

VERBATIM PROCEEDINGS

OLD SAYBROOK PLANNING COMMISSION

"THE PRESERVE"

JANUARY 19, 2011

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HEARING RE: OLD SAYBROOK PLANNING COMMISSION
JANUARY 19, 2011

1 . . .Verbatim proceedings of the meeting
2 of the Old Saybrook Planning Commission, held January 19,
3 2011, at 7:35 P.M., at the Old Saybrook High School
4 Auditorium, 1111 Boston Post Road, Old Saybrook,
5 Connecticut. . .

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10 CHAIRPERSON McINTYRE: I'm going to call
11 the meeting to order. This is a regularly scheduled
12 meeting of the Planning Commission, Wednesday, January 19,
13 2011, at 7:30, Old Saybrook High School Auditorium, 1111
14 Boston Post Road.

15 Our first order of business is the Roll
16 Call. Tonight we have all regular members, myself, Robert
17 McIntyre, Janis Esty, Sal Aresco, Robert Missel, Don
18 Ranaudo, and one alternate, Cathryn Flanagan. There will
19 be no alternate seated tonight. We have all the regular
20 members.

21 The next order of business, I'd like to
22 get a motion to move Regular Business to down below Public
23 Hearing.

24 MR. ARESCO: So moved.

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1 CHAIRPERSON McINTYRE: Okay. Second?

2 MR. RANAUDO: Second.

3 CHAIRPERSON McINTYRE: Okay. It's been
4 made and seconded by -- made by Sal, seconded by Don. Any
5 discussion?

6 Hearing none, all in favor?

7 VOICES: Aye.

8 CHAIRPERSON McINTYRE: Opposed?

9 All in favor.

10 Okay. Public Hearing, preserve,
11 modification to approve special exemption for preliminary
12 open space subdivision plan for 226 total dwelling units,
13 925.82 total acres, and open space, 556.83 total acres,
14 Ingham Hill and Bokum Roads, M-55-L-3, M-56-L-6, M-61-L-
15 15, 17 and 18, Residence conservation C-District, aquifer
16 protection area, Applicant, River Sound Development, LLC,
17 owner, agent, David M. Royston, Esquire. And the action
18 tonight is the continued public hearing or close by 11/19
19 2011 and then consider and act after that.

20 Okay. Christine, why don't you -- she
21 mustn't have anything to say.

22 Attorney Royston, I guess you have the
23 floor.

24 MR. ROYSTON: Thank you. Mr. Chairman,

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1 members of the commission -- can you hear me?

2 CHAIRPERSON McINTYRE: Not really. You
3 might have to --

4 A VOICE: We can hear you, yes.

5 CHAIRPERSON McINTYRE: If you get it real
6 close to your mouth, it works. Give it a good yank. It
7 comes out. There you go.

8 MR. ROYSTON: As they say, can you hear me
9 now? Or better?

10 A VOICE: I don't think it's the mike
11 we're hearing. I don't think. I hear you, but --

12 MR. ROYSTON: The microphone says it's on.
13 I will --

14 CHAIRPERSON McINTYRE: There you go.

15 MR. ROYSTON: Okay.

16 MR. ARESCO: Don't move from that spot.

17 MR. ROYSTON: Mr. Chairman, David Royston,
18 attorney for the applicant.

19 CHAIRPERSON McINTYRE: Dave, can I
20 interrupt you for just one second? I got a little bit
21 ahead of myself. Just -- I apologize to the public.
22 Normally at this time I like to, you know, carry out how
23 this is going to go. Obviously, first we're going to
24 listen to the applicant. And as soon as the applicant is

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1 done speaking, then we're going to have the intervenors
2 speak and then I will open up the public portion of the
3 public hearing to the public.

4 After that, I will then close that
5 portion. And then the board will make comments to the
6 applicant and any questions to our staff.

7 If anyone has a cell phone on right now,
8 please make sure it's turned off. If you need to talk,
9 please go outside in the hallway. Thank you.

10 Go ahead, Attorney Royston.

11 MR. ROYSTON: Thank you, Mr. Chairman. We
12 are in a new venue. I hope that at the end of this
13 hearing we'll be able to have the band come in and we can
14 get up and dance.

15 The -- we have tried to the best of our
16 ability to adhere to your ground rules, particularly with
17 respect to our comments and map revisions. As we did at
18 the January 5 session of the public hearing, we provided
19 to the commission the plan revisions which we thought were
20 consistent with review comments that you had received. We
21 also filed responses to comments prior to that hearing on
22 December 29.

23 And as we indicated at your hearing on
24 January 5, we had not received your engineering report

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1 from Jeff Jacobson and, thus, we were unable to respond to
2 it either by comments or plan to any significant degree.

3 Since the hearing on January 5, we
4 received comments from your reviewers and consultants. In
5 particular, I would make reference to the three reports
6 that you received after your January 5 public hearing.
7 You received a report from your traffic engineer, Bruce
8 Hillson, dated January 7. And his comments were based
9 upon the plans as revised through December 29, 2010 and
10 comments that he had heard at the public hearing.

11 You also received a report from your
12 attorney, Mark Branse, and a letter dated January 13,
13 2011. And you received a report from the Land Use
14 Department dated January 14, 2011.

15 Due to unavoidable situations, we did not
16 -- or I did not receive those reports until January 18,
17 yesterday, simply because of the office, Land Use office,
18 being closed for the holiday, and certain logistical
19 concerns.

20 And not to say that we have not had
21 adequate time to respond to them, but simply to let the
22 commission know that this is the reason why I will be
23 filing with you tonight plans that are revised through
24 January 13, 2011. And those plans, although the revision

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1 date is January 13, 2011, they actually include certain
2 modifications, revisions which were made after that date.
3 We held to the January 13 revision date because that is
4 the date referenced in all the other documents and that is
5 also the date on the plan. And so we simply wanted you to
6 know that.

7 Some of the information on that plan was
8 developed after conversations between the applicant's
9 engineer and Mr. Jacobson, who was kind enough to make
10 himself available on Monday, January 17, 2011, the
11 holiday, to take a look at some of the information.

12 Having given you that preamble, I would
13 like to give to the commission the plan, six sheets dated
14 January 13, 2011, RS-1 through RS-6. These are the same
15 plans but with revisions that you have received, the
16 original set dated October 7, 2010, the first revision
17 December 29, 2011 (sic) and the latest revision January
18 13, 2011.

19 I'll do my best to speak as loudly as
20 possible since the microphone doesn't seem to be operating
21 at full strength at all times.

22 If I may approach, Mr. Chairman, and
23 simply put this microphone down for the moment and hand
24 out these plans?

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1 CHAIRPERSON McINTYRE: Yes.

2 MR. ROYSTON: Thank you.

3 CHAIRPERSON McINTYRE: This will be
4 Exhibit 69? Exhibit 69.

5 MS. RYNECKI: And each page will be a
6 different number.

7 CHAIRPERSON McINTYRE: Okay. And each
8 page will be a different number.

9 MS. RYNECKI: A, B, C. That way?

10 CHAIRPERSON McINTYRE: Okay. 69-A, B, C.

11 MR. ARESCO: Six pages, 69.

12 (Whereupon, the six-page plan was received
13 and marked as Applicant's Exhibit 69-A through Exhibit 69-
14 F.)

15 MR. ROYSTON: As we proceed, Mr. Chairman,
16 we will make reference to these, to these plans, as we go
17 through other oral and written testimony which we are
18 going to present this evening.

19 The second document which I would like to
20 present to you for the record is the response of River
21 Sound Development, LLC, dated today, January 19, 2011, to
22 the review comments that it received. Those review
23 comments, again, are Land Use Department report, January
24 14, 2011, Attorney Branse's letter dated January 13, 2011,

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1 Bruce Hillson's report dated January 7, 2011.

2 And if I may approach again, Mr. Chairman,
3 and provide copies of our written response for the record?

4 (Whereupon, the response, dated January
5 19, 2011, to Land Use comments was received and marked as
6 Exhibit 70.)

7 You may note for the record, Mr. Chairman,
8 that the -- this document is reduced in length from those
9 that you previously received from me as we get down to the
10 remaining issues in this application.

11 The first thing I would like to do is to
12 address the reports, particularly those legal aspects of
13 the report. I would then turn over to Bob Doane to go
14 through the actual plans in which those, the comments of
15 reviewers have been addressed. And finally, I would like
16 to turn the floor over to Michael Kline to provide
17 additional testimony and a report with respect to the
18 intervention.

19 The Land Use report, which is dated January
20 14, 2011, and the preamble, it raises three items. It
21 says that the Land Use Department questions a reasonable
22 yield at the Bokum Road parcel, notes that revisions to
23 the plans by the applicant made great efforts to
24 accommodate many of the concerns, but that the concern

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1 continues with respect to the applicant's treatment of the
2 three identified areas, quote, "Pods", close quote, a
3 stand-alone development.

4 The Land Use Department also indicated in
5 its preamble finally that their second report was
6 offered in the hope of refining the proposed
7 modifications so that the development better fulfills
8 the purposes of the Residence C conservation district as
9 originally proposed and approved.

10 So the first significant gut pattern is
11 the phased areas issue. It is fundamental to the Land
12 Use Department report. It is fundamental to Attorney
13 Branse's letter. It is fundamental to Bruce Hillson's
14 report.

15 And just by way of background, if you go
16 through the items that have been provided to you, the
17 applicant, through me, on December 29 in our response to
18 review comment made what was our interpretation of what
19 was meant by Section 56.6.8 of the Zoning Regulations,
20 of the Zoning Regulations which controls this particular
21 application.

22 And in our interpretation, we did not
23 believe that the term "phased development" prohibited
24 the Planning Commission from approving a stand-alone

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1 development, (A). (B), we did not believe that that
2 definition required, required, all the open space in the
3 entire open-space subdivision; that is, the entire 925
4 acres to be conveyed at the time of the approval of the
5 first subdivision application.

6 And finally, we submitted that if that's
7 the interpretation, then we respectfully suggest you
8 merely state that that is your interpretation.

9 Now, as you go through the Land Use
10 report, the Land Use report goes back into the history
11 of that regulation. We don't dispute that that
12 particular section, 56.6.8, has been in the regulations
13 since the adoption of the Zoning Regulations in 1973.
14 We don't dispute this historical aspect of it that it
15 was based upon an East Haven regulation and they quote -
16 - there's some change in language -- sections and
17 phases. We don't dispute that those terms are used in
18 the same sense.

19 We simply say that that section should
20 not be interpreted the way it is being interpreted by
21 Land Use staff at entry port and the way it's
22 interpreted by Attorney Branse in his letter.

23 But you will note that in the Land Use
24 report the ultimate conclusion, the ultimate conclusion

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1 in that report, is -- I'm quoting from the Land Use
2 report -- "We reiterate that a consequence of phasing
3 development is that the land reserved for open space by
4 the preliminary open space plan must be dedicated,
5 whether in fee or in easement, as a condition of
6 approval at the time of approval of the first phase of
7 the open space plan for subdivision of land." That's on
8 Page 3 of the Land Use report.

9 Attorney Branse in his letter goes into a
10 lengthy rebuttal of my interpretation of the -- of that
11 Section 56.6.8. His ultimate conclusion is contained on
12 Page 4 of his letter where he states, quote, "Allowing
13 the interior stand-alone development of each of the
14 three hubs is allowing a phased development and no
15 amount of linguistic acrobatics can change that fact.
16 This triggers a requirement of Section 56.6.8 that all
17 open space be conveyed in the first phase."

18 As I comment in my report, I don't take
19 any offense at his characterization of my argument. He
20 has stated his opinion, which concurs with that of the
21 Land Use Department. So be it.

22 The applicant will proceed with the
23 balance of this supplemental response and will proceed
24 with this application without further debating the

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1 interpretation of "phasing" and with the expect-- with
2 our expectation that the commission will concur with the
3 interpretation of its staff and its attorney.

4 So the debate has ended on that
5 interpretation as far as I'm concerned, that if the
6 commission declines to accept my argument, accepts the
7 argument of its staff and its attorney, again, so be it.
8 That -- that is a regulation which affects this
9 particular application.

10 The Land Use Department goes on to
11 question the reasonable likelihood of a conventional
12 subdivision of the parcel of Bokum Road into nine lots.

13 We believe that the revised plans,
14 January 13, 2011, address those concerns. And I think
15 the -- the matter which I think is important to point
16 out is that the regulation under the open-space
17 subdivision plan basically says "We are going to
18 determine what we think is a reasonable expectation, a
19 reasonable subdivision of the land. We are not
20 requiring you to do final soils testing. We are not
21 requiring you to make final application. We are not
22 requiring you to do all the things that you are going to
23 have to do when you file the final plans which you're
24 going to have to do under the regulation. We are simply

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1 seeking to determine the reasonable number of lots that
2 you could get in a conventional subdivision, a
3 conventional subdivision."

4 And I submit that, if you take a look at
5 the suggested change in what we propose for the
6 conventional subdivision, it's based upon the fact that
7 we have lots in our conventional subdivision that have
8 an upland review area on the lot, not that we have
9 wetlands which are being impacted by the development on
10 those lots. All our mabel areas, that is, when you do a
11 subdivision, this is a plan -- so that you understand
12 that. Your mabel area is to demonstrate a 15,000-
13 square-foot area on which you can locate the
14 infrastructure for a dwelling, a house, septic system
15 and the like.

16 We are showing on a conventional plan --
17 we have gone so much further than the regulation
18 requires. And we're showing in that conventional plan
19 that none, none, of the activity required for
20 development of a conventional subdivision lot is located
21 within the upland review area.

22 Yes, there are regulated areas on the
23 lot. But a regulated area is not a prohibited area.
24 It's a regulated area. And it would be, I believe, an

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1 improper assumption to say that at this point those lots
2 should be excluded.

3 And so I ask you to take careful
4 attention to RS-5 and RS-6. Those are the Bokum Road
5 areas in which we have proposed as a conventional
6 subdivision for demonstration purposes only for
7 determining how many units we could get on that
8 property, whether they be lots, whether they be --
9 whether it be a PRD, what have you.

10 The regulation says we don't get any more
11 than we could demonstrate we could get in a conventional
12 subdivision.

13 In 2005, the commission determined that
14 on the property, except for Bokum Road, for that entire
15 property, that we could get 221 conventional units.
16 Once you take that number, then you go to your open-
17 space plan and then you can change the configuration,
18 the mix, the type of units. But 221 was the number that
19 was allowed under a conventional subdivision. That sets
20 the lot yield. That was set in 2005.

21 And I submit that the Bokum Road nine
22 lots is a conservative estimate based upon the location
23 of the mabel and all the development on that lot.

24 The -- I want to make another point, too.

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1 What is, when we're talking about the purpose and intent
2 of the residence-C conservation district and the
3 regulation, what is the purpose of having a lot yield
4 and then allowing for a reduction in the lot size, the
5 residence Triple A, but not in residence C. But what is
6 the purpose? The purpose is -- can I answer that, Mr.
7 Aresco, if I may? It's a rhetorical question. I'm
8 sorry.

9 MR. ARESCO: Okay. I thought you were
10 asking.

11 MR. ROYSTON: The purpose is so that you
12 could avoid the need to place infrastructure within
13 regulated areas to enable you, as we have done in our
14 RS-6, in our open-space plan, to be able to place
15 wetlands areas totally outside of lots and the most
16 significant area of this development. Totally outside
17 lots so that the open space could be conveyed in fee.

18 If you take a look at -- that's the real
19 difference between the RS-5 and RS-6, between the
20 conventional and then the open space.

21 We get a little wiggle room under the
22 current regulations. They don't allow reduction in lot
23 size. But you do have some ability, because of your
24 minimum square, the mabel area, you have some ability to

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1 reduce your lot size and your lot configuration. And
2 that's what has been done in RS-6.

3 So we don't get any more lots. But we
4 are able to make a better -- better subdivision.

5 We've been asked to bring the access road
6 to the Boykowski property. We have already placed into
7 the record that subdivision map in its entirety. And if
8 you take a look at where we have placed the roadway vis-
9 à-vis that subdivision map, that is the appropriate
10 place to put it. And, again, I don't think there's any
11 basis to indicate that the -- that the location is
12 improper.

13 I think the question regarding spread
14 layout becomes moot. If you look at that report, if
15 you're going to say that, "Look. At the time of your
16 first subdivision approval, the first one, you're going
17 to have to convey all the open space and you're going to
18 have to provide access to it", that really, I think,
19 takes away the issues regarding the layout.

20 But I will note the Land Use Department
21 says that we have -- wishes the commission to approve
22 reserved strips to bridge the gap between maximum length
23 of a dead-end street and the requirement carry proposed
24 dead-end street to the proposed lot line with adjoining

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1 undeveloped land. Although the subdivision regulations
2 indicate no reserve strips will be permitted. That's in
3 the Land Use report.

4 The applicant, in revised plans dated
5 January 13, 2011, always labels each future access
6 roadway as land to be conveyed to the town, reserved for
7 future highway purposes, land to be conveyed to the
8 town. This is so that reserved strips are avoided.

9 Again, I'd like to just submit something
10 to you for the record which relates to that particular
11 question. And if I may approach, Mr. Chairman?

12 I'll just tell you what it is. It is the
13 subdivision map for Brenda Lane. And it is the deed for
14 Brenda Lane. And if you go Brenda Lane off Middlesex
15 Turnpike over to the right, there is an access strip
16 which is labeled exactly the same way, which provides
17 access to property which was formerly Rock Hill
18 Corporation, a large-acreage piece which has frontage on
19 Bokum Road. That subdivision provides access to it
20 through this access strip.

21 Then you take a look at the deed. It was
22 conveyed to the town. That means if you go along that
23 roadway, that access strip is there. Not until if and
24 when the other land is divided will that access strip

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1 need to be cleared and developed. That would be the
2 responsibility of the adjacent property owner who seeks
3 to use that roadway as access to his property.

4 So if I may approach, Mr. Chairman?

5 CHAIRPERSON McINTYRE: So the deed would
6 be 70 and the map is 71.

7 (Whereupon, the deed for Kitteridge Hill
8 was received and marked as Exhibit 71.)

9 (Whereupon, the map for Kitteridge Hill
10 was received and marked as Exhibit 72.)

11 MS. RYNECKI: 71 and 72.

12 A VOICE: Exhibit 70 was the response.

13 CHAIRPERSON McINTYRE: Oh. Okay.

14 MR. ROYSTON: In case you think this may
15 be just somewhat of a random example, I am also going to
16 submit for the record the deed to the -- I'm sorry, Mr.
17 Chairman. I think I may have handed you -- could you
18 check that? Excuse me. I think I have provided you the
19 Kitteridge Hill deed.

20 CHAIRPERSON McINTYRE: Yes.

21 MR. ROYSTON: I'm sorry. So I will -- I
22 will correct it. The first deed I provided to you is
23 Kitteridge Hill, Kitteridge Hill subdivision. And that
24 exhibit, if it can still retain its same number, it is

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1 the Kitteridge Hill subdivision off Schoolhouse Road.
2 And, again, that goes back to a 70's subdivision that --
3 and it was different -- done by a different engineering
4 firm. It labels the roadway exactly the same way as we
5 have, provides access to adjacent property, says reserve
6 for future highway purposes. And that property on
7 Kitteridge Hill likewise, if you go up Kitteridge Hill,
8 go around the cul-de-sac, there is that area which is
9 undeveloped.

10 So if I can correct myself, Mr. Chairman,
11 I'm now going to give you the Brenda Lane map and deed.

12 (Whereupon, the map for Brenda Lane was
13 received and marked as Exhibit 73.)

14 (Whereupon, the deed for Brenda Lane was
15 received and marked as Exhibit 74.)

16 CHAIRPERSON McINTYRE: So, simply put,
17 what we have done in this subdivision by bringing the
18 roadways to the boundary lines of the particular areas
19 we're seeking to subdivide where there is likely future
20 development or they may be future -- I think the
21 regulations say may be future development of the
22 abutting property, is consistent with practices since
23 the Kitteridge Hill area was subdivided and the Brenda
24 Lane subdivision.

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1 The --

2 MR. BRANSE: Mr. Chairman, if I may?

3 Just -- for the record, Mark Branse. Just one question.

4 On the I guess it's the Grindle Lane --

5 MR. ROYSTON: Brenda.

6 MR. BRANSE: Brenda. Sorry. The Brenda

7 Lane subdivision. There's no scale or dimensions on

8 this. Do you know what the scale is?

9 MR. ROYSTON: I believe there's a --

10 MR. BRANSE: Oh, wait a minute. Maybe

11 it's -- oh -- one inch -- is this -- is this actual

12 size? Has this been reduced in any way?

13 MR. ROYSTON: No. It's the --

14 MR. BRANSE: Scale, one inch equals one

15 hundred is what I've got on the cover sheet. I assume

16 that applies to this. One inch, one hundred. Yeah, it

17 must be.

18 MR. ROYSTON: That's taken from the file

19 -- it's taken from the -- a copy of the filed

20 subdivision map. So if there's any reduction, it's

21 because of a reduction in the filed subdivision map.

22 There's a reference in the Lane Use

23 report to lot configuration. We've corrected the

24 reference to the section regarding reconstruction of

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1 stone walls. We have provided, as requested, on the
2 revised plans zoning tables, mabel tables. And that
3 includes what is the area of steep slopes which are
4 included within the -- within the mabel. And if you
5 take a look at those revised plans, you will note that
6 very little area in those plans includes steep slopes.

