

**In The Matter Of:**

*Town of Stoneham Board of Appeals  
Weiss Farm Apartments, LLC, Re 170 Franklin Street*

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*Public Hearing, Volume VIII  
October 28, 2015  
Comprehensive Permit Request*

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*Original File Stoneham\_Hearing\_Weiss\_Farm\_Vol8.v1  
Min-U-Script® with Word Index*

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Volume VIII  
Pages 8-1 to 8-105

TOWN OF STONEHAM  
BOARD OF APPEALS  
Public Hearing Re  
Comprehensive Permit Request by  
Weiss Farm Apartments, LLC  
With Regard to 170 Franklin Street  
Board Members Present:

Robert Saltzman, Chairman  
William Sullivan  
Tobin Shulman  
R. Michael Dufour  
Laurence Rotondi  
Catherine Rooney, Secretary

Huggins & Witten, LLC (by Jonathan Witten, Esq.)  
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jon@hugginsandwitten.com, 781.934.0084,  
for the Board.

Cicatelli & Cicatelli (by Steven L. Cicatelli,  
Esq.) 266 Main Street, Stoneham, MA  
02180-3502, scicatelli@cicatelli.com,  
781.438.4060 - and -

Rackemann, Sawyer & Brewster (by Richard  
Gallogly, Esq.) 160 Federal Street, Boston,  
MA 02110, rgallogly@rackemann.com,  
617.542.2300 for the Applicant.

Held at:

Stoneham Town Hall  
35 Central Street  
Stoneham, Massachusetts  
Wednesday, October 28, 2015  
7:30 p.m.

Alexander K. Loos  
Registered Diplomate Reporter

\* \* \* \* \*

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1 P R O C E E D I N G S

2 CHAIRMAN SALTZMAN: All right, everybody.  
3 Good evening. Welcome to the Stoneham Board of  
4 Appeals. This is -- wait a minute.

5 Are you ready for us?

6 VIDEO OPERATOR: You're good. You're good.

7 CHAIRMAN SALTZMAN: We'll try this again.

8 All right. Good evening, everybody, and  
9 welcome to the Stoneham Board of Appeals.

10 This is a continuation of an ongoing  
11 hearing that we're having with reference to the  
12 application for a comprehensive permit for 170  
13 Franklin Street, the property known as Weiss Farm.

14 Just before we get started -- I'm sorry.

15 Could everybody who is coming in here,  
16 could everybody sign in? Didn't mean to wait until  
17 you sat down, but I didn't see you sneak in there.

18 MR. ROTONDI: Mr. Chairman, could I have  
19 something to say --

20 CHAIRMAN SALTZMAN: Sure.

21 MR. ROTONDI: -- before we start the  
22 meeting?

23 CHAIRMAN SALTZMAN: Sure.

24 MR. ROTONDI: What I want to ask Cathy is I

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1 want to know how much money is left in the money  
2 that was appropriated for this alone, which we have  
3 no idea. Because I heard that some of the money is  
4 going for this land swap, and that money wasn't  
5 appropriated -- it was just appropriated for this.

6 So I want to know how much money we spent  
7 on all the -- the lawyers and the consultants. If  
8 you can get a copy of that for us, just to let us  
9 know? Because as a taxpayer, I think we should  
10 have -- even though it's not a thing to do with the  
11 Board, I think we should have an idea of what we  
12 spend and what we --

13 MR. VERNA: I can answer that. I got some  
14 copies from the treasurer's office.

15 CHAIRMAN SALTZMAN: We recognize -- okay.  
16 Can you tell us who you are.

17 MR. VERNA: Bobby Verna, Tedford Drive, and  
18 a Standing Committee member.

19 There is about \$82,000 left out of 250.

20 MR. ROTONDI: Did all of the 250 go for  
21 this?

22 MR. VERNA: No.

23 MR. ROTONDI: Because I heard a lot of this  
24 has gone to the land swap, and it doesn't have

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1 anything to do with it.

2 MR. VERNA: More than -- more than that has  
3 gone for the swap, but I don't know everything about  
4 it.

5 CHAIRMAN SALTZMAN: Okay. Just one quick  
6 thing.

7 I just want to call everybody's attention  
8 to one detail of great significance. The -- the --  
9 the legislation, it was passed at the town  
10 meeting -- which created this particular fund, and  
11 the Standing Committee -- stated that the funds  
12 shall be under the jurisdiction and control of the  
13 town selectmen, and selectwoman, as assisted by a  
14 standing committee.

15 So I would just say that the -- the request  
16 is -- as a taxpayer is absolutely in line, but  
17 directing it to the Board of Appeals, we don't  
18 have -- we don't have --

19 MR. ROTONDI: But shouldn't we know how  
20 much we've spent so we know how much we're going to  
21 be able to do? I mean --

22 CHAIRMAN SALTZMAN: Well, it's -- but  
23 it's -- what I'm saying is, it's something that, if  
24 you are directing the Board of Appeals, or asking if

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1 the Board of Appeals will inquire of the selectmen,  
2 that might be the way to go. But what I'm saying  
3 is, you know, that -- that, you know, that --

4 MR. ROTONDI: Okay.

5 CHAIRMAN SALTZMAN: -- we don't have it  
6 under us. We don't have it under us.

7 MR. ROTONDI: Should I rephrase it then,  
8 ask Cathy to ask the Board of Selectmen how much  
9 money that we have we spent towards this 40B?  
10 And -- you know -- because you hear a lot of  
11 scuttlebut. I know the taxpayers voted for that  
12 money for the 40B only.

13 MS. ROONEY: I'll look into it.

14 CHAIRMAN SALTZMAN: And I would say it  
15 should be a matter of public record, so it should be  
16 easily ascertained.

17 Yes.

18 MR. ROTONDI: Go ahead.

19 MR. VERNA: I have a copy of -- I don't  
20 have it with me tonight, but I have a copy of all  
21 the money spent for counsel and the swap, the  
22 alleged swap, whatever that means.

23 MR. ROTONDI: Okay. But I'm saying --

24 CHAIRMAN SALTZMAN: Would you be kind

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1 enough to provide us with a copy?

2 MR. VERNA: Absolutely.

3 CHAIRMAN SALTZMAN: Sure.

4 MR. ROTONDI: But I'm just trying to say  
5 that the money was never raised for the swap. It  
6 was just for the 40B.

7 MR. VERNA: I brought up that issue, and I  
8 was told it is. I'm not a lawyer, so...

9 MR. ROTONDI: All right. I just wanted to  
10 know. That's all I asked.

11 CHAIRMAN SALTZMAN: All right.

12 On that note, seeing the conditions outside  
13 tonight, you know, puts -- puts one in mind of,  
14 perhaps, a site visit being in order. Not tonight,  
15 but it might be something that we want to think  
16 about as a board and as a group. I mean, it's  
17 something that we -- we should probably, before it  
18 gets too nasty out there -- not only tonight --  
19 think about perhaps the -- the early part of  
20 December when, of course, nobody will have anything  
21 else to do, maybe -- maybe think about something  
22 possibly toward the end of that first week.

23 I'm just putting that out there. It's  
24 something that we ought to think about, and it's

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1 something that, I think that, as part of our due  
2 diligence as a board, we ought to be closing in on.

3 All right. There is just one other thing  
4 that occurred to me. During the last meeting there  
5 was a -- Jeffrey Dirk, the traffic consultant, in  
6 answer to a question, as I recall, you know, we  
7 have -- we have, I think, a very good faith basis  
8 for wondering, Franklin Street, the redesign of  
9 Franklin Street may be something that is outside the  
10 reach of this particular Board. I'm not convinced  
11 that we have the authority to take a public way and  
12 redesign it.

13 That said, if the Board decided it wouldn't  
14 do that, what the next -- the question that that  
15 creates is, if you're not going to have three lanes  
16 on Franklin Street, such as would make that  
17 left-hand turn easily -- easily accomplished in the  
18 afternoon, my recollection of the answer to the  
19 question is, "Well, what would" -- "what would that  
20 mean for the project?" Jeffrey Dirk said it would  
21 mean that the number of units would have to be  
22 reduced to between 100 and 125. That was my  
23 recollection.

24 Does anybody have a different recollection?



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1 MR. ENGLER: No. It's the same.

2 CHAIRMAN SALTZMAN: All right. I didn't  
3 bring my minutes, but I've -- let's assume that for  
4 the instant. That seems to be a fair question.

5 Would there be an objection to providing us  
6 with that information, with what would 120 to  
7 125 units look like, in the event that the -- the  
8 lanes cannot be redrawn on Franklin Street?

9 And I would submit that there would be a  
10 host of reasons why that might not happen. Safety,  
11 bicycles, the fact that the town is very committed,  
12 along with the two adjoining towns, to creating a  
13 bikeway, the fact that this connects to the bikeway.  
14 There are legitimate questions, and I believe -- and  
15 this may be -- be something that we -- we look at.

16 I have some -- some understanding that when  
17 there was talk of siting a middle school at the  
18 town's property where the high school is located on  
19 Franklin Street, across the street from Weiss Farm,  
20 that there was a building committee that studied  
21 that, and the building committee determined that the  
22 traffic was such that they couldn't do widenings of  
23 the road; they couldn't sufficiently address the  
24 traffic concerns that would be attendant to having a

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1 school at that location, and so the town could not  
2 site a school on that property because of traffic.

3 I would submit that we may be looking at a  
4 very serious issue here, just on the traffic front  
5 alone, and I would ask if the -- the Applicant would  
6 submit a -- a redesigned project of between 120 and  
7 125 units.

8 MR. ENGLER: Good evening, Mr. Chairman.  
9 Bob Engler of SEB for the Applicant.

10 I haven't spoken to him, because you're  
11 just raising the question for the first time, but  
12 the way I would look at it is if you impose a  
13 condition that we have to get that to work, then we  
14 have the obligation to either say, you know, "We  
15 accept that condition, and we will get it to  
16 work" -- our position may be that you do have the  
17 authority to -- to grant that based on the work done  
18 by your own traffic consultant and how it would  
19 work, and we would participate in that. You know,  
20 it may be our position that that's not something  
21 someone else has the right to do; you have the right  
22 to do. But that's one major condition that we would  
23 like to look at, along with anything else you ask  
24 for at the time when all the discussion is over, and

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1 the issue is how many of these things can you work  
2 with or not work with, and we have that very frank  
3 discussion. We'll be happy to participate at that  
4 point in time.

5 But we would rather stick to the fact that  
6 we think that could be done, and we're willing to  
7 participate in it. And if it can't be done, we have  
8 to -- we have to decide whether, you know, that's a  
9 condition that breaks the project or not. But I  
10 don't think it helps us to redesign a project and  
11 say -- if we felt we could live with 125 units, we  
12 would give you that. We don't think we could live  
13 with 125 units, so it's not going to get us any  
14 further in the discussion other than looking at that  
15 condition as -- can we get that condition to work.  
16 Because we agree that your consultant has said it's  
17 something that should happen, and we would like to  
18 participate in having that happen.

19 CHAIRMAN SALTZMAN: Well, if it's -- if  
20 it's your position that 125 units would not work, is  
21 that because 125 would not be economic?

22 MR. ENGLER: Well, I could think it's  
23 fairly safe to say cutting this by half is not -- is  
24 not going to work, so -- but --

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1           CHAIRMAN SALTZMAN: You know, and just on  
2 that front, I mean, I did not anticipate -- I mean,  
3 I asked the question. I had no idea what the answer  
4 was going to be when Mr. Dirk was speaking, and I  
5 hadn't really digested the answer until after I was  
6 driving home, and I'm thinking, "Jesus, that's quite  
7 a change." And I think that we all -- we're pretty  
8 much in the same position. I mean, it wasn't in his  
9 report.

10           MR. ENGLER: Right.

11           CHAIRMAN SALTZMAN: And so I -- you know,  
12 and as to, you know, a frank discussion, you know,  
13 no time like the present. I mean, if that's what  
14 we're looking at, and if that's a -- if that's your  
15 response as the Applicant, I would ask, you know, if  
16 it's -- if it's not economic, if we could have the  
17 pro forma at this point. Because it does seem to be  
18 a legitimate time where there should be review,  
19 because I think that's going to be an issue.

20           MR. ENGLER: Well, if it is, and -- the way  
21 the regs read -- and here's counselor over here to  
22 speak to that -- but the way we read the regs, the  
23 pro forma gets discussed when all substantive  
24 matters from other consultants and other areas of

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1 expertise get dealt with. After those discussions  
2 are over, and the Board has a sense of the Board as  
3 to the kind of things they want to impose -- if they  
4 deny, that's one thing, but if they want to impose a  
5 lot of conditions, put them all on the table. If we  
6 say we can't live with some of those, or all of  
7 them, you have every right to ask for a pro forma,  
8 and we'll look at that. But that's not at the  
9 middle of the process. That's when everything else  
10 is put on the table.

11 CHAIRMAN SALTZMAN: Well, I would just  
12 submit that if --

13 MR. ENGLER: You're alerting us to the fact  
14 early that this may be one of them, and I understand  
15 that.

16 CHAIRMAN SALTZMAN: I mean, it's -- you  
17 know, we were all at the same meeting; we all heard  
18 the same thing. It does appear that it's a  
19 legitimate issue. And I would just say that, from  
20 our end of it, if we're going to get the pro forma,  
21 I mean, we're looking at the close of this being  
22 January the 15th. And it would just seem to me  
23 that, you know, I don't want to get this in my  
24 Christmas stocking this year. You know, it's not

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1 something --

2 MR. ENGLER: We don't want to give it to  
3 you --

4 CHAIRMAN SALTZMAN: I know that answer, but  
5 I would just say that if it's going to be -- if the  
6 applicant is going to -- is going to state that this  
7 is uneconomic, it's probably no time like the  
8 present to -- to state it, and no better time than  
9 now to put us in a posture where we can -- we can  
10 know what we're looking at.

