

1
2 OLD SAYBROOK PLANNING COMMISSION

3 "THE PRESERVE" MEETING
4

5 WEDNESDAY, DECEMBER 1, 2010, 7:30 P.M.
6

7 OLD SAYBROOK TOWN HALL - TRANSFERRED TO
8 OLD SAYBROOK MIDDLE SCHOOL AUDITORIUM

9 60 SHEFFIELD STREET

10 OLD SAYBROOK, CONNECTICUT
11

12 ORIGINAL
13

14 PLANNING COMMISSION MEMBERS PRESENT:

15 ROBERT J. MCINTYRE, CHAIRMAN
16 JANIS L. ESTY, VICE CHAIRMAN
17 SALVATORE V. ARESO, SECRETARY
18 DONALD J. RANAUDO, REGULAR MEMBER
19 ROBERT D. MISSEL, REGULAR MEMBER
20 CATHRYN M. FLANAGAN, ALTERNATE MEMBER
21 RICHARD L. SULLIVAN, ALTERNATE MEMBER

22 ATTENDING STAFF:

23 BRUCE HILLSON, TRAFFIC ENGINEER
24 DAMON HEARNE, ENVIRONMENTAL PLANNER/ACTING CLERK
25 MARK BRANSE, ESQ.
MICHAEL E. CRONIN, ESQ., CONSULTING LEGAL COUNSEL
CHRISTINE NELSON, TOWN PLANNER
JOANNE RYNECKI, PLANNING COMMISSION CLERK

COURT REPORTER:

DEBRAH VERONI, RPR, LSR #393

1 CHAIRMAN MCINTYRE: Obviously there's not enough
2 seats for everyone here to be comfortable, so we are
3 going to take this meeting -- we are already preset
4 just in case this happened -- over to the middle
5 school, that way everybody can be comfortable and
6 everyone can have a seat. Obviously we have a lot
7 more people coming than we anticipated, and even at
8 that the -- all the exhibits will be able to be
9 better seen. So if everyone would just head on over
10 to the middle school, and we are going to start at
11 eight o'clock.

12 (Meeting is resumed at middle school.)

13 CHAIRMAN MCINTYRE: Good evening, ladies and
14 gentlemen. Everyone looks a lot more comfortable
15 right now. Okay. I'm going to start the meeting.

16 It's a regularly scheduled meeting of the
17 Planning Commission, and it is -- we were scheduled
18 to be at the first floor conference room of Town
19 Hall, however, because of space constraints we have
20 moved the meeting to the Old Saybrook Middle School.

21 First order on the agenda tonight is roll call
22 tonight: Robert McIntyre, Chairman, that's me; Janis
23 Esty, Vice Chair; Sal Aresco, Secretary; Robert
24 Missel, Regular Member; Don Ranaudo, Regular Member;
25 Cathryn Flanagan, Alternate; and Rich Sullivan,

1 Alternate. Tonight all regular members are here, so
2 they will all be voting.

3 I need a motion to move regular business below
4 the public hearing.

5 MR. ARESCO: So moved.

6 MR. RANAUDO: Second

7 CHAIRMAN MCINTYRE: Second.

8 Any discussion?

9 Hearing none, all in favor?

10 (All voted in favor.)

11 CHAIRMAN MCINTYRE: Okay. Next item on the
12 agenda is the public hearing on The Preserve
13 Modification to Approved Special Exception for the
14 Preliminary Open Space Subdivision Plan for 226 total
15 dwelling units, 925.82 total acres, and Open Space,
16 556 -- 556.83 total acres, Ingham Hill Road and Bokum
17 Road, map 55/L3, map 56/L6, map 61/L15, and 17, and
18 18. Residence Conservation C District Aquifer
19 Protection Area. Applicant: River Sound
20 Development, LLC, Owner/Agent: Robert -- I mean
21 David M. Royston, Esquire. And our action is to
22 consider new regulation and revisions to the old act
23 and set an effective date.

24 I'd just like to ask everybody in the audience
25 to make sure their cell phones are off. And when we

1 get to the public portion of the public hearing, if
2 you're called upon to speak, then you need to state
3 your name and your address for the record. Okay.

4 Just -- there's a lot of new members on the
5 board. And obviously I've seen a lot of familiar
6 faces out there. Nice to see you all again. There
7 are probably new people here who don't understand how
8 we do business. First of all, we are going to open
9 up the floor to the applicant. And once -- the
10 applicant is going to speak for approximately an hour
11 and then the Connecticut Fund for the Environment is
12 going to speak next. After that I will open up the
13 floor to the public to make comments for or against.
14 And then once that's all closed out, we will -- the
15 board will ask some questions of the applicant,
16 whatever questions we need of our staff.

17 I would like to say to the board members the
18 best way to run this meeting is to let the applicant
19 go through his presentation or anybody presenting,
20 let them go through their presentation. And if you
21 have any questions, write them down and then ask them
22 at the appropriate time. The only time you should
23 interrupt an applicant or anyone presenting is to get
24 clarification. Like if you didn't hear, for
25 instance, where this was or where that was, ask for

1 clarification. But we should not be getting into any
2 debate at this point or asking any questions that can
3 be held until after the applicant or whoever is
4 speaking finishes. It just helps move the process
5 along quickly.

6 We probably -- I don't know how many -- well, a
7 lot of the faces out here -- we used to go to 12:30,
8 one o'clock. We are going to try not to do that this
9 time. Right now we plan on pretty much shutting down
10 at 11:30. I know by 11:30 everyone is pretty tired.

11 MS. NELSON: Ten thirty.

12 CHAIRMAN MCINTYRE: Ten thirty, okay. The
13 custodians go home at eleven, so we have to kind of
14 vacate at 10:30. All right.

15 So at this time I would like to ask Attorney
16 Royston to step forward and make his presentation.

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

18 My name is David Royston. I am the local
19 attorney for River Sound Development, LLC, which is
20 the applicant. My address, home address is 6 Wild
21 Apple Lane, Old Saybrook. And that is up Ingham Hill
22 Road and abuts the land of the applicant. If I
23 didn't know there was a public hearing tonight as the
24 attorney, I would -- certainly would know by The
25 Preserve, our thousand-acre forest signs along Ingham

1 Hill Road as well as the benefit of an agenda for
2 this meeting in my mailbox.

3 I'd like to start out by departing slightly from
4 your rules. You indicated that we would have
5 approximately an hour and then the Connecticut Fund
6 for the Environment would speak. Attorney
7 Rothenberger has advised me and has provided me a
8 copy of their intervention, which is a verified claim
9 that there may be environmental issues; a reasonable
10 likelihood there will be. And I would like to ask
11 that he be allowed to present his intervention, put
12 it in the record so that he is a --

13 CHAIRMAN MCINTYRE: Do you want to try my mic,
14 Dave, see if it works better?

15 MR. ROYSTON: So that he can participate during
16 presentation of positions at that time having already
17 presented his intervention, if that's acceptable.

