

Volume I
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TOWN OF STONEHAM
CONSERVATION COMMISSION

Public Hearing Re
Notice of Intent by
Weiss Farm Apartments, LLC
With Regard to 170 Franklin Street

Commission Members Present:

Ellen McBride, Co-Chairman
Robert Parsons, Co-Chairman
Megan Day
Rachel Rennard
Norman L'Esperance

Catherine Rooney, Secretary

Huggins & Witten, LLC (by Jonathan Witten, Esq.)
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for the Board.

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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,
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Held at:

Stoneham Town Hall
35 Central Street
Stoneham, Massachusetts
Thursday, April 9, 2015
7:20 p.m.

Alexander K. Loos
Registered Merit Reporter

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P R O C E E D I N G S

CO-CHAIR McBRIDE: Okay. Next item on the agenda is the project at Weiss Farm, or Weiss Farm Apartments, LLC. And we met on, I think it was, March 19th. And in the three weeks since then, there have been conversations between Bob Griffin, who is the peer engineer for the Town of Stoneham, and I can't remember the gentleman's name for Corcoran.

MR. WHITE: Jim White.

CO-CHAIR McBRIDE: Jim White.

And the company is?

MR. WHITE: HW Moore.

CO-CHAIR McBRIDE: HW Moore.

And I think we are sort of moving in a direction of working some things out, but I think it might be prudent to talk about a few of the things here.

And we also haven't done a site walk yet, and now that the snow's melted, I think that might be maybe even the first thing we should do. I don't know how you guys feel about it. You're all nodding, so that's a good sign.

Do we want to do that, start right off the

1 bat? Or I can just tell you -- I think I brought
2 this up at the last meeting. I have this -- this
3 information about -- from two people who were on the
4 Commission for years -- Steven, you'll know them --
5 Bob Conway and Dan Towse, wonderful Dan Towse, that
6 at some point there was a stream or a river called
7 Meeting House Brook.

8 AUDIENCE MEMBER: It's not easy to
9 understand what you're saying. I'm having
10 difficulty understanding what you are saying.

11 CO-CHAIR McBRIDE: I always have difficulty
12 understanding you, Marty.

13 Come on and sit in the front row, please.
14 I'm trying really hard. I'm talking into the mic.
15 Come up on up front, Marty.

16 AUDIENCE MEMBER: There is an echo. It's
17 not the volume.

18 CO-CHAIR McBRIDE: It's the room. Am I too
19 close to the mic or -- is that better?

20 AUDIENCE MEMBER: Maybe it's because you
21 were facing them rather than the audience.

22 CO-CHAIR McBRIDE: Maybe. But anyway,
23 there is -- I don't know if any of you know about
24 it, but there is -- or you guys in the neighborhood,

1 there is a Meeting House Brook that ran behind
2 there, and I just want to know what happened, where
3 it went. And I think there is no time like the
4 present to investigate that a little deeply and find
5 out. So I think we might need to hire --

6 I'm not moving my head, but it's getting
7 buzzy. So is that me or is that you guys?

8 I think it might make sense for us to ask
9 to have a wetlands scientist come and do a walk
10 through. I know there was one a few years back, but
11 I don't know that we asked this sort of specific
12 questions. I just feel it would be my
13 responsibility, or our responsibility to look into
14 that before we go any further with the project. So
15 maybe we could do that at the site visit.

16 Does that sound -- I don't know if I'm even
17 making sense.

18 MR. CICATELLI: Madam Chairman, that was
19 one of the issues that we wanted to discuss this
20 evening because, in many cases, the Commission does
21 request a site visit. So what we we would like to
22 do this evening, if we could, is, perhaps, to
23 schedule a site visit.

24 And as you have mentioned, the two

1 engineers did have a very productive meeting today,
2 and I think many issues have been addressed. There
3 still is some additional information that Bob has
4 requested that we provide, that we're going to
5 provide. So it might make sense if we could,
6 perhaps, have Jim go over the issues that were
7 agreed upon, the further information that we intend
8 on providing. We can talk about the site visit.
9 And we also have a slide that we would like to just
10 show to the Commission and the audience, just an
11 aerial view, just so there is a clear understanding
12 as to where the construction is going to be. It's
13 not a plan; it's an actual slide. We feel that
14 might be helpful.

15 So, you know, at this point, whatever you
16 would like to do first. But if you would like Jim
17 to maybe address the discussions that he had today
18 with Bob Griffin, and the information that we're
19 going to continue to provide, that might be a good
20 start.

21 CO-CHAIR McBRIDE: Do you want to say
22 something, Jon?

23 MR. WITTEN: If I could, Madam Chairperson.
24 Good evening, Members of the Commission.

1 With regard to the site visit, the
2 Commission has the right to hire its own peer review
3 wetlands consultant, either in conjunction with
4 Mr. Griffin or independent of Mr. Griffin. So I
5 would ask the Commission to at least first discuss
6 that matter. Because if you are to hire your own
7 peer review wetlands consultant, the then Applicant
8 would pay for that pursuant to the 53G fund, as they
9 are paying for Mr. Griffin's services.

10 So that might be the first order --

11 CO-CHAIR McBRIDE: To set one up?

12 MR. WITTEN: Well, the account's already
13 set up.

14 CO-CHAIR McBRIDE: No. No. No. Set up
15 the site visit.

16 MR. WITTEN: I would say, even before that,
17 the first statement is, is the Applicant willing to
18 pay for the Commission's retaining a wetlands
19 consultant to join the Commission at the site visit,
20 but also to provide the Commission with advice on
21 Mr. Lowry's Notice of Intent.

22 MR. CICATELLI: And I believe our question,
23 before we can answer that, would be whether
24 Mr. Griffin is able to provide that expertise.

1 MR. GRIFFIN: So I'm not a biologist, as
2 you know. But in the past, when these types of
3 questions have come up -- and, in fact, for the
4 Weiss Farm ANRAD several years ago -- we engaged
5 Mary Rimmer from Newburyport, of Rimmer
6 Environmental. I haven't spoken to her yet to see
7 if she's available to participate in the ongoing
8 Notice of Intent review, but I would suggest the
9 Commission consider Mary's services only because
10 she's familiar with the site and some of the
11 questions that have come up in the past.

12 MR. WITTEN: I think, Madam Chairperson,
13 the first question is just yes or no from the
14 Applicant whether they're willing to pay the
15 Commission's retaining of a qualified wetlands
16 consultant pursuant to Chapter 44, 53G.

17 MR. CICATELLI: We don't have an objection
18 to that.

19 CO-CHAIR McBRIDE: Okay. Thanks.

20 MR. WITTEN: So then the second question to
21 the Commission is, Madam Chairperson, the consultant
22 that you chose to hire, the Applicant can object to
23 that consultant only if that consultant has a
24 conflict of interest or is not qualified. Certainly

1 the Applicant hasn't previously objected to
2 Ms. Rimmer. The other possible consultant would be
3 Ingeborg Hegemann of BSC who I know Mr. Lowry knows
4 very well. She's more than qualified as well.

5 CO-CHAIR McBRIDE: Do you have any
6 preference, Bob?

7 CO-CHAIR PARSONS: No, I -- I don't have
8 any preference either way. I just want to make sure
9 that whoever is up there is qualified and meets the
10 criteria.

11 Do we have to select who that is tonight I
12 guess is the question?

13 MR. WITTEN: No.

14 CO-CHAIR PARSONS: I would say maybe as a
15 Commission we talk about who that individual is
16 going to be and make a decision. But the concept of
17 having a wetlands specialist out there is obviously
18 a very good one and something that I would highly
19 recommend.

20 CO-CHAIR McBRIDE: So do you have any
21 objection to either Mary or -- I forgot the woman's
22 first name.

23 MR. WITTEN: Ingeborg Hegemann.

24 CO-CHAIR McBRIDE: Ingeborg.

1 MR. CICATELLI: No, we don't have any
2 objection. If Mary Rimmer knows the site, I think
3 it would make sense to choose her, but we would also
4 like to have someone engaged so that they can attend
5 the site visit.

6 You know, I think what's happening is the
7 engineers, I would think after maybe one or two more
8 meetings, we should be able -- in terms of their
9 meetings we should be able to provide the required
10 information. If we can do the site visit, I think
11 if this matter is continued to the first week in
12 May, we should be in a position where all the
13 information has been provided to the Commission.

14 Obviously this evening one of the other
15 issues we wanted to know if Commission members had
16 any questions so, again, we can be prepared for the
17 May -- the May meeting.

18 MS. DAY: Actually, I have a question for
19 Jon.

20 In our last meeting we had talked about
21 reaching out to DEP about the issues we had with
22 being the first permit. Are we jeopardizing -- I
23 know there was a time sensitivity of that. Setting
24 up site visits and moving forward like this, is that

1 jeopardizing that position?

2 MR. WITTEN: Yes. Great question.

3 So I wrote a letter to DEP's general
4 counsel for northeast not in reference to the
5 specifics of this project, but in reference to the
6 regulations, whether an application for an NOI can
7 precede the receipt of a comprehensive permit.

8 And we have not received response back.
9 I'm skeptical that we ever will. I think it's fair
10 to say DEP probably will not respond.

11 By proceeding with the hearing, the
12 Commission at some point will have sufficient
13 evidence, and it will be far enough into the hearing
14 process, that it won't make sense any longer to say
15 they filed too early. What that point of time is is
16 hard to say, because we don't know the status of the
17 Board of Appeals hearing. We're still waiting for
18 the Housing Appeals Committee to rule on whether
19 Stoneham is consistent with local needs under the
20 1.5 percent.

21 If Stoneham is consistent with local needs,
22 as Town Counsel and I believe you are, then the
23 Applicant will have to make a decision as to whether
24 they want to proceed with the Board of Appeals. If

1 Stoneham is not consistent with local needs, then
2 the application will go back to the Board of
3 Appeals, and then this process will still be
4 premature, because the Board of Appeals will not
5 have issued a decision.

6 That's a long-winded answer, because where
7 we were last time, the question before the
8 Commission is, do you feel comfortable denying this
9 application because it was filed out of sequence?
10 And the risk is, as we discussed last time, if you
11 do deny for that reason -- which Town Counsel and I
12 believe you could deny based on the regulations --
13 then you run the risk of losing control over this
14 hearing, because DEP -- the Applicant will take an
15 appeal to the DEP, request a superseding order, and
16 will argue that the Commission failed to issue a
17 decision.

18 We balanced, I think, collectively that
19 risk last meeting, and I think the Commission has
20 another problem having to balance it again tonight.
21 At some point down the road it won't matter anymore,
22 because you will have had so much testimony. At
23 this point I still think it's a live issue before
24 the Commission.

1 My opinion still remains the same: I would
2 not want to see the Commission lose control of this
3 case to DEP, so my opinion still is to err on the
4 side of caution and not deny under the Act because
5 the Applicant filed in the wrong place at the wrong
6 time.

7 That's still my advice. It's ultimately
8 the Commission's decision and only the Commission's
9 decision, but I just don't want to have to argue to
10 DEP a remand back to you only to have DEP deny.

11 MS. DAY: Well, we have case law against
12 us --

13 CO-CHAIR McBRIDE: That's correct.

14 MS. DAY: -- in the opposite.

15 CO-CHAIR McBRIDE: So I have a question.

16 If -- and none of us are lawyers, but is
17 there any -- does anyone ever make a deal with the
18 consultant that says, "Listen" -- this is probably
19 not the case, but I'm going to shoot it out there
20 anyway -- "we think you're premature in your
21 application. We're waiting for DEP to either agree
22 or disagree. Chances are that that's not going to
23 happen in our lifetime, because they are just not
24 going to. Can we" -- well, I think I'm answering my

1 own question. I was going to say, "Would you be
2 willing to say, if DEP did come back and say, 'Yes,
3 you're premature,'" but obviously it would be moot
4 at that point because you would be premature.

5 I was just going to say, could we strike
6 some kind of a deal at some point we've had four
7 meetings, five meetings, whatever, and then, all of
8 a sudden, you know, we get an answer, that you won't
9 be able to hold that against us and say, "Well, why
10 did you talk to us? Why didn't you just deny us?"

