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OLD SAYBROOK PUBLIC HEARING

THE PRESERVE SPECIAL EXCEPTION
FOR OPEN SPACE SUBDIVISION

WEDNESDAY, JANUARY 12, 2005, 7:30 P.M.

OLD SAYBROOK MIDDLE SCHOOL
60 SHEFFIELD STREET
OLD SAYBROOK, CONNECTICUT

PLANNING COMMISSION MEMBERS PRESENT:

- ROBERT J. MCINTYRE, CHAIRMAN
- H. STUART HANES, SECRETARY
- JUDITH S. GALLICCHIO, REGULAR MEMBER
- RICHARD R. TIETJEN, REGULAR MEMBER
- JANIS L. ESTY, ACTING REGULAR MEMBER
- SALVATORE V. ARESKO, ALTERNATE MEMBER
- JAMES S. CONROY, ALTERNATE MEMBER

ATTENDING STAFF:

- MATTHEW WILLIS, 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: The next order of business
2 is public hearing, The Preserve Special Exception for
3 Open Space Subdivision, 934 acres total, open space
4 542.2 acres. Ingham Hill and Bokum Roads, Map 55,
5 56, 61; lots 6, 3, 15, 17, 18. Residence
6 Conservation C District, Aquifer Protection Area.
7 Applicant: River Sound Development, LLC. Agent:
8 Robert A. Landino, P.E. Action: Close public
9 hearing no later than 1-12-05, deliberate and act
10 within 65 days, by 3-16-05 regular meeting.

11 First, I would like to start by letting everyone
12 know what the format of tonight's meeting is going to
13 be. We have had a lot of meetings. We have had a
14 lot of information given to us. It is our intention
15 to close the public hearing tonight. And we have
16 kind of come up with a little table so that everyone
17 can try to get to speak. We are going to start with
18 the applicant, then we are going to have Essex come
19 up and give a short -- excuse me. Essex is going to
20 come up and speak for 45. Everyone's going to get 45
21 minutes. The only one that doesn't need 45 minutes
22 is the selectman from Old Saybrook, Bill Peace. He's
23 going to give a five-minute presentation in between
24 Essex and -- the town of Essex and the Connecticut
25 Fund for the Environment.

1 So it's going to run the applicant is going to
2 give an opening, then it's going to be Essex, then
3 Bill Peace, first selectman from Old Saybrook, then
4 Connecticut Fund for the Environment, then we are
5 going to open it up to the public for 45 minutes, and
6 then to the -- my staff and the commission for 45
7 minutes, and then the applicant will close. And he
8 has 45 minutes to do that. Even with this schedule,
9 so everyone fully understands, that will probably get
10 us out around here -- out of here around 12:30, one
11 o'clock. So we will have a short break for anyone
12 recording here. She'll let me know when she's ready
13 for the break and we'll take it then.

14 Before I start with the applicant, Chris, the
15 town planner, Christine Nelson, do you have anything
16 that needs to be said at this time?

17 MS. NELSON: No.

18 CHAIRMAN MCINTYRE: Okay, Mr. Landino.

19 MR. LANDINO: Mr. Royston.

20 CHAIRMAN MCINTYRE: Everyone must remember for
21 tonight make sure you state your name for the record.
22 I don't think that's on yet. You'll have to turn it
23 on.

24 MR. ROYSTON: Mr. Chairman, for the applicant
25 David Royston.

1 Obviously, you've received as indicated a
2 tremendous amount of material. Part of it's
3 generated by literally the 11th hour. The
4 alternative information submitted by Connecticut Fund
5 for the Environment and the intervention by the town
6 of Essex resulting in a change in the time
7 constraints. We understand we have 45 minutes to
8 make this particular presentation and we will adhere
9 to that.

10 The first thing which I wanted to specifically
11 do was to just again emphasize the nature of the
12 application before this particular commission. This
13 is an application for a special exception under
14 Section 56 of the zoning regulations. It is an
15 application to allow this particular applicant to
16 proceed to an open space subdivision plan. As part
17 of that application, the applicant needs to present
18 you with a conceptual standard plan; the applicant
19 needs to present you with a preliminary open space
20 plan, and this is what the applicant has done. The
21 very nature of this application is one in which the
22 material is preliminary. It is not a final
23 subdivision application. Although we present a
24 conceptual standard subdivision plan, it is not an
25 application for that particular subdivision.

1 Likewise, there is no wetlands application,
2 because there is no activities which are applied for
3 with this special exception. There are going to be
4 many additional applications, each one which will
5 subject this plan to further scrutiny and review.
6 There's going to be the state traffic commission;
7 there's going to be the DEP looking at the septic
8 system, looking at the railroad crossing. It's going
9 to be the town of Essex, the town of Westbrook with
10 respect to 153. Numerous other applications need to
11 be made. They are not before this commission at this
12 time.

13 And it goes without saying I think that neither
14 is the suggestion or proposal that this property be
15 preserved imperpetude. And all of us agree that that
16 would be an ideal situation for its preservation, but
17 that is not the application before you.

18 In our response we have -- in written responses
19 in the past, we have gone through the six decisions
20 that have been laid out by your counsel as a decision
21 this commission must make in its application. We
22 will continue with that particular format. And the
23 six decisions, the first one is whether or not the
24 site is more conducive to an open space subdivision
25 as opposed to a development as a conventional

1 subdivision. And with respect to that decision, the
2 first decision which has been indicated that you need
3 to make, only I believe Mr. Fisher from Essex has
4 testified in favor of conventional development of
5 this property as an appropriate or preferable plan,
6 so I'm going to go directly to decision number two.
7 And decision number two is whether or not the site is
8 more conducive to an open space subdivision and if so
9 what is the proper number of lots.

10 And I want to state the legal position of the
11 applicant just in summary. It is in several areas
12 throughout the responses, but in summary as in
13 reviewing our conceptual standard plan, how do you
14 determine the lot yield. If you take a look at the
15 regulation, the regulation says that you can use a
16 variety of information, soil analysis, but one thing
17 you do not have to use is to have specific lot
18 testing as required for a conventional, a
19 conventional lot. It does not say that this
20 information cannot or should not be used in your
21 evaluation. It simply says that we were not required
22 to provide that. And it may be that we are somewhat
23 a victim of the admonition of the commission that
24 says when you give us the information, make sure that
25 your information is thorough. And we have attempted

1 to do that.

2 One of the ways to do that was to actually use
3 the site testing information. And when we used it we
4 used it under the same sort of criteria that has been
5 used by the commission in the past, and that is to
6 determine whether or not you can obtain a Public
7 Health Code for client septic system on your
8 individual lots. And that's what we did. You may
9 recall a portion of this property was subjected to a
10 conventional subdivision review; the 14-lot
11 subdivision which was approved off Ingham Hill Road.
12 And each one of those lots was looked at to see if
13 they could comply with the Public Health Code.

14 Your sanitarian has indicated he can't do final
15 approval until there's actual testimony. We
16 understand that. And that's the situation any time
17 you have a subdivision. It's not final approval.
18 And so that is the reason why we have used the soil
19 testing as part of our lot yield; also with respect
20 to the soil type analysis which has been the
21 methodology adopted by Mr. Jacobson. And we don't
22 dispute that that, again, is a method to determine
23 appropriate lot yield. And our disagreement with his
24 use of it simply centers around whether or not this
25 is the exclusive methodology. And there'll be

1 further discussions with respect to that.

2 Finally, whether or not you have to have a golf
3 course in your conventional plan if you're going to
4 have a golf course in your open space plan. And we
5 believe that it is not required by the regulation,
6 that the regulation has development land and open
7 space land. Within that development land we have a
8 mix of uses. We do not believe that we are required
9 to show that.

10 We have, however, in the material that you've
11 received, we have shown you a conventional plan with
12 a golf course for informational purposes. And the
13 purpose in doing this is because you can't simply
14 overlay a plan. You can't simply put the golf course
15 on top of our conventional plan. If you're going to
16 do a conventional plan with a golf course, you would
17 reconfigure it. So we have done that and that was
18 basically our legal position with respect to decision
19 two, the conventional plan.

20 And one final thought. Why are we making such a
21 big deal on whether or not our conventional plan
22 shows 293 lots? The only reason why we are
23 emphasizing the validity of that number is that in
24 the event this plan is turned down, in the event this
25 application is denied, and in the event there is a

1 further method of division of this property, we still
2 assert that that is the appropriate number. We are
3 only applying for 248 total lots or units as defined
4 in your regulation. That is the maximum. That's in
5 our application. But we have demonstrated that there
6 is more.

7 For further comment on decision number two and
8 decisions number three and four, I'm going to turn it
9 over to Dennis Goderre. Decisions number three and
10 four basically being if -- once you've determined the
11 plan number -- the yield plan numbers, should the
12 preliminary plan be approved, should it be modified
13 or conditioned and in what way. Those three and four
14 are in one decision. Dennis.

15 MR. GODERRE: Over the past several months --

16 CHAIRMAN MCINTYRE: Could you state your name
17 for the record.

18 MR. GODERRE: Dennis Goderre, BL Companies.

19 Over the last several months we have received
20 several comments from the staff, from the commission,
21 and from the public regarding the conventional
22 standard plan. And within our response, package
23 number four dated December 23rd, we have -- we have
24 a culmination of those responses in providing revised
25 plans that would respond to the concerns in questions

1 that have been raised. In total those revisions
2 resulted in the removal of ten lots under the
3 conceptual standard plan. Twenty-nine lots have been
4 revised and ten new lots have been provided. While
5 we are still proposing 293 lots as Attorney Royston
6 had mentioned, we do assert that we believe under our
7 methodology in terms of yield 293 total lots is a
8 density that requires a yield that the site can
9 support, significantly higher than what we are
10 proposing within our standard plan.

11 The revisions resulted in essentially four
12 categories: Roadway decision provisions; the
13 protection of natural resources; the protection of
14 cultural resources and soil type analysis; and the
15 application of our methodology.

16 Under roadway design for the conventional --
17 conceptual standard plan, we have employed the
18 alternative design standards that were previously
19 approved by the board of selectmen for the private --
20 the previous applications on this property. We've
21 applied those standards in the same fashion as we did
22 for the preliminary open space plan. So there was
23 equal comparison. There were some modifications
24 from -- as a result from staff comments and as a
25 result approximately 20 lots had been revised for

1 that. Some were either relocated or slightly
2 modified for the lot lines to accommodate all the
3 realignments and in some cases the elimination of
4 roadways.

5 Protection of natural resources. We have no
6 homes -- disturbance for home lots or septic systems
7 within the 100-foot upland review area of wetlands.
8 There are no roadways within the upland review area
9 of priority vernal pools. These are comments that
10 had been -- that we had heard from staff and we
11 applied those to our plans. We do have some roadway
12 crossings. And we have also eliminated -- or not
13 eliminated, but reduced significantly the amount of
14 disturbance that would be required.

15 Protection of cultural resources. Three lots
16 were eliminated along Old Ingham Hill Road in the
17 vicinity of the Ingham homestead. Those three lots
18 the elimination would ensure their protection. We
19 have added conservation in areas that would be closed
20 by the stone walls or the Old Ingham Hill roadway.
21 And the stone walls along the Old Ingham Hill roadway
22 would be preserved since no home lots disturbance is
23 proposed except for one crossing for the roadway. It
24 connects from east to west.

25 The soil type analysis. Staff's application is

1 one methodology and we are proposing a second. I
2 believe the fact that we have been able to modify 29
3 lots, eliminate ten, add ten more is a testament to
4 the fact that there's a lot of flexibility that
5 remains on the site. If we were to simply apply the
6 methodology that the town has chosen to state, we
7 would be proposing approximately 350 homes on this
8 site and we would have a minimum of 10 percent open
9 space. We cannot simply state that 30 percent or
10 40 percent of the soil conflicts would be removed
11 because of soil restrictions. If we were using
12 1 percent of that soil complex, we could then apply
13 that, but we are not. But if we were to apply the
14 methodology employed by town staff, we would have a
15 plan that would still yield the lot count of 252
16 homes, still above the 248 that are proposed.

17 As Attorney Royston had mentioned, we provided
18 for you information within our response package. We
19 cannot simply overlay a golf course from one plan to
20 another. It would be an entirely different course
21 for modifications. And for your --

22 CHAIRMAN MCINTYRE: Could you state which
23 exhibit you're showing.

24 MR. GODERRE: The plan that I just showed you
25 was the Illustrative Standard Plan, Jacobson Soil

1 Methods Approach - Preservation Plan. And this plan
2 is the Illustrative Standard Plan with Golf Course.

3 The golf course meets the minimum requirements
4 or exceeds the minimum requirements of the zoning
5 regulations for a golf course, and we also would
6 still meet the density of 278 home lots.

7 With respect to decisions three and four, again,
8 there has been several comments, concerns, and
9 questions raised about our proposed plan. That plan
10 has been revised, and I would like to take a few
11 moments to go through what those revisions are.
12 There are three categories of revisions that we have
13 summarized. One, the increase in open space; two,
14 the protection of cultural resources and natural
15 resources; and the promotion of social interaction
16 and enhancement of the sensitive community and the
17 insurance of public safety.

18 The increase in open space. Our past plan
19 proposed 514 acres and we have increased it to 517.
20 A slight increase, but there's still the flexibility
21 that we have been able to provide towns with more
22 needed open space. This was accomplished by the
23 reduction of lots, of single-family lots to their
24 proposed minimum to ensure protection of other
25 natural resources and cultural resources but still

1 maintaining the minimum requirement in the zoning and
2 planning subdivision regulations.

3 Protection of cultural and natural resources.

4 Because of the modification of lot sizes and increase
5 in open space greater habitat has been prioritized.

6 For instance, lots have been either eliminated or
7 been reduced in size to ensure the protection of the
8 eastern optunia humafusa (phonetically) cactus on the
9 eastern portion previously within solely a
10 conservation easement with a private home lot. This
11 is now within the open space system. Old Ingham Hill
12 Road is now entirely, with the exception of one
13 crossing of the roadway and one crossing of the golf
14 hole, hole 13, is now entirely within public-owned
15 open space. There was modification of five -- or six
16 home lots that were over the Ingham Hill homestead
17 along the east -- northeast corner of the property
18 near the Essex line. Those home lots have been
19 reduced in size. Now the Old Ingham Hill Road is
20 within the town-owned open space.

21 The golf lot has been modified to ensure that
22 the Pequot Swamp Dam, as referenced in the
23 archaeological report within response four, is an
24 architecturally significant feature and warrants
25 preservation. Previously it was proposed in the golf

1 lot and has now been revised so the dam is within the
2 town-owned open space.

3 Golf cart paths have been revised and removed,
4 which previously in some locations ran parallel and
5 were on the Old Ingham Hill Road. They have been
6 removed and now cross perpendicular. And in
7 addition, there was a golf cart path that crossed
8 nearby the Old Ingham Hill homestead that has been
9 completely revised to a new location to ensure its
10 preservation.

11 The most significant stone walls on the property
12 occur along the boundary of the entire site and along
13 the Old Ingham homestead, the farm area, and along
14 the old roadway. All of these walls will be
15 preserved. Any walls that are on site that will be
16 disturbed because of development will be stockpiled
17 on site and used in some fashion as features within
18 the landscape within the community and none would be
19 removed from the site.

20 In addition and as confirmed by ACS's
21 archaeological report, all archaeologically
22 significant sites on site are being preserved through
23 open space. River Sound has completed significant
24 due diligence for phase I and phase II of the
25 archaeological studies to ensure that this will

1 occur.

2 With respect to social interaction and sense of
3 community, a new town green has been added in the
4 eastern village; play areas as recommended by the
5 commission has been provided in three locations and
6 coordinated with the population distribution.

7 Fire station and water tank have been relocated
8 or modified to decrease the amount of disturbance and
9 also to ensure public safety. The applicant is also
10 proposing a fire hydrant at the end of Ingham Hill
11 Road at our proposed still emergency access to the
12 Ingham Hill Road.

13 That summarizes the revisions that we have made
14 in response to comments for both plans, and I would
15 like to turn it over to Attorney Royston.

16 CHAIRMAN MCINTYRE: I would like to ask just one
17 question. Are all the changes that you're saying to
18 these exhibits in the new handout that we have?

19 MR. GODERRE: They are in the new handout and
20 they are also in the package.

21 CHAIRMAN MCINTYRE: Thank you.

22 MR. ROYSTON: This is Attorney Royston again.

23 This is in the format again going through your
24 decisions, decision number five. Decision number
25 five and six are those which are by reason of the

1 intervention. This gives you a couple of additional
2 things to decide beyond just supplying your own
3 regulations. Decision number five, as expressed by
4 your counsel, is the open space subdivision as
5 proposed by the applicant: Golf course, road
6 patterns, et cetera. Quote, reasonably likely to
7 unreasonably impair, pollute or destroy public trust
8 in the air, water or other natural resources of the
9 state, close quote, as compared to the conventional
10 subdivision.

11 Decision five basically requires you to take a
12 look at the evidence presented in favor of our plan
13 as well as the evidence that has been so far
14 presented by the opponents to determine whether our
15 plan unreasonably pollutes, impairs or destroys a
16 public asset. I would suggest to you that if you
17 take a look at the substantial evidence that has been
18 placed in the record by the applicant that it does
19 not.

20 And I ask you simply to take a look at the
21 evidence that has been presented by the intervenor so
22 far on this issue. They have presented evidence by
23 Geoffrey Hammerson with respect to protection of
24 vernal pool areas; Robert Craig with respect to
25 retaining large, unfragmented forests for the purpose

1 of migratory birds, open forest. We do not disagree
2 with the science of either one of those persons that
3 testified. We simply believe, as our experts will
4 indicate, that what they say is more supportive of
5 the plan that we have proposed as opposed to a
6 criticism of the plan. In fact, Dr. Craig did not
7 even comment on our particular plan when he made his
8 presentation to you.

9 You also have received testimony from George
10 Logan and that testimony and our response in writing.
11 We have submitted numerous instances where
12 Mr. Logan's testimony in other projects relating to
13 aspects which we believe are appropriate to this
14 development has come to contrary conclusions. And so
15 he has also submitted a defense of his testimony
16 which has been submitted into the record. I would
17 simply ask that you review both of them. It's simply
18 a matter of the credibility of his testimony. But
19 with respect to his interpretation of the science
20 that -- the science people that have been assembled
21 by the applicant will comment on, because we
22 substantially disagree with his interpretation of the
23 science. Simply put we believe that his
24 interpretation is incorrect. We must await actual --
25 see the presentation. We must await the town of

1 Essex's presentation really to do a full rebuttal of
2 that.

3 But simply put we believe that our application
4 does support the decision filed, that we are not, we
5 are not polluting, destroying or impairing the
6 natural resources. Further evidence with respect to
7 this would be presented to you by Michael Klein.

8 I'm going to turn it over to Michael Klein, who
9 has testified previously, who will then also
10 introduce Stuart Cohen, who also testified on that
11 specific question. Michael Klein.

12 MR. KLEIN: Hello. My name -- I'm sorry.
13 You're going to have to bear with me. I'm just
14 getting over a cold. Michael Klein. I'm a
15 biologist, soil analyst. My office is in West
16 Hartford.

17 We prepared a detailed response to the comments
18 of the staff and the intervenors to date regarding
19 the impacts on natural resources. It's contained in
20 the response four binder. Most of it's in Appendix
21 G, but there are a couple other places. I'm not
22 going to go over that lengthy document with you, but
23 I did want to address several specific items and show
24 you some graphics that illustrate and we believe
25 prove our point.

1 Chris Cryder told you that the project would
2 degrade headwater streams through tree removal. In
3 actuality we'll show you a graph right here that
4 demonstrates that we're retaining 90 percent of the
5 tree cover along the perennial streams on the site.

6 MR. GODERRE: Did the packet get into the record
7 already?

8 MR. KLEIN: You've got a folder of 11-by-17
9 maps. This is one of them, number 16. It shows the
10 perennial streams on the site. There's two; one on
11 the western side of the site and one on the far
12 southeastern side of the site.

13 CHAIRMAN MCINTYRE: Could you just state the
14 name of the exhibit you're --

15 MR. KLEIN: Sure. Perennial Stream Canopy
16 Removal. We have tabulated the footage of those
17 perennial streams on the site. And in fact, these
18 are the two areas where there's going to be tree
19 removal for the golf holes that play over the stream
20 in two places. The total area of canopy removal is
21 634 linear feet. And it's only about 90 percent -- I
22 mean it's only 10 percent of the stream core length
23 on the site. Furthermore, we would expect dense
24 shrub growth to recur in the immediate vicinity of
25 those streams where tree removal would occur.

1 Wendy Goodfriend had some concerns about the
2 open space plans, protection of state-listed plants.
3 I disagree with her conclusions. First of all, Jim
4 Cohen from my office is a skilled botanist. He's a
5 past member of the Board of Directors of the
6 Connecticut Botanical Society. His survey is
7 thorough. He's added several new locations to the
8 list of plants. A conventional subdivision provides
9 no protection for those plants. The River Sound plan
10 does. Vegetation management of the golf course would
11 benefit at least one of those species that requires a
12 sunny environment. We have revised the maps of the
13 plant occurrences as she requested, but I would like
14 to note that that particular occurrence of the false
15 hop sedge has always been within the protected area
16 of the site from the very beginning. Further note
17 that the site plan has been revised to address the
18 concerns regarding the eastern optunia humafusa
19 cactuses that Dennis just mentioned.

20 Wendy also requested a 400- to 600-foot wide
21 buffer on the western side of Pequot Swamp. There's
22 no scientific basis for the use of this broad setback
23 area. We did a quick calculation of the total
24 setback that she's requesting around Pequot Swamp
25 Pond. It comes to around 85 acres. And there's no

1 basis for that.

2 You've also heard at the last public hearing
3 that the site plan would adversely affect genetic
4 diversity causing localized extinctions. I think it
5 should be obvious that the site plan will not result
6 in the isolation of any birds or mammals which are
7 highly mobile critters for the most part.

8 Extensive design measures have included -- you
9 heard way back at the very beginning of this public
10 hearing a couple of months ago the measures that have
11 included -- the design measures that have included
12 maintaining connectivity between amphibian
13 populations. You also heard at the last hearing that
14 George Logan felt that the vegetation survey was
15 inadequate. In actuality, our report documents about
16 350 plant species, indicates which plant association
17 each species was found in, describes each plant
18 association and its characteristic species, and
19 includes detailed descriptions of Pequot Swamp Pond
20 and the Atlantic White Cedar swamp, which are the two
21 unusual plant communities on the site, and also
22 includes the functions and described the dominant
23 plants' needs in each of the individual wetlands.

24 George Logan had two criticisms of the mammal
25 survey. He said the mammal survey was not adequate,

1 pointing to the graphic on the other survey. I'm
2 looking now at a map which was part of the original
3 submission entitled Site Mammals. What he apparently
4 didn't realize that this -- what this map shows is
5 locations where animals were found. It cannot show
6 where animals were not. It can only show where we
7 found them to be. We included direct observation; we
8 included observations of tracks and scat; we included
9 data from live trapping; and we included data from
10 remote cameras.

11 Final graphic I would like to show you is this
12 one, Breeding Bird Survey Points, the Braventure
13 Survey 2002 document. George said that the wood
14 swamp/hardwood forest interface was not adequately
15 documented. For birds that is an important place to
16 look, because you expect a higher density of birds at
17 that particular point in any site. We agree that
18 that's a good place to look. George showed you a map
19 which plotted the survey points, but he didn't plot
20 those survey points on a site plan that showed the
21 actual locations of the wetlands. This is I believe
22 number 15 in your packet. If he had done that, he
23 would have found that 14 of the 34 sample points are
24 located at the immediate interface between the
25 wetlands and the nonwetland forest. In addition, the

1 survey technique that was used by Dave Braventure,
2 and George knows this very well, he sampled about a
3 300-foot radius around each sample point. And if you
4 look at the limits in the wetlands in comparison to
5 those radii, you'll find that 80 percent of the
6 sample points include wetland habitat.

7 He may have also left the commission with the
8 impression that forest fragmentation is the only
9 reason for the decline of birds -- interior birds in
10 Southern New England. In actuality loss of wintering
11 habitat in the tropics is another recognized factor
12 and the relative contribution of each is unknown.

13 In conclusion, the detailed biological survey
14 meets or exceeds the typical standards used in land
15 use applications in Connecticut. It appears that the
16 sea of these consultants did not carefully review
17 either the methods or the results of our work. And
18 there's no doubt that the proposed conservation
19 subdivision preserves a large area of ecologically
20 significant open space. In my judgment it will not
21 result in unreasonable pollution or destruction of
22 natural resources.

23 Now I'll turn it over to Dr. Stuart Cohen.

24 MR. COHEN: My name is Stuart Cohen. I'm with
25 Environmental and Turf Services of Maryland. You --

1 I think at the first hearing you had my CV, but
2 briefly I spent 11 years with USEPA. I was in charge
3 of the pesticides in groundwater program in
4 Washington. My firm has worked on over 120
5 turf-related projects for developers as well as
6 municipalities.

7 This is in regard to the decision criterion
8 number five. The criterion is -- I will only speak
9 for a few minutes on this. And the decision
10 criterion is compared to -- an excerpt. It is a
11 reasonable likelihood to impair and pollute as
12 Attorney Royston said.

13 My testimony will be in two parts. One part
14 will address the intervenor's attempts to claim that
15 we failed that decision criterion. And the second
16 part would be more proactive, talk about our
17 proactive stewardship program and the advantages of
18 it.