7 The Lane Use report talks about the
8 Ingham Hill Road and there's a concern with respect to
9 the applicant's wish to defer the widening of Ingham
10 Hill Road to development of the interior parcel. This
11 was part of the applicant's request for stand-alone
12 development which, if allowed, would allow 13 lots on
13 Ingham Hill Road without having to widen Ingham Hill
14 Road for the benefit of those 13 lots. That's what we
15 asked to have deferred.

16 Again, I think that issue may be moot
17 because if the commission concurs with their staff and
18 attorney's view on phasing, as soon as we apply for any
19 subdivision, we are going to have to construct that
20 roadway.

21 However, I would suggest that the
22 commission consider as an alternative condition the --
23 making a T-intersection at the area where we have
24 proposed a -- nine lots and that this would be a way to

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1 eliminate the reverse turn, reverse curve, on Ingham
2 Hill Road which would involve considerable land
3 disturbance. And I think this is something that you
4 could receive comment from staff afterwards. I think
5 Mr. Jacobson is aware of what I refer to as a T-
6 intersection at that location.

7 So we will leave it to simply say we
8 think that that would be a reasonable alt-- potential
9 alternative under this modification. Even if you are
10 involved with the full entry road to the interior of the
11 property, the extension of Ingham Hill Road, I think
12 that alternative ought to be allowed, that T-
13 intersection at that point, ought to be allowed or ought
14 -- as a potential solution to the sight line at Ingham
15 Hill Road, subject to final plans and subject to
16 engineering review.

17 Finally, with respect to the Land Use
18 report, there was a reference to the Essex Road/Route
19 153 phase, suggesting that the applicant provide
20 recreational open space and access to trails.

21 There's been, I think, some confusion
22 throughout as to what is in the original open-space plan
23 and what was proposed by the applicant in its wetlands
24 application.

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1 And, yes, there was a suggestion that
2 there be recreation -- a recreation field on the
3 Westbrook side of the property south of the entry road
4 with a pavilion. This was to be an open-air pavilion.
5 There were some discussions with Park & Rec. They
6 didn't want a closed -- there was discussion of
7 recreation fields there.

8 However, the only requirement in the
9 original special exemption, 2005, was that final plans,
10 final plans, show a 10-acre level -- 10 acres to provide
11 level playing fields.

12 So right at this point, I note that what
13 the applicant has proposed in its revised plans is
14 simply a trail head at that location right off the entry
15 road. That would -- that trail head, with parking,
16 would be there whether or not the road is extended.
17 That would be there.

18 We also in our plan have noted that we
19 would provide a pedestrian easement to historic Ingham
20 Hill Road. And if you take a look at RS-1 and RS-2 --
21 it's very difficult to see. But the right-of-way of the
22 historic Ingham Hill Road as it goes through I'll call
23 it the Peckham property, that you will note that that
24 roadway extends and meanders up to the Essex line.

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1 There, in fact, is a property -- if you take a look at
2 that map, you'll see a little house up near -- a house
3 shown on the plan up near the Essex line. That house is
4 actually accessed from Westbrook, has an address of 296
5 Ingham Hill Road. So that's -- that's where it is.
6 Orient yourself there.

7 We have agreed early on, 2005, that
8 although River Sound's title to the property shows no
9 Ingham Hill Road -- Mrs. Maynard, I'm sure you can
10 corroborate this -- is that the indication was that that
11 road had not been properly abandoned in the early 1900's
12 and still was a town right-of-way.

13 River Sound, at the point in 2005, said
14 fine. We don't think you have as a town any interest in
15 approving the historic Ingham Hill Road. If you've
16 walked it and gone along it, a number of sidewalks,
17 you'll understand why.

18 Rather, it was thought that make this
19 part of your trail system. Make it part of your open
20 space. That is done in the original plan.

21 And what we've done in this plan is we
22 have also connected those two trail heads by trail to
23 Ingham -- historic Ingham Hill Road. I'll call it
24 historic Ingham Hill Road so we don't get into an

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1 argument as to what it is. To connect those, to connect
2 the open space.

3 I think that's what the Land Use
4 Department reasonably meant when they said connect your
5 open space. I think that provides connectivity, not
6 just physical, which we have -- it's all connected --
7 but also to connect a trail system. We have done that
8 and put that on this plan.

9 Now, I think this is important to note
10 because, under the opinion of Land Use staff and your
11 attorney, we have got to provide all the open space upon
12 the first subdivision application and final approval.
13 We've got to do it the first time. We can't have one
14 nine-lot subdivision. We can't have one thirteen-lot
15 subdivision. We can't have a PRD, according to their
16 opinion.

17 However, that easement and that
18 modification will become, even under those conditions,
19 if you agree, part of the open space. There will be
20 provided that easement connecting that open space.

21 MR. BRANSE: Mr. Chairman?

22 CHAIRPERSON McINTYRE: Yes?

23 MR. BRANSE: I'm not sure I'm following
24 you, Mr. Royston. For the record, Mark Branse.

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1 You keep saying if -- if the -- if the
2 commission accepts the recommendation of its attorney
3 and Land Use Department, that all this open space will
4 be dedicated and those interconnections will exist.
5 Correct?

6 MR. ROYSTON: That's correct.

7 MR. BRANSE: So is the applicant
8 accepting that as a possible condition? Should the
9 commission make it a condition?

10 MR. ROYSTON: I made -- I think I made
11 myself very clear in writing.

12 MR. BRANSE: Well, not --

13 MR. ROYSTON: That's -- I -- if I have
14 not made myself clear, I apologize, Attorney Branse.
15 What I have said is if that is the regulation, so be it.
16 If you follow that regulation and you state specifically
17 in your approval, I hope, that that is a condition, make
18 no doubt about it, that is a condition of this
19 modification. That is a condition which we will be
20 required to accept.

21 MR. BRANSE: And that will mean --

22 MR. ROYSTON: Do I agree with it? No.
23 Am I required to accept it? I don't think I have any
24 choice.

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1 MR. BRANSE: All right. Thank you.

2 MR. ROYSTON: Attorney Branse, I'm now --
3 I'm now at your part of the report. So -- you've put me
4 on -- on the hot seat. We certainly would not think of
5 doing that to you.

6 MR. BRANSE: I hope I haven't done that
7 to you, either. Never my intent.

8 MR. ROYSTON: In my -- in our -- in our
9 response, evaluation of assets of River Sound
10 Development, LLC. Attorney Branse points out that the
11 undersigned, me, David Royston, identified the subject
12 property as being the sole asset of River Sound
13 Development, LLC, which was owned by a subsidiary of
14 Lehman Bros. Holding, Inc., which filed for bankruptcy
15 in 2008.

16 On Page 2 of his letter, Attorney Branse
17 states "The subtle suggestion was that River Sound's
18 financial future and, in part, that of Lehman Bros.
19 Hinged on the value of this asset of River Sound."

20 I hope the commission, as well as
21 Attorney Branse, is aware that I would not make such a
22 suggestion, subtle or otherwise, in representation of
23 this or any other client.

24 So I think I would suggest, Attorney

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1 Branse, that you have no need to admonish me.

2 MR. BRANSE: Thank you.

3 MR. ROYSTON: What I have asked for is
4 that this client be treated fairly and equally, like any
5 other property owner, in the imposition of conditions
6 and regulatory requirements, particularly those of a
7 discretionary nature.

8 I'm just going to expand on that just a
9 little bit. As I've indicated previously, I haven't
10 been on Ingham Hill Road as long as probably George
11 Maynard, but I've been there now 40 years. And I am
12 familiar with the development along Ingham Hill Road, as
13 I know Barbara Maynard is.

14 And if you take a look at it, it's
15 extremely interesting. As you go up Ingham Hill Road
16 and you go Fox Hill and Barley Hill and Pheasant Hill
17 and Colter Woods and that side, where is the open space?
18 Where is the open space in those subdivisions?

19 I live in a subdivision approximately 40
20 acres, 30 lots, no open space. Why? The answer was
21 really easy then. We got that Lyons property out there.
22 Some day we're going to get our open space. That's
23 fine. That's fine. River Sound acquired that property
24 and they were part of saying "Okay. If you're going to

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1 subdivide it, do it as a conservation subdivision where
2 you get 50 percent of that property as open space."
3 That makes up for it.

4 Likewise, the testimony regarding the
5 potential dangers from septic systems in this area,
6 60,000 square feet, and you put a septic system on that
7 lot --

8 A VOICE: Can you --

9 MR. ROYSTON: Well, I think you take a
10 look at the records -- and I'll probably just testify
11 myself. You will not find incidents of septic system
12 failures on those -- those lots along Ingham Hill Road
13 on 40,000 square feet, 40,000 square feet. You're not
14 going to find it. And you aren't going to find it if
15 these lots are built because they're going to have to be
16 built under the Public Health Code and under even more
17 stringent regulations than were required when my house
18 was built and when most of the other houses were built.

19 So I think that to describe any effort on
20 the part of River Sound to be coming to this commission
21 and asking for favors, to asking for it to bail it out
22 of anything, is unfounded and unjustified. Comments
23 with respect to the applicant's intent, "What's he got
24 in mind?" -- Robert Levine, who is here, who is the

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1 owner's representative, put it in writing. He said to
2 you, "What's the purpose of this application? We want
3 to be able to make some use of this asset now by limited
4 stand-alone development." And what did he say? He said
5 that "My intent is to leave the 811 acres -- leave our
6 options open." Full development, partial development or
7 no development.

8 Nobody asked anybody to bail anyone out.
9 What we've asked for simply is fair treatment in the
10 application of your regulations. And I have confidence
11 that the commission will treat us fairly. I think the
12 commission treated us fairly in 2005.

13 The applicant didn't get all the lots
14 that it said it could get. This commission cut it down
15 from 248 to 221. The applicant lived with that.

16 Attorney Branse has also suggested again
17 I think at length the issue relating to phasing. And,
18 again, we have -- I hope I've made myself clear, the
19 applicant's position clear. If you determine that the
20 regulation requires a conveyance of all the open space
21 and access to it at the time any section or phase is
22 developed, so be it.

23 The traffic circulation. Attorney Branse
24 states that "Mr. Royston's statement that traffic issues

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1 can be addressed at the subdivision or PRD review stage
2 is just wrong." If that were what I said, I would
3 agree. However, the commission and Attorney Branse, I
4 request that you take a look at what the applicant has
5 specifically agreed to in writing and its proposed
6 conditions dated January 13, 2011.

7 What it has agreed to as part of the
8 modification and special exception is that all site
9 improvement consideration is a condition of the special
10 exception. That's we said. That's we agree to. We
11 didn't simply say, "Oh, you can just wait until the time
12 of subdivision approval" because I am well aware, as
13 Attorney Branse is well aware, that under current
14 subdivision law you can't require a subdivider to
15 provide off-site improvements beyond its frontage.

16 In his November 23, 2010 letter, Attorney
17 Branse emphasizes that under special exception you still
18 can do it. I said that without arguing whether or not
19 he is correct. We agree to it. And if we agree to it
20 and a special exception, there is case law which says
21 we're bound by it. We're bound by it if we take
22 advantage of it.

23 Finally, I -- I simply request with
24 respect to Attorney Branse's comments that you take a

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1 look at our written materials and our plans. Attorney
2 Branse knows I have a great deal of respect for him. He
3 also knows that sometimes I think he goes a little bit
4 overboard, particularly on some of his comments. And I
5 hope he takes no offense to my comment.

6 Finally, Mr. Hillson. Mr. Hillson, you
7 expressed your report, your two aspects, your continuing
8 concern with respect to that reverse curve and that if,
9 as we had proposed, that this be deferred, that the
10 potential could be that if the interior area was not
11 developed, that that situation could potentially not be
12 corrected. And I -- I appreciate your concern. And I
13 think under the interpretation followed by the
14 commission, it would render that concern moot because
15 they're saying that when you first get a subdivision
16 approval, you're going to have to convey the open space
17 and access to it.

18 So -- but in the event in some way that
19 area is not improved and there is any current
20 development, even for -- even for now, even without
21 houses up there, if there was some thought that that
22 situation ought to be corrected, I would ask that the
23 commission consider a T-intersection.

24 More importantly, with respect to Mr.

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1 Hillson's report, he emphasized that the issue about a
2 second access to Ingham Hill Road -- Mrs. Maynard
3 testified with respect to the tree that fell and hit the
4 wires, the live wires. And I was one of those persons
5 who spent the night elsewhere because the police would
6 not allow residents to go up Ingham Hill Road.

7 I point out, however, that that was not
8 to -- that emergency personnel would not have been able
9 to get up that road, but, rather, residents and vehicles
10 and walking were not allowed to go up that road.

11 However, the conversation continually was
12 what about a second access. And what I said is that I
13 did not feel it was fair to impose the burden of a
14 second access to Ingham Hill Road if it could not be
15 from our property. And as a practical matter, if you
16 take a look at the property on the east side of Ingham
17 Hill going up Ingham Hill Road, preserve property, there
18 -- all the road endings are down steep slopes and over
19 wetlands. That's because those road endings were put
20 into effect before the wetlands act came into existence.
21 Those road endings -- you just fill it in and get over
22 to the high ground. That's not the case now.

23 However, there -- I'm going to submit for
24 the record at the expense of River Sound Development the

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1 what is available for a second access from the end of
2 Dwayne Road, left-hand side as you go up Ingham Hill
3 Road, that subdivision ends in a cul-de-sac. At the end
4 of that cul-de-sac, there is a right-of-way in favor of
5 the Town of Old Saybrook. That right-of-way extends to
6 property of the Town of Old Saybrook. That property is
7 not subject to the same restrictions as the Great Cedars
8 Conservation District. That property was purchased from
9 the Divall estate prior to that time.

10 That property extends around the property
11 owned by Andrew Mortali, which, if you take a look at
12 the maps, you suddenly see a house which is halfway,
13 about halfway, between the end of Dwayne Road -- there's
14 a driveway going off the end of Dwayne Road to his
15 property. You see his house about halfway between that
16 and the end of Kitteridge Hill.

17 As I provided you previously, the end of
18 Kitteridge Hill has a -- land which is owned by the Town
19 of Old Saybrook which extends off the end of Kitteridge
20 Hill.

21 Mr. Chairman, I'd like to just submit for
22 the record --

23 MS. RYNECKI: 75. 76 is the map.

24 CHAIRPERSON McINTYRE: Yes.

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1 (Whereupon, the document showing the
2 available second access was received and marked as
3 Exhibit 75.)

4 (Whereupon, the map of Shady Glen
5 Subdivision was received and marked as Exhibit 76.)

6 MR. ROYSTON: Can I speak from here?

7 CHAIRPERSON McINTYRE: Sure. Speak
8 loudly, though.

9 MR. ROYSTON: I'm also going to submit
10 the deed of the property -- this is the name of Joan G.
11 Whitaker -- that is at the end of Dwayne Road, which
12 reflects the existence of that right-of-way.

13 CHAIRPERSON McINTYRE: 77.

14 (Whereupon, the deed of Joan G. Whitaker,
15 Dwayne Road, was received and marked as Exhibit 77.)

16 MR. BRANSE: Mr. Chairman?

17 CHAIRPERSON McINTYRE: Yes?

18 MR. BRANSE: Mark Branse. Mr. Royston,
19 Exhibit 76, this Shady Glen Subdivision, at the time the
20 subdivision was approved, the road probably didn't have
21 a name. What's the street name for that one?

22 MR. ROYSTON: Dwayne Road.

23 MR. BRANSE: Okay. So Dwayne Road is
24 Shady Glen Subdivision.

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1 CHAIRPERSON McINTYRE: This is 77.

2 Thanks.

3 MR. ROYSTON: There's two properties over
4 which the right-of-way runs. There's a deed to the
5 second property. And I'm going to provide you with the
6 copy of the deed from James E. Divell and Raymond A.
7 Divell, October 29, 1971. That is the land that the
8 Town of Old Saybrook over which -- to which the road
9 ending on Kitteridge Hill, the right-of-way off the cul-
10 de-sac of Dwayne Road, that's the property to which each
11 of those road ending and right-of-way connects.

12 (Whereupon, the deed of James E. Divell
13 and Raymond A. Divell, Dwayne Road, was received and
14 marked as Exhibit 78.)

15 MR. ROYSTON: Also, if you take a look at
16 USGS mapping -- I have not brought a copy of that
17 mapping. But, again, I would -- I think this is
18 information that would be available through your
19 engineer.

20 You will find that there is -- on that
21 mapping it shows the location of what was likely an old
22 Woods Road connecting those two areas.

23 MR. BRANSE: Mr. Chairman?

24 CHAIRPERSON McINTYRE: Yes?

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1 MR. BRANSE: Mark Branse. Mr. Royston,
2 do you have a sketch of any kind that shows all this,
3 either connects to provide this secondary access? It's
4 hard to sort of piece together all the deeds and
5 everything.

6 MR. ROYSTON: The -- I'll see if Mr.
7 Doane does. It is relatively simple if you take a look
8 at the assessor's map. The assessor's map will clearly
9 show the connection between the -- between the two
10 properties.

11 And, again, I -- I think that's material
12 we'd certainly have no objection to the commission
13 taking a look at the assessor's map for that purpose.

14 And I emphasize to you that this was as a
15 result of the colloquy at the end of the January 5
16 session in which it was said, "Well, look. We certainly
17 are willing to take a look to see if there is a
18 connection. But I don't think that the burden of
19 actually constructing one should be imposed upon this
20 particular applicant."

21 And I say the same thing now. But at
22 least it's not theoretical. And so I would hope that
23 the commission recognizes that throughout these
24 proceedings River Sound Development and its predecessors

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1 and its representatives have been characterized in, I
2 think, an inappropriate way. I'll leave it at that.
3 And I think the record says that they have acted
4 responsibly throughout.

5 I appreciate your patience and listening
6 to me. But we go through this process and we get to the
7 very end and we -- we basically get to the point where I
8 think the phasing issue becomes paramount. And I simply
9 want you to take a look at our plan and, if you say, you
10 know, "Yeah. Great. That, you know, that works, you
11 know, fine. But you're still going to have to abide by
12 the regulations." So be it. That's fine.

13 And if you take a look and if you take a
14 look and -- Lot 12 and Lot 13 on RS-3. And I think Mr.
15 Jacobson has expressed concern about those two lots
16 because of the cut that would be required for the
17 extension of Ingham Hill Road. And that's understood.

18 Now, we have this dilemma because, if
19 your regulations say, okay, if you're going to go
20 through, then you're going to have to make that -- make
21 that cut. It's not the reverse curve situation. It's a
22 cut to get to the interior of the property. That's the
23 -- that's the extension that was approved.

24 But if you -- if you determine that that

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1 area, those two lots, would not be appropriate for
2 subdivision under a modified plan to the whole
3 development, even though I disagree with you, I can
4 understand that one. But with respect to the rest of
5 them, I -- I just cannot understand how the approval of
6 those lots is detrimental under any fair and equitable
7 consideration of what is proposed. As part of the
8 overall development, if that's what you require, fine.
9 So be it.

10 Thank you.

11 MR. HILLSON: Mr. Royston, if you could
12 just show on the plan what you mean by the T-
13 intersection. I'm not sure I understand --

14 MR. ROYSTON: I'll ask -- I'll ask Mr.
15 Doane to do that when he goes over the plans and show
16 where that would -- that would be placed.

17 Thank you very much. I appreciate your
18 patient.

19 MR. ARESCO: Can I ask a question, Mr.
20 Chairman --

21 CHAIRPERSON McINTYRE: Go ahead.

22 MR. ARESCO: -- of Attorney Royston?

23 If I can ask a question of Attorney
24 Royston. It's just a second. Regarding your responses

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1 to what you feel the mood is toward this application and
2 specifically the gains that -- the perceived gains that
3 might be sought through approval, that you weren't
4 coming here for favors and all that. Remember that
5 discussion. What is the responsibility of -- when Mr.
6 Levine came with his opening remarks, he talked about he
7 was here because of -- under the direction of the
8 bankruptcy trustee. Is that correct? Is that correct?

9 MR. ROYSTON: What he said, he has been
10 engaged by the trustee --

11 MR. ARESCO: Okay.

12 MR. ROYSTON: -- of the bankruptcy for
13 the purpose --

14 MR. ARESCO: And what is the --

15 MR. ROYSTON: -- of being the property
16 man-- the owner's representative for this particular
17 piece of property.

18 MR. ARESCO: Okay. He's the owner's
19 representative. Now, what are the responsibilities of a
20 trustee? When a person -- you know, when an entity goes
21 bankrupt, what is the trustee -- what is their mission?
22 What are they trying to do?

23 MR. ROYSTON: I believe the trustee's
24 mission is to get the best economic value for the assets

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1 of the bankrupt estate for the benefit of the creditors
2 of the bankrupt estate.

3 MR. ARESCO: I see. Okay. So --

4 MR. ROYSTON: That simply means if you
5 took -- if the trustee in bankruptcy takes over a car
6 dealership, it will seek to get the best value it can
7 for the inventory that that bankrupt estate has for the
8 benefit of its creditors.