11 Mr. Mahoney.

12 MR. MAHONEY: Just a few things.

13 Our -- we heard Mr. Dirk. We haven't done  
14 our own analysis, so I think it's a bit unfair for  
15 us just to accept Mr. Dirk's analysis that the site  
16 can only handle 120 units without giving us a chance  
17 to have our traffic consultant look at the same  
18 question. I mean, I was surprised to hear it.

19 You know, we -- we came to the left-turn  
20 lane, you know, as we went through the design  
21 process. It was not apparent to us up front that  
22 that was going to be absolutely required, so I was  
23 surprised that it was 120 units. We didn't go back  
24 to study it because I didn't know we were going to

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1 have further discussion about it.

2 CHAIRMAN SALTZMAN: Sure. And, you know,  
3 the only thing I'm going to say, if we're going to  
4 be in a spot where we raise the issue now, and it  
5 seems to me it's going to be an issue in connection  
6 with this, I would just say, if you need some time  
7 and you want to see what the traffic consultant has  
8 to say about it, if I were in your spot I would be  
9 saying the same thing. The only thing that I would  
10 ask in return would be, say if we take -- you know,  
11 if we look at this, and by the end of the week you  
12 say, "Well, this is" -- "this is going to be an  
13 issue," and, you know, it doesn't seem to me that  
14 there would be any harm in sending it.

15 But if you're not going to send it,  
16 certainly there is no harm in extending us out past  
17 the 15th of January so that we would have ample time  
18 to study the -- the documents.

19 MR. ENGLER: Well, let me just respond that  
20 the regulations are very clear:

21 "A board may request to review the pro  
22 forma or other financial statements for a  
23 project only after the following  
24 preconditions have been met:

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1                   "Other consultant review has been  
2                   completed" is number one.

3                   CHAIRMAN SALTZMAN: Okay.

4                   MR. ENGLER: So it hasn't been completed.  
5                   Mr. Houston is here. Our team is here. We're  
6                   certainly not hiding from it. We'll get to that.

7                   CHAIRMAN SALTZMAN: Okay. And on that  
8                   front, we're going to be doing the traffic, what,  
9                   next time? Or is it the time after? I'm --

10                  MR. MAHONEY: I don't think we concluded.  
11                  I know the consultants have been in touch, and I  
12                  think our goal was to wrap it up as quickly as we  
13                  can.

14                  CHAIRMAN SALTZMAN: On the 12th?

15                  MR. MAHONEY: Yeah. That would be our  
16                  goal, yeah.

17                  CHAIRMAN SALTZMAN: Okay. So we can keep  
18                  in mind -- all right. We can look at that for the  
19                  12th but that's -- if -- it would seem to me that,  
20                  you know, I would start thinking about it, because I  
21                  think it's going to be an issue.

22                  MR. ENGLER: Fine.

23                  MR. WITTEN: Mr. Chairman.

24                  CHAIRMAN SALTZMAN: Yes, Mr. Witten.



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1           MR. WITTEN:  If I could, I guess two  
2 comments.

3           One is Mr. Mahoney's surprised to hear of  
4 the left-turn lane.  There is no surprise.  The  
5 left-turn lane was baked into the project because of  
6 the density.  Mr. Dirk said on at least two  
7 occasions, if not three, that the project, as  
8 proposed, required, necessitated the left-turn lane.

9           MR. MAHONEY:  I was surprised to hear that,  
10 in his view, the left-turn lane, without it, would  
11 result in a 120-unit project.

12           MR. WITTEN:  So the left-turn lane was part  
13 of the 264-unit project.  It was necessitated by the  
14 density, and Mr. Dirk testified that at 120 or  
15 125 units, that would avoid the left-turn lane.  So  
16 you've had a chance to rebut that.

17           The second comment, Mr. Chairman, is  
18 Mr. Engler selectively read a portion of the  
19 regulations.  The Board has done what the Board  
20 needed to do.  It asked for a alternative proposal  
21 at a density consistent with Mr. Dirk's testimony.  
22 The Applicant has said that would render the project  
23 uneconomic.  The Board is entitled to review the pro  
24 forma.

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1           There should only be one pro forma, and the  
2 one pro forma should have been designed and edited 6  
3 to 8 to 12 months ago, so there shouldn't be a  
4 moving pro forma. Other people have gotten into a  
5 lot of trouble with moving pro formas. So that pro  
6 forma exists somewhere in the team's files, and the  
7 Board is entitled to it if the Applicant is going to  
8 say -- if the Applicant is going to say that  
9 125 units renders the project uneconomic.

10           If that's the response, the Board is  
11 entitled to a pro forma. The Board does not have to  
12 wait until all the consultants' reports are in,  
13 because by that time it would be, as the Chairman  
14 said, the end of December. So the Board is  
15 entitled, based on Mr. Engler's statement, to a  
16 review of the pro forma.

17           MR. ENGLER: I'm reading the regs. I'm  
18 just reading the regs.

19           MR. WITTEN: You're reading part of the  
20 regs.

21           MR. ENGLER: Part of the regs, but that's a  
22 very clear part.

23           By the way, the pro forma was turned in as  
24 part of the site approval. It's a public document.

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1 You have it. Mass. Housing has it. It's in our  
2 application. So you're asking to see the pro forma  
3 like it's a new document.

4 Mr. Witten has already said it's one pro  
5 forma. We are entitled to modify it based on things  
6 that we hear here about our project, but basically  
7 there is a pro forma in the documents submitted to  
8 the town. There it is. You've got it.

9 MR. WITTEN: Mr. Chairman, that pro forma  
10 that Mr. Engler is referring to has already been  
11 discredited by Mass. Housing where the site  
12 acquisition value claimed by the Applicant has  
13 already been disallowed by Mass. Housing. So one  
14 would presume that there is another pro forma,  
15 because that pro forma is off by a tune of  
16 \$6 million.

17 CHAIRMAN SALTZMAN: So there would be an  
18 adjusted pro forma --

19 MR. WITTEN: One would hope so.

20 CHAIRMAN SALTZMAN: -- to say the least.

21 MR. ENGLER: Well, with the way it works  
22 with Mass. Housing, as Mr. Witten knows, is you turn  
23 in a site application before an appraisal is done,  
24 and you're estimating what the land value might be

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1 as of right. When you get that appraisal done, you  
2 can modify the pro forma.

3 We haven't gone to that trouble yet because  
4 we don't have to show it until we've really worked  
5 through this process. So yeah, there is one number  
6 that's not the right number. That's not to say the  
7 pro forma can't be looked at.

8 We're happy to talk about it. I'm not  
9 trying to make it like we're not, because certainly  
10 if we have to rest on the case that it's uneconomic,  
11 we will be defending that. So it's not the issue.

12 CHAIRMAN SALTZMAN: As much as we're happy  
13 talking about it, we would be much happier if it's  
14 produced.

15 MR. MAHONEY: There was a pro forma in the  
16 application. Maybe the first step would be to look  
17 at that. I mean, that's the pro forma that we  
18 submitted with this application. I don't have it in  
19 front of me.

20 CHAIRMAN SALTZMAN: It's two years old,  
21 right? That one?

22 MR. MAHONEY: Yeah.

23 CHAIRMAN SALTZMAN: Okay. You would agree  
24 that things -- things have changed?

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1           MR. ENGLER: Yeah. They've gotten more  
2 expensive. We could -- when the time comes, we will  
3 look at the pro forma that we need to submit to you.  
4 You're asking for it now. We'll talk about it. We  
5 may get it to you in two days, or we may get it to  
6 you after we've had some more discussion, but it  
7 will get -- it will be given to you in adequate time  
8 to review it with a consultant review and a  
9 discussion before the end of the period.

10           CHAIRMAN SALTZMAN: Although I would agree  
11 in most matters, I -- I would agree that delay is  
12 preferable to error. In this case, if there is  
13 delay, we will be asking for an extension at the  
14 other end. You can talk about it longer if you want  
15 to extend the time.

16           MR. ENGLER: We don't want to talk about it  
17 longer.

18           CHAIRMAN SALTZMAN: All right. Well, talk  
19 fast.

20           MR. ENGLER: We'll come to that. We'll get  
21 back to that.

22           CHAIRMAN SALTZMAN: All right.

23           So, Mr. Cicutelli, I believe we're going to  
24 be talking about storm water management.

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1           MR. CICATELLI: Yes, Mr. Chairman. We have  
2 Jim White from HW Moore. He's going to just  
3 basically present a storm water overview for the  
4 Board, and then after that we have Dennis Lowry to  
5 basically give a wetland overview and address any  
6 questions that the Board may have.

7           CHAIRMAN SALTZMAN: Great. Thanks.

8           MR. WITTEN: Mr. Chairman, could I just  
9 make one comment for the record?

10          CHAIRMAN SALTZMAN: If you would.

11          MR. WITTEN: The Board is in possession of  
12 Attorney Gallogly's response to Mr. Houston's  
13 engineering report, just for the record, and I don't  
14 know if the Board wanted to discuss that at all  
15 or...

16          MR. CICATELLI: Jim could discuss that  
17 after the overview if you have specific questions,  
18 certainly.

19          CHAIRMAN SALTZMAN: Sure. It might be  
20 encompassed in the questions, sure.

21          MR. CICATELLI: Certainly.

22          MR. WHITE: Good evening. My name is Jim  
23 White. I'm with the engineering firm HW Moore  
24 Associates.

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1           And I know at the last hearing I was at, we  
2 went over the storm drainage system on the site, and  
3 there was several questions the Board had. One  
4 question was -- if I can get to the correct slide.

5           One of the questions was about the type of  
6 soil that's on the site. We did numerous test pits  
7 and borings on the project site, as shown on this  
8 plan. All of them indicated a sandy glacial till on  
9 the site, with the exceptions of those done on the  
10 hill which indicate an underlying bedrock, or rock.  
11 We did not find any peat in any of the soil testing  
12 we've done -- we did on the project site.

13           CHAIRMAN SALTZMAN: What was the date of  
14 your most recent test?

15           MR. WHITE: We did some in the spring. I  
16 think it was April.

17           CHAIRMAN SALTZMAN: Okay.

18           MR. WHITE: And another question was how  
19 many gallons the storm water system holds, total  
20 number of gallons, and it's 192,578 gallons. So  
21 it's --

22           MR. ROTONDI: Would you repeat that?

23           MR. WHITE: Let me put my glasses on, make  
24 sure I'm reading this correctly.

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1           It's 192,578 gallons, the total volume the  
2 system holds, the storm water system holds, and  
3 that's our five underground infiltration systems.

4           CHAIRMAN SALTZMAN: Okay. And in three  
5 sentences or less can you tell us how you reached  
6 that number?

7           MR. WHITE: Sure. And I would just show  
8 you some pictures of -- of what the system looks  
9 like.

10           So what the system looks like is these  
11 underground chambers. These chambers are about  
12 30 inches high, 51 inches wide, and you line these  
13 up as shown in the photos. It's a photo below, and  
14 that's an artist's rendering. You can see you line  
15 them up in rows. You have crushed stone underneath  
16 the system, put crushed stone around the system, and  
17 you put crushed stone over the system. You surround  
18 the whole system with a filter fabric, so none of  
19 the sand can get in -- in the system.

20           CHAIRMAN SALTZMAN: What would be the  
21 density of the stone on top?

22           MR. WHITE: The crushed stone, we use  
23 porosity. The porosity is 40 percent.

24           CHAIRMAN SALTZMAN: I guess, from the top,



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1 from the topsoil to the --

2 MR. ROTONDI: Five feet. Five feet down.

3 MR. WHITE: The depth varies. Underneath  
4 the pavement it's about two to three feet.

5 So we -- these chambers -- I'll go to the  
6 next slide. This is one of our systems. It's  
7 70 feet long, 35 feet wide. Each one of those  
8 rectangles represents one of those sections of pipe  
9 that's seven feet long.

10 As you can see, it's all surrounded with  
11 crushed stone, and the whole -- all the crushed  
12 stone is encased in a geotechnical fabric.

13 To answer your question regarding the  
14 volume, we calculate how much volume is in each one  
15 of those chambers. We calculate how much volume  
16 would be in stone, and then that's our total volume  
17 of water that the system holds.

18 CHAIRMAN SALTZMAN: And the crushed stone  
19 is going to be stone that gets crushed on site?

20 MR. WHITE: No. That would be washed  
21 crushed stone that we're bringing in from off site.  
22 That would be a uniform stone that's been bought,  
23 similar to a septic system stone that's been washed  
24 and cleaned, so it doesn't have fines in it. We

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1 bring it in from off site.

2 I would like to just briefly go over the  
3 storm water. At the last meeting we talked about  
4 on-site storm water. I would like at this time to  
5 talk about the watershed, because it's a rather  
6 unique system out there.

7 As you can see, this is the project site.  
8 There is a drainage ditch that runs along the  
9 perimeter of the development area. Going back in  
10 history, and prior to 1935 -- let's see if I can get  
11 to that, that plan. Here it is.

12 Storm water ditches were excavated in the  
13 wetland area adjacent and on the Weiss Farm  
14 property. If you look at this, this is the Weiss  
15 Farm property. These are all, you can see in here,  
16 storm water ditches that run through. There is a  
17 culvert in this location. The Dunkin' Donuts is now  
18 right here. The high school is in this area. But  
19 back in 1935, it was mostly undeveloped land.