19 First, I would like to point out to you
20 something that when it was first submitted into the
21 record by CFE on November 17, I just thought it was
22 an error and then it was promulgated on December 8 by
23 CFE testimony. What they did was they took a USGS
24 website that showed pesticide use and detection in
25 groundwater and golf courses around the United

1 States. But what they submitted into the record only
2 gave you the columns showing all the pesticides that
3 are legally used in the United States, and pesticide
4 use is legal in the United States.

5 CHAIRMAN MCINTYRE: Could you identify that
6 exhibit.

7 MR. COHEN: I'm sorry. This is exhibit USGS
8 Pesticide Natural Synthesis Project as submitted by
9 CFE. This is page one of it.

10 You see here that they list all of -- a lot of
11 pesticides legally used, and this is just one of
12 several pages, and the states where used. What they
13 deleted or failed to produce were two columns that
14 showed of all those places where actually used, it
15 was actually detected in a very limited area. And
16 you will notice that somebody named Cohen, et al.
17 that's heavily relied on this. This is a paper I
18 published a number of years ago. Just this one
19 example to show you the significance of this and the
20 misimpression it could leave you. Not only did the
21 CFE quote the wrong number of pesticides, they quoted
22 39 pesticides being detected in groundwater in golf
23 courses in the United States. And that's nowhere
24 even near the truth. Look at this example two four
25 D. It is used all over the place. It was only

1 detected in a study I did when I was at the EPA in
2 Massachusetts.

3 And it's even more obvious when you look at
4 Table 4. Only the pesticide use, only the states
5 used, not listing the rare times when it's detected.
6 In fact, on this page it's mostly in Japan.

7 Secondly, the intervenors presented a video
8 which is newscast. And the newscast quoted a couple
9 of citizens who expressed concerns about groundwater
10 contamination by a golf course under construction on
11 Long Island, in Suffolk County. We did the
12 environmental permit to that. It's a very high end
13 risk assessment and then to show and get a proactive
14 environmental stewardship program analogous to what
15 we are doing here and to demonstrate that there
16 wouldn't be a problem afterwards monitoring them.

17 The doom and gloom predictions that you saw in
18 the 1999 newscast, which I'm not sure about the
19 validity of submitting that in terms of expert
20 testimony, were proven to be incorrect, as we could
21 have told them that in 1999. But we understand that
22 nothing works like good monitoring. And a letter was
23 submitted and it's in the record. It's Appendix H in
24 the response that was submitted to you on
25 December 23rd by the town planner of the town of

1 South Hampton who hires peer reviewers to review our
2 work. I'm only going to read to you the last -- two
3 of the last sentences in the letter. Based on the
4 results of the extensive sampling of groundwater
5 monitoring wells, groundwater quality has not been
6 affected by the golf course. And this is, by the
7 way, a very vulnerable hydrogeology area. Given the
8 level of review by experts has been the subject of
9 the Town Water Authority in the town of South
10 Hampton. And by the property owner's expert, its
11 monitoring serves as a model for groundwater
12 protection.

13 It looks like the predictions by the concerned
14 citizens in the 1999 newscast as submitted into the
15 record as evidence were incorrect.

16 Finally, REMA Ecological Services, that's George
17 Logan and his partner, submitted on January 7th a
18 letter and then an attachment of a review of an
19 integrated pest management plan. I'll just talk
20 briefly about that. And it's very critical. The one
21 major problem with that is he reviewed the wrong
22 document. That is not our turf management plan. The
23 CFE, in the November 10th and the November 17th
24 hearing, requested that we submit the original IPM
25 plan that had been developed for the Tim Taylor

1 project back in 1999 and 2000 that went along with
2 the approval for the wetland permit. We did that as
3 a courtesy. We have said many, many times that we
4 have refined on that; we are building on that. And
5 in fact, we submitted into the record an executive
6 summary report on November 3rd that listed the
7 steps in which we're going that says amphibian
8 toxicity. How we expanded the monitoring program.
9 How we've added turf management programs for the
10 homeowners. And these are enforceable turf
11 management programs. And how do we know they're
12 enforceable? Because we developed -- brought before
13 the zoning commission under the PRD regs and it would
14 be -- these documents would be legal documents in the
15 homeowners' association.

16 We happen to agree with some of the scientific
17 concerns raised by Logan and his partner, but they
18 are reviewing the wrong document. And they did not
19 acknowledge, for example, that we removed 15 of the
20 pesticides from the original plan. They misspelled
21 and mischaracterized some of the pesticides. Some of
22 the pesticides don't even exist. They stated that
23 phosphorus runs off at a rate of 60/23 percent. And
24 in fact, phosphorus runoff is less than 1 percent.

25 So to summarize part of my testimony, the --

1 there has been no -- nothing that's been documented
2 in the record that's valid to show that there will be
3 groundwater contamination or some sort of
4 contamination on this property. In fact, the
5 opposite has been demonstrated.

6 Finally, the -- do you have the diagram?

7 To show the advantages of our approach --

8 CHAIRMAN MCINTYRE: Is that a different exhibit?

9 MR. COHEN: This is a different exhibit. This
10 is called Natural Resource Protection Under the
11 Preliminary Open Space Plan. You all have a copy of
12 this and the intervenor does as well.

13 We have water quality monitoring, service in
14 groundwater, habitat conservation that you've heard
15 about extensively, integrated pest management. Three
16 different programs. One with the golf course, two
17 with the homeowners. And all of this is risk
18 assessed and combined to yield resource protection.
19 So this is a very proactive approach. And this is an
20 industry that rarely has documented groundwater
21 research of our contamination anyway.

22 Finally, the advantages of the open space plan
23 versus the single lot on-site septic development or
24 conventional plan are many pesticide and fertilizer
25 use. Under the conventional plan people can

1 basically use whatever they can buy. Under our plan
2 only risk assessed substances are allowed. Pesticide
3 and fertilizer use must be justified. Fertilizer and
4 nitrogen load will be much less in the open space
5 plan. Sanitary wastewater, individual septic that
6 would result in extensively more nitrogen going into
7 the groundwater. And vernal pools. The critical
8 thing is the last line here. The critical forestural
9 habitat would be unregulated under the conventional
10 plan, but it would be conserved for all high priority
11 pools under the open space plan. Thank you very much
12 for your time.

13 MR. ROYSTON: David Royston for the applicant
14 again.

15 We are -- according to our time keeper I have
16 four minutes. I am not going to use it all.

17 CHAIRMAN MCINTYRE: Okay.

18 MR. ROYSTON: Decision number six. Decision
19 number six is are there feasible and prudent
20 alternatives that would reduce or eliminate any
21 unreasonable adverse impacts that are found to exist?

22 Basically, first you have to determine that
23 there is a probability that our plan will
24 unreasonably pollute, impair, and destroy. You have
25 to find that first before you even get to whether or

1 not there is an alternative to our plan. But we are
2 going ahead and we have gone ahead in ways to put
3 into the record the information with respect to what
4 alternatives we've considered.

5 And this is -- we have talked about it generally
6 throughout this hearing; the number of tests, and
7 studies, and what have you. But we have also put
8 into the record for your consideration a memorandum
9 from BL Companies, and that memorandum goes through
10 specifically the number of alternatives that they
11 considered in terms of roads, in terms of habitat,
12 wildlife, flora, fauna, different things that they've
13 considered. But it also puts in -- gives you a list
14 of all the studies and materials that they have since
15 1998 and up through February of 2001. This was all
16 materials that were provided and turned over to them
17 by the previous applicant, The Preserve, LLC, Tim
18 Taylor. All of that information, all of the studies,
19 maps, reports, application materials that were
20 submitted, comments that were received back from your
21 consultants, all that material was turned over to BL
22 Companies, to River Sound Development as part of the
23 foreclosure by which it acquired this property and
24 then by River Sound Development turned over to BL
25 Companies when it did its due diligence.

1 Now, this has been referred to generally. I
2 think Bob Landino testified to that. But we put into
3 the record the specifics, just a list of all the
4 materials and all the things that were considered.
5 We are going to defer further comment with respect to
6 feasible and prudent alternatives until CFE and the
7 town of Essex have made their presentation and then
8 we understand under the procedure we will have the
9 right to put in a rebuttal and summation of that
10 material. And we intend to do so. And I would say
11 at this point this is the conclusion of our formal
12 presentation to take not more than 45 minutes. Thank
13 you very much.

14 CHAIRMAN MCINTYRE: Thank you very much. We
15 have to hold up to change the tape.

16 Next to come up and speak will be the town of
17 Essex. I guess Selectman Miller and his attorney.

18 MR. RANELLI: Good evening, Mr. Chairman,
19 members, and staff. I am Matt Ranelli of Shipman and
20 Goodwin. I am here on behalf of the town of Essex
21 and with me here tonight, who will speak later, is
22 first selectman of Essex Phil Miller.

23 I would like to first do a quick piece of
24 housekeeping. I just want to confirm that certain
25 items have in fact made it into the record with the

1 onslaught of documents that we have heard having been
2 received. So just to catalog them. We submitted on
3 January 6 a memo dated January 6 responding to the
4 comments of River Sound which was dated I believe
5 December 22nd. And that's I think a three-page
6 letter which should be in the record.

7 You should also have received from the Office of
8 the Attorney General a letter from Richard
9 Blumenthal, the Attorney General, outlining his
10 opposition, his office's opposition to the project.
11 And he stated many of the concerns or -- actually,
12 many of the concerns that the town of Essex and the
13 other intervenor, Connecticut Fund for the
14 Environment, raised. And that letter is dated
15 January 11 and that's in the record.

16 You should also have received a letter dated
17 January 11 from Beth Brothers, the assistant director
18 of the land acquisition and management section of the
19 Department of Environmental Protection, which I think
20 is an effort to clarify that -- several things. One,
21 that there is no request pending before them. In
22 fact, there has been no formal request made for the
23 applicant to use the Valley Railroad State Park Trail
24 as is a necessary element of the plan it is asking
25 you to approve and, also, its opinion that it would

1 be precluded from granting such an easement. That
2 should be in the record as well. That's dated
3 January 11.

4 In addition, I have for you, and I brought extra
5 copies as requested by staff, all of these items,
6 with the exception of the letter from the Attorney
7 General which I will give to the staff. And I also
8 have a letter dated today from myself. This is a
9 two-page letter responding to the materials submitted
10 by River Sound on January 6. And just to be clear
11 this letter really simply points out the fact that
12 they have not provided a piece of information which
13 was requested on two public hearing occasions by
14 members of the commission. So this is not new
15 information or something that would catch them by
16 surprise but is really just a letter to memorialize
17 that fact. And I will discuss that in a moment. So
18 here are the letters, extra copies.

19 MS. NELSON: Thanks.

20 MR. RANELLI: In addition, you should also
21 have -- I believe you do have the intervention
22 petition filed on behalf of the town of Essex in
23 accordance with Section 22a-19 of the General
24 Statutes.

25 Okay. Well, in the interest of time, I'm not

1 going to read all the items we have submitted. I
2 will trust that the commission and staff will do
3 that. I think many of these points have been made.
4 They are just refinements based on the information
5 that's gone back and forth. Rather, what I would
6 like to do is just summarize in three or four points
7 what's contained here.

8 The first -- the first point is that the
9 applicant has overstated, as we discussed, has
10 overstated the yield in their conceptual subdivision
11 plan. They have, as you know, in the conceptual
12 subdivision plan not included the golf course and in
13 the open space subdivision plan added it in after
14 estimating, taking advantage of or maximizing the
15 residential yield.

16 This applies to oranges approach, as we have
17 called it, is plainly inconsistent with the
18 regulations that's drafted and the very purpose of
19 the regulations, which is to allow this commission to
20 compare the conceptual standard plan with the open
21 space plan without the addition of uses of --
22 different sorts of uses which are not contained in
23 the comparison plan. Otherwise, it would open -- if
24 the commission were to interpret its regulations the
25 way the applicant is inviting it to, it would open up

1 the commission to other applicants bringing in plans
2 under this section and adding other special exception
3 uses after gaining the benefit or maximizing the
4 residential yield, and that is not consistent with
5 the purpose statement of the regulation which clearly
6 defines purpose to encourage open space. And not
7 open space just by acreage, but open space by the
8 values that come with open space. And that's what we
9 are all asking you to look at.

10 There's no question that many conventional
11 subdivisions can achieve 50 percent open space and in
12 my experience many of them do. There's no question
13 that the applicant can reach that 50 percent target
14 here either in a conventional plan or in an open
15 space plan. The question is then which one maximizes
16 the values that this commission is charged with
17 looking at. And the way that the apples to oranges
18 approach is set up does not allow you to maximize
19 those values. And those values are contained in
20 Section 56.2 of your regs and also in Section 56.6.6.
21 And among them, which I will not read, but one of
22 them, number 14 in 56.6.6, says, provides open space
23 that is reasonably contiguous. Another one says that
24 the -- that it will provide significant wildlife
25 habitat.

1 And the goal here is to maximize. The applicant
2 has conceded as much. It does not just say I will do
3 this. It's to maximize it. Clearly the issue of the
4 golf course diminishes rather than enhances the very
5 values this section is designed to protect.

6 The other point, related point to that is the
7 materials that the applicant submitted on January 6.
8 And in that plan they included a -- I think a sheet
9 which they call a conventional subdivision with golf
10 course. And this is addressed in my January 12
11 letter. What happened here is that the commission on
12 two occasions asked the applicant provide us with a
13 transparency in essence of the golf course lot so
14 that we can lay it over the conventional plan to make
15 an apples to apples comparison. Simple request. The
16 applicant did not provide that at the next hearing.
17 They said that they -- it had slipped through the
18 cracks and promised to provide it at this hearing.
19 And again, they did not. Instead, what they did was
20 they equivocated. They tried to come up with what
21 they are submitting as a conventional subdivision
22 plan with golf course.

23 Well, this plan that they are trying to pass off
24 to you is not the same subdivision layout,
25 conventional subdivision layout and it's not the same

1 golf course. And I don't see it on the boards up
2 here, but what they did essentially was take the
3 bottom two holes -- I think they are holes 12 and 13.
4 These holes.

5 CHAIRMAN MCINTYRE: Could you identify the
6 exhibit you're pointing to.

7 MR. RANELLI: This is the Primary Open Space
8 Plan - Preservation Plan, River Sound. It doesn't
9 have a board number. And it shows the open space
10 layout, but it also shows -- what's useful here it
11 shows the golf course.

12 So what they did was they took these holes
13 rather than give you what you asked for, that is, the
14 layout as proposed in this -- in the open space plan.
15 They moved these holes up here into the wetlands,
16 into one of the most productive and ecologically
17 sensitive wetlands identified by their team as well
18 as all the other environmental consultants here,
19 popped it right into the middle creating a new
20 wetlands crossing, all in an effort so in their
21 conventional plan they could keep this road, so that
22 they could keep all the houses down here without
23 being hamstrung by the cul-de-sac land limit.
24 Whereas, if they really laid this plan over the
25 conventional plan, they would lose all these homes.

1 And then they said, well, so we can achieve 252
2 homes.

3 But that's really not an accurate comparison for
4 a couple of reasons. One is what they submit to you
5 is not a conceptual standard plan which is required.
6 Regulations require them to assert -- to provide
7 certain information and a certain scale for those
8 plans, which they didn't do. Just one sheet, you
9 know, look what we can do.

10 What it really is is a testament to the fact
11 that any applicant could reverse engineer a
12 conceptual plan to achieve a desired result if they
13 are not constrained by the requirement you raised,
14 that the subdivision be reasonably -- a reasonable
15 subdivision -- in other words, reasonably approvable.
16 If you're not constrained by that, you can -- sure,
17 you can lay out lots in a plan to show you can, pop,
18 squeeze them all in. But their plan doesn't meet the
19 requirements for a conceptual standard plan and also
20 it isn't constrained by the very environmental
21 planning principles which their consultants endorsed
22 and applied. So if you're not going to look out for
23 wetland crossings and other things, they'll just add
24 them in without having to justify those which would
25 be reasonably approvable, then you can do it. But

1 that one sheet does not suffice for the piece of
2 information that this commission requested.

3 Good environmental planning is as much a part of
4 conventional subdivisions as it is open space
5 subdivisions. This commission regularly gets
6 conventional subdivision plans. I don't think any of
7 you would agree that when you get one environmental
8 planning goes out the window. So those principles
9 should be applied to the conceptual site plan -- the
10 conceptual site plan as well as to the open space
11 subdivision. So for those reasons that one sheet
12 that they submitted is not adequate for the
13 information you requested.

14 Why is this important? Because your
15 regulations, A, required them to, in the first place,
16 submit an apples to apples plans. But in the second
17 place clearly authorizes the commission, under 56.4,
18 to request additional information necessary that the
19 commission -- that the commission deems necessary to
20 make a reasonable decision on the application. You
21 asked for such information; you didn't receive it;
22 and now they are asking you to endure the hardship of
23 trying to make a decision without the information
24 that you asked for. And I think that it will be
25 incumbent on you to say no, that's not our risk to

1 take. We asked you for simple information; we didn't
2 get it.

3 The other thing the applicant says about this
4 topic is they say that we have provided this
5 alternative plan because you simply -- you can't
6 simply lay a golf course over the plan. Well, it
7 turns out actually you can and I think that you
8 should. If you want to on your own, just take the
9 plan and lay it over the conventional subdivision.
10 It actually fits in nicely over the major road
11 networks and doesn't require a lot of changes. So it
12 really is something that you can do. And the
13 applicant doesn't want you to do it, but you can.
14 And if you do it, you'll find that it is --
15 effectively eliminates about 100 units or more,
16 depending on how you read the cul-de-sac land
17 limitation. So I would not accept the applicant at
18 face value when it tells you you can't lay that golf
19 course over the conventional plan. In fact, they
20 have left you with no choice but to do that. And so
21 you should do just that and find that it reduces the
22 yield by 100 units or you should deny the application
23 and require them to come back with a better conceived
24 plan.

25 The next issue is the lack of permission for the

1 applicant to use the Valley Railroad State Park. It
2 is, again, undisputed in the record that this strip
3 of land which bisects a portion of the site and
4 separates the site from Bokum Road is owned in fee by
5 the State of Connecticut, and that is indeed on the
6 land records in the town of Old Saybrook, if you
7 should need to review it. It is also a matter of
8 record that the applicant has not approached the
9 Department of Environmental Protection to request
10 that permission, and has not received such
11 permission, and has not received anything approaching
12 something that will constitute a reasonable
13 likelihood that they can expect to get that
14 permission.

15 In fact, so unusual is the applicant's approach
16 of not gaining consent of a landowner, use of whose
17 land is necessary for the plan they are inviting you
18 to approve, that the DEP felt compelled to write a
19 letter making their position clear. This is the
20 applicant's homework. They haven't done it. Rather,
21 they put the commission, the residents, and other
22 entities like the town of Essex and Connecticut Fund
23 for the Environment through the time, effort, and
24 expense of preparing these public hearings, reviewing
25 their work without providing the most fundamental

1 element necessary to bring an application, one that
2 you would not allow a single lot homeowner to bring
3 an application without. You should no more allow
4 this applicant to get away with it than you would
5 another applicant.

6 The bottom line is that's the Department of
7 Environmental Protection's land. Permission to use
8 it is a matter purely of negotiation between
9 homeowners -- I mean between landowners, not an
10 administrative permit. There is no requirement that
11 they acquiesce to the request. There are no set of
12 standards that if the applicant meets them, they will
13 be entitled to the permit. It is not, as the
14 applicant suggests in their response to you,
15 analogous to an SPC permit for several reasons.
16 Mostly because it's not an administrative approval
17 process, but also there is no statutory requirement
18 that they wait until after they have local approvals
19 to approach the owner of the land.

20 This isn't -- I urge you not to say this is --
21 let's leave this to the attorneys. It's not that
22 complicated a matter. There really are questions
23 here that can't be answered and haven't been answered
24 at these public hearings. They simply don't have
25 permission. DEP's letter makes it perfectly clear

1 there is no reasonable expectation that they have it.
2 They have provided nothing to the contrary. The
3 testimony in their December 22nd memo, Mr. Curtis
4 Proud, who they offer as an expert -- and I am not
5 sure if he's in attendance tonight or not. If he's
6 not that's another problem, because he cannot be
7 questioned by this commission or by the opposition.
8 But even if he is I would suggest it has absolutely
9 no bearing on the analysis. First of all, it
10 pertains to rights-of-way. Well, this isn't a
11 right-of-way. It is a fee simple, state owned.

12 And second of all, this is a state park trail.
13 This is not surplus property. This is -- let's face
14 it. It's also -- a state park trail has a certain
15 aesthetic value and that is it houses an historic
16 railroad which people ride for an historic feeling
17 and having a cement bridge abutment would clearly
18 detract from that. So there are plenty of reasons
19 that they would not gain approval, even more so than
20 under a normal piece of state property. So in the
21 absence of that information, in the absence of the
22 permission, this is just not an application that you
23 can approve in my estimation.

24 Cases cited by the applicant to suggest that
25 this could be a condition of approval are all

1 distinguished because all those cases involve
2 administrative permit processes. None of those cases
3 involve negotiation between homeowners. Further,
4 even if those cases were analogous -- and, again,
5 this is not something you need to rely on the lawyers
6 for. The applicant concedes in his letter that
7 approval of a subdivision cannot -- I'm quoting.
8 Cannot be conditional upon approval by another
9 government agency unless that approval by the other
10 agency appears to be reasonably probable. And he
11 cites the Carpenter case.

12 And again, the evidence in the record presented
13 tonight in addition to the fact that the department
14 has previously denied a crossing requested by the
15 prior property owner is evidence that it's not
16 reasonably probable. And remember there doesn't have
17 to be evidence that it's not. It's the applicant's
18 burden to put up evidence that it is reasonably
19 probable. So not only is there an absence of
20 evidence or satisfying that burden of proof by the
21 part of the applicant, there is in fact evidence to
22 the contrary.

23 The applicant goes on, discretionary review by
24 the Town of Old Saybrook Zoning Commission or land
25 use agencies in other towns would not have any

1 reasonably probable outcome and could not operate as
2 a condition of approval. So in essence discretionary
3 review by another agency can't be a condition of
4 approval.

5 Well, negotiation between landowners is the
6 height of discretionary review. It's not review at
7 all. It's negotiation. But if you were going to
8 even call it review, it is the height of discretion.
9 So the applicant simply has failed this most
10 fundamental element. And to say this is a work in
11 progress passed along, it's only a preliminary
12 approval is to miss the point.

13 Passing a law requires everyone here to come out
14 again. It requires an enormous effort by the town,
15 an enormous effort by the public all because the
16 applicant has elected strategically not to pursue an
17 approval it should have gotten in the first place.
18 You should not require everyone else to bear the
19 burden of their strategic gambling. They should be
20 required to let the homeowner go out and get that
21 permission and then come back if they so choose.

22 The last point which I will -- it's contained in
23 my letter of January 6. And it simply states that
24 they have also failed to comply with the road grade
25 requirements. At my last check the board of

1 selectmen had not approved alternative road
2 standards. Your regulation 56.3.1(10) say, under
3 requirements for conceptual standard plan, street
4 layout with road lengths and spot elevations to
5 demonstrate compliance with road grade requirements.
6 And their road layouts demonstrate that they do not
7 comply, but they would seek the alternative -- legal
8 alternatives as well. They haven't done that. And
9 this doesn't say what it will seek. It says
10 demonstrate compliance. So if compliance for them
11 means getting an alternatives analysis, they have to
12 have that in hand when they come to you, not
13 something that they get later on down the road. But
14 I think there will be more testimony on that and I
15 will leave it at that.

16 The final note. I would just urge you not to
17 accept this concept that this is a preliminary
18 approval. It doesn't allow us to build anything. We
19 have to come back. This is a special exception
20 approval. It's a final act of this commission,
21 subject to all the rights that come with it,
22 including the right to come back with other plans.
23 But that's not unusual for approval. Oftentimes you
24 can't build anything until you get a subsequent
25 approval. This is an approval. Only once in here

1 does say -- does it refer to it as a preliminary
2 approval. So it's not preliminary in any sense. It
3 has rights of appeal; it has rights of the applicant
4 to proceed; and it has standards that they have to
5 meet. And if they don't meet them, they don't
6 satisfy it. And that's the bottom line. It's not
7 that we can get it later when we get our next
8 approval.

9 So in conclusion I will wrap up. I want to
10 thank the commission, and the staff, and members for
11 their attention and patience. This is obviously a
12 unique parcel. There are volumes of information.
13 The numbers are staggering not necessarily because of
14 the complicated nature of the application, but really
15 because of the size of the site. So what I would say
16 is -- to summarize the proposed plan does not satisfy
17 your regulations and there is information requested
18 that's missing. There are plans that don't comply
19 with the purpose of the regs. The application even
20 as presented does not maximize. We have meaningfully
21 advanced the goals contained in the open space
22 subdivision regulations at 56.6 I think it is and
23 56.2.

24 And the open space that's provided with this
25 golf course interwoven into it really diminishes

1 rather than enhances what this commission and this
2 town are trying to achieve with its regulation. And
3 this would be a very unfortunate precedent for a
4 piece of this size and scale to be allowed to
5 misapply these regulations like this, because it
6 would really set the tone for everything that comes
7 after. These regulations are really designed to give
8 Old Saybrook meaningful open space, provides an
9 opportunity for the applicant. The applicant has to
10 hold their end of the bargain, and I submit that they
11 haven't. This property deserves better. And this
12 commission should interpret its regs to require
13 applicants to bring something in that is better and
14 it truly maximizes the open space values.

15 So on behalf of the town of Essex, I
16 respectfully request that you deny the plan for this
17 applicant for the reasons that we have stated.

