

**In The Matter Of:**

*Town of Stoneham Conservation Commission  
Notice of Intent by Weiss Farm Apartments, LLC*

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*Public Hearing  
March 19, 2015  
Re 170 Franklin Street*

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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  
Eric Buckley

Catherine Rooney, Secretary

Huggins & Witten, LLC (by Jonathan Witten, Esq.)  
156 Duck Hill Road, Duxbury, MA 02332,  
jon@hugginsandwitten.com, 781.934.0084,  
for the Commission.

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

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

Held at:

Stoneham Town Hall  
35 Central Street  
Stoneham, Massachusetts  
Thursday, March 19, 2015  
7:40 p.m.

Carol H. Kusinitz  
Registered Professional Reporter

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

2 CO-CHAIR PARSONS: It being 7:40, we're  
3 going to open the public hearing for Weiss Farm  
4 Apartments, LLC. At this point, we're going to turn  
5 it over to Town's Counsel, Attorney Jon Witten, for  
6 a few opening remarks.

7 MR. WITTEN: Thank you, Mr. Chairman. Good  
8 evening, members of the Commission. Good evening,  
9 members of the public.

10 When the Commission last met and then  
11 continued to this evening, there was discussion with  
12 the Applicant and the Applicant's Counsel regarding  
13 whether or not this Application was filed under the  
14 Wetlands Bylaw of the Town of Stoneham. There was,  
15 perhaps, some disagreement on the Applicant's side  
16 as to whether it was or wasn't being filed under the  
17 Wetlands Bylaw, but in either case, whether it has  
18 been or it hasn't been, the current Application does  
19 not conform with the Stoneham Wetlands Bylaw.

20 That's based in part on Mr. Griffin's peer review  
21 report, and it's also based on the fact that the  
22 Conservation Commission does not have before it a  
23 formal application pursuant to Chapter 11 of the  
24 Stoneham Code.

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1           So, members of the Commission, I think the  
2 first order of business for the Commission to  
3 consider and discuss and entertain comments from  
4 both the Applicant and the public, if you so choose,  
5 is what to do about the lack of filing under the  
6 Bylaw.

7           The Commission has two options. One is to  
8 do nothing and proceed with the hearing, as it has.  
9 The other, which is my recommendation, is to deny  
10 under the Bylaw, meaning that because the  
11 Application before the Commission doesn't comply  
12 with the Bylaw, then the Conservation Commission  
13 must take some affirmative step, and that step you  
14 have little choice but to deny.

15           You don't have to deny tonight, but I  
16 think, out of fairness to the Applicant and to the  
17 public, the Commission should make a decision on  
18 what to do about the failure of complying with the  
19 Bylaw as soon as possible, and I would recommend  
20 that you do that tonight.

21           If the Commission denies under the Bylaw or  
22 failure to conform with the Bylaw, then the form  
23 that the Commission files is a Wetlands Protection  
24 Notice Form, the same that you would use under a

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1 traditional Order of Conditions, and you would  
2 identify that as being denied pursuant to the Bylaw.  
3 I suspect you've done that in the past as well.  
4 That filing gets reported at the Registry of Deeds.

5 So, Mr. Chairman, that would be my  
6 recommendation as the first order of business for  
7 the Commission to discuss.

8 CO-CHAIR PARSONS: I guess, with that, I  
9 would like to ask the Applicant specifically, there  
10 was some question, I believe, at the previous  
11 meeting as to whether or not it was being filed  
12 under the Bylaw as well. We knew that the WPA was  
13 being filed. So I guess I would defer to you guys  
14 on that.

15 MR. GALLOGLY: The Notice of Intent was  
16 filed under the State Act. It was not filed under  
17 the local Bylaw. We do not intend to file under the  
18 local Bylaw. We requested waivers in our  
19 Comprehensive Permit Application, waivers from the  
20 local Bylaw.

21 CO-CHAIR McBRIDE: Can you speak a little  
22 slower and closer to the mic so we can hear.

23 MR. GALLOGLY: I'll repeat. We filed a  
24 Notice of Intent under the State Wetlands Protection

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1 Act. We did not file under the local Bylaw. That  
2 is because, in our Comprehensive Permit Application,  
3 we asked for waivers from the local Bylaw, therefore  
4 negating the need to get a local Bylaw approval.  
5 That will be issued by the Zoning Board of Appeals.

6 CO-CHAIR PARSONS: I guess I'll defer to  
7 Attorney Witten, but I think the issue is -- Jon,  
8 correct me if I'm wrong -- I think the waiver needs  
9 to be granted prior to the filing? So technically  
10 it's still open, the Bylaw?

11 MR. WITTEN: That's correct. I understand  
12 the Applicant's position, and it's a fair position,  
13 which is, "We've applied to the Board of Appeals for  
14 a Comprehensive Permit, and we seek a waiver under  
15 the Bylaw." But as we've discussed previously, the  
16 process for doing that would have been to apply to  
17 the Board of Appeals, wait for a decision from the  
18 Board of Appeals, and then file with the  
19 Conservation Commission.

20 The Applicant has chosen to do it in a  
21 different order. So as we sit here today, there is  
22 no hearing before the Board of Appeals. It's been  
23 suspended because of the appeal to the Housing  
24 Appeals Committee. There is no waiver from the

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1 Board of Appeals, because the Board of Appeals  
2 hearing is suspended, and there is an application  
3 before the Conservation Commission that is in direct  
4 violation with your requirements to file under the  
5 Bylaw.

6 So it was the Applicant's choice to follow  
7 this order of events, and this is the position that  
8 the Conservation Commission finds itself in, which  
9 is an Application that is in derogation of what Town  
10 Meeting adopted as your local Bylaw.

11 CO-CHAIR PARSONS: Any further comment?

12 MR. GALLOGLY: No.

13 CO-CHAIR PARSONS: Do I have any comments  
14 from the Commissioners relative to the Bylaw? (No  
15 response)

16 Any comments from the audience specific to  
17 the Bylaw and this discussion? (No response)

18 CO-CHAIR McBRIDE: I have to say, I'm  
19 surprised. That's a good thing.

20 CO-CHAIR PARSONS: Okay. Well, then, do  
21 you want to --

22 CO-CHAIR McBRIDE: So I'm going to read a  
23 motion, folks.

24 Mr. Chairman, I move that the Stoneham

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1 Conservation Commission vote to deny the Application  
2 of Weiss Farms Apartments, LLC, for a Notice of  
3 Intent pursuant to Chapter 11 of the Stoneham Town  
4 Code, that being the Stoneham Wetlands Bylaw, as the  
5 project submitted to the Conservation Commission  
6 does not comply with the Wetlands Bylaw and has not  
7 been adequately or properly filed pursuant to the  
8 Wetlands Bylaw. I further move that the Commission  
9 complete for recording WPA Form 5 so indicating  
10 this motion.

11 CO-CHAIR PARSONS: Can I have a second?

12 MR. L'ESPERANCE: Second.

13 CO-CHAIR PARSONS: All in favor? (Chorus  
14 of ayes)

15 CO-CHAIR McBRIDE: Do we need a roll call  
16 vote for this?

17 CO-CHAIR PARSONS: We'll do a roll call  
18 vote, please.

19 Eric Buckley, how do you vote?

20 MR. BUCKLEY: Yes.

21 CO-CHAIR PARSONS: Norman?

22 MR. L'ESPERANCE: Yes.

23 MS. RENNARD: Yes.

24 MS. DAY: Yes.

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1 CO-CHAIR McBRIDE: Yes.

2 CO-CHAIR PARSONS: Yes.

3 CO-CHAIR McBRIDE: So unanimous.

4 CO-CHAIR PARSONS: Unanimous. With that, I  
5 think there is still the issue of the Wetlands  
6 Protection Act filing, which is also a part of this.  
7 And, again, we'll defer to Attorney Witten for some  
8 opening remarks on the State Act.

9 MR. WITTEN: Thank you, Mr. Chairman. So  
10 the other issue that's before the Conservation  
11 Commission and has been flagged by Town Counsel is  
12 that the regulations under the Act -- this is the  
13 Wetlands Protection Act -- the regulations make  
14 clear a sequencing of events before filing for  
15 Notice of Intent.