11 Do you understand my premise?

12 MR. WITTEN: I do.

13 Let me take a step back.

14 I'm not worried that the Applicant will be
15 able to say --

16 CO-CHAIR McBRIDE: Okay.

17 MR. WITTEN: -- "You played this card too
18 late," because at the last hearing Attorney Gallogly
19 had a chance to respond. It's his opinion that Town
20 Counsel and are reading the the regulation
21 incorrectly. So it's well on the record what the
22 Applicant's position is, and it's well on the record
23 what the Town's position is.

24 So I think my opinion, the Commission could

1 make this a decisional point at any time. At some
2 point, pragmatically, the purpose of the regulation
3 will have been satisfied, because you'll have a full
4 hearing and a full discussion with the public,
5 Mr. Griffin's comments, whoever you wetlands
6 consultant's comments will already be in the record.

7 So I think that's a pragmatic response.
8 From a legal perspective, I think what Bill and I
9 have said we still stand behind, which is the
10 Applicant filed in the wrong place at the wrong
11 time. Pragmatically, I'm not sure it's in the
12 Commission's best interest to play that card.

13 That's all.

14 CO-CHAIR McBRIDE: Okay. So that being
15 said, should we set a site visit up first, our next
16 step? Do you agree with that, Jon?

17 MR. WITTEN: Oh, yeah.

18 CO-CHAIR McBRIDE: Okay. So why don't we
19 all look at our calendars.

20 And just for the audience's sake, everybody
21 in the public is invited to site visits. I will
22 warn you if it's wet -- and it will be -- dress
23 appropriately because Weiss is very, very muddy.

24 So today is April 9th. I'm going to ask

1 that we meet on a weekend, preferably a Saturday or
2 Sunday morning, if that's possible, only because by
3 the time I get back to Stoneham it's six o'clock and
4 I am going to guess this is going to go more than an
5 hour, because it's a big property.

6 So does that -- are you guys okay with the
7 Saturday meeting or Sunday meeting?

8 MR. WITTEN: Ellen. Can I --

9 CO-CHAIR McBRIDE: Yep.

10 MR. WITTEN: The only comment I would make
11 is just because you don't have a wetlands scientist
12 on board yet --

13 CO-CHAIR McBRIDE: Oh, yeah. Right.
14 Right.

15 MR. WITTEN: -- maybe if the Commission and
16 the Applicant can pick a couple of dates just so
17 there is flexibility.

18 CO-CHAIR McBRIDE: That's a good idea.

19 CO-CHAIR PARSONS: Yep. Yep.

20 CO-CHAIR McBRIDE: So I don't have
21 children, so I'm going to defer to the people who
22 have children who have every sporting event known to
23 man on Saturday mornings.

24 CO-CHAIR PARSONS: I guess the two dates

1 that I would recommend -- given that we still need
2 to make a final selection on a scientist -- is
3 either Saturday, the 25th of April; or Saturday,
4 May 2nd. That should suffice. I think we should be
5 able to have a selection and secure that person for
6 one of those dates.

7 The question is, if we've got two dates
8 floating, when do we actually issue the final one?

9 MR. WITTEN: Well, the -- the Commission
10 could set both dates and could inform the public as
11 to which date through --

12 CO-CHAIR McBRIDE: Okay.

13 MR. WITTEN: -- web page, through e-mail.
14 I mean your -- the site visit is not subject to the
15 rigors of the open meeting law as a regular meeting
16 is. You do want to post it. You want the public to
17 be informed.

18 So I think you could pick both dates,
19 Bob --

20 CO-CHAIR PARSONS: Okay.

21 MR. WITTEN: -- and then, as soon as you
22 could, make a decision and then announce that
23 through public channels.

24 CO-CHAIR PARSONS: Okay.

1 CO-CHAIR McBRIDE: Anyone on the Commission
2 have objections to the 25th or the 2nd?

3 MS. DAY: I can't do the 2nd. I'm away.

4 MR. CICATELLI: Madam Chairman, would the
5 18th or the 25th work?

6 CO-CHAIR PARSONS: We have the 25th as an
7 option. I think just because we're not sure of the
8 schedules, we want to give as much time as possible
9 for what the scientist is going be.

10 MR. GALLOGLY: I'm sure the wetlands
11 scientist will accept the job offer and be available
12 a week from Saturday.

13 CO-CHAIR PARSONS: I guess not if they're
14 not in town. I don't know what their schedules are
15 at this point.

16 CO-CHAIR McBRIDE: So --

17 MR. GALLOGLY: If you don't know the
18 schedules, how can you set any date?

19 CO-CHAIR McBRIDE: Say that one more time.

20 CO-CHAIR PARSONS: We're trying to give
21 them enough buffer now so that we can see if they
22 can get in the schedule sooner than later.

23 So I guess next week might be a little bit
24 restrictive for some folks. I think the more time

1 you have to prepare for it or plan it out, it would
2 seem to me your chances will be a little better.

3 Is there any reason why 18th --

4 MR. CICATELLI: We don't want to push it
5 too late if we're going to be continuing I'm
6 assuming to the first week in May. So May 2nd, I
7 feel, is a little close to your meeting date.

8 CO-CHAIR PARSONS: We can definitely push
9 for the 25th. I would prefer the 25th myself,
10 but...

11 AUDIENCE MEMBER: It's dig night now, too,
12 when all the reptiles do their matings. So you
13 might want to wait until the reptiles, the
14 amphibians --

15 CO-CHAIR McBRIDE: We're not going to be
16 doing anything at night. We're going to be doing it
17 during the day.

18 CO-CHAIR PARSONS: I think this is an
19 appropriate time of of year to be doing the site
20 walk. I want to make sure that whoever --

21 CO-CHAIR McBRIDE: So Norman and Rachel,
22 are you both available on April 25th?

23 MS. RENNARD: Yep.

24 CO-CHAIR McBRIDE: And Megan you are, too?

1 MS. DAY: Yep.

2 CO-CHAIR McBRIDE: I am, too.

3 Bob, you are, too?

4 CO-CHAIR PARSONS: Yeah.

5 CO-CHAIR McBRIDE: Megan is is not on 2nd,
6 so maybe we'll be able to work it out with whoever
7 we pick for April 25th.

8 CO-CHAIR PARSONS: We'll shoot for 25th.
9 The sooner, the better. I understand that.

10 CO-CHAIR McBRIDE: But if not, we'll
11 default to the 2nd.

12 MR. MAHONEY: Is there a time that's better
13 than others? I would like to check with Ms. Weiss.
14 I'm sure Saturdays are busy for her.

15 CO-CHAIR McBRIDE: They're very quiet. But
16 no, that's a good point, especially for parking. My
17 guess is we may have to hire a person to direct
18 traffic.

19 Usually we do site visits at 9:00.

20 Does that work?

21 MR. MAHONEY: I can check with her.

22 CO-CHAIR McBRIDE: Okay. If there is a
23 problem, you know, just let Cathy know, and we'll
24 work it out.

1 So is everybody okay with April 25th at
2 9:00 and/or May 2nd at 9:00, and we will hopefully
3 have an answer early next week that we can put on
4 the website and let everybody involved know which
5 date works.

6 Of course we would also have a conversation
7 about who to pick and why one person would be better
8 over the other or if they're of equal talent. I
9 just want to make sure we get someone, as do you,
10 that knows what they're doing.

11 MR. WITTEN: I would offer, Ellen, that
12 because you won't be meeting -- unless you are
13 meeting between now and the 25th.

14 CO-CHAIR McBRIDE: We are not.

15 MR. WITTEN: Then the Commission might want
16 to delegate to either Ellen or Bob the authority to
17 choose the consultant so you don't have to meet
18 again -- I'm assuming the Applicant wouldn't object
19 to that. They're not objecting to either.

20 So my recommendation would be for the
21 Commission to empower -- it doesn't have to be Ellen
22 or Bob, to empower any Commission member --

23 CO-CHAIR McBRIDE: I going to empower
24 Norman and Rachel.

1 MR. WITTEN: -- to make that decision. And
2 the Applicant has agreed and did not object to
3 either consultant.

4 CO-CHAIR McBRIDE: Is everybody okay with
5 that?

6 MS. DAY: I'm sorry to backtrack again, but
7 if we do hear from the DEP between now and then,
8 what are the next steps? Because I feel like we're
9 constantly being pushed forward when we're not ready
10 to move. I mean, that's, obviously, what's
11 happening. We're pushing forward with the site
12 visit when we have this huge issue looming over us.

13 So let's say we do hear from the DEP, we do
14 hear from them. What happens?

15 MR. WITTEN: So DEP -- again, our
16 position -- and I think Town Counsel agrees with
17 me -- our position is DEP, there is only one right
18 answer, which is the application is in the wrong
19 place at the wrong time. So it's really -- with all
20 due respect to DEP, whatever their answer is, it's
21 not going to change my opinion about -- my advice to
22 the Commission.

23 What I don't want to see you do is lose
24 control of this project, because I fear what would

1 happen on an SOC at this early stage. We won't have
2 a site visit. We won't have a consultant on board.
3 We won't have Mr. Griffin's concerns adjudicated by
4 the Applicant. So it will raise to an SOC level --
5 the public be won't be involved. It cuts this whole
6 process out.

7 So I think, regardless of DEP's opinion, my
8 advice is going to stay the same. If DEP comes back
9 and Attorney Saitz says, "You know what? You're
10 absolutely right. We shouldn't have filed." Then
11 the Commission can always make that statement at
12 your continued hearing in May.

13 MS. DAY: Okay.

14 CO-CHAIR McBRIDE: So we're going to check
15 on the dates --

16 Go ahead. Were were you going to say
17 something, Steven?

18 MR. CICALTELLI: No. No.

19 CO-CHAIR McBRIDE: So we're going to check
20 on the dates. Bob and I will talk about who we're
21 going to hire to hopefully come with us on the site
22 visit. I think we're good. And then we'll get in
23 touch with everybody who wants to know about it,
24 once we know.

1 So next steps -- go ahead.

2 MR. CICATELLI: If I might, I would like
3 Jim to maybe address some of the content of the
4 meeting that he had with Bob today and again just
5 show that slide to the Commission.

6 CO-CHAIR McBRIDE: Okay.

7 MR. CICATELLI: If that's possible.

8 CO-CHAIR McBRIDE: Okay.

9 You know what? I think we would like Bob
10 Griffin, who is the town-hired engineer, to give a
11 little bit of an overview.

12 Are you okay with that, Bob?

13 MR. GRIFFIN: Sure.

14 CO-CHAIR McBRIDE: And then Jim can answer
15 Bob's concerns, because I think that's how it went.
16 So it makes sense we work that process.

17 MR. GRIFFIN: I would be happy --

18 CO-CHAIR McBRIDE: I just want to give the
19 folks in the audience an update, just in case you're
20 not following.

21 So the Applicant presented their Notice of
22 Intent. Bob Griffin is the engineer the Town has
23 hired -- and the Conservation Commission has used
24 before -- has reviewed it; he made comments back to

1 the engineer on the Applicant's side, who then made
2 comments back. And then Bob made comments on the
3 comments. So it's a process, it's a back and forth
4 process like anything.

5 And so they had meeting I think actually
6 today to come to some better discussion and
7 agreement.

8 Is that about right?

9 MR. GRIFFIN: No. I think that's well
10 said, Ellen.

11 Just to refresh your our memories, back in
12 February we wrote a letter to the Applicant
13 responding to their initial plans. We laid out some
14 27 comments about -- or questions about the plans
15 that had been provided.

16 We provided a letter just yesterday sort of
17 reviewing their resubmittal, and I would say out of
18 the 27 comments that we had made in February, I
19 think 80 percent of them, roughly, had been fully
20 addressed, and so we've sort of crossed those off
21 the list completely. I think Mr. White did a good
22 job of responding to our comments.

23 The purpose of the meeting today was to
24 sort of understand what we were trying to express in

1 some of our most recent comments, and Mr. White was
2 also, in that meeting, able to give me some
3 information that I didn't necessarily understand, or
4 some additional background that wasn't apparent from
5 my review of the documents.

6 So I think, to summarize, where the major
7 issues are that are left to address is we've asked
8 them to provide some additional characterization of
9 soils and ground water at the site. I believe
10 Mr. White is going to do that. Some questions have
11 been -- are -- still need to be addressed regarding
12 the specific design and layout of the infiltration
13 structures. He'll probably show you where those
14 infiltration structures are today.