18 Now, what I would like to do is I am going to
19 introduce Phil Miller, the first selectman of the
20 town of Essex. He's going to make a statement on
21 behalf of the town. And then to the extent that we
22 have extra time -- as you know we have intervened.
23 And our intervening carries many elements, including
24 the feasible alternatives analysis requirements. We
25 are going to defer the balance of our time on that

1 topic to see the presentation if we should have
2 additional minutes.

3 CHAIRMAN MCINTYRE: I will make that
4 determination.

5 MR. RANELLI: We'll make that now.

6 CHAIRMAN MCINTYRE: Any applicant may alleviate
7 your time. The purpose of this meeting is to get
8 everyone to speak as much as possible to conclusion.

9 MR. RANELLI: Part of our application -- rather
10 than have us repeat the alternatives analysis, it
11 makes sense to have it presented in a manner if you
12 arrive I would ask you to consider that aspect. This
13 is really a time-saving measure.

14 CHAIRMAN MCINTYRE: I'll take it into
15 consideration.

16 MR. MILLER: Good evening. I stand before you
17 tonight as the chief elected official in the town of
18 Essex, but I take an equal amount of pride to stand
19 before you as part of a grassroots ground as well of
20 opposition to this project, along with the good
21 people of Essex, Westbrook, and Old Saybrook. And I
22 think it's appropriate that we group the three towns
23 together.

24 I'm very keenly aware in Essex -- that Essex was
25 part of Old Saybrook for longer than it's been its

1 own town. And in fact, the village that I live in,
2 Ivoryton, along with the village of Centerbrook,
3 stayed part of Old Saybrook until 1859. And
4 Westbrook also comes from Old Saybrook, so I don't
5 know that you can really separate them. They are all
6 very wonderful, lovely towns, and I think they are
7 inhabited by the same really fine people as well.

8 This property, a thousand acres of it, if this
9 were perhaps another time and place maybe this would
10 be palatable, like maybe a generation ago and maybe
11 five miles to the north where there's high and dry
12 land, maybe an incidental stream going through it.
13 But this is not where -- we don't have much space
14 like this anywhere along the Connecticut coast left.
15 And there's not just one incidental stream. There's
16 three fully functional watersheds that originate from
17 this property. The main one is the Oyster River
18 watershed. And I don't know of any other towns I can
19 think of that are like Old Saybrook in that you have
20 this completely closed watershed within your town
21 boundaries, and that's the Oyster River. I was
22 thinking maybe the East River over in Madison, but I
23 think part of that watershed is north of Madison. So
24 right there you have something special.

25 We mentioned before about the good faith effort

1 being done in the lower part of the Oyster River to
2 restore the oyster beds there and the ongoing
3 challenge that with storm water runoff from I-95.
4 But everything in that watershed north of I-95
5 emanating from this property seems relatively
6 pristine and certainly the disruption of this
7 property would compromise that vitality.

8 The second watershed is the Trout Brook
9 watershed in Westbrook. Most of the water drains
10 really 300 acres and included in that argument very
11 valuable Westbrook wells and the Holbrook wells. So
12 that's public trust. That's what we are speaking
13 about. Private rights versus the public trust, two
14 very time-honored traditions.

15 Back in November Barbara Maynard spoke to you,
16 the highly esteemed person, former -- eight-time
17 first selectwoman of Old Saybrook. And she spoke of
18 the importance of the sanctity of the surrounding
19 subdivisions onto this land. And many of those
20 subdivisions were built during her distinguished long
21 career in public service. And of course she's not a
22 public servant that would ever turn her back on those
23 people whom she represented, and yet their water
24 supplies mostly emanate from this land.

25 CHAIRMAN MCINTYRE: Hold on one second. We have

1 to change the tape.

2 MS. MCKEOWN: Thank you.

3 MR. MILLER: Now, on the surface of this land
4 you've heard of lots of these fully functional vernal
5 pools, really amazing things. If any of you have
6 ever seen what they call a salamander ring, it's
7 something not to be missed. The first rainy night of
8 spring many of those salamanders leave the wooded
9 floor and return to these vernal pools to start that
10 cycle of life once again. And these are really
11 valuable. They recharge the aquifer. And you've got
12 fully functional ecosystems on this property right
13 now. So when you're talking about functionality,
14 it's there.

15 And now it's been said that there's been
16 hundreds of e-mails about this project and I don't
17 doubt that. I mean you only have to think that on
18 the surface a golf site living in subcoastal
19 Connecticut certainly does sound attractive, but
20 those of us who have seen this property and walked it
21 and know it are not buying it and that's the
22 difference. And when you talk about ecological
23 function that would be compromised by development,
24 that's lost forever.

25 We started out with a lot of concerns that

1 became reservations, reservations that became
2 objections. And we recognized that it is
3 unprecedented for a town to become an intervenor. We
4 didn't take this decision lightly. And as I said
5 before I don't particularly like being on the
6 opposite side of some of the honorable people, the
7 applicants here.

8 CHAIRMAN MCINTYRE: We have a tape problem here.
9 Okay. We are ready to proceed. Thank you.

10 MR. MILLER: Many times you have heard about
11 missed opportunities, that ten years ago we could
12 have bought this property for a lot less money.
13 Well, I would like to think somehow, some way, but
14 clearly their plan is a forever lost opportunity,
15 that there will be no going back. Because when you
16 dig, and fill, and blast, and move, and disrupt, and
17 destroy, you cannot replace a lost aquifer or you
18 cannot replace that function. It's something that
19 nature does so much better than humans. And that's
20 what stands to be lost here.

21 This plan is unsound. It's full of liabilities
22 for us on the outlying areas. We are concerned about
23 the degradation of the Mud River, the Trout Brook
24 watershed, and the Oyster River, but there's also
25 traffic. The resulting traffic from this preserve

1 project would be detrimental to us on the outside and
2 we are also looking at the financial liabilities as
3 well. So I would ask all of you to stand your
4 ground. And as I said earlier I take a lot of pride
5 at really having a part in our own
6 self-determination. And this is what the public
7 interest and the public trust is all about.

8 But I'm not alone as a public servant. I know
9 there's a lot of others with me. In addition to
10 myself from the town of Essex, our Selectmen Norman
11 Needleman and Vincent Pacileo voted to pen a
12 resolution against this project. From the town of
13 Westbrook, First Selectman Tony Palermo, Selectwoman
14 Barbara Reeve, and Selectwoman Sally Greaves. And we
15 also have some of the selectpeople from Old Saybrook
16 here tonight. And in addition, we also have several
17 of our other elected officials here tonight. James
18 Spallone could not be here. He's still up at the
19 state capitol, but he called and asked that he be
20 remembered here and be noted for standing with us.
21 We have Representative Brian O'Connor, who's in the
22 back of the room over here, who represents Westbrook.
23 We also have Representative Marilyn Giuliano, who
24 represents Old Saybrook here. We also have Senator
25 Andrea Stillman, who's right up here in front. And

1 Senator Eileen Daily came today, who was going to
2 make it, unfortunately she can't be here because of a
3 family illness. So they can't be here.

4 But I guess what it is, again, private rights
5 versus the public trust. And here is the best army
6 of paid experts that money can buy, and we have the
7 best group of citizens and elected officials that no
8 amount of money could buy.

9 So with that I thank you. And I also want to
10 additionally commend the land use board. I really
11 appreciate the decorum with which you folks have
12 maintained these proceedings throughout, and I think
13 you're to be commended. And I certainly hope that
14 the people of Saybrook take a righteous pride in
15 these folks, who are volunteer citizens, who give so
16 much for their town. Thank you very much.

17 CHAIRMAN MCINTYRE: Thank you. Mr. Peace.

18 MR. PEACE: Thank you for giving me an
19 opportunity to add just a few more comments for the
20 record.

21 My name is Bill Peace. I'm a selectman in Old
22 Saybrook, have been for nine years. I'm also a
23 retired employee from the Department of
24 Transportation and worked as an engineer for 38
25 years.

1 Some of the concerns I still have, some have
2 been exasperated. And I came here to the previous
3 meeting and entered something into the record, talked
4 about what do we do with the unfunded liability for
5 the three bridges. I think that was about \$108
6 million unfunded liability. It really is.

7 It's interesting when I first came into office
8 it was about a \$34 million unfunded liability. And
9 our health benefit plan, we're working hard to close
10 that. It's just an incredibly unfair burden to leave
11 my grandchildren and on.

12 But what I would like to say at the last board
13 of selectmen's meeting, one of the things that
14 occurred I learned that there are two additional
15 bridges. I don't know how big they are, but five
16 bridges on it. So I'm not quite sure how they put
17 that in.

18 Really what we have here we have a hypothetical
19 project. I really wonder whether we should all be,
20 quite frankly, wasting our time reviewing the
21 hypothetical project. The attorney who was up before
22 me addressed that in some extent. We have a letter
23 from the town of Westbrook which says you can't come
24 here. That was where 60 percent of your traffic was
25 projected. When I say the town of Westbrook, really

1 all the three highest elected officials in the town,
2 this is what they have said. Any reasonable person
3 would have to say it doesn't seem likely that that's
4 going to occur. There's something called a
5 reasonable man. I know I'm surrounded by more
6 attorneys here than I'll ever see in one place, but
7 certainly we could fall back to what a reasonable
8 person does. The reason is that the three highest
9 elected officials of the town say you can't come,
10 doesn't seem that's going to occur very easily. I
11 also had a personal conversation with the first
12 selectman of Essex who said essentially the same
13 thing. He basically agreed, saying that that was
14 ludicrous.

15 I also took the time to go into the record. And
16 I found in a letter to Tim Taylor from the DEP that
17 basically said no, you can't cross the DEP property,
18 not unlike what the attorney from Essex said.

19 But there's also a leaseholder on that property.
20 So not only does the DEP own the property, but
21 there's also a leaseholder. I think it's extremely
22 presumptuous to basically project 40 percent of your
23 property over basically a piece of property you don't
24 own. So once again, it's a hypothetical project, so
25 it makes it very difficult.

1 And we all know, right, that there's -- nobody's
2 going to use Ingham Hill Road, because that's where
3 their proposal is. So basically you can't get there
4 from here. So we have a project where you can't get
5 there from here. So as a selectman it really gets
6 difficult for me.

7 One of the things I have heard talk about an
8 alternate road, and we have done some work on that.
9 Board of selectmen has not approved them.

10 In my mind one of the real issues is the regs.
11 I understand the plans, as best as I can interpret
12 them, that they are this cross development road,
13 right, which is I think two and a half miles, right?
14 Our requirements require 6 percent grade and I think
15 they are proposing an 8 percent -- or excuse me,
16 10 percent grade. If you look the difference is
17 interesting, because there certainly -- there
18 certainly is spec -- I would not be one -- at least
19 the grade one to waive developmentally. And the
20 unfortunate thing is you look at the massive amount
21 of rock, because you certainly can't drill like we
22 did on Route 80 in Lyme. There'll be families and
23 children in the area.

24 Near the end of my career I spent a lot of time
25 up on Route 6 trying to get some of these roads

1 built. I'm beginning to think it was less than some
2 of this development here. You know, the problems
3 with the Army Corps and we have all kinds of safety
4 issues. This is going to be incredible in this
5 theoretical project. There'll be an incredible swath
6 through this particular road for a road that doesn't
7 serve any resident in the town of Old Saybrook,
8 because remember you can't get there from here.

9 Another thing I want to say about this -- a
10 couple of things rather. If this thing was built,
11 nobody who lives up there is ever going to shop in
12 our village. You can't get there from here. And I
13 think, first of all, you have a hypothetical project.
14 And I don't think you really should -- you should try
15 to refashion it, and change it and all this. This is
16 going to be the burden of the developer. Because if
17 he tries to change it in some small way, then it's
18 really fair to do some sort of analysis on the impact
19 with the traffic and these sort of things.

20 I would ask you basically to reject this project
21 as proposed. Let them come back another day. We
22 really shouldn't be reviewing hypothetical projects,
23 projects where it's unlikely that they would fulfill.

24 Well, I just want to check -- one of the
25 things -- another interesting issue is Old Ingham

1 Hill Road. As far as we have ever been able to
2 determine, the town of Old Saybrook has never
3 obtained that roadway. It's interesting they're
4 building the 13th hole across what could very well be
5 our property.

6 I mentioned about the village. The
7 environmental impact the others have really touched
8 on long before me. And really the last one -- I
9 don't know if anybody happened to read the paper,
10 what took place down in Stamford the other day when
11 they finally reached a settlement with the firemen
12 down there about a firehouse in the north end and
13 what the costs are. In the Stamford area to get a
14 firehouse up and running in the north end was about a
15 million and a half dollars. They actually had to --
16 they actually had to hire I think it was 14 firemen
17 to staff this thing.

18 Nobody's ever addressed how we are going to take
19 care of the fire issue. In other words, presently we
20 rely on a volunteer department. The volunteer
21 generally work. The thought was, well, maybe we'll
22 build a station up there. And then I assume that the
23 assumption is the town will have to pay five or
24 \$600,000 for the truck to put in there. That's
25 another cost to the public. The folks that are going

1 to buy up there don't strike me as generally being
2 the profile that fits most of our volunteers in the
3 community, so I'm not sure where we are going to get
4 the volunteers. So we are going to be -- part of the
5 planning process we are going to have pressure put on
6 us to basically at least be paying for drivers or
7 some kind of a situation up there.

8 The other thing everybody said, well, we are
9 going to take care of fire with our firehouse. Just
10 so you know the town of Old Saybrook, we spend about
11 \$250,000 a year on fire hydrants. That's what -- the
12 water company will give us a hydrant anywhere we
13 want, but it costs about 50 bucks a month. So I'm
14 not sure -- well, five miles of road, you put one
15 every, you know -- \$50 a month times 50, you do the
16 math, times 12. You can see the cost. So that's
17 actually how you pay for the water lines, the town.
18 This is not a great gift that we are getting. We'll
19 have a continuing cost.

20 So just to sum it up this project as proposed
21 seems to be an unreasonable economic burden on our
22 community, large unfunded liability. We certainly
23 don't have the personnel in this community to
24 maintain any -- quite frankly, my office couldn't
25 even maintain the Lyme bridge. That's only a 39-foot

1 bridge. It's absolutely unlikely a town of 10,000
2 that we would be able to take on the staff to
3 maintain these kind of things. It just doesn't make
4 any sense.

5 There's other ways they can develop this
6 property. I would certainly recommend that you tell
7 them to go back and come back with a better plan. I
8 don't think that we have to be fashioning their plan
9 here until eleven, twelve or one o'clock in the
10 morning. And with that I want to thank you for your
11 time. And I'll stay around until one in the morning
12 to see if you guys are still hanging in here.

13 CHAIRMAN MCINTYRE: We'll be here. Okay. The
14 next presentation is the Connecticut Fund for the
15 Environment. Which one are you going to use first?

16 MR. ROTHENBERGER: This one.

17 CHAIRMAN MCINTYRE: So I've got to move.

18 We have a change. We are going to take a quick
19 break for five minutes and then you can get set up.

20 (Recess)

21 CHAIRMAN MCINTYRE: At this time I want to
22 reconvene the meeting. At this time it will be a
23 presentation from the Connecticut Fund for the
24 Environment.

25 MR. ROTHENBERGER: Thank you, Chairman McIntyre.

1 For the record, my name is Charles Rothenberger with
2 the Connecticut Fund for the Environment.

3 Before I begin I would just like to provide the
4 commission with a couple of documents. The first
5 document is a response to -- a critique of the site
6 analysis study that was done on our behalf of the
7 Commonwealth Research Group. And I'll submit copies
8 to the commission for the record.

9 CHAIRMAN MCINTYRE: What you can do is just hand
10 them down to Attorney Willis and he'll pass them down
11 to us.

12 MR. ROTHENBERGER: Also, at the request of your
13 town planner, I have made copy packets of all the
14 materials that were submitted electronically last
15 week relating to this presentation.

16 The majority of our time this evening is going
17 to be spent giving a Power Point presentation. At
18 the beginning, though, I would just like to make a
19 few preliminary comments. As Attorney Ranelli stated
20 there have been a tremendous number of documents that
21 have been submitted into the record on this hearing.
22 I agree with his assessment that the number of those
23 documents really is completely out of proportion to
24 the complexity of the issue and the question that you
25 have before you. I think part of it is that the

1 questions that you're considering have been phrased a
2 couple of different ways. And really, I think that
3 there's a large probability of losing the forest for
4 the trees as we think about the decisions that you
5 have before you.

6 Really very simple. Number one, does the
7 proposed application before you meet your own goals
8 and criteria as applied in the open space subdivision
9 regulations?

10 Do they meet the goals of preserving large,
11 meaningfully contiguous open space?

12 Do they provide adequate and meaningful buffers
13 to wetlands and watercourses?

14 Do they preserve the natural resources such as
15 the vernal pools?

16 Or alternately would a better design site with a
17 better site plan address those concerns more
18 adequately?

19 We think clearly the current proposal isn't
20 sufficient in the goals and regulations and that
21 there are alternatives.

22 Secondly, with respect to the intervention,
23 whether the current application is reasonably likely
24 to unreasonably impair the public trust in the
25 natural resources of the state. And again, I think

1 the answer is clearly yes, and our proposal this
2 evening will demonstrate that. And we'll also
3 provide the commission with at least one prudent and
4 feasible alternative. There may be many others, but
5 you shouldn't be confused by attempting to compare
6 the applicant's proposal with a conventional
7 subdivision. That's not simply the question before
8 you.

9 In essence, the town has already made that
10 decision about whether an open space subdivision is
11 preferable to a conventional subdivision by zoning
12 the property as a Residency C Conservation District
13 and by appropriating the subdivision regulations.
14 That answer was clearly yes. The town wants an open
15 space subdivision rather than a conventional
16 subdivision here. The question is what kind of open
17 space subdivision. Obviously one that meaningfully
18 addresses the criteria of your own regulations.

19 I also would just like to state for the record
20 that prior to making a determination on this open
21 space special exception, that the application does
22 need to go to the inland wetlands commission for
23 their determination. It may not have been the intent
24 of your local municipal regulations in requiring that
25 processes, but the state statutes are perfectly clear

1 that that's a necessary prerequisite for any
2 approval, a special exception. And those state
3 statutes would trump municipal regulations if they
4 were inconsistent. I'm not entirely sure that they
5 are inconsistent with the regs of the town, but we
6 would maintain that that is still a concern with this
7 application.

8 Now, what you'll see this evening is a
9 demonstration that the applicant's proposal will have
10 a far greater negative impact of the natural
11 resources of this site than at least one potential
12 alternative design. We are not saying there aren't
13 designs that are worse, but your task is to determine
14 whether there are designs that are better. And we
15 should stress that in going through this analysis we
16 did rely upon the applicant's own numbers. While we
17 agreed with the town's own consultants that the lot
18 yield proposed by the applicant is probably too
19 large, we wanted to model this in sort of a worst
20 case scenario, relying on the numbers that they
21 proposed for their own open space subdivision,
22 roughly 250, and did design that with your own
23 requirements for road access and cul-de-sac
24 limitations as well.

25 We anticipate that the applicant will complain

1 about the removal of the golf course from the
2 proposed alternative design which is -- essentially I
3 think that speaks to just how damaging ecologically a
4 golf course design is. And you should bear in mind
5 that it's not your job. Yours is a job of the state
6 regulations to ensure that the applicant gets its
7 maximum economic return from the property. Indeed,
8 zoning law at a fairly basic level recognizes that if
9 left to their own devices, simply maximizing the
10 profit, you would have a lot of negative consequences
11 that zoning is designed to alleviate.

12 Every regulation necessarily limits the scope of
13 what an applicant might otherwise choose to do in
14 guidance by their own self-interest. Really, the
15 regulations are designed to make a proposal sensitive
16 to the community, not just the individual.

17 And in summary, we believe that the materials
18 that you'll see demonstrate that the proposed
19 application is reasonably likely to pollute, impair
20 or destroy the public trust in the natural resources
21 of the state, specifically Old Saybrook, and that
22 there is a prudent and feasible alternative
23 consistent with the reasonable requirements of the
24 public health, safety, and welfare.

25 And with that I would like to turn it over to

1 George Logan of REMA Ecological Services, who will be
2 narrating the presentation which hard copies are
3 provided in the packet that I distributed.

4 CHAIRMAN MCINTYRE: Are you submitting these
5 charts as exhibits?

6 MR. ROTHENBERGER: Eight and a half by 11 copies
7 of those charts are also a part of the application
8 packet.

9 CHAIRMAN MCINTYRE: Does that suffice?

10 MS. NELSON: That you got tonight.

11 CHAIRMAN MCINTYRE: Thank you.

12 MR. LOGAN: Thank you, Charles. Good evening.
13 For the record, my name is George Logan, and I'm the
14 president of REMA Ecological Services of Manchester,
15 Connecticut. And I am here on behalf of CFE.

16 We have conducted a detailed review of the
17 application, and there is a report that has been in
18 part submitted electronically to the applicant and to
19 the town. I think seven were submitted to the town a
20 few days ago. And we'll have additional copies, a
21 full count of about 12 or 13, for the town.

22 Now, just to get this thing out of the way as it
23 relates to the applicant's desire to undermine our
24 credibility. On the one hand Sigrun Gadwa and myself
25 are very perplexed and we're also saddened that the

1 applicant has plummeted to the depths in order to
2 perform an attack and produce a diatribe basically
3 against us.

4 As you will see in the roughly 35 pages that I
5 have produced as part of my response, you will see
6 that the Merriam memorandum twists the facts, takes
7 things out of context, and also compares apples to
8 oranges. We submit that since Mr. Merriam himself is
9 not a qualified scientist and he's actually a
10 signatory of that memorandum, that his testimony
11 should be basically disregarded. On the other hand,
12 we are sort of pleased that their attack proves that
13 our testimony is troublesome to them.

14 So tonight what I will do is I will take you
15 through a brief presentation that will demonstrate,
16 we feel in our professional opinion, there are some
17 key facts regarding this particular application that
18 you will need to look - it will assist you in
19 rendering your decision - in which we feel that the
20 applicant has not put into the record.

21 Could I have the first slide. Based on your own
22 regulations an open space subdivision must conserve
23 the natural resources such as forest, such as listed
24 species, species of special concern, threatened and
25 endangered, and wildlife populations. Now, if these

1 resources are found to be significant, their
2 preservation should be woven in or designed into the
3 applications of the development plan.

4 We feel that The Preserve is ecologically
5 unique. And I think this is something that most of
6 us who are gathered here tonight will agree with. It
7 is ecologically unique not just because it is large,
8 just based on sheer size, but it is also based on the
9 applicant's own ecological inventories, such as the
10 herpetological inventories that were conducted by Dr.
11 Klemens or the inventories conducted by DS as well as
12 our own knowledge and the town's consultants'
13 knowledge of the site and its environment. It is our
14 opinion that the applicant's proposal will unduly
15 damage the ecology of the site and will diminish its
16 natural diversity.

17 To back up this statement we have submitted
18 significant testimony into the record. And at this
19 point I think it's only sufficient to say that if the
20 proposal goes forward as planned, there is a
21 reasonable likelihood that there will be an
22 unreasonable impact upon the site's natural
23 resources, to borrow from the language of the state
24 statutes regarding the intervention. But I will take
25 it a step further and say that in my opinion this

1 reasonable likelihood of unreasonable impact is a
2 clear certainty, and we will demonstrate that a
3 feasible and prudent alternative and ecologically
4 sensitive one exists at the site. Next slide.

5 Now, measuring impacts to natural diversity at
6 the landscape level. That's what I am going to talk
7 about today. As conceded previously it's not too
8 difficult to lose the forest for the trees on such a
9 large and natural resources-rich site such as this
10 one. Therefore, what we have done -- and we have
11 been a pool of geographical information systems and
12 GIS. And what GIS has done is they've helped us
13 to -- enabled us to conduct a landscaping level
14 study, if you will, of this site in order to be able
15 to compare impacts upon natural diversity from
16 various development alternatives. And for the most
17 part we will be comparing the proposal of the
18 applicant with the existing conditions, including the
19 alternative we have proposed.

20 Now, these types of studies have been conducted
21 throughout our nation in the past probably ten, 15
22 years and have been on the increase since GIS has
23 become more available with people like myself and has
24 been more -- been used by -- as planners around the
25 nation grappled with this very real issue. And the

1 issue is the loss of natural diversity from
2 development pressures, with its commensurate golf
3 course effects upon the ecological health of the
4 ecosystems that are out there and the social
5 well-being of us all. Next slide.

6 So here comes landscape ecology to the rescue.
7 Landscape ecology is sort of an emerging science.
8 It's been around since the '80s. It is a
9 subdiscipline of ecology. And it's the study, as I
10 say there, of how landscape structure affects the
11 abundance and distribution of organisms is that its
12 biological diversity. Landscape ecology looks at or
13 measures the landscape in terms of composition, such
14 as the habitat types and the size, the length of the
15 forest edge, the density of the houses and roads.
16 And secondly, it looks at configuration. I guess we
17 would call that the juxtaposition of the landscape
18 elements, such as the habitat types and the measures
19 of habitat fragmentation and heterogenation.

20 Now, landscape ecology emerged as a scientific
21 discipline in great part through the emergence of
22 another scientific discipline and that is
23 conservation biology. The rigorous scientific
24 endeavor of conservation biologists, and there are at
25 least a couple of us in this room, realize that

1 habitat fragmentation at the landscape level was
2 responsible for diminished natural resources and
3 diversity.

4 And to quote from Wilcox, if you can go to the
5 next slide, please, habitat fragmentation is the most
6 serious threat to biological diversity and is the
7 primary cause of the present extinction crisis.