16 So what's before the Conservation  
17 Commission is called a Notice of Intent. The  
18 Commission issues, if it chooses to do so, an Order  
19 of Conditions. Before a Notice of Intent is filed  
20 with the Conservation Commission, the regulations  
21 require that all obtainable permits be applied for  
22 or obtained before filing for the Notice of Intent.  
23 There are some exceptions to that -- for example,  
24 the Subdivision Control Law -- but there are a lot

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1 of other matters that must be applied for or  
2 obtained before applying for a Notice of Intent.

3 The regulations carve out a specific  
4 provision for Comprehensive Permits. So, Mr.  
5 Chairman, just for the sake of the Conservation  
6 Commission, I'll just read this one sentence. And  
7 this is 310 CMR 10.05 4(E), as in Edward.

8 "When an Applicant for a Comprehensive  
9 Permit from a Board of Appeals has received a  
10 determination from the Board granting or denying the  
11 permit and, in the case of a denial, has appealed to  
12 the Housing Appeals Committee, said Applicant shall  
13 be deemed to have applied for all permits obtainable  
14 at the time of filing." That's the final sentence  
15 in that paragraph. The preceding sentences make  
16 clear that there must be an application for or  
17 obtaining all other permits.

18 The way the regulations read in the  
19 Comprehensive Permit world is you have to have  
20 obtained the Comprehensive Permit or there has to  
21 have been an appeal to the Housing Appeals Committee  
22 of the Comprehensive Permit decision before you can  
23 apply for Notice of Intent. The appeal, though, was  
24 brought to the Housing Appeals Committee by the

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1 Board of Appeals, not by the Applicant, and that was  
2 on a particular matter.

3 So the issue before the Conservation  
4 Commission --

5 CO-CHAIR McBRIDE: Excuse me. Someone has  
6 a phone on or a recording going?

7 MR. WITTEN: The issue before the  
8 Conservation Commission is whether the Commissioners  
9 wish to deny under the Act for failure, again, to  
10 comply with the sequencing requirements.

11 Now, I would caution the Commission and,  
12 Mr. Chairman, for discussion for the Commission,  
13 because a denial under the Act, as the Commission  
14 know, allows the Applicant to take an appeal to the  
15 DEP for a Superseding Order. An appeal to DEP for a  
16 Superseding Order may render the matter out of the  
17 Commission's hands; in other words, DEP may take  
18 this matter away from the Commission, even though  
19 you haven't begun to substantively discuss the  
20 project. Mr. Griffin's report hasn't been  
21 discussed. Dennis Lowry's response to Mr. Griffin's  
22 report hasn't been discussed. So there hasn't been  
23 a discussion among the Commissioners as to the  
24 technical aspects of the project.

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1 I think there's a better-than-average  
2 chance that DEP would remand the matter back to the  
3 Commission once the sequencing has been completed  
4 properly, but I caution the Commission to at least  
5 discuss the possibility that DEP could take this  
6 away from you. We've known DEP to do that in the  
7 past. There is some exposure there, because, again,  
8 Mr. Griffin hasn't opined, Mr. Lowry on behalf of  
9 the Applicant hasn't had a chance to discuss with  
10 Mr. Griffin in an open session this matter, the  
11 public hasn't had a chance to discuss the wetland  
12 impacts.

13 So the issue is, is this form over  
14 substance? No, I don't think so. The regulations  
15 are quite clear, and I think they're quite clear on  
16 purpose. An Applicant shouldn't file with the Con  
17 Com and waste the public's time until the Applicant  
18 has proceeded according to the regulations, and that  
19 is exactly where we are today.

20 So the question is strategically for the  
21 Commission to decide how best to proceed. If the  
22 Commission chooses to move forward with the  
23 Application, especially after having this  
24 conversation, I suspect the Applicant would claim

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1 the Commission has waived its right to re-raise this  
2 again in the future. So I suspect tonight is an  
3 important night to discuss whether the Commission  
4 believes the sequence has been violated, for lack of  
5 a better word, and if so, what to do about it.

6 I think what Town Counsel and I would  
7 recommend you do about it is, I think you have to  
8 deny under the regs, under the Act; but, again, it's  
9 a caution as to what might happen with DEP. I would  
10 be happy to respond further to questions.

11 CO-CHAIR McBRIDE: The only concern I have  
12 about denying tonight under the regulations is we  
13 denied a project in Town five years ago now, and we  
14 denied the project under the Bylaw and under the  
15 Wetlands Protection Act, and the applicant rightly  
16 appealed. When you appeal the Bylaw, you appeal to  
17 Superior Court. When you appeal the Wetlands  
18 Protection Act, you appeal to the DEP.

19 It went to Superior Court. DEP stayed  
20 their decision for, I think, almost two years, and  
21 when the Superior Court finally made their decision,  
22 we lost. And the reason we lost was because of a  
23 deadline, because we issued our decision on the 21st  
24 day. And the Applicant got up and left the room, so

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1 we never physically handed the decision to him, even  
2 though we had issued it publicly, and we lost in  
3 Superior Court on that.

4 So notice to anybody out there, never issue  
5 a decision on the 21st day. But also -- his appeal  
6 then went to DEP. They heard it. They denied it.  
7 And then this applicant asked for a Superseding  
8 Order of Conditions, and the DEP said -- not a  
9 Superseding Order of Conditions, an adjudicatory  
10 hearing. And DEP -- basically he's saying, "I don't  
11 like the fact that you denied my project and they  
12 denied my project. Can't you just see me one more  
13 time?" I might be simplifying.

14 And instead of an adjudicatory hearing, DEP  
15 said, "Let's all get to the table and make nice."  
16 And two years later we said, "We don't like this  
17 project at all." It crossed a stream. It was nine  
18 houses. In my personal opinion and in our opinion,  
19 it was a horrible project. But DEP approved it, and  
20 it's being built right now in Stoneham.

21 So I am hearing what you're saying. I'm  
22 concerned that if we denied this project tonight  
23 under the Wetlands Protection Act and the DEP -- we  
24 then lose jurisdiction, the Town of Stoneham loses

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1 jurisdiction. It turns over to DEP. And if DEP is  
2 stressed out, understaffed and maybe mad at us, we  
3 don't -- we lose control over it. So I just --  
4 that's my --

5 We'll wait until we all talk first, okay,  
6 Bill?

7 CO-CHAIR PARSONS: Yes.

8 CO-CHAIR McBRIDE: So anyway, that's my  
9 comment. I'm not sure. I'm hoping to hear more.

10 MS. DAY: Jon, can I ask, does the Zoning  
11 Board still -- if for some reason this is taken out  
12 of our hands, can we still ask the Zoning Board to  
13 adhere to our Bylaw?

14 MR. WITTEN: Yes. Great question. So  
15 under the Comprehensive Permit process, the  
16 Conservation Commission is one of the requisite  
17 boards to comment to the Board of Appeals. So you  
18 still have input to the Board of Appeals. You won't  
19 have regulatory input if you lose jurisdiction, but  
20 you certainly have technical input. Mr. Griffin's  
21 report would be part of the record. So, yes, but it  
22 would be advisory as opposed to regulatory.

23 CO-CHAIR PARSONS: I guess my question is,  
24 understanding that there is a risk in denying the

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1 project based on the State Act, I don't necessarily  
2 have an issue with moving forward with some of the  
3 technical issues. My question is, if we do that,  
4 are we foregoing the option at all to use what we  
5 feel is the law as part of this?

6 MR. WITTEN: Another great question. No,  
7 you're not. I suspect the Applicants would say,  
8 after a couple more hearings, "You've waived your  
9 right. It becomes inequitable to lie in wait on  
10 this particular issue." That's a matter for someone  
11 with a higher authority than us to decide. But I  
12 think that's to be anticipated from the Applicant's  
13 perspective.

14 CO-CHAIR PARSONS: Do any other  
15 Commissioners have any comments, anything you'd like  
16 to add to this particular discussion?

17 MR. L'ESPERANCE: It's a tough one.

18 CO-CHAIR PARSONS: With that, then I would  
19 like to open questions and comments from the public.  
20 Bill, yes, please.

21 MR. SOLOMON: Thank you. Bill Solomon,  
22 Town Counsel.

23 As Jon mentioned and the Commission is  
24 aware, I had flagged this issue for the Commission

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1 on the State regulation and also raised the concern  
2 that, if there was just a flat-out denial with DEP,  
3 even though this is their regulation, and despite  
4 the fact that it wasn't perfectly worded, there is  
5 no question what it means.

