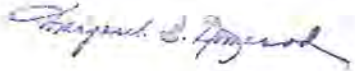


CITY OF SHELTON  
TOWN CLERK

2020 MAY 12 A 8:32



**1. PLEDGE OF ALLEGIANCE**

**2. ROLL CALL**

**3. BUSINESS MEETING**

**3-A. OLD BUSINESS**

**1. PERMIT-APPLICATION #17-14, TOWN CENTER AT SHELTER RIDGE –  
BRIDGEPORT AVENUE/MILL STREET/BUDDINGTON ROAD. Proposal to  
create a mixed use commercial and apartment development involving a  
commercial subdivision with roadway construction, building construction and  
grading within regulated area, upland review area and discharge of stormwater to  
regulated area. Public Hearing closed; discussion only by Commission.**

**4. ADJOURNMENT**



**CITY OF SHELTON**  
**INLAND WETLANDS COMMISSION**  
**REGULAR MEETING MINUTES**  
*Thursday, May 7, 2020*  
*10:00 am, Auditorium*

In accordance with Governor Lamont's Executive Order No. 7B, the Inland Wetlands Special Meeting will be live-streamed. The public may access the meeting on the home page of the City of Shelton's website: [www.ityofshelton.org](http://www.ityofshelton.org).

Chairman Zahornasky called the Special Meeting of the Inland Wetlands Commission to order at 10:25 am.

**1. PLEDGE OF ALLEGIANCE**

All in attendance recited the Pledge of Allegiance.

- 2. ROLL CALL:** Michele Kawalutzki, Commissioner  
 Ken Nappi, Commissioner  
 Joseph Reilly, Commissioner  
 Charlie Wilson, Vice-Chairman  
 Gary Zahornasky, Chairman

Excused: Robert Dunford, Commissioner

Also Present: John Cook, WECO  
 Sophia Belade, Recording Secretary

**3. BUSINESS MEETING**

**3-A. OLD BUSINESS**

- 1. PERMIT-APPLICATION #17-14, TOWN CENTER AT SHELTER RIDGE – BRIDGEPORT AVENUE/MILL STREET/BUDDINGTON ROAD.** Proposal to create a mixed use commercial and apartment development involving a commercial subdivision with roadway construction, building construction and grading within regulated area, upland review area and discharge of stormwater to regulated area. Public Hearing closed; discussion only by Commission.

Chairman Zahornasky stated that the purpose of this special meeting is to conduct our deliberations on the Shelter Ridge project, we all know that we have volumes of information and as I spoke at the last meeting, 3 options basically facing this commission.

- Approval with various conditions
- Deny with conditions why
- Deny by being incomplete, we don't have updated information or enough information to make a proper decision

One of my issues in going through all this is that the plans that we have on the table are still plans from 2017, they reflect none of the changes discussed during the public hearings as far as changes that the applicant was willing to make based on testimony of the various parties, like the intervenors, the public and what/not the commission. At the last public hearing they threw in 1 more thing to this project and it seemed that it was a never-ending process. It changes all the time. At the last public hearing they stated that they were going to increase the open space or the buffer around the vernal pool area and eliminate that 1 area, ok fine, and also

some other things, and also we were expecting or at least I was expecting a Geotechnical report in which they had testified during the public hearing that they were going to hire and supply us with, and now they stated that they have retained one but that when they determine where the infiltrators, we'll call them, where they were actually going to be located, then that Geotechnical firm will then decide what the best course of action will be based on that area of property.

I'm not very comfortable with that. I mean these plans were significantly drawn down to 1 foot scale and now at the last minute you're telling me you don't know where these things are going. So it's a trust me on this, I don't go for that. Even years ago when Chairman DaSilva was running it and we had a question on owe of our projects that we had approved it and things were not done as to what we had approved. The ruling from Corporation Counsel was that it's based on the plans that you have in front of you. It's based on that there. You can discuss all you want with the applicant and they can say yes we'll do that, but unless it is on those plans it's not bound by the applicant.

Commissioner Reilly stated because we're talking about 2 waterways, not 1 but 2, I think the plans are insufficient and I want to deny it.

Chairman Zahornasky stated certainly your opinion. Anyone else have any comments that you'd like to make?

Commissioner Nappi stated yes, give us the options again Mr. Chairman.

Chairman Zahornasky stated you can approve it, which I'm not comfortable with, with conditions like any other projects which have conditions of approval based on something as approval by City Engineer. These are the guidelines that we normally run by. On as big of project as this, there would have to be a multitude of conditions that would have to be applied. Or it can be denied, and again going to the courts, the judge is going to require any Inland Wetlands Commission in denying a project has to be able to pretty much prove that it will have adverse effects, if you may, you can't say that it might do that, that's not good enough. The third option is to deny it because it's incomplete and the way that I'm looking at it is those plans that we have right there are not complete. They don't show any of the changes, they don't show any changes. We really haven't discussed those changes because we don't see them on the plans. You're telling us you're giving us buffers, you're telling us you're eliminating this, what else changes. Now you're moving this 1 infiltrator because you're giving us more buffers around the vernal pool, so where does that go? What else does that impact? We don't know because we don't have it on the plans. Then we have when the City Engineer's report, he felt that 3-4 houses in the neighborhood were going to be flooded based on this project as that plan. Yet when Commission Nappi asked the question, they stated we'd be willing to work with the neighbors to discuss that problem. The only problem I have with that is I've heard that over the past 30 years that it never happens. What happens is well there was nothing we could we do, we can't go on someone else's property, we can't, we can't. 9 out of 10 times it comes back as sorry, there's nothing we can do.

Commissioner Nappi stated that based on those 3 options my feeling is that, I feel we're all in agreement that there is insufficient information. What's happening is that the applicant is saying 1 thing, the intervenor is saying another and our consultant is saying he doesn't know. So how can we make a decision based on what we feel is insufficient information, and I think that's the easiest thing to defend. That's the truth; we're going to deny it because we feel there is insufficient information

Vice Chairman Wilson stated that in page 15 of this transcript, Jim Swift goes that we've been in contact with hydraulic engineers, things like that, putting together programs to make sure that infiltration can be proven in any condition under rock excavation, under placement of fill, under existing areas, etc. We can approve this with conditions but we don't have any of this.

Commissioner Kawalautzki asked are they allowed to keep adding prints after the public hearing and all that stuff. Chairman Zahornasky stated no, that's the problem, they're not allowed. I remember years ago P&Z was faced with this, the old green glass building in Huntington Center. Dr. Montanaro was the applicant I believe, P&Z ended up in court and the records they had in court were mishmashes that the judge even said I don't know what plans you're even talking about. You have to give me the plans for me to look at that these are the plans which are going to be built by. We even got a call from Corporation Counsel saying what plans do you have? Corporation Counsel stated that if it's not on those plans it's not a viable issue. We can discuss it all you want here, but if it's not on paper when those construction plans get issued out to a contractor, that's what they're building off of. No, no that was supposed to be over there; well it's not on my plans.

Commissioner Nappi stated, Mr. Chairman 1 of the safest things to do if we're going to deny it because of insufficient information, we should consult with counsel. Chairman Zahornasky stated that before you arrived, Corporation Counsel Fran Teodosio had called in said that no matter where we decided to go with approval, denial whatever, is that we're going to sit down with Fran to draw a motion with a consensus, that will be legally defensible. Commissioner Nappi stated then I recommend that we don't make a decision today until we consult with counsel. That's my opinion. Commissioner Reilly agreed. He stated I agree 100% with Ken Nappi but I feel this plan should be denied, but I want to make sure that legally we're ok. Commissioner Kawalautzki and Vice Chairman Wilson both agreed. Commissioner Nappi stated that I'd like to hear from our Administrator.