15 We raised some questions about the capacity
16 and long-term viability of the existing storm water
17 pump station along Franklin Street that I believe
18 he's going to look further into. There was some
19 comments made regarding restoration of some degraded
20 portions of the buffer zone at the site. He's going
21 to advance, as I understand it, the plans regarding
22 the buffer zone, improvements that are proposed.

23 And lastly we had asked him to better
24 document the flooding issues along Franklin Street.

1 And he did have some information that I think will
2 be able to address that question that we had and is
3 going to work in that particular regard.

4 So I think that sort of summarizes where
5 the major areas of remaining work are, at least from
6 our point of view. And, of course, we're going to
7 put Jim on the spot and ask him to describe the
8 comments and what has gone on to date.

9 MR. WHITE: Thank you.

10 CO-CHAIR McBRIDE: So do you want to stand
11 at the podium or is -- okay. As long as we can hear
12 you, that would be great.

13 MR. WHITE: Thank you.

14 My name is Jim White. I'm with the
15 engineering firm HW Moore.

16 As Mr. Griffin just stated, we spent today
17 and went over the items. Most of the items in
18 Mr. Griffen's original report have been taken care
19 of, either by my previous answers or modifications
20 to the site plans.

21 We will be going out to the site and doing
22 additional ground water monitoring wells and borings
23 at the locations of the infiltration systems, again,
24 to make sure everything will work correctly. We do

1 have three monitoring wells now and we have done a
2 number of test pits. But we will be additional
3 testing --

4 CO-CHAIR McBRIDE: I'm sorry, sir. You
5 have three more what?

6 MR. WHITE: Monitoring wells.

7 CO-CHAIR McBRIDE: Oh.

8 MR. WHITE: That's how we tell where the
9 ground water is.

10 So we'll be installing some more monitoring
11 wells and we'll be doing additional borings at each
12 of the infiltration systems. That's probably the
13 major issue.

14 We'll be going also out and doing an
15 inspection report of the pump station. We gave
16 information at the last go-around on the pump
17 station, and we'll be doing a further report on that
18 and actually say what type of condition of the pump
19 station, how the wiring is and what needs -- if
20 anything needs to be done to upgrade the station,
21 make sure it's working properly for many years to
22 come.

23 One of the issues is -- and it was brought
24 up at the last hearing -- is we have a 25-foot

1 no-disturb area and probably 60, 70 percent of that
2 no-disturb area has been disturbed by past farming
3 on the site. There is also two locations where
4 there is stockpiles of top soils, or stone, or
5 debris that we would like to remove. And we talked
6 about improving the 25-foot no-build area with
7 landscaping or other vegetation to help improve the
8 buffer zone and the wetland area. So we'll be
9 preparing our plan to show that, those improvements.

10 And also we'll be sending Bob some
11 additional information on the flooding on the site.

12 I would also like -- I would also like to
13 present a slide -- we overlaid the site on -- the
14 proposed development as shown here. And the photo
15 was taken in April of 2008, when there was
16 significant flooding occurring within the site.

17 I just want to to show the audience and
18 Commission that when you drive along Franklin Street
19 you look at the site and you see a big pond of
20 water. Well, our development is not going in that
21 pond of water. Our development is a little over 400
22 feet from Franklin Street.

23 CO-CHAIR McBRIDE: I'm sorry. Can I ask
24 you to just speak a little slower. I'm having a

1 hard time. It's the acoustics in here. They're
2 awful.

3 MR. WHITE: I just wanted to show this --
4 I'll start over again -- this slide, to show where
5 the flooding was on the site and where our
6 development is.

7 As you can see, the water ponds near
8 Franklin Street. Our development isn't in where the
9 flooding of the water is. I think most of the
10 Commission members knew this, but I just want to
11 make that clear to the audience that we're not
12 building in the area where it currently ponds. So
13 this is a good representation of where our
14 development is in relationship to the pond and the
15 wetlands area.

16 When we do our storm water calculations,
17 the first step is to determine how much water, storm
18 water, is running off the site through the
19 hundred-year storm events. We provide these
20 calculations according to DEP policy and
21 recommendations.

22 The second step is to determine how much
23 water is running off under proposed conditions and
24 what type of mitigation is required so that there

1 won't be any increase in storm water running off the
2 site.

3 So our mitigation is provided in four
4 underground and one above detention systems and
5 infiltration systems. We've done calculations
6 showing from the 100-year storm event there won't be
7 any increase in storm water runoff from our
8 development area into the wetlands. And I just want
9 to make that clear to everyone that we will not be
10 increasing any flooding in the area.

11 CO-CHAIR McBRIDE: Can I ask you a
12 question?

13 MR. WHITE: Sure.

14 CO-CHAIR McBRIDE: Should I ask it now or
15 wait until you're through?

16 MR. WHITE: Go ahead.

17 CO-CHAIR McBRIDE: So I'm not a scientist,
18 but I'm someone who lives here, and I know there is
19 a flooding issue down on Franklin Street. And I
20 hear every person who is sitting in here who lives
21 on Franklin or in that vicinity is saying, "You're
22 not going to put any more water out there than
23 already exists." Well, what already exists is
24 untenable for any of those folks.

1 So I said this at the last meeting, and I'm
2 going to throw it out there again. I don't know the
3 answer to it; I don't know what the next step would
4 be. But we, as a Town, are never going to have this
5 opportunity again to look at that area to see what
6 is going on, because we do have the purview -- we do
7 have the right to ask you to look at the flooding
8 that occurs off site and how this project might
9 affect that, and so I am -- I don't know the right
10 questions to ask or the right next step, but it
11 seems to me now is the time for us to do that -- and
12 maybe we can talk about it on the site visit, and
13 explain it, and we can ask people who live in that
14 neighborhood to really explain to us, you know,
15 "this is" -- this is, you know, "how much water I
16 get in my my basement."

17 Because I get it, and I hear it, and I
18 understand that any Applicant has to create a
19 project that does not make it worse than it is
20 existing, but existing is bad. And so I want us --
21 if this is going to happen, I want it to be better,
22 and I want everybody in that neighborhood to have no
23 issue whatsoever.

24 And I just don't know -- I don't know what

1 our rights are. I don't know what our next step is,
2 but I believe it will be inappropriate of me and the
3 rest us on this Commission to not address it at
4 least.

5 Anyone?

6 MR. WHITE: Okay. No. Where exactly is
7 the flooding on Franklin Street?

8 CO-CHAIR McBRIDE: What?

9 MR. WHITE: Where is the flooding on
10 Franklin Street?

11 CO-CHAIR McBRIDE: Where is it? It is on
12 Franklin Street. Right where the pump is, right
13 straight across from Brookbridge, the apartment
14 buildings there, those basements all get flooded,
15 the parking lot gets flooded. The house right
16 behind there -- we can walk this the day of the site
17 visit -- the house behind the Brookbridge
18 condominiums --

19 And I actually I'm going to say I'm
20 surprised you don't know this at this point. I
21 would think you would have walked -- maybe you do.

22 AUDIENCE MEMBER: This is enough.

23 CO-CHAIR McBRIDE: No need to outbreak.
24 Okay? Let's be polite.

1 The apartment -- the house that is right
2 behind Brookbridge apartments on Sunset, he actually
3 had to tear his house down because it was sinking
4 and he rebuilt the house closer to the curb. So
5 it's that whole area.

6 MS. DAY: It's also a resource area. Right
7 there is an actual wetland delineated resource area,
8 so we need to make sure that that's not going to be
9 adversely affected. I mean, the pump station is
10 here, and this is a resource area across the street.
11 So we would absolutely need to know for certain that
12 would not be impacted.

13 MR. WHITE: Yeah. The question was does
14 Franklin Street flood, itself flood?

15 MR. CICATELLI: Franklin Street, the street
16 itself.

17 CO-CHAIR McBRIDE: Yes. Yes.

18 I mean, there are times when it's hard to
19 pass because, you know, there is ducks swimming in
20 it, on the street. And I bet you if I ask, a few
21 people will come right to the front and tell us, and
22 show us pictures. So anyway...

23 So I just want to put that out there and
24 say -- ask for advice, I guess from Jon, as to what

1 our next step should be.

2 MR. WITTEN: I would say, Ellen, it's an
3 important question. It was identified as -- long
4 ago as the Board of Selectmen's comments on the
5 project eligibility letter to MassHousing. Your
6 state senator has raised it. Every speaker who has
7 been before the Board of Appeals has raised it. I'm
8 from out of town, and I know it floods on Franklin
9 Street, and I know this entire area is in a
10 watershed of grave concern. So it's remarkable that
11 the Applicant is asking questions whether about
12 whether or not it floods or not.

13 The Commission has the authority under the
14 Wetlands Protection Act, and certainly under its
15 Bylaw -- but the Bylaw has been denied because the
16 Applicant refuses to comply with it.

17 So the Commission has the authority under
18 the Wetlands Protection Act to make sure that down
19 gradient and off site properties are not flooded,
20 that current flooding problems are ameliorated, and
21 the Commission has the jurisdiction under this
22 Notice of Intent to ensure that.

23 So I think it's certainly within the scope
24 of Mr. Griffin's review and recommendations from

1 Mr. Griffin's office to ensure that off property,
2 off locus sites are improved in terms of flooding.
3 And that, of course, that includes the public way of
4 Franklin Street.

5 I think the burden is on the Applicant to
6 satisfy Mr. Griffin and the Commission that off-site
7 properties are no longer flooded; that, in fact, the
8 storm water management plans have been improved, and
9 that 10, 20, 50 years from now there will be no
10 further flooding from this site to off-site
11 properties. That's clearly within the Commission's
12 jurisdiction under the Act.

13 CO-CHAIR McBRIDE: Thank you.

14 MR. GALLOGLY: I agree that the Commission
15 can ask the question, but it's questionable whether
16 under the Wetlands Protection Act the Applicant is
17 required to ameliorate existing flooding problems.
18 We can't make them worse, but we're not required to
19 ameliorate the town's drainage problems that they've
20 ignored for years.

21 MR. WITTEN: Well, I guess the question
22 will be whether the Town has has ignored the
23 drainage problems or the problems are stemming from
24 the site itself. And that's -- that's why we have

1 engineers who will provide commentary.

2 The Commission has jurisdiction, because
3 the NOI has been filed. And it's the Commission
4 that needs to be satisfied that off-site impacts are
5 going to be corrected from -- or by this Applicant
6 because of this or from this project.

7 CO-CHAIR McBRIDE: So what do you recommend
8 as the next step, Jon?

9 MR. WITTEN: I think the Applicant has to
10 provide information. It's got to look at the
11 watershed. And, you know, again we're dealing with
12 professionals who know what we're talking about.
13 It's a watershed issue, not just a site issue. The
14 Applicant needs look at the full watershed and
15 determine where water's coming from, where water's
16 going to currently, and then, with the project as
17 built, and proposed solutions to fix the problem.

18 Those solutions then lead to a subsequent
19 conversation about how best to solve them. In fact,
20 some of the problems might be the Town's own making,
21 but until that data, the watershed analysis is
22 prepared, we're not prepared to say whose fault it
23 is. And, in any event, even if this were the Town's
24 historic fault, the Applicant has an obligation to

1 fix it in a pro rata, fair share basis. And until
2 the Applicant provides the Commission with that
3 information, we're only guessing. We don't know.

4 It's not the burden on the Commission to
5 demonstrate what the impacts are. It's the
6 Applicant's. It's the Applicant's obligation to
7 demonstrate how to fix those impacts.

8 So I would -- I would say to the Commission
9 that unless and until you have that requisite
10 information submitted to Mr. Griffin, and the
11 board -- or the Commission has had a chance to
12 review Mr. Griffin's review of that work, this
13 hearing will remain open because you can't close the
14 hearing and render a decision under the Act until
15 the Applicant has provided what it needs to provide.

16 And let me also say this is not rocket
17 science. The Applicant knew it was entering onto a
18 site that had significant historical flooding
19 issues. So this is not new news. As I said, the
20 Board of Selectmen raised this issue a long time
21 ago, and I think anyone who has lived in Town has
22 known about it for decades.

23 So the Commission is entitled to a robust
24 storm water management report, including an analysis

1 of the full watershed.