18 Attorney Rothenberger.

19 MR. ROTHENBERGER: Thank you, Attorney Royston.

20 For the record, my name is Charles Rothenberger,
21 staff attorney with Connecticut Fund for the
22 Environment. And my address is 142 Temple Street,
23 New Haven, Connecticut, where the offices of
24 Connecticut Fund for the Environment are also
25 located.

1 As Attorney Royston indicated, we will be filing
2 a notice of intervention pursuant to 22a-19 this
3 evening. I have an original copy with me. I've
4 already supplied Attorney Royston with a copy of that
5 filing, and I also have eight copies for the members
6 of the commission. So I'll do that now and that will
7 be it for the time being.

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

9 With me tonight is Robert Levine, who's the
10 owner/representative of the applicant. The applicant
11 is River Sound Development, LLC. River Sound
12 Development, LLC is a wholly-owned subsidiary of a
13 wholly-owned subsidiary of Lehman Brothers Holdings,
14 Inc. Lehman Brothers Holdings, Inc. is in
15 bankruptcy. Lehman Brothers Holdings, Inc. has
16 assets, and one of those assets is River Sound
17 Development, LLC. River Sound Development, LLC's
18 sole asset is the property known as The Preserve.
19 That property consists of 1,000.1 acres consisting of
20 893 acres, which I'll call the main portion of the
21 property, and that's the property lying essentially
22 south and southwesterly of the Valley Railroad, over
23 the Valley Railroad over to Ingham Hill Road, around
24 Ingham Hill Road where it abuts property of the town
25 on the north, the Town of -- Essex town line and on

1 the north also the Westbrook town line. That's 893
2 acres which we have referred to and will refer to as
3 the forest core of the property, 816 acres of which
4 are unaffected by this application. Those 893 acres
5 are supplemented by land known as the Pianta parcel.
6 That is a parcel on Bokum Hill -- on Bokum Road which
7 is separated from the main portion of the property in
8 Old Saybrook by the Valley Railroad.

9 There is no present crossing of the Valley
10 Railroad from the parcel on Bokum Road to the main
11 893 Old Saybrook acres on the other side of the
12 Valley Railroad. There is also -- so that brings you
13 up to 925 or so. And then you have about 70 acres
14 which extend in two pieces into Essex and another
15 approximately five acres of two pieces which extend
16 into the Town of Westbrook. Again, that is the sole
17 asset of River Sound Development, LLC, its property,
18 and it owns no other property.

19 Robert Levine will address you tonight at a
20 later point, but he is the owner's representative.
21 Since the bankruptcy he has been the individual, the
22 real person who is responsible for representing the
23 trustees in bankruptcy with respect to this property.
24 Also with me tonight is Robert Doane. Robert Doane
25 is an engineer and principal in Doane, Collins

1 Engineering, who has been engaged for the engineering
2 aspects regarding what we have described as proposed
3 limited development of the River Sound property.

4 Also with me tonight who will speak is Michael
5 Klein, who is an environmental consultant and soil
6 scientist who has been involved with this property
7 since earlier applications. And he's, again, been
8 engaged with respect to this particular application.

9 Mr. Chairman, you've indicated ground rules. We
10 will be allowed to make our presentation and
11 afterwards others would speak. And I know there are
12 many people here, and the people are desirous of
13 expressing their opinion and viewpoints. We have
14 received up through today various reports from the
15 commission's consultants, including a report from
16 your attorney, from your traffic engineer, from town
17 staff. There's a written report from the
18 Conservation Commission, from the fire department,
19 fire marshal and from the police department, police
20 commission to the police department. We have
21 received those, and we probably have had as much
22 opportunity as you have had to peruse them and
23 understand what the recommendations and the
24 viewpoints are in those reports.

25 It would be our request and our intention to

1 have this meeting, once it is adjourned, to be
2 continued until your regular meeting of January
3 5th, 2011. I realize that you have a regular
4 meeting in between, but I think that it is
5 appropriate, given the importance of this particular
6 application, that the commission have an opportunity
7 to fully digest the materials that have been
8 presented to it and that the applicant be able to
9 address those comments and the comments that are
10 provided by the public at this meeting.

11 We expect, from having looked at -- on -- about
12 a week on some of them, much less on others, that
13 there are many appropriate comments which we can
14 address in our application by revisions to either the
15 maps or by revisions to the statement of use or by
16 other acknowledgements in the statements applicable
17 to this particular original application. There are
18 some comments which we believe are inappropriate as
19 to what we are applying for. And we will indicate
20 those that we don't think are appropriate which
21 involve the original modification and involve aspects
22 of the, excuse me, the original special exception.
23 It involves aspects of that special exception which
24 we are not impacting, do not want to impact, do not
25 intend to impact, do not intend to change. We will

1 provide as soon as possible those materials so that
2 they can be submitted as part of the record and be
3 available for consideration by the intervenor, as
4 well as the commission, as well as the public.

5 Having said that I also think it's necessary to
6 spend a little bit of time to have an understanding
7 of the historic background of this special exception;
8 how we got to where we are. And for that purpose I
9 would like to just go back to no earlier than 2003,
10 before that. We'll start in 2003. 2003 was the day,
11 in September 2003, at which the Residence C
12 Conservation District was approved. And it was
13 approved upon application of River Sound Development,
14 LLC. It had acquired the property and the -- by
15 foreclosure of the original developer. And at that
16 point it was taking a fresh look at the property in
17 2003 and determined that -- at that time that a
18 conservation district would be appropriate for the
19 town and for its development. The conservation
20 district in which there would be a procedure whereby
21 you would determine what could you develop on this
22 property conventionally; what could you get under the
23 then existing regulations, how many house lots, and
24 then limit you to that number but to allow you a
25 reduction in the density of the lots, the size of the

1 lots, to allow you a reduction to cluster, to allow
2 you to have a planned residential development.

3 Fifty percent -- not less than 50 percent open
4 space, that's what the regulation provided for. And
5 it provided a two-step process. And step one was to
6 go before the Planning Commission, present them the
7 documentation with respect to what could be obtained
8 conventionally and then the commission would make a
9 decision. Present an open space plan and the
10 commission would make a decision on that. And that's
11 what occurred in 2004. River Sound came in with a
12 plan for the entire property, and that plan consisted
13 in its original application. It said that it would
14 be able to obtain 278 building lots on that property.

15 And the first issue which was addressed by the
16 commission as to whether that conventional layout
17 would include a golf course, and it was felt that no.
18 If you're going to have a golf course on it, then you
19 have to take the golf course land out of that in
20 determining the yield. And when that occurred the
21 applicant's open space plan, the yield plan, said we
22 could get 248 lots. The commission reviewed that
23 plan and determined, based upon characteristics and
24 based upon criteria and the subdivision regulations,
25 that no, we don't think you could.