John Cook stated to follow along with commission's deliberations there as far as completion of the application one of the other things that comes in as this was put forth through the public hearing process is for the commission to not approve an application unless all feasible and prudent alternatives have been proven that one does not exist. So there is also that recognition does the commission feel that there has been an exhaustive analysis to see what other options are able. Putting a building here, or moving this and if that alternative analysis is incomplete that also could be one of your rationale to form a resolution with counsel.

Commissioner Reilly stated that this project impacts not 1, but 2 waterways, not to mention the open space. I just want to make sure because that's my job here that they're not impacted adversely.

Commissioner Nappi, Mr. Chairman 1 more comment, I think it's important to say that our responsibility is to protect the waterways but our responsibility is also to protect the residents that live in that area and I'm still not comfortable with the response of the applicant as to the City Engineer's letter that it would adversely affect and cause flooding to 4 or more. There's not sufficient information to rebut what the City engineer said. Chairman Zahornasky stated I agree with you. I share the concerns of the neighbors, in many towns, when it comes to commercial development and economic benefits to a city, these cities and towns forget these citizens made this town or city what it is. Some have 40, 50, 60 years that have lived in this neighborhood. Now after all this time they have a skyscraper going up next to them, so instead of going out in the backyard and having a view I have to look at this. If you remember in Tom Harbison's Conservation report that's 1 of the things that he stresses in there, that nowhere in the course of discussions has there been as John stated, a prudent alternative looked at. Do they need to put that apartment building that high? He's not an engineer but with this type of project you can build a beautiful project on this side of that ridge. That's where all the problems delineate from, if you left all of that alone and let the water flow to the open space, I think that would be a win/win. It would be good for the neighborhood because they would have a protected buffer and we could maintain that and the Trails Commission could get their trail that they wanted instead of on a ridge and the applicant could still get his project all put in there and you're basically facing Bridgeport Avenue. If I have to drive up this mountain to get to something in the back how are you going to see it there? We all see it now with this economy that bricks and mortar buildings may not be the way of the future. We're going to destroy this area and in could be all for naught. I'm not going to go for this.

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Commissioner Nappi stated to Chairman Zahornasky that we know it was a trying time with your mom, and we want to offer our sympathy to you.

#### **4. ADJOURNMENT**

**Commissioner Reilly motioned to adjourn the meeting. Commissioner Kawalutzki seconded the motion.**

**A voice vote was taken; motion passed unanimously.**

Chairman Zahornasky adjourned the Special Meeting of the Inland Wetlands Commission at 10:46 am.

Respectfully submitted,

***Sophia V. Belade***

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\*\*\*Full transcripts of Public Hearing of February 27, 2020 follow.

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**Commissioner Reilly motioned to adjourn the meeting. Commissioner Kawalutzki seconded the motion.**

**A voice vote was taken; motion passed unanimously.**

Chairman Zahornasky adjourned the Special Meeting of the Inland Wetlands Commission at 10:46 am.

Respectfully submitted,

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Clerk – Inland Wetlands

\*\*\*Full transcripts of Public Hearing of February 27, 2020 follow.



SHELTON INLAND WETLANDS COMMISSION

FEBRUARY 27, 2020

PERMIT APPLICATION #17-14

TOWN CENTER AT SHELTER RIDGE - BRIDGEPORT AVENUE/MILL  
STREET/BUDDINGTON ROAD

CHAIRMAN

GARY ZAHORNASKY

VICE-CHAIRMAN

CHARLIE WILSON (NOT PRESENT)

COMMISSIONER

ROBERT DUNFORD

COMMISSIONER

MICHELE KAWALAUTZKI

COMMISSIONER

KEN NAPPI

STAFF

JOHN COOK

COUNSEL

FRANCIS TEODOSIO, ESQ.

COURT STENOGRAPHER

STEPHANIE CHARBONEAU

INLAND WETLANDS CLERK

SOPHIA V. BELAD

MR. ZAHORNASKY: We're going to start the meeting. Sorry for the delay.

We'll start with the Pledge of Allegiance.

(PLEDGE OF ALLEGIANCE)

MR. ZAHORNASKY: We need a motion to reconvene.

MS. KAWALAUTZKI: Do you want me to make a motion?

MR. ZAHORNASKY: We need a motion to reconvene. Yes, please.

MS. KAWALAUTZKI: Okay. I make a motion to reconvene public hearing.

MR. ZAHORNASKY: Okay. Second?

MR. DUNFORD: Second.

MR. ZAHORNASKY: Thank you. Okay. All those in favor?

THE COMMISSION: I.

MR. ZAHORNASKY: All right. There was a question raised at the last public hearing as far as the validity of the hearing itself, as to the State Statutes and time limits, and what not like that. So we have Corporation Counsel and he will address that issue.

Mr. Teodosio.

ATTY. TEODOSIO: A direct response is that you still do have - -

A VOICE: Speak up, please.

MR. ZAHORNASKY: You got to use the microphone.

You have to get closer.

ATTY. TEODOSIO: The direct response to the question is that the agency still does have jurisdiction. There is a General Statute that lays out an outline as to how extensions can be granted. It speaks about the ability of the applicant to leave the forum of the Inland/Wetlands Agency and go up to DEEP on the City's nickel. However, there are no cases that indicate that if the Commission chooses to ask for extensions and the applicant provides them, that the Commission loses jurisdiction.

So given all of the work that has gone into this, I am of the opinion that you still have the ability to hear the remainder of the case. I got more specifics in the written opinion that I gave to you. But the Statute that I'm alluding to, specifically Section 22a-42a Section C. Okay.

MR. ZAHORNASKY: All right. This attorney's letter to the Commission will be part of the record.

ATTY. THOMAS: You got to be careful. One of those microphones - -

MS. KAWALAUTZKI: Yeah, that one.

ATTY. THOMAS: - - does that all of the time.

MS. KAWALAUTZKI: That one.

MR. NAPPI: Mr. Chairman, I just want to bring out that based on Corporate Counsel's ruling that this Commission should make a decision whether to

proceed or not. So I will make that motion to proceed, based on the Corporate Counsel's remarks.

MR. ZAHORNASKY: Second?

MS. KAWALAUTZKI: Second.

MR. ZAHORNASKY: Thank you. All in favor?

THE COMMISSION: I.

MR. ZAHORNASKY: Opposed? So moved.

Okay. We are going to open up with the applicant's response to the LandTech report.

ATTY. THOMAS: Thank you very much, Mr. Chairman and members of the Commission.

We will be responding in accordance with, first of all, our responses which were filed with this Commission on or before 12/12. And then in addition to that, supplementing that with the responses to the February 3<sup>rd</sup> letter of LandTech, which was delivered to the Commission.

On the screen behind you is a copy of the plan. It is up there only for the purpose that we can refer to, specifically refer to, various parts that are related to our responses.

Mine, hopefully, will be the shortest of the responses tonight. I have read carefully through the February 3<sup>rd</sup> response, which was LandTech's response to our responses. I will note that at the - - at the January 9<sup>th</sup> meeting I was taken to the woodshed because of my initial impression that LandTech was

given what they reviewed, and later I was told that they chose what to review. In their response LandTech - - of February 3<sup>rd</sup> LandTech stated it was provided with 70 documents, and they stated they were not provided transcripts. They did not choose what to review, but reviewed all of the docs they were provided. However, in their report they only listed 18 documents that they listed as reviewing.

They tried to address my challenge. The POCD has no relationship, whatsoever, to this Wetlands proceeding. They tried to address it by saying they were just using the wetlands - - the POCD for the purpose of establishing where the property was located.