2 CO-CHAIR McBRIDE: Can I also ask another
3 question -- and I don't know if this is
4 appropriate -- but I've heard from Bob Griffin and
5 from -- from Corcoran that there is some discussion
6 about the pump station and its viability and its age
7 and corrosion and a few other things.

8 Has there been any discussion in your
9 project about getting rid of the whole idea of the
10 pump station and managing that water in another
11 completely -- I don't know the right answer or even
12 what to suggest, because I'm not a wetlands
13 scientist or an engineer. It just seems that's not
14 working. Whether it runs or not, right now it's not
15 working. And I just wonder, even if it works to get
16 the water off Weiss, it seems to make the water on
17 the other side of the Franklin worse. So I'm
18 just -- I don't know the answer to this, but I'm
19 wondering if you have looked at alternatives that
20 rid the project of the pumping station and provide
21 some other suggestion? Or would you? Or is that
22 even a reasonable question? I don't know.

23 MR. WHITE: Sure. Not getting into the
24 whole history why there is a pump station there, the

1 pump station pumps right now at about 7-, 800
2 gallons per minute --

3 AUDIENCE MEMBER: The pump is off.

4 MR. WHITE: -- when it's working.

5 CO-CHAIR McBRIDE: Marty. Marty. You will
6 have all the time in the world when this is over.
7 I'm going to ask you to please be respectful.

8 AUDIENCE MEMBER: The pump isn't pumping.

9 CO-CHAIR McBRIDE: Marty, I don't want to
10 ask you to leave, so just hold your horses. We'll
11 get to you. I see your hand.

12 Go ahead. Sorry.

13 MR. WHITE: So it's been -- when it's on it
14 pumps at a certain rate. There is a float
15 mechanism that turns the pump on and off. So water
16 gets to a certain elevation, and it pumps out at the
17 certain rate.

18 The whole area, at that rate, is not
19 enough -- doesn't pump fast enough to take the water
20 as it comes in the wash. This wetland, like most of
21 our wetlands, acts as a detention basin. The water
22 comes in and slowly goes out.

23 The Town looked at putting a culvert under
24 the road quite a few years ago.

1 CO-CHAIR McBRIDE: Say that one more time.

2 MR. WITTEN: The Town looked at putting a
3 culvert under the road, Franklin Street, quite a few
4 years ago. At that time they thought it was too
5 expensive and they didn't go through with the
6 project.

7 We cannot --

8 CO-CHAIR McBRIDE: Can I ask you where you
9 got that information?

10 MR. WHITE: A news clipping.

11 CO-CHAIR McBRIDE: Did you confirm it with
12 our Town engineer? I'm just curious --

13 MR. WHITE: Well, I just read it in a news
14 clipping --

15 CO-CHAIR McBRIDE: Okay.

16 MR. WHITE: -- from 1972.

17 CO-CHAIR McBRIDE: Okay.

18 MR. WHITE: So this -- this pump's been
19 pumping since the 1950s at a rate of about 800
20 gallons per minute. We cannot increase that rate
21 because then we're increasing flow downstream. We
22 can't put a pipe in at this time because then we're
23 increasing flow downstream. So at this point, and
24 not to increase and cause issues downstream, the

1 pump is what is the most viable solution there.

2 CO-CHAIR McBRIDE: And when you say
3 "downstream," do you mean literally down Franklin
4 Street to Melrose?

5 MR. WHITE: On the opposite side of
6 Franklin Street. Right now that pump pumps to a
7 culvert under Franklin Street, and discharges on the
8 opposite side of Franklin Street.

9 CO-CHAIR McBRIDE: So you're saying
10 downstream is Sunset Road?

11 MR. WHITE: Yeah.

12 CO-CHAIR PARSONS: So you're meeting --
13 you're meeting pre and post peak rates of runoff;
14 you're maintaining whatever the 800 --

15 MR. WHITE: For my development site, which
16 is separate from the entire property, we're not
17 increasing any flows to the wetland area. As far as
18 the pump goes, we're not -- the pump has been
19 pumping at this rate for 50-some-odd years,
20 60 years. It's going to continue pumping at that
21 rate.

22 CO-CHAIR PARSONS: Who has taken ownership
23 of the pump station at the completion of the
24 project? Is it the property owner? So you're going

1 to maintain it, and it's going to be maintained?

2 MR. CICATELLI: I'm sure that will be an
3 issue that will be discussed at the Board of Appeals
4 level, yes. There will be an O&M required, I'm
5 sure, regarding that.

6 CO-CHAIR PARSONS: I guess I would echo
7 Ellen's concern that if the existing condition is
8 poor, then why would we try to replicate that? I
9 think the question about alternative drainage
10 solutions for this site is a good one.

11 I'm not sure referring to an article from
12 the '70s is an appropriate alternative analysis, but
13 I think something should be looked as an alternative
14 to the drainage problem. I mean, it's there. I
15 would think, from your perspective, you would want a
16 drainage system that functions so that your
17 property, the property doesn't back up as well, or
18 still have issues. That's just my thought.

19 MR. CICATELLI: That's certainly an issue,
20 Mr. Chairman, that, you know, the two engineers can
21 discuss --

22 CO-CHAIR PARSONS: Yes.

23 MR. CICATELLI: -- as we go forward. But,
24 again, the concern that Jim just mentioned is I

1 think a valid one. If we increase the flow, if the
2 pump station works more effectively, that water goes
3 behind and it affects everything to the southwest,
4 and that's the concern.

5 CO-CHAIR PARSONS: Yeah.

6 MR. CICATELLI: Because now we're
7 increasing the flow off the site.

8 CO-CHAIR McBRIDE: Because now you're what?

9 MR. CICATELLI: Increasing the flow of
10 water off the site.

11 MS. DAY: I'm just curious. What was the
12 article about, the 1972 article? I'm assuming it
13 was about flooding, correct?

14 MR. WHITE: I have a copy.

15 MS. DAY: If they're talking about -- is it
16 about the flooding?

17 MR. CICATELLI: We have a copy we can
18 submit to you if you like.

19 MS. DAY: Okay.

20 Thank you.

21 CO-CHAIR PARSONS: I guess for now, I would
22 say it would be good that the engineers kind of work
23 through this issue. And it will be interesting -- I
24 think Jon made a good point -- that the issue may

1 not be necessarily something about the site, but it
2 may be a downstream condition is preventing the site
3 from draining, I guess. So, I mean, knowing that
4 would be helpful for us as well.

5 So I think that type of review, if you do
6 recognize a downstream condition that is preventing
7 either A, water from flowing off the site -- whether
8 it's sediment buildup in a brook or whatever it is.
9 That would be good to know as well.

10 CO-CHAIR McBRIDE: I'm going to guess that
11 what Megan's trying to make a point about is that
12 you prior didn't know that Franklin Street flooded
13 but that article pretty much says it flooded, and
14 that that's an article from 1972.

15 So is that where you were going?

16 MS. DAY: Yeah.

17 CO-CHAIR McBRIDE: Okay. So --

18 MR. MAHONEY: Can I just clarify.

19 We're aware that there's flooding. We're
20 asking specifically to what you guys were referring?
21 Because people say, in general, Franklin Street
22 floods. We were asking specifically which area you
23 guys were referencing.

24 CO-CHAIR McBRIDE: I guess, because this is

1 a Weiss Farms Apartments, LLC, conversation we were
2 talking about Franklin Street in front of Weiss.

3 MR. CICATELLI: Madam Chairman, we're
4 talking about the street, versus the property,
5 versus beyond the property.

6 CO-CHAIR McBRIDE: We were talking about
7 the whole area, Steven, and that's what we're...

8 So all right. So I just want to go to what
9 our next steps should be so we can open this up
10 to --

11 CO-CHAIR PARSONS: Just one quick thing. I
12 know DEP has submitted comments on the website.

13 Have you guys had a chance to look at those
14 comments and do you have responses or you're in the
15 process of responding?

16 MR. WHITE: Yes, we have responded to those
17 comments, and we have sent the Commission a copy of
18 the letter we've sent to the DEP.

19 CO-CHAIR PARSONS: Okay. Thank you.

20 CO-CHAIR McBRIDE: So if we -- I'm not
21 quite sure where we should go -- I'm sorry -- where
22 we should go next if -- I mean, a site visit is
23 obviously prudent, maybe a walk around the whole
24 property, not just the wetlands but to look at

1 drainage everywhere on the property and to see where
2 it goes now, to see where it should go, to see where
3 the problems are. I think if we can ask -- well,
4 I'm not quite sure what I'm trying to say. But we
5 should -- we should talk about the whole project
6 versus just the wetlands part of it. And, I mean,
7 Conservation has jurisdiction over flooding,
8 flooding up in the back, flooding on all ends of it,
9 and it's not just Franklin Street. It's not
10 just Sunset. The whole area floods. Everybody
11 knows it.

12 And I guess I'm just stuck on that. I
13 don't understand -- I guess I would think that you,
14 in order to have this project approved, would want
15 to do pretty much anything you could to make the
16 problem go away, and I don't feel like that's where
17 you're coming from, and maybe I'm misreading that.

18 MR. MAHONEY: We've studied the area, you
19 know, and submitted a fair amount of information. I
20 don't want to come across as if we're not aware that
21 there is those issues.

22 What we're trying to show and we're trying
23 to do here is show the impacts that the project that
24 we're proposing is going to have, and explain to you

1 how the site works in relation to the existing
2 wetlands.

3 So I don't know -- I don't want it to come
4 across as if we're not hearing these issues. We
5 are. You know, maybe during the site walk it could
6 be discussed further.

7 CO-CHAIR McBRIDE: Maybe.

8 Maybe I can ask a real direct question:

9 Do you feel it's your responsibility to
10 look at flooding outside the parameters of the
11 project? Do you feel responsible for the people
12 whose basements have six inches of water in them on
13 Sunset Road, or on Gerald Road, or parking lots for
14 the day care center that can't park cars or kids
15 can't play in. It's off site; it's not part of the
16 project, but do you feel a responsibility to fix
17 that?

18 MR. MAHONEY: I think we need to --

19 CO-CHAIR McBRIDE: That's yes or no.

20 MR. MAHONEY: Well, I think where there is
21 issues that we are able to fix, we would like to try
22 to do that. If there was a parking lot that was
23 built in the wetlands 50 years ago, I'm not sure
24 what we can do.

1 MR. CICATELLI: Madam Chairman, the parking
2 you're referring to was built pre-Hatch Act

3 CO-CHAIR McBRIDE: So was Weiss Farm.

4 MR. CICATELLI: So was the high school.

5 CO-CHAIR McBRIDE: That doesn't mean we
6 have to say, "Oh, too bad. We just have to deal
7 with it."

8 That's what I'm asking is some sort of
9 support or some kind of evidence that you want to
10 help make it better in the neighborhood rather than
11 just sort of say, "Here are the borders, and that's
12 all we worry about."

13 MR. GALLOGLY: If we went away --

14 CO-CHAIR McBRIDE: Marty, I will get to
15 you. Please put your hand --

16 AUDIENCE MEMBER: There is an easy solution
17 to limit this conversation.

18 CO-CHAIR McBRIDE: Please.

19 MR. GALLOGLY: There will still be flooding
20 problems if we went away.

21 CO-CHAIR McBRIDE: Okay.

22 MR. GALLOGLY: If we went away and stopped
23 this project, didn't go forward, you would still
24 have flooding problems. So we can look at the

1 flooding problems, but we don't see that it's our
2 obligation to fix the Town's flooding problems
3 that's not caused by us. We're not changing
4 anything. We're not increasing the flows.

5 MR. WITTEN: So, Madam Chairman --

6 CO-CHAIR McBRIDE: Yep.

7 MR. WITTEN: -- the issue is whether the
8 conservation Commission has the jurisdiction to
9 require the improvements to off-site flooding, and
10 the answer is yes. If the Applicant wants to
11 characterize it as -- the Applicant can characterize
12 it as they see fit. You have the jurisdiction to
13 ensure that down gradient flooding will not occur,
14 period. So it's now up to the Commission to get
15 sufficient information from the Applicant.