8 Now, that was written back in 1985. Unless you
9 think that I am referring here to habitat
10 fragmentation in just the globalish sense if you will
11 or just something that happens maybe at the Amazon
12 River basin, I am not. In a very real sense this
13 habitat fragmentation leads to local extinctions here
14 at home, right in our own backyard if you will; the
15 many plant and wildlife species and its local
16 extinctions that have and will lead to diminished
17 biodiversity in our Connecticut landscape. This is
18 kind of interesting, has a lengthy list of species
19 which have not been observed for many years in
20 Connecticut and to which they have attached the label
21 of the leaf extricated or the translation the leaf
22 lost. Next slide.

23 Forest fragmentation. Now, a specific kind of
24 habitat fragmentation which is most important when we
25 look at a landscape with the dominant community in a

1 forest is forest fragmentation. It is responsible in
2 our region for adverse changes in natural diversity
3 and for declines and local extinctions of
4 area-sensitive birds that are vulnerable to predation
5 and passivity; small forest wildlife and
6 invertebrates which are identified by poor
7 dispersability. And by the way, the latter group has
8 not been located at the site. And finally, uncommon
9 forest undisturbed plants. To that list I could
10 probably add similar keystone species of unfragmented
11 forested habitats such as the fisher cat, which has
12 been noted in these parts, and also the bobcat. And
13 probably some of the vernal pool amphibians, also.
14 Next slide.

15 Now, landscape scale or landscape level of
16 metrics are ways to assist the commission in their
17 decision making, so we have employed these metrics
18 and together with some of the principles of
19 conservation biology and landscape ecology and have
20 chosen these metrics to evaluate and compare impacts
21 to natural diversity again using GIS. Now, these
22 types of metrics again have been employed extensively
23 throughout our nation from Coast to Coast. They were
24 applied through the county basis or the watershed
25 basis or at the municipal level, but they can also be

1 used at specific portions of a landscape. And here
2 we have chosen to look at these 1,000 acres.

3 We have identified the following metrics to be
4 used at The Preserve not only because they are
5 gratuitive and simple to understand, but also because
6 they tie directly into the regulations. And here
7 they are. Number one, unfragmented, undisturbed
8 habitat remaining or simply unfragmented forest.
9 This is a metric which measures how much of a
10 property remains as forest and weighs it in how
11 remote it is from areas of connectivity.

12 The second one you see is water resources
13 impacts. This is a metric which measures how much of
14 the wetlands, the watercourses, and the golf course
15 are impacted by the development in ways that by the
16 proximity of the development is water resources.

17 The third we have natural diversity or listed
18 species impacts. And this was initially considered.
19 This measure impacts to known listed species based on
20 development. And this I guess will be called an
21 honorable mention of the metric, because it was not
22 used in calculating the natural diversity index on
23 the site since impacts listed species are rather site
24 specific. But we did use the vernal pool habitat
25 impacts, and this measures how much of the vernal

1 pools and the surrounding habitat is impacted by
2 developing the proximity to the vernal pool. Next
3 slide.

4 So we envision that we can put together a
5 natural resources index comparing these various
6 alternatives, and the site is unfragmented and in a
7 pristine situation. Again, this is measured on a
8 scale from one to 100, with a score of 100 represents
9 the land in its undeveloped state. And the final
10 score or index is a relative composite of ecological
11 integrity and environmental impact; these two things
12 coming together.

13 Again, it should be noted that the natural
14 diversity, the natural resources index aids in the
15 comparison of development alternatives that it has on
16 the natural diversity on this site alone. And it is
17 not meant to compare, make comparisons with other
18 portions of the surrounding landscape. The index
19 that we used and the metrics are very reasonable;
20 that is, they do not overestimate or inflate the
21 values and also are science based. Next slide.

22 Now, let's look at the natural resources on The
23 Preserve. What you see here is a November I think 1,
24 2000 aerial photograph. Thank you. Oops. What
25 happened here? What we have done is we have overlaid

1 the site in its undisturbed condition. And it
2 consists primarily of a large intact forest, the
3 green, that is removed from human activity. And this
4 has an index of 100. The buffer that's shown here,
5 you can kind of see - at least I can see; maybe you
6 can see too - several buffer increments if you will
7 that are shown in 100-foot increments up to 400 feet.
8 Now, the reason for that is because the scientific
9 literature is replete with studies that show the
10 impacts on the biodiversity of forest dwellings and
11 forest species of wildlife, which, by the way,
12 includes all plants and animals, is diminished with a
13 distance from the forest edge. Next.

14 Forest resources. At The Preserve are, we
15 believe, diverse, and abundant, and include
16 area-sensitive species such as the worm-eating
17 warbler, the hooded warbler that you see here, the
18 scarlet tanager, and the bobcat that you see here
19 just to name a few. Next.

20 Water resources. The Preserve is very rich with
21 water resources. And many of these are unique,
22 sensitive, and regionally important. These include
23 at the center, the core if you will of this habitat
24 Pequot Swamp Pond, which is regionally important, and
25 a unique related topic which includes nutrient

1 unlimited bobolink shrub swamp. It also includes
2 many class A streams and sensitive headwater seeps.
3 It includes the headwaters of the Oyster River as has
4 been noted before, which is an environmentally
5 sensitive and important resource.

6 And here water resources also include the
7 natural riparian wetland buffers that are an
8 internal, integral part of the sensitive water
9 resources. These here are shown in increments of
10 50 feet to 200. Again, the scientific literature is
11 replete with studies that show the importance of
12 riparian and wetland buffers and includes for the
13 preservation if you will the general health, and the
14 environmental quality, and the natural diversity of
15 the water resources leads directly and positively to
16 the width of the buffer. Next, please.

17 Vernal pools. We talked a lot about vernal
18 pools. The vernal pools are extremely important
19 habitat elements and of course the ecosystems here,
20 and they link if you will the unfragmented forested
21 habitat with the natural resources. Without argument
22 the site is extremely rich with vernal pool habitats.
23 There are 31 in total that have been looked at. The
24 great majority are very diverse and very productive,
25 with some being extremely productive.

1 Your own consultants sitting here before us,
2 Richard Snarski, Wendy Goodfriend, stated on the
3 record, with maybe the exception of one or two of
4 these vernal pools, they are all worthy of full
5 protection. And the natural resources index of the
6 vernal resources on the site in its undeveloped state
7 is as you see it, 100. Next, please.

8 Amphibian populations. The Preserve is the home
9 of at least 14 documented amphibian species and many
10 productive amphibian breeding habitats. Now, it is
11 widely known that vernal pool amphibians inhabited
12 forests surrounding the breeding habitats of vernal
13 pools and can be found hundreds of feet from these
14 pools. Dr. Klemens's model suggested 750 feet is a
15 reasonable distance, but the scientific literature
16 shows that these species will actually travel much
17 further and disperse much further than that.

18 For pools that are extremely productive, such as
19 those that are inventoried for this site - and
20 there's a few of those with egg mass counts of 500 to
21 1,200 - spotted salamanders alone which computes
22 populations in the thousands. The canopy capacity of
23 the forest ground would quickly exceed the wetland
24 habitat greater than 750 feet from vernal pools. And
25 we must not forget also reptiles. There's eleven

1 species of those on this particular site, few of
2 which are habitat and fragmentation sensitive. These
3 would include the box turtle, we feel the spotted
4 turtle and also the -- next slide.

5 We have species of special concern. Several
6 animals and plants were found on this site and fit
7 this category. These include the eastern box turtle,
8 the red bat, and the ribbon snake. And the plants
9 are -- here are the eastern prickly pear, false hop
10 sedge, and marsh milkwort. And the last on the list
11 of the species of special concern are thistle. They
12 are not going anywhere but also important. It is
13 probable, and this is my opinion, that an additional
14 list of species, particularly plants but also
15 invertebrates, could occur on the site. Next slide.

16 So let's talk about the impacts of the
17 applicant's proposal first. Again, what you'll see
18 here is the 2000 aerial photograph of the site and
19 you'll see the development envelope in red of the
20 applicant's proposal. And resource impairment
21 impacts and diversity which would result from the
22 applicant's proposal are generally connected to these
23 here.

24 Forest fragmentation, and of course they are
25 related, negative edge effects. As has been

1 mentioned previously, induced or what we call
2 man-made forests in Connecticut impacts the native
3 plants and mammals in many cases.

4 Then the loss of wetlands connectivity. As you
5 can see from the multiple passes, at least half of
6 the fairways cross over the wetlands, the golf
7 fairways, and of course the roadways of the wetlands.

8 Then we have habitat degradation. This is a
9 direct taking or alteration of habitat again,
10 fairways. Of course water quality impairment, which
11 is a very real threat for the proposed uses including
12 the golf course. Let's look separately at the
13 natural resources. Next slide.

14 Forest fragmentation. What you see here again
15 in red is the envelope, the development envelope as
16 proposed with the buffers and you see the habitat
17 that remains. This shows the edging, also, which
18 extends 400 feet from the forest edge. Those are
19 those bands, the buffers. What the applicant's laid
20 out here that you see results in six, maybe seven
21 forested patches that are rather small. Most of them
22 except maybe one with limited habitat remaining.
23 These forest patches are not enough, in my view,
24 meaningful force of habitat for the wildlife that's
25 found on the site. The natural resources index,

1 based on our GIS study of this particular method, is
2 42. And again, remember that in its undisturbed
3 state is 100. Next slide.

4 The next one is -- again, impacts on the water
5 resources. And you can see what's left once the
6 applicant is done with the development envelope. The
7 applicant's proposal will result in several things,
8 sedimentation and siltation impacts. This is a real
9 threat no matter what kind of development is put on
10 the site, no matter what the alternative, but it's
11 more easily mitigated by design that avoids sensitive
12 areas and respects wide buffers.

13 Second kind of impact upon natural water
14 resources is nutrient enrichment and degradation.
15 This is one that I feel particularly -- it's been
16 avoided in the testimony. There are wetlands and
17 watercourses on the site. Just based on what I see
18 here, undisturbed watersheds and small watersheds in
19 comparison to some of the resources themselves. And
20 based on the applicant's own data there are wetlands
21 here that are nutrient enriched and sensitive to such
22 impacts. These types of impacts can be mitigated
23 more easily by the sensitive design, and we'll show
24 you how that can be done.

25 Then we have impacts from toxic uses.

1 Pesticides used in golf course and landscaped areas.
2 We have hydrologic impacts related to the potential
3 for changes of some of these wetlands, the water
4 budgets. And the natural resource index that we have
5 come up with here is 83, again, compared to 100.
6 Next, please.

7 Impacts on vernal pool habitats. It was stated
8 in previous testimony with the exception of one or
9 two of the vernal pools at the site all are worthy of
10 maximum protection. However, the applicant's
11 proposal impacts several of these and the surrounding
12 habitat. And it seems that these have been
13 expendable, but in our analysis it's not acceptable.
14 And the natural resources index for the applicant's
15 proposal is 76. Next, please.

16 I will go over this quickly, because there seems
17 to be some confusion as to what we reviewed. What we
18 reviewed is included as Appendix B in the proposal in
19 our report. What the applicant actually submitted,
20 we looked at that. And we looked at some of the
21 supporting documentation. And we are not going to
22 resolve this tonight. So you can go and just look at
23 it and tell me what you think. Next slide, please.

24 So what we are proposing is a better
25 alternative, what we call a real open space

1 subdivision. So we have run the landscape level of
2 metrics for an alternative development that you see
3 there. Again, the red is the proposed envelope. And
4 this is probably one of several alternatives that we
5 could have run, that we could have envisioned. It
6 should be noted that if we focused even closer by
7 leaving the landscape level at each specific resource
8 at The Preserve, we could probably fine tune the
9 alternative proposal and get even less habitat
10 degradation and more resource protection. This is a
11 conservative view. We could have cut these out with
12 a fine-toothed comb if you will and extracted
13 additional areas from this red, but we did not do
14 that.

15 Now, around this room you see right here in
16 front of you and in a handout that I just provided
17 this commission, we have provided -- and these
18 boards. So you can see and compare the composite or
19 the individual natural resource indexes with the base
20 case, which is 100, with the applicant's proposal and
21 with the alternative layout. And I'll let you do
22 that, but in each case I think you will see and agree
23 that the alternative development scored higher
24 compared to the applicant's proposal.

25 Now, alternative can be summarized as follows.

1 MS. MCKEOWN: Can you stop. I have to change
2 the tape.

3 MR. LOGAN: Yes. Allow me to wet my lips.

4 MS. MCKEOWN: Thank you.

5 MR. LOGAN: Again, to summarize our proposal the
6 golf course and spine road as you can see are
7 eliminated. And the alternative offers the same
8 density as far as housing units but with more
9 clustering development. There are several very
10 large, and you will see on these boards right here
11 and in the handout, meaningful forest blocks which
12 are preserved with connectivity and there's much less
13 habitat fragmentation. It should be noted that even
14 lower density and more clustering would allow for an
15 even better and more environmentally-sensitive plan.

16 What I will do next is I will briefly show you
17 on the ground some of these main elements of the
18 alternatives and then let the next speaker take it
19 from there and give you a little bit more detail.
20 What you see here in sort of an oblique way in red is
21 our proposed center development and here you see the
22 very nicely rehabilitated Pequot Swamp Pond.

23 What you see here, what we purposely did is we
24 took all the development and took it outside of the
25 watershed, because we believe that this particular

1 resource is extremely sensitive to any development in
2 close proximity. If you remember the plan, as you
3 will see later, it was within feet that the applicant
4 had his development. Next, please.

5 So this is the central and this is the eastern
6 portion. When we use -- most of the applicant's
7 developing is in the middle. Because we feel that if
8 we could get access there - that's a good question -
9 that's probably the least sensitive area of the site.
10 If you go to the next one, you go to the far side,
11 you will see again if we get access from Westbrook,
12 this particular development is also left.

13 So I thank you for your consideration of these
14 key facts and consideration of our alternative. And
15 we hope that you can see that there exists a feasible
16 and prudent alternative that will conserve more
17 natural resources, allow for less fragmentation,
18 allow for the preservation of wildlife conservation.
19 Thank you much and now our next speaker will address
20 you.

21 MR. ROTHENBERGER: Just briefly, an Old Saybrook
22 resident that you have heard from on a number of
23 occasions, Chris Cryder, who knows this property
24 extremely well and has spoken passionately and
25 eloquently on the application proposal a number of

1 times will briefly just really take the commission on
2 a tour of this property from the perspective of
3 somebody who knows it.

4 CHAIRMAN MCINTYRE: Before we get started you
5 have approximately seven minutes, Chris.

6 MR. CRYDER: By my watch when we started it was
7 10:20.

8 CHAIRMAN MCINTYRE: We are not going to debate
9 minutes, but how long is your presentation?

10 MR. CRYDER: Mine is about -- I'll try to make
11 it 15 minutes. I'm also a member of the public.

12 CHAIRMAN MCINTYRE: That's fine, but this
13 portion is presented for the Connecticut Fund for the
14 Environment, and I am just trying to keep everything
15 on schedule. The applicant and everyone else has
16 stayed within their time limits, and I would like to
17 try and do that. My point being that if at this time
18 you feel that you're going to go over the time for
19 the Connecticut Fund for the Environment, I would
20 feel that maybe we should open it up to the public
21 and then continue what you have maybe at a later --

22 MR. CRYDER: At the public session?

23 CHAIRMAN MCINTYRE: Maybe tonight later on,
24 depending how long it is. I mean I just saw how much
25 you had in your hand and to present that much in 15

1 minutes I really don't think it's --

2 MR. CRYDER: I have more than 15 minutes. I
3 could do part of it here and part of it in the public
4 session.

5 CHAIRMAN MCINTYRE: Right. But there's a lot of
6 people from the public that may want to speak also,
7 and we have heard from you on numerous occasions. So
8 at this time why don't we -- if it's okay with you --
9 and talk to your attorney there and see his feeling
10 on it.

11 MR. ROTHENBERGER: I think what I'll just do,
12 given the time constraints, is just reiterate what
13 Mr. Logan said about drawing the commission's
14 attention to the resource-specific boards that are as
15 well part of the packets that were handed out. Note
16 the fact that the alternative development across the
17 board on each of those metrics does a better job of
18 meeting the goals of your open space regulations and
19 meets the statutory criteria for intervention.

20 I just have a couple of follow-up questions for
21 Mr. Logan just to get this on the record. With
22 respect to the Old Saybrook regulations, is it your
23 professional opinion that the alternative proposal
24 would do a better job at preserving the wetlands and
25 slopes of clearing, grading, filling, and

1 sedimentation?

2 MR. LOGAN: Yes. The answer is yes.

3 MR. ROTHENBERGER: Would the alternative
4 proposal do a better job at creating buffers for
5 wetlands and watercourses?

6 MR. LOGAN: That's a definite yes.

7 MR. ROTHENBERGER: And finally, would the
8 alternative design provide a better job with open
9 space that is reasonably and meaningfully contiguous?

10 MR. LOGAN: Without a doubt.

11 MR. ROTHENBERGER: And then finally, in your
12 professional opinion would the applicant's proposal
13 unreasonably pollute, impair, and destroy the public
14 trust in the natural resources of the city?

15 MR. LOGAN: I'm afraid unfortunately it will.

16 MR. ROTHENBERGER: Does the proposal that you've
17 laid out here and we have shown, in your professional
18 judgment is that the reasonable, and prudent, and
19 feasible alternative to the applicant's proposal?

20 MR. LOGAN: It definitely is.

21 MR. ROTHENBERGER: Thank you.

22 CHAIRMAN MCINTYRE: Does that end your
23 presentation?

24 MR. ROTHENBERGER: Yes, it does.

25 CHAIRMAN MCINTYRE: Okay. Thank you very much.

1 At this time I would like to have the board
2 members come back up front, please.

3 Okay. This portion of the public hearing is now
4 open to the public. Anyone wishing to speak from the
5 public can do so at this time. Just raise your hand.
6 I'll acknowledge you. And when you come up to the
7 podium, please state your name for the record.

8 Yes, sir. You have to cut through. You have
9 time. Take your time.

10 MR. POWITZ: Good evening. My name is Dr.
11 Powitz. I'm the chairman of the Old Saybrook Water
12 Pollution Control Authority. And my other hat is I'm
13 health director of Westbrook.

14 My question and comment has to do more with my
15 38 years as a sanitarian and as a health official.
16 And my concern is for the folks who live around The
17 Preserve as it gets developed. It's been my
18 experience with this type of geology that any time
19 blasting occurs fractures can happen. We are --
20 anything north of I-95 we have our own water
21 supplies. We do know groundwater contamination can
22 occur with golf courses and we do know that
23 groundwater changes do occur with mass construction.

24 When a project like this is undertaken, I think
25 those of us who rely on well water will have to have

1 some assurances that if our wells are disturbed in
2 the Ingham Hill area, that either the town or the
3 developer will see that we either get public water or
4 one of -- use water systems to provide us with a
5 water resource. And that's about -- I used up my
6 nickel. And that's the only thing I would like to
7 leave you with.

8 CHAIRMAN MCINTYRE: Thank you, sir. What's your
9 name again, sir?

10 MR. POWITZ: Powitz, P-O-W-I-T-Z.

11 CHAIRMAN MCINTYRE: Thank you. Anyone else
12 wishing to speak? Yes, sir.

13 MR. MANZI: My name is --

14 CHAIRMAN MCINTYRE: We are a friendly group.

15 MR. MANZI: I'm sorry?

16 CHAIRMAN MCINTYRE: We're a friendly group.

17 MR. MANZI: My name is Ron Manzi and I live on
18 Schoolhouse Road. I am a ten-year resident of Old
19 Saybrook and I have a couple of comments.

20 First of all, I am totally opposed to this
21 preserve development. And I think as a commission
22 anytime a rock or a stone or anything is touched by
23 machinery or anything else, you have reasonably
24 polluted, destroyed or impaired the environment. And
25 I would say it's your job. You can't allow this to

1 happen. And listening to all of the attorneys today,
2 you know, if you believe in a lie long enough, it
3 becomes the truth. And I just don't believe that
4 this will have any positive impact on our community.

5 And lastly, as a resident I am very concerned
6 about my water supply. My well is pretty much
7 reliant upon whatever happens in the rest of the
8 environment. And what's the town going to do for me
9 when I don't have potable water? That's all that I
10 have to say. I can only urge you to vote against
11 this. Thank you.

12 CHAIRMAN MCINTYRE: Thank you, sir. Yes,
13 Barbara.

14 MS. MAYNARD: My name is Barbara Maynard and I
15 have lived on Ingham Hill Road for many, many years.
16 And thank you, Commissioners, for the opportunity to
17 make this statement.

18 Recently, the beginning of this week, we read
19 about the skating pond that wasn't there anymore.
20 This is the Exchange Club Pond which was created in
21 the '70s and it has supplied water and recreation for
22 all these years, up until a little while ago. There
23 will be no skating on it, because there's no water on
24 it. The only thing that we can determine from what
25 we read is that our water table is very, very

1 sensitive to any amount of pumping, whether it's the
2 water company pumping to put water in the Obed
3 Heights tower or whether it's Mr. Pakowski pumping to
4 lower the levels so he can dig more gravel until his
5 gravel pit permit runs out. We don't know. They
6 don't know or at least they haven't indicated that.
7 However, it does show that if that amount of pumping
8 drops the water table so there's no more exchange for
9 the pond, what is the amount of pumping out of our
10 groundwater going to do to satisfy the golf course
11 needs and the homes that are up there?

12 All the water comes from the ground, whether
13 it's from the Connecticut Water Company wells or
14 whether it's from our own private wells. As it is
15 when we have dry summers, people in that area who
16 have particularly shallow wells have to be very
17 careful. I think we have a problem that we didn't
18 even realize we had before. And I would request the
19 commission please look into this and I want this on
20 the record that this is a great concern. Thank you.

21 CHAIRMAN MCINTYRE: Thank you, Miss Maynard.

22 Anyone else wishing to speak? Yes, sir.

23 MR. HALL: Frank Hall, Essex.

24 I would like to express concern about the impact
25 of the construction traffic on the adjoining roads.

1 They are talking about having blasting. There's
2 going to be heavy equipment on those adjoining roads.
3 If they do build this and have 250 units, you figure
4 there's going to be at least another 500 cars in that
5 area. Average household has about two cars.

6 I used to live in the Hartford area, and there's
7 a lot of traffic up there. I hope that doesn't
8 happen in this area. We have enough problems with
9 all the traffic on I-95. They are talking about
10 expanding that to six lanes. I just would like for
11 you to consider this. I think it's going to be a
12 serious problem. Thank you.

13 CHAIRMAN MCINTYRE: Thank you, sir.

14 Anyone else wishing to speak from the public?

15 I'm holding you off to the end, Chris. What I'm
16 trying to do is get everyone else in and then squeeze
17 you in.

18 MR. CRYDER: I understand. No problem.

19 CHAIRMAN MCINTYRE: Yes, ma'am.

20 MS. BASHAM: Carol Basham, Old Saybrook.

21 CHAIRMAN MCINTYRE: Could you pick up the mike,
22 ma'am, so you can be heard. There you go.

23 MS. BASHAM: Okay. I just wanted to mention
24 Selectman Peace stated we would have unfunded
25 liabilities. And I believe at the last meeting The

1 Preserve mentioned deeding over the open space to the
2 town. And I hope we're well aware that we would be
3 taking on tremendous liabilities in case of any
4 property injury or property damage on this land.
5 Okay. That's it.

6 CHAIRMAN MCINTYRE: Thank you very much.

7 Anyone else from the public wishing to speak at
8 this time?

9 Okay. Seeing that no one else wishes to speak,
10 Chris, would you please come up.

11 MR. CRYDER: Thank you and happy New Year.

12 And I thank the commission for taking their
13 walks and taking the second walk. I hope all the
14 other -- the ones that didn't make it in the group
15 were able to make it individually, because I do
16 believe that you were able to see on the second walk
17 really a little bit more of the true nature of the
18 land. Great to see some of the wetlands, the
19 springs, the watercourses, the vernal pools. Even
20 though you went on the second walk, you really only
21 saw about 25 percent of the property.
22 Seventy-five percent you haven't visually seen yet,
23 which I still think is important.

24 This land means a lot to me personally, but it
25 also means a lot to me from the perspective of the

1 future of Old Saybrook. I believe the decision that
2 the commission makes regarding the property will
3 significantly impact the future direction of Old
4 Saybrook. This is a turning point for the future of
5 Old Saybrook in my opinion. I think Mr. Royston said
6 this is just a concept, not a detailed plan, but this
7 is a concept which will drive the future. The future
8 zoning and inland wetlands meetings are only details.
9 It's the concept here that you'll approve that will
10 drive us and is so important.

11 I would ask the commission that you dust off
12 your plan of conservation and development that was
13 approved by the town in 2003. Please get it out. In
14 fact, you must get it out and read it intently.
15 Please absorb in there the vision that you laid out,
16 the goals that you laid out, and the ten-year plan
17 that you set forth in that document. And I will
18 submit to you that the Lehman Brothers proposal as it
19 is designed today is not in keeping with the goals
20 you set forth in the conservation and development
21 plan.

22 From a personal perspective and perhaps the
23 value that I bring to these proceedings is that I
24 know every acre and inch of that preserve. I have
25 been through the whole thing, everywhere. I was

1 introduced to the property in the 1980s by Mr. Lyons
2 when I worked in Essex. He was a former owner. And
3 he took me in the north end of the property and
4 showed me the dark hemlock forest in and amongst the
5 heavy ridges and ledge there. And at that time
6 woolly edeljet was impacting the hemlocks and even
7 today they are, but the hemlocks are making a rebound
8 throughout the northern region. I'll have to go back
9 and click my mouse there.