I do want to point out one thing. And you people may say to me well why do you keep talking about the fact that they should have had transcripts. They are going to do a thorough review of this. The transcripts are important because their position that they did not want to talk to Mr. Swift or Mr. Popp because they wanted to be objective to me is somewhat absurd. In most peer reviews you can question the individuals, clarify things. And if they felt uncomfortable, Mr. Trinkaus could have been included, Mr. Cook could have been included, Mr. Kulacz, or he may have already retired, Mr. Remus, could have all been included as the technical people to discuss it.

What I want to do is show you something. And these are from your transcripts. Of course, John provides everybody with a transcript as soon as he receives it from the Court Reporter. The first thing I do after John gets it to me is I save it as a Word Document, then resave it as a PDF. Now, they had questions about infiltration. They had questions about alternatives. They had questions about spotted turtles.

So the idea of word search is nothing new, okay. So I just want to show you what I was referring to as to how this could have facilitated the report. This is the word alternatives. You'll see a little black box how many times the word alternatives appears, and what you can do to search it. This is spotted, for spotted turtle. They had questions about whether or not Matt Popp addressed it. You can look at it in the transcripts. And this is infiltration, which is numerous times, fifty times it is in here. So all you do is go next, next, next, next and you get - - if we're not going to talk to Jim Swift, you can see what Jim Swift talked to you about.

So I just wanted to give you an idea of what I was talking about. I'm not being a pain about the transcripts. I believe that they are - - they would have been significantly important if they were going to choose not to speak to Matt Popp and not to speak

to Jim Swift, because Matt Popp, Jim Swift, Mr. Trinkaus, all of them spoke to the Commission. And in speaking to the Commission - - and in speaking to the Commission the transcripts, much more information could have been discovered. I just gave you an example of what it's like. But it is the ability to even look up word searches, find it, find out what everybody said, everybody including Mr. Trinkaus, including myself, including all of the experts, including even the Commission members in their questions.

Now, I want to point out something. The report that was done, if you read the LandTech report and you read the LandTech response, does not identify any adverse impact upon the Wetlands. It focuses an awful lot upon the fact that if there was more information, if there was more information, we might be able to determine if there was impacts upon the wetlands.

And it goes on to say, but you have to read it carefully, the only time the words adverse impact are used in the LandTech report are at the very end when it's being discussed by the engineer about the infiltration, and whether or not the infiltration could affect water temperature. Other than that, there's a discussion that if we had more information, we will - - we might be able to make a further

determination. And we have - - I think you saw in Mr. Popp's report and you saw in Mr. Swift's report that they addressed the fact that the information was there. And in fact, the further information was there. A lot of it the explanations were there in the transcripts.

If you look at Mr. Ryder's responses, I'm not sure, I think there is about twenty paragraphs where he addresses Mr. Popp's reports and everything. They are almost exclusively addressed to the vernal pool. Mr. Ryder was very concerned about getting a background as to where the property was located, that he review the POCD, and then admitted in his February 3<sup>rd</sup> letter that he made mistakes by identifying it by repeating something that was in one of Mr. Harbinson's letters that the portion of the property was in the greenway, when it wasn't. Yet in the twenty or so paragraphs in which he discusses the vernal pool, he never once mentioned that the vernal pool was located as part of the proposal in twenty-five-acre plus wetlands - - open space, I'm sorry. Twenty-five-acre plus open space. He never mentions it.

But the other thing is this; he is doing an analysis for the Wetlands Commission. He does mention and have a discussion about Wetlands F. And since Dominick forgot his pointer, Wetlands F - -



Do you have one? Okay. Thank you.

Wetlands F, I think, if I'm correct, was the wetlands that was filled in this general vicinity right there, okay. So that's Wetlands F in that general area. And he does talk about that. And Matt Popp addresses it, and Matt Popp will address it further.

But one of the things that surprised me, because especially when they were talking about alternatives and everything, which you can, again, have looked up, is that there was a lot of discussion by Matt Popp about the two crossings and how the crossings were done. These are - - this here, I believe, is a direct impact upon the wetlands. This one here was actually in between two wetlands. It was in an upland review area that connected to wetlands.

It is not once mentioned in the LandTech report or the LandTech response. It's a direct impact. And they are being retained to review the applicant's presentation and the responses. Now, I will say that if you read Mr. Trinkaus' responses, he addressed it during the course of the transcripts. And Matt Popp responded that he had produced alternatives. We showed the best way to do the crossing, the best way to accommodate the wildlife, and you could find that very easily in the transcripts. But it was kind of surprising that there was nothing in there about it.

And again, I don't think - - failing to talk to Matt and Jim I don't think was the best way for this - - for LandTech to do its report, and for this Commission to derive a viable report with alternatives.

I want to give another example. In the February 3<sup>rd</sup> letter the engineer - - I assume its from the engineer. Referring to the engineer, there is a - - and Mr. Swift will address this. There is a constant going back and forth where Mr. Bartos says there isn't enough information on the erosion - - on the appropriate soil erosion sediment control plan. Mr. Swift's response is yes, there is. If you had looked at Sheet 4, Map 5, whatever, he says look at notes; look at all of the notes.

In his response on February 3<sup>rd</sup> Mr. Bartos says, well, that is an example of Mr. Swift's problem. And the problem apparently is that Mr. Swift's responses are that the Connecticut Erosion - - Soil and Erosion Control Manual, I think that's the name of it, that that would be the guidance for it. And then in his further response, and Mr. Swift will elaborate on it, he says if the Commission wishes further detail, then it can be put on it.

Well, let me explain to you why Mr. Swift's version is a lot better than Mr. Bartos' version. If instead of referring to the manual you cut and paste

what is in the manual and you put it on the map and you say this is what we're going to do for soil erosion and sediment control, and a year from now when you start the soil erosion sediment that you have to do, and you put on the map that you will do X, but in the subsequent year the DEEP has decided to relook at the manual and say X must be X plus Y, then what is controlling? What is on the map? What is in the manual? It is, obviously, much better to tie the applicant, the developer, to the manual and to insure that he or she or it, if it's an LLC will comply with the manual when they are committing the stuff to it, even if the manual changes.

So I think that when you look at it from that perspective, Mr. Swift isn't blowing off putting the details on. He is actually being much more careful and much more alert. It's why when we as lawyers often refer to a Statute, we often refer to a Statute as it may be amended, so that you can - - if there are changes, the changes can be addressed.

We believe that we have addressed all of the issues before you in the numerous public hearings and everything. I believe that the LandTech evaluation was, and I haven't been bashful at saying it, that it wasn't complete, nor was it - - and it had sort of a slant to it. Regardless of that, Mr. Swift I think identifies, and he'll be able to go over, numerous

things that are suggest in the report that we'll be able to incorporate.

In addition to that, even though Mr. Popp went through an elaborate explanation in the transcripts, in his reports, to protect this very, very, very valuable vernal pool area up here and to protect it. And how you would protect if there is any migration, what you do, the rock walls, and everything like that.

We are prepared to look at Mr. Ryder's report and adapt other matters, including one that will increase the disturbed area - - excuse me - - the undisturbed area around the vernal pool, and we have a little plan to show you, even farther out, because we believe that it can be done. And we're prepared to listen, look beyond some of the stuff or the implications in the report, and see if there are any nuggets in the report that yes, we can adapt to.

So with that, I will turn it over to Jim Swift to address his responses to the LandTech report.

MR. SWIFT: Good evening. My name is Jim Swift, Professional Engineer Landscape Architect.

I am going to go over just briefly the response that to LandTech's original report. And again, this was a - - it was December 12<sup>th</sup>, dated December 12<sup>th</sup>, and it was an item-by-item response to the original LandTech report. Every single comment that LandTech

had come up with I addressed. And at the end of my response to that LandTech report, on the last few pages you'll see - - you'll see in my conclusions that I have two lists. One list is a correction of documents design errors. LandTech went through. They found errors, typos, that sort of thing on my drawings that I - -

MR. COOK: Excuse me. Just for the record, because there are so many exhibits, just for the intervenors, the public, the Commissioners, what Jim is referring to is identified as Exhibit 61 that was logged in that night of December 12<sup>th</sup>.