16 If I could, I would like to ask one
17 question, if I could, and then make one additional
18 suggestion to the Commission:

19 And that is, in the Notice of Intent the
20 Applicant has stated -- no reason to doubt it's not
21 correct -- but stated that the site is not on the
22 2008 endangered species map, the estimated habitat
23 map. So the Commission may want to consider
24 whether -- when you have your wetlands person on

1 board, whether he or she can also do an analysis of
2 potential endangered species habitat on the locus.

3 CO-CHAIR McBRIDE: I think you guys agreed
4 to -- it was in this room. It wasn't ConCom; so it
5 must have been Zoning Board of Appeals, because I
6 asked that question. Because any kind of natural
7 heritage investigation had been done so many years
8 ago, we asked if it was appropriate or if it was
9 within jurisdiction of the Town to ask for that, and
10 the answer was yes. And I think you guys said that
11 would be fine. And if not, I'm asking it now, and
12 hope that you would agree to that and we can ask
13 someone from natural heritage to come out and check
14 the area. It's been pretty much dormant for a long
15 time, so -- parts of it anyway.

16 MR. WITTEN: Yeah. I mean, again I think
17 the Commission is being very courteous to the
18 Applicant. The Commission doesn't need the
19 Applicant's permission to do that.

20 MR. MAHONEY: We're not objecting.

21 MR. CICALLELLI: We're not objecting, Jon,
22 so don't characterize it as an objection.

23 MR. WITTEN: That's good.

24 Then I guess the question, Madam

1 Chairperson, to I think Mr. Lowry would be if he
2 could describe what appears to be the channel or the
3 earthwork that goes from the northern portion of the
4 site -- and northern, in this case, going up --
5 excuse me, the eastern portion of the site that runs
6 northerly and then westerly and then meanders
7 around. Could I ask, Steven, if Mr. Lowry could
8 respond to that question.

9 MR. CICATELLI: Is it your question or the
10 Commission's question?

11 MR. WITTEN: Well, it's my question.

12 CO-CHAIR McBRIDE: But I ask it.

13 MR. LOWRY: I'm sorry. Did you simply ask
14 if I could describe the limits of the channel that's
15 there?

16 MR. WITTEN: If you could describe the
17 nature of the channel. Or is it standing water? Is
18 it -- just describe it in your own words.

19 MR. LOWRY: Yeah. I mean, it obviously
20 carries water, conveys water from the western
21 portion of the site up around the northern portion
22 of the upland area.

23 CO-CHAIR McBRIDE: Can I ask you to put
24 that red laser on it so that we could follow along?

1 But I don't know about you guys, but north, east
2 gets confusing when the map is...

3 MR. LOWRY: So the channel that is being
4 referenced begins and follows the course of the red
5 dot there now along the northern edge of the knoll,
6 back down to the south, and continues down to the
7 southeast portion of the site down near where the
8 aforementioned pump station is. And it conveys
9 flow, certainly during, you know, springtime and
10 into the summer. I believe it's been characterized
11 as intermittent during the original review that was
12 subject to the ANRAD. There is a small weir within
13 the channel, kind of halfway down, a little more
14 than halfway down the eastern side of it.

15 CO-CHAIR McBRIDE: Can you point to that,
16 please.

17 MR. LOWRY: Yeah. Right around there.
18 There is a small weir in it that controls the stage
19 and the discharge through the channel that -- you
20 know, somewhat of a dilapidated weir, and that's
21 kind of a characterization of the channel.

22 It's clearly a man-made channel. It's
23 straight. It's fairly steeply incised in terms of,
24 you know, it's obviously been cut rather than

1 natural geomorphic process of forming a stream.
2 And, you know, that would be -- if that satisfies
3 your request.

4 MR. WITTEN: It does. Thank you.

5 If the weir is removed, would there be
6 constant flow in the channel?

7 MR. LOWRY: No. In fact I think that could
8 probably limit the stage and the duration of the
9 stream. I think it functions as a weir and controls
10 flow to the up-gradient portion of it. And although
11 when I've looked at it, in the fall, I believe, the
12 water -- the water in the ditch was dropped down
13 below the stage of the weir, so it clearly doesn't
14 control it, you know, at all times. It probably
15 does this time of year, but it wouldn't as the water
16 table drops.

17 MR. WITTEN: And how many times did you
18 observe the channel?

19 MR. LOWRY: I've only been out there one
20 time.

21 MR. WITTEN: So have you ever seen it dry?

22 MR. LOWRY: Well, yes. At that time when I
23 was out there it was dry in that portion of the
24 ditch.

1 MR. WITTEN: Do you remember that date?

2 MR. LOWRY: I would have to look at my
3 field notes. I could do that right now if you'd
4 like.

5 MR. WITTEN: Are you aware of whether it's
6 been dry at any other times of the year?

7 MR. LOWRY: Based upon the historical
8 evidence that I reviewed that goes back to the
9 original ANRAD, there was was reference to it being
10 intermittent during those proceedings. But I
11 couldn't tell you the precise information on it.

12 MR. WITTEN: Thank you.

13 CO-CHAIR McBRIDE: Can I ask a question
14 about -- so where the weir is --

15 MR. LOWRY: Yep.

16 CO-CHAIR McBRIDE: -- I don't know, towards
17 the back of the property.

18 MR. LOWRY: Towards the north, yep.

19 CO-CHAIR McBRIDE: And where the little
20 bridge is?

21 MR. LOWRY: Yep, right up there. Yep.

22 CO-CHAIR McBRIDE: Somewhere in there there
23 is a running stream, or brook, of water.

24 MR. LOWRY: Yes. There is some more water

1 that comes in at that location kind of from the
2 north-northeast.

3 CO-CHAIR McBRIDE: What is that water?

4 MR. LOWRY: In terms of its source?

5 CO-CHAIR McBRIDE: Yeah.

6 MR. LOWRY: I couldn't tell you. I would
7 suggest that it's probably mostly storm water runoff
8 that's coming down a little bit more of a gradient,
9 but I haven't traced it to the north-northeast to
10 give you any more information than that.

11 CO-CHAIR McBRIDE: Is that something we can
12 ask you guys to do?

13 MR. LOWRY: Sure.

14 CO-CHAIR McBRIDE: You'll agree you'll
15 trace to the source of the water?

16 I just want to know if that's what happened
17 to Meeting House Brook? It used to exist, and I
18 don't know where it is. And I've done Stream Stats,
19 and I clearly don't know how to use it, but...

20 MR. LOWRY: All I can tell you is looking
21 at USGS, you know, topographic map information I've
22 never seen any reference to a Meeting House Brook up
23 in that area, but I can't say it's been definitive.

24 CO-CHAIR McBRIDE: You knew Dan Towse, I

1 would think, and you knew Bob Conway, and they
2 talked about it all the time, and I'm sure there are
3 people in this Town who talked about it. I would
4 just like to know, you know, what that body of water
5 is, what that running water is.

6 Because when we walked it, the water was
7 running, running. So I would just like to know what
8 the source of it is. If it's storm water, it's
9 storm water, but if you're willing to do that, that
10 would be great.

11 So I want to try to recap before we open
12 this up to the public for questions. We're going
13 to -- are you okay with that?

14 CO-CHAIR PARSONS: Yeah.

15 MR. WITTEN: Okay.

16 CO-CHAIR McBRIDE: We're going to set a
17 site visit hopefully for May 25th -- I'm sorry,
18 April 25th; if not, May 2nd. We'll do our -- first
19 we're going to decide who to pick as a wetlands
20 person. Then we're going to set the date.
21 Hopefully that person will be available. If they're
22 not, we'll reconnoiter, but we will make it public
23 as fast as possible. That is public. Anyone can
24 come to that.

1 Gosh. There is so many little things.

2 You've agreed that you will look into the
3 source of that water. I'm not probably doing this
4 in the right order. I don't know if you've agreed
5 that you would look off site for the flooding or
6 not.

7 CO-CHAIR PARSONS: Yeah. I think it's part
8 of the analysis. Yeah. I thought that was part of
9 the analysis, there was going to be some level of
10 analysis as to what the conditions, flooding
11 conditions are outside of the site itself, or at
12 least get some idea as to what's happening.

13 I mean, correct me if I'm wrong, but I
14 think that's what I had heard.

15 MR. MAHONEY: I think maybe -- yes, we'll
16 look into it. It's best if maybe the engineers kind
17 of work out the parameters of that.

18 CO-CHAIR PARSONS: Uh-huh.

19 MR. MAHONEY: Is that okay?

20 CO-CHAIR PARSONS: Agreed.

21 CO-CHAIR McBRIDE: We also wanted to look
22 at the watershed, the whole area as a watershed, and
23 what that all means to the rest of the area.

24 And help me out if I'm forgetting things,

1 guys. We've got a bunch of things.

2 Along with hiring a wetlands scientist, we
3 can also either ask that person to do a wetlands
4 species -- or endangered species check, maybe get
5 natural heritage out to do that.

6 CO-CHAIR PARSONS: Yeah. The wetlands
7 scientist should be able to do that, yeah.

8 CO-CHAIR McBRIDE: I feel like I'm
9 forgetting something.

10 MR. WITTEN: No. That's it.

11 Just in terms of the 53G payments, I spoke
12 with Cathy earlier. It sounds as if there is
13 sufficient funds in there, but Attorney Cicatelli,
14 if Ms. Rooney determines that additional money is
15 needed, she'll contact your office for payment.

16 Yes?

17 MR. MAHONEY: Yes.

18 MR. WITTEN: Thank you.

19 CO-CHAIR McBRIDE: Does anybody else --

20 MR. MAHONEY: Before you open up to the
21 public, I -- we haven't talked about this. We're
22 proposing -- I know there has been some back and
23 forth about improvements to remove some of the
24 stockpiles and do some planting in the buffer zone.

1 We're also proposing to improve that pedestrian, or
2 the existing bridge here with -- you know, improve
3 the bridge just for access here. It's kind of a
4 natural walking area.

5 And I wanted to get the Commission's
6 thoughts on that, because that's an additional --
7 that's the only entrance we had proposed to the
8 25-foot buffer zone. We're not talking about
9 improving other areas --

10 CO-CHAIR McBRIDE: We denied you on --

11 MR. MAHONEY: So would you guys -- would
12 the Commission like us to eliminate that part of the
13 plan?

14 CO-CHAIR McBRIDE: I don't know that --

15 MS. DAY: Don't we normally do the site
16 walk before we're able to discuss it?

17 MR. WITTEN: Yeah. I think it's a fair
18 question from the Applicant, but on some levels it's
19 an unfair question, because that question should
20 have been asked before we made a decision as to
21 whether or not there was a filing under the Bylaw.
22 So I would advise the Commission not to --
23 respectfully not to respond to that question.

24 CO-CHAIR McBRIDE: We can certainly --

1 MR. WITTEN: It is what it is.

2 CO-CHAIR McBRIDE: -- look at it when we
3 get to the site visit. I mean, I'm going assume
4 when we do the site visit the 25-foot no-disturb
5 zones will all be flagged, the hundred-foot will be
6 flagged. And can you also put in some sort of
7 boundaries? I mean, we've never done a project this
8 big but usually, if we have houses on a project, we
9 have boundaries that say this is where one building
10 will be; this is where another building will be.

11 MR. MAHONEY: We will flag the 25, 100, and
12 we can flag building corners.

13 Does that work?

14 CO-CHAIR McBRIDE: Yeah. That's good.

15 MR. MAHONEY: Yeah.

16 CO-CHAIR McBRIDE: And then parking pads
17 and all this stuff. So it will be easy to walk it
18 and people will get a feel for it when they're
19 walking it. Thanks.

20 Anybody else on the Commission have
21 questions before we open it up to the public?

22 MR. MAHONEY: Could we just clarify the
23 25-foot? Because you have asked us -- or
24 Mr. Griffin has asked about improvements in terms of

1 plantings and removing some of the stockpiles within
2 the 25-foot. Is that -- is that what the Commission
3 is asking us to propose something there?

4 CO-CHAIR McBRIDE: No. I'm asking you just
5 to flag them, just to mark them so --

6 MR. MAHONEY: No. No. No. I understand
7 that. Separate from -- back to the bridge, my
8 bridge comment.

9 CO-CHAIR McBRIDE: I don't think we're
10 going to answer that one until we do the site visit.

11 MR. MAHONEY: I understand that as well.

12 The question Mr. Griffin had raised, there
13 is existing stockpiles within the buffer zone which
14 we had meant to leave there. We had also not
15 proposed any landscaping improvements within the
16 buffer zone.