10 CHAIRMAN MCINTYRE: For the record, let it be
11 known that Mr. Cryder is using his -- a Power Point
12 demonstration, and that's what he's referring to as
13 he discusses comments.

14 MR. CRYDER: I've also had numerous wildlife
15 encounters on the property: Turkey, deer, coyotes,
16 not long ago a fisher cat. I won't get into what a
17 fisher cat is. And most recently, not too long ago,
18 with my dog we ran into a bobcat. But the natural
19 resources which continue to amaze me the most are the
20 water resources on this site. They are everywhere:
21 Springs, swamps, vernal pools, wetlands, streams.

22 And let me move over to this presentation. And
23 this is looking from south to north, and I'll bring
24 you in here a little closer. But here's the beating
25 heart of The Preserve, the Pequot Swamp Pond which

1 supplies so much water for the Oyster River. I have
2 taken the stream that runs right out from the Pequot
3 Swamp in this direction and followed it down to the
4 Trout Brook that goes to the Patchogue River and that
5 feeds into the Sound. I have taken watercourses that
6 go in this general direction down to the Great Cedar
7 Swamp that then flow into the Oyster River. I have
8 followed the spring that starts here and goes into
9 this huge wetlands complex here, down into the Red
10 Maple Swamp area and flows in this direction and into
11 the Ingham Hill Ponds that feed Chalkers Mill Pond,
12 into the Oyster River. I have also taken small
13 streams that flow northerly and in this direction to
14 the Mud River. And the Mud River flows to the
15 Connecticut River. There are so many water resources
16 here. This is the crown of Old Saybrook. It feeds
17 many watersheds into Old Saybrook, Essex, and
18 Westbrook.

19 The east natural resources, the wildlife, and
20 the water are extremely valuable. And we are
21 shepherds of these resources and you as a commission
22 are shepherds of these resources. And we must do
23 everything we can to preserve these, to protect
24 these, because many of these are in the public trust.

25 My goal, along with many hundreds of Saybrook

1 citizens through the Alliance of Sound Area Planning,
2 a grassroots organization, goal is to fully protect
3 this site. That would be our goal. We truly hope
4 and wish that the DEP land acquisition division and
5 the Nature Conservancy can negotiate a purchase, but
6 if it cannot, if it cannot, we ask that if this
7 cannot come to pass, that you choose the development
8 option which has the least impact on the natural
9 resources which are in your trust. Please choose the
10 option with the least impact.

11 Now, let me take you on a virtual tour of this
12 property and lay over the proposed plan by the Lehman
13 Brothers and let me take you in here to the eastern
14 complex somewhat. Here is the central village, very
15 close to the Pequot Swamp, and here is hole ten and
16 here's 11. It traverses the Pequot Swamp. Here are
17 the other holes on the eastern complex which traverse
18 the wetlands. And I want you to take a look at these
19 little open natural spaces that are left. Are these
20 quality natural spaces left? Do these meet your test
21 of reasonable contiguousness that are in your open
22 space regulations? I would say no.

23 Same with this area which is so ecologically
24 sensitive. This whole area is ecologically
25 sensitive. Do these little pieces here meet your

1 test of reasonable open space? The most significant
2 left over is just this 100-acre spot here.

3 We have heard from the experts that the natural
4 spaces are so important, that having more forest core
5 is important. What will happen here is that this
6 natural space will be cut into ribbons of Swiss
7 cheese. We have learned that the fragmentation that
8 will be here will cause a severe detriment to the
9 indigenous avian life. We will have local
10 extinctions of birds like the hooded warbler or the
11 worm-eating warbler. With all this fragmentation and
12 the edge effect from these golf courses, there will
13 be some species that are severely, severely
14 detrimental. It will also harm mammals such as the
15 bobcat and the fisher cat. The entire nature of this
16 property will change irrevocably by this development.
17 What will be left over? Only small, fragmented
18 pieces. Does this meet your test for reasonable
19 contiguousness? I would submit no.

20 Let's take a look then at the proposed
21 alternative without the golf course. Here we keep
22 the same density for argument sake, even though there
23 may be fewer based on your town's consultants'
24 analysis. We have single-family homes here over
25 towards Westbrook. We have the central village which

1 has been moved out of the watershed from Pequot
2 Swamp, and we have maintained the eastern portion as
3 planned. And I would agree, because I have walked
4 this, that this is probably the least sensitive area
5 on this ridge. You are already along an edge, which
6 is this powerline. And the railroad tracks here are
7 along here as well. Right here is the railroad
8 tracks. This acts as a natural -- I mean -- I'm
9 sorry, a man-made, but it does act as a buffer to the
10 wetlands on this other side. So this is probably the
11 best place to be.

12 We happened to choose this exit here to Barley
13 Hill. We are not in agreement with it, not against
14 it. It just happened to be where the applicant had
15 put a road in their conventional plan. There's been
16 some thought that maybe as the gravel pit is --
17 reaches its end of usefulness, that maybe the road
18 can be down this way. But we haven't analyzed the
19 traffic impact of this alternative.

20 What I would like to do now is lay over for you
21 the water resources of this site. And this combines
22 the vernal pool metrics that we talked about earlier
23 along with the wetlands metrics. And to make this
24 understandable the dark green are the sensitive
25 areas. This is where vernal pools are and where

1 wetlands are and overlap each other. The lighter
2 blue are the least sensitive areas. So you want to
3 be concerned about these green areas. And in the
4 blue you want to be concerned about these vernal
5 pools and wetlands.

6 Would you not agree that it would make sense
7 that from a development perspective it would be best
8 that you would place your development as far away
9 from these sensitive water sources which are in the
10 public trust that you have that will impact runoff,
11 groundwater, et cetera. I would hope that you would
12 agree with that.

13 Now, let's overlay the applicant's proposal.
14 Come down a little bit here and let's see. Let's
15 look over at the eastern. See how these holes
16 traverse these sensitive areas. These holes traverse
17 sensitive areas here. We have learned that of the 31
18 vernal pools, many of them will be eliminated.
19 Experts say they are less productive, but some of
20 them will be eliminated in the plan.

21 Let's go down to the very important Pequot
22 Swamp. The experts have said and so have the
23 applicant that this is a unique regional water
24 source. It is a specific kind of water source that
25 is low nutrient in nature, meaning there aren't

1 streams that go into it. And the wildlife and the
2 plant life here thrive on low nutrients. With holes
3 ten and 18 so close to the Pequot Swamp -- and this
4 is a significant ledge. And with these holes here,
5 with essentially no buffer here to the Pequot Swamp,
6 it's at high risk for pesticide runoff, high risk.

7 I would also like to give to you again a
8 handout, which I handed out to you before, which
9 shows that over half the holes traverse wetland
10 areas. And the buffers in many cases are only
11 25 feet from the wetlands. This is not a
12 well-designed golf course sensitive to the water.
13 They could have done this much differently, much
14 differently. And the more and more I look at the
15 consultants' reports, and the town's consultants'
16 reports, and Wendy Goodfriend and others, is that
17 this is not sensitively done. They are trying to
18 squeak out as many water holes as possible and do it
19 legally, but it's not sensitive to the water
20 resources here.

21 So I submit to you that if we go to the
22 alternative, let's see what happens. It's not ideal,
23 but it's much better. All of these water areas are
24 preserved and the water quality will be maintained.
25 Essentially no risk. Same with the whole very

1 sensitive western complex. We would have
2 unfragmented forest and you would assure the quality
3 of the water into the future for Old Saybrook, Essex,
4 and Westbrook. This is a prudent, a reasonable, and
5 a feasible alternative.

6 Look at the large sections of remaining forest
7 here and here. Also, there's continuity between here
8 to allow the wildlife to move in this site. If you
9 look at the applicant's proposal, you will see
10 there's no continuity through here and just these
11 tiny fragments. And I submit to you that part of the
12 open space regulations require that there be public
13 recreation. There will be cart paths through here,
14 but is that really quality public recreation? And I
15 won't get into the discussion about the proposed
16 supposed nature center that they have planned.

17 How much time do I have left?

18 CHAIRMAN MCINTYRE: Enough.

19 MR. CRYDER: Okay. I'm almost done.

20 This application is all about the future. Old
21 Saybrook is the shepherd of our natural resources.
22 Does the applicant's proposal qualify for approval?

23 This application has generated so much interest
24 in this town. Why? Because it's about what kind of
25 town Old Saybrook is going to be in the future. In

1 fact, it has generated statewide and regional
2 interest. We are very fortunate to have this large
3 and unspoiled tract of land in our town. That's why
4 you enacted the open space regulations, because you
5 want to assure that large tracts such as The Preserve
6 would be developed in such a way so that these
7 resources and the unique character would remain in
8 the area as much as possible.

9 Let's talk about requirements for approval of
10 open space in an open space subdivision. What are
11 the requirements for the preliminary approval?
12 Pretty simple. It's designed to achieve the purposes
13 of conserving open space, natural, scenic, and
14 cultural resources. You don't need to be a lawyer to
15 understand this.

16 Density no greater than a conventional
17 subdivision. You must have quality open space which
18 is 50 percent or more of the space, and it must be of
19 sufficient size and character to accomplish the
20 purpose of the open space subdivision, and it must be
21 available to the public for recreation.

22 You must have preservation of natural, scenic,
23 and cultural resources, specifically woodlands,
24 wetlands, and buffer areas, steep slopes, scenic
25 views, wildlife habitat, species of special concerns,

1 historic, and archeologic features. Based on
2 everything that you've heard here, I believe that the
3 Lehman Brothers proposal does not meet the standard,
4 and the small open spaces don't meet the test of
5 reasonable contiguousness, and the natural resources
6 which are in your public trust are damaged.

7 You must also protect the public health, safety,
8 and property values. I would submit to you that
9 since you don't have the applicant's real IPM plan,
10 integrated pesticide management plan, that you don't
11 know how that's going to impact the public health.
12 What we have is Tim Taylor's plan.

13 I encourage you to read REMA Ecological
14 Services' analysis of that plan. The past -- the
15 inland wetlands commission. Let me read the
16 conclusion of that plan. Given the proposed fairway
17 layout and sensitivity and the value of the adjacent
18 and downgrading open spaces which includes wetlands
19 and watercourses, the level of risks and impact of
20 natural resources is unacceptable.

21 In terms of the numbers of high-risk products to
22 be used and the emphasis on chemical control and the
23 overall control strategy, the Tim Taylor, let's
24 suppose, the IPM plan puts forth a low standard.
25 That's all we have to go by at this point. You don't

1 know at this point what the plan will be.

2 Now, I submit to you that with the golf course
3 as it's designed traversing the wetlands with the
4 minimal 25-foot buffers in many areas and also with
5 many of the golf holes encroaching and going into the
6 100-foot -- the 100-foot barrier -- buffer on vernal
7 pools, that there are significant risks here.
8 Mr. Cohen has mentioned that there is not frequent
9 pesticide pollutions, but there is and it has
10 happened. It's happened in Massachusetts; it's
11 happened on Long Island. How frequent does it have
12 to be?

13 In conclusion, it's your job to protect the
14 resources that we are lucky to have. We have shown
15 that the proposal does not comply with the
16 regulations. We have shown that it would impair,
17 destroy, and pollute the natural resources. I urge
18 you to do what is right for The Preserve, what is
19 right for Old Saybrook. Please deny the application
20 and require the applicant to redesign the project.
21 Thank you.

22 CHAIRMAN MCINTYRE: Thank you, Mr. Cryder. Do
23 you have a copy of your Power Point presentation to
24 submit for the record?

25 MR. ROTHENBERGER: Yes, we do.

1 MR. CRYDER: Yes.

2 CHAIRMAN MCINTYRE: You do, okay. Mr. Cryder,
3 you were giving your testimony as a citizen, correct?

4 MR. CRYDER: Yes.

5 CHAIRMAN MCINTYRE: As a resident.

6 MR. CRYDER: Yes. Yes, I am a resident of Old
7 Saybrook, living on 3 Merritt Lane.

8 CHAIRMAN MCINTYRE: Thank you. Is there anyone
9 else? We have some time left for the public to
10 speak. Is there anyone from the public who wishes to
11 speak? Yes, sir.

12 Mr. Cryder, could you turn these off if you
13 could.

14 MR. CRYDER: I'm sorry?

15 CHAIRMAN MCINTYRE: Could you turn these off.

16 MR. O'NEIL: Mark O'Neil. Is this on?

17 CHAIRMAN MCINTYRE: No, it's not. Push it up.

18 MR. O'NEIL: My name is Mark O'Neil. I'm a
19 resident of Westbrook. I just feel that I should at
20 least say something. I have spoken at every meeting
21 here and being the last meeting and probably the most
22 important.

23 CHAIRMAN MCINTYRE: I was wondering where you
24 were.

25 MR. O'NEIL: It's -- one concern that I have

1 that I was thinking about going back to my childhood.
2 I was lucky enough to grow up on the shores of the
3 Housatonic River, the swamps called the swamp grass
4 back then, and the canals and fortunate enough to
5 grow up with 30, 40 kids running around in the swamps
6 enjoying nature and little chubs and stuff like that.
7 It kind of brought me back to what kind of
8 development this is, you know, shows 300 children be
9 running around, approximately 300, maybe more in
10 time.

11 I was also not lucky enough to watch a very good
12 childhood friend of mine, his younger brother get
13 pulled up blue and deceased from drowning in the
14 swamps, which brings me up to just a point which I
15 don't really anticipate, but I was wondering who
16 really has jurisdiction over the Pequot Swamp? It's
17 a large body of water. I know a small swimming pool
18 has to be fenced in pretty much legally anywhere in
19 town. I was wondering how long it would take before
20 200 toddlers or children in the future are going to
21 be demanded by the parents to fence the swamp in,
22 whether through the association or from the town.
23 Who would be responsible for anything that could
24 unfortunately happen over there? Because children
25 will, not maybe but will be playing in swamps. It

1 seems like a great way to grow up as a kid. That's
2 for sure. That was just a concern that I thought
3 about before that I was interested in.

4 I think Mr. Keeney said it right at the very
5 first meeting. Where would -- 150 years ago where
6 would Central Park be if the people there didn't have
7 the insight to -- the foresight to look ahead and see
8 how valuable that piece of land really is, you know?
9 Where would New York be without Central Park? Where
10 would the birds go? Where would the squirrels go?
11 Most importantly, where would the people go? I mean
12 there's a city that's had a lot of tragedy in the
13 last three or four years. Where would they be
14 without that one piece of property to tie it
15 together?

16 This is 8 percent of the Town of Old Saybrook,
17 this piece of property. How important is it to us?
18 Maybe we can't see it today, but how about 50 years
19 or 150 years from now. How important is the decision
20 in front of you people going to be to the people --
21 to your grandchildren, your grandchildren's
22 grandchildren and the next 50 years, 100 years, 150
23 years from now? I don't think it's really hard to
24 see how important this property will be to the town
25 of Old Saybrook in 150 years from now. Pretty

1 simple. Just look back to New York. Population is
2 going to grow.

3 This is probably the most least desirable piece
4 of property in all of Old Saybrook to develop. It
5 was shown today a very feasible way to develop it on
6 a smaller scale, clustered scale and still
7 maintaining a huge amount of open space. So there is
8 an alternative. It doesn't have to be the golf
9 course and the cluster housing. The small cluster
10 housing development may or may not fit the
11 developer's development. I don't know. That's
12 not -- I think the residents -- that maybe the
13 commission has to look at what's really important for
14 the future of this town.

15 I'm a resident of Westbrook, so I know it's -- I
16 believe it's important for Westbrook. We'll get to
17 the traffic problems and the road problems. That's
18 what impacts my town. So far all three selectmen
19 from Westbrook have shown opposition to this. Two
20 selectmen from Essex, selectmen from Old Saybrook all
21 oppose the project.

22 I don't -- I'm having a hard time seeing,
23 besides the developers, where the benefit is of this.
24 I mean are we all golfers? Do we really need a golf
25 course? I mean golf is fine. I don't want to sound

1 like a tree hugger, because I'm not. Believe me I
2 believe in development. We need it. You know, it's
3 just not the issue here. But the issue is that we
4 are running out of space. We are. We are running
5 out of space; we are running out of clean water; and
6 we are running out of air. And the animals are, too.
7 A lot of people don't care about that but hey,
8 somebody has to care about it.

9 So I really -- I kind of feel that the future is
10 what we are looking at. We are not looking at down
11 the road ten years, 20 years. We are looking at 100
12 years, you know, 50 years, 100 years. I know it's
13 hard to look that far ahead, but we have to do it.
14 And thank God that some people do; we have done it in
15 the past. We have saved places that are as important
16 as this. This is a priceless piece of property.
17 This swamp is a heartbeat. This is a Central Park of
18 New York City. It's important that we do whatever we
19 can to save as much of this space as we can.

20 I agree with this scaled-down cluster. It was
21 shown clearly that it can be done. I mean whether
22 developers have an interest in doing it that way I
23 don't know, but it certainly looks like there is a
24 feasible alternative to the broken up, fragmented
25 idea that was put in front of the board the other

1 way.

2 So that's it. And I hope that it's -- I hope
3 that this is going to end at this town and not in
4 Westbrook, because you can go a long way, but I thank
5 you very much.

6 CHAIRMAN MCINTYRE: We have to change the tape
7 right now. Thank you very much for your comments.
8 We are changing the tape.

9 (Tape is changed.)

10 CHAIRMAN MCINTYRE: Okay, that concludes the
11 public portion of the public hearing. At this time I
12 want to move on to see if any of our staff have any
13 comments. We have tonight Attorney Willis, for
14 traffic we have Bruce Hillson; soil design test, Rich
15 Snarski; our town engineer, Geoff Jacobson; Christine
16 Nelson, town planner; and Wendy Goodfriend, natural
17 resource scientist. Any of these individuals wish to
18 speak at this time or have any comments? Don't be
19 bashful.

20 MS. NELSON: I don't have anything to say, Mr.
21 Chairman.

22 CHAIRMAN MCINTYRE: I would just ask
23 Mr. Neilson, do you have any comments?

24 MR. NEILSON: Everything I have to say has been
25 said in several memos which have been submitted.

1 CHAIRMAN MCINTYRE: Thank you. Attorney Willis,
2 do you have anything to say?

3 MR. WILLIS: I don't have any particular
4 comments at this time.

5 CHAIRMAN MCINTYRE: Mr. Snarski.

6 MR. SNARSKI: No comments.

7 CHAIRMAN MCINTYRE: Mr. Jacobson.

8 MR. JACOBSON: No.

9 CHAIRMAN MCINTYRE: Miss Nelson.

10 MS. NELSON: I have put all my questions in
11 previous memos.

12 CHAIRMAN MCINTYRE: And Wendy Goodfriend.

13 MS. GOODFRIEND: Same. Everything has been in
14 writing.

15 CHAIRMAN MCINTYRE: None of our staff wish to
16 comment at this time. They don't have anything to
17 say on the record.

18 At this time I would like to open it up to
19 questions to the commission. I would like to start
20 at the end of the table. Jim, do you have anything
21 you want to talk about?

22 MR. CONROY: No questions.

23 CHAIRMAN MCINTYRE: Janis Esty, do you have
24 anything?

25 MS. ESTY: One on the --

1 PUBLIC SPEAKER: Microphone.

2 CHAIRMAN MCINTYRE: Thank you very much.

3 MS. ESTY: I had a question on when you did
4 percentages for the disturbed landscape on whatever
5 plan you chose, the one with the golf course and the
6 construction for the golf course calculated and that
7 percentage of the property that would be disturbed.

8 MR. GODERRE: Dennis Goderre. The calculation
9 for the disturbance for the open space plan was done
10 and it's separated, itemized out for the development
11 of roadways and home lots. And there's a separated
12 number that's listed for the disturbance with the
13 golf course and a total number of both of those.

14 MS. ESTY: Okay. And I had one other on
15 pesticides. We were talking about pesticides as far
16 as the golf course goes. Did anyone think about
17 pesticides as far as mosquitos goes? I was looking
18 at all of this water and all of this meadow and
19 swamp, and it suddenly occurred to me that we could
20 be dealing with a different type of pesticide.

21 MR. COHEN: My name is Stuart Cohen.

22 Yes. Two-part answer. I don't believe the past
23 management plan, Tim Taylor plan dealt with that, but
24 we will. And there's some biological alternatives
25 that work for that. But, also, I would like to point

1 out that a vibrant amphibian ecosystem, vernal pool
2 ecosystem would be a natural means of keeping down
3 the mosquito larvae, which cuts down on the amount of
4 mosquitos.

5 CHAIRMAN MCINTYRE: Okay. Thank you. I'm going
6 to hold up my comments and let Miss Gallicchio speak.

7 MS. GALLICCHIO: On November 17 - this is for
8 the applicant - you stated that the private and
9 public roads would be labeled on the new plans. I
10 didn't find them labeled on the new plans. Are they?

11 CHAIRMAN MCINTYRE: Let's make this easy.

12 MR. GODERRE: Again, Dennis Goderre.

13 Yes, they are, in response to four. There is a
14 map 17 shows all of the roadways that will be public
15 and private.

16 MS. GALLICCHIO: I'm sorry, what page?

17 MR. GODERRE: It's in the appendix, Appendix K.
18 The plan name is Roadway Designation E Plan.

19 MS. GALLICCHIO: Is that what they got this
20 evening or a week ago?

21 MR. GODERRE: The 23rd of December.

22 MS. GALLICCHIO: Thank you. Also, on the 17th I
23 asked about a mowing of the fairways. And I did read
24 the response of one-half to three-quarters of an inch
25 three to four times a week; however, the second part

1 of my question was not answered and that is what
2 impact does the height and frequency of mowing have
3 on small animals, particularly reptiles and
4 amphibians which move across the fairways?

5 MR. COHEN: I'm sorry. I forgot to answer that.
6 There was a study done by the University of Rhode
7 Island and it showed that there's no significant
8 impact on amphibians. There's no impact when you go
9 across a normal span of height in a golf course. I
10 think the senior author is Peter Payton. However,
11 there's an issue of timing. And we worked out a
12 strategy internally which we would supplement from
13 the management plan at the next stage of the approval
14 whereby we have to orient some of the mowing towards
15 the end of the daytimes rather than early morning
16 operations, because some of the amphibians would be
17 more active early in the morning. So the timing
18 issues will be -- have been examined. It's a soluble
19 problem, but it has to be a little different than
20 what's normally done.

21 MS. GALLICCHIO: That was my point of the
22 question, not the height of the grass, but the
23 physical mowing of the grass over the animals.

24 MR. COHEN: We would want the mowing to not
25 occur at the time the amphibians are active and

1 moving around. They're more active around dawn. I'm
2 getting from Klemens a yes.

3 MS. GALLICCHIO: More active at dawn. That
4 means they are not active late in the day?

5 MR. KLEMENS: Michael Klemens for the record.

6 No. The amphibian activity -- the best time to
7 mow would be late in the day, toward evening. As it
8 cools off they become more active, in rains are
9 active, certainly more active in the morning dews
10 than at night. What I have been discussing is having
11 a mowing regime later in the day when it's still hot
12 and the animals are inactive, which is a very
13 different time to mow. We have been discussing
14 regime amphibian movement.

15 MS. GALLICCHIO: Thank you. What is the total
16 road length, private and public, in the conventional
17 plan?

18 MR. GODERRE: Dennis Goderre. The total length
19 of the conventional plan is 7.8 miles of road. That
20 will all be public road.

21 MS. GALLICCHIO: I'm sorry?

22 MR. GODERRE: All public road.

23 MS. GALLICCHIO: What about private road?

24 MR. GODERRE: No private road on the
25 conventional plan.

1 MS. GALLICCHIO: And in the open space plan?

2 MR. GODERRE: I have that number somewhere.

3 Excuse me for a second.

4 MS. GALLICCHIO: If you want we can come back to
5 that. You can be looking. I also have a question
6 about the length of the golf cart paths. While
7 you're looking up those I'll ask some other
8 questions.

9 Will there be more than one homeowners'
10 association? And I'm curious as to how that works.
11 We are familiar with a homeowners' association in a
12 neighborhood where all the houses are individual
13 houses or a condominium association, but when we have
14 three different types of housing how does that work?

15 MR. ROYSTON: There will be under this plan a
16 master planned residential development which would
17 have a master association for that purpose. Within
18 that PRD there would be a cluster, and in the cluster
19 there would be a second homeowners' association with
20 respect to the village clustering units.

21 MS. GALLICCHIO: So the estate lots would come
22 under the master PRD.

23 MR. ROYSTON: The estate lots would come under
24 the master association.

25 MS. GALLICCHIO: Okay.

1 MR. GODERRE: David Royston responded to that
2 question.

3 MS. GALLICCHIO: On the second site walk which I
4 did go by myself, and I need to thank the applicant
5 for flagging them so carefully that I didn't get
6 lost, on the map that was given, the self-guided
7 interpretive walk map, the golf fairways appear to be
8 labeled as conservation easement; is that correct?

9 MR. GODERRE: Dennis Goderre. No, they are not.
10 Fairways are not conservation easement.

11 MS. GALLICCHIO: I didn't think so. It's the
12 way it appeared to me. Okay.

13 The cart path that was near the dam, I
14 understand that is no longer near the dam.

15 MR. GODERRE: Correct. That has been realigned.

16 MS. GALLICCHIO: My next question: How do you
17 reconcile the use of four-acre estate lots in an open
18 space subdivision in the Conservation C District
19 rather than clustering them?