1 And the commission, as step one, approved 221
2 units, housing units. None of those housing units
3 were on the Bokum Road parcel. All 221 housing units
4 were located on the land which was to the west and
5 south of the Valley Railroad. All of them. River
6 Sound's open space plan for 200 -- for the 221 units.
7 And originally, again, remember they said they
8 were -- they had 248 on it. The decision said no.
9 It's only 221.

10 MR. BRANSE: You said 220 a moment ago. It was
11 221.

12 MR. ROYSTON: Two twenty-one. Two twenty-one,
13 excuse me.

14 And the commission said okay. In your -- we are
15 approving your general open space plan, but when you
16 come to bring in final plans, you're going to need to
17 reduce your housing units at 221. You're going to
18 need to do a variety of other things.

19 And in order to make this application
20 consistent, we have attached to our application
21 materials a modified statement of use. And in
22 that -- attached to it as part of the documentation
23 is the original approval in March of -- March 23rd,
24 2005. That original approval; the conditions of that
25 approval.

1 That decision by this commission was appealed to
2 the courts and it was appealed by the Connecticut
3 Fund for the Environment. And they appealed that
4 decision both on the procedural regulation as well as
5 the decision that was made by the Planning
6 Commission. The court dismissed that appeal. In
7 other words, that special exception which was
8 approved and which is contained in the documentation
9 that we had provided to you was sustained by the
10 courts. That special exception continues in
11 existence.

12 The Zoning Commission adopted a regulation which
13 extended the period of time by which final plans
14 would have to be submitted, and that extends the date
15 out to no later than March 23rd, 2015.

16 After the decision was made and it was appealed,
17 the appeal was upheld. That court decision did not
18 come down until 2008. I believe it was 2007, 2008.
19 In the meantime what the applicant did was to prepare
20 a plan which was essentially to incorporate the
21 changes that were required by the approval and
22 that --

23 CHAIRMAN MCINTYRE: Attorney Royston, you seem
24 to be addressing that map. If you could read the
25 information off the map; its revision level, also.

1 MR. ROYSTON: Yes, I will. And that -- those
2 approval conditions were incorporated into the maps
3 prepared by BL Companies, which were part of the
4 application to the Old Saybrook Inland Wetlands &
5 Watercourses Commission for the permits required for
6 the full development of the property. Full
7 development of the property means 221 housing units,
8 a golf course, country club and all the roadways,
9 infrastructure, community septic system, public
10 water, water tower that were included within the
11 approved plan in 2005. Those maps were submitted to
12 the Wetlands Commission.

13 But what the applicant has done is taken those
14 maps and essentially included this as part of its
15 application. And the map I'm referring to is
16 designated as RS10T. It's a 400-scale plan dated
17 October 7, 2010. That plan is the first map of the
18 set that's been provided to you.

19 CHAIRMAN MCINTYRE: There's no revision level.

20 MR. ROYSTON: There's been no revisions of that
21 map as of yet.

22 And that map includes the breakdown of the 221
23 housing units on the table which shows the cluster
24 development and what I'll call the forest core of the
25 property; the surrounding property.

1 And in this particular map which I will -- I
2 think you can probably identify even further away
3 from that. But if you -- what I'm holding up and
4 showing is on this particular map. Outlined in or
5 shaded in green are the areas within that particular
6 original plan that are proposed for development in
7 this application. And if you take a look at that
8 first sheet, you will know that on Bokum Road there
9 is now -- there are no houses; there are no lots.
10 There is no proposed development other than an access
11 road.

12 If you take a look over on the Ingham Hill Road
13 side, you will note that there is no development
14 proposed in that area other than there is the
15 potential for ballfields in that area. And we'll get
16 into that a little bit later.

17 Over on the westerly side, adjacent to the
18 Westbrook boundary line, the original plan showed 28
19 half- to three-quarter-acre lots located on
20 approximately 37 acres. So that essentially was the
21 plan that was approved by the Planning Commission in
22 2005. And the need to put it on a map in this way is
23 because, as I mentioned, the actual special exception
24 was under appeal. And the maps were prepared even
25 while it was under appeal for wetlands purposes.

1 There has been a question as to whether or not
2 that map fairly represents the conditions of
3 approval. And I would like to submit for your
4 record -- Mr. Chairman, if you could tell me how you
5 want me to -- who you want me to give the record to.

6 (Mr. Chairman points to Ms. Rynecki.)

7 MR. ROYSTON: To Joanne, okay.

8 This is the original letter from Dennis Goderre.
9 And some of you may recall Dennis Scodara was
10 employed by BL Companies. And there's some
11 additional copies. Was employed by BL Companies and
12 was the project manager particularly during the
13 wetlands application. And he has, at our request,
14 reviewed the map which Bob Doane prepared based on
15 the BL Companies' maps to determine whether it
16 accurately represented what were the conditions of
17 approval. And if you go through the letter, he
18 indicates that he confirms that it does with a couple
19 of exceptions. And the exceptions are relatively
20 minor, but in the letter he said that the 40-scale
21 plans which are on file in the land use office dated
22 September 1, 2005, show the bike trail referenced in
23 condition B of extending southerly to the end of the
24 central building but not to Ingham Hill Road,
25 although the right-of-way is the appropriate width to

1 accommodate the bike trail. This should be
2 corrected. So if you look very carefully, and you
3 may need a magnifying glass, but if you take a look
4 at what we represented to be the plan as it was
5 approved in 2005, you'll see that there is a black
6 line along the Pequot Swamp side of that particular
7 road. And it extends past what is called the Central
8 Village on that plan but does not extend all the way
9 to Ingham Hill Road.

10 CHAIRMAN MCINTYRE: The map you're referencing
11 is the one you previously --

12 MR. ROYSTON: Again, that's RS1. And we are
13 prepared clearly to correct that error. That would
14 be one of the map changes that we would correct.

15 The second item is the -- which is more a
16 reference to the Ingham homestead. In your original
17 approval it was indicated that there would need to be
18 a -- some preservation protection of the Ingham
19 homestead. And if you take a look at this plan --
20 again, you may need a magnifying glass. But if you
21 take a look at the -- where the Ingham homestead is
22 located, it's a little square.

23 CHAIRMAN MCINTYRE: Why don't we let the record
24 show that Attorney Royston was showing Sal the Ingham
25 homestead.

1 MR. ROYSTON: Correct. And it's been marked in
2 yellow on that copy of the map. And we will make
3 sure that it is, in any revised map, identified
4 specifically as to its location.