6 So my sense was, and I think I've written  
7 this and I'll say it here, is that I think there's a  
8 middle ground that the Commission can consider. And  
9 that middle ground would be to reach out to the DEP  
10 to say that you have this before the Commission,  
11 that it's the Commission's regulation that says that  
12 the Board of Appeals has to either grant the  
13 Comprehensive Permit or deny it and be appealed, as  
14 Jon indicated, and say to the Commission, write to  
15 the Commission that you would like them to affirm  
16 their regulation. You're not looking for an opinion  
17 on something that's just within your authority.

18 You're asking them to affirm what their regulation  
19 clearly means, because there's a concern that in the  
20 Northeast Region, as opposed to other regions, there  
21 is a tendency at times not to remand a matter back.

22 So I think with that, as long as you  
23 protect yourself on timing under the deadline, which  
24 I'll leave to your counsel, it seems to me then that

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1 you've raised the issue, you're acting on it, but  
2 you've protected yourself from a potential  
3 Superseding Order.

4 I am concerned, as I wrote in the initial  
5 memo, that if you go through the entire hearing and  
6 then you have a decision that's some sort of denial  
7 or the Applicant is not pleased with it and they  
8 appeal it, then it's likely that the DEP will say,  
9 "Well, all the substance has been dealt with."

10 Because the reality is that this statute -- talking  
11 about originally obtaining all the permits, but it  
12 was amended to say that you could also apply for  
13 them -- in their regulation is not something that is  
14 their foremost concern. They're trying to deal with  
15 a statute that says to a town or a city, an  
16 Applicant needs to complete certain things or apply  
17 for certain things in order to be ripe before you,  
18 because as stated, you shouldn't go first, you  
19 should go last. So it's a policy reason for this.

20 But given the fact that it's not DEP's  
21 prime concern -- the prime concern is the  
22 substantive wetlands -- I think it's important that  
23 they address this issue in a timely fashion now and  
24 not when the matter is substantively all completed,

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1 dollars have been expended. I think at that point  
2 they would look for a reason to say, "Let's decide  
3 on the merits. Let's not decide it on the important  
4 process issue."

5 So that would be my recommendation, is to  
6 get confirmation, attempt to get confirmation with  
7 DEP on what the regulation means -- we think it's  
8 clear, it is clear -- and with that I think you'd  
9 have some certainty and you would be dealing with it  
10 procedurally and up front.

11 CO-CHAIR PARSONS: Thank you, Bill.

12 CO-CHAIR McBRIDE: So, Jon, can I ask a  
13 question for clarification? If we deny tonight  
14 under the Wetlands Protection Act because we feel  
15 it's a premature application, not because of the  
16 merits or the technical aspects of it, the Applicant  
17 is free to come back to us once and if they do get  
18 permission or the okay to continue with Mass.  
19 Housing, they can come back to us, without  
20 prejudice, and we would hear the case on its merits  
21 then?

22 MR. WITTEN: Yes. If the Commission were  
23 to deny, the Applicant would most likely take an  
24 appeal, a Superseding Order appeal, and negotiate

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1 that out with DEP. The Commission would have a  
2 position on that. But that wouldn't preclude them  
3 from refileing after the Board of Appeals, if the  
4 Board -- if it ends up back to the Board of Appeals,  
5 if the Town doesn't prevail at the Housing Appeals  
6 Committee and it's back before the Board of Appeals  
7 and the Board of Appeals renders a decision, then  
8 would be the proper time to file with the  
9 Commission. I think Bill said that very, very well.

10 I'd like to add on to what Bill said. This  
11 is a procedural regulation. So the more testimony  
12 the Commission takes, the less relevance the  
13 procedural regulation has. So after Mr. Griffin has  
14 provided his report and Mr. Lowry has provided his  
15 rebuttal, it starts to dissolve the purpose of the  
16 regulation, because the Commission has spent  
17 taxpayer money, the Commission has spent the  
18 Applicant's money, the Applicant has spent its own  
19 money, and the purpose of the regulation starts to  
20 get weakened.

21 CO-CHAIR McBRIDE: DEP could actually say  
22 to us, "Well, why did you hear them?"

23 MR. WITTEN: I think that's what Bill and I  
24 are both concerned about. I think Bill's suggestion

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1 is a very good one, which is, let's get  
2 clarification from DEP. We'll either get it or we  
3 won't. If we don't, we don't.

4 I don't think the Commission should  
5 overemphasize procedural issues after tonight or the  
6 next hearing, because you will have heard a lot of  
7 substantive testimony.

8 So I think that's why Bill raised it,  
9 correctly so, and I think that's why we both  
10 suggest -- Bill's suggestion is a very good one:  
11 Let's get an answer from DEP sooner rather than  
12 later. But I don't think this is something you can  
13 postpone for too long and still have it as a valid  
14 issue. It's a technicality, but technicalities are  
15 important, because procedure is important.

16 So I think the Commission should, as a  
17 recommendation, follow up on Bill's suggestion,  
18 which is a letter to DEP, which I can have prepared  
19 tomorrow and to DEP for Monday morning, and put this  
20 matter on first in your agenda for the continued  
21 hearing, if you chose not to make a decision  
22 tonight.

23 MR. SOLOMON: Mr. Chairman, if I could make  
24 just one brief point, I think it would help.

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1           Because this part of the statute at the  
2 very beginning -- the statute, by the way, says that  
3 the Applicant shouldn't even apply originally unless  
4 they had all the permits or had applied for it, and  
5 the regulation clearly gives DEP's spin to what that  
6 means, and it's clear what it means for a  
7 Comprehensive Permit.

8           It's not something that folks focus on. So  
9 with great respect to excellent advisors for the  
10 Developer, my sense has been and may well be that  
11 they were just unaware of this regulation, that they  
12 haven't filed because -- saying, "Well, we don't  
13 care what it says," or "We're going to argue that it  
14 means something different," but that they were  
15 unaware of it.

16           So one question from the Commission to the  
17 Developer's counsel could be, All right, this is  
18 what the regulation says. You're really supposed to  
19 wait. This is the opposite side of the same coin of  
20 the first act, which is to say, it's not before you.  
21 The reason there's even a discussion of the local  
22 permit is because in effect the regulation is saying  
23 it's premature. It's not ready yet. Let's consider  
24 these things.

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1           You have other cases where we recently  
2 looked at matters where you need to know what's  
3 being developed on the uplands in order to figure  
4 out how to protect wetlands. It's the same thing  
5 here. The DEP is saying, you know, We need to know  
6 something about this development at the end of a  
7 Comprehensive Permit process, because before that,  
8 there's a lot of things that haven't been decided.  
9 Is it 300 units? 50 units? 200? Those make a  
10 difference. That's why the law is based upon not  
11 going first but protecting the wetlands when you  
12 have some sort of sense.

13           So I would recommend, through the Chair and  
14 through your Special Counsel, to ask the Developer's  
15 counsel, understanding this regulation is there --  
16 maybe you were unaware of it -- isn't the thing to  
17 do to withdraw this Application, complete your  
18 Comprehensive Permit process, and follow the  
19 regulation? It may well be that they, upon  
20 reflection, think that's the proper process.

21           CO-CHAIR PARSONS: Thank you, Bill.

22           I would like concurrence from Attorney  
23 Witten as well -- I don't have a problem asking the  
24 Applicant and getting feedback from them.

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1           MR. WITTEN: Yes. If Attorney Gallogly  
2 would like to respond?

3           MR. GALLOGLY: We were aware of that  
4 provision. We disagree on the interpretation. We  
5 don't think it says what your counsel says it says.

6           CO-CHAIR McBRIDE: Could you speak up, sir.

7           MR. GALLOGLY: We were aware of that  
8 regulation. We disagree with the interpretation.  
9 That's the bottom line.

10          CO-CHAIR PARSONS: Thank you.

11          I guess my question to both Attorney Witten  
12 and Bill as well is that the duration, I guess, is  
13 what you're suggesting might be critical in how  
14 strong the argument procedurally is. So I don't  
15 want to mess around with it too much. Reaching out  
16 to DEP, I think, is also a good idea, to get an  
17 interpretation.