20 Storm water came off from the north, flowed  
21 in this direction in the wetland here, was  
22 intercepted by all these ditches and flowed out  
23 underneath Franklin Street, which is right here --  
24 it says undeveloped land, but it's now the high

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1 school. And from the high school down to Doleful  
2 Pond. Doleful Pond is about a thousand feet south  
3 of the high school. The town obtained an easement  
4 in 1935 from all these landowners to maintain these  
5 ditches.

6 You can -- and you can still see the  
7 ditches in aerial photos today if you go back and  
8 take a look at the aerial photos.

9 CHAIRMAN SALTZMAN: Now, Mr. White, is the  
10 sketch of the Meeting House Brook, is that in  
11 exactly the same spot it was? The brook hasn't  
12 changed any -- anything at all during that time?

13 MR. WHITE: It's a little hard to see on  
14 this, but you can see on the aerial photos where  
15 those drainage channels are. There has been some  
16 modifications because there has been a little bit of  
17 filling in in this area of the drainage channel.  
18 The drainage channel used to go straight across  
19 here, and now it goes up and around an area that was  
20 filled in I believe back in the '70s or '80s. But  
21 you can still --

22 CHAIRMAN SALTZMAN: That was -- was that  
23 the Army Corps of Engineers earlier than that?  
24 Could that have been in the '50s?

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1           MR. WHITE: I'm not sure. I don't know.

2           MR. DIAZ: Okay.

3           MR. WHITE: Just based on photos.

4           But we've walked these. You can still see  
5 all these drainage channels out here. There is  
6 still remnants of the drainage channels in here and  
7 water still flows through those channels.

8           Unfortunately, those channels have not been  
9 maintained. As any channel, you know, trees fall  
10 down, branches fall down, leaves fill up. So not as  
11 much water flows out that way now as it used to, and  
12 water has to get up to a higher elevation in order  
13 to flow out that way.

14           So if you look at old photos of the farm, I  
15 mean, this area was a farm field at one time. It's  
16 now pretty much under water.

17           The other thing that's happened over the  
18 years is you've had all this development upstream of  
19 the project site. There has been no -- back in when  
20 those areas were developed, there was no storm water  
21 management. They just paved and the water just went  
22 down. So it's been considerable increase in storm  
23 water flowing into this large wetland area.

24           A little bit of history on Franklin Street.

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1 Franklin Street was reconstructed in the early 1950s  
2 and a culvert was put in in this location. Weiss  
3 Farm found that their fields were flooding in the  
4 spring because the culvert wasn't -- was put in too  
5 high, so they installed a pump chamber, a pump  
6 station, to drain those fields in the spring.  
7 And -- and it's not clear if Army Corps or Weiss  
8 Farm dug a drainage ditch around the farm area to  
9 help drain the land.

10 CHAIRMAN SALTZMAN: What about the -- are  
11 we looking at the original pump --

12 MR. WHITE: The pump?

13 CHAIRMAN SALTZMAN: -- in the pump station?

14 MR. WHITE: I'm not sure if that's the  
15 original from 1950, but the pump station is pretty  
16 old. Yeah. We're talking about the same pump  
17 that's there.

18 CHAIRMAN SALTZMAN: Did you get to take a  
19 decent look at it? Could you tell?

20 MR. WHITE: Well, the pump's not the same.  
21 The pump was replaced a few years ago. I don't know  
22 if that shed is still there from back then or not.

23 But in any event, so in order to drain this  
24 in the spring -- and if you go back and look at all

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1 historic photos, you always see, as in this one, a  
2 dark area where I'm circling. And that's the area  
3 near Franklin Street which every spring fills up  
4 with water.

5 In 19 -- the early 1960s, over by Sunset  
6 Road, a culvert was installed in this area. That  
7 culvert is actually higher than the outlet to the  
8 Franklin Street culvert, so water has to build up in  
9 order to flow out, flow through the Sunset Road  
10 culvert.

11 That culvert was also put in very flat,  
12 pretty much perfectly flat. The town wrote several  
13 letters to the developer asking them to reconstruct  
14 the culvert, and that never happened.

15 So we have a culvert that doesn't work too  
16 well in this area, an area that floods -- I'm  
17 circling -- near Sunset Road, and an area that  
18 floods, fills with water on the north side of  
19 Franklin road -- Franklin Street.

20 CHAIRMAN SALTZMAN: Mr. White, I go back  
21 far enough that when I was a child, that in the  
22 winter, people would play hockey on Weiss Pond.

23 MR. WHITE: Yes.

24 CHAIRMAN SALTZMAN: And that -- so what --

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1 one question that I have is, I mean, isn't the  
2 purpose of the -- the pump to -- to clear that end  
3 of the property? Isn't that --

4 MR. WHITE: Okay.

5 CHAIRMAN SALTZMAN: What's going on? How  
6 come it backs up there in the spring still?

7 MR. WHITE: Okay. Well, it's always backed  
8 up in the spring because the Sunset Road culvert,  
9 water backs up from Sunset Road and actually goes to  
10 Franklin Street.

11 The pump station pumps to a trough, almost  
12 like a bathtub, and there is a pipe going out under  
13 Franklin Street. If the water on the other side of  
14 Franklin Street builds up, pumping into that trough  
15 doesn't do any good because water just spills out of  
16 the trough. So that's why, when you have high water  
17 almost every spring, water builds up on the other  
18 side of Franklin Street, water can't get through the  
19 culvert on Franklin Street, and you've got water  
20 ponding.

21 CHAIRMAN SALTZMAN: On the -- on the pump,  
22 it's measured in, what, gallons per minute?

23 MR. WHITE: Yes.

24 CHAIRMAN SALTZMAN: How many does this

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1 particular pump --

2 MR. WHITE: About 500.

3 CHAIRMAN SALTZMAN: About 500?

4 MR. WHITE: Yes, 500, 550 gallons per  
5 minute.

6 MR. ROTONDI: Well, I know one thing, the  
7 reason why the water don't drain that well is  
8 because it's zero gravity. It's almost flat, that  
9 brook, all the way into the culvert.

10 MR. WHITE: Yes.

11 MR. ROTONDI: Mike Finney owned the  
12 property behind there, and the town used to have to  
13 dredge that every year to lower it to make the water  
14 come down.

15 MR. WHITE: Yeah. Yeah.

16 MR. ROTONDI: Because it's almost zero --  
17 there is zero degrees.

18 MR. WHITE: There is no elevation  
19 difference, yeah.

20 MR. ROTONDI: That's why the water never  
21 used to go through the culvert, unless it would  
22 build up, and so it builds up all the way by --

23 MR. WHITE: So it builds up, right.

24 So once the water goes down on the south



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1 side of Franklin Street, they can turn the pumps on  
2 and drain -- drain that area. That's what usually  
3 goes on.

4           There used to be an earth dam here which  
5 used to sort of force water back the other way. At  
6 some point, that earth dam was removed. DEP came  
7 in, I think it was 2007 -- I don't know, 2006 -- and  
8 asked them to put in a -- a concrete dam. That has  
9 been done. And that maintains a certain elevation  
10 of water in this area and helps force the water back  
11 to where it's supposed to go, back to the other,  
12 larger culvert. It also maintains the water  
13 elevation in the wetland area.

14           So that's just a brief overview of how the  
15 overall water system works in that area.

16           CHAIRMAN SALTZMAN: Go ahead.

17           MR. SULLIVAN: Looking at your earlier one,  
18 you have a culvert -- I don't know if you call it  
19 Meeting House something or other?

20           MR. WHITE: Meeting House Brook.

21           MR. SULLIVAN: It goes northerly?

22           MR. WHITE: Yes. In this area.

23           MR. SULLIVAN: And where does that go to?

24           You've got the one where the easement, the

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1 original easements are shown? One of your earlier  
2 ones that it shows the culverts and the people that  
3 gave the easements.

4 MR. WHITE: Yes. Hold on a second and I'll  
5 get to that one.

6 MR. SULLIVAN: Right there.

7 So that, it says Meeting House Brook?

8 MR. WHITE: Yes. It's North Meeting House  
9 Brook.

10 MR. SULLIVAN: And where does that come  
11 from?

12 MR. WHITE: It starts in this wetland area.  
13 Spring Lane is here.

14 MR. SULLIVAN: Right. And what's that  
15 behind the town of Stoneham? I can't read what that  
16 says. Something "lateral ditch."

17 MR. WHITE: It probably says "lateral  
18 ditch" on it.

19 MR. SULLIVAN: Now, that lateral ditch runs  
20 all behind the Weiss Farm property, is that not  
21 correct, and then it runs to the storm drain -- it  
22 runs to the ditch, it runs down to Franklin Street.

23 MR. WHITE: These are different ditches.  
24 These were built in the 1930s.

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1           MR. SULLIVAN: Yeah.

2           MR. WHITE: The big ditches on Weiss Farm  
3 property was built in the 1950s.

4           MR. SULLIVAN: Right.

5           MR. WHITE: So the Weiss Farm ditches  
6 have -- like where my pointer is up in this area.

7           MR. SULLIVAN: They go into one another,  
8 though.

9                    There used to be three fingers on the Weiss  
10 Farm. There was a ditch that come through --

11           MR. WHITE: Okay.

12           MR. SULLIVAN: -- and then went over to  
13 that preculvert, and then there was three fingers  
14 there. And then it ran behind the whole Weiss Farm  
15 project, and it was that lateral ditch right there  
16 that ran down along -- Spring Lane used to go to the  
17 left also. I'm pretty familiar with it. I lived  
18 there for 55 years.

19           MR. WHITE: Yeah. I saw that in the older  
20 photographs that there was --

21           MR. SULLIVAN: Right.

22                    And I just see this coming up north, the  
23 property that I grew up at would be the property of  
24 the Manning-Connors, and hence you have Sullivan

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1 Circle here thanks to my father.

2 So those -- you're showing a swamp right  
3 there. I'm confused where that is.

4 MR. WHITE: Okay. You want me to go back  
5 to the aerial?

6 CHAIRMAN SALTZMAN: The circle there, above  
7 the Johnson property?

8 MR. SULLIVAN: Yeah.

9 MR. WHITE: It shows up -- it shows up on  
10 the aerial plan. If I can go back. It's going to  
11 take me a second to go back there. I should have  
12 put these closer together.

13 The swamp is up in here (indicating).

14 MR. SULLIVAN: And it would be --

15 MR. WHITE: So the swamp's up here, and  
16 this is hard to see, but there is ditches in here;  
17 there is ditches across there.

18 MR. SULLIVAN: Right.

19 MR. WHITE: The main channel comes across  
20 here and then down -- there is Dunkin' Donuts in  
21 this location, down through this drainage channel,  
22 and then it goes underneath the school -- underneath  
23 the school, I think the ball field, football field,  
24 and down to Doleful Pond.

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1           MR. SULLIVAN: So there is a swamp to the  
2 left of the ditches that's not part of the ones  
3 behind all that area? That's one big swamp back  
4 there.

5           MR. WHITE: Yeah. This whole area that's  
6 undeveloped is a -- basically a swamp that I'm  
7 outlining.

8           MR. SULLIVAN: Now is the water supposed to  
9 flow that way from Weiss?

10          MR. WHITE: Originally all this water in  
11 this area flowed to this culvert. There is some  
12 water in this area that likely flowed, you know, in  
13 this location. There is a small culvert under  
14 Franklin Street by the pump station.

15          MR. SULLIVAN: So the water in the north  
16 area was flowing southerly, or was it southerly  
17 flowing north?

18          MR. WHITE: It was all flowing southerly.  
19 It was -- the water in this area was flowing through  
20 these drainage channels underneath this large  
21 culvert at this location. There was lateral ditches  
22 in this area which flowed this way into this also.  
23 So these ditches accepted the flow coming in from  
24 the north. I'm not exactly sure historically what

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1 was happening in this area (indicating). If this  
2 flowed, you know, through Weiss Farm --

3 MR. SULLIVAN: Yep.

4 MR. WHITE: -- to Franklin Street or it  
5 flowed westerly.

6 MR. SULLIVAN: That's where all the woods  
7 are back there?

8 MR. WHITE: Yeah. This is -- this is all  
9 wooded.

10 MR. SULLIVAN: Yeah.

11 MR. WHITE: As I said before, historically  
12 this used to be a farm field back here which is now  
13 under water. And this area here is -- is very, very  
14 wet, which used to be a farm field.

15 MR. SULLIVAN: That's where the three  
16 fingers used to be.

17 MR. WHITE: That's where the three fingers  
18 used to be. That's correct.

19 MR. SULLIVAN: Okay. Thank you.

20 CHAIRMAN SALTZMAN: I have a question  
21 perhaps best answered by one of the gentlemen to  
22 Mr. White's east.

23 Who is going to have ownership and  
24 management and control of the -- the pump?

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1 MR. MAHONEY: The Applicant would.

2 CHAIRMAN SALTZMAN: It would.

3 MR. MAHONEY: It would be part of the  
4 parcel, yes. And I think -- did we submit our  
5 maintenance plan?

6 We've already submitted, I believe, a  
7 management plan for the pump station. It would be  
8 part of our storm water -- obviously it's a key to  
9 the storm water management of the property, so that  
10 would be part of our storm water management plan.

11 CHAIRMAN SALTZMAN: What's the date of  
12 that, so I'll know it when I see it?

13 MR. WHITE: I believe it was in June of  
14 this year.

15 MR. MAHONEY: We can e-mail you the exact  
16 date so you know the right one.

17 CHAIRMAN SALTZMAN: Sure. Was that  
18 submitted to us, or would it have been submitted to  
19 Conservation?

20 MR. WHITE: Originally submitted to the  
21 Conservation Commission.

22 CHAIRMAN SALTZMAN: Okay.

23 MR. LOWRY: I believe July 9th.

24 MR. MAHONEY: I believe we submitted to the

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1 Board --

2 CHAIRMAN SALTZMAN: Does that refresh your  
3 recollection?

4 MR. MAHONEY: There was a lot of June and  
5 July dates. We will make a point to send the e-mail  
6 tomorrow to confirm.