20 MR. LANDINO: How do we reconcile; is that the
21 question?

22 MS. GALLICCHIO: Yes.

23 MR. LANDINO: Bob Landino. Mainly because we
24 applied significant conservation easements to those
25 lots to restrict development in a large part of them

1 which totals the bulk of the land -- undisturbed land
2 that is not a part of the deeded open space.

3 MS. GALLICCHIO: Okay. And how can we ensure
4 that the four-acre estate lots will remain as such,
5 not being resubdivided at some later date into
6 possibly four lots each?

7 MR. GODERRE: First question -- Dennis Goderre.

8 We do have conservation easements on some
9 under-revised plan. Approximately half of the
10 lots -- I believe it is about ten lots of the estate
11 lots have been reduced in size, so there is no need
12 for conservation easements. Some of that land would
13 be deeded over to the town as open space. As far as
14 the resubdivision, that's a legal --

15 MR. ROYSTON: David Royston. I think your
16 comparison on the cove is an excellent one. The
17 Otter Cove was a subdivision which initially had deed
18 restrictions. And once the deed restrictions
19 expired, a number of the residents in that area began
20 subdividing their property, because under the zoning
21 regulations they were able to do so. The Otter Cove
22 district then went and had the zoning regulations
23 actually amended so that it was able to prevent
24 further subdivision of lots within Otter Cove. Point
25 is it was zoning that allowed the subdivision

1 initially and then prevented it later. Under this
2 proposal there is a special exception to allow a PRD
3 which will include the entire development. That PRD,
4 the special exception amidst the development, 248
5 housing units, thus you would not be able to
6 subdivide that 248 lots, which is an estate lot, to
7 get 249. That would violate the zoning applicable to
8 this development. It would exceed the maximum that
9 would be allowed under the special exception.

10 MS. GALLICCHIO: Thank you. Do you have your
11 answers, Mr. Goderre?

12 MR. GODERRE: For the length of road, the
13 preliminary open space -- Dennis Goderre. The total
14 length of public roads is 4.3 miles and approximately
15 one mile of roadway would be private.

16 MR. ARESCO: Did you say 4.3?

17 MS. GALLICCHIO: So 5.3 total.

18 MR. ARESCO: Oh, 5.3.

19 MR. GODERRE: Five point three total.

20 MS. GALLICCHIO: And the length of the golf cart
21 paths?

22 MR. GODERRE: That number, I apologize, I do not
23 have.

24 MS. GALLICCHIO: Okay. That's all for my
25 questions. I just need to state, and I should have

1 earlier, for the record that I -- on the December 8
2 public hearing I needed to leave early, but I wish to
3 state that I have reviewed the transcripts, tapes,
4 and exhibits so that I feel eligible to vote on the
5 application.

6 CHAIRMAN MCINTYRE: Thank you. Okay, Stuart. I
7 think I have enough cord.

8 MR. HANES: One question regarding the overlay.
9 My concern is the number of lots. And I'm
10 particularly interested in the overlay of the golf
11 course, eliminating the golf course, seeing how many
12 homes would be impacted. Did you provide an overlay?

13 MR. GODERRE: Dennis Goderre. The applicant did
14 not provide an overlay. I believe there was another
15 member of the public that had provided an overlay.

16 MR. HANES: I think that I asked for that a
17 couple of meetings ago.

18 One other item that I am concerned with is the
19 golf carts. In the event that golf course goes in
20 and all of the residents have golf carts, are these
21 going to be traversing the roadway there or are there
22 going to be specific cart paths from the homes to the
23 golf course?

24 MR. GODERRE: Dennis Goderre again. The cart
25 paths are carts that if the homeowner owned them

1 would not be allowed to use public right-of-way.

2 MR. HANES: That would be an association
3 regulation, because as I understand it there's no --

4 MR. GODERRE: It would be an association
5 regulation and also it's a legal issue as far as
6 having a registered or unregistered motor vehicle on
7 a public right-of-way, a public road.

8 MR. HANES: As I understand there's no state law
9 prohibiting golf carts on public ways.

10 MR. GODERRE: The only carts on the course will
11 be owned by the course and they would not be allowed
12 to traverse any public road.

13 MR. HANES: Part of your golf paths would be
14 open to the public I understand.

15 MR. GODERRE: The intent is that where there
16 would be no conflict of interest or safety, they
17 could be opened and coordinated with the open space.

18 MR. HANES: That would be say after hours, so to
19 speak, or even during the course of play?

20 MR. GODERRE: Could be during the course of
21 play. If in some instances where an open space trail
22 would need to traverse a wetlands but there's already
23 a cart path that's being proposed to traverse that
24 wetlands to minimize that impact, it would be shared
25 in that location.

1 MR. HANES: I see. Thank you. That's all I
2 have. Dick.

3 MR. TIETJEN: Can you hear me without this
4 thing?

5 CHAIRMAN MCINTYRE: They can't. It's not them;
6 it's the audience.

7 MR. TIETJEN: Okay. I never know how close to
8 get to one of these things.

9 Just a quick one. In one of the multiple plans
10 that we have been receiving all of a sudden, there's
11 some measurement of the -- what do you call it, the
12 landing area right next to the village. The
13 landing -- the area that is of golf balls. It seems
14 to me that it's terribly close there. And I just
15 wondered how safe you think it is to have a road
16 right there, right -- or have a golf course right
17 next to the road. So that's one question about
18 roads. I have a couple other things that maybe you
19 would like to deal with. Go ahead if you want to
20 now.

21 MR. GODERRE: This is Dennis Goderre.

22 MR. TIETJEN: Louder, please.

23 MR. GODERRE: Dennis Goderre. Our golf course
24 architect couldn't be here this evening. He did
25 provide a detailed response in response package

1 number three regarding concerns for buffer areas and
2 safety plans to the roadways and also to housing.
3 And the golf course architect reaffirmed us and we'll
4 reaffirm this commission that the design has been
5 coordinated with safety standards and guidelines that
6 have been set forth. And they are really guidelines,
7 but we must also take into consideration the
8 topography that's proposed for the holes that are --
9 namely, hole 18 and hole ten. But we do believe that
10 our site plan has been safety evaluated.

11 MR. ROYSTON: David Royston, also attorney for
12 the applicant.

13 I would again point out that this is a
14 preliminary open space plan. Both -- the golf course
15 itself would require a special exception by the
16 zoning commission. That special exception would take
17 into consideration these safety factors. The entire
18 PRD with the cluster, the village would also be
19 subject to a special exception approval by the zoning
20 commission. Again, at which the proximity of both
21 would be subject to review at that time, specifically
22 to look at the final engineered plan to determine
23 their safety compliance.

24 MR. TIETJEN: Okay. You reminded me of another
25 question. It seems that the road through the village

1 so-called is quite straight. I'm talking about the
2 one that runs down the center of things now. What
3 kind of -- what Mr. Arendt refers to as speed
4 inhibitors, I think. I'll get back to that in a
5 minute. What kind of provision have you for safety
6 in that mile long whatever it is, street?

7 MR. GODERRE: Yeah, it wouldn't be a mile long
8 street. There is a little bend -- there is a bend in
9 there halfway down. The speed or traffic calming
10 techniques that would be employed are streetscape
11 type elements that would bring the roadway -- the
12 width as well as what the vertical geometry is as far
13 as trees and then also the village is -- the village
14 homes that are in place and proposed, it's bringing
15 them closer to the scale of it than opening them up
16 and promoting a speed for traffic that's going on a
17 highway. So we have street trees, lighting that's
18 both pedestrian oriented and detailed. And the
19 detail of the architecture all combined with a -- now
20 is part of why we are proposing the alternative road
21 standards. I mean our roadway is still within the
22 safety guidelines required, but all combined together
23 has created a common that would be pedestrian
24 oriented but still allow vehicular traffic to move
25 safely and efficiently through the common space.

1 MR. TIETJEN: As you know we have locally here a
2 move afoot to reduce the speed limit on Main Street
3 to 25 or is it 20 miles an hour? Something
4 incredible. But I guess --

5 MR. GODERRE: It's a long street but also a wide
6 main street.

7 MR. TIETJEN: Oh, okay. To continue the road
8 thing, I'm sorry Mr. Arendt isn't here, because I
9 could ask him about this too. He suggests in one or
10 another of his books ways of reducing speed and sight
11 lines and so forth or increasing sight lines I guess
12 is more important, but reducing speed by not just
13 having straight shots through everything. Another
14 aspect of that that compounds the situation is his
15 recommendation that roads follow contours; that is,
16 that the topography has something to do with how you
17 lay out the roads.

18 Now, looking at the plans, whichever one you
19 look at now, you see a lot of what looked like
20 potentially very fast roads and maybe aesthetically
21 less fetching than they might be. I think it was a
22 very good recommendation and I am sure he was quite
23 serious about it. If you look he has something in
24 the November 10 response volume, about page ten I
25 think it is, in which he talks about things like

1 angles of intersection and the proximity to vernal
2 pools and so on and so on. Traffic calming features
3 is what he talks about. And also he mentions bike
4 paths and one that will go all the way down to Route
5 95. I think that appeared in this thing. I think
6 I've got it right that there would be a bike and
7 pedestrian path that goes all the way down to 95.
8 That struck me as being a little optimistic, but is
9 it true or is it something that we can count on?

10 MR. GODERRE: There is a bike -- Dennis Goderre.
11 There is a bike path proposed along the spine road
12 that connects Route 153 out to Bokum Road. That's
13 the only bike path or trail that is being provided --
14 that is being proposed. There is no trail being
15 proposed to or pedestrian way proposed to 95.

16 With respect to the road layout and the road
17 geometry following contours as recommended by
18 Mr. Arendt, personally speaking having worked with
19 him on this project for over a year now, we have
20 worked together with our engineers on the road
21 alignment, the state on road alignment. We walked it
22 in the field several times. There's a lot of items
23 in the field that you can see that you can't see on a
24 contour map, and that is why we ended up with the
25 geometry we have coordinated with Dr. Klemens's

1 recommendations for vernal pool protection. And
2 that's the culmination that led to our alternative
3 roadway design standards that we proposed.

4 MR. TIETJEN: Okay. Let's see. There was one
5 other little one. Oh, well, access to Route 153 was
6 clearly recommended. And I'm wondering how much of
7 this project is going to depend on whether that
8 access is accomplished. Now, this is another case of
9 building the road and making sure people and not golf
10 carts get to where they are supposed to get. I think
11 some of these other things -- well, the first thing
12 that you can speak to is the question of apropos of
13 contours of the maximum grade which is ten -- ten to
14 one or whatever the --

15 MR. ARESCO: Ten percent.

16 MR. TIETJEN: Ten percent. I notice also that
17 the town in another section has allowed for
18 12 percent given a 300-foot run so that it's
19 beginning to look as if maybe there's going to be a
20 bit of up/down -- up and down that doesn't show up on
21 the map. So I would like you to speak to that if you
22 will.

23 MR. GODERRE: Dennis Goderre. Our alternative
24 standards we have 10 percent maximum grade for a
25 certain length --

1 MR. TIETJEN: Yes, yes.

2 MR. GODERRE: -- in distance. Then there's been
3 some discussion of reducing that maximum grade to 8
4 percent for a maximum distance only on tangents and
5 not on curves. The maximum for the length of the
6 road would be a 6 percent as proposed. Our
7 alternative standard proposes 8 percent. We feel
8 what we propose is realistic. And again, as I
9 mentioned before they are proposed based on our
10 knowledge of the site, our knowledge of sound
11 engineering principles, and what we feel is right to
12 reduce the amount of the service within the landscape
13 and natural habitat without compromising public
14 safety.

15 MR. TIETJEN: I yield my time to Mr. Aresco.

16 MR. ARESCO: Thank you very much. I just wanted
17 to -- Judy had asked the question as to the number of
18 miles -- length of roads in the open space
19 subdivision. Did I hear that correctly of 5.3?

20 MR. GODERRE: Correct.

21 MR. ARESCO: Okay. Because I'm looking at the
22 summary of values that you had given us and there's
23 3.9. So it's 5.3. That's okay as long as I have the
24 right figure.

25 MR. GODERRE: The total in the chart is just for

1 public roads.

2 MR. ARESKO: Pardon me?

3 MR. GODERRE: The total in the chart, the
4 summary value is just for public roads.

5 MR. ARESKO: I see. So this is public and
6 private, 5.3.

7 MR. GODERRE: Yes.

8 MR. ARESKO: Now, I was comparing here the four
9 plans -- the five different plans that you had
10 illustrated. And it's pretty clear that when you
11 compare the open space subdivision to a conventional
12 plan, that The Preserve landscape and the undisturbed
13 land is maximizing in an open space subdivision. And
14 it also appears that the road lengths are reduced
15 because of the use of the PRD. I guess that's
16 correct in that the PRD will help them reduce road
17 lengths, reduce lot sizes and thereby preserving more
18 land and having less disturbance. But when I look at
19 the open space, one-half -- you chose to use an open
20 space plan with one-half-acre minimum lots in there.
21 And those of course -- when we compare the
22 undisturbed and when we compare the land preserved
23 and the amount of land that would be deeded over to
24 the town, it's very close to the open space with the
25 golf course. I think you would agree with that.

1 Now, what I ask here is there any reason why in
2 the open space with half-acre lots that you didn't
3 combine that with the PRD? Because it seems to me
4 that that would greatly reduce the amount of roads
5 that would be necessary. Is there any reason why you
6 didn't do that?

7 MR. ROYSTON: David Royston for the applicant.

8 This may not be the legal question, but when
9 they showed for informational purposes an open space
10 plan with half-acre lots, that was to show you for
11 informational purposes how the site would be
12 developed if you did not have the cluster; if you did
13 not have the 179 units within the village.

14 MR. ARESCO: That's all that's showing. So am I
15 correct to assume if you did include the
16 clustering -- we would increase those factors of the
17 preserved, and undisturbed, and reduced road lengths
18 if we did include clusters in a conventional open
19 space plan in combination -- excuse me, a
20 conventional -- excuse me, an open space plan with
21 half-acre lots in combination with PRD would help to
22 increase the amount of land preserved, reduce
23 disturbance, and reduce road lengths. I mean that's
24 what I'm drawing from it. Just tell me if I'm right
25 or wrong.

1 MR. ROYSTON: I think your conclusion is
2 incorrect, because you don't combine the two. The
3 reason why you don't combine the two is that the
4 village -- when you say PRD, I think you're referring
5 to the village.

6 MR. ARESCO: Yeah, the village. What I'm saying
7 if you did some village in combination with half-acre
8 lots as a means of reducing road lengths, that's
9 what's in my mind.

10 MR. ROYSTON: I understand. In order to have a
11 cluster, you need a community sewage disposal system.
12 In order to have a community sewage disposal system,
13 you are going to, of necessity, have all the expenses
14 and the infrastructure of creating that community
15 system. The village has been -- is dependent upon a
16 community sewage disposal system.

17 And what the example was to demonstrate was that
18 without the -- basically without the -- without
19 basically a golf course, that you would not be able
20 economically to have a village with 179 units. And
21 if you didn't have a village with 179 units, then
22 what you would have is individual septic systems. In
23 order to obtain individual septic systems for the
24 lots --

25 MR. ARESCO: I understand what you're saying. I

1 guess what I'm getting at is that it doesn't
2 necessarily have to be 179 village. Let's say the
3 village was 75 and would that support a community --
4 I mean would a community sewage system work with
5 that?

6 MR. ROYSTON: I'm going to let -- that question
7 will be answered I think when we get into the
8 feasible and prudent alternative.

9 MR. ARESCO: I guess what I'm trying to say
10 here, and I want to just keep this conceptual and I
11 want to keep this as preliminary so it's not -- you
12 know, I guess the conclusion I'm drawing is that in
13 that half-acre open space type plan that you're
14 showing, if it were created in combination with a
15 village - I don't know what size that village would
16 be - and it were feasible to have the community sewer
17 system, that would help to reduce road lengths,
18 wouldn't it, I mean conceptually?

19 MR. ROYSTON: I'm going to answer your question
20 because you're very good at posing the question, so
21 I'm going to answer it. And the answer would be yes
22 but. But in order to fully answer your question, it
23 is --

24 MR. ARESCO: But.

25 MR. ROYSTON: But in order to fully answer your

1 question, it is not a prudent alternative to have a
2 village which would only have 75 units.

3 MR. ARESCO: It is not.

4 MR. ROYSTON: It does not make economic sense.

5 MR. ARESCO: Okay. Thank you very much.

6 The other question was Pequot Swamp. Are there
7 any amphibians and reptiles in that? I mean I'm
8 hearing this, you know, low nutrient. Are there
9 reptiles and amphibians in Pequot Swamp?

10 MR. KLEMENS: Hi. For the record, Michael
11 Klemens.

12 Yes, there are amphibians and reptiles in Pequot
13 Swamp Pond. There are painted turtles in the ponds,
14 quite a lot of them. There are large populations of
15 bullfrogs and green frogs. On the southern end of
16 Pequot Swamp Pond there appears to be some activity
17 related to vernal pool species. At the very southern
18 end marbled salamanders; I think maybe ribbon snake
19 nearby. And there is definitely amphibians and lots
20 and lots of spring peepers in that.

21 MR. ARESCO: Thank you, Dr. Klemens.

22 My question is this. And this was just
23 troubling to me, because I read the responses that
24 were provided. And there was the response in
25 particular that related to the -- related to a

1 suggestion that there be a wider buffer around Pequot
2 Swamp. And the response was -- said something to the
3 effect that there was no legal reason for it and
4 there was nothing in the regs that provided -- there
5 was no scientific data that said that the buffer
6 around Pequot Swamp should be greater than that
7 100-foot that was being allowed. And what was
8 troubling to me was the comment of no scientific
9 data. I mean I'm looking here at two papers that
10 were written, Biological Delineation of Terrestrial
11 Buffer Zones in Pond Breeding Salamanders, for
12 example. They say that they are breeding, and Dr.
13 Klemens could probably verify this, that go out as
14 far as 534 feet. And I was also looking at another
15 paper here that talks about Are Small, Isolated
16 Wetland's Expendable? And essentially it talks
17 about, you know, they are really not expendable. So
18 I just, you know -- so I don't understand that
19 response that said there is no scientific data.

20 MR. KLEMENS: For the record, Michael Klemens.

21 There is scientific data on Pequot Swamp Pond.
22 The animals in Pequot Swamp -- the bulk of Pequot
23 Swamp Pond are not the type of amphibians that occur
24 in the small wetlands. You have rather general
25 species throughout most of the pond. At the very

1 southern end of the pond there does appear to be some
2 amphibians breeding. It's not a vernal pool, but
3 there definitely are vernal pool obligate species
4 that appear to be using that southern end. We've
5 documented woodfrog tadpoles in there and there was a
6 lot at the end, maybe half over the course of the
7 study. Maybe four to six marbled salamander, young
8 ones were found around the edge, whether they came
9 out of the pond itself or whether they came from
10 nearby. I do think you'll see -- as was indicated in
11 the study on the maps and our report, I think you
12 will see on those maps, the appropriate maps,
13 locations within the ponds. But the bulk of that
14 pond, as you get further up from that southern end,
15 as you go get further up north of the pond, it's --
16 basically, the pond is characterized by the bullfrog,
17 the green frog, the spring peepers and painted
18 turtles. None of these are the kind of animals that
19 require the kind of buffers, the upland habitat
20 requirements. They are aquatic creatures and are not
21 the animals spoken to in those two papers.

22 MR. ARESCO: There was no scientific data is
23 what was throwing me.

24 MR. COHEN: In our November 3rd --

25 CHAIRMAN MCINTYRE: State your name for the

1 record, please.

2 MR. COHEN: I'm sorry. My name is Stuart Cohen.

3 This might address some of your concerns. In
4 our November 3rd submission, we said specific
5 limitations are recommended for quick release water
6 cycle fertilizers when applied within 200 feet of
7 vernal pools and watercourses. So we recognize that
8 there is a potential for nutrient use. And this was
9 a concern raised by Mr. Cryder and Mr. Logan earlier.
10 And we had set forth a whole program of testing the
11 soil, testing the plant issue to only apply what's
12 needed in terms of nitrogen and phosphorus. In the
13 submission that we put into the record in writing, we
14 said that within 200-foot buffers there should be
15 nitrogen use restrictions.

16 MR. ARESCO: Thank you. Let's see, I had
17 another question. I lost it. Oh, it had to do with
18 the -- there were questions concerning the blasting.
19 When I went on the site walk, what really struck me
20 was the fact that for many of the paths we walked
21 along, we were actually walking on bedrock and then
22 there were many, many outcrops. And what struck me
23 there was a flag hanging out there. I guess it's the
24 candy cane stripe typed flag hanging and that was a
25 roadway. It was sort of like halfway up a -- quite a

1 rock structure there, that it appeared to me that
2 that was going to have to go in order to accommodate
3 this.

4 Now, it was explained in one of the other
5 meetings that the blasting today is a -- you know, we
6 shouldn't worry about it, because it's a very
7 controlled blasting and so forth. So there are
8 concerns on that. I mean my only comment is this --
9 and the concern is that this controlled blasting, I
10 mean does that guaranty that there aren't going to be
11 cracks and fissures along which water can --
12 pollutants can run and possibly get to places where
13 we don't want them to be? I want to clear that up.

14 MR. GODERRE: Dennis Goderre. I'll let our
15 hydrogeologist, Sam Haydock, answer those questions.

16 I would like to comment on your first portion.
17 I know exactly the location that you're talking
18 about. I remember you were trying to ask the
19 question and counsel was stopping you. And I wanted
20 to answer it, because without the detailed plans and
21 being able to look at really where cuts, where fills
22 are, you can't make the assumptions that just because
23 there's a candy striped flag or there might be a rock
24 outcrop or a boulder sticking out that we are going
25 to be blasting in there.

1 The plans -- when we get to a level of detail of
2 the next phase of this, you'll be able to ascertain
3 what areas will actually be blasted and which ones
4 you'll be actually filling in order to get the road.
5 And I believe in that area would likely be in a fill
6 situation. What you referred to would be a fill
7 situation and not a blasting situation. But to
8 address your latter questions I'll let Sam Haydock
9 answer.

10 MR. HAYDOCK: Sam Haydock from BL Companies for
11 the record.

12 Two things. First of all, with regard to
13 blasting, pre and post blasting surveys of the
14 surrounding neighborhood are standard practice in the
15 blasting industry. These reflect both foundations,
16 buildings as well as water wells. That's very
17 standard practice. From a liability standpoint
18 that's something that the blasting companies
19 undertake on their own initiative so that they can,
20 one, ensure that they don't have adverse impacts and
21 defend claims against them.

22 And with -- secondly, with respect to
23 contaminants and pollutants, I think that that's an
24 IPM issue.

25 MR. ARESCO: IPM.

1 MR. HAYDOCK: The integrated pest management
2 plan, the turf management program. And that would be
3 specifically addressed in that program, but -- and
4 Stuart can add to this. But I think there's some
5 very important concepts that are important to note.
6 And one of those is that the pesticides, and
7 fertilizers, and chemicals that are applied are done
8 in a manner so that they do not leach. They are done
9 in a manner -- in a controlled fashion so that they
10 bind to the plants in the soil that they are designed
11 to treat. And if in the development of that plan, in
12 the detail phase if there are areas of the golf
13 course that are close to bedrock outcrops, that would
14 be addressed. Those areas would be handled
15 appropriately in the development of that plan.

16 MR. ARESCO: Thank you. I mean from a personal
17 experience a number of years ago when it occurred I
18 lived in Middletown. We lived in an area that had a
19 farm there. And the town came through and the state
20 came through and decided to widen it, and they
21 blasted that area. A number of years thereafter
22 there was a barn fire not far from where our street
23 was located. And in order to put the fire out, they
24 had to put on thousands and thousands of gallons of
25 water to put the fire out. A short time thereafter

1 my well, along with many of my neighbors' wells, were
2 affected. We were polluted. The city came out, said
3 we couldn't use the water and so forth. And we had
4 to take some remedial action to straighten it out.
5 So, you know, it's a concern to me when we talk about
6 blasting.

7 I know from personal experience the blasting
8 occurred and large volumes of water were put on this
9 fire. It was in a barn. There was I guess whatever,
10 the waste of all the animals. Somehow it was decided
11 or determined that it found its way through these
12 fissures into our well. So that's a major -- you
13 know, that's a concern. So you're saying that you
14 have --

15 MR. HAYDOCK: This is -- first of all, fire
16 fighting is a very uncontrolled event. But, again,
17 with respect to the management of the golf course and
18 the IPM plan, one of the -- I would say the foremost
19 goal of that plan is to manage the golf course in a
20 way that prevents leaching and runoff, excessive
21 runoff to surface water bodies as well as leaching to
22 groundwater. That really is the primary focus of
23 that plan.

24 MR. ARESCO: Thank you very much. Just one
25 other -- okay, go ahead.

1 MR. COHEN: I want to add to that. I'm Stuart,
2 Stuart Cohen.

3 Management alone isn't necessarily going to be
4 good enough. So this is an example of how a team
5 works together. If Sam tells me that there's going
6 to be fractures would -- ordinarily would be ledge
7 and it's going to be underlying just say two feet of
8 soil, then we would adjust our risk calculations
9 going in, going forward and say, okay, we are going
10 to have to be more protected than we otherwise
11 thought we would have to be and therefore certain
12 pesticides might have to be excluded that right now
13 tentatively are included. So you raised that point.
14 So that would have to be feedback from the geologists
15 to us saying there's going to be cracks, there could
16 be some short circuiting. And we might say, okay,
17 then we have to delete pesticides X, Y, Z from the
18 plan.