18          I'm not sure. Will they provide, will they  
19 truly provide an interpretation of their  
20 regulations, or are they just going to leave it up  
21 to our counsel to make that determination?

22          MR. WITTEN: The Town hired me and hired  
23 Bill to give you our best legal advice, and it's not  
24 that often that lawyers agree on everything. But

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1 Bill and I agree as to what the regulation says,  
2 with due respect to the Applicant's counsel. I  
3 think it's unambiguous, it's crystal clear. I think  
4 in practice it's not used very often, but that  
5 doesn't mean it's not clear.

6 Having said that, I am more concerned about  
7 the Commission losing jurisdiction than I am about  
8 the regulation, per se. So Bill's middle ground  
9 approach is a safe one. I think Attorney Gallogly's  
10 response that he disagrees with the interpretation  
11 is actually helpful for the Commission, because if  
12 the Applicant disagrees with the interpretation,  
13 then they won't be able to argue waiver three months  
14 from now. So I'm pleased to hear that response.

15 I think the Commission should -- my advice  
16 to the Commission would be to do as Town Counsel  
17 recommended. Let's draft a letter to DEP. They  
18 will respond or they won't. If they don't, this  
19 issue remains on the table when the Commission  
20 reconvenes at the next meeting.

21 But because you're under pressure time-  
22 wise, and because Mr. Griffin has already produced a  
23 report, I don't see any harm in taking testimony  
24 tonight, Mr. Chairman, with the understanding that

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1 this issue has not been resolved; the Commission  
2 reserves its right.

3 The Applicant is clearly on notice that the  
4 Commission is deliberating this issue, and Town  
5 Counsel has made a very concrete suggestion, which  
6 is offering to have the Application withdrawn. The  
7 Applicant has every right to say no, and that's what  
8 the Applicant said. So this issue is live. No one  
9 is going to surprise the Applicant if this comes  
10 back a month from now.

11 CO-CHAIR PARSONS: Well then, I would  
12 elect, myself personally -- we will open it up to  
13 the Commission -- to move forward as such. I think  
14 having a letter drafted to Mass. DEP, getting an  
15 opinion, is the prudent thing to do and, I guess,  
16 further undertake discussion of more technical merit  
17 at this point regarding the proposed project.

18 I'll ask the Commission members, do you  
19 have any thoughts on that approach?

20 CO-CHAIR McBRIDE: I do. First I was  
21 thinking why would we do that, but I think the  
22 reason would be that if we sent a letter to DEP  
23 tomorrow, DEP will take a bit of time to respond to  
24 us, is my guess. In the meantime, it makes no sense

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1 to -- if at some point down the road, even if it's  
2 agreed that you have to wait, the Applicant has to  
3 wait to present their Notice of Intent to us, the  
4 facts are going to be the same. So we might as well  
5 start talking about the technical end of the project  
6 now and not stall that. Is that kind of what you  
7 mean?

8 CO-CHAIR PARSONS: Yes. And I would also  
9 ask the Commission members, and I'd also ask the  
10 Applicant if they want to entertain, I guess, at  
11 this point a technical discussion, because it  
12 obviously has to do with them.

13 Any other Commission members have any  
14 thoughts?

15 MR. L'ESPERANCE: I think that would be a  
16 good approach.

17 CO-CHAIR PARSONS: So then I'll ask the  
18 Applicant, given sort of the approach we're taking  
19 here, do you have any comments or anything that you  
20 want to say relative to that?

21 MR. GALLOGLY: You're asking if we want to  
22 present testimony this evening? The answer is yes.

23 CO-CHAIR PARSONS: Okay. So I guess with  
24 that, we've had a peer review of the proposed storm

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1 water management plan, storm water calculations,  
2 design drawings, specifications. That's Bob Griffin  
3 of Griffin Engineering.

4 So I guess what I would suggest then is I'd  
5 like to get maybe just a quick summary from Mr.  
6 Griffin on his comments relative to this  
7 submission -- and I know that there's been some  
8 responses made from the Applicant relative to the  
9 technical comments -- and kind of continue  
10 discussion on that level.

11 CO-CHAIR McBRIDE: Is it okay if I just  
12 kind of give, for the audience, for people who don't  
13 come to Conservation Commission meetings, what  
14 happens? The Applicant presents a project to us.  
15 We remand it basically to Bob Griffin, who is the  
16 person that we've used at the Conservation  
17 Commission for years for projects, but he is also  
18 the person that the Town has hired in this effort.

19 So Bob then writes a letter and says, you  
20 know, "This is the Notice of Intent, this is the  
21 project, this is the breadth of the project, and  
22 here are my comments, my concerns."

23 The Applicant then responds to those  
24 concerns and says either, "Yes, I agree. We're

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1 going to move that flag" or "No, we disagree, and  
2 this is why" or -- whatever. So Bob has done his  
3 job, the Applicant has responded, but Bob has not  
4 yet had the time -- because he only, I think, got it  
5 over the weekend -- to respond to the Applicant's  
6 responses to Bob's review.

7 Does that make sense to people? It's  
8 confusing, but -- I didn't want people sitting out  
9 there thinking, What are they talking about? So I  
10 just wanted to clarify a little.

11 CO-CHAIR PARSONS: And the other part of it  
12 is, Mass. DEP also does a technical review of the  
13 NOI submission and has provided comments that I  
14 believe the Applicant and Griffin Engineering have  
15 also seen. And those are factored into the  
16 technical review of this whole project. So just as a  
17 matter of course there.

18 MR. MAHONEY: We have not received the  
19 DEP's comments.

20 CO-CHAIR PARSONS: I did check the  
21 website --

22 CO-CHAIR McBRIDE: It's on the website.

23 CO-CHAIR PARSONS: They're up there.

24 MR. GRIFFIN: Good evening. We did, a

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1 couple of weeks ago, provide the Town and the  
2 Applicant with a letter describing some comments on  
3 their initial submittal. Their initial submittal  
4 included some design plans describing the proposed  
5 development, the grading, the drainage. They had  
6 also provided some storm water calculations, and  
7 that was the information that we reviewed.

8 Now, we have gotten some information this  
9 week from the Applicant. We really haven't had a  
10 chance to get into it in great detail, but I guess I  
11 would just briefly summarize the type of comments  
12 that we made. If the Applicant wants to discuss any  
13 of those tonight, that's fine.

14 But in general, I think our first comment  
15 was that, based on the traffic that would come and  
16 go from the site, based on their own traffic  
17 calculations, we thought that the project should be  
18 considered what's called a Land Use with Higher  
19 Potential Pollutant Load. This requires a little  
20 bit more stringent manner of storm water management  
21 at the site than would otherwise be required.

22 Their most recent response I did notice  
23 indicated that they would meet that particular  
24 higher standard. So that was one thing that I felt

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1 was important to what the storm water management  
2 system would eventually look like here.

3 We've asked them to provide some additional  
4 information regarding the characteristics of the  
5 soil and the groundwater at the site, particularly  
6 in regards to the design of several infiltration  
7 basins. They manage storm water throughout the site  
8 by building these crushed stone basins that water  
9 will go into during storm events and seep into the  
10 ground and thereby, you know, remove themselves  
11 essentially from the project.

12 So I think they've still got some work to  
13 do in regards to characterizing the soils and the  
14 groundwater at the project site, but that's  
15 something that we're going to be looking for in the  
16 future, and it will help support the design that  
17 they provide.

18 We had some specific comments about the  
19 design of the infiltration basins. We had some  
20 comments about how they calculated the amount of  
21 solids that would be removed from storm water during  
22 the design storms, and I think they've significantly  
23 improved that portion of their submittal.

24 We asked them for some background

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1 information about some of the proprietary storm  
2 water treatment devices that are going to be used in  
3 the project. At several locations they have special  
4 storm water treatment tanks that remove solids,  
5 oils, hydrocarbons, things like that from the storm  
6 water. We had asked them to provide some additional  
7 information in that regard, and I think they've  
8 provided that.

9 We made some suggestions about adding some  
10 structures at various locations in an effort to  
11 improve the ability to monitor the performance of  
12 the system and to improve the ability to maintain  
13 the system in the future, and I think they've taken  
14 a look at that issue and have made some helpful  
15 improvements in that regard. There were similarly  
16 some suggestions about inspection ports in some of  
17 the infiltration systems as well.