MR. SWIFT: So when we take these reports, I just want the Commission to you know when the Commission closes the hearing and goes to their discussions amongst themselves, is to you know please pay particular attention to that, because it does list the things that should be rectified and corrected.

And I am going to state for the record now that none of those things, none of those errors, none of those typos have any impact or effect on - - it wants my fingerprint - - on the design, efficacy of the design.

The second part of my conclusions are modification is designed as recommended by LandTech.

And this goes back to what Dominick was talking about

and give you the empirical data and say okay, this system here infiltrates in five hours; this system over there infiltrates in twelve hours. They are absolutely correct in that. And to be honest, I did not base my contention that we are sufficiently treating that one inch of runoff for thermal impacts. I think it is treated by the mixing. So we've got a disagreement there. But there is a pretty simple solution to this.

We have been in contact with hydrological engineers, things like that, about putting together programs to make sure that that infiltration can be proven in any condition under rock excavation, under placement of fill, under the existing areas. And to be honest, the simple solution for this is for this Commission to say all right, I've heard Mr. Swift, I heard LandTech, I've heard Mr. Trinkaus. Well you know what, our decision is that one inch must be infiltrated and you must provide for that.

As I stand here I can tell you that this applicant will accept that condition of approval and that it can be done. GZA had already prepared some of the background for that. I still believe that we have infiltration sufficient as the project stands. But again, I don't have any empirical data. But all this Commission needs to do is say you know what, we've heard both side; we want the infiltration, and

we want it within the two to three days that LandTech says it should occur. Condition mandatory, and we will provide it. So hopefully, that will put that issue to bed.

I'll say one more thing about that infiltration. We keep coming back a lot to the DEEP's erosion control. We need to register for areas five acres or more in construction. We need to register under the DEEP's requirements for that permit. And just to clarify, the DEEP has issued that permit as a general permit. It applies to everybody. Everybody that is doing five to twenty acres of construction in town falls under that permit. What we have to do is register under that permit, and to prove that we comply with some of the basic requirements of that registration. And it keeps coming up over and over again, but that general permit, and I'll quote, requires the permanent storage of the water quality volume on the property.

I've said this previously, I've said it during the response to Mr. Trinkaus' testimony, I've said it under the response to the first letter by LandTech, and I'll say it again now, that's false; that's false. There is a provision under the requirements to register under the general permit of DEEP that they want that first inch, that water quality volume, infiltrated back into the ground. The very next

paragraph of that permit states the exceptions to that. And I'm the first to agree they may or may not accept the exception. But one of the first exception they mention is if the construction falls under excavated rock. So any indication that the DEEP infiltration of that one inch is mandatory is patently false. And you can - - and I believe John has a copy of the - - now has a copy of that DEEP permit.

The last paragraph, again, is generally, we find the applicant's response insufficient until such time as the drainage report and the drawing are revised. Again, I encourage the Commission to go back through both my responses to Mr. Trinkaus, my responses to the original LandTech, see the specific items that I state that I think that the Commission would be well advised to make mandatory, make a condition of approval. I encourage the Commission to read both the LandTech report, original, my response to the LandTech report item-by-item, and decide for yourselves did I incorrectly not get specific enough or do you want more specifics. That is well within this Commission's judgement to make.

But again, I agree with Dominick. The best thing to do about when you're dealing with soil erosion control is to refer to the manual, bind the contract to the manual, and then you're covered.



And I think, I think that covers it all.

ATTY. THOMAS: Just to make it clear, we have made the assumption that since we filed these reports in December, that you've read them, that you've gone over our response. So we just didn't want to regurgitate the response. Obviously, we're here to answer any questions you have on the responses.

On the - - I do want to make a point on the issue of GZA and the infiltration issues, not that I'm changing from JD to PE or anything like that. But frankly, if this Commission - - and I've been in situations - - this is a very large project. Even going through wetlands - - and I will point out something related to this.

We could have gone out there in this piece of property and started chopping down trees and said okay, here is where our concept plan puts our infiltrators, because we have to go to Wetlands before we go to final site development plans. So we could have gone out there, located the infiltrators, cleared the trees in the area, and done test pits. And this Commission can say to us you have to do it.

But then if we relocate the infiltrator because we are relocating a road or we're relocating a building, then what happens is we have to come back to you and say okay, fine. We are going to do it in a different area. And you are going to say okay,

fine, we need you to do the test pits. What Jim is saying to you is you can make that a condition for an approval. Wherever we relocated this, you have to prove test pits and you have to prove infiltration.

And one of the prime examples of what we're talking about is in our effort to try to address, even though we don't think we need to, Matt will address further protections of the vernal pool. What you are going to see, if I'm correct, is that we are moving the disturbance line back. And what we have to - - the non-disturbance line back, and we'd have to relocate, guess what, an infiltrator, you what I mean. So that is - - that ties in exactly to what we were talking about.

With that we'll, again, we are all here answering questions. We assume you've read the report. Now we will have Matt come up and - -

Do you want me to pass that up?

MR. POPP: Good evening. Matthew Popp, Landscape Architect Professional Wetland Scientist with Environmental Land Solutions. I prepared the environmental assessment.

I am going to just talk about three topics. One is Wetland F right here, this little pocket here. The second is the vernal pool up here. And then the third topic is just some wildlife protection measures, mainly for turtles.

I visited the site five times within one month. Actually, I'll list the dates. On March 31<sup>st</sup>, 2015, April 4<sup>th</sup>, April 7<sup>th</sup>, April 18<sup>th</sup>, and April 29<sup>th</sup> of 2015.

Dominick right now is handing out some photos of Wetland F right here. Now, these totals are mainly taken from the north, working across down to the south. You can kind of see in the background there's a small outcrop, which is just right about here. And the March 31<sup>st</sup>, 2015 that wetland was filled with water. About two and a half weeks later it was empty, which looking at the site during the March 31<sup>st</sup> site visit, it appeared to be - - you know it could possibly could be a vernal pool. But within the two-week period, two-and-a-half-week period it was completely dried.

Now, later on that month on April 29<sup>th</sup> there was standing water in there again. And then the last photo just shows a June photo. So that - - you know although you are there probably this time of year it can possibly look like a vernal pool, again, it drains out too quickly to support amphibians. You know it would have to be full with water well into the beginning of May, probably even towards the end of May. So in that wetland there is not a vernal pool.

In the LandTech report it mentioned - - quite a

bit of discussion on this vernal pool up here. They kind of wanted to know the quality of that vernal pool. And the people - - to look at the quality they look at the publication called Best Development Practices: Conserving pool-breeding amphibians in residential and commercial developments in the Northeastern United States, by Klemens and Calhoun. In there they have free categories of vernal pools; tier 1, tier 2, tier 3.

Tier 1 are the more valuable vernal pools. They provide more wildlife habitat. They are located in undisturbed woodlands. And again, this is a tier 1 vernal pool for several reasons. It supports two types of vernal pool indicator species. It supports wood frogs and spotted salamanders, which were noted. 75 percent of the vernal pool envelope. The vernal pool envelope is the 100 feet around this is undeveloped. And 50 percent of the critical terrestrial habitat, you know from the vernal pool edge out 750 feet, 50 percent of that is undeveloped. So again, this vernal pool meets that, so it is a tier 1 vernal pool. And that's - - you know we acknowledge that this is a high-quality wetlands system.