5 And if you compare the original plan, the
6 original plan had a golf course cart path which was
7 using portions of Old Ingham Hill Road. And one of
8 those portions was adjacent to the Ingham homestead.
9 And in the -- this modified plan, which, again, we
10 have represented as incorporating those conditions,
11 has a totally rerouted golf course cart path plan so
12 that it does not impact in any way Old Ingham Hill
13 Road or the Ingham homestead.

14 We would expect that in any final plan -- and I
15 think this should be put into specifically any
16 conditions of approval -- that that be further
17 preserved and protected in any final subdivision plan
18 which involves the trail system or that portion of
19 the property. And I say that specifically because,
20 again, that portion of the property is not -- which
21 is an area which is involved for development under
22 this application. Yes, sir.

23 MR. ARESCO: Now, when you're talking about that
24 cart that's in the core here, the golf cart -- golf
25 cart trail or path, it's in the core.

1 MR. ROYSTON: That's correct.

2 MR. ARESCO: So you're making the modification
3 in the core.

4 MR. ROYSTON: No, I'm not. What I am saying is
5 in the -- when the plan in 2005 was prepared for the
6 wetlands application, it incorporated the conditions
7 of approval.

8 MR. ARESCO: Got it.

9 MR. ROYSTON: One of those conditions was that
10 the Ingham homestead should be protected. So what I
11 am indicating is from Dennis Goderre's letter, that
12 that was consistent with that particular requirement.

13 MR. ARESCO: Got it. Thank you.

14 MR. ROYSTON: But, again, that is not an area
15 which we propose to touch, impact, change, modify in
16 any way. It's shown on that plan, that forest core.
17 That interior 816 acres is not an area which we are
18 attempting to modify. So this plan basically
19 reiterates the plan that was taken to the Wetlands
20 Commission. This shows what was the plan,
21 incorporating your conditions.

22 As you well know, the Wetlands Commission
23 considered a plan for the development of the entire
24 property; the regulated activities associated with
25 the development, full development of the entire

1 property. The Wetlands Commission, after extensive
2 hearings in 2006, denied a permit for those regulated
3 activities on a vote of four to three. That decision
4 was appealed by River Sound Development, LLC. Its
5 appeal was dismissed in Superior Court. Another
6 Superior Court said the Wetlands Commission acted
7 properly in denying that permit; it had a basis for
8 doing so. That decision was appealed to the
9 Appellate Court. And the Appellate Court likewise
10 sustained the decision of the Superior Court saying
11 that there was a substantial basis in the record, and
12 the Superior Court and the judge appropriately.

13 River Sound sought to have the Connecticut
14 Supreme Court rehear that decision. The Connecticut
15 Supreme Court declined to do so. That decision is
16 final. So that would require some change to that
17 plan, if the plan with respect to the forest core was
18 to go forward. That's one of the options.

19 I'd indicate to you also that there is one other
20 piece of litigation which has not yet quite been
21 resolved, and that is the decision of the Wetlands
22 Commission to modify a bonding condition for a golf
23 course only wetlands permit. And that decision
24 likewise was appealed by those unhappy with it, and
25 that happened to be the Connecticut Fund for the

1 Environment and Robert Lorenz. And that appeal was,
2 interestingly enough, heard at the same time in the
3 Superior Court, and the Superior Court upheld that
4 change in the bond condition for that permit. That
5 was appealed by CFE and Robert Lorenz and the DEP to
6 the Appellate Court, and the Appellate Court again
7 upheld the decision. The DEP and Robert Lorenz have
8 requested the Supreme Court to rehear that case, and
9 that decision is still pending. And unless Attorney
10 Rothenberger has more recent news than I, a decision
11 has not yet been made on that petition.

12 So that's a permit for a golf course in a larger
13 area of the property. So --

14 MR. BRANSE: I'm sorry, Mr. Chairman. For the
15 record, Mark Branse.

16 The golf course that's the subject of that
17 pending certification, is it the same golf course
18 that's on this plan?

19 MR. ROYSTON: It is not. It is in generally the
20 same location, but there are variations in the
21 routing of the golf course. If you look at it as
22 being essentially nine holes on the -- let's call it
23 the more southerly, southeasterly side of the
24 property, nine holes being more on the westerly side
25 of the property that is essentially the same. The

1 routing varies. The acreage encompassed by that golf
2 course is approximately 248 acres, where the acreage
3 of this one's approximately 200 acres. So -- but
4 not -- neither -- I should say neither of those
5 decisions impact what the applicant is seeking to
6 modify, because it is not seeking to do any
7 development this time with respect to that forest
8 core, whether it be full development according to the
9 original plan, some modification of that development,
10 partial development, different development or no
11 development. What we are seeking from this
12 commission does not involve that forest core.

13 After those appeals were concluded -- let me go
14 back a step. The Lehman Brothers Holding goes into
15 bankruptcy in 2008, and now certain decisions need to
16 be made. One of the first ones was to conclude that
17 litigation, but it's also to take another look at the
18 property. And Robert Levine will talk to you about
19 that.

20 But what has occurred since then, this plan
21 sheet RS1 represents substantially the modified plan
22 that you approved in 2005. A lot has changed since
23 2005. And one of the things when you read -- I think
24 some of the comments I would ask that you take into
25 consideration is that when this application was made

1 to change the regulations in 2003 and the application
2 was submitted in 2004 for the full development of
3 this property, circumstances were much different than
4 they are today. The idea of a full and comprehensive
5 development of the property was at that point
6 considered to be economically sound because of the
7 need to provide a tertiary, a community septic
8 system. So septic disposal system. The need for
9 water infrastructure things and all those tied
10 together and as part of the presentation of why the
11 entirety was needed. Why this number of units was
12 needed was in order to be able to develop that
13 property as one entire hold. Times have changed.

14 It's also interesting -- I just point this out
15 to you as the Planning Commission. Take a look at
16 the 1970 plan of conservation development which it
17 said we need to be prepared for -- by 1980 for 20,000
18 full, year-round population and that it's going to
19 increase beyond that. That's what it says.
20 Circumstances changed, time changed and dramatic
21 changes have occurred since 2005 and now.

22 So litigation has almost ended. Litigation with
23 respect to the original proposed development of this
24 property has ended by the Supreme Court declining to
25 rehear that case. So now here we are and we are

1 back. And I would respectfully request that you not
2 believe everything you read in the newspapers and
3 that you take a look at the material that is
4 presented to you on the record and read the comments
5 that have been made. There is a lot of valuable
6 information.

7 The application I know has been called
8 uninspired; it's been called disingenuous. And I
9 believe that those are editorial comments that are
10 probably off the mark, if you look at what we are
11 trying to do. To say that it is uninspired, to
12 simply go back to a limited, more conventional
13 development I think begs the question of the
14 circumstances that we all find ourselves in today.
15 And we hope to be able to expand on the reasons for
16 limited development and what that means.