18 There were a number of locations where the  
19 information on the plans had some minor  
20 discrepancies to the information in the storm water  
21 report and the calculations that were provided in  
22 addition to the plans. So we've asked in several  
23 areas to check, was the number in the report correct  
24 or was the number in the plan correct, and I think

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1 they've clarified a number of those minor  
2 discrepancies. We've similarly asked them to check  
3 several elevations of structures related to the  
4 design of the storm water management system.

5 We've asked them to provide some  
6 information about the storm water pump along  
7 Franklin Street. I think they've provided some  
8 information, but hopefully there will be more  
9 information coming. As you know, most of the storm  
10 water that leaves the site goes through a pump  
11 station at Franklin Street. So the ability of that  
12 pump station to operate in the future is naturally  
13 of concern to us.

14 We had asked them to clarify some  
15 landscaping issues and the preparation of a  
16 particular report that's required prior to  
17 construction. I think they provided some clarifying  
18 information in that regard.

19 So I think that sort of summarizes the type  
20 of comments we made. Our letter was, you know, many  
21 pages long in regards to some of these minor  
22 details. I think it would be very boring if I  
23 attempted to go through all of that tonight, but I  
24 think that reasonably summarizes what we did.

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1           CO-CHAIR PARSONS: One of the questions  
2 that I have is I know that I've never seen the  
3 actual pump or pump station that's down there, but I  
4 know it's a critical component as to how drainage  
5 water leaves that area. And I guess, Bob, if you  
6 haven't looked at this particular part yet, I would  
7 be curious to know what the capacity of that pump  
8 station is and is it adequate to handle what it's  
9 currently seeing and potentially under future  
10 conditions.

11           MR. GRIFFIN: I think we share that  
12 concern. Just having briefly skimmed through the  
13 Applicant's most recent response, I think they  
14 provided some information in that regard, but I  
15 don't think they provided enough information to  
16 answer those questions quite yet. Hopefully that  
17 information will be coming.

18           CO-CHAIR PARSONS: Thank you, Bob. I know  
19 it's tough to cover the minutia.

20           But that's the type of review that's  
21 happening, and there is some back-and-forth between  
22 our peer reviewer, Griffin Engineering, and the  
23 Applicant as well. I guess the plan would be to  
24 continue to resolve these issues and these comments.

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1           MR. CICATELLI: Mr. Chairman, members,  
2 thank you. On that last point, I did want to just  
3 maybe have some discussion, if we could. There  
4 really has not been a great deal of back-and-forth,  
5 and the reason is, our report, of course, was  
6 submitted to Mr. Griffin. He then responded, and we  
7 then responded, and that was delivered to you last  
8 week.

9           But on advice of counsel, I had requested  
10 that the two engineers speak, and that didn't  
11 happen. Your counsel said that that would require a  
12 vote of this Board, which, again, is new to me.  
13 Since I started practicing before this Board 29  
14 years ago -- actually peer review wasn't done at  
15 that time -- but the Board required and I think  
16 encouraged communication between the project -- the  
17 Applicant's engineer and the peer reviewer so that  
18 the peer reviewer would be prepared perhaps to  
19 narrow the issues, would receive information,  
20 perhaps ask questions.

21           So what I would respectfully request is  
22 that the Board allow Mr. Griffin and the Applicant's  
23 engineer to continue to speak. And then perhaps  
24 when we come to another meeting, we will resolve

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1 issues, information will be provided. And if  
2 there's an error on a plan, that will simply take an  
3 e-mail or a phone call versus the public hearing. So  
4 if that could be done.

5 And then if the Commission would like, I  
6 don't know if there are any questions that the two  
7 engineers have right now, or if there are any  
8 specific questions the Commission members have, but  
9 we're more than willing to address those at this  
10 point. I do agree it doesn't make sense to go  
11 through the report line by line this evening.

12 CO-CHAIR PARSONS: Thank you. I guess  
13 the -- I remember the discussion about not feeling  
14 comfortable having the engineers talk, because I  
15 think we felt it was premature. We hadn't really  
16 seen what Mr. Griffin's comments were. So I think  
17 we just wanted to understand what was in the report  
18 before it was turned over so that we had the  
19 opportunity to have some dialogue with Griffin  
20 Engineering as well. That was at least my  
21 perspective.

22 I can certainly -- I mean, I don't know how  
23 anybody else feels about having the engineers speak.  
24 I think it's probably wise to do that. So I don't

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1 personally have a problem with it.

2 CO-CHAIR McBRIDE: I don't either.

3 MR. L'ESPERANCE: I'm good with you.

4 MR. WITTEN: Mr. Chairman, Attorney  
5 Cicutelli, I think, accurately represented the  
6 concern I raised, and there are e-mails between  
7 Steven and myself about this issue.

8 It's totally up to the Commission. The  
9 only thing I would suggest, and I think everyone  
10 would agree, is, if the Applicant's engineer or  
11 wetlands scientist is communicating with Mr.  
12 Griffin, that those e-mails go through either Cathy  
13 or through the Chair, because they are a public  
14 record. It shouldn't be Mr. Griffin's  
15 responsibility to then remember to send them to the  
16 Town.

17 So it's the Applicant's responsibility.  
18 And vice versa, when Mr. Griffin responds to Mr.  
19 Lowry, that should be copied to Cathy so it's a  
20 public record. That keeps the communications open.

21 Certainly engineers need to speak to  
22 engineers over technical issues, but in terms of the  
23 transmission of substantive material, reports,  
24 memoranda, commentary, my advice to the Commission

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1 is to do it through Cathy so it then serves as a  
2 public record.

3 CO-CHAIR PARSONS: I guess that's -- I  
4 understand, Jon, when memos and written  
5 documentation is kind of passed between the  
6 engineers. What about phone calls or anything like  
7 that? Are we suggesting that only the actual  
8 discussion be held at public meetings, or somehow,  
9 you know, meeting logs or phone logs are written and  
10 submitted? What's the best way to approach that?

11 MR. WITTEN: Well, I don't want to change  
12 your historic practice that's worked well for you  
13 all these years. One piece of advice on a project  
14 that is under great scrutiny, which this one is, for  
15 everybody's benefit, is the more it's subject to  
16 disclosure, the better. So the less that's  
17 discussed outside the public forum, the best.

18 But engineers need to speak to engineers.  
19 Mr. Griffin needs to speak to their engineer and Mr.  
20 Lowry. But I think when it comes to recommendations  
21 to each other, I would say they should be reduced to  
22 a writing. And that could be Bob does a summary,  
23 "Spoke to Dennis Lowry today. Here is the summary  
24 of what we talked about." All decisions, of course,

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1 are left to the Commission anyway.

2 But I think that's just good public policy.

3 CO-CHAIR PARSONS: So I guess try to  
4 keep -- to try to sort of address this issue, any  
5 issue, with sort of generally having written  
6 documentation passed between the engineers. I guess  
7 a quick call for clarification on a couple of  
8 drawings is fine, I would imagine, through a phone  
9 call.

10 Anything of any significance, and I'll  
11 leave it up to Griffin Engineering to sort of pass  
12 the information along. But, yes, I think we should  
13 move forward with that type of communication to try  
14 to resolve whatever technical issues there may be.

15 So I would be fine with that. Is everybody  
16 else okay with that?

17 CO-CHAIR McBRIDE: Yes.

18 MS. RENNARD: Yes.

19 MS. DAY: Yes.

20 CO-CHAIR McBRIDE: Makes sense.

21 CO-CHAIR PARSONS: Any further questions  
22 from the Commission? I think we'll open it up to  
23 the public to see if there are any further comments.

24 MR. L'ESPERANCE: I'm all set.

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1           MS. DAY: I'm not sure, this may be  
2 procedural. So I'm looking at -- this is for you,  
3 Bob Griffin. I'm looking at the first item. It's  
4 Land Use with Higher Potential Pollutants Load. I  
5 know it's an item that's supposed to be checked off  
6 in the storm runoff analysis and the documentation  
7 for Mass. DEP, and I know you were talking and you  
8 said that they disagree.

9           So their response is, "We do not  
10 necessarily agree with this interpretation. The  
11 project is in compliance with the requirements of  
12 the Standard, and we have updated the Stormwater  
13 Report to reflect this."