It is located in the proposed open space through here. There was some discussion on what are the migration routes for the salamanders and the frogs.

There is a letter provided to this Commission from Ms. Gallagher dated August 25<sup>th</sup>, 2016. It's addressed to Ruth Perkins, Planning and Zoning Chair. And it states that Buddington Road up here to the north of the site, mainly from I would say in this southeastern portion of the property, the southwestern portion of the property up about Buddington Road about a half of a mile it's the most active amphibian crossing road crossing that she had found.

So we know that there are amphibians traveling from our site heading to the west. And that would be expected. Again, there are additional vernal pools across the street, so the salamanders and the wood frogs generally travel between pools and they travel between woodlands. So again, that document states, again, they are traveling to the north, northwest.

We did just submit it - -

Do you have that up on the screen?

We have a handout. We did take into some additional protection measures. The handout we just handed out its on the 11x17. Currently, there is 100-foot buffer between the vernal pool and the development. As a condition of approval, we would increase that to 200 feet. So that twice the area that we are proposing out. That 200-foot line comes back through here. And this phase right here would

get adjusted as needed. So there would be no disturbance within 200 feet of this vernal pool, except for an outlet, drainage outlet, located here. So and it's probably an additional you know half-acre to an acre of woodland that would be protected.

There's a wildlife protection barrier, a stonewall, that wraps around this. That would be adjusted also 200 feet away from the edge of that vernal pool, and they would make that a condition of approval.

And as far as turtle protection, I did handout -

- I have a Scientific Collectors Permit from the DEEP. And when you get this permit, like every three years you have to kind of renew yourself, there is some recommended guidelines for protecting turtles in it, and it's on the second page. And we would be you know happy to include those in any approval condition. Some of these changes slightly over time, but those are the conditions that the DEEP recommend on projects like this. It mainly is you know before any clearing, you put up the silt fence, you walk the site, you actually make an exclusionary zone with the silt fence, you walk the site carefully. If there are any turtles, you are moving them to the other side of the silt fence. And every morning, usually in June, you are out there searching the site to see if there are any turtles in the development zone, and

then relocating those to the other side. There were some other conditions in there. But again, we would be pleased to have those as a condition for approval.

So those are you know the three/four things. Again, this is not a vernal pool, and this is a high-quality vernal pool. We would be pleased to shift this development from 100 feet buffer to a 200-foot buffer. And we would be amendable to having those turtle protection recommendations from the DEEP as a condition of approval.

Thank you.

MR. COOK: I have a question for you.

MR. POPP: Sure.

MR. COOK: When you were talking about your site visits of 2015 that you were there about five times, since this is you know quite a project for all concerned, including Planning and Zoning, the Conversation folks, this Commission, what was the amount of rain and snow in that timeframe when you did those initial visits? And what factor does that play when it comes to sustaining your hydraulic condition within the vernal pool if you had, say, a draught in the fall and then a limited snow? You don't have that supply water.

And to follow up with that question. Have you had the opportunity or been contracted during this timeframe from 2015 now going into the breeding

season in 2020, to revisit either that particular wetland or look at some of these other factors?

MR. POPP: So when you say that particular wetland, is that - -

MR. COOK: That would be the Wetland F.

MR. POPP: Wetland F right there.

MR. COOK: I can see that it is limited, but at the same time - -

MR. POPP: It's very limited. Again, that was - - when I went and visited that site on April 18<sup>th</sup> when it was empty, all of the other wetlands were full with water. This watercourse here was still flowing this way. Over here this wetland was - - the vernal pool wetland was flowing out discharging out to the south. The wetland in the northeast corner of the site that water was still flowing. So there was still surface water throughout the site. Again, I was you know pretty surprised that this one was empty. It did fill up. There was another rainfall between you know the April 18<sup>th</sup> and April 29<sup>th</sup>. It did fill back up again, approximately - -

MR. NAPPI: Mr. Popp, I'd like to just stop you for a moment. I don't think it's fair. I'd like to - - he passed the Chair to me, just take a recess until the Chairman comes back, so he should hear this for his deliberation.

MR. POPP: Okay. Sure. Okay. I didn't see that



he was gone.

MR. NAPPI: So I'd make a motion to take a ten-minute recess.

MR. DUNFORD: I'll second.

MR. NAPPI: All those in favor?

THE COMMISSION: I.

(WHEREUPON THE COMMISSION TOOK A SHORT RECESS AND RESUMED WITH THE PUBLIC HEARING AT HAND)

MR. POPP: Matt Popp, Landscape Architect, Environmental Land Solutions.

I think the question was regarding Wetland F right here. And I just think how can you be certain that that isn't a vernal pool. Being that we went out to that site and visited that vernal pool just during one season, I think out on May - - I mean March 31<sup>st</sup>, 2015. The wetland was full with water. You could see by the photo. Eighteen days later it was empty. A vernal pool at that time of year would be able to sustain water for that eighteen-day period, and regardless of it rained or not. It emptied extremely quick.

During that time on the 18<sup>th</sup> all of these other wetlands still had flowing water. This watercourse through here had flowing water. The vernal pool was still discharging to the south. The northeast corner wetland here still discharged to the southeast. So again, just by looking at the other wetlands seeing

that they still had standing water and flowing water backs up my assumption that this is not a vernal pool. Again, it drained out extremely quick.

I just wanted to make one additional comment on we are increasing the buffer to the vernal pool 200 feet. Right now it's currently 100-foot undisturbed buffer. We are increasing it to 200 feet, except for that discharge point. Now, that discharge is from the infiltrators, and that's required to maintain the base flow of water to this vernal pool. Without that discharge in this location, you know we would have to discharge it to the different watersheds. So we just wanted to maintain that flow, again, to that verbal pool. And that would be, you know, filtered through the underground galleries prior to discharge.

MR. COOK: So if I understand completely, then, so this screen that is up here is the - -

MR. POPP: Old one.

MR. COOK: - - old plan - -

MR. POPP: Yeah.

MR. COOK: - - that was effective from April, 2018. And so that - - so what we're looking at is the 100-foot, not the 200 on this one?

MR. POPP: Correct. Yeah, this stonewall is 100-foot distance, and it would be a 200-foot distance. And it shows on the 11x17 I think it's a green dashed line, maybe it's like a half-toned line,

so it's quite a bit of a setback from that vernal pool. So I think that's it.

ATTY. THOMAS: Another thing with respect to John's question. I think it was addressed to the comment in - - it was addressed to the comment in the LandTech report relating to the fact that according to the National Oceanic and Atmospheric Administration, this is on page 3 of their September report, the integrated information system, the 2015 breeding season was the start of a multi-year drought. If you go on and look, it was the start. It was at the very beginning. The drought - - actually, when you look at the drought categories of the months, really the drought began in the fall of 2015, well afterwards. And I think Matt addressed that in his, again I'm assuming everybody has it and has read it, in Matt's paragraph-by-paragraph addressing of the issues with respect to it. But in addition to that, I think the testimony today as to what he actually did when he was out there and what he observed, addresses that issue.

So we are all here for any questions for you. And again, if the Commission has other things that it wishes us to do and other things that it wishes us to do and that would necessitate keeping the public hearing going, then that is what we're here to listen to the Commission tonight. We believe it's not

necessary. We believe we have addressed all of the concerns.

We believe, also, in accordance with the Statutes, that there's been no presentation of any adverse impact upon the wetlands or watercourses. We believe we've taken sufficient protections, especially to the vernal pool, by placing it in the 25 acres of open space. But all of the things that Matt - - and you know I'm sure you'll go back and review all of the exhibits in evidence and Matt's testimony with respect to the stormwater discharge.

We are prepared to address, as we explained to you, the infiltration issue by a requirement that at actual construction and pre-construction that they have to be notified when they are actually located. We have to produce for you the appropriate empirical data on infiltration.