19 MR. ARESCO: Any other comment?

20 You know, what's troubling me is that when we
21 talk about these pesticides and we talk about they're
22 safe and so forth - I think that's what I'm hearing;
23 it's not what it used to be - what I'm particularly
24 troubled with is that you see so much today where
25 various chemical products are put on the market. And

1 what comes to mind right now is Celebrex, you know.
2 It was okay to use it. It was safe. Everybody was
3 using it. It certainly did its job. It relieved all
4 the pain. And then after it's been used a couple of
5 years, we find out that there's a connection with
6 heart attacks. I mean there was thalidomide when --
7 you know, that was safe and you could use it,
8 et cetera. And it was a number of years later we had
9 deformed children.

10 So my concern is that many of these things that
11 we look at today as far as pesticides and they are
12 safe today, what assurances can we have that 5, 10,
13 15 years from now that discoveries are going to be
14 made that it does in fact affect a person's health?

15 I mean are there guaranties in that or what that
16 that won't happen?

17 MR. COHEN: The only guaranty is from the first
18 toxicologist we think ever in the 1400s. His name is
19 Paracelsus. Basically, what he said is those mix
20 with poison. So in other words, it's a consideration
21 of exposure and toxicity. And what you're saying is
22 what we think is a toxic dose in 1969 may be much too
23 high in 1999 or 2009.

24 What we could do -- what we have done I think
25 and the paper that we published in the peer-reviewed

1 literature, in the "Journal of Environmental
2 Quality", shows that it's not just a question of a
3 low exceedence of levels of concern which you're
4 saying can change and they do, but there's a very low
5 detection rate. So if it's not there, it's not being
6 impacted. If something's toxic but there's no
7 exposure, then there's no risk.

8 We would like to add, by the way, thalidomide
9 never made it over in the American market because of
10 the rigorous standards of the FDA. And I used to
11 work at EPA, and their toxicity assessment standards
12 are greater than --

13 MR. ARESCO: That was just an example. I mean
14 there's so many cases of so many things of that
15 nature.

16 MR. COHEN: I understand what you mean. So the
17 idea is there's uncertainty in toxicology. And I
18 think the uncertainty is much reduced relative to
19 what it is, but you're right. There could be some
20 uncertainties going forward. So if we keep the
21 exposure down to zero, then there's no risk.

22 MR. ARESCO: Okay.

23 CHAIRMAN MCINTYRE: We are running out of time
24 here.

25 MR. TIETJEN: I have a quick follow-up. Can you

1 hear me?

2 CHAIRMAN MCINTYRE: Ask your question quickly.

3 MR. TIETJEN: The question is very quick. I'm
4 curious about a seismic event, possible one. Amongst
5 all the plethora of maps which come in daily now, I
6 found one from which the east village has simply
7 disappeared. What happened? The east village, it's
8 not there. It's not on the map.

9 MR. GODERRE: In any of our plans that we've
10 submitted to our revised plans of December 23rd, we
11 have not removed the east village. It is still
12 there.

13 MR. TIETJEN: So it's gone. It's no longer --

14 MS. GALLICCHIO: No. It's there.

15 MR. HANES: It's there.

16 CHAIRMAN MCINTYRE: He said it was there.

17 MR. GODERRE: There might be other plans that
18 people have submitted from the Connecticut Fund for
19 the Environment or other members of the public
20 submitted something, but it's not the applicant.

21 MR. TIETJEN: So you're saying the map is not
22 the territory; is that correct? Never mind. Never
23 mind.

24 CHAIRMAN MCINTYRE: Let's move on. At the last
25 meeting I had asked a question about public

1 recreation areas would be provided, and I believe
2 the -- your response was that if the town wanted
3 them, we could have ballfields and things of that
4 nature.

5 MR. GODERRE: As far as active recreation, we
6 are not proposing any. We are proposing passive,
7 maybe with some playground areas. But as far as
8 identifying a location, that is something we haven't
9 done. And the -- as we've evaluated it for that
10 reason really doesn't seem to be conducive to a very
11 large, flat area that's part of a softball field or
12 baseball field or soccer field. But the intent of
13 the development that we proposed is conducive to
14 working with contours. But talking about an active
15 recreation component such as that, it would be very
16 difficult to accommodate.

17 CHAIRMAN MCINTYRE: But if there was real estate
18 for that, that could be something that could be done.

19 MR. ROYSTON: Mr. Chairman, David Royston again.

20 I believe you also said that if in our
21 evaluation we didn't find one that we thought was
22 suitable, we should say so for the record and we are
23 saying so for the record at this point.

24 CHAIRMAN MCINTYRE: Okay. All right. This is
25 for Attorney Royston. When you talked about that

1 deed restriction for Otter Cove, when did -- how did
2 the deed restriction expire?

3 MR. ROYSTON: That was a private restriction in
4 Otter Cove. The developer of Otter Cove put in
5 covenants and restrictions in that all the lots in
6 Otter Cove had to be a minimum of four acres. And
7 that restriction expired in 19 -- well, some date.
8 The developer imposed the restriction. The
9 restriction itself said that that restriction on the
10 minimum lot size expired. And when it expired then
11 zoning fell in place as a controller and zoning had a
12 lesser minimum lot area.

13 CHAIRMAN MCINTYRE: Okay. And as you stated
14 before that this condition will not be -- as you
15 answered Miss Gallicchio's question that this
16 condition will not exist in your development.

17 MR. ROYSTON: It will not exist, because the
18 zoning applicable to this entire development as a PRD
19 will limit under the special exception the total
20 number of lots which is defined as dwelling units to
21 248.

22 CHAIRMAN MCINTYRE: Okay. When we were talking
23 about cart paths and open space trails being merged
24 together, from what you've stated so far I understand
25 that if in fact this commission during -- you know,

1 in the next process -- I understand about going over
2 very sensitive areas, that you would join them
3 together so they would go across together. However,
4 there is -- if we feel that there is a cart path
5 that -- or I should say an open space trail that
6 should be moved away from a cart path, that that's
7 going to be feasible.

8 MR. GODERRE: Yeah, I believe that would be
9 feasible. And the trail system that we have proposed
10 showed a loose one was just something that would
11 show -- demonstrate the connectivity between town and
12 open space through our open space system. And I know
13 the town has a vested interest and park and rec has
14 an interest in what that layout is and how it works
15 with the landscape. And what we are showing and how
16 we are showing it is something that we are open to
17 suggestions on the layout of a pathway. There are
18 numerous pathways that exist on site and that's what
19 we try to coordinate.

20 CHAIRMAN MCINTYRE: One last question. During
21 Mr. Peace's statements he mentioned there was five
22 bridges now. What was the -- we originally talked
23 about three. Now are there five?

24 MR. GODERRE: There's three substantial
25 structures and then there are two other structures in

1 which we have refabricated crossings, but they are
2 qualified for the bridge program that the federal
3 government or the state of Connecticut administers.

4 CHAIRMAN MCINTYRE: Okay. Thank you.

5 MR. GODERRE: If I could follow up on Miss
6 Gallicchio's question on the cart paths. I don't
7 have an exact number for you, but the length of the
8 golf course is 7,000 yards, 21,000 feet. So the cart
9 path would roughly follow that figure but slightly
10 higher, 2,200 -- 22,000.

11 MS. GALLICCHIO: What is that in miles, half a
12 mile?

13 MR. LANDINO: Four miles. Little over
14 four miles.

15 MS. GALLICCHIO: Four miles?

16 MR. LANDINO: A little over four.

17 MS. GALLICCHIO: My math is really bad.

18 MR. ARESCO: I have a follow-up.

19 CHAIRMAN MCINTYRE: One more question and that's
20 it.

21 MR. ARESCO: Bob asked that -- I read over your
22 responses to the issue that Bob just raised on the
23 bridges and the monies that would be available from
24 the government. I guess I tend to be more cautious,
25 but, you know, the government is constantly changing,

1 reducing budgets, cutting budgets, things of that
2 nature. I mean what guaranty would there be in the
3 future that the government is going to have that
4 money there or have that amount of money there? I
5 mean there's possibilities of budget changes. I mean
6 how could we look at that and say, yeah, that's a
7 fact we can depend on it? I mean that's a big
8 expense. The state, they are struggling with the
9 budget now.

10 MR. LANDINO: I can answer it two or three
11 different ways. First, I think it's an issue for the
12 next level of consideration. Since you have the
13 choice as a commission, as the zoning commission
14 does, to make those bridges public or privately
15 owned. We are proposing that they be publicly owned,
16 but that's certainly a concern that you could address
17 at a later stage of permitting.

18 MR. ARESCO: Thank you.

19 MR. LANDINO: Secondly -- there are two or three
20 pieces to this. Secondly, the economic burden of
21 replacing town owned and municipal bridges throughout
22 the state of Connecticut would be extraordinary if
23 the state rescinded that program. And I would
24 suggest that two or three bridges in Old Saybrook
25 would be a very small piece of a large problem if the

1 state pulled back on that funding and the Federal
2 Highway Administration pulled back on that funding
3 benefit to the towns.

4 MR. ARESCO: Thank you.

5 CHAIRMAN MCINTYRE: Miss Gallicchio has
6 requested to ask one last question.

7 MS. GALLICCHIO: Quickly.

8 CHAIRMAN MCINTYRE: She promises.

9 MS. GALLICCHIO: In the archaeological report
10 the recommendation was made for further conservation.
11 And I know you mentioned that you were going to go
12 along with this, prehistoric sites. They mention
13 blocks L, M, and S and the Lyon Dam site. And I
14 wonder if you could show us on the map where blocks
15 L, M, and S are.

16 MR. GODERRE: If you give me one moment.

17 MS. GALLICCHIO: Sure.

18 MR. GODERRE: Block L is located actually in
19 Essex, in this location here. Block M is located
20 approximately on the Essex line, in this area. And
21 the other point was S you were asking about?

22 MS. GALLICCHIO: Yes. Those are the three that
23 were in the recommendations.

24 MR. GODERRE: Block S is down in this location;
25 all locations that are not proposed for development.

1 MS. GALLICCHIO: Thank you.

2 MR. HANES: Bob, these should go into the
3 record. They're the ones that Sal discussed.

4 MR. ARESCO: I referenced them.

5 MR. HANES: He referenced them.

6 CHAIRMAN MCINTYRE: These are referenced by Sal
7 for the record.

8 Okay. That ends the commission portion of the
9 public hearing. I want to take a ten-minute recess
10 and then we'll get back to the meeting.

11 (Recess)

12 CHAIRMAN MCINTYRE: At this time I am going to
13 reconvene the meeting, and at this time the applicant
14 will make its closing statements. Mr. Royston --
15 Attorney Royston, excuse me.

16 MR. ROYSTON: Thank you. David Royston for the
17 applicant. I'll speak fast, because we are going to
18 only have 45 minutes.

19 Mainly we -- I want to respond and give a
20 rebuttal to particularly the information that's been
21 submitted for the first time tonight. And let me
22 start off with the letter from Attorney General
23 Blumenthal which was submitted for the record, letter
24 dated January 11, 2005. That letter is addressed to
25 the Planning Commission and it's copied to a number

1 of people, including Attorney Merriam, myself, and
2 Attorney Ranelli. Interestingly enough, service to
3 Attorney Ranelli's law office must be better than to
4 mine and Attorney Merriam's, because we haven't
5 received this letter as of the close of business
6 today, but we do have it now.

7 And if you take a look at this letter, there are
8 I think three things of significance. Number one,
9 Attorney General Blumenthal states, and I quote, I
10 strongly support efforts to purchase this property,
11 to hold and protect it as undeveloped conservation
12 land perpetuity.

13 And again, we emphasize that nondevelopment is
14 not before this commission. And if you really think
15 about this nondevelopment, is that a prudent
16 alternative to development? Well, we think it's not
17 nor would just one lot be a prudent development of
18 this property. You do have to take into
19 consideration the economic viability. Does it make
20 sense?

21 Similarly, if you get to the point of 75 village
22 lots, is that a prudent alternative? And we submit
23 that it is not, because it doesn't meet that economic
24 test.

25 He does go on to say what we think is the

1 appropriate standard. Attorney General Blumenthal
2 says, this commission must fully and fairly evaluate
3 the proposal before it, including all of its
4 environmental, economic, and anesthetic implications.
5 And with that we agree.

6 We think, however, that with all due respect to
7 Attorney General Blumenthal, that he is a better
8 lawyer than he is a scientist, because he also
9 asserts that The Preserve is the heart of Long Island
10 Sound, last large coastal forest. Its wetlands,
11 marshes, streams, forests, and beaches comprise one
12 of the largest remaining unfragmented habitats on the
13 coast.

14 Clearly there are no beaches there. And I think
15 that is the difficulty when lawyers get into science,
16 so I am going to try to adhere to that and go
17 through -- if I said anything which expressed a
18 scientific conclusion, please disregard it. Attorney
19 Merriam, who is going to follow me, will try to do
20 the same thing and I think he will be successful. We
21 are going to stick to the legal issues.

22 Couple of other legal issues that were presented
23 tonight. One of them I think has been mentioned
24 previously, but that is the need to include a golf
25 course within the conventional standard plan. We

1 have addressed this previously, but, again, to
2 summarize it, that it is not required by your
3 regulations. The regulations do not state that. And
4 I want to emphasize that it isn't something that we
5 suddenly came up with a golf course in our open space
6 plan or that we didn't have a golf course showing a
7 conventional plan. These were part of the
8 demonstration materials that were presented to both
9 the planning commission and to the zoning commission
10 at the time that the regulation was adopted. It
11 isn't at some late point we suddenly said that we
12 were going to be showing the golf course in the other
13 area which was not the 50 percent which was dedicated
14 to open space.

15 We also need to address the fact that in
16 considering alternatives to simply say eliminate the
17 golf course and you ipso facto therefore will have an
18 additional 200 acres of land for open space is a
19 fallacy. It is a total fallacy. You do not
20 eliminate the golf course and suddenly have a village
21 and a cluster, all the infrastructure. You just do
22 not have it. And the reason you do not have it is
23 because it is not feasible; it is not prudent.
24 Prudent takes into consideration whether it makes
25 economic sense.

1 We are going to have Dwight Merriam address the
2 issue which was also presented tonight concerning the
3 crossing of the railroad. And I would just for the
4 record, because I'm familiar with it, like to point
5 out that when the application was made to the DEP on
6 the previous application, it was to connect through a
7 right-of-way to Bokum Road in the very southeasterly
8 end of the property. It was to be an at-grade
9 crossing. That crossing went through the process of
10 the DEP. That was turned down only because of the
11 environmental existence of a rare species in the
12 White Cedar swamp in that location. That was the
13 only reason. I'm going to turn it over to Attorney
14 Merriam.

15 MR. MERRIAM: Thank you. My name is Dwight
16 Merriam. I am a lawyer with the firm of Robinson and
17 Cole. We are co-counsel with David Royston's firm in
18 representing the applicant.

19 I want to see if I can help us collectively
20 resolve some of the confusion over the railroad
21 crossing. And you'll see it's only going to take me
22 I think three or four minutes to do this. What's
23 happened here, unfortunately, is apparently the town
24 of Essex did not fully understand the nature of the
25 proposed construction, gave some information to the

1 DEP. They have not seen the routing plan. They
2 don't know what the proposed construction is,
3 although Elizabeth Brothers and I have been in
4 frequent communication over the last several weeks on
5 this issue. And they were asked for a letter. I
6 don't think the chairman requested it from Miss
7 Brothers, was received today. It's not copied to me
8 or any of the other parties. We didn't request it.
9 I don't know who requested it. It doesn't say who
10 requested it, but she summarizes some of our
11 communications and then offers some information.

12 Do you all have a copy of that letter? Was
13 there enough for everybody to have a copy? Because
14 I'm going to refer to it briefly.

15 But there really are two aspects of this issue.
16 This is Elizabeth Brothers's letter of January 11,
17 2005 addressed to the planning commission.

18 MS. GALLICCHIO: DEP.

19 MR. MERRIAM: Excuse me?

20 MS. GALLICCHIO: DEP, correct?

21 MR. MERRIAM: Yes. Elizabeth Brothers is the
22 assistant director. There is no current director at
23 this time, since Dick Clifford retired last year, of
24 the land acquisition and management part of DEP,
25 which incidentally would be the part of DEP to

1 acquire the property were the state to acquire it.

2 In any event, there are two parts of this issue.
3 One is the timing of the application for a railroad
4 crossing. Should it be prior to this hearing, which
5 is the town of Essex's position, or can it come
6 later?

7 And the second aspect is how much certainty, if
8 any, should be demonstrated about the potential for
9 that crossing being allowed?

10 We start with the first question. As you know
11 as a planning commission there are a myriad of
12 permits, probably scores of permits when you add them
13 all up, that are required to develop a project of
14 this scale from federal, state, and local
15 governments, but no one has raised an issue about
16 those permits and you don't either in your process.
17 A 401 water quality certificate for the stormwater
18 discharge, you wouldn't ask that that be in hand
19 prior to subdivision application, which of course we
20 are not at the subdivision stage quite yet. You
21 wouldn't ask the state traffic commission for a
22 certificate of operation, which is plainly needed for
23 this project, to be in hand. In fact, as you know
24 the SDC wouldn't process one until you get further
25 down the line. And this is very much like an SDC

1 certificate of operation. Because if the SDC
2 ultimately requires in this or any other development
3 project that there be a passing lane or a turning
4 lane or a reconstructed intersection, there is going
5 to be private property transactions, some type of
6 acquisition and conveyance of private property
7 interest to enable that certificate to be issued. So
8 it's very much the analogue. And it is not standard
9 practice; it is not reasonable; it's not appropriate;
10 and it's not legally required to have this railroad
11 crossing in place at this stage of the proceedings.

12 The second issue is even assuming that it is
13 necessary that the applicant demonstrate some
14 likelihood of getting a crossing, which I've got a
15 memo back to you January 7. This has become the
16 battle of the memos throughout this hearing. Essex
17 has its memos; we have had ours; they have memoed our
18 memos; and we have memoed back. But my parting shot
19 is the January 7 memo, which I am not going to go
20 into details on. But the question is if it is in
21 fact legally required that the applicant in this type
22 of situation demonstrate some degree of likelihood,
23 what can we tell you.

24 Now, here's where the whole thing broke down
25 over these assumptions and misunderstandings. Like

1 David Royston said when Tim Taylor went to cross
2 those tracks, he was doing it in a southeastern
3 corner, in an environmentally sensitive area, at
4 grade. What Elizabeth Brothers and her unit does not
5 know is that this is -- she should know, because I
6 have left some messages for her and I sent a letter
7 to her about how many flyovers had they processed
8 since 1980, and the answer is none.

9 But this is an overpass at an area of changing
10 grade, almost a mile away from where Tim Taylor
11 applied. And so somehow when somebody requested that
12 Elizabeth Brothers send this letter, she had the idea
13 that this was another at-grade crossing. She had
14 already written to me and said don't think about an
15 at-grade crossing. In fact, that letter is attached
16 to her most recent letter in which she's responding
17 to my FOI request. We were not asking for an
18 at-grade crossing.

19 And then in this letter which counsel for the
20 town of Essex characterized as saying we are not
21 going to get a crossing, Elizabeth Brothers
22 references a state statute and that state statute,
23 which is attached to her letter, says that private
24 grade crossings -- this is 13b-292. I just have to
25 read one sentence to you. You need to understand

1 this definition, because it's central to the
2 misunderstanding. Basically, this statute, which
3 dates back to 1961, says, don't ask for a private
4 crossing. How do they define a private crossing? A
5 private crossing is defined as any private way and so
6 forth for use of pedestrians, motor vehicles and so
7 forth which crosses at grade, which crosses at grade
8 any railroad track.

9 We are not asking for an at-grade crossing. And
10 in fact, there's a communication in my most recent
11 memo of January 7th from Elizabeth Brothers which is
12 a verbatim transcript of a voice mail message which
13 she left for me. And she left me a message on
14 December 22nd and it says, good morning, Dwight.
15 We had a lot of business together over the years.
16 This is Beth Brothers at the DEP calling, calling
17 with response to you -- your call the day before
18 yesterday with regard to a railroad crossing for The
19 Preserve property. If you could I would need to run
20 that through our property management review team.
21 What I would need would be a location map of where
22 the crossing is being requested. If you could send
23 some type of a sketch map along with a justification
24 for the need for the crossing and we will put it
25 through our property management review team and we'll

1 get an answer back to you. You can address that to
2 myself, Elizabeth Brothers, et cetera.

3 Now, what the counsel for the town of Essex
4 thinks is a fair standard for your action with regard
5 to this issue -- and I don't necessarily agree that
6 there should be any standard with regard to this
7 because it is premature, but what counsel for the
8 town of Essex said in his January 5th memo or
9 letter to you was that you should deny without
10 prejudice, quote -- quote, he said, until such time
11 as it, meaning River Sound, has the state's consent
12 to pursue an application. We have Elizabeth
13 Brothers's consent to pursue an application. She's
14 invited one. We have to put one together, submit it,
15 and she has said in her voice mail message to me that
16 she will process them.

17 Finally, we have not been able to find a -- we
18 have searched for the last three weeks. We have
19 talked to Amtrak; we have talked to Rail America; we
20 sent an FOI request to DEP. We have not been able to
21 find a single instance in this state --

22 MR. TIETJEN: A single what?

23 MR. MERRIAM: We have not been able to find a
24 single instance of a railroad overpass, a roadway
25 over a railroad line being denied by the state or by

1 any private railroad. They are routinely approved,
2 because they have no interference with rail
3 operations.

4 In fact, we know of two of them right off. Bob
5 Landino worked on one, got it approved for Duracell
6 in Bethel over White Turkey Road, what, about ten
7 years ago, an overpass railroad. And Saruzzi
8 (phonetically) got one approved at the Sino Theater
9 in Danbury.

10 So to summarize, number one, it's premature for
11 us to apply for that approval. We are going to apply
12 for it. We'll have to get it at some point and we
13 will.

14 Number two, to the extent that this commission
15 needs some assurance that there's a reasonable
16 likelihood that it will be approved, we have met the
17 town of Essex's test that the state be willing to
18 accept an application, which they have expressed a
19 willingness to do. And we represent to you that
20 there has, to our knowledge, not been, in the history
21 that we can find, a road overpass that has been
22 denied by any railroad in this state. And I hope
23 that ends the business of the railroad crossing for
24 the time being, which we certainly will revisit in
25 full when we come back for the final applications.

1 MR. TIETJEN: There is one on Bokum Road as you
2 know probably.

3 MR. WILLIS: May I ask either for Dwight or you
4 were talking about -- for the record, Attorney
5 Willis.

6 You were talking about two aspects. One was
7 timing; the other was likelihood. And in regards to
8 timing are you saying that the DEP legally would have
9 the ability to grant a permit or are you saying that
10 the DEP would legally give you a property right in
11 regards to the passover?

12 MR. MERRIAM: I don't know what the nature of
13 the grant -- of the permission will be. It could be
14 in the nature of an easement, a license, a
15 contractual right. I don't know, because we haven't
16 got to the stage of negotiating the arrangement. You
17 will see, when you get a chance to read the detailed
18 memo, that there is a fairly complex process usually
19 used in that nature.

20 Bob, do you have a response in part to this?

21 MR. LANDINO: The permit would have to occur
22 after review by the rail division of the Department
23 of Transportation. So even though the DOT I guess
24 has real estate ownership, there would be a DOT
25 review of the overpass prior to the DEP making an

1 approval.

2 The other point I wanted to make that was
3 mentioned by counsel for the town was earlier this
4 was part of a railroad tourist attraction. While it
5 is an extension of that attraction, the Valley
6 Railroad tourist attraction doesn't actually travel
7 on these tracks. These tracks are only used as a
8 main link between Essex Junction and Saybrook
9 Junction. And so there is virtually no trains on the
10 tracks except for an occasional maintenance or
11 service train. So I can't imagine why a grade
12 separated overpass would ever be considered to be an
13 issue.

14 MR. WILLIS: Is there anything specific that
15 you're going to cite to that says indeed what you're
16 going to be applying for is a permit and you need no
17 property rights?

18 MR. ROYSTON: A comment just on the initial
19 question. At least from my experience when the
20 previous application was made in -- I'm not sure of
21 the year, but within the last five or six years, the
22 application was for an easement, for an easement to
23 cross over the railroad property. That was the form
24 of the request for the permission or permit to do the
25 crossing. And again, that was a request for an

1 at-grade crossing which went through the process and
2 was denied on the basis of it, but was in the
3 adjacent Cedar Swamp -- by Cedar Swamp and that
4 having a roadway in proximity to it was not one that
5 the DEP agency responsible for that, in reviewing it,
6 would recommend.

7 MR. WILLIS: But this current proposal isn't for
8 a crossing for some sort of bridge or flyover.

9 MR. MERRIAM: Yes, it is. It's a bridge. And
10 if your question is would there be a property
11 interest conveyance as part of that arrangement, it
12 is indeed possible that it might be an air space
13 easement for that portion over the railroad
14 right-of-way. But as I said at the outset, this
15 situation is exactly what you in your firm, and I in
16 mine, and Dave in his, and everyone else in the
17 development business confronts all the time when we
18 get a certificate of occupation. We have to acquire
19 slope easements for construction. Sometimes we need
20 to acquire fee; sometimes we need to acquire
21 easements. The same goes with utility connections on
22 the properties, across other properties.