9 MR. ARESCO: So that the proceedings
10 we're involved in, considering that the trustee is
11 responsible for doing is to get the best value that you
12 can for the assets that are in bankruptcy here, that's
13 what you're here for, because that's what the trustee's
14 responsibility is.

15 MR. ROYSTON: That is correct.

16 MR. ARESCO: Okay.

17 MR. ROYSTON: And -- but I need to add
18 that what I have said is that that is no reason, whether
19 it's a trustee in bankruptcy, whether it's rich or poor,
20 wealthy or bankrupt --

21 MR. ARESCO: For better, for worse, for
22 richer, for poorer.

23 MR. ROYSTON: -- a native son or someone
24 from out of town, they all should be treated equally and

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1 fairly.

2 MR. ARESCO: Yeah. I just wanted to
3 clear that up. I don't think we -- you know --

4 MR. ROYSTON: I -- no one has -- no one
5 has accused this commission of not having treated us
6 fairly and equally in the past. I specifically said
7 that in 2005, although our lots were reduced, this
8 commission treated the applicant, I believe, fairly,
9 equally and fairly. They reduced lots. They had a
10 basis for doing it. They did it. And I think we were
11 treated fairly.

12 What I simply say is that I'm asking that
13 we continue to be treated fairly, despite the comments
14 that you have received that somehow we have some sort of
15 subtle, unexpressed intent that somehow you're looking
16 for us to bail us out. Somebody mentioned "It's not our
17 job to get you out of a bad investment." Absolutely
18 not. I agree 100 percent.

19 MR. ARESCO: What it was from was I
20 getting the notion that the commission wasn't treating
21 you fairly.

22 MR. ROYSTON: Well, I don't know where
23 you got that notion, Mr. Aresco, because --

24 MR. ARESCO: When, you know --

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1 MR. ROYSTON: -- I said specifically --

2 MR. ARESCO: Yeah. At the end, you did.

3 I agree.

4 MR. ROYSTON: I -- I said specifically I
5 was referring to comments that have been made,
6 particularly with respect to the motives and intentions
7 of this applicant and what may have been some subtle,
8 unexpressed suggestions that we ought to be treated
9 differently. And I wanted to put that to rest.

10 MR. ARESCO: Okay. Thank you.

11 MR. ROYSTON: I appreciate that. Thank
12 you.

13 MR. ARESCO: Thank you.

14 CHAIRPERSON McINTYRE: Well, on that
15 note, we're going to take a 10-minute break and then
16 we'll get back to the public hearing.

17 (RECESS)

18 CHAIRPERSON McINTYRE: Okay. I'm calling
19 the meeting back in order.

20 At this time, I'd like to -- Bob Doane
21 for the applicant is going to be speaking.

22 Okay. We're going to start. If
23 everybody would please sit down and let the applicant
24 speak?

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1 MR. DOANE: Good evening. For the
2 record, I'm Bob Doane. I'm a professional engineer.
3 I'm here on behalf of River Sound. And so what I would
4 like to do is just briefly run through the plans that
5 were handed to you tonight.

6 We have revised the set. The first sheet
7 was not changed and does not have a revision date in the
8 upper right-hand corner. But what I did in red, so that
9 you would be able to tell the sets apart, is that I
10 wrote in the upper right-hand corner that the set was
11 revised, that Sheets 2 through 6 were revised. And
12 that's the red in the -- in the border in the upper
13 right-hand corner just so that you could tell this set
14 of plans from your other set that was previously handed
15 to you.

16 But, essentially, RS-1 that you have
17 opened right now has not been revised. And so I'll go
18 on to RS-2.

19 MR. ARESCO: That's Exhibit 69, 69-A.

20 MR. DOANE: RS-2 was revised to reflect
21 the lot changes that were made from the 153 access. We
22 changed the shape a little bit. And on the Bokum road,
23 we changed just two of the lots. And Ingham Hill Road,
24 we changed the open-space area as indicated through the

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1 playing field. And when I get to the detailed plans,
2 I'll just run through those changes again. But those
3 are essentially the changes that were made on RS-2. And
4 it has a revision date in the upper right-hand corner of
5 the 13th of January of this year.

6 RS-3 is the Ingham Hill Road section.
7 And we have revised plans in response to Jeff Jacobson's
8 concerns. We have modified the locations of our mabel
9 to get them on top of the soil testing. And I have a
10 mabel table, for lack of a better term, in the lower
11 left-hand corner of the property on the plans.

12 And in that table, it indicates the
13 requirements of Section 7.2.1 which is the minimum area
14 of buildable land. The 7.2.1a, contiguous area, it
15 required that 15,000 square feet of mabel for each lot.
16 Each lot has 15,000 square feet and it's indicated as
17 all lots having that.

18 The shape for the open space -- excuse me
19 -- for the mabel. You need 100 by 100-foot square that
20 fits in the mabel. Each of the lots has a 100 by 100-
21 foot square that fits in the mabel.

22 Allowable wetlands. You're allowed no
23 wetlands. We have no wetlands in any of the mabels on -
24 - on all the lots.

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1 On Section 7.2.1d, the allowable 20-
2 percent sloped, you're allowed to have 20 percent of the
3 mabel be 20-percent sloped. Out of all the lots on this
4 RS-3, we have one lot that has some 20-percent slope in
5 the mabel. And that's 6.3 percent of the mabel on Lot 8
6 is in 20-percent slope. And we're allowed by
7 regulations to have up to 20 percent of the mabel. At
8 3,000 square feet, we're at the 6.3 percent. So all of
9 the -- and then I'll just continue through the table.

10 The soil profile can be demonstrated by
11 soil test and SCS, Soil Conservation Service, soil types
12 per Section 56.3.1.11 and 56.3.3, which is the open
13 space. And what we've done -- and I -- when I met with
14 Mr. Jacobson, I went through the placement of the mabels
15 and the soil test and I provided additional copies of
16 the soil test to Mr. Jacobson. And I will submit that
17 to the commission tonight.

18 When we moved some of the lots around,
19 our -- our tables in the -- of the soil test changed
20 because we moved some soil tests off of certain lots.
21 And so I will get you new soil test logs to coincide
22 with this current plan.

23 But each of the mabel areas meets --
24 meets all the -- all the requirements as listed in the

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1 table.

2 The alignment of Ingham Hill Road that
3 was referred to by Attorney Royston as potentially
4 providing the T-intersection is -- this intersection on
5 -- and for the record, I'm on RS-3. I'm pointing to the
6 intersection of our proposed roadway that goes off of
7 the west side of Ingham Hill Road. And it's this
8 intersection or this curve in -- on Ingham Hill Road
9 that was originally proposed to be realigned with
10 considerable amount of rock removal on the inside of the
11 curve.

12 And I think that we would be better
13 served at this intersection if we had a straight-through
14 roadway going into our cul-de-sac and brought Ingham
15 Hill Road to a "T" in here and had a right-angle
16 intersection. That could be controlled with a -- with a
17 three-- three-way stop. And that would -- that would be
18 a lot, I think, better than trying to modify the curve,
19 take out the rock and et cetera. And the sight line,
20 because it would be a stop-sign-controlled intersection,
21 the sight line would not be an issue for Ingham Hill
22 Road or our proposed roadway.

23 Another item that was brought up by Mr.
24 Jacobson was the proposed profiles of the roadway. And

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1 we had to demonstrate that the profiles for the
2 positioning of the roadway was indeed possible pursuant
3 to the current regulations, the road regulations, as far
4 as slopes and vertical curves and horizontal curves, et
5 cetera.

6 And I gave Mr. Jacobson a set of plans
7 that show the original profiles that were part of the
8 first -- the 2005 approval and I also provided profiles
9 of our proposed roadway. And those are in the set of
10 data that I will give to the commission. And Mr.
11 Jacobson has been provided the same information.

12 Also requested were spot grade exhibits.
13 And on 11x17's of each of our proposed roadways, I have
14 marked down the spot grades for the roadways, as well as
15 spot grades for the driveways, to demonstrate that we
16 do, indeed, meet all the slope requirements for the --
17 not only the roadways but also the driveways, also, that
18 are on the preliminary plans.

19 And with the preliminary plans,
20 obviously, we're dealing with 1-to-100 scale plans. And
21 once we get to the next phase of the plan preparation,
22 we get into 40-scale plans. And we just show all these
23 details, you know, in -- in greater length. But I --
24 what I'd like to do is provide you with these documents.

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1 I'd like to just touch briefly on RS-4,
2 the next sheet, which is the Route 153 access. And we
3 have revised the plan to relocate the Buildings 8 and 9
4 that were on the -- or in the area of the Frickley Fair
5 access on the -- and we have a designated open-space,
6 protected area and we have moved our units on each side.

7 And, also provided on this plan, we have
8 sized the sanitary system for the various units. And
9 the schematic sizing of those systems is with the soil
10 test data that I have provided that I turned in to the
11 commission just a few minutes ago.

12 And we have demonstrated with those
13 schematic layouts that the site can, indeed, support
14 sanitary systems that can accommodate the 11 units that
15 we are proposing.

16 I have also, in the documents I have just
17 handed you, have spot grades on the roadways to show
18 that this roadway, which follows the same horizontal
19 location as the previous approval and goes to the cul-
20 de-sac at a thousand feet from Route 153, and then we
21 have driveways going up to the various units.

22 The next plan, RS-5, this is the
23 conventional open -- conventional subdivision plan for
24 Bokum Road. On this plan we have modified or relocated

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1 our mabel areas. I have also put a table on this plan
2 for the mabel. And as with the Ingham Hill Road site,
3 all of the mabels comply with the Regulation 7.2.1. And
4 each of the lots has the shape requirement, that 200-
5 foot-square, for the minimum square that is a
6 conventional subdivision. So that each lot complies
7 with the Zoning Regs. 60,000-minimum-square feet.

8 We do have a portion of the Lots 2 and 3
9 are encumbered by a conservation easement which covers
10 the regulated area around Vernal Pool No. 37.

11 And, again, we have submitted spot grades
12 for the roadway and driveways which indicate full
13 compliance with the subdivision regs for the lots that
14 are shown on this plan.

15 And that was probably a too-brief for the
16 four or five days of revising the plans.

17 RS-6. And, again, we moved the mabel
18 areas to locate them, all of the mabel areas, outside of
19 the 100-foot review area in the regulated area for the
20 wetlands. And the Lots 2 and 3, the significant
21 difference between this plan and the conventional
22 subdivision plan is that on the open-space plan, even
23 though we have to have 60,000 square feet for each lot,
24 we can drop to a 100-foot square for the lot shape. And

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1 that allows me to open up the space between Lots 2 and 3
2 so that the lot boundary is now outside of the 100-foot
3 regulated area. So Vernal Pool No. 37 is now in open
4 space and the edge of the open space is around the 100-
5 foot regulated area.

6 The lots again, feasibility has been
7 designated again with spot grades in the documents that
8 were previously submitted.

9 One issue that Mr. Jacobson had was the
10 feasibility of providing storm water management as far
11 as quality and quantity control. And what we have done
12 is we have shown a detention basin area located adjacent
13 to Lot No. 9. And that area is slightly bigger than the
14 retention basin areas that were provided with the
15 original approval. And, again, the horizontal alignment
16 of the roadway is identical to that original approval,
17 as well as the profile of the roadway.

18 And with that, I will stop and I can
19 answer any questions that anybody may have on any of the
20 plans.

21 CHAIRPERSON McINTYRE: I have one, just
22 for, you know, clarification. On -- in Lot 4 where it
23 says 60,000 square feet, 1.38 acres, there's a dotted
24 line that runs over to the right. It looks like a

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1 walkway or something. Dotted line that runs over into
2 Ponkowsky and runs all through the --

3 MR. DOANE: That's an existing cart path.

4 CHAIRPERSON McINTYRE: That's what that
5 is?

6 MR. DOANE: Yes.

7 CHAIRPERSON McINTYRE: An existing --

8 MR. DOANE: Cart path. That's -- that's
9 a path that we walked on when we went out on --

10 CHAIRPERSON McINTYRE: Okay. All right.
11 Thank you.

12 MR. DOANE: I guess I'm all set if there
13 aren't any --

14 CHAIRPERSON McINTYRE: Okay.

15 Anyone else have any questions of Mr.
16 Doane?

17 MR. RANAUDO: I have a couple.

18 CHAIRPERSON McINTYRE: Go ahead.

19 MR. RANAUDO: On your RS-4 plan, there's
20 a little note off to the side, proposed condo unit 6.
21 Could you explain what you mean by that?

22 MR. DOANE: What that is is we're just
23 identifying what the numbered squares are. And those
24 are -- those are the condominium units. And that symbol

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1 is the same for all of them. That's why we say proposed
2 condominium unit.

3 CHAIRPERSON McINTYRE: Any other
4 questions of Mr. Doane?

5 Okay. Hearing no questions of Mr. Doane,
6 at this time I want to open up the floor to --

7 MR. KLINE: Yes. I --

8 CHAIRPERSON McINTYRE: Oh. Sorry. I'm
9 getting ahead of myself. Mr. Kline, please go ahead.

10 MR. KLINE: Mr. Chairman, members of the
11 commission. My name is Michael Kline. I'm a biologist
12 and soil scientist. My office is in West Hartford. As
13 the commission knows, I've been involved with planning
14 and ecological inventories of the site for over six
15 years now. The commission may also remember at the
16 start of the public hearing I indicated that one of the
17 first things we did when this concept of modifying the
18 preliminary open-space subdivision approval that you
19 gave was broached was to go back out to the site in the
20 spring -- and by the site, I mean the entire parcel, the
21 thousand-acre site, including the Bokum Road piece or
22 the Pionta piece, whichever you want to call it -- and
23 do a -- a confirmatory inventory on the site that none
24 of the -- that there hadn't been any substantial change

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1 in the resources that had been identified in the '03 to
2 '05 time frame. And I just wanted to remind the
3 commission of that.

4 You've heard the changes that have been
5 made to the plans for these three pods or whatever you
6 want to call them. And those changes were directly in
7 response to comments from staff. But I also want to
8 reiterate that I've made suggestions as we went along
9 and I've actually spoken to you about them. And those
10 suggestions have been incorporated into the plans as
11 well.

12 What I wanted to focus tonight on
13 specifically was the letter and testimony by Rema
14 Ecological Services at the last hearing regarding the
15 proposal and their contention that this application will
16 -- is reasonably likely to result in adverse impacts to
17 the air, land, water and natural resources, I think is a
18 close paraphrase of what the language in the
19 intervention statute talks about.

20 Though I'm not going to go in great
21 detail at this point in individual lot or each
22 individual subdivision, but I'm going to -- I do have a
23 letter which I'll give to the chairman. I did notice
24 that it does have a typo or two and I've corrected a

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1 couple of those on the copy, the record copy. But I do
2 have additional copies.

3 MR. BRANSE: Thank you.

4 MR. KLINE: I'll distribute them. And I
5 would also note that (Indiscernible) given copies to
6 (Indiscernible) Mr. Chairman.

7 MR. BRANSE: Mr. Kline, when did you give
8 the intervenors a copy of it?

9 MR. KLINE: About ten minutes ago.

10 MR. BRANSE: Thank you.

11 MR. KLINE: And they have, in turn, given
12 me a copy of the letter that they plan to submit tonight
13 as well.

14 MR. BRANSE: Thank you. That's right
15 where I was headed.

16 MR. KLINE: That's all taken care of.

17 There are -- Rema's client is, as you all
18 know, is Connecticut Fund for the Environment. They're
19 raised a number of procedural and legal issues. There
20 are -- although I do have a certain amount of expertise
21 developed over the last 30 years on procedures and what
22 the regulations mean, or at least my interpretation of
23 them, I'm not going to comment on those and will leave
24 that to the attorneys to sort out.

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1 However, I will note that this proposed
2 modification does not, in fact, have any environmental
3 impact. And that in some ways could be taken as a basis
4 to deny the intervention petition on -- on its face.
5 This is a plan which will allow the applicant, a
6 conceptual plan, a preliminary plan, that allows the
7 applicant to develop detailed plans to submit for
8 Wetlands Commission approval and, if those are approved,
9 submit back to this commission for approval. And I'd
10 suggest that at the wetland permit application stage and
11 at your final approval stage is the appropriate time to
12 -- to address in detail the environmental impact issues
13 that the intervenor suggests is appropriate.

14 If you -- if you approve this preliminary
15 open-space subdivision plan, River Sound, my client,
16 cannot build anything. Nor is a final approval pre-
17 ordained. It doesn't -- and that is seen by the history
18 on this particular parcel. You approved a preliminary
19 open-space subdivision plan and the Wetlands Commission
20 denied the application for the detailed activities that
21 -- that would allow River Sound to implement the plan or
22 to come back to you for final subdivision approval.

23 So I think that that assertion is
24 premature. Nevertheless, I'm going to go on and talk

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1 about some of the allegations made in the -- in Rema's
2 January 5 letter. And in my letter to you, Mr.
3 McIntyre, I've -- the stuff that's in bold type is a
4 direct quote, if you will, from the Rema letter. Rema
5 was kind enough to provide me with a Word file that had
6 that in it so I could make sure it was 100-percent
7 accurate.

8 If there are any deviations as a result
9 of my clumsiness at word processing -- but it should be
10 essentially identical. And I will do the same for them,
11 as I expect they will probably want to have some
12 responses to what I have to say.

13 So their first point was that the
14 development of these pods prior to the interior would
15 limit the feasible and prudent alternatives open to the
16 applicant. And, first of all, these modifications
17 require -- do not require or impose or assume any
18 significant limitations on the development of the
19 interior parcel. They provide for, and were designed in
20 concert with, the layout of the approved open-space
21 subdivision plan. The interior road access is
22 essentially identical. The areas available for
23 infrastructure and future residential development remain
24 substantially the same. There's no basis for that

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1 assertion whatsoever in the facts.

2 The second comment I want to talk about
3 is the Ingham Hill Road and portion of the west PRD were
4 originally to have been part of the proposed open space
5 based on the planning process in 2005 and were
6 accordingly not analyzed in detail for potential adverse
7 impacts.

8 In actual fact, all of these areas, the
9 entire thousand-acre parcel, including Pionta and the
10 area of the northern extension at the existing modern
11 Ingham Hill Road, were analyzed in detail as part of the
12 original planning process. The wetlands were
13 delineated. We collected detailed botanical wildlife
14 and soil data, soil testing occurred. Through-roads
15 were designed after consideration of the resources of
16 this area.

17 And the commission may remember that
18 there was also a -- at some point in time, development
19 of a plan for active recreation in the Ingham Hill Road,
20 area of the Ingham Hill Road pod, which in many ways is
21 very similar to the activity proposed here.

22 Rema said that landscape-level analysis
23 is lacking. And, again, this landscape-level analysis
24 was performed as part of the original planning process.

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1 You agreed with River Sound's analysis and approved the
2 open space -- preliminary open-space subdivision plan.
3 That same analysis was used to inform and refine this
4 plan, which, as I said, is actually a preliminary plan,
5 a conceptual plan, if you will, and not a final design.

6 Again, they ask for additional wildlife
7 data. And I respond in the same way. Detailed wildlife
8 data was incorporated into the planning of the approved
9 open-space subdivision, was used to inform the planning
10 of the proposed modifications. This information has
11 been available to Rema for over five years. And as I
12 mentioned just earlier, we did verify that the
13 conditions are largely unchanged or essentially
14 unchanged on the property this past spring.

15 Question. Would proposed homes impact
16 suitable adjacent rocky, upland forested amphibian
17 upland habitat? Again, there's no home specifically
18 proposed, specific design of a home, as part of this
19 plan. However, the layout of the roads and lots, as
20 well as the conceptual location of homes and driveways,
21 has been developed to minimize impacts on amphibian
22 habitat to the extent practical.

23 The vernal pool which is critical
24 terrestrial habitat was conserved before. It remains

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1 conserved under this modification.

2 Next Rema comment. Careful vegetation
3 survey is essential for decisions regarding location of
4 open space. And as I mentioned before, thorough
5 vegetation surveys were performed and have been part of
6 the public record for more than five years.

7 Next comment. I will admit to having, in
8 the CO to look at the vernal pool impacts which were the
9 focus of much discussion in 2005, we did -- we missed
10 that prickly pear cactus that ETS were the only people
11 who identified that. We missed it. On this new plan,
12 the plan has been modified to preserve the area of the
13 prickly pear cactus and substantial area around it as
14 open space. There will be physical restrictions on
15 access. There will be maintenance plans prepared. And
16 all of that will be included as part of the final
17 subdivision plan.

18 The next comment was that in the Ingham
19 Hill and Bokum Road pods there are multiple areas with
20 proposed activities that fall within the 100-foot upland
21 review area. Again, these are conceptual plans. It's
22 not a specific house location. All the houses -- it's
23 not a specific house. All the houses are the same. The
24 driveways are shown as straight lines. There's nothing

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1 here that would be built or could be built based on the
2 level of information required for a preliminary
3 approval.

4 If you approve this modification,
5 specific plans would be developed and presented first to
6 the Wetland Commission for approval and then ultimately
7 here.

8 I would note that the mere presence of
9 proposed activities or potential activities within
10 upland review area does not mean that there's going to
11 be an adverse impact or any impact at all. The -- and
12 I'll give you an example of that, and just a theoretical
13 example because, again, these are just theoretical
14 plans.