And like I said, nobody's report, no report, mentioned any adverse impact with respect to the crossings that take place, the two roads. One thing we will point out to you that you didn't see is that in the initial presentation to the Planning and Zoning Commission there was the - - there was a road here that went across the top and crossed over here.

And Planning and Zoning, in anticipation of issues related to the vernal pool, because Matt made an explanation of the vernal pool, Planning and Zoning

required us, as part of their approval, to relocate the crossings down below, and to find the narrowest points for the crossings. This crossing remained relatively the same location. This crossing was originally here, and now it goes like this and interconnects it in. And that was a benefit that was to address wetlands issues and the vernal pool even before we got to you. And that is the plan that, of course, that we have submitted.

So we believe we have addressed everything, and we are here to answer any of your questions.

MR. COOK: A question for Jim. When you talk about - - Jim or Dominick. When you were talking about the simple solution is to prove effective infiltration as a condition to insist on it, but what happens or what's the options if it was initiated and then you don't have that ability to prove that one-inch or whatever is considered the appropriate level of infiltration? What are the options at that point?

MR. SWIFT: Well, we are in violation of our wetlands permit. We are not allowed to do that.

ATTY. THOMAS: We got to relocate the infiltrators.

MR. SWIFT: We would have to come up with another plan. We don't have the authority to violate our permit.

MR. COOK: Theoretically, while that - - it

could actually affect the shifting of the building, even at that time then.

MR. SWIFT: It could. But again, you refer back to what this Commission has approved, and you know we can't justify a violation of a permit in one area but because you know of another area. You know your permit is your permit. And if we can't follow it, we're in violation.

MR. COOK: As a follow up to that, what sorts of geotechnical borings could be done? Is it possible to have that data to evaluate the capability of infiltration before construction actually starts?

MR. SWIFT: Sure. And this is one of the things that we've been in discussions with GZA about for the past month or so. There's, basically, three conditions. There is a condition where we could be placing infiltrators partially in rock excavation, transitioning to natural grade, and then transitioning to a fill. So those are three different distinct areas of condition underneath the infiltrators.

And I've got to digress a little bit here. I think I've spoke about this a long time ago. When I called these infiltrators, that was a very, very poor choice of words. They should have been called storm chambers. They are called infiltrators on the drawing because that's what the manufacturer calls

them. These big plastic things are called plastic infiltrators. And I have been paying for that mistake you know for this whole thing. So we'll continue to refer to them as infiltrators, because that's what the plans call them.

So anyways, so we, in consultation with GZA, we are looking at specific specification for making sure that we could infiltrate in a rock cut. And incidentally, any indication that when you blast a rock area in preparation for building something, the fact that we managed to blast it perfectly smooth so that there's you know it's like a dinnerplate with no water passing through it, is patently absurd. You know there's over blast, there's fracturing of the rock. There is still infiltration.

But be that as it may, GZA has looked at the possibility of how do we provide empirical data on what the infiltration rate is in that condition. We do the field testing when we're placing the bottom of these infiltrators in natural grade above the ledge profile, and that we field test. We can know exactly what the infiltration rate is. And then when we're placing these infiltrators in fill situations, we do just like we do on septic systems. We provide for a specific gradation for what we're going to do underneath those infiltrators. So we can provide this Commission with specific exact information on

what the infiltration can be expected on all of those conditions.

ATTY. THOMAS: In the exact location that they are going to go.

MR. SWIFT: Yeah, in their final location.

MR. COOK: No, just as another question, as they pop in. There is many that pop in and then you know then you have to try to recover them as you go through. But with the pointer can you - - is it possible on this illustration for us to clearly see - - I know it would be in some of the watershed analysis drawings that were submitted early on. But as to show what the current watershed boundary is for the high value vernal pool pre-construction, and then just kind of highlight with the pointer what the post-construction.

MR. SWIFT: This is the watershed.

MR. COOK: Okay.

MR. SWIFT: So what we have is, it's a little difficult to see, but you see this arrow right here is basically at the base of this vernal pool right in that location. There is actually another contiguous vernal pool just above it. But that's where that stream exists that vernal pool. And the watershed for that point goes all of the way around like that. And all of that water exits at that point.

And incidentally, our development is just a



very, very small area of the watershed for that - -

MR. COOK: That's what I was hoping to focus in on is on your - - the watershed in your development, the pre, and then the watershed of your development on the post.

MR. SWIFT: Yep.

MR. COOK: And this also is reflected - - the building locations those are the originals at 100 foot?

MR. SWIFT: Yes.

All right. So here is a good example of our efforts that you really want to keep the watersheds the same. You don't want to discharge water from this part of the development over into this watershed over here. You want to keep them as consistent as you can, and that's for the protection of watercourses and vernal pools. So you can see that the boundary of Watershed A precondition follows that general line. The boundary of it postcondition is, basically, it makes little jogs here, just little slight changes there, little slight change there; follows it there; little slight changes, jogs there, and up like that. So when you zoom in and you look at each one of these watersheds independently, you know you can see that we keep those things as close as we can to what the pre - - what the existing flows are.

So in other words, Watershed A stays in Watershed A. Watershed B stays in Watershed B. Watershed C, et cetera, et cetera.

Now, I am going to go to just - - this is a point that was raised in LandTech's original report, all right. We're just looking at a very small portion of all - - I think it's six different watersheds that flow to Wells Hollow Brook on the other side of Bridgeport Avenue. And this is going to illustrate that there are - - if you were to look at some of these postconstruction flows - -

Well, this is a perfect example. We fell right in Watershed F. The preconstruction is 1.2cfs; the postconstruction is 2.5cfs. So you could say oh, my goodness, you know you've increased the flow. But what happens is you've got to consider all of these watersheds along Burying Ground Brook - - or Wells Hollow Brook, I'm sorry, as a whole. And when you look at these watersheds as a whole, the post-construction flows are less than the pre-development flows. So even though this one might be quite a bit more, you are going to find others farther up the line that are considerably less.

So again, balance out the watersheds. Keep the watersheds in the same area. And even though F, G, and H are technically different watersheds, they all go to Wells Hollow Brook. So in that respect, we are

all part of the Wells Hollow Brook Watershed.

And we basically have three. We have the vernal pool discharges, we have the Far Mill River discharges, and we have the Wells Hollow Brook discharges, and they are all balanced.

The - - Jim, can you in Exhibit 45, City Engineer dated June 6<sup>th</sup>, 2018, he strongly disagreed with the watershed map boundaries and the proposed location of the outfall for Watershed A3. He refers to the 1973 topographic mapping presenting a contrasting water boundary where a significant portion of Watershed A actually flows to Bridgeport Avenue and Wells Hollow Brook and Watershed E. And the applicant shows all runoff from Watershed A being directed to the Far Mill River via the tributary watercourse the flow is through 77, 79, onto 97 Mill Street, which does have a - - they've got some flooding problems there.

MR. SWIFT: This is the City Engineer's markup for that on his contention. As I just pointed out, Watershed A I have discharging in this direction, eventually down to Far Mill.

Back in the early/late '70s the City prepared general watershed maps to the best that they could with the information available. And under those old reports they show this flow coming in this direction down towards Wells Hollow Brook. So what I did was -

- I knew that wasn't true. So what I did was I sent my surveyor out there to get very, very specifics elevations, you know what was the low point here, what was the low point there. All right.

This is a photograph of the discharge as I saw it and as I designed. So in other words, this is the vernal pool up in here. This is a flow that goes towards the watercourse that flows to the Far Mill River. And this is the design from my stormwater analysis.

This is the vernal pool up in this direction.

