go along Old
22 Ingham Hill Road, to indicate the place where Old
23 Ingham Hill Road would cross the main spine access
24 road, to go to the area to designate where the nature
25 center would be located. And I'll ask Dennis Goderre

1 to answer where else we would be able to go.

2 MR. ARESCO: Okay. I am going to ask my
3 question directly. Can I ask it of Dennis?

4 MR. ROYSTON: I would think so, because I'm not
5 sure exactly where the member of the public said
6 was --

7 MR. ARESCO: They said something about the
8 north. Is that member here that maybe they could
9 reiterate?

10 MR. CRYDER: Old Ingham Hill Road and Ingham
11 Hill Road, but -- and however I'm limited to that and
12 cross over the main road, go down to the nature
13 center towards the Westbrook line. My suggestion was
14 you would still not see the majority of wetlands to
15 the eastern side.

16 MR. ARESCO: Then that's what I want to see.

17 MR. CRYDER: The wetlands to the western side
18 that particularly traverse the planned golf course
19 area.

20 MR. ARESCO: I would like to see that.

21 MR. GODERRE: If I may, it would be extremely
22 difficult for any member of the commission, either in
23 a group of two or even in a group of five, if you're
24 not familiar with the site even to follow flags and
25 be comfortable out there. If it wasn't in a group

1 led by somebody that --

2 MR. CRYDER: On the site --

3 MR. BRANSE: Just a moment. I'm sorry. What
4 were you saying, sir?

5 MR. GODERRE: If you're not out there on the
6 site with somebody who's familiar with the site, has
7 been on the site before fairly recently, it may not
8 be very easy for just one or two people to go out by
9 themselves if you can't have a quorum, don't have the
10 full group, for those members that want to go out, to
11 go out later when they have time, it would be
12 extremely difficult for them to find their way
13 around. Especially this time of year, especially if
14 there's no wood roads to follow and you just go
15 through the woods. It was hard to find some of the
16 flags the other day. Without winds to blow them
17 you're not going to see them.

18 CHAIRMAN MCINTYRE: The only way to traverse
19 that property if you don't know it is with a GPS.
20 And other than that I got lost out there myself.

21 MR. ARESCO: So we are not going to see the
22 areas -- the sensitive areas that were suggested is
23 what you're saying, because it's too difficult to
24 traverse. I mean that eastern section.

25 MR. ROYSTON: What we are saying is that we will

1 provide the site walk along Ingham Hill Road, which
2 is an area which is within the preserved open space.
3 We are not saying we would deny you the access to
4 areas which you might consider sensitive or not.
5 That's obviously not our intent.

6 MR. ARESCO: Are we free to go to those areas --
7 I mean if we wanted to go to the areas -- if I wanted
8 to go up into the northeastern corner there and find
9 my way through there, am I allowed to do that or is
10 it just the flagged areas?

11 MR. ROYSTON: I think what Mr. Goderre is saying
12 and my guess is if you signed a waiver, because you
13 could very well get lost in there.

14 MR. BRANSE: The waiver doesn't help. The
15 problem is where the commission walks the absent
16 members need to be able to walk or they are not going
17 to have access to the same information. The
18 applicant will take you anywhere you want.

19 CHAIRMAN MCINTYRE: Can I just -- the hour is
20 late and we want to get this wrapped up.

21 The decision that we need to make is -- we know
22 we want to take -- because of the public has asked
23 for this -- this is what happened at the last public
24 hearing. This is why we are being asked to walk
25 Ingham Hill Road. I agree on that, that we should.

1 If after we do the Ingham Hill Road, we do have -- so
2 everybody knows later on during deliberation or at
3 another point in time prior to the closing of
4 everything -- well, not closing. Even prior to the
5 public hearing -- well, no. Because that's going to
6 be the 5th. So everything will close -- should close
7 on the 5th. That after the 5th we still do have the
8 opportunity to go out and look around if we wanted to
9 with the site walk until those 65 days are complete
10 during the deliberation, correct?

11 So what we're doing right now we'll go out on
12 Saturday. The ones that can go go Saturday. The
13 ones that can't follow the map that everybody else
14 walked and we are all set. We are covered.

15 MR. BRANSE: Right.

16 CHAIRMAN MCINTYRE: If in fact anyone else from
17 the commission -- we get together again on the 5th
18 and we determine that we want an additional site walk
19 for whatever reason and make a consensus. As the
20 board we can muster up another site walk if we want
21 to.

22 MR. ROYSTON: I believe Attorney Branse has
23 indicated that in that latter event that would be a
24 site walk conducted by your staff and your own
25 engineer.