7 CHAIRMAN SALTZMAN: That's great. Thanks.

8 MR. WITTEN: Mr. Chairman, can I just add?

9 CHAIRMAN SALTZMAN: Yes.

10 MR. WITTEN: Mr. White, I think the Board  
11 should have whatever storm water reports you've  
12 submitted to the ConCom that you want part of the  
13 record here submitted individually.

14 MR. WHITE: I believe we've submitted them  
15 all. I mean, in the past -- what we didn't submit  
16 previously, we've submitted in the past -- within  
17 the past week, so it's part of the response to  
18 Mr. Houston's comments.

19 CHAIRMAN SALTZMAN: I'm sorry.

20 Mr. White, did you send something during  
21 the past week, you said?

22 MR. WHITE: Well, in response to  
23 Mr. Houston's comments, I believe we submitted  
24 additional information on the watershed.



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1           CHAIRMAN SALTZMAN:   Okay.

2           MR. WHITE:   And the pump station.

3           CHAIRMAN SALTZMAN:   Did you submit a  
4 report?

5           MR. SHULMAN:   Is it this that's in the  
6 packet --

7           MR. WHITE:   Yes.

8           MR. SHULMAN:   -- that we just have?

9           MR. ROTONDI:   For tonight.

10          MR. WITTEN:   Mr. Chairman, I think maybe  
11 just to clarify:

12                 Mr. White, we have -- the Board received a  
13 letter from Rackemann, Sawyer, Brewster with three  
14 attachments -- four attachments, including one page  
15 from your office. So one of those attachments is  
16 the June 10th watershed study.

17          MR. WHITE:   Yes.

18          MR. WITTEN:   The other is the storm water  
19 management standard calculations from your office,  
20 HW Moore. And then there is a single-page storm  
21 water runoff table, and then there is an O&M  
22 schedule, and then there is the storm water pump  
23 station report. And those were all part of what we  
24 received from Rackemann, Sawyer.

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1           MR. WHITE: That's correct.

2           MR. WITTEN: And all of those reports were  
3 done previously for the Con.Com.?

4           MR. WHITE: The pump station report and the  
5 watershed report were.

6           CHAIRMAN SALTZMAN: Mr. White, in  
7 connection with the storm water management standard,  
8 the date of that is -- it was revised the third week  
9 of September.

10           Can you just explain what revisions would  
11 be in here that wouldn't have been submitted  
12 already?

13           MR. WHITE: Well --

14           CHAIRMAN SALTZMAN: Are there calculations  
15 changed or things of that nature?

16           MR. WHITE: Yes. Updated the calculations  
17 that were submitted in our April storm water report  
18 to increase the amount of recharge in accordance  
19 with DEP -- to increase the amount of storm water  
20 recharge in accordance with DEP storm water  
21 requirements.

22           MR. WITTEN: Could I ask, Mr. Chairman?

23           As you know, Mr. White, the Conservation  
24 Comission order of conditions is under appeal. Your

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1 client has brought an appeal of that.

2 Have -- what is under appeal, those  
3 calculations, have those numbers changed? In other  
4 words, the superseding order of conditions that  
5 you've requested overturning the Conservation  
6 Commission's order of conditions, the order of  
7 conditions was based on the materials that you  
8 submitted as part of the Notice of Intent process.

9 Have the calculations changed since you've  
10 taken the appeal to the superseding order?

11 MR. WHITE: Yeah. We sent in a response to  
12 Mr. Griffin's letter to the DEP.

13 MR. WITTEN: Is this after the appeal was  
14 taken?

15 MR. WHITE: Yes.

16 MR. WITTEN: So has the Conservation  
17 Commission received these updated calculations?

18 MR. MAHONEY: I believe so. I believe they  
19 were copied on correspondence to the DEP.

20 MR. WITTEN: Mr. White, are there any other  
21 updates?

22 MR. WHITE: Not that I know of.

23 MR. WITTEN: From -- well, they were  
24 prepared by your office.

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1 MR. WHITE: As far as -- no. The DEP, no.

2 MR. WITTEN: Thank you.

3 CHAIRMAN SALTZMAN: Any -- any other  
4 questions from the Board?

5 Very much out of order, but I will take any  
6 questions from the public.

7 Ms. McBride from Conservation.

8 MS. McBRIDE: Ellen McBride, 30 Butler Ave.  
9 And I am speaking as a member of the Conservation  
10 Comission.

11 Long time, no see.

12 So I just want to clarify what just -- I  
13 just heard. We denied the project partly because of  
14 the storm water -- we -- our peer review did not  
15 feel the project met storm water requirements, and  
16 so now you're saying you've -- I'm going to use the  
17 wrong terms -- but changed those calculations to  
18 meet what he recommended or -- and I don't remember  
19 getting a copy. Maybe Cathy just -- I know Cathy's  
20 been extremely busy lately, but can you tell us when  
21 you sent the revised storm water calculations to the  
22 Conservation Comission?

23 MR. MAHONEY: We don't have the exact date.  
24 We could follow up with the date.

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1           MS. McBRIDE:   Okay.   But can you answer the  
2 other question?   What were the changes you made and  
3 what prompted those changes?

4           MR. WHITE:   Mr. Griffin came back and noted  
5 that we were -- the volume was less than what was  
6 required under the -- under the DEP standards.

7           MS. McBRIDE:   He came back when?

8           MR. WHITE:   I received a letter from him.  
9 I don't know an exact date.

10          MS. McBRIDE:   I mean, before we denied it  
11 or after we denied it?

12          MR. WHITE:   After you denied -- after you  
13 denied, I received a letter from him.   And you --  
14 you received that letter, also.

15          MS. McBRIDE:   I'm not quite sure why he  
16 would send you a letter after we denied the project.

17          MR. GALLOGLY:   The letter went to DEP.

18          MR. MAHONEY:   Just to clarify, he sent the  
19 letter to the DEP with a copy to us.

20          MR. WHITE:   So I responded to that letter.

21          MS. McBRIDE:   Okay.   Got you.   All right.  
22                        But you couldn't respond to his changes  
23 when you were before us?

24          MR. WHITE:   He didn't respond to our

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1 information until afterwards. That was the first  
2 time I received that response -- that was the first  
3 time I received that response from him.

4 MS. McBRIDE: I think I'm confused. We  
5 needed more information from you in July.

6 MR. WHITE: No --

7 MS. McBRIDE: We requested -- let me  
8 finish, please.

9 MR. WHITE: Okay.

10 MS. McBRIDE: We requested more information  
11 from you. On July 9th you requested that we close  
12 the public hearing, if I'm not mistaken. We offered  
13 you a recess so you could think about it because we  
14 didn't have all the information we needed, and you  
15 came back and said, "No, we still want to close the  
16 public hearing," which left us in the hole as far as  
17 information, if I'm remembering correctly.

18 MR. CICATELLI: Mr. Chairman, this matter  
19 is under appeal, and I don't think this is the  
20 appropriate forum to discuss the matters before the  
21 DEP. Additional information --

22 MS. McBRIDE: No. I just want to say  
23 Mr. White had said he sent information to the  
24 Con.Com., and I don't remember us getting it. So

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1 when you clarified it, Peter, that it went to DEP  
2 and not to us, I think that helps. But I just  
3 wanted to ask the question: What were the changes?

4 MR. WHITE: Okay. I think I answered that.

5 And I think at the hearing you referred to,  
6 Mr. Griffin said he hadn't had a chance to look at  
7 our information that we had sent to him.

8 CHAIRMAN SALTZMAN: Just on that front,  
9 Mr. White, can you tell us exactly where we could  
10 find the recalculations that you made in this report  
11 that you have now submitted, we're seeing now  
12 tonight?

13 MR. WHITE: I think it's -- it's listed as  
14 the DEP standard. It's a -- it's a volume  
15 calculation. DEP requires a certain --

16 MR. SULLIVAN: Here.

17 MR. WHITE: Yes.

18 CHAIRMAN SALTZMAN: The storm water  
19 management standards, right; is that the one?

20 MR. WHITE: Yes. That's the one.

21 CHAIRMAN SALTZMAN: What page?

22 MR. WHITE: The first page shows the volume  
23 we're providing meets the volume required under DEP  
24 for storm water recharge at the bottom of the page.

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1           CHAIRMAN SALTZMAN: Okay. And just so that  
2 I understand this, in the body of this, this has  
3 been recalculated.

4           Has there been any change in the storm  
5 water management that gets us these numbers as  
6 opposed to any earlier numbers?

7           MR. WHITE: We -- we changed one invert  
8 elevation on the plan. I think we have a sketch in  
9 the back of that showing one elevation changing in a  
10 pipe.

11          CHAIRMAN SALTZMAN: Okay.

12          MR. WHITE: And that brought us to the  
13 correct volume.

14          CHAIRMAN SALTZMAN: What page would that be  
15 on?

16          MR. WHITE: The last page.

17          CHAIRMAN SALTZMAN: Okay.

18          MR. WITTEN: So, Mr. White, on the HydroCAD  
19 graphs, there were no -- no other changes, no  
20 changes at all?

21          MR. WHITE: No. We changed one invert of a  
22 pipe, so we provide the new HydroCAD calculations to  
23 show we changed the invert of the pipe, and there  
24 was no adverse impacts in the storm water.



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1           MR. WITTEN: So the -- so, Mr. Chairman,  
2 could I just maybe ask for clarification?

3           CHAIRMAN SALTZMAN: Sure.

4           MR. WITTEN, so Mr. White, the cover sheet  
5 we're looking at, storm water management standards,  
6 first page -- do you have a copy?

7           MR. WHITE: No, I don't.

8           MR. SHULMAN: Beat me to you.

9           MR. WITTEN: So the first page is Standard  
10 Number 3?

11          MR. WHITE: Yes.

12          MR. WITTEN: And it has a revision date of  
13 9/21/15?

14          MR. WHITE: Yes.

15          MR. WITTEN: Could you identify for the  
16 Board what has changed on that first page?

17          MR. WHITE: What changed is -- is -- we  
18 have -- at the bottom of the page we have  
19 infiltration systems A, B, C, D and E. Those  
20 numbers were updated, and especially with -- some of  
21 them were updated by a few CFS; some were -- some  
22 didn't change at all.

23                 The major change was infiltration system E  
24 where we changed an invert elevation of the outlet

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1 pipe by a few inches, and that gave us the required  
2 amount of volume that the DEP requires for storm  
3 water recharge.

4 MR. WITTEN: And then on the second page,  
5 are there any changes?

6 MR. WHITE: The second page --

7 MR. GALLOGLY: Excuse me, Jim. I think  
8 this is part of the superseding order request and  
9 it's not germane to what the Board's discussing  
10 right now.

11 MR. WITTEN: Well, Mr. Chairman, this is an  
12 attachment to Attorney Gallogly's response --

13 MR. GALLOGLY: Gallogly, by the way.

14 MR. WITTEN: -- Gallogly's response to  
15 Mr. Houston's engineering report.

16 So you've submitted it as part of the  
17 record, and Mr. White's just discussed it in front  
18 of the Board, and he has revision dates on it which  
19 postdate the Con.Com.'s order of conditions  
20 discussion.

21 And I think the Board's entitled to a fair  
22 question, which is what in this package is different  
23 from what the Con.Com. reviewed?

24 MR. WHITE: Sure.

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1           So if you look at the next page, that's --  
2           it's a summary for infiltration system A, and it  
3           goes through a calculation of how we arrived at the  
4           volume for infiltration system A. And then we have  
5           the next page.

6           MR. WITTEN: Are there changes on the  
7           second page from what was submitted to the Con.Com.?

8           MR. WHITE: I would have to look and see  
9           what was submitted. I believe -- I have to see what  
10          was submitted to the Con.Com. because it's the  
11          April 6th report.

12          MR. WITTEN: Well, Mr. Chairman, not to  
13          make Mr. White painfully go through every page here,  
14          but I think the Board is entitled to know --  
15          Mr. Houston, who is reviewing this on behalf of the  
16          Board, is entitled to know what in Rackemann,  
17          Sawyer's submission is different from what is on  
18          file with DEP and is subject to the superseding  
19          order.

20          MR. WHITE: This is what's on file with  
21          DEP.

22          MR. WITTEN: But the Conservation --

23          CHAIRMAN SALTZMAN: Would it make some  
24          sense here for a -- for an additional copy to be

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1 submitted just indicating where the changes are?

2 MR. WHITE: Sure. That would make it much  
3 easier.

4 CHAIRMAN SALTZMAN: Would that do the trick  
5 so that everybody knows what we started with and  
6 where we are now?

7 MR. WHITE: Yes. That would really be  
8 helpful.

9 CHAIRMAN SALTZMAN: If that could be done  
10 at the earliest possible time.

11 MR. WHITE: There is not much changes  
12 except we changed one pipe by a few inches.

13 CHAIRMAN SALTZMAN: Sure. And emphasize  
14 what happened on the last page as well.

15 MR. WHITE: Sure.

16 CHAIRMAN SALTZMAN: Okay. And if you could  
17 just have -- just to make it a little easier on  
18 everybody, if there could just be a reference on the  
19 first -- just attach a sheet indicating where they  
20 are.

21 All right?

22 MR. WHITE: Sure.

23 CHAIRMAN SALTZMAN: As well.

24 MR. WHITE: Okay.

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1           CHAIRMAN SALTZMAN: All right.