15 An upland review area may -- the site has
16 very steep and rugged topography in some places. The
17 upland review area could easily extend across the
18 drainage divide so that any activity -- so that some
19 activity that was within that 100-foot upland review
20 area might be not drained through the wetland in
21 question. It might, in fact, be on the other side of a
22 rocky knoll or a -- or a hill. So the mere presence of
23 the upland review area does not support any kind of
24 conclusion about the impacts of these activities or

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1 potential activities on wetlands or watercourses.

2 The driveways, again, are shown only to
3 demonstrate feasibility. The presence of a lawn or a
4 driveway in an upland review area cannot be taken as a
5 priore evidence of impact on wetlands. The disturbance
6 proposed in the upland review area in the Ingham Hill
7 Road pod is very similar to the approved subdivision
8 when you consider the -- the recreational aspect of that
9 plan.

10 We've suggested that we can -- we can
11 modify the plan to avoid the amount of blasting required
12 to start the through-road process and resolve the safety
13 concerns that exist and have existed on Ingham Hill
14 Road. But, regardless, the plan -- the proposed
15 modifications were designed in concert with the -- the
16 approved plan that provides for the full access through
17 the property.

18 The proposed road on Bokum Hill Road is
19 located in the same place as the approved through-road.
20 The center lines are, I'm told by the engineering
21 surveyor -- and I have no reason to doubt that. These
22 look to me to be, by eye, identical. There may be some
23 minor differences in the grading that could be
24 accomplished by a slightly more careful analysis and, in

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1 fact, I'm told have been accomplished. There have been
2 some minor tweaks to the grading that reduce impacts,
3 not increase them. But the center line of the road is
4 in the same location. It's the location that this
5 commission approved and everyone has determined was
6 appropriate for getting the road through -- through the
7 Bokum Road parcel.

8 I then go on and look very specifically
9 at the nine lots on the Bokum Hill Road pod. I don't
10 think I need to go over that in great detail with you
11 other than to remind you that the road is in the same
12 location. The Vernal Pool 37 is the lowest productivity
13 of any pool on the entire thousand-acre site. This
14 commission and everyone else has agreed that that's the
15 best location for a road. Once you establish the road,
16 the lot locations fall off of that. But, certainly, Lot
17 1 is an existing house. Several of the lots don't drain
18 to any wetlands or vernal pools. Several of the lots
19 don't have any wetlands or upland review areas on them.

20 So -- and, finally, those that do --
21 again, just a concept plan. And if the Wetland
22 Commission is concerned about those impacts of whatever
23 detailed plan is finally developed, they'll certainly
24 let us know and we'll change them to the maximum extent

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1 we can.

2 The next comment in the Rema letter had
3 to do with the proposed home locations in the western
4 PRD. And they -- they agree that they're not very close
5 to wetlands, but they are unclear whether there could be
6 adverse impacts.

7 Leaving aside the issue that this plan
8 doesn't allow us to do anything that -- us -- River
9 Sound to do anything that would cause an impact, it's
10 also clear from the most cursory of examination of the
11 plan that the activities shown conceptually in the west
12 PRD will not have an adverse impact on wetlands and
13 watercourses.

14 The access road is shown in the same
15 place as on the approved plan. The PRD involves fewer
16 units and less potential land disturbance than what was
17 shown on the approved plan. All the grading, all the
18 units and all of the driveways are north of the access
19 road/through-road, while all the wetlands and vernal
20 pools in this area located south of the road.

21 The closest potential activity shown is a
22 driveway almost 200 feet -- and by almost, I think it's
23 about 190 feet -- away from the wetlands, which driveway
24 is coincident with the location of the through-road on

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1 the approved plan.

2 So any suggestion that this plan has a
3 potential for an adverse impact on the wetlands that
4 varies in any way from that which you approved is just
5 absolutely not true and, in fact, there is -- I can't
6 really think of a rational mechanism for an adverse
7 impact in this circumstance. The amount of disturbance
8 is small, and the road proposed or driveway with the
9 intercept drainage and so forth.

10 The next comment in the letter was that
11 many of the test pits are on various peaked slopes.
12 Well, septic systems are regularly installed on peaked
13 slopes throughout Connecticut. The final plans will
14 show the cuts and fills, show erosion controls that are
15 necessary to prevent adverse effects from the
16 construction. They've only been developed to the level
17 of detail necessary to demonstrate feasibility, and as
18 you've already heard through testimony from Bob Doane
19 about the septic system locations that are shown.

20 And, finally, their conclusion, which I
21 mentioned up front, "The proposed changes are reasonably
22 likely to cause adverse impacts to multiple wetlands and
23 ecological communities", it's my contention that neither
24 their letter nor their verbal testimony provides any

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1 basis for this assertion. It's a conclusory statement
2 without any facts or reasoning to back it up. They
3 haven't requested permission to conduct an on-site
4 investigation. They weren't present at the public site
5 walks that have been held. They apparently did not pay
6 attention to the detailed vegetation and wildlife
7 surveys that are in the public record from the original
8 open-space subdivision and wetland public hearings.
9 Those reports were provided to CSE because they were a
10 party to the process. They've been referenced numerous
11 times by CSE and Rema during that process five years
12 ago.

13 Their letter identifies potential
14 concerns based on a failure to adequately review the
15 detailed information supplied as part of the approved
16 open-space subdivision plan and reiterated with this
17 application.

18 In summary, their letter and analysis to
19 date I think fails to recognize the limited nature of
20 the proposed modifications, the extent of the natural
21 resource data base that was assembled and distributed
22 and reviewed as part of the original application, failed
23 to recognize the testimony with respect to updating the
24 -- or ground-truthing, if you will, the validity of the

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1 -- of the 2003, 2004 data, 2010. I'm pretty sure that
2 happened on the first night of the public hearing. And
3 I don't recall, but I don't think -- I don't -- I can't
4 be 100-percent certain. But I don't think anyone from
5 Rema was there at that first -- first hearing and
6 couldn't have heard that.

7 They've identified concerns but have not
8 stated with specificity adverse environmental impacts
9 that are reasonably likely to occur.

10 Finally, the plan -- plans clearly show
11 that the proposed activities are consistent with, and
12 the potential impacts on air, land, water and natural
13 resources of the state are substantially the same as,
14 the approved open-space subdivision.

15 I'd be happy to answer the commission's
16 questions.

17 CHAIRPERSON McINTYRE: Are there any
18 clarification questions the board needs to ask at this
19 time?

20 MR. ARESCO: I have questions of Mr.
21 Kline.

22 CHAIRPERSON McINTYRE: To clarify
23 anything he said.

24 MR. ARESCO: No, nothing for that.

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1 CHAIRPERSON McINTYRE: Okay. Then we'll
2 address them at the end.

3 MR. ARESCO: Okay. Thank you.

4 CHAIRPERSON McINTYRE: Okay. At this
5 time, I would like to have Attorney Rothenburger from
6 the intervenor, Connecticut Fund for the Environment,
7 come up to the mike.

8 MR. ROTHENBURGER: Good evening. For the
9 record, Charles Rothenburger with Connecticut Fund for
10 the Environment. I have a couple of documents that I'll
11 be submitting.

12 A VOICE: Can't hear you.

13 MR. ROTHENBURGER: That one? Is it on?

14 CHAIRPERSON McINTYRE: Yeah. You've just
15 got to talk --

16 A VOICE: It fades in and out.

17 MR. ROTHENBURGER: Can you hear me now?

18 A VOICE: Yes.

19 MR. ROTHENBURGER: All right. Excellent.
20 I'll try to speak up.

21 A couple of documents to submit --

22 MR. BRANSE: Mr. Chairman, one other
23 thing. This is a very large room. And there's plenty
24 of room down front. So, please, if you're having

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1 trouble hearing, look at all the empty seats here. Come
2 on down, as they say on the radio.

3 A VOICE: Well, as a matter of fact, we
4 have (Indiscernible - not using microphone)

5 MR. ROTHENBURGER: I will try to project.

6 Again, Charles Rothenburger with
7 Connecticut Fund for the Environment. I have several
8 documents that I'll be submitting into the record this
9 evening and also be introducing later George Logan from
10 Rema Ecological Services who will also be submitting a
11 report and presenting testimony.

12 To begin with, though, I have a couple of
13 statements on behalf of Connecticut Fund for the
14 Environment. A -- well, maybe we should just do these
15 in order or as a packet. What's the chairman's
16 preference?

17 CHAIRPERSON McINTYRE: Whichever way you
18 --

19 MR. ROTHENBURGER: Let's do them all as a
20 packet. That's fine.

21 So a couple of letters from Connecticut
22 Fund for the Environment. One dated January 5
23 reflecting comments that I made at that public hearing.
24 One dated January 19. Another document, a

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1 herpetological survey and vernal pool analysis with
2 conservation planning recommendations and strategies,
3 dated October 26, 2004.

4 A motion as to denial of Application
5 05016, the Preserve, from the Inland Wetlands and
6 Watercourses Commission. And an Appellate Court
7 decision upholding that Inland Wetlands denial.

8 (Whereupon, the packet was submitted.)

9 MR. ROTHENBURGER: So, thank you. And I
10 may begin just by addressing some of the comments that
11 Mr. Kline said. You know, I'm afraid he's pretty much
12 made your jobs here completely redundant and kind of
13 undercut the whole purpose of your own regulations of
14 residential Conservation C district. You know, the
15 claim that an intervention raising environmental
16 concerns is unfounded at this stage because this is, in
17 his words, just a conceptual plan really ignores the
18 specific language of your own regulations.

19 In fact, this commission, in approving or
20 denying or reviewing plans, is charged specifically with
21 looking at a whole host of factors, which include
22 natural resource protection. So, clearly, you're
23 charged with evaluating how well a plan does or does not
24 protect the natural resources. Those natural resources

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1 are in play and certainly within the jurisdiction of
2 this commission and the actions that you take will have
3 impact on those natural resources.

4 You know, and I'm kind of tempted to take
5 Mr. Kline at his word that the proposal before you now
6 will have exactly the same environmental impacts as the
7 proposal that you approved now six years ago. Because,
8 in fact, as part of the materials that I gave you is a
9 letter from the Inland Wetlands Commission, nine pages
10 long, detailing a host of adverse environmental impacts
11 from the plan that you approved six years ago.

12 So if we take him at his word, we may be
13 in more trouble than -- than any of us -- any of us
14 recognize. But, be that as it may, you know, when I
15 spoke two weeks on the fifth, I really focused in on how
16 certain proposals to develop these three pods might
17 constrain options moving forward should that central
18 core be developed.

19 I did have a few comments related to
20 specifics of each of those pods as well. But I decided
21 to hold off and not present those, based upon the
22 testimony that was provided by the applicant; the fact
23 that they apparently had modified some of the areas,
24 particularly with respect to the Ingham Hill Road

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1 parcel. We heard that they had pulled the plots for a
2 couple of the houses outside of that upland review area
3 of the wetlands. You know. And that's -- that's
4 certainly not a bad thing.

5 However, as I went back and looked at
6 those revisions -- and I thought I had looked at the
7 most revised map and, in fact, I had -- it didn't really
8 comport with, you know, what I saw happening. In fact,
9 those lot lines had been pulled back pretty much just
10 directly adjacent to the upland review area. So they're
11 no longer -- in some cases, not all, there are still
12 some proposals within the upland review area. In some
13 cases, they pulled them back to that upland review area.

14 But I think it's very important to make a
15 point here that -- and I believe it's a point that
16 Attorney Branse made, made a couple of times. You are
17 not an Inland Wetlands Commission. And there is
18 certainly nothing magical about the 100-foot upland
19 review area. Mr. Kline said that activities within a
20 100-foot upland review area do not necessarily mean that
21 there will be adverse impacts. I couldn't agree with
22 him more. You have to look at the site-specific
23 activities, the conditions on the site, what's
24 happening.

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1 But the converse is also quite true.
2 Activities outside of a 100-foot upland review area do
3 not necessarily mean that everything is fine and that
4 there will not be impacts. Again, you have to look at
5 the site specifics.

6 And, you know, I would caution you
7 because you are not an Inland Wetlands Commission. Your
8 charge to consider the impact to these natural resources
9 is actually much broader. You're not limited to the
10 upland review area. That's a wetlands regulation.
11 That's something that arguably constrains the
12 jurisdiction of the Wetlands Commission. It does not
13 constrain or limit your jurisdiction whatsoever.

14 An upland review area is pretty much an
15 irrelevant concept as far as considerations for this
16 commission are concerned. So I think that's a
17 critically important point for you to have in mind as
18 you review this.

19 Again, we also heard that the Ingham Hill
20 pod is very similar to the original plan and, in fact,
21 as -- because of that, there will be no adverse impacts.
22 I believe the specific reference was to the set-aside of
23 the area at the southwestern corner for playing fields.

24 Be that as it may, that statement kind of

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1 ignores the fact that there are also 13 house lots being
2 proposed for that area that were not there in the
3 original plan. That's a very significant difference.

4 And you'll recall that in the original
5 plan that entire area was set aside as open space.

6 There was no proposed housing in that area. And the
7 reason why is very simple; because it contained two of
8 the most productive vernal pools on the site.

9 Recognizing the value of those natural resources, I
10 think the applicant did try to do a good job in terms of
11 preserving those two vernal pools. And what conclusion
12 did they come to how best to protect them? Well, we
13 just won't build it. Seems pretty simple. A concept
14 that we would certainly agree with.

15 And as you review this plan, you know,
16 it's certainly one that, at a minimum, would fall within
17 the concept of the prudent and feasible alternative.

18 It's not a prudent and feasible
19 alternative that I'm making up. It's one that six years
20 ago the applicant actually presented to you as a way of
21 preserving those natural resources. You know. I don't
22 think they're going to like that suggestion. But,
23 again, you're looking at -- even though we're only
24 talking about development in three pods, you're looking

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1 at a parcel that is the entire site. So -- and, again,
2 I think that as a corollary to the argument that
3 Attorney Branse brought up in his letter of January 13,
4 you know, the argument cannot be made that somehow it is
5 unfair or an unfair economic burden on the applicant to
6 require him to preserve that entire pod as open space
7 because they're the property owner, they have property
8 rights, they're allowed to build.

9 Again, I couldn't agree more with that
10 concept. But that right applies to the whole parcel.
11 So if those 13 homes can't be built there, there's no --
12 nobody saying they couldn't be built somewhere else
13 perhaps, if it meets Wetlands and other review.

14 So, again, don't box yourselves in to
15 looking at this one pod at a time. Even those areas
16 that have not had changes proposed are part of this
17 parcel. They're part of the prior approval. And
18 they're something that the applicant has to work with.

19 You know. I'm not trying to suggest that
20 you do, you know, come to any specific conclusion, but
21 just recognizing the fact that you do have that freedom
22 and you should be looking at the entire -- the entire
23 map.

24 And one point that wasn't brought up --

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1 and, again, I think this is a corollary to the issue
2 that Attorney Branse raised in discussing the Lucas
3 versus South Carolina Council issue. You know. I'm a
4 little concerned about this concept of the dedication of
5 open space in the first phase of development for reasons
6 very similar to what I raised two weeks ago.

7 You know, it strikes me that as we're
8 talking about phased development, you're talking about a
9 single subdivision approval and the associated other
10 processes, Wetlands, for a single pod and that gets
11 approved and then all of the open space throughout the
12 entire site is transferred to the town, great thing for
13 the town. Right? All this open space. This is great.
14 Who knows if anything else will ever get built?

15 Well, nobody does. The applicant has
16 stated that development of the entire parcel remains on
17 the table. They certainly intend to develop those three
18 pods. And, you know, who knows what will happen to the
19 core?

20 My concern is the applicant then turns
21 around and says, as they go for a subsequent subdivision
22 approval, "Well, you know, we understand your concerns
23 with respect to, you know, let's say, this housing lot
24 right here or this roadway or this golf hole. But we

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1 don't really have any options here. I mean all the
2 other property in this area is owned by the town. It's
3 your open space. We can't move anywhere."

4 And, you know, I suspect there then
5 becomes, you know, an immovable object means an
6 irresistible force in terms of the tension between
7 applicant and the commission in terms of essentially,
8 you know, being willing to make the applicant live with
9 the results of its own decisions.

10 You know, clearly that's an outcome that
11 could have been foreseen. The applicant, you can say,
12 takes the risk of being boxed in in such a way that, you
13 know, perhaps their development options are just
14 limited. They have to get rid of housing lots. They
15 have to reduce the size of a golf course. And they have
16 to live with it. Maybe.

17 Maybe the commission looking at that
18 says, "Well, you know, gee. We feel kind of bad, you
19 know, taking everything away from them just because we
20 got all of this open space. You know. If we had more
21 room to work with, maybe we could find a way to make --
22 to meet more of the applicant's wishes, make it work for
23 the applicant and also make it work for the wetlands,
24 for the natural resources" while also, you know, perhaps

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1 identifying even better parcels of open space for us,
2 you know, once we've gotten to the detailed level of a
3 site plan. You know, we don't have that information
4 here right now.

5 So, you know, I raise that as a concern.
6 I understand your regulations apparently authorized
7 phased development. You know. Again, it's an issue.
8 It raises some serious concerns on my mind that future
9 reviews are really going to have their hands tied in
10 trying to accommodate the development while protecting
11 the natural resources. And -- and you've seen -- I mean
12 you guys do a great job. But, you know, the plan that
13 you approved six years ago, you know, from the amount of
14 information that you had before you, you thought, "Wow.
15 This is great. We're discharging our duty. We're
16 meeting our obligations. We're preserving wetlands."

17 Well, it goes to Wetlands. They're
18 looking at more detailed information, taking a closer
19 look. And, you know, guess what? "We can't approve
20 this. This is -- you know, this is beyond the pale."

21 So, you know, I just want to underscore,
22 particularly in light of Mr. Kline's comments that, you
23 know, protection of natural resources, specifically
24 wetlands -- they're quoted in your regulations,

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1 completely within your power and the actions that you
2 take here on this application will have impacts further
3 on.

4 And with that, I've already gone on too
5 long. I will turn it over to Mr. Logan.

6 MR. LOGAN: Good evening. For the
7 record, my name is George Logan. I will be passing a
8 report out.

9 CHAIRPERSON McINTYRE: Nice to see you
10 again.

11 MR. LOGAN: Nice to see you, also.

12 (Whereupon, the report by Mr. Logan was
13 submitted.)

14 MR. LOGAN: All right. It's certainly
15 nice to be back with some familiar faces. I see people
16 in the crowd here -- and I don't remember all their
17 names. But we did this a few years back. And now we're
18 here with something that is, in my mind at least, a
19 little different.

20 Just by way of background, I'm very
21 similarly qualified as Mr. Kline is. We both have
22 Master's Degrees in natural resources and are both
23 certified as soil scientists and as wetland scientists.
24 My background is a little more education-wise maybe in

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1 wildlife than Mr. Kline. Other than that, we're pretty
2 equal in that -- in that respect.

3 What I'm going to do now is I have a
4 report here. It's not going to repeat information that
5 you heard in a similar fashion from my colleague that
6 was here before you the last time, Ms. Gottwell. It
7 will maybe take a step back and look at some big-picture
8 items and then it will hone in very specifically on some
9 issues, at which point I'll probably be using some of
10 the pile, if it's okay with you.

11 CHAIRPERSON McINTYRE: Okay.

12 MR. LOGAN: Just to have some examples.

13 The first thing I'd like to do is to kind
14 of look at some of the kind of considerations that you
15 folks look at, at least narrowly focus from my expertise
16 as a natural resources specialist.

17 I did read your -- your Section 56 of
18 your Zoning Regulations. I'm -- pretty extensive. I
19 was pleasantly surprised, impressed with the clarity and
20 scope of your regulations and the fact that you
21 recognize that there's a great variety of significant
22 natural features and natural resources that you can look
23 at.

24 My comments, obviously, because of my

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1 background, are going to focus more on the natural
2 features, natural resources, and how these blend in with
3 your consideration as a planning agency for an open-
4 space subdivision.

5 But I must say that some other
6 considerations probably should be at some point also
7 explored and that has to do with recreation and
8 aesthetics. I think we're all experts in some way or
9 fashion in this area because we all recreate and we all
10 like to see things and enjoy things.

11 One of the observations that I made as I
12 started looking at the plans and as I was driving down
13 here this evening and thinking about that fact is that
14 we never have really put on a climbing hat from that
15 side of recreation and aesthetics to the point that I
16 think you folks should understand that each parcel is
17 very, very unique. There are some natural features that
18 are on each one of these parcels that are not wetlands,
19 that are not vernal pools, that are not watercourses,
20 but they're other things that are important for you
21 folks to look at.

22 There are some significant knolls and
23 craggy landscapes out there. There are some boulder
24 terrains. There's some bedrock outcrops that certainly

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1 have an aesthetic appeal, you know, and should be
2 considered.

3 And the other thing that I also noticed
4 is that if you look at the three pods, particularly the
5 ones I'm going to be focusing on the most, which is
6 Ingham Hill and the Bokum Road, what few might notice is
7 that what's being proposed for open space is almost in
8 one sense what's left over, what's left over from the
9 applicant attempting to get the maximum count of lots
10 under this preliminary open-space subdivision
11 modification.