23 MR. WILLIS: What you're saying is it's both a
24 permit and you're going to need property rights.

25 MR. MERRIAM: The question is is it both permit

1 and property rights? It is at least a permit. And
2 what's the nature of the property interest or not, I
3 don't know. But at this point I submit to you and to
4 the commission that what you need to focus on is the
5 permit, because the property interest conveyance, to
6 the extent that there is one, is no different than
7 what we routinely acquire in all types of other
8 development-supporting activities. But we just don't
9 know until we get the process. Beth Brothers said
10 make an application. We'll process it. We are going
11 to make an application and they'll process it.

12 MR. WILLIS: I have no further questions,
13 Mr. Chairman.

14 CHAIRMAN MCINTYRE: Attorney Merriam, did you
15 submit the -- is that transcript that you have the --

16 MR. MERRIAM: Yes. It's in my January 7 memo
17 and Dennis Goderre. The January 7 memo on railroad,
18 supplemental memo. It was submitted tonight in the
19 package of rebuttal submissions. It's contained in
20 the January 7, 2005 memo from me to Bob Landino.

21 CHAIRMAN MCINTYRE: Thank you.

22 MR. MERRIAM: Thank you. I am really in
23 trouble. I take way more --

24 CHAIRMAN MCINTYRE: We took some of that.

25 MR. ROYSTON: Unless you ask some questions,

1 this is the last lawyer you're going to hear from.

2 We are going to turn it over to --

3 CHAIRMAN MCINTYRE: In my lifetime?

4 MR. ROYSTON: Just today.

5 MR. LANDINO: Just the next 30 minutes.

6 MR. ROYSTON: First of all, I just want to
7 mention to you that there is in the materials
8 submitted to you a letter from -- who has had the
9 opportunity to take a look at the alternative plan
10 that was submitted by CFE. And he has commented on
11 it and this letter has supported part of our plan
12 even in light of that.

13 Next, I just want, again, to repeat the legal
14 standard for your consideration when you evaluate the
15 testimony you received before and rebuttal testimony
16 and that is is the alternative feasible? Can it be
17 reasonably engineered? Is the alternative prudent?
18 Does it make economic sense?

19 So now I am going to turn it over to discuss the
20 alternative that has been presented by Connecticut
21 Fund for the Environment. They will go in this order
22 and just one after another to save time. Stuart
23 Cohen, Sam Haydock, Michael Klein, Michael Klemens
24 and then to sum up Bob Landino. I'm going to turn it
25 over to Stuart Cohen.

1 MR. COHEN: Yes. My name is still Stuart Cohen
2 and I'm definitely not a lawyer.

3 It's important for lawyers to be legally
4 correct. It's important for clergymen to be moral.
5 It's important for scientists to have strong
6 scientific validity and to apply methods properly and
7 to do it in a reproducible manner. The courts have
8 recognized this as well and they have applied
9 standards to this which I'll disclose to you in a
10 moment. By the way, I'll be only speaking for about
11 a minute and a half or so.

12 When Michael Klein, Klemens, and I saw the CFE
13 proposal, the landscape metric, we were surprised.
14 We hadn't quite seen anything like this before and we
15 had some questions about it. Michael Klein will
16 follow me in about a minute or so. In the meantime,
17 I want to show you standards that were handed down in
18 a Supreme Court case in 1993 and --

19 CHAIRMAN MCINTYRE: Does that have a name?

20 MR. COHEN: I was about to say it. I'm learning
21 finally. The title of this posterboard is U.S.
22 Supreme Court Test of Scientific Validity, Daubert v.
23 Merrell Dow, 509 U.S. 579, 1993. These are standards
24 of standards to determine if testimony is
25 scientifically valid.

1 One, has the underlying scientific theory been
2 tested? That's pretty easy to understand. We would
3 submit the answer in terms of this natural resource
4 index may be no.

5 Has the science been peer reviewed and/or
6 published? Now, published is obvious. Peer reviewed
7 means a group of peers put something through Reamer
8 as accepted. We would submit the answer is no. And
9 by the way, in Federal Court if you get one of these
10 things wrong, all of your testimony can be thrown
11 out.

12 What is the error rate of the science? Can you
13 know how accurate your prediction or calculation is?
14 We would submit the error, that it is not notable;
15 the error rate.

16 And finally, is the methodology generally
17 accepted in the scientific community? And to put
18 this in simple terms, does anyone else believe it or
19 do it? And we would submit that the answer is no.

20 With that I'll introduce Michael Klein, who will
21 talk about this in more technical -- I'm sorry. Sam
22 Haydock.

23 MR. HAYDOCK: Thank you, Stuart. Once again,
24 Sam Haydock from BL Companies.

25 I'm just going to touch briefly on the

1 engineering aspects of the CFE design alternative.
2 As David indicated there are both feasible and
3 prudent aspects that must be considered in the
4 alternative. Defined by statute an alternative must
5 be feasible, prudent, and implemented consistent with
6 sound engineering principles.

7 Development of our open space plan has been an
8 extensive process over 18 months that has not only
9 placed heavy emphasis with regard to ecology and the
10 environment, but also on sound, accepted, and
11 state-of-the-art engineering principles and
12 engineering and design principles. These elements
13 included but are not limited to traffic flow, site
14 access, roadway design, storm water management,
15 wastewater disposal, and water supply. And these are
16 critical components of any development that must be
17 engineered correctly not only for the protection of
18 public health, safety, and welfare, but it is
19 minimizing impacts to the environment. The
20 alternative provided by the Connecticut Fund for the
21 Environment in our opinion is not prudent and
22 feasible.

23 With respect to the environmental and ecological
24 shortcomings of this plan, Dr. Klemens and Mr. Klein
25 will address that shortly hereafter. With respect to

1 the engineering aspects there is no indication and it
2 is highly unlikely, given the short amount of time in
3 which they put together this alternative, that they
4 have given the engineering analyses their fair due.
5 In fact, Mr. Cryder indicated that they have not
6 evaluated the traffic impacts and traffic flow issues
7 associated with that alternative.

8 A few examples of the -- of why we believe their
9 design alternative should not be considered further
10 from the engineering perspective include the
11 following: There is no indication that existing
12 alternative roadway standards established by the town
13 of Old Saybrook can be met. There is one glaring
14 flaw. The northern access to Route 153 proposed by
15 CFE goes off a steep cliff and could not be built as
16 shown. The only way to build it would be to destroy
17 a wetland with extensive fill. And I would like to
18 point out that our plan calls for no filling of any
19 wetland on the site. In addition, there is no
20 indication of how storm water would be managed or
21 whether it could be done so in a manner that adheres
22 to all local, state, and federal regulations. In
23 particular, it appears that the majority of the
24 runoff is now concentrated in the Oyster River
25 watershed as opposed to the existing plan that

1 distributes runoff through three watersheds.

2 If the intent of the alternative design is to
3 use individual septic systems, this will have a
4 greater impact to water quality at the site and
5 wastewater treatment plant and community leaching
6 field, assuming that the alternative plan still calls
7 for use of the latter, that is, a wastewater
8 treatment plan and community leaching field. There
9 is no indication of the location of the leaching
10 fields. There is no indication of the extent of
11 disturbance associated with the leaching fields. And
12 there is no information on the extent of the
13 disturbance required to connect the eastern portion
14 and the western portion of the site with a sewer
15 collection system.

16 Lastly, there's no indication of how the site
17 would be served with a potable water supply. What is
18 lacking in their plan is the benefit of several
19 meetings and design discussions with Connecticut
20 Water Company. The proposed open space subdivision
21 plan takes into account design considerations
22 required by Connecticut Water Company which include
23 the connection of their Guilford and Chester water
24 distribution networks with a water main along the
25 spine road. This interconnection which the developer

1 must pay also includes a one million-gallon water
2 storage tank located on The Preserve site, portable
3 fire protection to the site, but will also improve
4 service and pressure to homes located off site. So
5 these are just a few of the engineering shortcomings
6 with the CFE alternative and as such is not a
7 feasible alternative to our proposed plan which
8 encompasses both extensive environmental and resource
9 protection as well as sound engineering. Thank you.

10 MR. KLEIN: Michael Klein. I'm a biologist and
11 soil scientist. I wanted to discuss a little bit
12 further Stuart's boards and look at the CFE proposal
13 with respect to the criteria which separate what some
14 people call real science from voodoo science.

15 CHAIRMAN MCINTYRE: Mr. Klein, could you
16 identify the board you're discussing.

17 MR. KLEIN: I just pointed back to the U.S.
18 Supreme Court Test of Scientific Validity. We got
19 the results, the conclusions of the CFE work that are
20 shown on these three boards, Vernal Pool Habitats,
21 Unfragmented Forest, and Water Resources on Monday,
22 the 3rd. There was no indication of the methodology,
23 how they were derived, and that's a critical element
24 in determining whether this is appropriate science.
25 So we asked questions about that. We didn't get

1 information on that until late in the day Monday, two
2 days ago.

3 Since the conclusions were obviously available,
4 we have to wonder why the methods were withheld. But
5 regardless of that fact we think that this is an
6 inappropriate use of some of the principles of GIS
7 and landscape ecology. This site is not appropriate
8 for analysis on a landscape scale. The smallest unit
9 that you would use for landscape scale analysis would
10 be an entire watershed. This site has portions of
11 watersheds but doesn't include one entire watershed.
12 They have used the site boundary --

13 CHAIRMAN MCINTYRE: Could you identify which
14 chart you're referring to.

15 MR. KLEIN: I'm referring to -- we'll refer to
16 the vernal pool habitat chart. The boundary of their
17 analysis is a property boundary landscape analysis,
18 has some landscape feature or some natural resource
19 feature that separates it out. You're looking at one
20 entire portion of the landscape, not a site, no
21 matter how large it is. This is just an arbitrary
22 property boundary. Neither of these three graphics,
23 the vernal pool habitats, the unfragmented forest,
24 the water resources, is necessary to convince me if
25 you push the developments to the margin of the site,

1 that there will be more areas preserved in the
2 center. That's obvious. Doesn't take a computer to
3 prove that.

4 Their criteria for environmental impact appears
5 to be that the distance between the development and
6 the resource is the only factor of any importance.
7 Their method has not been this natural resource
8 index. That's just a generic term as far as I have
9 been able to determine. We have looked through
10 Goggle Scholar, which has a data base of scientific
11 articles. Couldn't find any uses of this metric.
12 They have ignored all the site specific data and gone
13 back to much more general data. What do you end up
14 with, this general analysis?

15 First of all, I would like to point out that the
16 unfragmented forest slide is just plain wrong. As
17 anybody who has been on the site knows, and you can
18 see evidence of it here, there's a utility
19 right-of-way that goes through the site and goes all
20 the way along this edge. They didn't account for
21 that in terms of their fragmentation. They
22 completely ignored it. There's about 25,000 linear
23 feet of 200-foot wide right-of-way that runs through
24 the property. According to their metric each foot of
25 right-of-way affects 400 feet laterally to it. That

1 comes out to about 230 acres of disturbed or
2 fragmented habitat on the site that they don't
3 include at all in their analysis. They just
4 completely ignore the right-of-way. George Logan
5 cited that's about 25 percent of the site. George
6 Logan cited two references to edge effect. One
7 suggests 300 feet; one suggests 600 feet. And
8 somehow he's used 400 feet. It's not the average of
9 the two, not the larger, not the smaller. There's no
10 justification for it. There's no way to test the
11 validity of that argument.

12 Sam talked to you about the northern access
13 point that they propose to 153 and how it's not
14 engineeringly feasible. It also results in
15 environmental destruction and damage, not only
16 filling the wetlands but also paves right over one of
17 the box turtle habitat. Doesn't meet your criteria
18 of this zone which includes protection of listed
19 species. Furthermore, the analysis does not in terms
20 of high productivity pools are ranked exactly the
21 same as low productivity pools on the site. Some
22 have over 1,000 egg masses and some have just a
23 couple of egg masses, and their analysis assumes that
24 they are all equal. It also assumes that any
25 disturbance within the first 150 feet has the same

1 impact, that any disturbance in the next increment of
2 150 feet has the same impact, although slightly less,
3 and so forth. So it's a linear decrease with
4 distance. Dr. Klemens can tell you quite
5 conclusively that the science does not support that
6 kind of a metric. This is what happens when a GIS
7 specialist who doesn't know the biology tries to
8 apply these metrics.

9 The water resource indirection, the same thing.
10 It's shown on this board up here. It assumes that
11 impact decreases linearly with distance and that the
12 buffer zone or area of impact extends out to
13 200 feet. It doesn't relate to your buffer
14 requirement in your town regulations and it also
15 doesn't conform with the science that the DEP has
16 prepared over the years. They -- and George Logan is
17 quite aware of this, because he was the author of the
18 report that said 100-foot buffer zone absent
19 scientific data was an appropriate one.

20 I would just like to reiterate my conclusion
21 from before that the impact on biological and natural
22 resources resulting from the open space subdivision
23 are reasonable and that they have been mitigated to
24 an extraordinary degree.

25 MR. KLEMENS: Good evening. I would like to

1 talk to you both as a conservationist, as someone who
2 actually has sat in your chair, sat many years on my
3 own planning board. This has been a really long
4 process, especially long. One must remember that it
5 is a process not to determine the actual subdivision
6 or wetlands approvals, but really to decide upon what
7 type of development from a conservation perspective
8 is preferable for the site.

9 As I've stated before and many other people have
10 stated repeatedly, this is not a discussion about
11 whether or not to develop this site but how to use
12 the scientific information to determine a template of
13 development best suited to conserve the ecological
14 integrity of the site. These are indeed very
15 difficult questions. And the scientific team at The
16 Preserve has logged hundreds of hours in the field to
17 address basic biological questions and provide data
18 required at this stage of the process. And we do
19 have, in my opinion, sufficient data to make an
20 informed decision. That doesn't mean in any way that
21 we know everything about all the creatures on the
22 site, but that we have sufficient data in order to
23 make a cogent plan, a plan that ultimately can be
24 tweaked, planned or modified but stands as a
25 biologically sound plan.

1 Certainly some of the issues that have been
2 raised in the testimony of the past weeks should and
3 will be addressed as part of future submissions to
4 this board, the zoning board, the wetlands agency.
5 However, many of the issues raised by the opponents
6 to this project are not information needed at this
7 juncture of the project, nor in some cases
8 information at any future stage of the project.

9 In my opinion -- and I have seen this over the
10 years and I have dealt with this in my own
11 commission. When people put large volumes of
12 information in, it's almost overloaded the
13 commission. Questions that are raised specifically
14 to create confusion and doubt, not to further
15 scientific understanding, may be in the hope that it
16 becomes so overwhelming that the commission is
17 paralyzed. I dealt with this on my own commission on
18 several large projects. It can be very overwhelming.

19 Now, I'd like to talk a little bit about this
20 information. So lawyers hold on, because it's going
21 to be a little bit more antilawyer talk. Much of the
22 discourse about scientific data has not been carried
23 out by scientists. And by scientists I really mean
24 those individuals who have demonstrated a published
25 track record in peer-reviewed literature in their

1 respective disciplines. And in the area of that type
2 of science you have heard testimony from three I
3 would say quite respected Connecticut biologists,
4 Drs. Hammerson, Craig, and myself, Dr. Klemens. And
5 our testimony was fairly consistent. We all agree
6 that the site is large and unique, and we all would
7 like to see as much of the site protected as
8 possible. Dr. Hammerson stated that he would like to
9 see more vernal pools protected. I cannot disagree
10 with that. I would like to see more protected too.
11 And certainly many of us wish that more of the site
12 could be protected possibly perpetuity. And as the
13 project evolves possibly portions, if not all, of the
14 site could be protected through public acquisition.
15 But ladies and gentlemen, this is not the question at
16 hand; the question that you are being asked to render
17 a decision upon.

18 Now, let's move to a -- much of the scientific
19 noise and acrimony is coming from -- not from the
20 scientists themselves who have the experience and
21 understanding of the organisms on the site, not from
22 those who have published on flora and fauna, but from
23 lawyers and environmental consultants who take pieces
24 of testimony, references, snippets of data and
25 bibliographies to create page after page of

1 memoranda, responses to questions and yet more
2 questions and more responses. It's a bit like let's
3 take a little piece of information from column A,
4 merge it with information from column B or in the
5 case of what happened with CFE's submission on
6 pesticides, eliminate a couple of columns, take a
7 testimony quote from column C, another reference and
8 all of a sudden we have created an entirely new and
9 erroneous truth and submit it into the record. The
10 amount of that that has happened in this particular
11 application is unparalleled in my 25 years of
12 experience to ever have seen this kind of thing.

13 So I ask you to please step back from these
14 pages of mistruths and misrepresentations and focus
15 on the data, the scientific data that has been placed
16 into the record, not the rhetoric that seems to be
17 dominating the record. Everyone needs to take a look
18 at what happens when environmental consultants and
19 lawyers assisted by high-tech rapid crews create an
20 alternative development plan.

21 Just take a look at the alternative that was
22 produced by the lawyers and environmental consultant
23 for CFE. I'm old fashioned. I go out, spend time in
24 the field. I get muddy, dirty, spend lots and lots
25 of time in a site. This stuff looks wonderful when

1 you start scratching, and as I think we have heard
2 some of this on --

3 CHAIRMAN MCINTYRE: Could you identify the
4 board.

5 MR. KLEMENS: I'm trying to find it. This
6 stuff, unfragmented forest, vernal pool habitats,
7 water resources by CFE looks really impressive, as
8 does bibliographies in the record. You start to look
9 into it and -- I can't even find the Daubert board.
10 But basically you start to look in there. It doesn't
11 really meet that standard.

12 Let's talk very specifically -- there is the
13 Daubert board there. Doesn't really meet many of
14 these standards. Let's look a little bit more at the
15 vernal pool board. Very specifically Michael Klein
16 mentioned this. I really cannot believe after
17 spending hundreds of hours on the site studying these
18 pools over and over again, giving very, very distinct
19 information on productivity -- and there is no big
20 1,200-egg mass pool that we are all talking about.
21 George talked about it. I've talked about it. And
22 what do we have here? On the CFE plan we have an
23 arterial road going right into the most productive
24 vernal pool on the site. The pool that has 1,200
25 spotted salamander egg masses. I've got the road

1 going right around the pool. Complete violation of
2 much of the peer-reviewed science. The Best
3 Development Practice Manual that I co-authored, which
4 is a peer-reviewed publication which is distributed
5 by the State of Connecticut. That's an absolute
6 complete violation to have a high intensity road
7 cutting through these two vernal pools, cutting here.

8 And we get to the box turtle right here. We
9 remember when Dr. Goodfriend and Snarski were trying
10 to joggle house lots here around the box turtle zone
11 here. It's paved over. You've paved over right
12 here, the box turtle habitat. And that's in real
13 violation of the whole concept of the zone, because
14 the zone that you have here, which is the open space
15 plan, because you cannot take and destroy populations
16 of state listed special concern species. This
17 basically is one of them right here. And I am
18 pointing on the vernal pool map. This is one of your
19 three box turtle sites on the property.

20 CHAIRMAN MCINTYRE: Mr. Klemens.

21 MR. KLEMENS: Yes.

22 CHAIRMAN MCINTYRE: Your side's running out of
23 time.

24 MR. KLEMENS: Okay. All right.

25 MR. LANDINO: Thanks, Mr. Chairman.

1 MR. KLEMENS: Just to give you one more example
2 of how flawed this is, can I just finish one thing?
3 The whole thing -- whether this thing with the --
4 with Mr. Logan, the habitat -- the pools are so
5 productive that they need even more habitat, well,
6 the reality is think about The Preserve. Think about
7 the habitat. The habitat is like this on The
8 Preserve. It is so rich and infolded that -- there's
9 so much habitat there that that's why these pools are
10 productive, because of the landscape, because of the
11 quality, the infolding of the land.

12 So that's basically -- I'm going to stop and let
13 Bob take over. I have a lot more to say, but I'll
14 stop.

15 CHAIRMAN MCINTYRE: At this time your time has
16 expired, but I don't think that -- we can take a few
17 more minutes.

18 MR. LANDINO: I had about 15 minutes. I'll do
19 it in two or three just to call it a night.

20 I have a couple things that are necessary.
21 First, I just wanted to take one moment and thank
22 everyone on the commission, staff, and all the
23 opponents that have put in the time and effort. And
24 while we -- you know, the folks that have spoke
25 expressed their concerns and while we sit back and

1 watch your deliberations, the work really begins. So
2 I wanted to take this time to say that we appreciate
3 whatever side of the fence you're on. We appreciate
4 the time and effort you put in. I wanted to thank
5 those that are involved in expressing their concern
6 in this application. Everyone was respectful, never
7 got personal. They addressed their concerns
8 competently. Our firm does about a hundred of these
9 a month, and it's great to see that it's done this
10 way.

11 First, I would like to just -- one issue
12 regarding the board of selectmen in Essex. There was
13 a dissenting selectman, Vincent Pacileo. I wanted to
14 submit for the record his public statement. I'll
15 just read a quote of his for the record in deciding
16 how to vote on the actual intervention. He says,
17 however, this notice is an unacceptable expansion of
18 my articulated intent of the original intention and
19 will not receive my support. I wanted to submit
20 Mr. Pacileo's public statement for the record.

21 CHAIRMAN MCINTYRE: Thank you.

22 MR. LANDINO: Mr. Chairman, in closing I had a
23 bit to say, but I won't say it.

24 CHAIRMAN MCINTYRE: I think it's already been
25 said before.

1 MR. LANDINO: It's been said. We believe we put
2 an extraordinary investment of time and energy with
3 redundant planning consultants, and environmental
4 consultants, and engineering consultants to give our
5 best foot forward and represents for us the best
6 balance between the preservation of open space and
7 protection of the environment and a quality
8 residential community. We believe the golf course is
9 absolutely critical as part of this development as
10 it's an integral establishment of a traditional
11 neighborhood, and the prudent and feasible viability
12 of this alternative is based on the link between the
13 golf course and the residential community. So one
14 does not exist without the other. If one is removed
15 the residential layouts change substantially.

16 And as others have expressed during the course
17 of the evening, you can't just piecemeal a plan like
18 this. It strikes a complex balance of a variety of
19 issues which we worked hard with you over the last
20 two years to develop. With that remark I'll leave
21 with you that thought and leave you with your time
22 and deliberation. Thank you.

23 CHAIRMAN MCINTYRE: Thank you. Okay. That ends
24 the public hearing. We'll have to get a motion to
25 close the public hearing.

1 MR. HANES: I would like to make the motion that
2 we close the public hearing for The Preserve Special
3 Exception for Open Space Subdivision, 934 acres total
4 and open space 542.2 acres. Ingham Hill and Bokum
5 Roads, Map 55, 56, 61; Lots 6, 3, 15, 17, 18.
6 Residence Conservation C District, Aquifer Protection
7 Area. Applicant: River Sound Development, LLC.
8 Agent: Robert A. Landino, PE.

9 MS. GALLICCHIO: I'll second the motion.

10 CHAIRMAN MCINTYRE: We have a motion to close
11 the public hearing. It's been seconded. Any
12 discussions?

13 MR. TIETJEN: Yeah. I want my portrait back
14 from Dennis.

15 CHAIRMAN MCINTYRE: Okay. Hearing no discussion
16 all in favor.

17 (Affirmative response given by all.)

18 CHAIRMAN MCINTYRE: Opposed.

19 (No response)

20 CHAIRMAN MCINTYRE: Closed.

21 Our housekeeping has to be taken care of here.

22 MS. NELSON: All you have to do is set a
23 meeting, a special meeting for deliberations.

24 Wednesday, the 26th.

25 CHAIRMAN MCINTYRE: We have to have another

1 meeting.

2 MS. NELSON: I reserved the first floor
3 conference room in the Town Hall. That's all I could
4 get.

5 CHAIRMAN MCINTYRE: Let's try it. Motion is
6 being made here.

7 MR. HANES: I would like to make a motion that
8 we call a special meeting for the discussion.

9 CHAIRMAN MCINTYRE: Deliberation.

10 MR. HANES: Start deliberations for Wednesday,
11 January 26, at 7:30 p.m. at the Town Hall, second
12 floor conference room --

13 MS. NELSON: First floor.

14 MR. HANES: First floor conference room.

15 CHAIRMAN MCINTYRE: To discuss the deliberation
16 for the River Sound Development.

17 MR. HANES: I said The Preserve.

18 CHAIRMAN MCINTYRE: Okay.

19 MS. GALLICCHIO: I'll second.

20 CHAIRMAN MCINTYRE: Motion has been made to have
21 a meeting to start deliberation on the application,
22 The Preserve, to the 26th of January. At what time?

23 MS. NELSON: At 7:30.

24 CHAIRMAN MCINTYRE: At 7:30 and at the first
25 floor conference room at the Town Hall, 302 Main

1 Street, Old Saybrook, Connecticut, 06475. Any
2 discussion?

3 (No response)

4 CHAIRMAN MCINTYRE: Hearing none all in favor.

5 (Affirmative response given by all.)

6 CHAIRMAN MCINTYRE: Opposed.

7 (No response)

8 CHAIRMAN MCINTYRE: Okay. There it is.

9 MS. GALLICCHIO: Motion to adjourn.

10 MR. HANES: I'll second it.

11 CHAIRMAN MCINTYRE: Motion to adjourn.

12 Discussion?

13 (No response)

14 CHAIRMAN MCINTYRE: All in favor, aye.

15 (Affirmative response given by all.)

16 CHAIRMAN MCINTYRE: Opposed.

17 (No response)

18 CHAIRMAN MCINTYRE: Meeting is closed. Thank

19 you very much, ladies and gentlemen.

20 (Whereupon, the meeting was adjourned at

21 12:35 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 194 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 12th day of January, 2005, 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 8th day of February, 2005.

Debrah Veroni, RPR, LSR