2           MR. WHITE: We'll make it simple.

3           CHAIRMAN SALTZMAN: All right.

4           Yes.

5           MR. VERNA: One question.

6           CHAIRMAN SALTZMAN: Sure.

7           MR. VERNA: You people -- Bobby Verna,  
8 Tedford Drive.

9           Are you people aware of the high water  
10 tables in some of the developments -- specifically  
11 Tedford Drive, Sparhawk and Citation -- because all  
12 the homes down there were built as splits, and they  
13 couldn't build garrisons because of the high water  
14 table.

15           Are you people aware of this?

16           MR. WHITE: Yes. We -- we installed  
17 numerous test wells throughout the project site.

18           MR. VERNA: Yeah.

19           MR. WHITE: We monitored the ground water  
20 and determined what the seasonal high ground water  
21 is in the area. So we're well aware of what the --

22           MR. VERNA: So there shouldn't be any  
23 problems as a result of your building?

24           MR. WHITE: Yeah. That's correct.

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1           MR. VERNA: They said that about the Big  
2 Dig, too, but -- okay.

3           CHAIRMAN SALTZMAN: Sure.

4           MR. WANTMAN: Martin Wantman, 20 Gerald  
5 Road; long-time abutter to the property.

6           The earthen check dam that was mentioned  
7 was last used in 2004. It was located just north of  
8 my property. And it worked absolutely, as the  
9 material was placed into the ditch, and stopped the  
10 water from coming from the north to the south so  
11 that the pump could catch up with the amount of  
12 water that was coming from the north, and it could  
13 be pumped across Sunset Street.

14           The question is, considering that most of  
15 the people who have been on the site visit and the  
16 Conservation, and Corcoran has acknowledged that the  
17 concrete check dam -- or weir, as it is sometimes  
18 called -- that is in essentially a similar location,  
19 just maybe 20 or 30 feet north of where the earthen  
20 check dam used to be, is leaking, and the flooding  
21 incidents have been severe and repetitive when we're  
22 not in a time of drought.

23           Would you consider reinstalling an earthen  
24 check dam that really took minutes to maintain and

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1 worked absolutely instead of the concrete weir that  
2 has failed since day one and is still failing?

3 CHAIRMAN SALTZMAN: Thank you.

4 MR. WHITE: The concrete dam was put in per  
5 a consent decree order with DEP. Sorry. We plan  
6 on -- it is correct there is a leak in the dam right  
7 now. Also the dam has settled. We propose on  
8 correcting that leak and resetting the concrete  
9 blocks to -- to the correct elevation to bring it up  
10 to where -- you know, make it work the way it's  
11 supposed to be working.

12 CHAIRMAN SALTZMAN: So the -- the earlier  
13 solution that -- that Mr. Wantman referred to, has  
14 that been something considered and rejected? Or is  
15 that something that's still a possibility?

16 MR. WHITE: I think it works the same. It  
17 stops water. It forces water to go through the --  
18 the westerly culvert rather than down toward the  
19 Weiss Farm pump house. They both work the same. If  
20 the check dam is operating properly, if it's at the  
21 right elevation, if it's not leaking, it will work  
22 exactly the same as an earth dam would work. You  
23 know, one's concrete; one's earth, basically.

24 CHAIRMAN SALTZMAN: Is the problem the fact

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1 that the pumping station doesn't always pump out  
2 500 gallons a minute? Is that part of the problem  
3 here?

4 MR. WHITE: No. I -- I mean, there is a  
5 couple of problems, I think. One is the check dam  
6 isn't working properly, so more water is going down  
7 there than it should.

8 The Sunset Road culvert, as I mentioned, I  
9 think that needs to be cleaned out. I did talk to  
10 the public works director. He didn't think it would  
11 help, but I really think that would help. The  
12 sediment downstream of the Franklin Street culvert  
13 should be cleaned out.

14 The Meeting House Brook stream, we walked  
15 that site -- and we include pictures of it in the  
16 report -- there are branches and trees falling down  
17 blocking flow. If those branches and trees were  
18 cleaned out, that would certainly help the drainage  
19 in this area.

20 CHAIRMAN SALTZMAN: But I'm -- just back to  
21 the pump. What sort of repair is that in right now?  
22 Does it need work?

23 MR. WHITE: The pump is -- right now it  
24 needs work in that it's not -- I mean, you know,



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1 some rusty stuff, and the controls are hard to get  
2 to. So we've proposed on putting new controls in,  
3 making it more accessible. It's working, but it  
4 doesn't work when the Sunset Road culvert backs up,  
5 and there is nothing you can do about that. You  
6 can't -- if you pump over the road, all you're going  
7 to do is flood those people down by Sunset Road. So  
8 when Sunset Road culvert backs up, the culvert that  
9 was put in very high and flat, the pump is just  
10 turned off because it doesn't do -- it doesn't work.  
11 It doesn't do any good --

12 CHAIRMAN SALTZMAN: What about -- now you  
13 said something a minute ago about it being  
14 accessible or inaccessible.

15 What's the story there?

16 MR. WHITE: The controls. Only that you  
17 have to kind of step over -- you know, it's old.  
18 The thing's old. So what -- normally what you do is  
19 put the controls in the place right now, they're in  
20 the building and you have to kind of step on the  
21 weir and go in there. It's a lot easier for someone  
22 if they're outside of the building on a panel board.  
23 If they had, you know, an alarm light, it had -- you  
24 know, it had modern controls.

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1           The controls on the pump are not modern.  
2 They're sort of -- you know, there is an on-and-off  
3 switch. There is floats, so it does turn on and off  
4 with the water height, but it's -- it's not to  
5 today's standards. So we would want to update that.

6           CHAIRMAN SALTZMAN: If we went down there  
7 now --

8           MR. WHITE: Yes.

9           CHAIRMAN SALTZMAN: I mean, maybe not now.

10          MR. WHITE: Yes.

11          CHAIRMAN SALTZMAN: But earlier in the day  
12 before it started raining, would the pump station be  
13 dry? Would it be something we could work on if  
14 there was something that needed fixing?

15          MR. WHITE: Oh, yes. Yes.

16          CHAIRMAN SALTZMAN: It's not flooded?

17          MR. WHITE: No. No. The pump house  
18 wouldn't be flooded right now.

19          CHAIRMAN SALTZMAN: Mr. Wantman, one other  
20 question, and then we're going to move on, I think.

21          MR. WANTMAN: This is actually a very  
22 important question that I forgot.

23                 Would you happen to have a pictorial of the  
24 1946 drawing of Weiss Farm that you had with the

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1 ditches, the original ditches?

2 MR. WHITE: The 1935?

3 MR. WANTMAN: 1946. It was Weiss Farm.

4 MR. WHITE: I don't have it.

5 MR. WANTMAN: The point that I'm going to  
6 make is that the main ditch, the ditch that was  
7 installed prior to the changes that were done in the  
8 1950s, the main ditch was actually gifted away by  
9 Weiss in 1964 to the then synagogue, which is now  
10 a --

11 CHAIRMAN SALTZMAN: Teachable Moments.

12 MR. WANTMAN: -- school.

13 CHAIRMAN SALTZMAN: Yeah.

14 MR. WANTMAN: That main ditch, in your  
15 depiction of conditions of abutters, is not in  
16 existence. And the water used to flow past my  
17 tennis court, going south to that main ditch, and  
18 then take a right-hand turn to go to the pump. And  
19 now it flows from the pump area towards my property,  
20 and takes a right-hand turn and goes around the  
21 corner.

22 So my suggestion would be to urge you to  
23 contact the owner of the school and see if you can  
24 arrange to clean out the main ditch going from the

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1 north to the south abutting Gerald Road.

2 CHAIRMAN SALTZMAN: All right. Maybe we  
3 might be wise to take a five-minute break --

4 MR. CICATELLI: Sure, Mr. Chairman.

5 CHAIRMAN SALTZMAN: -- just resume in a  
6 minute.

7 (Recess)

8 CHAIRMAN SALTZMAN: All right. We'll come  
9 to order now and resume.

10 Mr. Cicatelli.

11 MR. CICATELLI: Mr. Chairman, if you like,  
12 we could have Dennis Lowry just give a wetland  
13 overview.

14 CHAIRMAN SALTZMAN: Great.

15 MR. CICATELLI: Which sort of might tie in  
16 to what we were just discussing.

17 CHAIRMAN SALTZMAN: Welcome to the Board of  
18 Appeals, Mr. Lowry.

19 MR. LOWRY: Thank you very much.

20 For the record, my name is Dennis Lowry.  
21 I'm a wetland ecologist with AE Com out of  
22 Chelmsford, Massachusetts. I've been a practicing  
23 wetland ecologist for over 30 years. I've got a  
24 bachelor of science in biology from Tufts University

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1 and a master of science in wetland ecology from  
2 University of Rhode Island.

3 So what I would like to offer is my  
4 perspective and my experience on the site relative  
5 to wetlands, a lot of which you've already been  
6 discussing here this evening, which obviously are  
7 closely related to the drainage conditions.

8 I'll call your attention to the plan up on  
9 the board here with Franklin Street --

10 CHAIRMAN SALTZMAN: Mr. Lowry, if you could  
11 speak slow. We're just grasping this an inch at a  
12 time.

13 MR. LOWRY: I thought you wanted to get out  
14 of here quick.

15 MR. ROTONDI: No. That's tomorrow night.

16 MR. LOWRY: So the right of the site -- of  
17 the slide is Franklin Street. The wetlands on this  
18 slide are defined in the red line here.

19 And when I use the term "wetland," I will  
20 speak broadly. Under the Massachusetts Wetlands  
21 Protection Act wetlands are defined as a series of  
22 resource areas, one of which is bordering vegetated  
23 wetlands, which most of these wetlands in the  
24 northern part and the eastern part of the site are.

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1 There are also resource areas called land subject to  
2 flooding, which is a floodplain, land under water  
3 and bank, which are related to streams.

4 The limit of resource areas on this site  
5 had been defined in a -- in a issuance of an Order  
6 of Resource Area Delineation by the Conservation  
7 Commission back in February of 2012. So essentially  
8 in late 2011, the Commission started the review of  
9 an Abbreviated Notice of Resource Area Delineation  
10 which defined the resources on the site. The  
11 Conservation Commission hired a peer review, a  
12 professional wetlands scientist at the time, to help  
13 them review those designations. And ultimately, in  
14 February of 2012, they issued a -- what's called an  
15 ORAD, an Order of Resource Area Delineation, which  
16 documented the limits of the resource areas by and  
17 large.

18 The exception to that was they did not  
19 define the limit of bordering lands subject to  
20 flooding or the 100-year floodplain, and they left  
21 that open.

22 So when we started this project, we --  
23 those determinations were still valid. They were  
24 still legally binding in terms of the limit of

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1 resource areas on the site. And so those resource  
2 area delineations and extent have been held forward  
3 in terms of the design of this project and in  
4 looking at compliance with the Wetlands Protection  
5 Act.

6 We did go forward, at the request of the  
7 Conservation Commission, to define the limit of  
8 floodplain on the site, or the bordering land  
9 subject to flooding. And in a case like this, where  
10 there is no defined floodplain from FEMA, the  
11 Massachusetts regulations tell you to look at the  
12 maximum lateral extent of flooding on the site from  
13 observed conditions.

14 So that was used in this case. It was  
15 defined at elevation 163.6 and plotted on the plan.  
16 And it roughly follows the wetland line, especially  
17 in the southeast part of the site. The wetland  
18 limit generally runs from about elevation 163 up to  
19 about elevation 165 in various portions of the site.

20 So if you look at the general gradients  
21 here, the swamp in -- in the northern part of the  
22 site is about at elevation 162. The culvert under  
23 Franklin Street at the pump station that Mr. White  
24 has talked about is at about 160.7, I believe, 1 --

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1 160.1, but it's defined by actually the -- the  
2 elevation of the culvert further downstream, which  
3 is 160.7.

4           So as we've talked about, it's a very flat  
5 gradient through here. And so there is only two  
6 feet of pitch or so from the northern swamp area  
7 down to the culvert under here, and that western  
8 culvert over by the high school is about at that  
9 same elevation of just over 160.

10           So it's a very flat, gentle gradient. It's  
11 an area of high ground water. Ground water tables  
12 are about those same elevations, 160 to 162, and  
13 that's why there are wetlands on the site. That's  
14 why there are streams that try and drain from the  
15 site because it's a high ground water table, and  
16 that's what gives rise to wetland conditions.

17           The ditches that were dug going back into  
18 the 1930s or so, the ones we saw relative to Meeting  
19 House Brook, those are shown up in this portion of  
20 the slide. And then in the 1950s, when the Corps of  
21 Engineers dug the big ditch around, you know, in the  
22 western, the northern and eastern parts of the site,  
23 all of those are attempts to try to help drainage  
24 get off of the site a little bit more expeditiously



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1 than they would with just vegetated wetland. They  
2 work only so much because the gradients are so flat.  
3 So basically the water stage needs to build up  
4 before it can start to flow off the site.

5           The pump station down here really only  
6 operates when the water tables get above the invert  
7 elevation of the culvert. So it really only starts  
8 to work above, say, 161, and it's -- it's -- it was  
9 really put in to try and drain this water down when  
10 it gets up to about 162 1/2 down to that elevation  
11 of 161 1/2. So it really only works in a limited  
12 area.

13           Other than that, you still have high ground  
14 water table; you have wetlands, bordering vegetated  
15 wetlands; you have the floodplain, and these areas  
16 are protected because they are wetland resource  
17 areas under the protection of the Massachusetts  
18 Wetlands Protection Act.