14           You mentioned that you guys have gone back  
15 and forth and that they had made some adjustments.  
16 Does that need to be reflected, and is it reflected  
17 in here? Because I know just in the Standard 5 on  
18 here it's not. Does that need to be addressed?

19           MR. GRIFFIN: It certainly does need to be  
20 addressed. And I think -- again, I've skimmed  
21 through some of the materials they've provided. I  
22 think they have bumped up their storm water  
23 treatment so that it meets the one-inch requirement  
24 instead of a half-inch requirement.

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1           But I think before this project is closed,  
2 we need to have a storm water form that is current.  
3 We need to have all the appropriate checks and  
4 information in those forms and stamps on the plans  
5 and all that. So I think we're probably getting to  
6 that point. We may not be there yet.

7           MS. DAY: Does that change the plan? I  
8 don't know this specifically, but does that change  
9 other parts of the plan? Because it sounds like  
10 there's a disagreement as to whether the traffic  
11 that will be flowing through here qualifies under  
12 the standard. So does that change other parts of  
13 the project? Or is it just specific -- I'm not  
14 sure.

15           MR. GRIFFIN: I guess I'm not going to  
16 attempt to speak for the Applicant. I'm not sure  
17 what they meant by they don't necessarily agree with  
18 our opinion. I'll let them speak to that. But as  
19 far as I'm concerned, you know, if you've got to  
20 provide a water quality volume that is equal to one  
21 inch of rainfall falling on all the impervious  
22 surfaces, that's twice as much volume as if it was  
23 half an inch falling on the impervious services. So  
24 I think it is a higher standard, it's a higher level

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1 of treatment. As I skimmed through the documents,  
2 it looks like they had provided a higher level of  
3 treatment.

4 CO-CHAIR PARSONS: Anything else?

5 Just to restate, not having the opportunity  
6 to review the storm water calculations or anything  
7 myself, the flooding issue, I think, and  
8 understanding really what's proposed -- and I know  
9 that there's going to be some further discussion  
10 about that -- would be, I think, something that we  
11 would want to get a better understanding on,  
12 understanding what the existing condition is versus  
13 what the proposed condition is, and even so, how is  
14 that system functioning today. That's just, for me  
15 personally, an issue that I want to see resolved.

16 If there is nothing else, I'll open it up  
17 to the public for any --

18 CO-CHAIR McBRIDE: I just have one other  
19 comment, the same kind of thing. Everybody knows it  
20 floods whenever there's rain. I know -- and I'm not  
21 going to say this articulately, so, Bob Griffin,  
22 please help me when I get screwy. But there's a  
23 recent change to either DEP or EPA about, you know,  
24 the hundred-year storm, this storm or that storm.

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1 It's all recent, because, as everybody knows,  
2 something is going on and every storm is worse than  
3 usual, and the storm water protection measures  
4 haven't quite caught up to that. I just don't know  
5 if we are able to jurisdictionally address that.  
6 I'm not saying this well at all, am I?

7 MR. GRIFFIN: I think the DEP storm water  
8 management guidelines are pretty clear, if you  
9 follow them, as to what amounts of rainfall should  
10 be used for the various design storms, and I think  
11 they used the appropriate amounts of rainfall in  
12 their calculations.

13 To the extent that people think that they  
14 should be using even greater storms because the  
15 climate is changing or something else is going on in  
16 the universe that we haven't quite figured out yet,  
17 I would just note that I don't think that is  
18 embodied in the DEP storm water management  
19 guidelines right now. I think if you wanted to ask  
20 these guys to consider what happens in a different  
21 storm, you sort of have to ask them that.

22 CO-CHAIR McBRIDE: Okay. Thank you.

23 CO-CHAIR PARSONS: Anything else from the  
24 Commission?

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1 MS. DAY: I have one more question, and  
2 this is -- it was mentioned to me, and I'm not sure  
3 of the specifics, but I know we have Resource Areas  
4 that are not on this property that may be affected.  
5 And I was under the impression that we could ask for  
6 a storm water analysis for those properties, because  
7 they may be affected. And I don't know if that's  
8 included, but if that is something we could do, I  
9 would be interested. I mean, I think people can say  
10 that there are other areas that flood significantly  
11 around the property -- I know Sunset Road -- and  
12 there is a Resource Area there.

13 So are we at liberty to ask for that? I'll  
14 pass this to you, because I don't want to read it,  
15 but -- under this (indicating).

16 MR. WITTEN: Mr. Chairman, the Commission  
17 absolutely can ask for off-locus impacts. That's  
18 part of your charge under the Act, and especially  
19 under the Bylaw. The Commission just denied it  
20 under the Bylaw, because the Applicant failed to  
21 file under the Bylaw.

22 So it's my opinion, subject to Bob's  
23 technical suggestions, that you have every right to  
24 ask, where there is such historical evidence of

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1 known flooding. It would almost be an abdication if  
2 the Commission didn't ask the Applicant to provide  
3 that information.

4 CO-CHAIR McBRIDE: On that, then, I'm going  
5 to add one more thing. Everyone has talked for  
6 years -- and I don't know if this is the right  
7 application; I don't want to be unfair in any manner  
8 at all. But everybody talks about when the pump is  
9 running, when the pump isn't running. When the pump  
10 isn't running, everything backs up, floods Weiss  
11 Farm.

12 And then -- I don't know what the truth is,  
13 and I guess what I'm trying to find out is, is there  
14 some way we have a right to get to the truth,  
15 whether it's this applicant helps us get there,  
16 or -- I don't know that it would be appropriate that  
17 we charge them to get there.

18 But there is something under Franklin  
19 Street. Everyone seems to know there's a culvert  
20 that's cracked or something is going on so the water  
21 doesn't get out the other way. I just wish -- since  
22 I've been in town and since I've been on the  
23 Commission, I hear about it all the time.

24 And this might be the opportunity that the

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1 Town finally has to have somebody say, We need to do  
2 some kind of comprehensive review -- and I don't  
3 mean necessarily that Corcoran has to do it -- but  
4 that the Town take heed and do some kind of  
5 comprehensive review of that area of town to find  
6 out what is really going on so that it stops.

7 And I don't know if I have even explained  
8 that well, how we go about addressing it or  
9 identifying it.

10 MR. WITTEN: I would say, Mr. Chairman,  
11 that the Commission has the right to require an  
12 applicant for a Notice of Intent under the Act and  
13 the Bylaw, in this case now just the Act, to assure  
14 the Commission that the interests of the Act are  
15 being met. And one of them, as the Commission is  
16 certainly well aware, is flooding and storm water  
17 management. And your scope of review is not limited  
18 to the four corners of the project.

19 CO-CHAIR PARSONS: And I would probably say  
20 that it's probably valuable here to understand what  
21 the capacity of the existing station is and how it  
22 impacts the site now. So I think that may be step  
23 one, and it sounds like we're sort of moving in that  
24 direction.

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1           But it is a critical part of this, and  
2 storm water and storm water management is a big part  
3 of what we look at and what we have under our  
4 jurisdiction. So if there's an opportunity to  
5 improve a condition, that's a no-brainer.

6           And I think we're going to have to get  
7 through that process. It may be complicated, and it  
8 may involve others, not just the Applicant. But we  
9 have to move in that direction. Status quo down  
10 there doesn't seem like it's working. So we've got  
11 to figure out a way -- figure out what the issue is,  
12 and then go from there.

13           MR. WITTEN: Mr. Chairman, could I just  
14 ask, maybe through you to the Applicant or counsel,  
15 are you making a presentation tonight, Richard? Is  
16 there a response that you have to Mr. Griffin?

17           MR. GALLOGLY: It's in writing. We  
18 submitted it to the Commission.

19           MR. WITTEN: So do you plan on making any  
20 kind of oral presentation?

21           MR. GALLOGLY: We can do that, go through  
22 the comments one by one.

23           MR. WITTEN: Mr. Chairman, I defer to you.  
24 What I would say is, I do have a copy of the CD,

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1 which are your responses, but it's a public hearing,  
2 the public is entitled, there are members from  
3 abutting communities here as well that don't have  
4 access to the CD. And that, I think, speaks  
5 precisely to what I was saying before about the  
6 engineer speaking to the engineer.

7 It's a public hearing. So it doesn't have  
8 to be this evening, but I think Mr. Lowry or Mr.  
9 White or one of your technical folks needs, I would  
10 ask, to make a presentation or at least a commentary  
11 on Mr. Griffin's comments so the public can  
12 understand where there is a dispute or differences.  
13 And it could be tonight or any time that you feel is  
14 appropriate.