This is the valley that the City Engineer is referring to that eventually flows down to Bridgeport Avenue that his contention was this was where the vernal pool discharges, not the way I had shown it. And I leave it to the Commission's good common sense to see which is correct.

MR. POPP: Matt Popp, Landscape Architect.

Actually, I did visit that area with Jim, and there is kind of a highpoint in that watercourse that flows.

I don't know if you want to get back to that drawing.

But again, it doesn't - - the vernal pool empties out to the south. It doesn't empty out. Now, there is sort of a highpoint in this right here that flows back. This flows back towards the vernal

pool, and in here flows down this way. So the vernal pool does not discharge down. It discharges to the south, as Jim noted.

MR. SWIFT: And again, Jim Swift for the record.

These are slides that were presented, I'm not exactly sure which meeting they are, but these slides that I've just showed you are part of the record from previous open hearing dates. And it's an honest issue for the City Engineer to raise up, because the information he had in his office indicated something different than I had shown.

MR. COOK: Part of it may be that the outflow of the vernal pool that goes towards the Far Mill River tributary, the ancient road that goes from Mill Street towards Buddington Road. As you look at that very critically, it almost looks as though in a much older timeframe, you know at least before the '70s, that some rocks may have been pulled out, basically as an attempt to possibly dewater, to some degree, that vernal pool, which over decades may have had an impact, as I saw that when I had visited the site. And the flow goes right across the old cart path that was at...

MR. SWIFT: And again, that's - - I could just have easily have just taken these photographs, brought them to the Commission, showed them, and said you know I'm right; the City Engineer made a mistake,

but I went further than that. I had Mr. Lewis, who happens to be in the audience right now, my land surveyor, go out and shoot elevations throughout that entire area. And that is going to show that there's no way that that flow used to go in the other direction.

MR. NAPPI: Jim, there has been a lot of data both ways and sometimes it does, without going through it a couple of times, get confusing. So I just want to ask you the question that the City Engineer asked.

Based upon your design and your research, are you sure that the current design would not exacerbate the drainage problems experienced with the Mill Street culvert, and it will not impact the properties at 77, 79, 91 and 97 Mill Street? Without concept approval from the top for the required widening of Bridgeport Avenue, the Commission will not know the environmental impacts to the Wells Hollow Brook and its tributary, which will receive runoff from the project site. This application should not be approved, based on the original project drawings, and I realized you revised them, and the revised drawings, which were submitted during the public hearing.

So what I am asking you, in your professional opinion and your teams', you are telling us in your

opinion this will not happen?

MR. SWIFT: I am. And let me explain that a little bit.

Concerning Wells Hollow Brook and the discharges across Bridgeport Avenue. I think everybody is familiar with there's a culvert redesigned on Long Hill Cross Road. So the embankment and the culvert of that road is not going to be impacted by the flows coming off of our site. We are reducing the post-development flow from the predevelopment flow. So we are clear on that.

Now, let's go up to the Mill Street area. We are, again, reducing the post-development flows from the predevelopment flows. That doesn't mean that there wasn't issues there before, particularly the culvert flowing underneath Mill Street from I believe it's Old Kings Highway, and some of those houses in that area.

And I think we're on record from a previous open public hearing here that we would volunteer to examine that culvert, which has previously been undersized, and we would agree to upgrade that culvert as a part of this project. Its not our drainage. It belongs to the City. Its in the City street. Its not on our property. But again, it's you know a lot of times you'll run into situations where there's an existing problem that a development

upstream of that doesn't necessarily exacerbate, but in good conscious probably the developer, if it's within their means, should address the problem.

ATTY. THOMAS: Can you show them that map where that culvert is?

MR. SWIFT: Yep. That culvert I believe its - - that's a watershed. Its up here. The water comes out of the vernal pool, comes through private properties. And you know Mr. Kulacz showed that here. He's got the Mill Street watercourse. Comes down, comes around, and crosses Mill Street right about there. So that's probably about 100/150 feet west of our property line.

ATTY. THOMAS: Is any of our drainage going in there?

MR. SWIFT: Some of our drainage from these upper areas that discharge into Watershed A do get to that point, but none of these other drainage areas get anywhere near it.

ATTY. THOMAS: And as Jim said, we agreed to look at it and possibly, if we could, fix the situation by increasing the size of the culvert.

MR. SWIFT: Right. But again, for the record, we are decreasing the post-development discharges, peak flows, from the pre-development.

MMR. DUNFORD: Jimmy, could you show the slide where you had the pre and post watershed lines on the



Mill Street side?

MR. SWIFT: The overall watershed map?

MR. DUNFORD: Yeah.

MR. SWIFT: No, this is the watershed map.

MR. DUNFORD: No, the one you had before where you had pre and post lines drawn, or this is it?

MR. SWIFT: Yeah, this is actually it. Bob did use the watershed map to draw this, so yeah. I can zoom in on it. Let's get a little closer. I can zoom in a little bit more if you want.

MR. DUNFORD: Maybe just move it this way.

ATTY. THOMAS: He wants Mill Street.

MR. DUNFORD: Mill Street side.

MR. SWIFT: Oh, the Mill Street side. So you can see that the farthest edge of our watersheds that are anywhere near this - - this is Watershed B, by the way. And all watersheds to the Far Mill River are in B1, B2, and B3, because for all intents and purposes they are all discharging at that point. So you can see even parts of our property are, in fact, that they don't drain to the watersheds that were calculated.

ATTY. THOMAS: Did you want to see the numbers, or just the - -

MR. DUNFORD: Are they on that map? Can you just - -

MR. SWIFT: Yeah, the numbers are - -

ATTY. THOMAS: The numbers - -

MR. DUNFORD: Oh, I gotcha. To the left. Okay.

MR. SWIFT: So you'll see here I've got the calculation for Watershed B1, Watershed B2, Watershed B3, but that doesn't tell the whole story. What tells the whole story is what's the total discharge to the Far Mill River. And the reason that's true is because when we do this development up in here, which is part of that watershed, a little in here, a little down here, we are very, very sensitive to the discharges into the Far Mill River. So what we're doing is we're taking the water that we're generating up in these upper areas, we are bringing it all down to this point, and piping it across the street, down the street a little bit, and to the Far Mill River. And this is one of the issues that I had with LandTech that you'll see when - - if you read my report in detail.

We spent a lot of time picking the exact point that we should take this drainage and discharge it to the Far Mill River and the right place. What is critical is that there be no erosion, that it be stable. And if you were to go out in the field and examine that point where we're building our discharge point, we're actually at a point where we have to pin the drainage structures into the ledge that's exposed. So we are discharging onto exposed ledge at

the waterline for the Far Mill River, absolutely guaranteeing that there is going to be no erosion at that point.

MR. ZAHORNASKY: We are going to open it up to you guys. I guess Mr. Trinkaus isn't here tonight, so.

MR. TETRO: Yeah. I talked to him on the phone. He had to go out of - -

MR. ZAHORNASKY: You have to identify yourself. I'm sorry Gary.

MR. TETRO: Oh, okay. I wanted to make sure I was allowed.

MR. ZAHORNASKY: Yep. Go right ahead.

MR. TETRO: Gregory Tetro, 281 Buddington Road. I spoke to Mr. Trinkaus today and he has a different opinion from Corporate Counsel on the Statute. I don't really know Corporate Counsel's long history as a lawyer, but I don't know how much of his practice dealt with Inland/Wetland issues and Statutes. I do know that Mr. Trinkaus has done it his whole career, and he is under the opinion that it is being read wrong, that it's very clear.

I think you decided to continue the hearing based on it. I'm fine with that. I understand that for coming out here and getting it to the end. But I think it really seriously needs to get looked into to make sure that it's an actual fact, so we don't deal

with that issue later.