19           In our design of this project, we looked at  
20 the local standard in terms of setbacks from those  
21 resource areas, and the local bylaw says they are  
22 looking for a 25-foot setback from the limits of the  
23 wetlands, and that's defined by this green line  
24 here, which is just up gradient of the red line. So

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1 this project proposes no activities within any  
2 wetland resource area, including the floodplain,  
3 nothing within bordering vegetated wetlands, nothing  
4 within the defined streams or banks, and nothing  
5 within the 25-foot setback from those resource  
6 areas.

7           So there are no performance standards for  
8 work within buffer zone, which essentially this is  
9 what's considered a buffer zone project.

10           So we are fully in compliance with all  
11 performance standards, all requirements of the  
12 Wetlands Protection Act. And as Mr. White has  
13 defined and explained, the storm water management  
14 system -- which becomes the focus of a project which  
15 is in the buffer zone -- is fully compliant with  
16 the -- with the Massachusetts storm water standards,  
17 and basically those standards are looking at the --  
18 at the peak rate and the quality of storm water  
19 runoff from a site. It wants to make sure that  
20 you're not increasing the peak rate, and you're not  
21 aggravating the quality of the water running off the  
22 site under the proposed development conditions.

23           And, in our view, the storm water  
24 management design has fully complied with those

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1 standards, and that's under review by the DEP right  
2 now. There has been, obviously, about six or seven  
3 months of back and forth between Mr. White's firm  
4 and the peer reviewer for the Conservation Commission  
5 over some of the details of that storm water plan,  
6 but we are very confident that it is in compliance  
7 with the storm water standards and that that will be  
8 upheld through the review with the DEP.

9 So that's a quick overview.

10 CHAIRMAN SALTZMAN: On the other side of  
11 Franklin Street --

12 MR. LOWRY: Yeah.

13 CHAIRMAN SALTZMAN: -- is that the -- is  
14 that also a resource area?

15 MR. LOWRY: Yes, it is. Absolutely.

16 CHAIRMAN SALTZMAN: So -- so it would be  
17 necessary not just to protect the wetland on the  
18 site but also this other resource area?

19 MR. LOWRY: Yes.

20 CHAIRMAN SALTZMAN: So is it not a problem  
21 now -- and certainly it's my understanding that  
22 there was a DEP order, a consent decree that was  
23 entered into in 2005 or 2006.

24 MR. LOWRY: There were two separate ones,

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1 yes, sir.

2 CHAIRMAN SALTZMAN: Right. And the 2006  
3 did -- it's my understanding -- and I'll, for the  
4 moment, defer to you until I can get my hands on a  
5 report -- but it's my understanding that the --  
6 the -- the owner entered into that and was found in  
7 2011 to be in noncompliance with that 2006 consent  
8 decree.

9 Is that fair to say?

10 MR. LOWRY: It's been many months since  
11 I've looked at the consent decree, so I think that  
12 that's not inconsistent with my recollection of  
13 that.

14 CHAIRMAN SALTZMAN: Okay. And part of the  
15 reason for these consent decrees is the protection  
16 of the wetlands. Obviously DEP is -- is involved in  
17 that, and they're the ones that entered into these  
18 consent decrees.

19 So we've got the 2011, and I'm -- I believe  
20 that the -- the owner is not in compliance with the  
21 2011 decree. Is that -- is that your recollection  
22 as well?

23 MR. LOWRY: Well, let me put it this way:  
24 I haven't seen any recent activity from

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1 DEP, you know, in a number of years relative to  
2 those consent decrees. So I'm not sure at this  
3 point, you know, what -- I think there were issues  
4 relative to erosion from the site into resource  
5 areas, so kind of going at water quality within the  
6 wetlands. That was a focus of DEP's actions.

7 But I -- but I -- again, I haven't looked  
8 at them for some time.

9 CHAIRMAN SALTZMAN: Let me ask you this:  
10 Is there any evidence since 2011 on that  
11 site that the current owner did anything in response  
12 to what appears to be further conditions added to  
13 the 2006 decree? I mean, there is no major change  
14 to the property? There is no -- there is nothing  
15 that would suggest the water is moving in any  
16 different direction?

17 MR. LOWRY: Correct.

18 CHAIRMAN SALTZMAN: If anything, it seems  
19 to be more water, not less.

20 I'm just trying to cut to the chase here if  
21 I could. We have two existing consent decrees, one  
22 that merged into the next, and we appeared to be in  
23 noncompliance with the Wetlands Act going back  
24 approximately nine or ten years.

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1           MR. LOWRY: I mean, I guess I'm not  
2 prepared to say one way or the other on the facts of  
3 that matter in terms of the compliance with the  
4 Wetlands Protection Act.

5           I mean, this is an agricultural activity.  
6 There are agricultural exemptions, so it gets fairly  
7 complicated in terms of compliance or noncompliance.

8           CHAIRMAN SALTZMAN: And I would submit that  
9 that's very true. And notwithstanding the fact that  
10 there is a fair amount of slack being cut to farms,  
11 we still have two consent decrees, one more  
12 stringent than the previous, and we don't seem to  
13 see any evidence at all of compliance with either  
14 one of them. And I would just submit that the  
15 wetlands -- you know, you come to a situation where  
16 the wetlands seem to be suffering, and I don't know  
17 that there is anything -- and what I'm hearing --

18           Go ahead.

19           MR. LOWRY: Yeah.

20           CHAIRMAN SALTZMAN: I see the smile.

21           MR. LOWRY: First of all, in terms of  
22 activities, I mean, the current owner has been  
23 replacing hay bales and erosion control measures  
24 around the limits of the wetlands in the year and a

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1 half since I've been looking at the site, so there  
2 have been activities that have been done by the  
3 current owner that are a reflection of the  
4 requirements of those consent orders, those consent  
5 decrees.

6           And I would -- I would also say, from my  
7 perspective as a wetland ecologist, the wetlands on  
8 this site are extremely healthy. They're very  
9 vigorous. They're prolific. You know, there is no  
10 lack of hydrology to drive good wetland conditions  
11 on this site, which is really what -- what drives  
12 wetlands.

13           I mean, if you look at the wetland down in  
14 the southeast corner, it's a very productive shallow  
15 marsh community. It's a highly valuable wetland.  
16 It's doing what it's supposed to do in an area that  
17 has a high ground water table, that's subject to  
18 flooding, and it's doing all the things that  
19 wetlands are protected -- protected to do under the  
20 Wetlands Protection Act.

21           CHAIRMAN SALTZMAN: Now -- but one of the  
22 issues obviously during the course of the last  
23 several years, you've heard people get up and say  
24 that the water is -- has altered its course and

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1 instead of heading downstream, it's heading into  
2 people's basements.

3 I heard Mr. Wantman. I don't see that  
4 there is any reason to doubt what he's saying. I'm  
5 just asking that's -- that's certainly not an  
6 intended result here, correct?

7 MR. LOWRY: From my perspective, looking at  
8 the record of this landscape since the 1930s, and  
9 looking at what was done in Meeting House Brook area  
10 in terms of ditches back at that time and done by  
11 the Corps of Engineers in the 1950s, this area has  
12 had similar drainage issues since that time. I  
13 mean, it's a high ground water table area, and when  
14 you build in close proximity to those high ground  
15 water tables or areas which are subject to flooding,  
16 you have associated issues with development in those  
17 areas.

18 And that's why this particular project is  
19 not doing that. It's completely out of those flood  
20 prone areas; it's completely out of the wetlands;  
21 it's above the ground water table. So it's designed  
22 appropriately, and I would submit that if most of  
23 the other development in the area had been designed  
24 similarly, then you wouldn't have these kind of



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1 conflicts between drainage, flooding, high ground  
2 water table and development.

3 CHAIRMAN SALTZMAN: It's never good to be  
4 last. It's never good to be last.

5 MR. LOWRY: Right.

6 But all you can do is design to the  
7 required standards, which is what this project is  
8 doing. And it's also made commitments to -- to  
9 assist in some of the -- quote, unquote --  
10 "problems." And, again, I look at this as a wetland  
11 ecologist, and I say this is no more of a problem  
12 than building in the flood plain of the Merrimack  
13 River is a problem. I mean, if you build in those  
14 flood prone areas, then you're going to have  
15 problems. But if you don't, if you design your  
16 project appropriately in the uplands and out of the  
17 flood plain, then you don't have those problems.

18 And so as part of the review with the  
19 Conservation Commission, commitments were made as  
20 part of -- contingent upon approval under the  
21 Wetlands Protection Act -- by the Applicant to make  
22 sure that the pump station works, to make sure that  
23 the weir is reconstructed to a state of  
24 functionality that would allow a little better

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1 operation of the -- of the pumping down of that  
2 southeast corner.

3 We can't pump it down completely, because  
4 that's a violation of the Wetlands Protection Act as  
5 well. You've got to find a balance between  
6 addressing those drainage issues and maintaining  
7 wetlands in an unaltered state in terms of the  
8 Wetlands Protection Act. So you've got kind of  
9 competing interests there.

10 But again, this project is fully compliant  
11 with the Wetlands Protection Act and I think has  
12 gone beyond the required standards in terms of  
13 looking at issues associated with the pump station,  
14 and the weir, and also providing a monetary donation  
15 to -- to work on some of the ditches in the area  
16 to -- to kind of remove vegetation so that they can  
17 operate a little bit more efficiently.

18 MR. WITTEN: Mr. Chairman.

19 CHAIRMAN SALTZMAN: Sure.

20 MR. WITTEN: Could I just maybe add a  
21 couple of things to the record:

22 The Conservation Commission obviously  
23 disagreed with Mr. Lowry, and now it's up to DEP to  
24 determine, and perhaps the courts, as to whether

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1 this project complies with the Wetlands Protection  
2 Act.

3 I think the second comment is Mr. Lowry  
4 referred to the local bylaw, compliance with the  
5 local bylaw. But the record's clear that the  
6 Applicant refused to file under the local bylaw.  
7 The Conservation Commission issued a denial under  
8 the local bylaw, so at least, as we sit here today,  
9 there is no compliance with the local bylaw.

10 That decision to deny under the bylaw was  
11 not appealed by the Applicant, so that decision has  
12 been recorded.

13 MR. LOWRY: I think the point is, is we've  
14 made sure that things are pulled back from the edge  
15 of the wetlands by the 25-foot, which is the  
16 local -- locally desired setback distance, and that  
17 was the intent of doing that.

18 MR. WITTEN: And then the third thing,  
19 Mr. Chairman, just in response to Mr. Lowry's  
20 comments, is with regard to the consent orders, the  
21 Conservation Commission issued an enforcement order  
22 with a compliance date of September 30th, 2015. The  
23 landowner has appealed the Conservation Commission's  
24 decision, and the Conservation Commission has filed a

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1 counterclaim seeking enforcement.

2 So that matter will be adjudicated by  
3 another body in another forum.

4 CHAIRMAN SALTZMAN: So that's a live  
5 question.

6 MR. WITTEN: But that is very much a live  
7 question as to whether or not the enforcement order  
8 issued by your Conservation Commission is going to be  
9 complied with. Because the Con.Com. concluded that  
10 there wasn't compliance with the consent order and  
11 that there wasn't compliance with the Wetlands  
12 Protection Act local bylaw.

13 So that matter is -- is teed up now in  
14 superior court.

15 CHAIRMAN SALTZMAN: Thank you.

16 MR. GALLOGLY: Mr. Chairman, can I just  
17 respond.

18 We're not the landowner. The enforcement  
19 order was issued against the landowner.

20 MR. WITTEN: I believe I said that, and if  
21 I didn't, then I stand corrected. It's against  
22 Weiss Farm, Inc.

23 MR. GALLOGLY: I just want to point out  
24 that we did not apply for the order of conditions

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1 under the local bylaw. We were denied. I've never  
2 seen a situation where an applicant who doesn't file  
3 an application can be denied.

4 MR. WITTEN: Well, you know, it's  
5 interesting, Mr. Chairman, because the Applicant  
6 doesn't want to revisit what happened in the  
7 Con.Com., but the Applicant's revisiting what  
8 happened at the Con.Com.

9 The application --

10 MR. GALLOGLY: I was just responding to  
11 your statement.

12 MR. WITTEN: The application, during the  
13 public hearing process, was clear that there was an  
14 application under the bylaw, and the Commission  
15 denied under the bylaw. So that matter, unappealed,  
16 has been resolved, and it has been resolved in that  
17 the Conservation Commission denied under the local  
18 wetlands bylaw.

19 CHAIRMAN SALTZMAN: Mr. Shulman, did you  
20 have a question?

21 MR. SHULMAN: Yeah. It feels like a small  
22 question in the context of the discussion.

23 CHAIRMAN SALTZMAN: No. No. No.

24 MR. SHULMAN: But there is 100-foot buffer

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1 zone from the wetland, which is in -- nine  
2 o'clock -- which is indicated on the plan. My  
3 experience has been that the 100-foot buffer,  
4 although not as strict as the 25-foot no-build  
5 buffer, is still a relevant buffer. And the  
6 project, as proposed, seems to fill the majority of  
7 that buffer with parking.

8           Could you speak to the approach of the  
9 project in -- in essentially filling that buffer  
10 zone? Or do you not view that buffer zone to be a  
11 relevant one?

12           MR. LOWRY: Well, it's obviously a  
13 jurisdictional area. It is not a resource area.  
14 There are no performance standards in the  
15 regulations that tell you what you can and can't do  
16 within the buffer zone. The buffer zone is -- when  
17 you're proposing work within it, you need to notify  
18 the Conservation Commission and take appropriate  
19 measures to make sure that the actual resource areas  
20 are not impacted. But it's not at all uncommon to  
21 have work go forward in the buffer zone, and it is  
22 not uncommon also to have some reasonable setback,  
23 such as 25 feet from the limit of the wetland, to  
24 make sure that the wetland is not actually altered

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1 by those activities in the buffer zone.