17 There's some idea initially that it's
18 disingenuous to look at small parts when we don't
19 know what's happening to the whole, but we showed
20 you -- presented a plan for the development of the
21 whole. To think that we know at this point what's
22 going to happen to the rest of this property in the
23 near future, if you have an idea or a -- let me know
24 or let Mr. Levine know, because he's the one who
25 would really like to know. So that's where we are.

1 That is why we are coming in. And I am referring now
2 to RS2, which is the map that we have presented at
3 400-scale which we wish to be the modified plan.

4 Now, I'll just mention to you very quickly that
5 the 40-scale plans I believe have been put onto the
6 town's website. If they have not then if you are
7 desirous of having 40-scale plans, they can be
8 provided because the 40-scale plans are part of the
9 wetlands application. They are available to you. If
10 at some point there's a desire to take a look at this
11 on a larger scale, that can be reproduced.

12 So here we are looking for limited development.
13 And we will -- I am going to have Bob Doane and I am
14 going to have Michael Klein comment on what that
15 limited development is. But before we get to that, I
16 think it is important that someone other than me
17 speak on behalf of this applicant. Why are they
18 doing this? Why are they coming in with limited
19 development? They must have something up their
20 sleeve. I hear this all the time. And I have always
21 felt it's very difficult to set the record straight,
22 but I would like to have Robert Levine -- I would
23 like to introduce him to you.

24 Robert, if you would please stand up. And I am
25 going to let Robert Levine give you a little bit of

1 his background and what he, as the owner's
2 representative, is attempting to do with this
3 application. Mr. Levine.

4 MR. LEVINE: Thank you, Dave.

5 Members of the board, Mr. Chairman, I would like
6 to thank you for having this opportunity to appear
7 before you. I have a statement to read in which I
8 will also present to you subsequently so you have it
9 written. But good evening. My name is Robert
10 Levine. I'm president and COE of RAL Development
11 Services, a real estate planning and management firm
12 with offices in New York City, at 434 Broadway, New
13 York, New York. I appear before you tonight as the
14 owner's representative.

15 As you have been told previously, River Sound
16 Development, LLC is a wholly-owned subsidiary of
17 Lehman Brothers Holdings, Inc., which entered into
18 bankruptcy protection in September 2008. River
19 Sound, by virtue of the approximately 1,000 acres it
20 owns in this three-town area, is an asset of that
21 bankruptcy. One of the first things the trustees in
22 the bankruptcy wished to do was to determine what was
23 the potential value of this asset and its highest and
24 best use and what should they try to do with it to
25 realize the greatest value to its creditors.

1 By reason of my past association with Lehman
2 Brothers on other projects and by reason of my
3 familiarity with the area, I agreed to act as the
4 owner's representative with respect to this property.
5 The first thing which I did which occurred more than
6 a year ago was to come up and walk the entire
7 property. I was accompanied by Michael Klein, an
8 environmental expert previously engaged by River
9 Sound; David Royston, River Sound's local attorney;
10 and Myson Harbor (phonetically), trained landscape
11 architect. I knew from the background materials as
12 well as the litigation relating to this property that
13 it was considered to be environmentally sensitive.
14 Had I not known that before I visited the property, I
15 had no doubt after having walked the property.

16 I am also trained as a planner and architect and
17 have published works relating to community
18 development and land analysis. I am aware that this
19 Planning Commission conducted site walks of the
20 property in 2004 and 2005 when it was considering
21 River Sound's special application for the full
22 development of the property. River Sound's approach
23 was that if this property is to be developed --
24 sorry. If River Sound's -- sorry. I am aware this
25 Planning Commission conducted site walks of the

1 property in 2004 and 2005 when it was considering
2 River Sound's special application for the full
3 development of the property. River Sound's approach
4 was that if this property is to be developed as it is
5 the owner's right, it must be developed in a
6 responsible way so as to preserve its environmental,
7 ecological, and historical value and resources. I am
8 fully aware that there was and remains disagreement
9 as to whether River Sound's plans for the full
10 development of the property, that is, the 221 housing
11 units, a golf course, country club, and associated
12 infrastructure improvements, adequately protect those
13 resources. This is a balancing act, and there is
14 always going to be disagreement. This came to a head
15 in the denial of the full development wetlands permit
16 in 2006. I understand it was a lengthy and thorough
17 review process as well as a lengthy and thorough
18 decision-making process. The result was a denial by
19 a four-three vote. Close, but a denial nonetheless.

20 The litigation regarding the denial of that
21 permit for the full development of the property has
22 been concluded with the decision of the Wetlands
23 Commission having been withheld by the court --
24 upheld by the courts.

25 Another decision of the Wetlands Commission

1 correcting a flawed bonding condition for an earlier
2 golf course permit approval has also been upheld by
3 the courts. The Connecticut Fund for the Environment
4 and the Connecticut DEP have petitioned the state
5 court to rehear that case. That decision is still
6 pending. I want to emphasize, however, that both of
7 those decisions relate to potential development of
8 what I call forest cores on the property consisting
9 of approximately 816 undeveloped acres lying between
10 Ingham Hill Road in Old Saybrook and the Valley
11 Railroad.

12 What we are attempting to do with this proposal
13 modification is to enable River Sound to proceed with
14 some limited development of what I call pods
15 consisting of approximately 43 acres along Ingham
16 Hill Road, 31 acres adjacent to the Westbrook
17 boundary and the Pianta parcel on Bokum Road
18 separated from the forest core by the Valley Railroad
19 consisting of about 32 acres. The modification
20 proposal before you seeks no changes regarding the
21 816-acre forest core. River Sound wishes to defer to
22 another timely decision as to what happens to the
23 central forest core. There are many options
24 available ranging from full development to no
25 development. We are not trying to change that.

1 I am obviously aware of the interest of many
2 particular environmental groups to have the property
3 acquired as open space. With all due respect to
4 newspaper reports, let me say for the record here
5 that River Sound has not set a price for the purchase
6 of this property nor is it ignoring the sentiment for
7 preservation of the property as open space. Since
8 becoming the owner's representative, I have reached
9 out to the Attorney General Blumenthal, to the DEP,
10 Commissioner Merrill and to representatives of the
11 Connecticut Fund for the Environment, the Trust
12 Wetlands, and the Nature Conservancy to see if there
13 is a way for us to not only agree upon a reasonable
14 price for the property but also to determine the
15 means and methods for the funding of such an
16 acquisition which currently include the pod
17 developments to offset some of the aggregate cost of
18 the acquisition.

19 I have met with representatives of those
20 agencies and organizations as recently as
21 November 19, 2010. Those agencies and organizations
22 are of course aware of this application before you.
23 One or more of them may become involved in this
24 application. I am sure other private citizens or
25 organizations will become involved in this

1 application. That is their right. I'm sure this
2 application will be given a thorough review, however,
3 I again emphasize that the purpose and intent of this
4 application is to maintain all potential options with
5 respect to the central forest core from full
6 development to no development.