12 And that's unfortunate because the kinds
13 of open spaces some of us like are the ones that do have
14 some flat ground, where you can put a road or a trail or
15 something through. So it's something that I noticed.
16 If you look at the plans, you will notice that the areas
17 that are proposed as open space are difficult from a
18 matter of terrain.

19 So I also think at some point someone has
20 to look at it from a master plan perspective and look at
21 the open space for what it is and figure out, "All
22 right. How are we going to recreate in here? And what
23 is the aesthetic appeal here that we're trying to
24 preserve?"

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1 Again, I'm not going to focus -- this is
2 not my expertise per se. I'm going to focus mostly on
3 the natural resources aspects, the features of the
4 resources.

5 Now, I know what you have heard a little
6 bit earlier from my colleague, Michael Kline, regarding
7 the fact that, at least in his mind, in his estimation,
8 there's a voluminous amount of information that was
9 provided back in 2004, 2005 to this commission, to other
10 commissions, where significant inventories had been
11 completed over the course of probably two or three years
12 and were presented as part of a whole package.

13 And that is true. And here is kind of my
14 predicament. My predicament is I know all that
15 information. I went and found it in my archive box in
16 my basement and brought it up. And I almost needed
17 another room to spread it out. It is a lot of
18 information. I have some of it here.

19 But it's not really part of this record.
20 Or is it? That's a big question that I have in my mind.
21 I'm not sure it is. I haven't seen it. I mean there
22 was a lot of communications that went back and forth. I
23 received a lot of them. I read almost all of them. I'm
24 sorry, Bruce -- if he was here -- I didn't read his

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1 traffic report. But I did look at a whole bunch of
2 information. And I'm aware of that information. But
3 it's not part of the record. It's not part of something
4 you're looking at. You're just taking at face value
5 what they have said, what the applicant has said, that
6 "We've done all these studies and so we know what's
7 going on. And we've already done this."

8 But now they're presenting something
9 that's different in Ingham Hill and something that's
10 different on Bokum Hill. So, unfortunately, I don't
11 think that this infor-- this necessary information has
12 been provided.

13 Now, I'm not going to tell them what to
14 do or what they should do or tell you what you should be
15 requiring for applicants to do in these kinds of
16 situations. I'll just give you my own opinion. And I
17 do some of these, not in this town but in other towns
18 that have similar regulations with a planning agent, a
19 planning/zoning agency is looking at open-space
20 subdivisions, trying to make an informed decision as to
21 whether or not the most significant natural features,
22 the natural resources, are being protected, aesthetics
23 are met, recreation is met and the like.

24 And typically what I do, if my client

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1 allows me to -- got to put that caveat -- is do a
2 significant amount of inventories like they say they
3 have. I will look at the -- obviously, the wetlands are
4 key because we have specific regulations. What their
5 productivity might be, if there are any vernal pools,
6 functional values. And the list goes on. And I do
7 avian studies, mammalian studies, whatever is necessary,
8 floristic studies. We'll look at the ecology. We'll
9 look at it in different seasons.

10 But then we synthesize that information
11 and we provide a picture for each parcel that I might be
12 working on. And that has not really been done in this
13 particular case. They haven't synthesized it in a
14 narrative for you folks to look at the information and
15 say, "Okay. Based on the fact that we have this
16 resource here that we should preserve or that resource,
17 whether it's a vernal pool, ragged knoll with some
18 interesting rare and uncommon vegetation, whatever it
19 might be --

20 CHAIRPERSON McINTYRE: George, can I
21 interrupt you there?

22 MR. LOGAN: Sure.

23 CHAIRPERSON McINTYRE: We -- it's getting
24 late tonight. And I appreciate all the information.

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1 But we really want to concentrate on what you believe is
2 the impacts of this change on this development. If we
3 can get to those --

4 MR. LOGAN: I would not be doing my job
5 right if I didn't give you a picture and a narrative.
6 If you want to shut me off --

7 CHAIRPERSON McINTYRE: No, I don't want
8 to shut you off.

9 MR. LOGAN: -- you could read the report.
10 But I think it's very important, and as a matter of
11 fairness, that you hear me out.

12 CHAIRPERSON McINTYRE: Okay.

13 MR. BRANSE: Mr. Chairman?

14 CHAIRPERSON McINTYRE: Yes?

15 MR. BRANSE: If I may? And Mr. Logan.
16 Hearing you out is not what it's about. You're --
17 you're -- you can cut to the chase more than you are.

18 MR. LOGAN: No. Mr. Kline didn't cut to
19 the chase, Mr. Branse.

20 MR. BRANSE: I -- you've already spoken
21 as long as he did.

22 MR. LOGAN: But he went specifically
23 through every single part of his little report,
24 specifically.

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1 MR. BRANSE: And -- and so could you go
2 through --

3 MR. LOGAN: So do you want me to do that?

4 A VOICE: I -- whatever -- whatever you
5 think is most effective. But, you know, what -- you're
6 losing your audience is what's happening. It's just
7 helpful advice, George.

8 MR. LOGAN: It's a matter of preserving
9 the record, in one sense, Mr. Branse.

10 MR. BRANSE: Yeah. But so far, what
11 you're saying doesn't contribute to that record.

12 MR. LOGAN: I'm getting to it. What I'm
13 -- what I'm trying to --

14 MR. BRANSE: You're there now.

15 MR. LOGAN: What I'm trying to identify -
16 - if I may?

17 CHAIRPERSON McINTYRE: Yes, you may.

18 A VOICE: (Indiscernible)

19 CHAIRPERSON McINTYRE: No. No. No. No
20 comments from the audience please. Thank you.

21 MR. LOGAN: I apologize. I was under the
22 impression that this is what you needed to hear. Now,
23 I'm told that maybe I need to cut the chase and I'll
24 take your advice. Very good. I apologize. I don't

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1 want to alienate anyone and for people not to hear me.

2 All right. So here's the -- here's the
3 thing. The information is not in the record as far as
4 all this natural resource information for each of the
5 parcels. I don't see it in the record. Even today Mr.
6 Kline said that there was -- he went and verified some
7 of this information to make sure there was not any
8 material substantial change in the field. But I don't
9 have that information.

10 He says in his report that he has a 2010
11 vernal pool study. I don't have that information. So I
12 have to take it -- he said it; I guess that's what it
13 is.

14 So here's my predicament. And this is as
15 far as I'm going to go. I hope you understand that I'm
16 not sure where this information is. It's not in the
17 record and there's new information that's not been
18 presented. And it's old. Five or seven-year-old
19 information is typically considered from an ecological
20 perspective to be old.

21 All right. The other issue had to do
22 with -- and I'll be quick with this one -- principles of
23 said finding I believe were not effectively used. The
24 DEP, as you're probably aware, has put out two

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1 publications, what is called the 2002 Soil Erosion
2 Control Manual. The other one is the Connecticut Storm
3 Water Quality Manual, 2004. All commissions have it.
4 All staff use it extensively. And in both of those
5 publications, which many commissions in other towns have
6 incorporated as being standard practices to look at,
7 have sections in them for the planning process, how you
8 design, how you plan, and they're very significant
9 principles, such as these from the 2002 manual that you
10 need to utilize existing topography, that you align the
11 roads and contour wherever possible. And I will come
12 back specifically to that because that has not happened
13 in this particular case.

14 To concentrate development in the
15 flattest areas to avoid steep slopes and severe soil
16 limitations. Reduce land disturbance activities, cuts
17 and fills and the like.

18 So there are very well-known principles
19 in those manuals that people that plan subdivisions
20 should be using.

21 Some of the things that I noted from the
22 plan is that there are important natural features on the
23 site, such as scenic bedrock, dominated knolls and
24 boulder trains, that have potentially high ecological

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1 significance and have not been addressed specifically.

2 For example, if you look at the Ingham
3 Hill Road parcel -- and let's take that -- and I'll just
4 have -- I'll point out like this, if you don't mind.

5 CHAIRPERSON McINTYRE: If you'd just --
6 could you just please address what exhibit you're
7 looking at?

8 MR. LOGAN: I'm looking at Exhibit No. --

9 CHAIRPERSON McINTYRE: (Indiscernible)

10 MR. LOGAN: Okay. This is
11 (Indiscernible) a plan modification. The date is
12 1/13/11, modification of original plan, 7 of 10.

13 CHAIRPERSON McINTYRE: Which --

14 MR. LOGAN: Okay. Oh, I see. RS-3.

15 CHAIRPERSON McINTYRE: Thank you.

16 MR. LOGAN: Okay. The point here -- and
17 these are just examples. We've already talked about the
18 fact that there (Indiscernible) cuts that are happening
19 here to this small cul-de-sac in order for access to
20 Lots 12 and 13. That's not -- I know that there is a
21 proposal to continue this road if this road were ever to
22 be continued. But this particular location should not
23 be chosen for the reason for the access of the two lots,
24 12 and 13, where all this massive amount of grading and

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1 cuts and fills that have to happen here for that to
2 happen.

3 All right. Lots 7 and 8, again, there's
4 been some modifications. But if you look at the lots
5 themselves, you're probably not going to find much area
6 on these lots that's less than 18 percent. Maybe right
7 here in the front of these two parcels where they're
8 actually showing now the proposed houses.

9 These slopes here are in excess of 20
10 percent. And they're above the headwater stream wetland
11 right here on very steep slopes. I believe there will
12 be impacts here. And I'll come back to what that means
13 in a moment.

14 Then another example would be
15 (Indiscernible - not at microphone). This is Plan RS-5,
16 which is again revision 1/13/11.

17 One thing that I heard a little earlier -
18 - and I would challenge Mr. Kline to take a much closer
19 look at his own plan that he's supporting because what
20 has been said here is that the alignment of the road
21 that you folks approved is exactly the same as it was
22 before. It is not. It is substantially different from
23 a point going over. And I'll show you how it is. If
24 you can look at the plan -- this one here -- I'm sorry.

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1 It's RS-1, revision date of it is 12/29/10. Here's the
2 Bokum Hill parcel. What you will see is that the
3 delineation of the roadway up and to af-- right after
4 the Vernal Pool No. 37 is very similar. I'm not going
5 to argue with that. But there's a little trail, woods
6 trail that you see right there. I'll point it out on
7 this map. Which is this trail right here. Then in the
8 previous plan, that road follows. Why? Because it
9 followed the general principle that I told you where
10 you're following contours wherever possible.

11 And so when they came off here with the
12 previous plan, they got to about there and saw that they
13 could follow that contour all the way close to the
14 property boundary where the land is a lot flatter, a lot
15 -- they're avoiding bedrock outcrops. They're avoiding
16 steep slopes, et cetera. And then they hook up into.

17 What they're doing now by this particular
18 alignment, which is a lot different from what they
19 already -- you folks have already approved, is they're
20 going through a significant knoll area and they're
21 having 20- to 30-foot cuts. Now, I'm giving you a range
22 because it depends on where -- you know, where they
23 start and how they chase it up, et cetera. But it's
24 going to be significant.

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1 And I believe that the reason they're
2 doing that is because they saw an opportunity of what
3 they figured was maybe some good land for lots. So Lots
4 No. 3, in part, and certainly 4 are possible because
5 they move the road onto the knoll. And from an
6 aesthetic perspective, that's not good, either. That's
7 -- that's probably one of the nicer portions of that
8 particular -- of that particular site.

9 Again, these are some concrete examples
10 of what's going on here in these two different pods.

11 So we believe that there is a feasible
12 and prudent alternative that would reduce or eliminate
13 the reasonable and likely adverse impacts to natural
14 resources by, for instance, going back to their original
15 approved -- originally approved delineation, which went
16 up this way and then back, and eliminating Lots 3 and 4,
17 or eliminating one lot and seeing how they can save the
18 other, if it's possible. But then what happens is
19 they're starting to come closer to Vernal Pool No. 37.

20 And even though it has been indicated
21 that this is the lowest-productivity vernal pool of all
22 the ones they inventoried way back -- I haven't seen the
23 new data where I think they say there were no egg masses
24 this time around. They said there were only two in the

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1 past or Michael Kline said that. But if you look at the
2 Clemmons data, you see that's not true. It's
3 inconsistent with the original data.

4 But, again, what happens is when you have
5 vernal pools -- and you have four of them on this site
6 and you have No. 37 -- I think this one is Number -- I
7 need better glasses. 30. This might be 29. And this
8 is 24 up here. They're all within distances of several
9 hundred feet, which is -- you know, you've heard the
10 Clemmons 750-foot critical terrestrial habitat. Well,
11 they're well within that limit.

12 So what happens when you have the vernal
13 pools at different quality and different places, these
14 are each actually ecologically connected. And there's a
15 concept called meta population dynamics where there's
16 sort of genetic flow between all these four vernal pools
17 which is very good for the long-term viability of a
18 population.

19 So you can't just knock off 2 and 37 and
20 say it's not going to hurt anything. It could be very
21 important somewhere down the line where some disease
22 hits another pool and then the only one that has egg
23 masses is 37 and then they repopulate.

24 So it's important to kind of look at

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1 these things.

2 They've done a little better job with
3 their new plan. They've twisted the road around. But,
4 again, they still have impacts within the watershed of
5 that vernal pool. As you know, the watershed's
6 important because that has to do with water quality and
7 water quantity. They haven't specifically addressed
8 that. I think it's way too close and there's a better
9 plan here.

10 So, at a minimum, we're looking at
11 elimination of those two lots.

12 All right. What I did notice in the
13 current plans -- and it really wasn't discussed to any
14 great extent -- was a concern that I had and that was --
15 and I think it was a concern your own consultant, Mr.
16 Jacobson, had in the past in his first letter that I
17 remember seeing; is that there weren't, at least in a
18 conceptual, there weren't locations of where the storm
19 water management was going to be taken care of. You
20 know, the final best management practices or your
21 detention/retention basins.

22 Some of them have now appeared on the
23 plan, which is good. Obviously, I just saw them today.
24 I can tell you that I don't like one of them

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1 (Indiscernible - not using microphone) back to Plan No.
2 RS-3. There's a detention basin location right in this
3 area --

4 MR. BRANSE: Mr. Logan, can you -- when
5 you say "in this area", can you give us --

6 MR. LOGAN: Between Lots 3 and 2 and up
7 against the -- the new roadway that would be going in
8 off Ingham Hill in a westerly direction. And it's on
9 this steep slope. And it's right above a seepage
10 wetland.

11 Now, let's talk about seepage wetlands.
12 And there are several ones in this particular area. And
13 this is one of the reasons that I'm a little befuddled
14 with hearing from Mr. Michael Kline that the
15 conservation of the vernal pools will be exactly the
16 same now in this particular plan as they were before
17 when this was open space and there were no lots.

18 For instance, we do have Lots 1 and 2
19 within the terrestrial habitat, 150-foot terrestrial
20 habitat as defined by their own consultant, Mr. -- Dr.
21 Clemmons in the past. And this is a very productive
22 vernal pool, No. 16. No one denies that. 200-and-
23 something egg masses of just spotted salamanders. Very
24 productive.

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1 And so what happens is when you have a
2 vernal pool that's very productive is you can kind of
3 think of it, the carrying capacity of the surrounding
4 land gets saturated quicker. You know, if you have a
5 vernal pool that only has, say, a hundred salamanders,
6 they're not going to go too far, depending, of course,
7 on what kind of habitat that's there. But if there's a
8 lot of them, that means they're coming from a wider
9 area.

10 And I believe that with Ingham Road being
11 there for a while and the fact that it is productive, it
12 means it's kind of reached an equilibrium of some sort
13 where Ingham Hill is not an issue as far as the
14 productivity of that particular vernal pool.

15 And so I believe that this land in here
16 is very important for the vernal pool. And I'll give
17 you another clue of why I think that. When the studies
18 that have been done in the past show that spotted
19 salamanders, all other things considered equal, because
20 there are a lot of factors, prefer southern exposure.
21 So you have some southern -- here's north. There's
22 south. Southern exposure type of slopes there, which
23 means they get warmer quicker when the season turns from
24 winter to spring. And salamanders like that. They want

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1 to get through the pools first, you know, as quickly as
2 they can. That's their behavior.

3 So I believe that this vernal pool will
4 be impacted by the elimination of -- their population,
5 elimination of this habitat, and possibly even to the
6 other side on Lot 3, but certainly on Lot 1 and 2
7 there's frogs.

8 Now, the other thing --

9 MR. BRANSE: By the detention pond?

10 MR. LOGAN: Not by the detention pond.

11 We'll get back to that. But the fact that you have
12 activities within Lots 1 and 2, whatever they might be.
13 You know. You're going to have a house. You're going
14 to have a lawn, wherever it might be, a driveway, et
15 cetera. Some have been shown here to show feasibility.
16 But we know, we expect something normal.

17 Now, back to these headwaters east and
18 west. I looked the data that Mr. Kline had provided.
19 And this particular one was Wetland No. 9. This was
20 Wetland No. 6. For Wetland No. 6, Mr. Kline said in his
21 report there was significant seeps. I think he used the
22 word "significant", maybe "substantial seeps" on the
23 northern portion of Wetland 6, right about here. And
24 you can see there's some significant slopes that go down

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1 to it. The soils are probably more Chatfield than
2 Charlton, which means they're shallow to bedrock and so
3 the water pops out.

4 And if you look at the configuration of
5 the groundshed of these things, of this thing, it
6 doesn't go too, too far past Ingham Hill Road. As a
7 matter of fact, probably Ingham Hill Road is sort of a
8 barrier, in a sense.

9 So these areas here, including the vernal
10 pool, but mostly Area 9 and 6, which also have seasonal
11 seepage, according to Mr. Kline's report, are -- are
12 headwater systems. And the reason why that's important
13 is what we have discovered is that headwater seeps are
14 very unique places, not all of them, but many of them
15 are, where water is extremely clean and very low in
16 nutrient availability. So -- and I go into some detail
17 here. I'm not going to bore you with all the details.
18 This is starting back and jumping around on Page 8 under
19 Adverse Nutrient Impacts.

20 What we have found out -- and we've done
21 doing studying -- I don't know. We probably have 150 or
22 more that we've studied so far over the years. Right
23 where we see a headwater seep, we run. And the client
24 pays for it, but that's okay because we're gathering

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1 data. And a lot of that data has now been incorporated
2 in the Connecticut Association of Wetland Scientists
3 Water Quality Database and probably half of the
4 information there is ours from -- from Rema, and other
5 sources, too. And I'm sure Mr. Kline has provided some,
6 too.

7 But what we've found is that in
8 Connecticut in general, in areas with crystalline rock,
9 you know, somewhat on the acidic side like we have here,
10 the nitrogen is very low. Often, we come back and it's
11 below detection limit, which is usually .05 for nitrate,
12 nitrogen and nitrite. Very low.

13 And so most of them, I would say, would
14 be less than .5 milligrams per liter. The United States
15 Environmental Protection Agency has a draft guidance for
16 headwater streams and streams, small streams like this
17 in general, that says that the threshold is .31
18 milligrams per liter. What do they find that? Well,
19 they pooled a bunch of data, did some statistics and
20 they spit out a number that had a one, .31.

21 We had a personal communication with --
22 I'm going to call her name wrong. Where did it go?
23 With a lady from the DEP. Okay. When you think you
24 know where it is, then you don't. But, anyhow, we'll

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1 find it in a second.

2 And the state is compiling similar data
3 right now because they have to, in compliance with the
4 Clean Water Act and what EPA's doing, come up with their
5 own nutrient criteria.

6 And so Middlesex County has this big
7 database. I didn't bring it. It's online. And, again,
8 what you see is consistently below .5 milligrams per
9 liter for headwater type of streams.

10 Now, what happens is when you have a
11 situation like this where everything seems to be going
12 towards a seepage wetland sort of directly, when you put
13 septic effluent in it, it could reach it, particularly
14 when you have shallow soils and steep slopes. And the
15 reason is that, as your own consultant would tell you,
16 if you asked him, is that septic systems don't take care
17 of all their nitrogen. When it leaves the leaching
18 fields, at least the ones that are well-designed,
19 between 50 and 60 percent of the nitrogen is taken care
20 of. The rest is let go. And then what you rely on is
21 dilution and distances to -- to your sensitive resource,
22 a stream, a wetland, to dilute it to a concentration
23 that's not going to be harmful.

24 And there's some methodologies -- Mr.

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1 Jacobson's office has come up with a methodology that
2 DEP uses, the 2006 methodology, which is used more for
3 industrial/commercial type uses. But you can use the
4 same methodology for any septic system as long as you
5 use the same data. And it considers runoff coefficients
6 and slopes, which before there was just the area. So
7 those kinds of things should be used.

8 To get to the bottom of this, what I'm
9 trying to say here is that, in my professional opinion,
10 the loading on these kinds of -- of slopes and these
11 kinds of soils with septic systems kind of pointing
12 right to these resources will bring the nitrogen to
13 these streams.

14 And if you know anything about nitrogen,
15 you need to have anaerobic conditions and a very good
16 source of carbon in order for particular bacteria to
17 work on and changing nitrogen to atmospheric nitrogen
18 where it doesn't have an impact. That happens in the
19 wetlands. So until they get to the wetlands, that's not
20 actually happening.

21 I have it in the report. I'm not going
22 to go into it because the time is going by. But you
23 will see that we have specific impacts that we have
24 identified, specific types of categories of impacts we

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1 have identified for these wetlands right here and also
2 for the Wetland No. 4, which is below Lots 7 and 8.
3 And, of course, those septic systems are -- are
4 targeting that particular wetland.