15 MR. CICATELLI: It's up to the Chair's  
16 pleasure.

17 CO-CHAIR PARSONS: I would certainly  
18 entertain a dialogue now, given it is a public  
19 hearing.

20 There are items that are maybe of lesser  
21 consequence, and there may be items that are more  
22 critical to the review. So I guess -- I certainly  
23 would entertain any discussion on this, but I would  
24 probably want to focus on the ones of a more

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1 critical nature. Maybe the pumping station is one  
2 of those items.

3 If there are others, and specifically if  
4 there is a difference of opinion from our peer  
5 reviewer to the Applicant's engineer, that's  
6 probably -- this is probably a good place to bring  
7 that up so that we know we have a thought on this,  
8 you have a thought on this and they're not the same  
9 thought and there's no plan to change that.

10 So maybe I would suggest we focus on the  
11 more critical issues. We can talk about anything  
12 relative to the report, but, again, I would rather  
13 focus on the ones of higher consequence, if  
14 possible.

15 CO-CHAIR McBRIDE: Can I make a comment? I  
16 know that Bob Griffin, in a phone call with me I  
17 think it was yesterday, said that you hadn't had the  
18 opportunity to review the Applicant's responses to  
19 Bob's questions and you weren't going to be prepared  
20 tonight.

21 I don't want to put you on the spot. If  
22 you're not ready, we can postpone that part of it to  
23 another meeting. I just want to be fair.

24 MR. GRIFFIN: No, I think this would be

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1 very helpful. I might even learn something, so I'd  
2 like it hear from these guys.

3 CO-CHAIR PARSONS: So with that, the  
4 engineer for the Applicant, is there anything -- I  
5 guess maybe start the discussion based on the review  
6 comments, understanding it's a process now and you  
7 haven't gained access to the DEP's comments, which  
8 would be another part of it. But maybe just open it  
9 up from your perspective, what are some of the  
10 ongoing issues.

11 MR. WHITE: Good evening. My name is Jim  
12 White. I'm with the engineering firm of H.W. Moore  
13 Associates. We're the civil engineers on the  
14 project.

15 We have received Mr. Griffin's report and  
16 responded to it. We made every attempt to respond  
17 in a positive manner to the comments. I thought all  
18 the comments are very good. There are one or two  
19 items we have a slightly different opinion.  
20 However, we did try to comply with what the  
21 regulations state and what Mr. Griffin's  
22 interpretation of those regulations were.

23 The Land Use with Higher Pollutants Load,  
24 we did update the plans to meet that regulation as

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1 requested by Mr. Griffin. The reason why my opinion  
2 is a little different than his is that DEP lists  
3 many, many items that are land uses with --

4 MS. DAY: I'm very sorry. I can't hear.

5 MR. WHITE: I'm sorry. DEP lists many  
6 items or many uses, land uses for Higher Pollutant  
7 Loads. Residential housing is not listed as one of  
8 those uses. However, in the regulations, they  
9 mention parking areas.

10 One, I believe, is 1000 vehicles a day or  
11 1500 vehicles a day. We do have more than that.  
12 Mr. Griffin used that to classify this as a Land Use  
13 with Higher Pollutant Loads. I've not heard that  
14 interpretation before. Mr. Griffin may be correct.  
15 So we updated our plans accordingly to meet this  
16 requirement. So we do meet that requirement, and we  
17 comply with DEP regulations.

18 We made some other changes or updates to  
19 the plan based on Mr. Griffin's comments. I think  
20 they're good improvements to the plan. We added  
21 what's called isolated rolls or cleaning rolls into  
22 our infiltration systems to maybe better clean the  
23 systems.

24 We made other requirements. The TSS

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1 removal, we had a slightly different opinion, but we  
2 meet DEP requirements on that also.

3 Pump station, we did submit information  
4 showing how much the pump pumps. Mr. Griffin  
5 mentioned that he'd like some more information. We  
6 can certainly supply the information he has  
7 requested or any other information he may want to  
8 have on this project. And I look forward to talking  
9 to Mr. Griffin and any other questions he may have  
10 on this project. Thank you.

11 CO-CHAIR PARSONS: I don't know who this  
12 question is for, maybe for both engineers. But  
13 there's a couple of, I guess, phases to the project.  
14 I mean, you've got managing it through construction,  
15 which is probably one of the more critical parts of  
16 the project where you've got sedimentation/erosion  
17 control issues.

18 One of the other concerns -- I think I  
19 speak for the Commission here -- is that, given the  
20 size of the project, I'm a little concerned, long  
21 term, with the viability of the Resource Areas.  
22 It's hard to forecast into the future, but from a  
23 personal perspective, and again I think I speak for  
24 the Commission here as well, I want to make sure

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1 that not just during construction and not just  
2 during the first year or two -- because a lot of the  
3 systems do require maintenance, and this is  
4 something we see on just about every larger  
5 development -- that the long-term viability of the  
6 Resource Areas there are sustained and improved.

7 And I guess at this point I'm not sure that  
8 that's -- I don't know if I'm comfortable with that.  
9 I'm not sure that's an easy question to answer,  
10 because you're forecasting and you're predicting.

11 Is there anything -- maybe, Bob, I'll ask  
12 you as well and the engineer for the Applicant --  
13 has any thought been put into that? And how, I  
14 guess, theoretically are we planning on doing that,  
15 making sure that the long-term viability of these  
16 Resource Areas that serve a purpose are maintained  
17 and approved? O&M and things of that nature, those  
18 are all being looked at as part of this process.

19 MR. GRIFFIN: I think it's fair to say that  
20 the O&M information that they provided primarily  
21 involves the operation of the storm water system. I  
22 haven't seen anything regarding maintenance of  
23 nearby wetland areas that are on the property or  
24 inspections of those wetlands for invasive species

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1 control or anything like that. I guess I'd have to  
2 turn it over to the Applicant to ask what their  
3 intentions are in that regard.

4 MR. MAHONEY: Could you repeat the  
5 question. We couldn't hear the question.

6 MR. GRIFFIN: So I think Mr. Parsons was  
7 asking about the long-term viability of the on-site  
8 wetland resources, and he asked if there were  
9 specific O&M measures included in the documents  
10 regarding that. I told him that I didn't recall  
11 seeing anything about maintenance or long-term  
12 viability of the wetland resources on the site, and  
13 so I said that I think we would need to hear from  
14 you guys regarding what your intentions were in that  
15 regard.

16 MR. WHITE: Thank you. Unfortunately, Mr.  
17 Dennis Lowry, our wetland scientist, is not here  
18 tonight. We can certainly work together with the  
19 Commission to try to come up with something to  
20 maintain it.

21 Every Commission is different. Some don't  
22 want you near the wetlands, and others might want to  
23 help it out. So we certainly are willing to work  
24 with you on that issue.

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1 CO-CHAIR PARSONS: I think I'm concerned  
2 mostly, just looking ahead, I know that a lot of the  
3 components that you're proposing will have some O&M  
4 to it. And it's -- just even long term, and again  
5 it may be hard to quantify, but given the fact that  
6 it's a farm now and we're putting a development  
7 there that isn't a farm, just that we're able to  
8 ensure in some way, do whatever we can that we're  
9 going to ensure the best we can that the wetlands  
10 and the Resource Areas stay viable and serve the  
11 purpose that they serve now.

12 Any other questions from the Commission  
13 members?

14 MR. L'ESPERANCE: The thing that does  
15 concern me is that you can build this project and  
16 you can meet every single standard that the DEP  
17 wants and that the environmental law requires, but  
18 once the water gets off that site, where does it go?  
19 And I think that's a big concern as well, is make  
20 sure that we're not making it worse somewhere else.

21 CO-CHAIR PARSONS: Okay.

22 MR. L'ESPERANCE: The act of Corcoran is  
23 not an act of God. So we have to be concerned with  
24 what happens downstream.

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1           It also affects all of these people in this  
2 room. It's going to affect land values. It's going  
3 to affect a lot of other things. Your project may  
4 be slick and clean, but then other people may have  
5 to deal with the results of it in the future.

6           So we want to make sure that that is all  
7 covered. I've been in that situation myself, making  
8 sure that my neighbors weren't affected by something  
9 that I was doing, even though they were beyond my  
10 project.