7 We do not believe that any of the provisions of
8 the limited development that we are seeking have any
9 significant impact on the central forest core. We
10 also believe that each of the three pods individually
11 and in the aggregate with the remainder of the
12 preliminary plan meet your open space subdivision
13 regulations. We are sure you will want to confirm
14 this in your review. We are prepared to make such
15 plan revisions as are necessary to meet the
16 regulations. I welcome this opportunity to state for
17 the record exactly what the intentions of River Sound
18 are, and I thank you for your attention and I look
19 forward to your favorable approval of this
20 modification. Thank you.

21 MS. RYNECKI: Thank you.

22 MR. ROYSTON: Since we are getting close to the
23 end of our allotted one hour, I am going to ask Bob
24 Doane, first of all, to give you very quickly exactly
25 what is being proposed on these three pods. You have

1 the plans, you have review comments, but we just want
2 to let you know exactly what's being done. And when
3 Bob is finished, I am just going to have Michael
4 Klein speak to you again briefly about the wetlands
5 aspects; how this plan has been developed with
6 consideration to previous and updated wetlands
7 status.

8 MR. DOANE: Good evening. For the record, I'm
9 Bob Doane, professional engineer and licensed land
10 surveyor and here on behalf of River Sound.

11 We were requested to look at the three out
12 parcels and propose conventional layouts on the out
13 parcels and then open space layouts on the out
14 parcels, each of which is a stand-alone proposal that
15 meets all the requirements of your open space
16 regulations. The set of plans that is before you has
17 the two 400-scale sheets. One is the original
18 special exception and the second one being the
19 modified special exception. The third sheet shows
20 the Ingham Hill Road pod, if you will, portion of the
21 property, which is a 43-acre -- acres in total
22 consisting of 13 lots, four of which are on the
23 western side -- excuse me, five of which are on the
24 western side of Ingham Hill Road and eight of which
25 are on the eastern side of Ingham Hill Road.

1 With this proposal we are proposing an 800-foot
2 cul-de-sac street off of Ingham Hill Road. And also
3 with this proposal we went out and did significant
4 soil testing to determine that each of these lots are
5 indeed buildable in accordance with the regulations.
6 Typically with the first step of the open space
7 subdivision process we can submit a plan based on
8 available soil information, soil tests, and soil
9 conservation service. We have done significant
10 testing to go beyond that to indicate that we do
11 indeed have areas for subsurface sewage disposal that
12 can be accommodated in the net buildable area shown
13 on this plan.

14 We recognize that the plan has a one inch equals
15 100-scale plan. And the detail on it we feel is
16 sufficient, even though it's at a small scale, is
17 sufficient to allow us to proceed to the next stage
18 in the open space subdivision process in which we
19 will prepare 40-scale plan profiles for the roadway,
20 et cetera.

21 MR. ARESCO: Question on the plan. This
22 waffling area here, what is that referring to? What
23 is this? I didn't see a scale for that -- I mean a
24 lanyard for that. What is that?

25 MR. DOANE: Those areas right here. The shaded

1 areas on each of the --

2 MR. ARESCO: Those are the conservation areas.
3 I got it.

4 MR. DOANE: Is an open space conservation area
5 and an easement on the lots.

6 I'd like to comment on the regulations. I know
7 that these plans have been criticized as really not
8 being that different going from the conventional
9 subdivision layout to the open space layout that we
10 have. And what happens in the regulations is that in
11 the zone C the lots have to be 60,000 square feet
12 minimum in the conventional subdivision layout. And
13 typically when you go into the open space layout, you
14 have 50 percent open space but you're allowed to
15 reduce the lot sizes. In the zone C there is a
16 provision that if you do not have public water, you
17 cannot reduce the lot size. So what we are asked to
18 do is when you're going from the conventional to the
19 open space, you have to provide 50 percent open space
20 but you cannot reduce the minimum lot area. And in
21 order to address that, we have added conservation
22 easements to a lot of the lots because we need to
23 maintain a certain size for the lots.

24 We have -- I do -- in my hand I have all the
25 soil tests that we have done on this section and also

1 on the other two pods, and I would like to just
2 submit that for the record. That is something that
3 your town engineer asked me to submit.

4 So that I'm trying to stay brief, but I will
5 move to the next section is what we call the --

6 CHAIRMAN MCINTYRE: Mr. Doane, before you move
7 on, could you state for the record what the map is
8 you were just referring to.

9 MR. DOANE: Yes. The map that shows the Ingham
10 Hill Road subdivision. The first section was RS3.

11 CHAIRMAN MCINTYRE: Thank you. Any revisions?

12 MR. DOANE: Yes. It has a revision to 11-29-10
13 on this exhibit. I don't believe there's a revision
14 on the plan that you have in front of you on the
15 table.

16 But what this -- we had a meeting with the Park
17 and Rec on Monday. And they were concerned about the
18 location of the fields, so we've added the fields on
19 this plan.

20 CHAIRMAN MCINTYRE: Thank you.

21 MR. DOANE: We are in the process of responding
22 to the comments that we have been receiving over the
23 past week. And so the plans will -- we continue to
24 add information as we receive the comments. So I do
25 have the ballfields shown. And this was in

1 preparation I believe on the December 12th. I am
2 going to be walking the site with the Park and Rec,
3 and I want to make sure that they have this on their
4 plan. So that's RS3.

5 And then we go to RS4 is the area on the western
6 side of the property that is accessed from 153 in
7 Westbrook. And this parcel is 31 acres in size
8 and -- sorry for the feedback. I'm not sure why it's
9 doing that. But on this particular site we do have
10 the potential of public water. And so on this site
11 we are proposing a planned residential development
12 consisting of 11 housing units, a total of 32
13 bedrooms.

14 CHAIRMAN MCINTYRE: What map is that again?

15 MR. DOANE: This is RS4.

16 CHAIRMAN MCINTYRE: No revisions?

17 MR. DOANE: No revisions on this one.

18 And again, we've -- on this particular site
19 there were soil tests available, and we have
20 identified those in the document that I just handed
21 you.

22 And to be brief, I went -- the third parcel is
23 the Pianta piece on Bokum Road which is 32.6 acres.
24 And on this parcel I have submitted two plans, RS5
25 and RS6. RS5 is the conventional layout which shows

1 ten lots and there's -- serviced by a 1,000-foot
2 roadway ending in a cul-de-sac. And that plan was
3 modified to show a convention -- an open space
4 subdivision that is on RS6, and that is --

5 CHAIRMAN MCINTYRE: What are the dates of those?

6 MR. DOANE: These are all 10-7-10 are the dates.
7 This does not have a revision date. Okay. And this
8 plan was reduced to nine lots to provide 50 percent
9 open space. Again, because we are in zone C we are
10 faced with the same problem where we have to keep the
11 lot 60,000 square feet and provide 50 percent open
12 space.