1 CHAIRMAN MCINTYRE: Right.

2 MR. ROYSTON: Not by the applicant and it would
3 not be a public hearing.

4 MR. BRANSE: That's correct.

5 CHAIRMAN MCINTYRE: Right.

6 MR. BRANSE: Public meeting. It would be a
7 public meeting. It would not be a public hearing.

8 CHAIRMAN MCINTYRE: Right. Now, my question is
9 can you take that into consideration during
10 deliberation, anything you see out there?

11 MR. BRANSE: I don't know.

12 CHAIRMAN MCINTYRE: I wouldn't think so.
13 Because I think it's pretty cut and dry.

14 MR. BRANSE: There's not much case law on site
15 walks. We do know that -- from the case law that
16 there is, we know that the public needs to know where
17 you went and that if you're using it as an element of
18 your decision making, if there's something particular
19 that you saw that's going to influence your decision,
20 you need to say it on the record, which means it
21 would have to be done before the public hearing
22 closes. So I don't know how you could go out
23 afterwards and use it in your decision making.

24 CHAIRMAN MCINTYRE: Okay. That's what I was
25 getting at. So I guess I would like to make a motion

1 that we have a site walk on Saturday -- what's
2 Saturday's date?

3 MR. ARESKO: Eleventh.

4 CHAIRMAN MCINTYRE: On the 11th for all those
5 members that can attend. For those that cannot
6 attend, the applicant will provide a map indicating
7 the location of the path or area that the site walk
8 occurred on and that individual members will be
9 allowed to go out on that site walk on their own to
10 get orientated and only no greater number than two
11 individuals at one time from the commission can go on
12 those individual site walks.

13 Anybody want to second that?

14 MR. HANES: I'll second that.

15 CHAIRMAN MCINTYRE: Okay. The motion has been
16 made and seconded. Any discussion?

17 MR. HANES: What time?

18 CHAIRMAN MCINTYRE: What time, there you go.
19 What time? Well, I'm not going so I'm not going to
20 make the time.

21 MS. NELSON: I have a workshop on Saturday.

22 CHAIRMAN MCINTYRE: So I would suggest in the
23 interest -- so that the board members can also attend
24 the workshop, I would suggest that it be done in the
25 afternoon, sometime afternoon. What did we say

1 earlier, 1:00, 1:30?

2 MR. ROYSTON: I had suggested 1:30 on the basis
3 that the workshop is ending at 12:30.

4 MR. ARESCO: One thirty.

5 CHAIRMAN MCINTYRE: Okay. So the motion will be
6 amended to be the site walk will be conducted at
7 1:30. Any other discussion?

8 MS. ESTY: Where do we meet, same?

9 MR. BRANSE: Meeting where?

10 CHAIRMAN MCINTYRE: We are going to meet at the
11 same location.

12 MR. ARESCO: Same place.

13 CHAIRMAN MCINTYRE: We are going to meet at
14 the --

15 MS. NELSON: Which is?

16 CHAIRMAN MCINTYRE: -- end of Ingham Hill Road.
17 How did we describe it last time? I don't remember.

18 MS. NELSON: You said the terminus of Ingham
19 Hill Road.

20 CHAIRMAN MCINTYRE: That's the word. The
21 terminus of Ingham Hill Road. And the -- is there
22 anything else we need?

23 MR. BRANSE: The only other thing is and from
24 that date to January 5th at seven p.m.

25 CHAIRMAN MCINTYRE: Continued to the public

1 hearing.

2 MR. BRANSE: In this room.

3 CHAIRMAN MCINTYRE: Okay. And we'll make the
4 motion one more time. Is that after the site walk we
5 will be -- the site walk will be a continuation of
6 public hearing on the Saturday and then on the 5th of
7 January we will continue the public hearing again in
8 this room at seven o'clock. And I would just --

9 MS. NELSON: I was just wondering that's a
10 regular meeting, which usually starts at 7:30.

11 MR. BRANSE: Oh, okay, seven thirty.

12 MS. NELSON: Well, that's what's scheduled with
13 the town clerk.

14 MR. BRANSE: If we start a half hour early, it
15 becomes a special meeting for that first half hour.

16 CHAIRMAN MCINTYRE: We'll amend it to 7:30.

17 And just for the general public's knowledge, on
18 the -- more than likely, just so everyone knows, it's
19 our intention to close the public hearing on
20 January 5th. However, what I am going to do is I
21 am going to open up the hearing one hour to the
22 applicant, one hour to the commission, one hour to
23 the public, and then another hour which the applicant
24 can summarize. And that will be the close of the
25 public hearing. And I do say that that's the

1 maximum, but it doesn't have to be the minimum.
2 Okay. Dick, we are going to vote.

3 MR. TIETJEN: Aye. Whatever it is aye. If I
4 don't get out of here --

5 CHAIRMAN MCINTYRE: Can I get a second.

6 MR. HANES: Second.

7 CHAIRMAN MCINTYRE: We can't do anything. We
8 have three people.

9 MS. NELSON: You can pass the motion. You can
10 adjourn.

11 MR. BRANSE: He voted. You have one aye.

12 CHAIRMAN MCINTYRE: All in favor.

13 (Affirmative response given by all.)