2 But there is no prohibition to work within  
3 the buffer zone nor strict performance standards  
4 which regulate that work.

5 CHAIRMAN SALTZMAN: Is there anyplace where  
6 it's advised that, you know, the -- you get the  
7 25 feet setback, the next 75 feet almost all the way  
8 around it are parking?

9 MR. LOWRY: Again, you have to look at the  
10 specifics of the buffer zone under -- in terms of  
11 existing conditions, what happens in those buffer  
12 zones now and what's going to happen there under the  
13 post-development condition.

14 And in my experience, looking at the storm  
15 water management standards here, and some of the  
16 other landscaping and so forth, the things that are  
17 happening within this buffer zone are such that it  
18 will maintain the integrity and the functions of the  
19 wetland, and that's what the buffer zone is there  
20 for. We're going to make sure that -- that recharge  
21 is accommodated within the uplands, and recharge is  
22 distributed among the site around the buffer zone.  
23 We're going to make sure water quality is treated in  
24 terms of anything coming from the site that moves

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1 through the buffer zone to the wetlands.

2 So, in my experience, there is nothing  
3 happening within those buffer zones that's going to  
4 be -- adversely affect the wetlands that it's --  
5 that it's -- that it borders on.

6 MR. SHULMAN: So maybe you can just speak  
7 to that a little bit more, then, and explain how --  
8 I mean, cars are dirty. They leak oil. They have  
9 heavy metals from their brakes. There is various  
10 things that are -- pollutants that are bad for  
11 wetlands, as far as I understand it. Rain falls,  
12 washes that on to pavement, and eventually it sheet  
13 flows off the pavement and down through that 25-foot  
14 buffer and into the resource area, presumably.

15 Can you respond to that how --

16 MR. LOWRY: Sure.

17 As Jim has mentioned, the storm water  
18 management system was designed really for two  
19 primary purposes: One is to make sure that the peak  
20 rate of runoff does not change pre to post; and  
21 secondly, to address water quality issues, to make  
22 sure that water quality is treated in a treatment  
23 train as it runs off of the paved surfaces and areas  
24 that cars are parking in and off of roof tops. And



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1 so as it moves through the storm water management  
2 system, those pollutants are attenuated by various  
3 measures. There is direct settling. There is --  
4 there is filtration through soil. There is  
5 biochemical activities. And so it's very well  
6 established at this point in time that those storm  
7 water management measures that are part of the storm  
8 water system attenuate those pollutants and protect  
9 the receiving resource areas -- whether they be  
10 wetlands, or streams, or the ground water system --  
11 and that's how the whole system is designed to make  
12 sure that it does work appropriately.

13 MR. SHULMAN: So water that falls and hits  
14 the paved areas all in that 100-foot buffer zone,  
15 that all gets treated?

16 MR. LOWRY: Correct. That is correct.

17 CHAIRMAN SALTZMAN: Any other questions?

18 Mr. Sullivan.

19 MR. SULLIVAN: Sure. Would now be the time  
20 to bring up snow? How would they remove ice and  
21 such? That would be in that 100-foot zone also.  
22 Would it relate to that?

23 MR. LOWRY: I don't recall. We had a snow  
24 removal plan. It's basically you're required to

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1 have a snow removal plan, and I don't recall the  
2 details of it at this point.

3 Do you recall, Jim?

4 MR. WHITE: As part of our storm runoff  
5 analysis and operation and maintenance plan, there  
6 was a snow storage plan in that package which  
7 indicated locations where snow could be stockpiled  
8 on site, or piled on site.

9 MR. SHULMAN: Can you just describe that to  
10 us? Where is the snow stockpile? Could you just  
11 show us on the --

12 MR. SULLIVAN: I can't find it amongst  
13 my -- my weekly reading list. It's very hard to do  
14 this and run a business at the same time.

15 MR. WHITE: It's in that April storm water  
16 report, which is very, very thick. And it may be  
17 better just to bring a plan next time rather than  
18 try to point out locations.

19 MR. SULLIVAN: Yeah. If you could.

20 MR. WHITE: I think that would work better.

21 MR. SULLIVAN: And the other concern I have  
22 is, you know, deicing materials -- salt, sand and  
23 such -- I know I see in a lot of areas I'm going  
24 through maybe a reservoir area and there is all

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1 sorts of signage about no salt or sand being in use.

2 So I would like that also addressed.

3 MR. WHITE: Okay.

4 MR. SULLIVAN: Thank you.

5 MR. WHITE: Sure.

6 CHAIRMAN SALTZMAN: Any other questions  
7 from the Board?

8 Mr. Houston.

9 MR. HOUSTON: Yes, Mr. Chairman.

10 CHAIRMAN SALTZMAN: Would -- please.

11 You've heard considerable testimony tonight  
12 in connection with the wetlands area. I know you've  
13 had opportunity to study it.

14 Can you offer the Board some guidance as to  
15 where our inquiry should go at this point.

16 MR. HOUSTON: Certainly, Mr. Chairman.

17 We did review the storm water, the overall  
18 site layout, its impact to the wetlands, et cetera,  
19 as part of our original review.

20 Earlier this week we received the  
21 supplemental filings that have been discussed in  
22 terms of the area-wide drainage study, the study of  
23 the pump station, some additional infiltration  
24 calculations, indicating compliance with Standard 3,

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1 et cetera. We have gone through those  
2 superficially. We need to do some additional  
3 analysis.

4 I think my comment would be that many of  
5 the responses to the issues regarding wetlands and  
6 regarding storm water were qualitative in nature.  
7 And I did speak to Jim earlier this evening about  
8 maybe getting together because, by way of example,  
9 we raised concerns about fill impacting the  
10 infiltration facilities.

11 We received written responses saying,  
12 "Well, in this area the fill is granular; it's okay  
13 to leave. In this area, it isn't." But there was  
14 no technical backup to that. So we have the -- the  
15 answers in words, but I think we need to delve into  
16 them to get a quantitative basis for -- for those  
17 responses.

18 I guess with respect to the big issues of  
19 storm water management, I think we initially raised  
20 the issue that the design point selected for the  
21 calculations is not correct. It should, in fact, be  
22 a point that reflects the overall hydrology of the  
23 area, and that includes the adjacent wetland. It's  
24 a requirement of standard engineering practice to

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1 not only model a site in isolation, but to model  
2 typically off-site areas that flow onto the site or  
3 whatever.

4 In this instance, we have a very large area  
5 of relatively level, for lack of a better term,  
6 ponded water that surrounds the site that will  
7 affect and impact the site, and we don't really know  
8 what the controls are there. I know that the  
9 area-wide drainage study estimated total flows into  
10 that wetland area, but doesn't really tell us what  
11 happens now or what happens post development  
12 quantitatively. I think we need to expand the  
13 drainage calculations to include the upland areas  
14 that intimately affect the hydrology, surface water  
15 and ground water of the site.

16 I think our comments and concerns about the  
17 pump station remain fundamentally unanswered. Jim  
18 did a credible engineering evaluation of the pumps  
19 and the function of the station now, but I think our  
20 recommendations for alternating pumps and for  
21 standby power remain in place. And in order to  
22 design an upgraded station, you really need to know  
23 the water coming into it, which is, again, why you  
24 need to expand the drainage calculations.

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1           From the area-wide drainage study that was  
2 submitted I learned, in fact, that there are two  
3 outlets to this larger wetlands system, and one  
4 functions dominant at one time and it sort of shifts  
5 back and forth, so I think it's necessary to  
6 evaluate that and determine its impact on the  
7 project.

8           With respect to the wetland issues that we  
9 heard about, I concur with Mr. Shulman's concerns.  
10 It's correct that there is no quantitative limit on  
11 the alteration of buffer zone in terms of the  
12 5000 square feet we often hear with respect to  
13 alteration of wetland itself, but I think it is  
14 unusual to have a project which so extensively  
15 alters buffer zone.

16           The reason the buffer zone exists is that  
17 activities within the buffer zone have a high  
18 potential to alter the wetlands themselves. If you  
19 have a very significant portion of the buffer zone  
20 altered, not so much for storm water management  
21 facilities -- and you see that quite a bit -- but  
22 for parking and other hard site improvements, I  
23 think there is just an inherent potential for that  
24 work to -- to impact the wetland.

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1           I guess the way I phrased my comment may  
2 have been unfortunate, because I suggested the  
3 solution was to seek input from the Conservation  
4 Commission, and the Rackemann letter responds, "Well,  
5 that's in appeal," et cetera. So that is true. So  
6 I guess I would rephrase it and just raise the  
7 concern about the potential impact on the wetlands  
8 due to the extensive alterations of the buffer zone.

9           Less is more in this case, to quote Le  
10 Corbusier, the architect. So if we could alter less  
11 of the buffer zone, that would be highly beneficial.  
12 If that's not within -- consistent with maintaining  
13 the program, well, we'll have to look at the issue  
14 at that point.

15           So...

16           CHAIRMAN SALTZMAN: Does the -- does the  
17 pump station itself make this a somewhat unusual  
18 site, the way that -- you know, the way the water  
19 seems to congregate on one end of the place, that  
20 the fact that you've got flooding off site next to  
21 the -- in the adjoining areas, you've got -- you  
22 know, and then you've got flooding further down  
23 the -- on the other side of Franklin Street. It's  
24 almost like you're stuck having to pick your poison.

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1 Where is it going to go? It's not going to stay  
2 here.

3 MR. HOUSTON: Well, that's another reason,  
4 of course, to analyze it.

5 It's pretty unusual to pump storm water in  
6 any instance. I mean, you see it in very urban  
7 situations like Storrow Drive where it's halfway  
8 under the river level. They pump storm water there.  
9 But it's pretty unusual to have it in a suburban  
10 situation.

11 I don't know, looking back, what led to the  
12 design considerations of what inverts place the  
13 culvert at and things like that, but it is kind of  
14 complicated because I've gone out there, oh, maybe a  
15 month or a month and a half ago. It wasn't a  
16 particularly rainy time, and yet the pump was going  
17 full force, and it wasn't functioning properly. It  
18 was spilling over the sides, et cetera.

19 So, you know, it's a pretty complex  
20 situation. I know they turn it off in the winter.  
21 They turn it off when the water level reaches a  
22 certain point. But, you know, I think we need to  
23 understand that in additional detail, and I think we  
24 need a more reliable pump.



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1           I mean, if you have a -- a septic system  
2 for a house, it has dual pumps that alternate. So I  
3 think if you've got a 550-gallon pump, you would  
4 probably want pumps that alternate, among other  
5 reasons, if one of them does break, the other one  
6 kicks in and allows the storm water to be pumped  
7 until that pump -- excuse me -- can be replaced.

8           So I think some of our concerns about storm  
9 water were answered, particularly the impacts of  
10 fill on certain of the systems, but again there is  
11 no quantitative basis for it. I think our  
12 fundamental concerns about the nature of the storm  
13 water modeling, even though, as the Applicant made  
14 the point, the volumes do balance from the site, I  
15 still don't think that's how you analyze this  
16 particular area. It's a complex area. We have to  
17 understand it because it impacts the project.

18           CHAIRMAN SALTZMAN: On the issue of  
19 replacing the pump and having a backup pump, is --  
20 is cost a significant factor on that? I mean, I  
21 don't think this pump that's in there right now  
22 seems to owe anybody anything. Right? It's more  
23 than --

24           MR. HOUSTON: Although I think Mr. White

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1 said it's been replaced a few years ago, but the one  
2 that was in there since 1950 to 2000-something  
3 certainly didn't owe anyone anything.

4 But yeah, I mean, at some point a pump is  
5 going to break, so I think the idea of an  
6 alternating pump, you know, it helps the wear of the  
7 system, extends the life, and provides that safety  
8 backup in case you need to pump when one of the  
9 pumps malfunctions. That's just a standard  
10 engineering approach to any type of pumping  
11 facility, and certainly one of this magnitude, so...

12 CHAIRMAN SALTZMAN: And it would be backed  
13 up by a generator?

14 MR. HOUSTON: Yes. Yes.

15 CHAIRMAN SALTZMAN: Questions from the  
16 Board?

17 MR. SULLIVAN: I think they -- I think  
18 they're pumping their sewage there; isn't that  
19 correct?

20 MR. HOUSTON: From the proposed project?

21 CHAIRMAN SALTZMAN: That's a happy thought.

22 MR. SULLIVAN: Yes.

23 Isn't that what's proposed?

24 MR. HOUSTON: I don't recall, exactly.

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1           MR. WHITE: Yes, that's correct.

2           MR. SULLIVAN: And last time we were going  
3 to -- that was one of the questions you were going  
4 to get back to me on was the type of generation.  
5 You said you were -- possibly could use natural gas,  
6 and we were going to get a size of a generator that  
7 would be required, whether it was natural gas. If  
8 it was a standard diesel generator, what would be  
9 the number of gallons. And I would hate to see  
10 diesel in a wetland area.

11           MR. WHITE: I assume at this time, as long  
12 as regulations don't change, that we'd be using  
13 natural gas as our source of power for the  
14 generator.

15           MR. SULLIVAN: I'm not positive, but I'm  
16 pretty sure that's up to the local jurisdiction,  
17 correct? Whether or not they accept a natural gas  
18 or the diesel.

19           MR. WHITE: That's correct.

20           MR. SULLIVAN: Because I know some don't.

21           And then I don't think, if it was proposed  
22 and everything went through, that I would hope that  
23 the generator would be of sufficient size to also  
24 make sure that in a power outage that those pumps

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1 would be able to operate.