5 Those are some of the kinds of things
6 that you have to take into consideration because, you
7 know, the -- the criteria for treatment for the Health
8 Code as far as nitrogen is 10 milligrams per liter. If
9 you're below that, you're fine. But that's more for
10 health of humans, not of wetlands and animals.

11 All right. Backing up -- and I'm
12 whittling down here, recognizing the time and you folks
13 have been doing this for longer than I have.

14 Again, the other thing that -- I
15 understand what Mr. Kline was saying, is they did do a
16 lot of gathering of information. And even though it's
17 not in the record, I went and looked at it. And so, for
18 instance, the issue of plants. Why is it important?

19 Well, obviously, plants and plant
20 communities are very important because they're a natural
21 resource. They're a natural feature. And I suspect
22 that some of these knolls that are out there in some of
23 this very craggy land actually might have some
24 communities that are worthy of protection.

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1 Now, he'll probably stand up in a minute
2 and say, "If they were there, we would have found them.
3 We would have told you." But you're not going to find
4 in your record and the record that I looked any specific
5 information of where they went, what they did. You
6 know, you have some maps and the information is
7 scattered. You have a -- a very extensive and detailed
8 floristic inventory, but it's keyed to general habitats.
9 Say hardwood forests. Well, there's hardwood forest
10 everywhere. Or open field. Well, there's maybe a
11 couple of spots.

12 So that's the problem that I was having,
13 is there's not any specific information on the specific
14 parcel that we're looking at as far as, for instance,
15 floristic diversity.

16 All right. And I'm not going to go into
17 too much other things. I do have an aerial photograph
18 in the back. Yes, we did not go and visit the site or
19 we'd be trespassing. We did not go on the site walk.
20 If we knew about it, we probably would have. But you
21 can see a lot of things with aerial photographs. And
22 this doesn't really do it justice because this is my
23 printer. But on the screen, this is Ingham Hill, Figure
24 1. And I have pointed out to Vernal Pool 31 and Vernal

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1 Pool 16.

2 And if you look carefully -- at least I
3 can see it. Maybe you don't. In those areas, you will
4 see a lot of exposed rubble, bedrocks and boulders and
5 erratics and so on. And that's the kind of habitat
6 adjacent to these vernal pools that actually salamanders
7 prefer to use because there's a higher incidence of
8 crevices and places that they can hibernate than running
9 through the forest trying to find, you know, burrows of
10 strews to utilize, which is one of the things they do.

11 Again, that's why it's important. And
12 that Lots No. 1 in particular, to a lesser extent 2, 3
13 to some extent, but certainly parts of 11 and parts of
14 12 have those kinds of habitats there. And so that's
15 why we're not very happy with Lots 11 and 12 and
16 certainly not 1 and 2.

17 So if we were to propose a feasible and
18 prudent alternative, if you combine the vernal pool
19 impacts, the impacts to the headwater seeps, we could
20 see elimination of -- and/or something else with Lots 1,
21 2 and 3, maybe a combination of something.
22 Reconfiguration of Lots 12 and 13 for the other issue we
23 talked about, which is excessive cuts and fills, and
24 bring that lot further away from Vernal Pool No. 31.

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1 And then we have an issue with Lots 7 and
2 8. I don't think those are buildable, in my -- my book
3 at least, with that wetland right down there and these
4 steep slopes. So what I would do there is either
5 eliminate them or combine them.

6 Again, we're not trying to tell them they
7 can't have anything. We're just trying to say that
8 right now we believe that there is reasonable likelihood
9 of unreasonable pollution and paramount destruction of
10 natural resources; that there are alternatives and that
11 those alternatives considered these impacts will be
12 eliminated or reduced.

13 All right. I think I'll leave you with
14 that. But I'll take just one moment to look through my
15 colleague's report and see if there's anything that's --
16 that I have not addressed. I think we -- that page is
17 taken care of.

18 Well, I think that's good. If I think
19 it's necessary for me to comment on Mr. Kline's
20 rebuttal, I will certainly -- can do that in writing.
21 If you tell me you want it by a certain date, I can
22 certainly do that.

23 I think -- do you -- Charles, do you have
24 any closing remarks on our side at this point or are you

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1 good?

2 MR. ROTHENBURGER: No. I think --

3 MR. LOGAN: Again, I did not want to be
4 antagonistic at any point. I was maybe unclear as to
5 where we were going with this.

6 Yes?

7 CHAIRPERSON McINTYRE: Questions?

8 MR. ARESCO: Yes. I mean as far as in
9 writing, your comments --

10 MR. LOGAN: Yes.

11 MR. ARESCO: -- to his rebuttal, if we
12 could get that --

13 MR. LOGAN: Yes. Absolutely. And he
14 would get that.

15 MR. ARESCO: And your recommendations are
16 included in -- that you just recommended --

17 MR. LOGAN: Correct. Correct. I mean I
18 --

19 CHAIRPERSON McINTYRE: Let me just say
20 something here.

21 MR. LOGAN: Sure.

22 CHAIRPERSON McINTYRE: We close the
23 public hearing tonight.

24 MR. LOGAN: Okay.

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1 CHAIRPERSON McINTYRE: And then the case
2 get submitted to the record, as you know.

3 MR. LOGAN: Yeah.

4 CHAIRPERSON McINTYRE: So we -- I'm just
5 bringing a point that we --

6 MR. ARESCO: Yeah.

7 CHAIRPERSON McINTYRE: -- we'll close --
8 I just want to make everybody aware that we close the
9 public hearing tonight. Now we can't get anything from
10 --

11 MR. LOGAN: I got you.

12 CHAIRPERSON McINTYRE: -- the outside.

13 MR. ARESCO: Okay.

14 MR. LOGAN: If that's what you do, then
15 that's -- I'll defer to you.

16 Any other questions?

17 Okay. Well, thank you very much.

18 CHAIRPERSON McINTYRE: Thank you.

19 MR. ARESCO: Thank you, Mr. Logan.

20 MR. LOGAN: Appreciate it.

21 CHAIRPERSON McINTYRE: Okay. At this
22 time, I'd like to open the public hearing to the public
23 portion. And I know there's a Mr. Kermit Hua. Would
24 you please step up? Then we'll move on to everyone

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1 else.

2 Please identify yourself.

3 MR. HUA: Sure. Good evening, Chairman
4 and members of the commission. My name is Kermit Hua.
5 Tonight I'm presenting as a traffic consultant for an
6 area group ASAP, which stands Aligned for Area -- for
7 Sound Area Planning.

8 Now, in addition to the comments which
9 will be brief, I also prepared a detailed memorandum for
10 the commission. Obviously, given the limited time I'm
11 allotted, I won't go through line by line of the memo
12 itself. But I will touch the main points of the memo,
13 memorandum.

14 At this time, before I go further, can I
15 go ahead and just distribute this?

16 CHAIRPERSON McINTYRE: Yes. Please.

17 A VOICE: Thank you.

18 MR. HUA: Just some very quick
19 background. Again, this is Kermit Hua. I'm a
20 registered engineer in the state of Connecticut. I'm a
21 certified professional traffic operations engineer. I
22 have 14 years of experience. Most of those are in the
23 area of traffic engineering and transportation planning.

24 I am the principal of a traffic

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1 engineering firm, KWH Enterprises, LLC in Meriden,
2 Connecticut.

3 By the way, attached to the memorandum is
4 a professional resume for your information.

5 CHAIRPERSON McINTYRE: Thank you.

6 MR. HUA: The main focus of my comments
7 tonight is on the off-site improvements -- the
8 improvement requirements for this project.

9 The first item I want to discuss is what
10 is really the basis for analyzing the traffic impact of
11 this project. To me, this hasn't been sort of a stellar
12 question. Are we talking about three pods only or are
13 we talking about the whole development site?

14 The way I look at it, because this is a
15 modification to a 2005 approved special exception, it is
16 reasonable to look at this as a whole, including all the
17 components of the previous approval. On top of that,
18 obviously, we want to overlay what has been changed in
19 this iteration of the application.

20 So I think the basis for the analyzing of
21 the traffic impact of this development is the whole, not
22 only those three pods. The result of that is I feel the
23 related off-site improvements in the previous approval
24 for Ingham Hill Road and Bokum Road still applies in

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1 this situation, unless the part of the three pods have
2 changed significantly compared to the previous approval.
3 That's my opinion. That's point number one.

4 Point number two. As you are aware, in
5 the previous 2005 approval, there is a condition for the
6 off-site improvements to these two roads, Ingham Hill
7 Road and Bokum Road. What does that entail? This is my
8 recommendation to the commission. All of it. In other
9 words, not only we need to look at the intersections of
10 these two roads but the roadway segments between those
11 intersections as well.

12 There are several reasons for this. One,
13 obviously --

14 MR. BRANSE: Mr. Chairman?

15 MR. HUA: Go ahead.

16 MR. BRANSE: If I may? For the record,
17 Mark Branse.

18 Mr. Hua, the -- I believe that the
19 condition of approval to examine off-site traffic impact
20 is not limited to just intersections. I believe it is a
21 condition addressing any and all off-site --

22 MR. HUA: Okay. That's good. That's
23 good. Because, you know -- actually, for traffic
24 engineers, we always sort of assume the position, only

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1 think in terms of the choke points of roadways, which
2 are intersections. So I just want to emphasize we need
3 to look at, or not necessarily improve all those two
4 roads, we need to look at all the roadway sections that
5 will be affected by this whole project.

6 The reason I'm saying this, one,
7 obviously, the significant amount of traffic that's
8 going to be generated by this project. You know, you're
9 talking about 200-- over 220 residential units and golf
10 courses, club houses and so forth.

11 And the other is -- I think the other
12 aspect is the context of these two roads. We are
13 talking about two narrow, winding, steep, residential
14 roads with very -- sort of a limited access or not very
15 good access, I will say, to area highways. So that's
16 something to keep in mind when we evaluate the adequacy
17 of these roadway facilities in light of the significant
18 amount of traffic that's going to be generated by this
19 project.

20 If I may go into a little bit of detail?
21 I already discussed these roads are winding. They are
22 residential roads.

23 MR. BRANSE: Mr. Chairman?

24 I'm sorry. I didn't mean to interrupt

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1 you again.

2 We cannot address the 2005 approval.

3 MR. HUA: Okay. I understand.

4 MR. BRANSE: The subject of this hearing
5 is the modifications that the applicant is making to the
6 2005 --

7 MR. HUA: Okay. I'll stop right here. I
8 just want to emphasize the improvements --

9 MR. BRANSE: I appreciate your
10 background, but I --

11 MR. HUA: Right.

12 MR. BRANSE: You need to address the
13 current application.

14 MR. HUA: Right. Right. I want to
15 emphasize just, you know, we need to look at all the
16 roadway sections, not only intersections.

17 The third point I want to make is about
18 the intersection toward the southern end of Bokum Road,
19 which is the intersection of Bokum Road and Route 154.

20 River Sound Development, LLC retained a
21 consultant in October 2004. They prepared a traffic
22 study. The result of that traffic study is they
23 projected in year 2010 at this intersection, even
24 without the traffic from the Preserve project, traffic

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1 will operate at a level of service "E" and "F" during
2 peak hours. I want to emphasize without even one
3 additional vehicle from the Preserve project in year
4 2010.

5 Now, what does this mean? As you know,
6 traffic level of service is sort of a grading system
7 from Level A to Level F with Level A being the best,
8 with Level F being the worst.

9 So what we are talking about here is,
10 even without traffic from the Preserve project, those
11 operating conditions are troublesome. They represent
12 excessive delays for drivers. And any additional
13 traffic from the Preserve will only aggravate this
14 condition and put additional strain on this
15 intersection.

16 So, in my opinion, improvement related to
17 the Preserve project at this location is critical. It's
18 not only a sort of a capacity or congestion issue. It
19 may also be a safety issue.

20 The fourth point I want to point out is,
21 as you know, the current application really doesn't
22 commit to any specific off-site improvements, including
23 those two that were required in the 2005 application.
24 To me, that's very troublesome.

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1 What are the consequences if we allow
2 this project to proceed without these required
3 improvements to Ingham Hill Road and Bokum Road?

4 In my professional opinion, that will be
5 worsening the traffic congestion for area drivers and,
6 more importantly, I think the project will represent a
7 clear and a significant threat to traffic safety for the
8 driving public as well.

9 The fifth point -- I will really be brief
10 -- is the State Traffic Commission process. As you
11 know, for a project of this size usually, especially
12 when related to improvements to state roads,
13 intersections, there's an STC process. Although that's
14 not directly related to the commission's approval of
15 this project. But the town, either the staff or the
16 town's legal traffic authority or the commission itself,
17 as I recommend, should be sort of actively involved in
18 that process because towns does have input as far as
19 what STC will approve or will require as far as the
20 improvement to those state intersections.

21 Just as a background, again, I want to
22 refer to the applicant's own traffic consultant, their
23 traffic report produced in October 2004. They projected
24 very troublesome traffic levels. So there's at least at

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1 four -- at more -- at least at seven state intersections
2 in this area, all with Level of Service E or F. So
3 that's, again, the existing conditions. That's
4 something to keep in mind.

5 The final point I want to touch on is
6 obviously I -- when I started, I mentioned there was
7 some confusion about what exactly does this project
8 entail as far as a basis for analyzing traffic impact.

9 I want to assume a scenario, say,
10 development of a scenario, say someone would come in
11 with three residential pods just like what is proposed,
12 with no restrictions or previous approval or special
13 exception. Do you still require them to improve the
14 Ingham Hill Road or Bokum Road?

15 My personal opinion is you should. At
16 least you should look at it. Not only because the
17 deficient geometric features of those two roads and also
18 because even the amount of traffic represented by these
19 three residential pods represents a significant
20 increase when you compare it to the existing traffic
21 load or existing traffic volume on these roads
22 currently.

23 So, with that, I'll -- I'll just stop
24 here. I don't want to summarize all -- if you have any

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1 questions, I will be glad to answer.

2 CHAIRPERSON McINTYRE: Does anybody have
3 any clarification questions?

4 MR. ARESCO: It's all in here.

5 MR. HUA: It's all in here. Right.

6 Exactly.

7 MR. ARESCO: We got it.

8 MR. HUA: Go ahead.

9 MR. ARESCO: Thank you.

10 MR. HILLSON: Mr. Hua, you've indicated
11 that you heard a lot of the 2004 traffic study.

12 MR. HUA: That's correct.

13 MR. HILLSON: And you've also indicated
14 that the minimum traffic to be added by the development
15 would have a detrimental impact on the roadway at the
16 intersection.

17 MR. HUA: That's correct.

18 MR. HILLSON: Can you tell us the impact
19 at the peak hour trips associated with each of the three
20 pods? And also the volume of traffic traveling the
21 roadway (Indiscernible)

22 MR. HUA: I don't have the exact figure.
23 I can tell you as far as the magnitude of the increase
24 compared to the existing traffic, I would say in the

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1 double digits as far as the percentage increase.

2 MR. HILLSON: And at the intersection of
3 Bokum Road and Route 154?

4 MR. HUA: Yeah. If you look at the
5 traffic volume figures contained in the previous BL
6 Company traffic study, they do have a traffic count on
7 those two roads.

8 MR. HILLSON: And if they're operating
9 (Indiscernible) high volume of traffic?

10 MR. HUA: Well, obviously. Yeah. At
11 least on the approach, that's a serious level, yes.

12 MR. HILLSON: Okay. And then because
13 there are a dozen or so homes each --

14 MR. HUA: Right.

15 MR. HILLSON: -- the volume of traffic of
16 each of those would be (Indiscernible) nine or ten
17 trips?

18 MR. HUA: Right.

19 MR. HILLSON: That could be a dozen or
20 fifteen trips.

21 MR. HUA: Like I said -- I emphasize when
22 you consider the adequacy of traffic, you don't only
23 look at level of service. You also need to look at the
24 context of the roadways. Because if you have a

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1 development right next to a good highway access with no
2 congestion whatsoever, you have no problem. And the
3 context we are discussing here is very geometrically
4 deficient local roads, very narrow roads. So you have
5 to take that into account, into consideration, in
6 addition to the level of service.

7 MR. HILLSON: You've made the assertion
8 that the traffic that would be added by the three pods
9 would be detrimental to the roadways.

10 MR. HUA: Absolutely. Just as an example
11 --

12 MR. HILLSON: I'm just trying to get a
13 sense of the magnitude of this additional traffic versus
14 the traffic that's on the road right now.

15 MR. HUA: Right. What you need to also
16 keep in mind is when you already have an intersection
17 that's operating at unacceptable level of service, for
18 example, "E" or "F" -- an example is Bokum Road and
19 Route 154. Right? When you -- when it's already
20 congested, if you add additional traffic to it, the
21 marginal increase in traffic delay is much more than
22 compared to an intersection with acceptable level of
23 service.

24 In other words, if you add additional

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1 vehicles to that intersection, you will have much more
2 higher average delay than compared to adding, you know,
3 one vehicle to an intersection, say, operating at a
4 Level of Service C. Is that correct? Do you agree with
5 that?

6 MR. HILLSON: Well, what I'm -- what I'm
7 trying to get to for the benefit of the commission --

8 MR. HUA: Sure.

9 MR. HILLSON: -- is the relative impact
10 of the trips associated with the homes on the three pods
11 versus the total volume of traffic presently traveling
12 each of those roads, just so that they have a sense of
13 the magnitude --

14 MR. HUA: Like I said, I -- my estimation
15 is probably an increase in the magnitude of a double-
16 digit percentage.

17 MR. HILLSON: You're talking 10 percent?

18 MR. HUA: Probably more. Yes.

19 MR. HILLSON: So if the pods are
20 generating 13 trips during the peak hour, that means
21 there's 130 cars on the roads presently?

22 MR. HUA: I don't have the exact number
23 for you. But I think that, at a minimum, needs to be
24 looked at. We don't want to say, "Oh, because we only

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1 have three residential pods, we don't even want to look
2 at it." I think that's the wrong attitude to go about
3 it.

4 MR. HILLSON: I understand. You think
5 it's likely that double-digit increases --

6 MR. HUA: Most likely. Yes.

7 MR. HILLSON: I'm trying to get specific
8 numbers so we can understand exactly what impact it has.

9 MR. HUA: Sure.

10 MR. HILLSON: We know that 13 homes would
11 generate in the afternoon peak (Indiscernible) a dozen
12 to fifteen trips coming or going. So that means you
13 will probably have ten trips returning home and five
14 trips leaving.

15 MR. HUA: Maybe.

16 MR. HILLSON: And the surrounding
17 roadways, the Bokum Road area, maybe several hundred
18 cars on that same hour?

19 MR. HUA: You know, you can look at their
20 study to get an answer, I believe.

21 MR. HILLSON: Thank you.

22 CHAIRPERSON McINTYRE: Any questions?

23 MR. HUA: All set?

24 CHAIRPERSON McINTYRE: Thank you.

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1 MR. HUA: Thank you very much.

2 CHAIRPERSON McINTYRE: Does anyone from
3 the public wish to speak at this time?

4 Yes, Ma'am.

5 MS. MURANO: Hi. My name is Belinda
6 Murano. I live at One Barley Hill Road. I've written a
7 letter that I'd just like to read into the record.

8 It's my understanding that the special
9 exception granted for the Preserve development
10 modifications are going to be made to Ingham Hill Road,
11 including realignment of the road, the addition of
12 sidewalks and provisions for bike paths.

13 To my knowledge, the residents of Ingham
14 Hill Road neighborhood have not had the opportunity to
15 see any such plans or provide any feedback.

16 I am very concerned about the additional
17 traffic that the proposed two-phased development will
18 bring, not to mention the added traffic to and from the
19 planned recreational area. Even in Ingham Hill's
20 present state, there are serious safety concerns. I
21 cannot imagine what our narrow and scenic road might
22 become when the many trips, car trips, start winding
23 their way up and down Ingham Hill Road. It's doubtful
24 that Ingham Hill Road, even with modifications, can

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1 support the anticipated load of traffic.

2 Before any action is taken by the
3 Planning Commission, I request an opportunity, along
4 with other neighbors, to review and comment on the
5 roadway modifications that are planned by the
6 developers. I also look forward to seeing the report by
7 the town's traffic engineer's consultant.

8 And I can speak personally from an
9 experience on Ingham Hill Road where my husband and I
10 had a car veer into our lane. Fortunately, we were able
11 to go up onto the grass on the Mill Pond house. There's
12 now a fence there. So that wouldn't have been such a
13 great outcome had that happened now. And if we had been
14 just a little further down the road, we would have ended
15 up in the pond. So just -- just the fact that it's a
16 very dangerous road. And as well as Bokum Road, of
17 course.

18 Thank you for your time.

19 CHAIRPERSON McINTYRE: Thanks.

20 Anyone else wishing to speak from the
21 public?

22 MR. FORTIER: My name is Larry Fortier,
23 on Ingham Hill. I just wanted to make a comment in
24 regards to -- Attorney Royston was pointing out the

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1 difference between the subdivision on Ingham Hill Road
2 that was built a while ago where the lot sizes were
3 40,000 square feet, comparing it to the new proposal for
4 lot sizes on Ingham Hill Road of 60,000 square feet,
5 which is, from what I understand, the minimal lot size
6 today, which is a decrease from their previous lot sizes
7 of the original proposal.