17 The comment that was in Mr. Griffin's
18 report, I think, was to remove the stockpiles and
19 improve some of those areas with some natural
20 landscaping, which we were happy to do, and proposed
21 to you guys. We just to clarify that that's -- you
22 would like us to propose something like that?

23 MR. WITTEN: I think maybe after the site
24 visit we'll have a better feel for that, because --

1 MR. MAHONEY: Okay.

2 CO-CHAIR McBRIDE: -- frankly, normally we
3 don't have any encroachment into the 25-foot
4 no-disturb zone. If the current no-disturb zone is
5 so badly deteriorated, we would maybe entertain, you
6 know, low bush blueberry or something would help
7 bring it back.

8 I would imagine is that what you were
9 aiming for, Bob?

10 MR. GRIFFIN: There are some portions of
11 the site that right now the stockpile materials go
12 into the 25-foot no-disturb zone, or the 25-foot
13 buffer zone. There is also a small area where the
14 stockpile material appears to go over the wetlands
15 boundary. And I think it would be impossible for
16 these guys to build the plan that they have shown
17 without removing the stockpiles completely, or at
18 least, you know, 99 percent of those stockpiles.

19 So that's going to require that they do
20 some disturbance in the 25-foot buffer zone, and I
21 think a small disturbance in the wetlands itself.
22 So in our comments we had suggested that they
23 provide a landscaping plan that incorporated
24 enhancement of this buffer zone.

1 This issue, I think, was also reflected in
2 one of DEP's comments, and so that was the reason we
3 put that forward.

4 I think it would be an enhancement to the
5 project to include some buffer zone enhancement.
6 But, you know, at the end of the day, it's -- you're
7 the Commission; it's up to you guys to decide what
8 you want.

9 CO-CHAIR McBRIDE: So what you are saying
10 and what you're agreeing to is that right now
11 Donna Wiess is violating the Wetlands Protection Act
12 because she has stockpiles within the 25-foot
13 no-disturb zone. That's the first thing I taught of
14 when you said it.

15 MR. CICATELLI: We're not saying that.
16 We're just -- we're just trying to see if we can,
17 perhaps, follow some of Bob's recommendations, DEP's
18 recommendations and make the certain situation that
19 is not appropriate better. We wanted to get your
20 input on that in terms of working in the no-build.
21 It would be an improvement, much like removing
22 debris, from the no-build. That is an improvement.
23 But maybe as you mentioned, Madam Chairman, in the
24 site visit we can look at this.

1 CO-CHAIR McBRIDE: Yeah. But, I mean, you
2 are saying right now there is stockpiles in the
3 25-foot no disturb zone.

4 Or Bob are you? I don't want to put you on
5 the spot.

6 MR. GRIFFIN: Well, I think that's what
7 their plan shows, yes.

8 CO-CHAIR McBRIDE: Okay.

9 MR. WITTEN: I think the Commission needs
10 to decide how -- at this meeting or in a subsequent
11 meeting -- how it wants to respond to that. If, in
12 fact, there is a violation under the Act and the
13 Bylaw then the Commission needs to --

14 CO-CHAIR McBRIDE: File an enforcement
15 order.

16 MR. WITTEN: -- have some discussion about
17 how to proceed.

18 CO-CHAIR McBRIDE: They're not here. They
19 should be here.

20 MR. WITTEN: It's -- you know, you have
21 testimony from your engineer as to -- and the plans
22 show what they show as to the status under the Act
23 and the Bylaw.

24 CO-CHAIR McBRIDE: Current status.

1 MR. WITTEN: Current status.

2 CO-CHAIR McBRIDE: Well, I mean, if there
3 is -- I don't -- normally we hear about this sort of
4 thing from a neighbor who calls and says, you know,
5 so and so is doing something they shouldn't be
6 doing. Now we're actually hearing it from the
7 potential buyers of the property that there is a
8 problem.

9 And yeah. I mean, I think we want to
10 confirm it and if, in fact, it's the case, file an
11 enforcement order and say, "You need to remove it,
12 and pronto." And that means operation cease until
13 that gets removed.

14 MR. MAHONEY: I would just like -- this is
15 something that was shown on the plan. We don't know
16 how long it's been there, so...

17 CO-CHAIR McBRIDE: I can tell you it wasn't
18 there when we did the site walk with you not three
19 years ago, because those piles weren't there then.

20 MR. MAHONEY: I'm not sure. I think it
21 probably was. Our survey was done around that time.

22 CO-CHAIR McBRIDE: We're talking about the
23 same piles.

24 MR. MAHONEY: I think maybe we should

1 review it at the site walk.

2 CO-CHAIR McBRIDE: Or before.

3 CO-CHAIR PARSONS: Yeah.

4 CO-CHAIR McBRIDE: We don't have to decide
5 on the enforcement order?

6 MR. WITTEN: You do not. I mean, that's
7 the benefit of having what occurred and
8 Mr. Griffin's testimony, so...

9 CO-CHAIR McBRIDE: Okay. So have I kind of
10 recapped it as best everybody remembers? Is
11 there -- okay.

12 So now we'll open up to the public, if you
13 have questions. And I will ask people to come to
14 the mic. Please recognize we have a stenographer
15 here, so try to do your best to speak into the mic
16 and slowly.

17 And I'll just remind people that our
18 jurisdiction is wetlands, flooding. It's not
19 traffic. It's not height of building. You know, I
20 think everybody knows the story now.

21 So anybody?

22 Come on up. Name and address for the
23 record, please.

24 MS. PECORARO: My name is Mary Pecoraro, 5

1 Walsh Avenue here in Stoneham. I've lived in town
2 for 38 years.

3 CO-CHAIR McBRIDE: Could you say your last
4 name again, please.

5 MS. PECORARO: Pecoraro, P-e-c-o-r-a-r-o.
6 Used to be on the Board of Selectmen.

7 That map up there, the aerial photo, when
8 was that picture taken, the aerial photo?

9 MR. WHITE: 2008.

10 MS. PECORARO: Excuse me?

11 MR. WHITE: 2008.

12 MS. PECORARO: 2008.

13 MR. WHITE: April 2008.

14 MS. PECORARO: 2008. Okay.

15 Because looking at that -- and I see then
16 that's the overlay of the proposed project?

17 MR. WHITE: Yes.

18 MS. PECORARO: Yeah. Okay.

19 So when I look at it -- if I could go over
20 and point.

21 Is that the existing farmhouse, Mr. Weiss'
22 house?

23 MR. WHITE: Yes.

24 MS. PECORARO: Yeah. Okay.

1 My daughter was born in 1980, and I walked
2 along here, and so this farm house -- and I guess
3 the barn is there, and you'll take the barn down?

4 MR. WHITE: The barn is there.

5 MS. PECORARO: The barn is there.

6 But this whole area now, I believe, is --
7 where -- there is pine trees in this area, somewhere
8 in here? Because that area used to flood, and they
9 would have horses in there and the horses' feet
10 would get wet. So that's -- that's something that
11 I've known since at least 1980. That is when my
12 girls were born, in September of 1980. My son was
13 born in 1984. So I spent a number of years walking
14 back and forth on Franklin Street with a stroller
15 and looking at the horses and being aware of the
16 water.

17 So -- and then we've heard tonight that the
18 land, it has historic flooding. So that issue is
19 not going to go away. That's mother nature. It's
20 sort of like buying something as is, I'm going to
21 guess, because the water is still going to be there.
22 But I'm thinking that a project with heavy buildings
23 and large areas that are going to be covered, that
24 these areas are now able to somewhat absorb the

1 water, but clearly doesn't because we get flooding.
2 But when we add impervious surfaces like sidewalks
3 and parking lots and huge buildings that will be
4 pressing down on the soil, it reminds me when you
5 take a cup of water and you put rocks in it, and
6 then you add more rocks, and you keep adding more
7 rocks, eventually it's going to overflow.

8 So I have sort of two questions: Wondering
9 how this whole thing could be expected not to be
10 worse, in which case I would think it would be the
11 responsibility of the developer, if this historic
12 flooding gets worse, and wondering if perhaps you
13 need a smaller design.

14 MR. WHITE: With regards to the storm water
15 runoff, as I previously mentioned, we have performed
16 calculations and we are proposing to install four
17 large underground storm water infiltration systems
18 along with one surface detention system. The
19 surface detention and infiltration systems have been
20 designed in accordance to DEP storm water management
21 requirements. The storm water calculations indicate
22 that there will not be any increase in storm water
23 runoff from the project site.

24 The calculations also indicate that they

1 would be recharging the groundwater similar to
2 what's being recharged today.

3 MS. PECORARO: Thank you.

4 CO-CHAIR McBRIDE: Questions?

5 MR. WANTMAN: Martin Wantman, 20 Gerald
6 Road.

7 I'm curious if the Applicant is aware that
8 there is an order from the Department of
9 Environmental Protection forbidding the flooding
10 that currently exists? That would be my first
11 question.

12 And then I would suggest that the easiest
13 solution to eliminating a good portion of the
14 flooding would be to reopen the northwest drainage
15 channels, which would include the North Meeting
16 House Brook drainage easement which is basically
17 blocked.

18 And then I would ask that the Commission
19 allow the public and they and the Applicant walk the
20 North Meeting House drainage easement area, as it is
21 allowed -- and the Board of Selectmen have the
22 ability to go onto the land and -- to clean out the
23 ditches. So my guess is that it's going to require
24 some kind of cooperation between the Applicant and

1 the Town of Stoneham to eliminate the flooding
2 condition.

3 I will also let the audience and the
4 Applicant know that there is an easement on the
5 southeastern side.

6 CO-CHAIR McBRIDE: Marty, could I ask you a
7 question?

8 Can you lend Marty your red dot thing that
9 you can point to it.

10 Are you okay with that, Marty?

11 MR. WANTMAN: Or I could walk up.

12 CO-CHAIR McBRIDE: I think it's easier for
13 you to be at the mic when you do it.

14 MR. WANTMAN: I'm hearing...

15 MS. DAY: Could we answer -- could we
16 just -- well, we're paused -- are you aware of a DEP
17 order forbidding the flooding that currently exists.

18 Sorry.

19 MR. MAHONEY: We're aware there is an
20 order, yes.

21 MR. WANTMAN: They are aware?

22 CO-CHAIR McBRIDE: That's what he said.

23 MS. DAY: Yeah.

24 MR. WANTMAN: Then why would they think

1 they're going to be able to build without abiding by
2 that order?

3 MR. MAHONEY: We believe the design will
4 allow us to do that.

5 MR. WANTMAN: What was the response?

6 CO-CHAIR McBRIDE: They believe the design
7 will alleviate the flooding.

8 MR. WANTMAN: I see. Okay.

9 CO-CHAIR McBRIDE: So could you please get
10 the red dot thing, please. And I'm interested in
11 what -- you just talked about the northwest corner
12 with the Meeting House Brook easement.

13 MR. WANTMAN: I need my glasses. One
14 moment.

15 MS. DAY: Can I ask one more question?

16 Earlier you mentioned that you thought the
17 flooding, that you didn't have to make it better,
18 you just couldn't make it worse.

19 Does this order change that?

20 You said earlier that you felt that you
21 couldn't -- you shouldn't make it worse, but it
22 wasn't your job to make it better.

23 MR. GALLOGLY: Yes. That's what I said.

24 I can't speak to the DEP enforcement order.

1 I haven't seen it.

2 CO-CHAIR McBRIDE: EPA.

3 MR. GALLOGLY: EPA.

4 CO-CHAIR McBRIDE: Which one?

5 MR. WANTMAN: It is DEP.

6 CO-CHAIR McBRIDE: I thought you said EPA.

7 MS. DAY: DEP.

8 MR. WANTMAN: So what did you want me to
9 point to?

10 This map is oriented -- it's not oriented
11 north to south. And, of course, it was just changed
12 to further confuse me. I believe that's north.