2 MR. WHITE: That's correct. The generator  
3 would be sized for the pumps to operate, so there  
4 would be no stoppage in pumping.

5 Oh, I'm sorry. Are we going back to storm  
6 water or are we going to sewage?

7 MR. CICATELLI: Are you referring to the  
8 pumping station?

9 MR. SULLIVAN: Both. What I was bringing  
10 up was that the -- you are pumping -- proposing to  
11 pump the sewer, correct?

12 MR. WHITE: That's correct.

13 MR. SULLIVAN: That's waste?

14 MR. WHITE: That's waste, right.

15 MR. SULLIVAN: Correct?

16 So the conversation that we have when you  
17 were going to propose it to pump the waste, there  
18 was a conversation of a standby generator to make  
19 sure that waste could always be pumped.

20 My comment is, if there is a standby  
21 generator there, I'm concerned about if it's diesel  
22 in a wetland area. And I also want to know how much  
23 fuel it would carry. I know that the natural gas is  
24 another option that's available, and like I just

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1 stated, I believe that's up to the local  
2 jurisdiction as to whether or not they find it, you  
3 know, sufficient for that use.

4 And I said I would just hope that if you  
5 have to put a generator in there, that it would be  
6 of sufficient size to carry any pumping that would  
7 be required for storm water management.

8 MR. WHITE: Okay.

9 MR. SULLIVAN: That was more of a  
10 suggestion, because I knew we had already talked  
11 about having a generator there, so --

12 MR. WHITE: Okay.

13 MR. SULLIVAN: -- if it's sized  
14 accordingly, it shouldn't be an issue, and I'm sure  
15 that wouldn't be an issue, either.

16 MR. WHITE: That's a good point.

17 MR. SULLIVAN: That's all.

18 CHAIRMAN SALTZMAN: Any other questions?

19 Sure.

20 MS. McBRIDE: Hi. Ellen McBride, 30 Butler  
21 Ave.

22 I just wanted to make a few clarifications  
23 for the record of points that have come up during  
24 tonight.

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1           One is I think, Dennis, you referenced Army  
2 Corps of Engineers digging the ditches. And I know  
3 in a letter I think Peter, you presented it months  
4 ago, that, in fact, it was rumored, or -- no one's  
5 ever been able to clarify that.

6           I, myself, contacted Army Corps of  
7 Engineers. They have no records whatsoever that  
8 they dug the ditches. So I just want -- no one  
9 knows who dug them. I just don't people to think it  
10 was Army Corps.

11           And then when you say you're out of the  
12 25-foot no-disturb zone everywhere on the project,  
13 if I'm remembering, on the northeast section of the  
14 project, isn't there a bridge that goes over to  
15 three acres of upland?

16           MR. WHITE: There is an existing little  
17 concrete bridge in that location.

18           MS. McBRIDE: Right. So that's in the  
19 25-foot no-disturb zone, right?

20           MR. WHITE: That's an existing bridge.

21           MS. McBRIDE: Right. But aren't you  
22 planning on fixing it?

23           MR. GALLOGLY: Not unless you allow us to  
24 do that.

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1 MS. McBRIDE: But the part of the project  
2 is not 25-foot no-disturb zone.

3 MR. GALLOGLY: No. That's not -- that's  
4 not part --

5 MS. McBRIDE: In your -- in one of the  
6 parts of your project you talk about:

7 "And a lovely bridge that leads to  
8 three acres of upland."

9 So it kind of is in your project, so I'm  
10 just --

11 MR. GALLOGLY: In its existing condition.

12 MS. McBRIDE: I agree.

13 But I'm just saying, you say the whole  
14 project is outside the 25-foot, and it's not.  
15 You're not -- I'm not saying you're altering it; I'm  
16 just saying it's part of the project.

17 And the hay bales you talked about that  
18 Mrs. Weiss and Weiss Farm have been very good about  
19 replacing all along, they only replaced them after  
20 we did a site walk and we asked them to replace  
21 them, because all the hay bales that had been put in  
22 2012 were all degraded. So we asked them to put  
23 them in. And they weren't put in, and we asked them  
24 again, and then they were put in.

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1           And I think, Mr. White, you said the pump  
2 was replaced a few years ago. Do you know when it  
3 was replaced?

4           MR. WHITE: In my pump report it has in  
5 there when it was replaced, the exact year.

6           MS. McBRIDE: Okay.

7           MR. WHITE: I don't know off the top of my  
8 head.

9           MS. McBRIDE: Like after 2010? Or after  
10 2000? I don't want to put you on the spot, but --

11          MR. WHITE: I would have to look at my  
12 report.

13          MS. McBRIDE: That's fine.

14          MR. WHITE: But I believe it was after  
15 2000.

16          MS. McBRIDE: And Dennis, you referenced  
17 that this was agricultural land, and it's not.  
18 Donna lost her agriculture license years ago, and  
19 that was a long contentious fight with the town. So  
20 it's not agricultural land. She doesn't get any  
21 benefits of agricultural --

22          MR. LOWRY: I was basing my statement on  
23 the definition of "agriculture" under the Wetlands  
24 Protection Act --



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1 MS. McBRIDE: Okay.

2 MR. LOWRY: -- and the guidance that's  
3 provided by the DEP.

4 MS. McBRIDE: Okay. I wanted to make it  
5 clear that it's not a farm any longer.

6 CHAIRMAN SALTZMAN: That's a question that  
7 we're not going to resolve among ourselves tonight.

8 MS. McBRIDE: I know. And then one more  
9 point.

10 And I think last meeting we talked about  
11 nobody had the numbers of what is -- I don't know  
12 what the right terms are -- but when you talked  
13 about removing two levels, that would drop it down  
14 20 feet. If you removed all five, it would drop it  
15 down 50 feet, and what was the before and after of  
16 ground level.

17 I think you have that information tonight,  
18 so maybe you can revisit that question.

19 CHAIRMAN SALTZMAN: Okay.

20 MS. McBRIDE: If you want to. Thanks.

21 CHAIRMAN SALTZMAN: Mr. Houston, just very  
22 quickly.

23 MR. HOUSTON: I just wanted to follow up on  
24 the comment that was made about the Corps of

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1 Engineers ditch and potential easements.

2 That was one of our comments and a concern,  
3 because it would be, in my judgment, highly unusual  
4 for the Corps of Engineers to have constructed  
5 something and not maintained some kind of rights to  
6 go in and maintain it.

7 In response to that, I believe the  
8 Rackemann letter said something like there is no  
9 evidence of an easement or whatever, but I do think  
10 it's important that there be a detailed title search  
11 of that particular issue. Because if the Corps has  
12 any rights in that, and if the applicant can't touch  
13 it or discharge into it without a Corps permit, it  
14 really sort of leaves us up in the air.

15 So I didn't -- I couldn't determine from  
16 the response whether there had been a detailed  
17 evaluation of that issue or not. So...

18 CHAIRMAN SALTZMAN: Is there a response?

19 MR. MAHONEY: We've done extensive title  
20 research on the site and have not found anything  
21 that would indicate the Corps has any rights on the  
22 site. I think the -- the historic, anecdotal  
23 information was that this was a Corps project, but  
24 we have not -- we don't have any -- there is no

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1 easements, as far as our title research, have turned  
2 up, and we've done extensive research.

3 CHAIRMAN SALTZMAN: I always thought the  
4 Army Corps of Engineers wrecked a site and ran. But  
5 hey, I don't know.

6 At this time perhaps it might be wise to  
7 entertain a motion?

8 Yes, sir.

9 MR. BENNETT: Arthur Bennett, 7 Sunset  
10 Road, Stoneham.

11 I live adjacent to the brook on Sunset  
12 Road. When there is several inches of rain, my  
13 property is like a swimming pool. This development  
14 will impact more flooding on my property, especially  
15 in the basement. The water in the brook now is  
16 practically stagnated.

17 CHAIRMAN SALTZMAN: Thank you.

18 Anybody else?

19 MR. ROTONDI: I would like to make a motion  
20 to adjourn.

21 MR. WITTEN: Mr. Chairman, can I just ask  
22 one question before the Board votes on that.

23 Last week I asked Mr. Mahoney about the  
24 MEPA status, so I just wanted to ask that question

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1 again tonight.

2 MR. MAHONEY: We have not filed. We plan  
3 to file, I would guess, within the next week.

4 MR. WITTEN: Within the next week?  
5 Prior to the next meeting?

6 CHAIRMAN SALTZMAN: We're meeting again in  
7 two weeks.

8 MR. MAHONEY: Yes.

9 CHAIRMAN SALTZMAN: You've got all the time  
10 in the world.

11 MR. MAHONEY: Prior to the next meeting.  
12 That's the plan.

13 MR. WITTEN: Thank you, Mr. Mahoney.

14 And the second question, Mr. Chairman, is  
15 just some clarification, maybe it's from Mr. Engler,  
16 as to whether or not -- or Attorney Cicutelli -- is  
17 the Board going to see a plan for 120, 125 units?

18 MR. ENGLER: The Board will see a pro  
19 forma. And if you hire a consultant of financial  
20 expertise to look at the pro forma and you ask that  
21 consultant what would happen if it were 125 units,  
22 that's something that that consultant can look at,  
23 make a comment on, and we can respond to it.

24 So we plan on giving you a pro forma very

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1     shortly.

2             MR. WITTEN:    So I appreciate that,  
3     Mr. Engler.    But my question is, is --

4             MR. ENGLER:    No, we won't be doing a  
5     modified plan.   We have -- we're living with the  
6     plan we've submitted.

7             MR. WITTEN:    And when would the Board  
8     expect the pro forma?

9             MR. ENGLER:    Oh, I would say ten days.  
10     Before the next meeting.

11             MR. WITTEN:    Before the next meeting?  
12     Because, Mr. Chairman, taking --

13             MR. ENGLER:    No?

14             Before not the next meeting, but the  
15     meeting after that, we'll have it.

16             MR. SULLIVAN:   The 18th of November  
17     meeting, sir?

18             CHAIRMAN SALTZMAN:   The meeting on the  
19     12th?

20             MR. CICATELLI:   The 12th and the 18th,  
21     Mr. Chairman.

22             CHAIRMAN SALTZMAN:   We're counting ten days  
23     from today.

24             MR. ENGLER:    Well, I said that.   I work for

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1 my client, who said it would be a little longer.

2 CHAIRMAN SALTZMAN: Don't be shy,  
3 Mr. Engler. It's the first we've seen of that.

4 MR. ENGLER: Very shy.  
5 You will have it, though, before.

6 CHAIRMAN SALTZMAN: Fair enough.

7 MR. WITTEN: Thank you, Mr. Chairman.  
8 And I'll have a recommendation to take  
9 Mr. Engler up on that offer, and I'll have the  
10 recommendation to the Board for a pro forma  
11 consultant review.

12 And then my last question, if I could,  
13 Mr. Chairman, is:

14 Mr. White, do you have any written  
15 submissions other than the updated reports, any  
16 testimony, any report other than the Rackemann,  
17 Sawyer letter which I think you are referenced at  
18 least by implication on? Do you have any comments  
19 to Mr. Houston's report?

20 MR. WHITE: No.

21 MR. WITTEN: Written comments?

22 MR. WHITE: They're included in our  
23 attorney's letter, our responses.

24 MR. WITTEN: Your attorney's letter is

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1 signed by -- by your attorney.

2 Are they your comments?

3 MR. WHITE: I helped craft those comments.

4 MR. MAHONEY: Mr. Chairman, could I just --

5 MR. WITTEN: Did you craft -- could I just  
6 finish, Mr. Mahoney?

7 Did you craft all of the comments? Some of  
8 the comments?

9 MR. CICATELLI: Mr. Chairman, it's --

10 MR. MAHONEY: The comments from Mr. Houston  
11 were obviously multidisciplinary, and we had, you  
12 know, input from many, many team members and --

13 MR. WITTEN: Mr. Chairman, just for the  
14 record, the Board --

15 CHAIRMAN SALTZMAN: I think the question  
16 is, the -- if there could be some indication as to  
17 whose comments --

18 MR. MAHONEY: We could do that.

19 CHAIRMAN SALTZMAN: -- that would be --

20 MR. MAHONEY: We will do that.

21 CHAIRMAN SALTZMAN: That would be most  
22 helpful.

23 MR. WHITE: I responded to those comments  
24 that dealt with the civil engineering aspects of the

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1 project.

2 CHAIRMAN SALTZMAN: Sure. If we could just  
3 know who said what, that would be somewhat helpful.

4 And on that happy note, Mr. Rotondi, do you  
5 have a motion?

6 MR. ROTONDI: I would like to make a motion  
7 to adjourn.

8 MR. SULLIVAN: Time and place?

9 MR. WITTEN: To continue.

10 No, not to adjourn. To continue.

11 MR. SULLIVAN: Continue.

12 MR. ROTONDI: To continue to November --

13 MR. SULLIVAN: November 12th, 7:30 p.m. in  
14 this room, and I would second that.

15 CHAIRMAN SALTZMAN: All right.

16 All those in favor.

17 (Chorus of ayes)

18 CHAIRMAN SALTZMAN: All right.

19 MR. CICATELLI: Mr. Chairman, that would be  
20 traffic that evening would be the plan?

21 CHAIRMAN SALTZMAN: Traffic and more water,  
22 I suppose.

23 MR. MAHONEY: More water, you suppose.

24



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(Whereupon, the hearing was  
continued at 9:27 p.m.)

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C E R T I F I C A T E

I, Alexander K. Loos, Registered Diplomate Reporter, do hereby certify that the foregoing transcript, Volume VIII, is a true and accurate transcription of my stenographic notes taken on October 28, 2015.



Alexander K. Loos

Registered Diplomate Reporter

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