Also, I am hearing a lot of well, when we redesign, and redesign, and redesign. As you redesign you are creating a new application, basically. You are saying trust me. The applicant is saying trust me; we'll make it work no matter what. I have heard that a lot and I've seen a lot of disasters in the construction field. We'll just make it work.

It's very clear that the application was presented. The City Engineer said it failed in many factors. Our engineer said it failed in many factors. LandTech said it failed in many factors.

We spent a lot of money on our engineer and our attorney to fight our side. We heard that LandTech only had limited money to be able to do a limited amount, and they are not here to discuss their side. I think it's very - - you know it was sad to hear the Mayor saying maybe we'll just go and get another engineer. I thought that was an embarrassment to say that in front of this Commission. I think that it's very clear that three people disagree with one person. All of them are professionals. All of them are quality engineers. But you have to look at the preponderance of the evidence, and you have three people who disagree.

Its very difficult for you. I understand how

difficult it is for you to decide. But right now, basically, they've told you that we have to fix stuff. Very simply deny the application. Let them reapply. The reason why they want to continue this is because if this is denied, it was part of the P and Z application that it's pending the approval of Wetlands, so they would have to start from ground zero. That's not our fault. They talked about they are going to move a building so they can get more space for the wetlands.

I was at every Planning and Zoning meeting, okay. That building was going away anyways. They said we are going to leave that as nothing right now. Maybe it was because they knew they had wetlands problems. Maybe they didn't know what they were going to put there yet. But it is very clear that they have not proven their case. That three engineers have totally disagreed, and we still have the issue of whether or not the application went too long. And all of those things have to be seriously looked at.

Thank you.

(APPLAUSE)

MR. ZAHORNASKY: Anyone else? No? Okay. We're good.

ATTY. THOMAS: We have the burden.

I missed seeing Mr. Trinkaus in my law class. I

probably have just a bit of experience in doing this.

When you look at the Statutes and you look at the various time limits, there are two major things to look at.

Number one, there's the automatic approval, which are site plans and subdivisions. Actually, there's three categories. Number two, the zone changes in which there is no automatic approval. And if you read the case law, the case law requires it to be mandamus. And number three, there is wetlands, and wetlands provides a unique alternative. The alternative is to take the application, if not acted within the time limit, can take the application to DEEP. If Mr. Trinkaus' legal treatise is correct and you didn't act within the time limit, he is trying to say the application is void, which would render the statement that it goes to the DEEP, the applicant go to DEEP, meaningless. And you cannot have a Statute in which a portion of the Statute is rendered meaningless by an interpretation.

In this case, and it's been my position over the thirty years that I've been doing this, that the changes to the Statute on time limits are for the basis of the - - are for the benefit, I'm sorry, of the applicant. What was happening prior to 2003 change in the Statute was the Commissions were simply not acting and they were just simply giving

themselves extensions. So the Legislature put some limitations on it, but those limitations are for the benefit of the applicant.

There is no case law that says that you lose jurisdiction. So what happens is - - excuse me - - Commissions have to be diligent to request the applicant consent to a further extension. If you went Mr. Trinkaus' way and you put the hard time limit and the hard extension and you said that's it, then you would never be able to have a reasonable discussion of major projects, such as this, where it has to go back and forth where they are very large.

And that leads to the response to the second issue about changes. The fact that in the thirty years I have been doing this most major projects go through changes through the wetlands or the P and Z process, and those changes are usually for the better, if applicants come in before a Wetlands Commission and simply say it's our way or the highway, well they probably should be denied. Because contrary to, apparently, the opinion of Mr. Trinkaus and LandTech that they are always right and nobody else is right, we believe you should listen. And if you listen and have a discussion, you can come up with suggestions that will improve the plan and improve the protection of the wetlands.

If the applicants wish, and this has been said

over and over again - - I'm sorry. If the opponents wish that there be no impact over the wetlands, and then, as I've said over the years, then they need to come into this room on the second Thursday of the month when the Board of Alderman meets and ask them to buy the property. But with respect to the development and respect to the changes, its because we are not arrogant. Its because we are understanding. And we believe that whenever changes area suggested that can be done, then we can try to incorporate that.

So that's the reason for that. If, in fact, it was denied, wetland was denied, you don't go back to square one. We would either appeal, or go on with the wetlands application to reapply. So in order to avoid that what an applicant does is listen to the objectors, listen to the Commission, listen to the experts, and make changes that are important to address the concerns of the Commission and the concerns of the objectors, which is what we did.

But let's get to the bottom line. What is the bottom line of a Wetlands Commission? The bottom line of a Wetlands Commission is to grant a permit for a regulated activity. The permit for the regulated activity involves Wetland F, involves the crossing, involves upland review areas, and there is no evidence of any of those having an adverse impact



upon the wetlands.

Now with respect to this, there is the other issue that has to be decided, has to be determined, and that is the protection of the Tier 1 vernal pool, which is not in the middle of our development, which is on the edge of our development, which is in a 25-plus acre open space, and which we've done a substantial effort to protect, including many of the things, if LandTech had had the transcripts, could have read the thirteen or so pages that Mr. Popp testified to and went through all of the things he's doing with the wetlands with respect all of the things he's doing to protect the migratory patterns. So we believe, that being said, we have shown that there is no adverse impact upon the vernal pool or the migratory species in the vernal pool and we have taken the protections.

All that being said under the Statutes and the 22a-38 and et seq. and all of the following Statutes, we believe we have complied with the requirements under the law for the wetlands permit.

Thank you very much. And thank you for your attention.

MR. NAPPI: No, I just thought, Mr. Chairman, that we were going to have an opportunity to comment on LandTech with LandTech present, but evidentially, that is not happening.

MR. ZAHORNASKY: No. Well, we certainly have a lot of information to go over. Like I said, we do have...

MR. COOK: Just for housekeeping, we have one letter from Counsel for the applicant submitted this evening consenting to an additional extension; we have several pages. And we should probably mark those as exhibits. I believe that would be in order, if that's correct. So this will be, actually, marked as an exhibit. The next exhibit number would be 66.

MR. ZAHORNASKY: 66. And these?

MR. COOK: Should all of these be as one exhibit by the - -

ATTY. THOMAS: Whatever you choose.

MR. NAPPI: Just the number of pages.

MR. COOK: Yeah. One, two, three, four pages, and that would be number 67; four pages.

MR. ZAHORNASKY: 67, okay. Okay. No further business.

Mr. Dunford, can I have a motion to close the public hearing?

MR. DUNFORD: I'll make a motion to close the public hearing.

MS. KAWALAUTZKI: Second.

MR. ZAHORNASKY: All those in favor?

THE COMMISSION: I.

MR. ZAHORNASKY: So moved. The public hearing

is closed. We will begin our deliberations.

And now we need a motion to adjourn the regular meeting, correct?

MR. COOK: Unless you want to deliberate right now.

MR. ZAHORNASKY: No.

MS. KAWALAUTZKI: Motion to adjourn.

MR. ZAHORNASKY: All those in favor?

THE COMMISSION: I.

MR. ZAHORNASKY: Okay. We're all done.

(END OF PUBLIC HEARING)

SHELTON INLAND WETLANDS COMMISSION

FEBRUARY 27, 2020

APPLICATION #17-14

TOWN CENTER AT SHELTER RIDGE - BRIDGEPORT AVENUE/MILL  
STREET/BUDDINGTON ROAD

\*\*\*\*\*

CERTIFICATION

I HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND  
ACCURATE TRANSCRIPTION OF THE VOICE RECORDED  
PROCEEDINGS IN THE ABOVE ENTITLED MATTER, DATED THIS  
28<sup>TH</sup> DAY OF APRIL, 2020.

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STEPHANIE CHARBONEAU  
RECORDING MONITOR