13 CO-CHAIR McBRIDE: Could we put the other
14 one back on?

15 MR. WANTMAN: North is in this direction;
16 south is in that direction?

17 MR. MAHONEY: Sir?

18 CO-CHAIR McBRIDE: Where did the other map
19 go?

20 MR. MAHONEY: The aerial view, if you press
21 the left button.

22 CO-CHAIR McBRIDE: There you go.

23 You are powerful.

24 MR. WANTMAN: This is north. This is west.

1 This is east, and this is south.

2 This area right here, which is now the
3 flooded area that you call a pond, in 2005 Wiess
4 called that their southern meadow, and they used to
5 plant -- they wrote to the Conservation Commission
6 that they planted winter wheat in there.

7 This area in here was installed in
8 approximately 2006 in an effort to eliminate the
9 flooding that was already existing under an
10 Administrative Consent Order with the DEP.
11 Unfortunately, the flooding has worsened.

12 Historically, in this area here, where you
13 see -- or you don't see, because it's obliterated --
14 are historical ditches that used to drain Wiess in a
15 straight line essentially west and then, in this
16 area here, and drain behind the high school's
17 football stadium and stay in Stoneham.

18 Now, since the '50s -- there was no
19 drainage ditch right here. This drainage ditch here
20 was not there in the 1950s. In 1985 the Ellen Road
21 and Tamarock Terrace was installed. And you will
22 not see it on this map, unless it's rains, but there
23 is waterfall that's created from the overflow from
24 the 24 or 25 houses that were cut out of Weiss Farm

1 that traverses down here to this spot, and then some
2 of the water goes south and some goes west. But
3 since it can't escape to the south, it all
4 accumulates here, goes to the west, and then comes
5 back to the south, floods the people on Sunset and
6 floods the people on Gerald Road.

7 Were these ditches to be opened -- and I
8 believe that the cost is approximately \$25,000 --
9 which would -- which is a lot less than the
10 engineers and the lawyers are going to make, then
11 there would be virtually no water down here.

12 The weir that these people are talking
13 about could also be called a storm -- a flood
14 control dam. It used to be an earthen dam, which
15 means that there was earth at the bottom and no
16 water could leak and come forward. So it was
17 absolute. Back before 2000, the dam would be
18 employed in an earthen fashion, the pump would be
19 on, and the dam would be opened to allow the water
20 to flow from this whole area to the pump in a
21 fashion that the pump could handle and no one was
22 flooding. There was virtually no complaints about
23 flooding prior to the year 2000, when Saul Weiss was
24 alive. And during that time period, I was

1 friendlier with the farm, and I managed the pump
2 house for a full 17 years, which means that I've
3 been on that property thousands of times. Not one
4 time. Thousands. I was on Wiess' property on a
5 daily basis from 1984 till approximately 2001.

6 There is an easy solution. It's not
7 expensive. I hate to acknowledge it, but at one
8 time I offered to pay the cleaning the ditches out,
9 so I'm sure the Applicant, who is going putting in
10 264 units, can pay to clean the ditches out.

11 That's it.

12 CO-CHAIR McBRIDE: Marty, can you point to
13 where the ditches are that need to be cleaned out,
14 please.

15 MR. WANTMAN: Where the ditches are?

16 CO-CHAIR McBRIDE: What needs to be cleaned
17 out.

18 MR. WANTMAN: I sent Cathy -- did you get
19 that picture? Did you distribute it?

20 MS. ROONEY: I didn't.

21 MR. WANTMAN: Just a moment.

22 I recently -- I have one in the car, and I
23 can bring it in. I didn't want to come in here with
24 satchel full of paperwork. But I submitted to Cathy

1 Rooney a couple of days ago a picture of the farm in
2 1968 which shows the historical ditches.

3 This was installed in 2006. The historical
4 ditches are right here, and this is the
5 obliteration. This is fill that went in in 1968
6 when the high school was installed, and this blocked
7 the ditches. The Weiss used to flow like this over
8 here, down off the map, across, and that's the cause
9 of the flooding in the area, as far as I know.

10 And I would ask that the public be able to
11 walk that area, and the Commission walk that area,
12 and the Applicant walk that area. And were that to
13 be cleaned out, then half of the water that comes
14 off of Ellen Road and Tamarock Terrace extension
15 would go this way -- because it's a Y; comes down
16 right here (indicating); some of it goes that way,
17 some of it goes that way. And if half of it went
18 this way and drained, then the pump would likely be
19 able to keep up with the rest of the flow. And were
20 they to repair the -- what they call a weir, which I
21 would call a flood control dam, the flooding would
22 be eliminated. The flooding can be eliminated for a
23 small amount of money.

24 CO-CHAIR McBRIDE: Can you also show where

1 the North Meeting House Brook easement is, please.

2 MR. WANTMAN: From what I understand, the
3 North Meeting House drainage easement is in this
4 area (indicating). And it's blocked. Some of the
5 ditches come down, some go over, and it's in this
6 area here (indicating), off of the Wiess Farm
7 property.

8 CO-CHAIR McBRIDE: So that's what I was
9 trying to get at before is that Bob Conway and Dan
10 Towse, who were on this Commission for 25-some-odd
11 years, always talked about Meeting House Brook. Dan
12 used to say, before Saul Wiess built the ditches --
13 to your point -- the water would run -- Meeting
14 House Brook would run -- and I'm going to say it
15 wrong -- east to west, or I don't know.

16 MR. WANTMAN: Do you want to use it?

17 CO-CHAIR McBRIDE: But the ditches changed
18 the way the water flowed and then all kinds of other
19 things started happening.

20 So I don't know that it could ever go back
21 and daylight it and bring back to where it was,
22 because it sounds like there is a high school in the
23 way now, and I don't know if that's true.

24 MR. WANTMAN: Saul Wiess was four years old

1 when those ditches were installed.

2 CO-CHAIR McBRIDE: Maybe not Saul, but
3 ditches, the ditches on Weiss Farm.

4 MR. WANTMAN: They were installed in the
5 mid '50s, 1955, 1956. And at that time, in 1956,
6 this north-south ditch was installed, which means
7 that no water, or virtually no water -- just the
8 water from Ellen Road, the lower end of Ellen Road,
9 the lower end of Walsh Road, made it's way over here
10 and needed to be pumped across the street.

11 The other fact is that that pump was not
12 there in 1955 -- it was more in this area -- and the
13 water used to go where there is a guardrail over the
14 Weiss Farm Trust Land to the same people that don't
15 respond to you when you write to them.

16 So this would be another area that would be
17 suitable for water storage capacity were the
18 Applicant to talk to the Wiess people and see if
19 they could perhaps purchase this wetland area. This
20 might be suitable for storm water management.

21 But the simpler solution would be to clean
22 out the ditches here, let the water flow by gravity.
23 I believe it goes over to Doleful or Buckman Pond --
24 I can't think of which one it is -- where there is

1 immense storage capacity, and that will help the our
2 friends in Melrose because the water will no longer
3 be going to them.

4 CO-CHAIR McBRIDE: Thank you, Marty.

5 Do you have any other questions or
6 comments?

7 MR. WANTMAN: Not at this time.

8 CO-CHAIR McBRIDE: Thank you. Stay tuned.

9 So I guess -- I'm not sure where to go, and
10 you can help me to say it correctly -- but it seems
11 to me, at this juncture -- not to sound like a
12 former President -- we have an opportunity here to
13 ask the Applicant to make this better. If that
14 means do a little more research, speak with the
15 town, DPW, Bob Grover, find out what really has
16 happened, what's causing the flooding. I mean just
17 to me it would behoove you to do it, because if you
18 could promise to eliminate the flooding, I think you
19 would have a lot more people on your side. I'm not
20 saying you would have everybody on your side, but --
21 certainly it would make us happier to know that this
22 project wasn't going to cause people to be more
23 flooded or flooded.

24 MR. MAHONEY: We're listening closely here,

1 and Jim and I will -- we'll have to work to figure
2 out the best way -- we're going to look at it.

3 CO-CHAIR McBRIDE: You'll have to pull the
4 mic closer.

5 MR. MAHONEY: We'll look into it.

6 CO-CHAIR McBRIDE: Okay.

7 Anything else?

8 MR. WANTMAN: One last thing. I'm sorry.
9 I'm a little nervous. I'm not a public speaker.

10 I cannot recall. Did I mention that there
11 is, in actuality, an easement on the opposite side
12 of the pump that is probably -- I know it's not
13 being employed.

14 What number do you you live at? What about
15 Mr. Bronstein?

16 At 9 Sunset Road there exists -- and of
17 course I have the documents and can supply them to
18 you -- there exists an easement which would allow
19 connection from the drainage channel that I hear the
20 Applicant doesn't want to send more water across
21 from the pump because it will cause more flooding.
22 There is a drainage easement that allows a pipe to
23 be installed at a right angle that would take the
24 standing water from that ditch opposite the pump,

1 bring it to Sunset Road into the drainage system,
2 and also help eliminate flooding in the Sunset
3 Street area.

4 CO-CHAIR McBRIDE: Thanks.

5 MR. WANTMAN: You're welcome.

6 CO-CHAIR McBRIDE: Name and address, sir?

7 MR. BENNETT: My name is Arthur Bennett, 7
8 Sunset Road.

9 My property gets impacted from the flooding
10 when the brook overflows. This development is going
11 to make it worse. The water is stagnated right now.
12 Our basement gets flooded, and I have to pump the
13 water out every time the brook overflows. We have
14 had serious damages to the basement floor and to
15 various valuable personal items. Also the water in
16 the basement has a terrible odor and is a health
17 hazard.

18 We feel that our house is going to be
19 eventually sinking like the one on 5 Sunset Road.
20 My house is built on wooden piles.

21 We have to stop this development from
22 happening or our property will become a disaster.

23 CO-CHAIR McBRIDE: Excuse me, sir.

24 Are you the house right next to 5?

1 MR. BENNETT: Yes.

2 CO-CHAIR McBRIDE: Where they tore the
3 house down and brought it forward?

4 MR. BENNETT: The water is like a lake in
5 my backyard.

6 CO-CHAIR McBRIDE: Would you say your last
7 name again, please. What is your last name again?

8 MR. BENNETT: Arthur Bennett.

9 CO-CHAIR McBRIDE: B-e-n-n-e-t-t?

10 MR. BENNETT: Right. It's like a lake in
11 my backyard, and it goes into the basement.

12 CO-CHAIR McBRIDE: Okay. Thank you.

13 MR. BENNETT: And this development is going
14 to make it worse.

15 CO-CHAIR McBRIDE: So I'm going rue the day
16 I say this is, but I think Marty would be helpful,
17 great -- I do. I've always said that.

18 MR. WANTMAN: Me, helpful?

19 CO-CHAIR McBRIDE: I think Marty's got some
20 history that would be helpful.

21 I will encourage you to ask questions --
22 and I know he's got a silent friend there who also
23 has some information from working at Wiess for
24 26 years or whatever. So I think that can only help

1 to get some historic perspective on the flooding and
2 what might have exacerbated it or when it wasn't
3 flooding and just, you know.

4 So anyone else?

5 Come on up.

6 MS. SALISBURY: Mine is really a request.

7 I would --

8 CO-CHAIR McBRIDE: Name and address.

9 MS. LEMIRE: Joan Lemire, 12 Fairview Road.

10 I would like to have a copy of this when
11 walking around the site, and so I was asking if you
12 would just make a whole bunch of copies of maybe
13 this and whatever else you think you would like us
14 to see.

15 CO-CHAIR McBRIDE: That's a good question.

16 MR. MAHONEY: Sure.

17 CO-CHAIR McBRIDE: Thank you.

18 Anyone else? Okay.

19 MS. BARICOTTI: Marylou Bariccoti, 36
20 Broadway.

21 I have a question. And I couldn't hear
22 you, so maybe you answered it.

23 Are you bringing in a hydrologist, someone
24 who can follow the water?

1 CO-CHAIR McBRIDE: That's a good question.

2 Have we talked about that at all?

3 Bob is a bit of a hydrologist.

4 CO-CHAIR PARSONS: Yeah. I think through
5 the peer reviews and the engineers, I think Bob --
6 Bob Griffin, who is our peer reviewer, has a level
7 of expertise in that area as well. I think the
8 combination of the engineering along with the
9 environmental scientist will help -- technically, I
10 understand what the proposal is and what happens on
11 the site under existing conditions.

12 MS. BARICOTTI: Because I worked on another
13 small project in Stoneham. It was a conversion of a
14 school into an apartment complex. And we did bring
15 in a hydrologist, and it was interesting to find, to
16 follow the flow of the water.