8 The statement, from what I understand, is
9 that there is no adverse effect in terms of septic
10 system malfunction on the 40,000-acre-- the 40,000-
11 square-foot lot sizes on the more recent subdivisions on
12 Ingham Hill Road.

13 It was inferred, or I would assume it was
14 inferred, that, therefore, the 40,000-square-foot lot
15 size is adequate for a septic system existing on Ingham
16 Hill Road. The new 60,000-square-foot lot sizes that
17 are proposed on Ingham Hill with the Preserve should be
18 fine.

19 Well, that's an incorrect assumption
20 because -- for several reasons. Number one, we don't
21 know what's the type of geography underneath the land on
22 the new part of Ingham Hill Road. All of us have walked
23 parts of it with this commission or with other
24 commissions. And I think the most important thing to

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1 keep in mind is that it's a unique parcel of land. And
2 what you always -- what's the most important thing you
3 see on there is wetlands and rock outledges, rock
4 formations. So if you were having septic systems built
5 over rock formations, you're going to have to have a lot
6 more volume of land in order for the septic system to
7 work properly, whether it's 60,000 square feet or some
8 multiple of that. It really depends on how deep the
9 land is before you hit rock. Therefore, you can't make
10 the comparison.

11 The other thing is the density of the
12 number of houses per lot size has not -- has increased
13 because the lot sizes have decreased and the number of
14 houses has not changed.

15 I'd like to just make two other quick
16 comments in association with the fear of water
17 contamination, which -- and the reason I think that's
18 important for your commission is that at the Planning
19 Commission it was pointed out earlier tonight that you
20 have the ability to oversee a lot of different aspects
21 that come into the planning, including lot size and
22 septic system.

23 This last spring when, you remember, we
24 had those unbelievable long rain storms -- I live on

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1 Ingham Hill Road. And my basement has never, ever had a
2 drop of water in it. We had that huge rain that lasted
3 three or four days. We had something like eight or nine
4 inches of rain in one weekend. Well, the first time
5 ever, my basement flooded.

6 The point being if you are now -- there's
7 a critical -- there's sort of a critical side of how
8 much the land can drain in terms of septic systems,
9 whether it's a thousand houses, whether it's 10,000
10 houses, whatever that number is, a hundred. If you
11 exceed that, then you're not going to have proper
12 drainage. If you combine that with the fact that you
13 have -- we've been seeing changes in our weather
14 pattern. If we have this huge, nine-inch deluge of rain
15 over a weekend and you increase the amount of houses on
16 the land and if it's true that some of those houses will
17 be built over rock ledge, then it's obvious that you're
18 going to have malfunction of septic systems, which would
19 then affect the water of all the houses in the area.
20 And that's one of our major concerns.

21 The other example I think which would be
22 very easily appropriate for this situation is that,
23 living on the shoreline, we all know the beachfront
24 communities around here. I know Point of Woods over in

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1 Lyme. Every -- the last couple of years they've had to
2 close the beach once, a couple of times, in the summer
3 because the number of people increases during the
4 summer. The number of use of toilets increases. The
5 system is overloaded. So there's a critical number that
6 the land can accommodate. If you exceed that, you can't
7 have properly functioning septic systems and it affects
8 it. We've seen that at the beaches. We've seen it in
9 other places.

10 So I think that at your committee, it's
11 critical for you to consider this in order -- before you
12 give a permit. And I think, as we had mentioned last
13 time, it really -- you can't really make an intelligent
14 decision without knowing what the geography is under
15 each one of those lots of land, whether there's a rock
16 ledge five feet down, ten feet down, twenty feet down.
17 So it's -- it's a very difficult decision unless you say
18 No.

19 Thank you.

20 (Interruption in taping - changing from
21 Tape 3-A to Tape 3-B.)

22 CHAIRPERSON McINTYRE: -- because we
23 still have questions we have to ask.

24 MS. CROWLEY: Good evening. Kate

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1 Crowley. I'm going to keep with the septic theme
2 because it's near and dear to my heart. I'm a resident
3 of Saybrook Acres where the septic upgrades are starting
4 because it's the easiest neighborhood.

5 I'll get to my point real quick. I think
6 a solution in somebody's mind to the gentleman's comment
7 now would be these advanced systems that are built a
8 little bit above the ground and they can solve that.
9 It's my understanding the advanced systems are going to
10 be the last ones implemented because they are not yet
11 proven.

12 And I'm just going to ask you to be as
13 critical as you can be, more critical, as critical as
14 the person who stood in my little quarter of an acre and
15 dug my test hole or I'll get my septic system that I
16 don't need because my present system is functioning
17 perfectly. But I'm going to comply because Saybrook is
18 complying because we are progressive in the
19 environmental world.

20 Nobody up the river is getting a new
21 septic system like mine. But we're going to comply
22 because a little bit of nitrogen increase. So I'm just
23 -- when this change came around from the original plan
24 and now we're going to -- when I heard septic now

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1 instead of the waste treatment plant, I just -- it's
2 like so many red flags. And when we haven't even
3 started talking about public works and schools and who's
4 going to pay for teachers and where are we going to
5 build bigger schools and on and on and on. So I guess
6 that's a different meeting.

7 Thank you.

8 CHAIRPERSON McINTYRE: Thank you.

9 Okay. Okay. I'm going to close the
10 public portion of the public hearing.

11 A VOICE: (Indiscernible)

12 CHAIRPERSON McINTYRE: I don't know yet.

13 A VOICE: (Indiscernible)

14 CHAIRPERSON McINTYRE: Sure. Yes.

15 A VOICE: (Indiscernible)

16 MR. BRANSE: Wait a minute. You do --
17 you will have to come to the mike, though.

18 A VOICE: Can I just --

19 MR. BRANSE: No. You have to pick up on
20 the mike.

21 MS. McCUEN: My name is Sue Ellen McCuen
22 with the Alliance for Sound Area Planning. And the
23 Alliance is several hundred residents strong of
24 Saybrook, Essex and Westbrook. And there was a -- and,

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1 again, this -- I'll say this is nothing personal about
2 anything that's happened venue-wise. But there was a
3 problem with the venue. And there's many people that
4 didn't make it here tonight that. The meeting was at
5 the middle school, then at the library. And there's
6 several people I know who wanted to speak and submit
7 testimony. There's several of us still in the audience.

8 And you guys, I commend you for the time
9 you've -- you put in and you have to continue to be
10 putting in. But there still is public testimony that
11 needs to be at the very least submitted. And I'm
12 wondering if you'd at least continue it and have the
13 public speak first next time and, you know, give us an
14 hour, whatever it is. But there still needs to be, you
15 know, just a little bit more public testimony because
16 the public really has probably had a total -- there's
17 been 80 people here the past -- there's only been two
18 other hearings. And at this hearing, there's really
19 only been, you know, three, maybe, aside from CSE and
20 the people who have been speaking on our, you know --
21 obviously for our side as well, more the experts. But
22 the public still needs some time.

23 And I'm wondering if you could say that
24 you could continue it for two more weeks and have the

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1 public be able to speak.

2 CHAIRPERSON McINTYRE: It's something
3 we're going to discuss.

4 MS. McCUEN: Okay. But --

5 CHAIRPERSON McINTYRE: I can't make that
6 decision on my own.

7 MS. McCUEN: So those of us who have
8 testimony, we want to just make sure that we're not, you
9 know, locked out here with our testimony. We want it up
10 here. So, anyhow -- and we want the opportunity just to
11 speak because the applicants, you know, really are
12 rarely cut off. And I know they have to have more time.
13 They have lots to present as well. But, anyhow, we
14 would hope you would afford us the extended opportunity
15 as well as the applicants.

16 CHAIRPERSON McINTYRE: Okay.

17 (APPLAUSE)

18 CHAIRPERSON McINTYRE: So we're going to
19 close the public portion of the public hearing at this
20 time.

21 At this time, I'll open the proceedings
22 to the commission that have questions of the applicant.

23 MS. FLANAGAN: I have a question.

24 CHAIRPERSON McINTYRE: Sure.

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1 MS. FLANAGAN: I'm not exactly sure who
2 could answer it for me. But I think maybe Mr. Doane.
3 My question is if it is an accurate statement that the
4 proposed roadway for the Bokum Road pod does, indeed,
5 impinge on the 100-foot envelope for Vernal Pool 37.
6 Whoever could help me with that?

7 MR. ROYSTON: I'm going to have Bob Doane
8 answer that, answer that question.

9 And for the benefit of those people that
10 are still here, Mr. Chairman, the -- it is the applicant
11 who needs to request and consent to an extension of time
12 for the completion of the public hearing. And so I
13 would indicate in your decision-making process that the
14 applicant is willing to request and consent to an
15 extension of time for completion of the public hearing
16 to your next regular meeting.

17 Similarly, we would not object to the
18 procedure whereby the public was given an opportunity to
19 speak first. And I say this because this is consistent,
20 you may recall, with what the applicant has done in the
21 past in terms of allowing those people who wish to
22 comment to comment.

23 So I give you that information.

24 I'm now going to give it to Bob Doane.

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1 The question is does the cul-de-sac on the Bokum Road
2 parcel, RS-5 and RS-6, impinge upon the 100-foot upland
3 review area. I believe that's the question.

4 Also, I think, Bob, you're talking about
5 the cul-de-sac. And that's what he was referring to
6 when he said the roadway was in the same location as in
7 the original plan shown on RS-2. So this is probably a
8 good time to clarify that, also.

9 CHAIRPERSON McINTYRE: Do you need to put
10 that, your extension, in writing?

11 MR. ROYSTON: It's not required, but I
12 will.

13 CHAIRPERSON McINTYRE: Okay. Thanks.

14 MR. DOANE: In answer to your question --
15 for the record, Bob Doane. The cul-de-sac that we are
16 proposing, the roughly about a thousand feet, the end of
17 the cul-de-sac is within the 100-foot regulated area.

18 And one of the comments that --

19 MR. BRANSE: Mr. Doane, upland review
20 area of --

21 MR. DOANE: Of the Vernal Pool 37.

22 MR. BRANSE: Thank you.

23 MR. DOANE: And that location -- when I -
24 - when I started that we're exactly where the roadway

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1 was originally proposed, we followed the exact same
2 center line to the cul-de-sac. I did flip the cul-de-
3 sac. I had a symmetrical cul-de-sac before. And
4 pursuant to Mr. Jacobson's comments, I did flip the cul-
5 de-sac to get it further away. But the edge of the
6 roadway is -- is within 100 feet of the regulated area.

7 And to clarify what Mr. Logan was talking
8 about, this section of the road near Lots 4 and 3 was
9 shifted to the west. We do, however, go down the hill
10 and cross the railroad in the identical location as the
11 originally proposed roadway.

12 And the profile that I submitted to Mr.
13 Jacobson is the exact same profile that was originally
14 proposed as far as the grades coming up, the three
15 percent for the cul-de-sac and then going -- going up
16 three percent and then down seven percent to the
17 railroad.

18 Okay?

19 CHAIRPERSON McINTYRE: Anybody else?

20 MR. ARESCO: My question is to Mr. Kline
21 and it's concerning the information that I requested for
22 the past two meetings. I had mentioned in the last
23 meeting some of my concerns. And in order to make a
24 decision, there's information that I need and I believe

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1 the commission needs, that's directly related to our
2 Plan of Conservation and Development.

3 And we're charged with the responsibility
4 to protect wildlife and natural resources and plant and
5 animal species that are of threatened, endangered or
6 special concern. That's one of our responsibilities as
7 delineated in the Plan of Conservation and Development.

8 Now, one of those species -- there are a
9 number of them when I read the report, when I read
10 Michael Clemmons' report, there are a number of species
11 that -- I'll speak to the special concern. The one that
12 I had asked specifically about was the box turtle.

13 And when we read Michael Clemmons'
14 report, he talks about the tremendous decline in box
15 turtles in the state of Connecticut and the impact of
16 loss of habitat on that particular species. And the
17 concern is that any disturbances or significant
18 disturbances can push that particular species over the
19 edge from a species of special concern to one that
20 becomes threatened.

21 So my question over the last two meetings
22 and information I need to make a decision is
23 specifically with the box turtle. We wanted to identify
24 where those box turtles were located. And you had

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1 mentioned that -- and identified within the context of
2 the plan that you're presenting us. So if it's near a
3 pod one way or another, wherever it is, I want to see
4 where it -- where they are.

5 And then, secondly, you had mentioned
6 last time that the range was 15 acres. So what I would
7 like to see is where those turtles were located. And
8 considering that we have a 15-acre parameter, if we
9 could draw a line out at 456 feet, that would be the
10 radius of the range of the box turtle. Okay?

11 Now, I didn't do the math. Somebody
12 helped me do the math on that. But that would be the
13 radius of 15 acres.

14 I want to see where they are because any
15 disturbance in those areas is going to affect that
16 particular -- that particular species. So if I can have
17 that information --

18 And, secondly, what I had asked for over
19 the last two meetings is I wanted to see specifically
20 where the vernal pools were located, not only in the
21 modified area but -- Mr. Logan had mentioned this and
22 it's something that I had been talking about or thinking
23 about with this meta population dynamic where vernal
24 pools -- that's a process of extinction, as you know,

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1 and recolonization.

2 And vernal pools, regardless of how we
3 may view them in a snapshot, are interrelated because
4 under different climate conditions, as you know, those
5 pools could be not at all productive at one particular
6 snapshot in time but very, very productive in some other
7 snapshot of time.

8 So I wanted to see what vernal pools were
9 located within that 750 range for vernal pools located
10 on the -- on the pods and where they -- where that
11 extends out and their particular range because I'm of
12 the firm belief -- and if you read Clemmons' report, he
13 agrees with that. You know, he talks about the -- the
14 100 and 700-foot upland habitat. And that should be
15 reviewed.

16 So I'd like to get that information. And
17 I can't really make a decision on -- at least an
18 informed decision on all the information we get until I
19 get what I've been asking for.

20 And I do have one other comment. I
21 wanted to ask what kind of survey -- I noticed in the
22 Clemmons' report that his survey, particularly with
23 turtles, was using dip nets and baited traps and so
24 forth. Now, they're a very -- as you know, they're very

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1 private and very difficult to locate. And I understand
2 that when you want a survey done for that type of
3 species, they have dogs that can sniff out where they
4 are and locate them.

5 Now, given the quality of this habitat,
6 it seems to me that where there's a lo-- where we
7 located maybe three of them, there's a good probability
8 that there are many, many more or many more box turtles
9 out there that, if they were surveyed in the manner that
10 I just mentioned, that we may be able to find out and
11 discover where they are.

12 But first I need that information. And I
13 just want to make the comment on the survey. You know,
14 I don't -- I'm not satisfied in my own mind that the dip
15 nets and trap type of survey really serves our purpose.

16 But go ahead. Let me have it.

17 MR. KLINE: No. I won't. I'm just --
18 Michael Kline. I'm a little bit perplexed because what
19 I heard you ask me for specifically was where they were
20 located. And I showed you that on --

21 MR. ARESCO: No. I want --

22 MR. KLINE: -- the map.

23 MR. ARESCO: I guess I want to -- I want
24 to see it on your map as it relates to specifically

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1 what's there in the development. Are they -- is it
2 noted on our map that we got tonight?

3 MR. KLINE: No.

4 MR. ARESCO: Okay.

5 MR. KLINE: We can provide that
6 information.

7 MR. ARESCO: Okay.

8 MR. KLINE: I did not understand --

9 MR. ARESCO: Yeah. Well, I'm sorry.

10 MR. KLINE: -- what we gave you last time
11 was inadequate. I thought it had answered --

12 MR. ARESCO: Yeah.

13 MR. KLINE: -- the question. We could
14 certainly draw circles that have a particular radius.
15 But --

16 MR. ARESCO: Well, a 15-acre radius, I
17 mean, would be, what, 456 --

18 MR. KLINE: Yeah. I mean I assume your
19 math is right. I haven't done that. But --

20 MR. ARESCO: Well --

21 MR. KLINE: But I'm not sure that that's
22 -- a 15-acre range is not necessarily a radius. It's
23 not necessarily circular.

24 MR. ARESCO: Okay. So how would you

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1 suggest -- if you're going to talk about a 15-acre range
2 and you -- you know, you've uncovered turtles out there.
3 How would you --

4 MR. KLINE: Well, one of the things to do
5 is to look at the characteristics of the habitat that is
6 in the area around the turtles and understand which
7 areas they would be more likely to utilize. And that's
8 certainly something that we can do.

9 MR. ARESCO: All right. Now, would that
10 area be somewhere where you located them? Because
11 they're there. So, obviously --

12 MR. KLINE: Yes.

13 MR. ARESCO: -- it must be a good area
14 for them.

15 MR. KLINE: Yes. Yeah. In relationship
16 to those, we can --

17 MR. ARESCO: Right.

18 MR. KLINE: -- absolutely look at that
19 for you. I am happy to show the relationship of the
20 proposed modifications to the vernal pools not only on
21 the -- the pod areas but the entire site, subject to Mr.
22 Branse clarifying his comments about not revisiting the
23 prior approvals and everything that's already been
24 approved on the balance of the site. So --

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1 MR. ARESCO: But we agreed last time --
2 and Mr. Branse came to my defense on that one -- that it
3 would be appropriate to do that.

4 MR. BRANSE: I think what I actually said
5 was that recognizing that there is some relationship
6 between vernal pools, some synergy, you look at the pods
7 and those that are in sufficient proximity to them as to
8 -- as to impact or affect that -- that synergy, but not
9 necessarily the whole --

10 MR. KLINE: I'll be happy to provide --

11 MR. BRANSE: I don't know how far that
12 would reach.

13 MR. KLINE: Right. Understood. I thought
14 that in my initial testimony -- but now that goes back a
15 month ago -- that I said that we had looked at the
16 relationship of the proposed developments to the other
17 vernal pools in the balance of the property. We will
18 show that graphically to you. My recollection is that
19 for the west PRD, the 750-foot critical terrestrial
20 habitat barely touches the eastern limit of the west PRD
21 and certainly would not change any of the conclusions
22 about the -- whether or not those pools would be
23 conserved, according to the Clemmons and Calhoun
24 criteria.

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1 My -- I know I -- in -- in my notes, I
2 estimated the offset from the vernal pools on -- in the
3 southwestern portion of the core property to the Ingham
4 Hill Road development. And, again, a very small portion
5 of that radius penetrates into that area, that 750-foot
6 radius. We can provide you with some more specifics.

7 I thought I had testified that that
8 wasn't going to be -- have any adverse effect on that
9 conservation status of those areas.

10 With respect to the Bokum -- the Pionta
11 property, Bokum Road property, the -- certainly the --
12 the radii -- the critical terrestrial habitat from the
13 pools that are around the perimeter penetrates into the
14 center of that property.

15 The pool that's in the center that's been
16 the subject of some discussion, the Vernal Pool No. 37,
17 was never proposed to be conserved, according to the
18 Calhoun and Clemmons criteria.

19 MR. ARESCO: 37?

20 MR. KLINE: 37. Under any of the
21 proposals that you saw.

22 MR. ARESCO: Yeah.

23 MR. KLINE: And, in fact, what you will
24 see, if you read Dr. Clemmons' report, is a statement

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1 that says that the idea behind conservation and bio-
2 diversity planning is to look at the significance of
3 these areas and protect the ones that are the most
4 significant and that merely protecting a 100-foot radius
5 around a vernal pool --

6 MR. ARESCO: Doesn't do it.

7 MR. KLINE: -- or a wetland is not as
8 important as looking at the ecological functions and
9 values that that natural resource feature provides.

10 And in that regard, that area of Vernal
11 Pool 37 is very shallow, has a very short hydro period,
12 has very limited bio-- biological productivity and is
13 far more likely to act as a sink for amphibian bio-
14 diversity than a source, even when you look at it on a
15 meta population basis. It's most likely -- this is my
16 professional opinion -- that during times when that pool
17 is flooded long enough to be productive, to not serve as
18 a sink, all the other pools in the area will also be
19 flooded.

20 Conversely, during times of slightly
21 drier to extremely drier conditions, that pool is much
22 more likely to act as a sink, in other words, a place
23 where animals may go, lay their eggs and the eggs don't
24 last -- the larvae don't last long enough to mature and

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1 reproduce.

2 It's much more likely to act as a sink
3 than the surrounding pools. So that the -- certainly
4 the concept of meta populations and linkage of vernal
5 pools is one that I'm well aware of and agree that it's
6 an important factor. Vernal Pool No. 37 is not one of
7 those.

8 MR. ARESCO: Are there others out there
9 that have been -- that are low-productive that -- I
10 guess when you -- when you give us a picture of where
11 the vernal pools are, we'll be able to go to Clemmons'
12 report and say, "Okay. These are the ones that, you
13 know --

14 MR. KLINE: True. I'll even -- we'll
15 even classify them -- I mean he broke them down into
16 high, moderate and low productivity.

17 MR. ARESCO: Yeah. I can't find 37 on
18 his report.

19 MR. KLINE: Because that draft was done
20 before that area was identified. But it was
21 subsequently added in to the presentation that was done
22 to the Wetland Commission at the very least.