13 We did extensive testing on this property at
14 some very nice deep soils on this piece, and that's
15 reflected in the report that I've submitted. I don't
16 want to go over my time, so I'll stop and answer any
17 questions that anybody may have.

18 CHAIRMAN MCINTYRE: All right. Keep things
19 moving on. You have one more person who wants to
20 speak. I'm sure everybody wants to hear everything
21 the applicant has to say tonight.

22 MR. ROYSTON: I am going to ask Michael Klein to
23 comment. And when he does I just want you to know
24 that Michael Klein reviewed original schematic plans.
25 And he in fact has had the opportunity to review

1 these plans more extensively, and he has provided us
2 with some recommendation which I'll provide to you,
3 also, for some revisions to those plans which he
4 believes are more protective of the environment.

5 Michael.

6 MR. KLEIN: Mr. Chairman, members of the
7 commission, my name is Michael Klein. I am a
8 biologist, soil scientist. My office is in West
9 Hartford. Some of you may remember that my office
10 has been involved with this property since about
11 2003.

12 In the summer of 2009, we were engaged by River
13 Sound, through their owner's representative, Mr.
14 Levine, to confirm and update the biological
15 wetlands, excuse me, and vernal pool data in the
16 areas that are now proposed for development; the
17 so-called pods or out parcels. Our comments to River
18 Sound up until now and to the commission tonight are
19 based on all of that biological and natural resource
20 data that's been collected, including the recent
21 updates that we did this past spring. And I'll refer
22 to the specific parcels in the same order that
23 Mr. Doane just did.

24 CHAIRMAN MCINTYRE: Mr. Klein, could you speak
25 to the map that you're going to speak to. Please

1 reveal the date and the number.

2 MR. KLEIN: Absolutely. Now I am referring to
3 RS3 dated 10-7-2010 and revised through 11-29-2010.
4 This is the so-called Ingham Hill Road property at
5 the south end of the parcel of the large tract.

6 The first comment that I make to the Planning
7 Commission is that the plans have been developed in a
8 manner that does not require any direct impacts on
9 wetlands and watercourses. And that's always --
10 avoiding impacts is always preferable to try to
11 mitigate those impacts. This area does contain two
12 of the vernal pools. Vernal pool 16 I'm referring to
13 now, I am pointing to, which is on the western side
14 of Ingham Hill Road, at the southern end of this pod,
15 and vernal pool 31, which is on the eastern side of
16 Ingham Hill Road, toward the northern end of this
17 pod.

18 MR. ARESCO: Number of that again was?

19 MR. KLEIN: I'm sorry. We have 16 to the south
20 and 31 to the north. Vernal pool 16, the southerly
21 one, has very high spotted salamander productivity
22 and supports all three outlet vernal pool species.
23 And that was confirmed during our most recent work
24 this past spring. Vernal pool 31, the more northerly
25 one, had relatively low spotted salamander

1 productivity but did support all three obligate
2 species.

3 In addition, in trying to look at this in a
4 little more global manner and consider all of the
5 natural resource data that's been collected over
6 these many years, we also looked at the relationship
7 of this development pod to the vernal pool of wetland
8 systems that are on the core of the property, and we
9 found that the critical threshold habitat for three
10 vernal pools, specifically nine, ten, and eleven
11 which have moderate to high productivity, extend
12 into -- just into the northwest corner of this pod,
13 in the vicinity of lots six, seven, and eight, I
14 believe. Because of the location of the two vernal
15 pools, 31 and 16, 16 and 31, virtually the entire
16 area of this development pod, even though it's
17 basically in full development in an area that's
18 already built with single-family homes, virtually all
19 of this area lies within the critical habitat of the
20 vernal pool and Ingham Hill passes through the
21 101-foot personal pool envelope of the vernal pools
22 in this pod.

23 Obviously there are some challenges for
24 development in this area. The most important aspect
25 of this portion, as I said, is that there are many

1 direct impacts involved. I had discussed with River
2 Sound some recommended modifications to the plan
3 which we will be exploring in the next few weeks,
4 including use of common driveways on lots 12 and 13
5 and 10 and 11 which will allow the development to be
6 more compact and require less impervious surface,
7 extending the conservation easement areas or open
8 space areas on those same lots to allow for
9 preservation of additional wildlife habitat and
10 vernal pool species habitat.

11 My recommendation also includes protection of
12 the entire remaining vernal pool envelopes on both of
13 these vernal pools, which would require additional
14 easements or fee simple open space dedication on lots
15 one, and eleven, and twelve and also that the roadway
16 system, new roadway system be designed to utilize
17 sheet blow and other low-impact development
18 techniques to minimize or eliminate any changes in
19 the hydrology of the vernal pools in this area. As I
20 said, we expect to progress with changes to this plan
21 over the next few weeks to conform to those
22 recommendations.

23 Moving on to RS4, the so-called PRB area on the
24 western portion of the property near 153 in
25 Westbrook. Of course we are referring to that

1 portion that's in Old Saybrook. Again, the
2 development in this area, the proposed development in
3 this area does not require any direct wetlands
4 impacts. And in fact, they are different from the
5 Ingham Hill Road area. There's no vernal pools
6 within this development pod.

7 Again, in looking at the -- taking it to the
8 next level, looking at the relationship of this
9 proposed development to the forest core and the
10 wetland core on the site, a very small portion of the
11 critical forestal habitat with three of the vernal
12 pools occurs along the eastern limit of this area.
13 The southern portion of that critical forest habitat
14 is within the open space, but the northern 25 percent
15 or so is in the extreme northeast corner, is within
16 the area that's proposed for development. Those
17 pools are of moderate to high productivity. I'm
18 sorry. Okay. But there's no development proposed
19 in -- within that critical forestal habitat for those
20 vernal pools. We think -- I'll get on to some minor
21 tweaks we propose, make sure there's no adverse
22 effects in those areas. '

23 Although, as I said, there's no wetlands or
24 vernal pools in this -- or there's wetlands but no
25 vernal pools in this portion of the site and there's

1 no impacts to any of the wetlands proposed. We do
2 have a resource issue here with respect to box turtle
3 habitat and box turtle species of special concern.
4 It's the lowest level, I guess you could say, of
5 biological resource protection, but it's nonetheless
6 an issue that we would like to address and indeed
7 we've got a method of conserving those animals.
8 Particularly the habitat for box turtles often
9 includes utility rights-of-way because the
10 maintenance of those areas keeps them at a state that
11 makes a good box turtle habitat. And also in the
12 steeply sloping area is where we found the box
13 turtles, and that would be north of units one and
14 four.