14 CHAIRMAN MCINTYRE: Opposed. Not hearing, okay.

15 MS. NELSON: So it's four to one -- or four to
16 zero. I'm saying it for the tape for Kim.

17 MR. BRANSE: Mr. Chairman, just in preparation
18 for the continued public hearing, there are just a
19 couple of things I want to focus the applicant's
20 attention on. The hearing -- the meeting is still in
21 session.

22 CHAIRMAN MCINTYRE: Excuse me.

23 MR. BRANSE: Gentlemen and others, the meeting
24 is still open. We have not adjourned as yet.

25 For the January 5th continuation, a few

1 things. One, I would like the applicant specifically
2 to address the interventions or intervention, the
3 allegation of unreasonable impairment, pollution,
4 et cetera. And the feasible and prudent alternatives
5 test. You have not addressed that yet. The
6 commission must hear testimony concerning that before
7 the hearing closes.

8 Second, with regard to this question of 8-3c in
9 the statutes and the requisite application, in that
10 actual application to the wetlands commission. As
11 you know in my most recent memorandum I have
12 expressed an opinion on that, but if I am wrong it is
13 the applicant's risk, not the commission's. So I
14 would like you to address that specifically, if you
15 haven't already in these other materials.

16 I also want Mr. Landino and his team to be
17 prepared to answer the question, which to me is a
18 simple question, as to whether in this application
19 for special exception, whether this application, and
20 I quote, involves an activity regulated pursuant to
21 Sections 22a-36, 22a-45 inclusive. That to me is
22 the central question.

23 Lastly, just a word of caution. You have
24 indicated you will provide your materials to the
25 commission and its consultant by the 23rd. There

1 will be some time for distribution. You'll bring it
2 to Ms. Nelson's office. She will then have to send
3 it out to the consultants. Consultants up so far
4 have always provided you with advance material and so
5 far have gotten reply books the night of the hearing.
6 It is possible that you will not receive commission
7 consultants' report until the 5th.

8 I don't know anyone's schedule, but there is
9 Christmas falling in between and New Year's. So it
10 is possible that that final night consultants will
11 have their responses that night verbally or written.
12 I don't know. I just want you to be aware of that,
13 that the holidays are in there. And based on new
14 material coming in it may not be possible to get you
15 advanced material as we have in the past. That's all
16 I had to say.

17 CHAIRMAN MCINTYRE: Just one other thing.
18 Attorney Branse, the issue of Ingham -- just in case
19 this comes up. The issue of -- and this has happened
20 a lot. The issue of the town road versus the -- we
21 still own the rights to that road. Where do we stand
22 with that, do you know?

23 MR. BRANSE: Yes, I do, but I am not going to
24 tell you. And the reason is because it's the ruling
25 of the town attorney and not me. It would be a board

1 of selectmen decision and a town -- based on a town
2 attorney's opinion. What counts from your standpoint
3 is that the applicant is saying that they are not
4 obstructing that route. They aren't saying whether
5 it is or isn't a public road. As far as the whole
6 discussion tonight about petitioning to make it into
7 a town road, I can certainly discuss that with you.
8 But the bottom line is that if such a petition were
9 filed, the cost of making the road a full town public
10 road would fall to those who are, and I quote,
11 benefited therefrom. That's the statutory language.
12 It would not be the taxpayers in general of the town
13 of Old Saybrook.

14 There's a judicial process. I just researched
15 this very recently. There's a judicial process under
16 which those who own land along that road would be
17 assessed the cost of bringing it up to specification,
18 whoever that is. So chances are that the people who
19 would be petitioning to make it a town road would be
20 the ones assessed to fund it, which is why the last
21 reported case on that statute was from 1896. Because
22 no one in the last 100 years has petitioned to
23 improve a road, knowing that they themselves would be
24 assessed for the cost.

25 CHAIRMAN MCINTYRE: Thank you. Okay. Motion to

1 adjourn.

2 MR. HANES: So moved.

3 CHAIRMAN MCINTYRE: Goodnight, everybody. Thank
4 you very much.

5 (Whereupon, the meeting was adjourned at
6 12:10 a.m.)

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C E R T I F I C A T I O N

I, Debrah Veroni, Registered Professional Reporter, do hereby certify that the within and foregoing 199 pages are a true and accurate transcription of my steno notes taken at the Public Hearing held by the Old Saybrook Planning Commission on the 8th day of December, 2004, at the Old Saybrook Middle School, 60 Sheffield Street, Old Saybrook, Connecticut, in the matter filed In Re: The Preserve Special Exception for Open Space Subdivision.

Certified this 20th day of December, 2004.


Debrah Veroni, RPR, LSR