23 MR. ARESCO: Can I ask one more quick
24 question? Because I know it's late and everybody wants

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1 to go home.

2 MR. KLINE: It's the chairman's call.
3 I'll stay as long as you want.

4 MR. ARESCO: Clemmons referred to the
5 criteria that he used for prioritizing these particular
6 pools.

7 MR. KLINE: Mm-hmm.

8 MR. ARESCO: Is that his method of
9 prioritizing or is that based on published -- published
10 research that was done? And I'm still -- I'm trying to
11 figure out a little bit what that means. You know.

12 MR. KLINE: Yeah. I'm trying to
13 understand exactly what you mean as well because --

14 MR. ARESCO: Well, on Page 11, he talks
15 about --

16 MR. KLINE: Let me get my copy.

17 MR. ARESCO: I really hate to hold you
18 folks up. But I've been waiting for a long time to ask
19 this question.

20 You can use mine, if you want.

21 MR. KLINE: Okay. Then that might be
22 faster.

23 MR. ARESCO: I've got notes all over the
24 place. So --

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1 MR. KLINE: That's okay. I won't read
2 your notes. Oh, I got it.

3 MR. ARESCO: Go to Page 11.

4 MR. KLINE: Page 11.

5 MR. ARESCO: He talks about the
6 Calhoun/Clemmons 2002. Were they -- were they under
7 contract with -- in 2002, were those two gentlemen under
8 contract with River Sound when they did their original
9 studies?

10 MR. KLINE: I don't think so.

11 MR. ARESCO: Okay. How about --

12 MR. KLINE: I don't think Clemmons ever
13 met anybody from -- I wasn't even working for River
14 Sound in 2002.

15 MR. ARESCO: Oh, they weren't. Okay.

16 MR. KLINE: I preceded his involvement.

17 MR. ARESCO: Okay. And 2005, they were,
18 though.

19 MR. KLINE: Yes.

20 MR. ARESCO: Okay.

21 MR. ROYSTON: I believe that Dr. Clemmons
22 was engaged as an environmental consultant by River
23 Sound in November of 2003.

24 MR. ARESCO: Three. Okay. So when they

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1 did this report, it was prior to that.

2 So I guess my question was they have a
3 report that they did and I saw somewhere in here where
4 it says not published. But let's let that go right now.
5 And the criteria they use there, you'll read it. These
6 are pools, on Page 11, one, two, three paragraphs down -
7 - is this the criteria established by those two
8 gentlemen or is this an accepted criteria based on
9 published research? It says, "These two pools are the
10 highest -- these are pools of highest quality with
11 several" -- do you see that paragraph?

12 MR. KLINE: Yes.

13 MR. ARESCO: I'm not sure I -- you know,
14 is that research that's telling us this or is that
15 criteria he established?

16 MR. KLINE: The answer is both of those
17 are true.

18 MR. ARESCO: Both.

19 MR. KLINE: It's based on his -- well,
20 and first of all, just to make the record clear, Avram
21 Calhoun is, in fact, a woman. She is the primary author
22 on that work. Clemmons is a second author. This is a
23 direct quote. As I read this, and I could be wrong, I'm
24 -- but by the fact that it's set in smaller type, I

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1 think this is a direct quote --

2 MR. ARESCO: Yeah.

3 MR. KLINE: -- from his 2002 manual. And
4 based on the research that was available at that time,
5 they then developed criteria for preservation. Those
6 criteria are theirs. They proposed them to the
7 scientific community. To the best of my knowledge,
8 they're the -- they're the de facto standard.

9 MR. ARESCO: Okay.

10 MR. KLINE: But there's certainly no
11 regulatory criteria.

12 MR. ARESCO: Okay. Now, I just need to
13 clarify one thing.

14 MR. KLINE: Mm-hmm?

15 MR. ARESCO: He talks about -- I mean you
16 could read it through -- the pool envelopes and then,
17 going on here, it says, "With more than 50 percent of
18 the associated criterion upland habitat intact, one
19 should note that to be rated with more than 50 percent
20 of the associated criter-- wait a minute. Rated Tier 1.
21 And the threshold is 50-percent development or less.
22 However, as design standard for de facto development,
23 these authors recommend no more than 25 percent
24 development within that zone."

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1 MR. KLINE: Mm-hmm.

2 MR. ARESCO: What does that mean? Does
3 it say that, you know, when you have a Tier 1 pool, in a
4 Tier 1 pool they're saying in those zones, you know,
5 development should only be 25 percent? Is that what
6 they're saying?

7 MR. KLINE: They -- no.

8 MR. ARESCO: Okay.

9 MR. KLINE: What they're saying -- and
10 this is --

11 MR. ARESCO: It's a simple answer.

12 MR. KLINE: It's not a simple answer
13 because it's -- it's a subject of much misinformation.

14 The tiering system is not the same as the
15 criteria for conservation. And there's no specific
16 implication that a Tier 1 pool must be conserved or that
17 a Tier 3 pool should not be conserved. They're two
18 separate issues.

19 The tiering system says that in order for
20 it to be considered a Tier 1 pool it has to have certain
21 level of bio-diversity, certain number of egg masses and
22 species, and at least 50 percent of the potential
23 critical terrestrial habitat is undeveloped.

24 The conservation criteria say that in

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1 order to indicate with a reasonable degree of certainty
2 that the bio-diversity, amphibian bio-diversity, of a
3 pool will be conserved, no more than 25 percent of that
4 critical terrestrial habitat can be developed in the
5 future.

6 So there can be pools that are Tier 1
7 pools that, if you were changing nothing, they would not
8 meet the conservation criteria. That's a quirk in the
9 methodology.

10 MR. ARESCO: Yeah. Because, see, what
11 I'm -- I guess what I'm getting at is this. There's 31
12 pools, I guess, and there's 15 of them that's going to
13 be preserved. And I said, well, let's see. Twenty-five
14 percent of that is -- and, obviously, that's less than --
15 -- more than 25 percent is being developed in that
16 particular -- you understand? There's 31 pools that he
17 speaks of here.

18 MR. KLINE: Right. But each --

19 MR. ARESCO: And 15 --

20 MR. KLINE: -- pool is looked at
21 separately to determine whether the pro-- was looked at
22 separately to determine whether the proposed development
23 was -- met the criteria. So you could have two pools
24 that are very close together --

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1 MR. ARESCO: Yeah.

2 MR. KLINE: -- and that would have a
3 different interaction in terms of the way they relate to
4 the proposed development than two pools that are far
5 apart.

6 MR. ARESCO: All right. So what they're
7 specifically talking about here is each individual pool
8 --

9 MR. KLINE: Right.

10 MR. ARESCO: -- is looked at.

11 MR. KLINE: Right. We looked -- we, the
12 team, looked at each individual pool and came up with a
13 plan that conserved the vast majority of --

14 MR. ARESCO: And so -- so conserved 75
15 percent.

16 MR. KLINE: Of the bio-diversity --

17 MR. ARESCO: Of the bio-diversity of that
18 pool.

19 MR. KLINE: -- of the productivity, not
20 75 percent of the pools, because --

21 MR. ARESCO: The bio-diversity of the
22 pools.

23 MS. RYNECKI: Right. Preserving a pool
24 or conserving -- I'd rather say conserving. Conserving

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1 the bio-diversity of a pool that has ten egg masses has
2 a very different implication ecologically than
3 conserving the bio-diversity of a pool that has 1,010
4 egg masses. And the range on this site was from two, in
5 terms of what were identified as vernal pools, from two
6 to way over a thousand. So there's a huge range.

7 MR. ARESCO: Yeah.

8 MR. KLINE: And to conserve a pool that -
9 - that the planning process was designed to focus on
10 maximizing the conservation of the productivity of the
11 pools, not maximizing the number of pools -- because we
12 could have conserved lots of pools that were
13 unimportant. And I think --

14 MR. ARESCO: Okay. You explained how
15 that works then. Then I guess I was stumped. Thank
16 you.

17 MR. KLINE: Okay. But we -- we can
18 provide you with --

19 MR. ARESCO: Yeah. I'll take a look at
20 it. Thank you.

21 MR. KLINE: -- the information that you
22 want.

23 MR. ARESCO: I'm sorry to keep you all so
24 long here. I wanted to clear it up in my mind.

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1 MR. KLINE: Not a problem.

2 CHAIRPERSON McINTYRE: Are you all set
3 now?

4 MR. ARESCO: I'm done.

5 CHAIRPERSON McINTYRE: Okay. Is there
6 anybody from staff that has any questions?

7 MS. NELSON: I have one question
8 (Indiscernible) On RS -- for the record, Christine
9 Nelson, Town Planner. On RS-3, there's an
10 (Indiscernible)

11 COURT RECORDER: I'm not hearing you.

12 MS. NELSON: All right. For the record,
13 Christine Nelson, Town Planner. Mr. Doane, on RS-3,
14 there's a pedestrian easement from the proposed parking
15 area, trailhead parking area, that goes around the
16 northerly-most of the last two houses on the -- on the
17 road. And I didn't really -- I never really understood
18 what that was about.

19 MR. ROYSTON: Maybe I -- I should explain
20 that. If you take a look at -- on RS-1 and RS-2, it is
21 difficult to discern it, but it is the historic Ingham
22 Hill Road which was laid out as part of the trail system
23 in the overall development was -- is identified. The
24 Conservation Commission provided as part of their trail

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1 system desire -- and when I did meet with the
2 Conservation Commission, they didn't have a quorum. But
3 arising out of that discussion was if we were proposing
4 limited development, could we still connect the two
5 developments, that on Ingham Hill Road and that on the
6 PRD west? Could we have pedestrian easements connecting
7 to historic Ingham Hill Road? And that's what we agreed
8 to do. So we're showing actually just on RS-3 the
9 easement. We did not map the entire intervening area to
10 get it to historic Ingham Hill Road nor did we do that
11 on RS-4. But on RS-2 you could see where we did do
12 that.

13 MS. NELSON: (Indiscernible) connection
14 from RS-2 to RS-3?

15 MR. KLINE: No. From RS-3 --

16 MS. NELSON: Okay.

17 MR. KLINE: -- to RS-4.

18 MS. NELSON: Which is the --

19 MR. KLINE: The PRD west, the area
20 towards the west proposed town line. And that was
21 consistent with at least that portion of what the
22 Conservation Commission was looking for its trail system
23 to do in its 1994 plan.

24 MS. NELSON: Okay. Thank you. Thank you

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1 for that clarification.

2 CHAIRPERSON McINTYRE: Okay. Any other
3 staff members?

4 Mr. Branse?

5 MR. BRANSE: Yes. For the record, Mark
6 Branse. For Mr. Kline, a couple of questions.

7 At the bottom of your written report,
8 Page 2, you point out that the upland review areas are
9 regulated but only to the extent that there are wetlands
10 impacts. And I -- I agree with you from the standpoint
11 that that is how the Wetlands Commission review it. But
12 this isn't the Wetlands Commission.

13 Mr. Rothenburger, Attorney Rothenburger,
14 was saying that this commission has a broader -- a
15 broader charge, which I think is correct. So my -- my
16 question to you is you say that only -- yes, they're
17 regulated but only to the extent that proposed
18 activities can be shown to have an adverse impact on the
19 wetland itself.

20 And my question to you is in -- based on
21 your knowledge of the site and based on your review of
22 the plans, is it your professional opinion that there
23 will or will not be such an adverse impact on the
24 wetlands by activities, regardless of -- of distance,

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1 whether a hundred feet, less or more? Do you -- do you
2 -- is it -- what is your professional opinion as to the
3 -- the reasonable probability of adverse impacts on
4 wetlands from the site from the plan that is now before
5 the commission?

6 MR. KLINE: There are -- there will be
7 some effects. But I would like to consider that a
8 little bit more carefully before I -- before I answer
9 specifically. And part of the reason is that, as I
10 mentioned, there's no detailed plan yet for the grading
11 and home development and it makes it hard to answer that
12 with specificity. So I want to think about it and see
13 how much I can say and how much I can't say.

14 MR. BRANSE: Since it appears the hearing
15 will be continued, feel free to do that.

16 MR. KLINE: Right.

17 MR. BRANSE: I would only say to you that
18 your answer can be no more specific than the plans. So
19 my question is predicated on the level of specificity
20 that is before the commission now. So keep that in
21 mind.

22 MR. KLINE: So you're -- just to make
23 sure, because I had some confusion, obviously, with Mr.
24 Aresco and I don't want to extend this thing because I

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1 misunderstood something when we meet next time.

2 The question that you have is will the
3 proposed modifications result in an impact on the
4 wetlands.

5 MR. BRANSE: Will -- and the plans that
6 are on this table --

7 MR. KLINE: Right.

8 MR. BRANSE: Okay? Will -- in your
9 professional opinion, will what's -- what is proposed
10 here have an adverse impact on wetlands? What I'm
11 trying -- what I'm concerned about is that your report
12 says -- your report talks about what the Wetlands
13 Commission would regulate.

14 MR. KLINE: Mm-hmm.

15 MR. BRANSE: And that's not what's in
16 front of us. We have an intervention that claims that
17 there will be, in the professional opinion of an expert,
18 that there will be adverse impacts from what is shown in
19 this plan. So, naturally, I'm trying to find out from
20 you whether you agree with that or you disagree with
21 that; if you disagree with it, why you disagree with it.

22 Okay? It's not enough to say, oh,
23 wetlands -- you know, a hundred feet doesn't
24 automatically mean adverse impact. Yes, you're right.

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1 But that's not really the question. The question is
2 will there be such adverse impacts in your professional
3 opinion. Is it reasonably likely or not reasonably
4 likely that there will be -- and, again, the word in the
5 statute is -- unreasonable adverse impact on --
6 recognizing that all of us driving here tonight had an
7 adverse impact on the wetland. The question is --

8 MR. KLINE: Right.

9 MR. BRANSE: -- is there an unreasonable
10 impact. And that's a matter of your judgment.

11 MR. KLINE: Right. I understand your
12 question.

13 MR. BRANSE: Okay.

14 MR. KLINE: I will -- and I will answer
15 it. I will just say one thing, though. Recognize that
16 the -- this letter was written in response to specific
17 elements of the January 5 Rema letter. So that the
18 answers that I presented here respond to their
19 allegations, not an overarching question that you've
20 just asked me now.

21 MR. BRANSE: Well, except that what you
22 responded to in your report was Sigma Gadwa's written
23 report.

24 MR. KLINE: Right.

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1 MR. BRANSE: What you didn't respond to
2 were the questions I asked her and that she answered
3 verbally. And so I'm deliberately posing to you the
4 same -- essentially the same questions --

5 MR. KLINE: Yeah.

6 MR. BRANSE: Okay. For the purpose of
7 balance.

8 MR. KLINE: This writing, this report
9 wasn't trying to avoid that question. This was just
10 written for (Indiscernible)

11 MR. BRANSE: All right. And in the same
12 vein -- and, again, you can defer your answer. But in -
13 - I guess on Page 4 where you're summarizing, you talk
14 about what Rema fails to consider, in your opinion, and
15 you talk about the -- you emphasize words like
16 "potential" and "concerns".

17 MR. KLINE: Mm-hmm.

18 MR. BRANSE: And that, again, that
19 doesn't take cognizance of the verbal testimony of Sigma
20 Gadwa. But in that same way, I'll want you to address
21 the reasonable likelihood of unreasonable adverse impact
22 and so on. Not so much what they didn't do or didn't
23 say or did or didn't say, but what you have to say in
24 your opinion on that issue.

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1 MR. KLINE: Well, that -- that presumes
2 that it's the applicant's burden under the intervention
3 petition. And I -- I'll answer the question as best as
4 I can. But, again, I'll also preface it by saying that,
5 as far as my understanding of the statute, it's the
6 intervenor's burden to show that there's a reasonable
7 likelihood of unreasonable impact.

8 MR. BRANSE: Yeah. You just want to
9 think really carefully about the questions I asked her
10 and the answers that she gave.

11 MR. KLINE: Well -- yes. I -- you --
12 you've raised your questions very -- very carefully to
13 take her verbal response beyond the scope of the written
14 report. But I was just --

15 MR. BRANSE: Yes. And that's why I'm
16 doing the same for you. To be -- to be fair.

17 Thank you, Mr. Chairman.

18 CHAIRPERSON McINTYRE: Okay. Does anyone
19 else have any questions?

20 What's your question?

21 Attorney Royston is giving a letter for
22 extension -- for continuance. Excuse me.

23 Hearing no other comments at this time, I
24 want to close the -- did you want to make any statement?

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1 I'm going to close the -- I'm going to continue the
2 public hearing to --

3 MR. MISSEL: February 6.

4 CHAIRPERSON McINTYRE: Yeah. Yeah.
5 Continue the public hearing to the next regularly
6 scheduled meeting, Wednesday, February 2, 2010, 7:30
7 p.m., at the Old Saybrook High School where we're
8 sitting right now.

9 MR. JACOBSON: 2011.

10 CHAIRPERSON McINTYRE: '11. Oh, '11.
11 Okay. Thank you. 2011.

12 So we will be here. Hopefully we won't
13 have any confusion.

14 Chris, did you get a chance to check if
15 you're available?

16 MS. NELSON: There doesn't appear to be
17 any problem (Indiscernible)

18 CHAIRPERSON McINTYRE: Okay. So we're
19 going to get -- okay. Thank you.

20 MR. BRANSE: So we've announced a
21 location pending --

22 CHAIRPERSON McINTYRE: Okay.

23 A VOICE: Regular business.

24 CHAIRPERSON McINTYRE: Regular business.

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1 Okay. We're going to regular business. We've got three
2 -- let's do the important stuff here. We've got a
3 couple of bills from Branse, Willis & Knapp that we have
4 to take care of. The first one is Statement No. 26604
5 for it looks like \$29.00 we own them for that one.

6 Is that correct? \$29.00, Statement
7 26604. Is there a motion to pay Branse, Willis & Knapp
8 for parts (Indiscernible) Lock Subdivision, graded rock
9 road review.

10 MR. RANAUDO: I'll make a motion.

11 CHAIRPERSON McINTYRE: Okay. Motion made
12 by Don.

13 MS. ESTY: Second.

14 CHAIRPERSON McINTYRE: Seconded by Janis.
15 Any discussion?

16 Hearing none, all in favor?

17 VOICES: Aye.

18 CHAIRPERSON McINTYRE: Okay. Next one is
19 Branse, Willis & Knapp for general counsel
20 representation, Statement No. 26799, for a total of
21 \$275.50. Do I hear a motion?

22 MR. RANAUDO: I'll make a motion.

23 CHAIRPERSON McINTYRE: Don. Seconded by
24 Janis.

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1 Any discussion?

2 Hearing none, all in favor?

3 VOICES: Aye.

4 CHAIRPERSON McINTYRE: Okay.

5 Correspondence, we had a letter from the Yacht Club and
6 also a nice letter from Attorney Branse about his rate.

7 A VOICE: The rates are going down?

8 CHAIRPERSON McINTYRE: So -- and the
9 other thing we have to do before we could adjourn is --

10 MS. NELSON: The Yacht Club, they want to
11 come -- she wants to come sit before you.

12 CHAIRPERSON McINTYRE: We'll talk about
13 it next week. Yeah. We're anxious to see them. We
14 just -- our minds are not ready to think about that
15 right now.

16 Okay. The Minutes for Wednesday, January
17 5. Does anyone have any errors or omissions on any of
18 this draft Minutes as presented?

19 Okay. Hearing nothing, a motion to
20 accept the Minutes as presented?

21 MR. MISSEL: I make that motion.

22 CHAIRPERSON McINTYRE: Okay. Made by
23 Bob. Seconded by Janis.

24 Any discussion?

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1 Hearing none, all in favor?

2 VOICES: Aye.

3 CHAIRPERSON McINTYRE: Opposed?

4 All in favor.

5 Okay. Motion to adjourn? Oh, no. Wait.

6 Before we do, so everyone fully understands that we're
7 getting right down to the end. All right? Now is the
8 time, because we probably will -- you know, unless some
9 really strange thing happens, we shouldn't have to
10 extend this meeting any longer. We should have
11 sufficient information to answer all of our questions.
12 So make sure that if you have anything that's really
13 bothering you about this application or you have a
14 question, to have, you know, a written question ready to
15 ask.

16 And then if you -- you know, as we're
17 having the next meeting and we're going through and, you
18 know, before we close this thing -- you've got remember,
19 once the public hearing is closed, there is no
20 additional information, other than getting things from
21 staff. You cannot bring anything else to the table.
22 You can't -- in discussion you can't even bring it up.
23 If it wasn't presented at the public hearing, it's not
24 open for discussion. So make sure you get everything

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1 out on the table that you need out on the table. Okay?

2 All right. Motion to adjourn?

3 MR. RANAUDO: So moved.

4 MR. MISSEL: Second.

5 CHAIRPERSON McINTYRE: Okay.

6 All in favor?

7 VOICES: Aye.

8 CHAIRPERSON McINTYRE: Opposed?

9 MS. RYNECKI: Who made that second?

10 CHAIRPERSON McINTYRE: It was Don and

11 then Bob.

12 MS. RYNECKI: Who was it?

13 CHAIRPERSON McINTYRE: Don and Bob.

14 (Whereupon, the meeting was adjourned at

15 12:04 a.m.)

16

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