15 So what we have recommended is that the open
16 space which is in the southeastern corner be extended
17 to include the critical forestal habitat, the
18 northeastern corner, and then to continue along the
19 utility right-of-way to protect the box turtle
20 habitat and then at the town line. Basically the
21 steep sloping area lies north and northwest of units
22 one and four. So this open space protection would
23 wrap around and connect to other proposed open space,
24 the 3.2-acre open space piece that's north of the
25 proposed cul-de-sac. So with those recommendations

1 implemented in the plans I said will be tweaked in
2 that regard, we provide complete protection for the
3 forest habitat, of the vernal pools as well as the
4 protection of the habitat and known locations of the
5 box turtles in this portion of the site.

6 The last piece I'll talk about, last drawing
7 I'll talk to you about, which is RS5, and it is dated
8 10-7 of '10 with no revisions. This is the so-called
9 Pianta piece that lies between the Valley Railroad
10 and Bokum Road on the extreme eastern side of the
11 property. Again, the plans have been developed to
12 avoid any direct impacts on the wetlands at all.
13 There are several vernal pools on this portion of the
14 property. They include vernal pool number 30 along
15 the railroad tracks, vernal pool number 29 along the
16 railroad tracks, and also vernal pool number 37 more
17 or less in the center of the parcel. The pool -- two
18 pools along the railroad tracks have high
19 productivity, even though they are relatively small
20 or moderate productivity. Oh, there's another, I'm
21 sorry, another vernal pool, number 34, near the Essex
22 town line.

23 So the vernal pools that are around the
24 perimeter are more diverse and more productivity,
25 hydro -- hydrological, support amphibians. The

1 vernal pool in the center, number 37, is very
2 shallow, has a very limited hydro period and in fact
3 has the lowest productivity of any of the vernal
4 pools on the thousand-acre parcel that we have been
5 looking at since 2003.

6 We found two egg masses there in I believe it
7 was '05. I don't think it had been identified as a
8 vernal pool earlier than the 2003 date. It wasn't
9 part of the property. We haven't back -- looked at
10 it again, found no egg masses at all. It appears to
11 be of very marginal significance because of its
12 location and because of the topography that's there.

13 Shifting the road network to the west to avoid
14 the vernal pool envelope in the area would -- appears
15 to me to require major cuts and fills, rock removal
16 and vegetation removal, and that work would likely
17 have an adverse effect on the much more significant
18 wetlands that are scattered around the margin of the
19 property.

20 So my recommendation for this piece -- and in
21 fact, that's the way this pod is developed. My
22 original recommendation was to maximize the
23 protection of the pools and wetlands around the
24 perimeter of the property and not to be overly
25 concerned with maintaining a very large buffer to the

1 wetland vernal pool that's in the centerpiece.

2 And I would also just note to the commission
3 that this recommendation and this road layout was not
4 arrived at lightly. This area was studied very
5 extensively in '04 and '05 and with the town's
6 consultants during the review process and the
7 consensus of all involved in this road configuration.
8 The prior road continued from this point, but this
9 general configuration to the west of that vernal pool
10 was the best environmental solution for developing
11 the road into this portion of the pod.

12 MR. ROYSTON: Mr. Chairman, obviously there's a
13 lot of information, a lot of detail and it's
14 contained in your reports. We've just touched on
15 some of those issues. And again, we are prepared in
16 the -- if the commission does agree to continue the
17 public hearing to January 5th, which is within your
18 statutory time period, then we would be making plan
19 changes, map changes, statements where appropriate
20 plus providing you information as to why we have not
21 made changes and the reasons for that. We don't
22 minimize the need to look at these plans carefully by
23 having just a short presentation at this time. I
24 want to assure you that if there are questions of the
25 commissioners, consultants, that we will be prepared

1 to respond to them.

2 I would also just like to bring to your
3 attention -- I don't know whether you received
4 anything from the Town of Westbrook, but there was a
5 referral. It's my understanding that the Town of
6 Westbrook Planning Commission did want to comment,
7 and I had indicated in a letter to them that we would
8 certainly be willing to have the public hearing
9 extended so that they did have the opportunity to
10 comment. We have met with the Park and Recreation
11 Commission. The Police Commission in its report
12 requested that we meet with them, and we are going to
13 as soon as we can have that meeting. And again, any
14 of those organizations which wish to meet with us to
15 have a clearer understanding of what we are doing, we
16 are prepared to do that.

17 And so I will conclude at least this portion of
18 the formal presentation on behalf of the applicant,
19 and I thank you very much.

20 CHAIRMAN MCINTYRE: Thank you. At this time I
21 would like to take a ten-minute recess and then we'll
22 get back into the meeting.

23 (Whereupon, a recess was taken.)

24 CHAIRMAN MCINTYRE: If everybody would be
25 seated, we'll get started.

1 We'll call the meeting back to order. The next
2 speaker will be Charles Rothenberger from the
3 Connecticut Fund for the Environment.

4 MR. ROTHENBERGER: Thank you, Mr. Chairman,
5 members of the commission.

6 Again, for the record, my name is Charles
7 Rothenberger with Connecticut Fund for the
8 Environment. And I'm sure everybody will be glad to
9 hear that my comments this evening will be extremely
10 brief. We will be offering a more detailed analysis
11 of the applicant's specific proposed modifications,
12 but as a preliminary matter some broad comments are
13 appropriate at this stage.

14 And taking respectful exception with the way
15 that Attorney Royston framed this issue, I really
16 think one of the biggest issues with this proposal
17 before you has less to do with what the applicant has
18 changed than what they haven't changed. At the
19 original hearings a number of environmental concerns
20 were raised before this commission. At that stage
21 the response and some comments were made that the
22 analysis at that time was really by necessity very
23 broad, very conceptual and that without a specific
24 detailed site plan it simply wasn't possible to
25 evaluate what the potential impacts would be with any

1 specificity.

2 Well, as you know, here we are five years later,
3 and this proposal as a whole has received a great
4 deal of scrutiny before the Inland Wetlands
5 Commission and it was found to be quite lacking.
6 CFCD was involved in those hearings, and we presented
7 a great deal of expert testimony regarding impacts to
8 wetlands and watercourses on the site. Those
9 hearings were extensive, over nine nights, thousands
10 of pages of testimony were generated. And as
11 Attorney Royston mentioned at the beginning of this
12 session, the Wetlands Commission did deny the
13 applicant's permit application at that time on the
14 basis of what it found to be significant adverse
15 impacts to the wetlands on the site. Those findings
16 were sustained by both the Connecticut Superior Court
17 and the Connecticut Appellate Court. So really as a
18 practical matter we have that detailed level of
19 analysis that the commission found was not available
20 the first time around, and I think it is appropriate
21 to consider that as you look at this.

22 While this commission is not wetlands, your open
23 space subdivisions also require you to consider a
24 number of factors in the proposal, including wetlands
25 impacts. And I think if you go through very briefly