17 We've seen other projects in Stoneham,
18 larger ones, where this hasn't been done, and it's
19 quite interesting that something can be built in one
20 area, but the water shows up quite a distance away
21 in another area. And you could look at Bear Hill
22 Water Hole as an example. That came from a housing
23 project not next door to Bear Hill.

24 CO-CHAIR PARSONS: Yeah. We see that one.

1 MS. BARICOTTI: It would be interesting to
2 have that study.

3 CO-CHAIR PARSONS: Thank you.

4 CO-CHAIR McBRIDE: So is that something we
5 should have a conversation about tonight or?

6 MR. WITTEN: Well, I think the
7 Commission -- that's really, I think, a deference to
8 Mr. Griffin. If Mr. Griffin would benefit from some
9 additional consulting work from someone who has a
10 specialty in hydrology, I think that's up to
11 Mr. Griffin. I think what the Commission has
12 decided tonight, and the Applicant has agreed to, is
13 the hiring of a wetlands scientist, who would be the
14 peer review really of Mr. Lowry's work on the
15 wetlands delineation and the wetlands issues as well
16 as the natural heritage.

17 So I think it's really a question for
18 Mr. Griffin. I don't think you have to make a
19 decision tonight. I think the Commission can
20 consult with Mr. Griffin and see how you feel.

21 CO-CHAIR McBRIDE: Thanks.

22 Anyone else?

23 Mr. Wantman.

24 MR. WANTMAN: Yeah. Last thing.

1 I believe that there already exists a
2 drainage report that was made for the Town, I think
3 it was O'Connor. Do you have a copy of that? That
4 shows a so-called drainage divide where the water
5 flows and has an overlay of the North Meeting House
6 drainage easement on it.

7 CO-CHAIR McBRIDE: Do you know what year it
8 was --

9 MR. WANTMAN: Two pages of verbiage. I
10 think O'Connor was the engineering.

11 CO-CHAIR McBRIDE: Do you know what year?

12 MR. WANTMAN: 2012, 2000 --

13 CO-CHAIR McBRIDE: So this was the one that
14 preceded -- I think it was all part -- I think
15 that's the guy who used to wear the hat?

16 I think we may.

17 MR. WANTMAN: This woman who wanted a map
18 on hand that -- if it's BF O'Connor that depicts the
19 drainage ditches and the flow of the water would be
20 a lot more advantageous than this map right here.

21 CO-CHAIR McBRIDE: We can look into that.

22 MS. DAY: I feel that --

23 MR. WANTMAN: I'm sorry. I'm sure I have
24 copies of it if I haven't submitted it to the

1 department.

2 CO-CHAIR McBRIDE: If you find one, that
3 would be great.

4 MR. WANTMAN: I'm sorry?

5 CO-CHAIR McBRIDE: If you find one, that
6 would be great.

7 MR. WANTMAN: I'll run out to the car.

8 CO-CHAIR McBRIDE: That would be great.

9 But I do -- I want to say I think that is
10 the report that when Donna was first looking into
11 potentially selling the property and we did -- I'm
12 getting my dates mixed up, but we can look into
13 seeing if we have that. And if not, you could
14 provide it. Thanks.

15 MR. WANTMAN: You don't have a copy of it?

16 CO-CHAIR McBRIDE: I don't know. I'm
17 saying we can look into that. But if we don't, I'm
18 sure you would be happy to provide one for us.

19 MR. WANTMAN: Surely.

20 CO-CHAIR McBRIDE: Anyone else?

21 MS. COLARUSSO: Good evening. Caroline
22 Colarusso, 4 Patrick Circle.

23 Mr. Witten, the wetlands scientist that
24 will be coming out to this, with the assistance of

1 Corcoran Company, will they be able to clearly
2 define to us whether or not placing a project of
3 this scope and size in that area will further
4 exacerbate the flooding that's there? Will they be
5 able to answer that?

6 MR. WITTEN: I think that's a question
7 directed to Mr. Griffin. The wetlands scientist,
8 their job should be to verify Mr. Lowry's filing
9 with the Conservation Commission under the Wetlands
10 Protection Act, to assist the Commission understand
11 whether it's potential endangered species habitat,
12 to assist in compliance under the local Bylaw in
13 terms of those issues, because they're relevant even
14 though the Commission has already denied. I think
15 the issue of hydrology and storm water runoff are
16 squarely within the expertise of Mr. Griffin and his
17 office.

18 What I was saying earlier is, it's up to
19 Mr. Griffin and the Commission to decide whether --
20 everybody in this business can always use a second
21 opinion. So if Mr. Griffin would benefit from a
22 second opinion, then the Commission would benefit
23 from a second opinion, then the Commission has the
24 right to ask the Applicant to pay for that.

1 So the wetlands scientist, no, would not
2 answer the question you're posing. Mr. Griffin and
3 his disciplines would.

4 MS. COLARUSSO: Okay. One more point:

5 Are there any other projects, similar to
6 this project, that we have historical data on that
7 we could determine if there have been flooding
8 impacts that have been exacerbated from something,
9 as Mrs. Pecoraro clearly pointed out, of this weight
10 and size? You know, we should be able to at least
11 look at that and have a discussion, healthy dialogue
12 with that information, because I think clearly -- at
13 least it's my opinion; I'm certainly not a
14 professional environmentalist, but something of this
15 scope and size going in that area certainly appears
16 to at least have further problems down the line,
17 especially for the residents like Mr. Bennett and
18 others in that area, Sunset Road and Tamarock and
19 those areas.

20 CO-CHAIR McBRIDE: Do you mean a project in
21 Stoneham?

22 MS. COLARUSSO: I'm wondering if there is
23 data on a similar project -- not limited to
24 Stoneham, but outside of Stoneham -- that will tell

1 us whether or not --

2 MR. WITTEN: I think the answer is yes, and
3 it goes back to something that I think you heard
4 from the Commission earlier tonight, and I know I
5 said it a couple of times. Which is the Applicant
6 needs to look at this as a watershed impact, not the
7 four corners of the locus. So the watershed
8 analysis has been around for 60, 70 years. It
9 should not be a surprise to the Applicant that I'm
10 saying this. We need to look at the watershed as a
11 wholistic resource not just the site. That's what
12 DEP requires, that's what most Conservation
13 Commissions would demand, and I know this Commission
14 would demand it as well.

15 So if you look only at the four corners of
16 the site, of course you can remediate the problems.
17 You just capture the storm water. But the issue is
18 much bigger than that, and I think that's what the
19 prior testimony has been, and that's what's been
20 going on for Stoneham on this locus for years. It's
21 a watershed problem, not just the four corners of
22 the site.

23 MS. COLARUSSO: And of course our concerns
24 would be as residents of Stoneham, over time, what

1 happens over time once the project is there, because
2 we have to live with it as residents of town. And
3 the developers will be long gone. The apartments
4 will be filled, but it will still be a Stoneham
5 problem at that point.

6 Thank you.

7 CO-CHAIR McBRIDE: Anyone else?

8 Okay. So to recap again, next steps are we
9 are going to talk about hiring a wetlands scientist
10 and then hopefully come up with a date and let
11 everybody know as soon as we know. It won't be
12 tomorrow, I can tell you that.

13 MR. WITTEN: Madam Chairperson, I think you
14 want to ask the Applicant to agree to an extension
15 of the public hearing to a date certain --

16 CO-CHAIR McBRIDE: Okay.

17 MR. WITTEN: -- and have the Applicant
18 agree to that date certain tonight. I think the
19 Commission was talking about May 6th?

20 CO-CHAIR McBRIDE: Well, our next -- before
21 you came in we scheduled our next meeting for the
22 27th, but I know Jon won't be available. So the
23 29th and 30th Cathy, who is our clerk, is already
24 meeting, so would you be okay with, say, May 7th?

1 Does that work for everybody there?

2 MR. CICATELLI: Yes, Madam Chairman.

3 CO-CHAIR McBRIDE: Okay. Does that work
4 for everybody here?

5 MR. L'ESPERANCE: What was this?

6 CO-CHAIR McBRIDE: May 7th.

7 MR. WITTEN: So the Commission should make
8 a motion to accept the Applicant's extension of the
9 public hearing to May 7th.

10 CO-CHAIR PARSONS: Continuation.

11 MR. WITTEN: Continuation of the public
12 hearing. Thank you.

13 CO-CHAIR PARSONS: Yeah. I'll make a
14 motion we continue the public hearing for for The
15 Commons of Weiss Farm to May 7th, Thursday.

16 CO-CHAIR McBRIDE: Second?

17 MS. RENNARD: Second.

18 CO-CHAIR McBRIDE: All in favor.

19 (Chorus of ayes)

20 MR. CICATELLI: Did we say 7:00 p.m?

21 CO-CHAIR McBRIDE: Say that again, please.

22 MR. CICATELLI: 7:00 p.m.?

23 CO-CHAIR McBRIDE: Yeah. I think you may
24 be it -- yeah, 7:00.

1 MR. CICATELLI: That's fine.

2 MR. WITTEN: And then Madam Chairperson, I
3 just wanted to clarify, just to make sure there is
4 no objection from Applicant -- I don't think there
5 is, but just so we're clear -- that the Commission
6 has delegated to Ellen or Bob the decision-making of
7 the retention of the wetlands scientist and that
8 hiring will be made individually outside of a public
9 meeting because the Commission won't have a meeting
10 between now and the site visit, and that person will
11 be hired under 44 Section 53 funds.

12 MR. MAHONEY: Between one of the two that
13 were mentioned earlier.

14 CO-CHAIR McBRIDE: Yes.

15 MR. MAHONEY: Yes.

16 CO-CHAIR McBRIDE: Yep. Are we good?

17 Okay. So, folks, that's it for Weiss Farm
18 part, but feel free to stay around because there is
19 an exciting rest of the meeting going on that I'm
20 sure you all want to participate in.

21 MS. DAY: Can we take five minutes.

22 CO-CHAIR McBRIDE: Do you want to take five
23 minutes?

24 Sure. Let's take five minutes.

1 Thank you, everybody.

2 (Whereupon, the proceedings were
3 adjourned at 8:57 p.m.)
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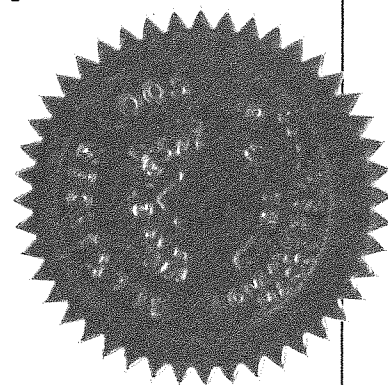
C E R T I F I C A T E

I, Alexander K. Loos Registered Merit Reporter, do hereby certify that the foregoing transcript, Volume I, is a true and accurate transcription of my stenographic notes taken on April 9, 2014.


Alexander K. Loos

Registered Merit Reporter

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 Exhibits 1 to 5

COMMONWEALTH OF MASSACHUSETTS
 DEPARTMENT OF INDUSTRIAL ACCIDENTS

Board No. 27996-12

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 EMPLOYEE: James Hogan :
 :
 EMPLOYER: City of Boston :
 :
 SELF-INSURER: City of Boston :
 :
 DATE OF INJURY: November 2, 2012 :
 :
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DEPOSITION OF ROBERT A. MCGUIRK, M.D., a witness called on behalf of the Employee, taken pursuant to Rule 30 of the Massachusetts Rules of Civil Procedure, before Nancy M. Kingsbury, Registered Professional Reporter and Notary Public in and for the Commonwealth of Massachusetts, at the Office of Robert A. McGuirk, M.D., 400 Washington Street, Suite 206, Braintree, Massachusetts, on Wednesday, April 15, 2015, commencing at 5:02 p.m.

PRESENT:

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 617.696.6360

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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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ROBERT A. MCGUIRK, M.D.

BY MR. BRANCA	3	25
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BY MR. WALSH	24
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E X H I B I T S

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2	Chart document dated 7/7/2008 by Jeffrey Zarin MD	24
3	Chart document dated 1/17/2008 by Anthony A. Schepsis MD	24
4	Document on letterhead of Robert A. McGuirk, M.D., dated July 31, 2014	24
5	Document on letterhead of Robert A. McGuirk, M.D., dated July 17, 2013	24

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