11           So I want to make sure that this project  
12 does not have an adverse effect on the people  
13 downstream. You know, it goes as far as Melrose,  
14 all the way down to the little pond down there  
15 across from the high school.

16           So we have to keep all that in mind. And  
17 if you put a big block of buildings in there and the  
18 water -- you might be able to keep it dry where you  
19 are, but you can't create another problem somewhere  
20 else. That's my major concern. I want to be able  
21 to feel satisfied with that before I ever say yes to  
22 this project.

23           CO-CHAIR PARSONS: Okay. Thank you.

24           Anybody else? (No response)

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1           I guess I'd open it to the public for any  
2 questions, comments. If you could state your name  
3 and address, please.

4           And before we open, because this is the  
5 Conservation Commission, our purview and  
6 jurisdiction is wetlands, wetland protection and  
7 storm water. So I know there are a lot of other  
8 issues that may be surrounding the project, but we  
9 want to keep it specific to those issues, if you  
10 can.

11           MS. LAWLER: My name is Tara Lawler. I  
12 live at 53 Walsh Ave.

13           Is the public able to request the  
14 off-location impacts? And if so, I'd like to  
15 request it for 188 Franklin Street, which is  
16 Teachable Moments. My daughter happens to attend  
17 the day care there, and it's a nightmare after the  
18 rain. It goes as far as where the dumpster is. And  
19 I can provide pictures.

20           CO-CHAIR PARSONS: I think the public --  
21 the documents that are being submitted are public  
22 records. So you will have access to whatever has  
23 been submitted.

24           There's a balancing act here. I guess not

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1 at this point knowing what all the downstream  
2 impacts are going to be, I'm not sure you're going  
3 to find the answer you're looking for. But you can  
4 certainly have access to the documentation. I  
5 think, based on some of the discussions tonight,  
6 we're concerned about what is happening on site and  
7 how things are moving off site as well.

8 I'm not sure you will find specifically  
9 your answer, but the information is available to  
10 you.

11 MS. LAWLER: Because it is adjacent to the  
12 property on the same side.

13 CO-CHAIR PARSONS: You're an abutter. Then  
14 that should come out of this review and this whole  
15 process.

16 CO-CHAIR McBRIDE: You're right at the  
17 corner of Gerald Road and Franklin?

18 MS. LAWLER: Yes. Right across from -- it  
19 used to be Temple Judea.

20 CO-CHAIR PARSONS: Mr. Griffin has a good  
21 point. If you have pictures, we would love to have  
22 them for the record.

23 MR. EATON: John Eaton, 18 Citation Ave.

24 I'd like to just applaud -- if I understood

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1 you correctly, I want to applaud the Conservation  
2 Commission for at least considering the denial of  
3 this application for failure to comply with our Town  
4 Bylaws, if that is your decision. Speaking for  
5 myself, regardless of all the technical aspects in  
6 the law, I would support you in that.

7 Construction so close to the wetlands would  
8 have an adverse impact on our wetlands, according to  
9 our Bylaws, and I think we need to show some  
10 backbone here. If we believe that, we need to stand  
11 by that.

12 And the only waiver request that I'm aware  
13 of has to do with the 25-foot zone for the upgrading  
14 of pedestrian path and to restore degraded areas.

15 But the real big impact of all this  
16 construction is a big, big unknown. According to  
17 our Bylaws, it could have a very adverse impact,  
18 either immediately or in the future, and nobody  
19 really has come up with a concrete answer on that.

20 The other thing I wanted to mention on  
21 this, you're going to get an interpretation, I  
22 understand, from DEP, if I understood you correctly,  
23 on the Wetlands Protection Act. And all I want to  
24 say is, if there is -- whatever interpretation that

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1 you get, I hope that you will make this public  
2 somehow. Can you put that interpretation on the  
3 Town website or get it out to the public somehow?

4 CO-CHAIR McBRIDE: (Nods head)

5 CO-CHAIR PARSONS: Yes. Again, it is all  
6 public records, so it will be available to the  
7 public, certainly.

8 MR. EATON: Okay.

9 CO-CHAIR PARSONS: The means by which we do  
10 that we'll talk about, but it is available, it will  
11 be available.

12 MR. EATON: I just don't want that decision  
13 to come to you guys and then the public never hears  
14 about it, and then down the road some kind of  
15 decision gets made on this application that we don't  
16 know all the background.

17 CO-CHAIR PARSONS: Just by coming to the  
18 public hearings you'll have all the information that  
19 we have. So we'll keep you in the loop.

20 CO-CHAIR McBRIDE: And, John, just to be  
21 clear, we did vote tonight to deny on the Bylaw.

22 MR. BUCKLEY: We can place that on the  
23 website as well.

24 MR. EATON: Oh, good. I still don't hear

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1 everything perfectly.

2 MR. BOUSSY: Good evening. Tom Boussy, 19  
3 Ellen Road. Two questions really. We talked about  
4 pumping -- I just want to make sure I understand  
5 this correctly -- underneath Franklin Street. That  
6 goes into a brook behind Sunset, is where that kind  
7 of comes, and I think that eventually leads down to  
8 Whip Hill. Am I correct in saying that?

9 CO-CHAIR McBRIDE: I don't know if it's  
10 Whip Hill.

11 MR. BOUSSY: This creates a maintenance  
12 nightmare on that brook and puts the Town under a  
13 liability that we shouldn't -- for excessive water  
14 going through there.

15 I'm wondering if we have any recourse on  
16 excessive flooding down in the Whip Hill area, which  
17 is actually downhill of Weiss Farm, which you  
18 wouldn't think. I guess that's my first question.

19 My second, I'd like to know -- the  
20 attorney's interpretation of the DEP law, he said he  
21 disagreed with it. For the record, could I find out  
22 what his interpretation is? Thank you.

23 CO-CHAIR PARSONS: At this point, I will  
24 take the first question first. I'm not sure exactly

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1 where things flow beyond the site. So I think we've  
2 got a little bit of work to do relative to that one.  
3 And maybe that comes out through the peer review.  
4 But it's duly noted certainly.

5 The second question I'll defer to the  
6 attorney for the Applicant on interpretation of the  
7 regulation, if he so chooses.

8 MR. GALLOGLY: I've said all I'm going to  
9 say about that.

10 CO-CHAIR PARSONS: The response is no  
11 further comment on that. Whatever has been stated  
12 has been stated.

13 MR. DAY: Michael Day, 49 Perkins Street,  
14 also the State Representative for Stoneham. Just  
15 kind of piggybacking off that last answer, I've been  
16 obviously following the hearings at the Board of  
17 Selectmen, either in person, on TV or through  
18 talking with members of different Boards and  
19 Commissions. And it occurs to me that this has been  
20 a giant cat-and-mouse game from the Developer, from  
21 the Applicant throughout.

22 The Board of Selectmen asked for meetings.  
23 They adhere to the technical base that they can  
24 adhere to, the Applicant. The Board of Selectmen

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1 asks for resubmitted drawings, resubmitted  
2 proposals, and they get a slapdash response. The  
3 Conservation Commission asks for the Notice of  
4 Intent to be submitted under the Bylaws because of  
5 environmental concerns. That's ignored by the  
6 Applicant.

7 This is more of a comment than a question  
8 for the Applicant. I want you to know that, as this  
9 continues, this legal maneuvering, you've got to  
10 remain here -- even if you win this battle legally,  
11 you've got to remain in this Town. And if this  
12 behavior continues, you won't have any friends in  
13 this town. You certainly won't have any friends in  
14 the State House of Representatives.

15 MR. CICATELLI: Mr. Chairman, can we stick  
16 to the issues before the jurisdiction.

17 MR. DAY: I'm just warning the Applicant  
18 that these repercussions go beyond tonight and they  
19 go beyond this town. Thank you. (Applause)

20 CO-CHAIR PARSONS: Any other questions or  
21 comments? Name and address, please.

22 MR. WILSON: Russ Wilson, 35 Tamarock  
23 Terrace. I think one of the things we've ignored,  
24 we've addressed indirectly, but we really have

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1 ignored the substance to the issue. The gentleman,  
2 the corporation, have purchased the land. The land  
3 has some existing problems, and you own the problems  
4 now.

5 Right now we get flooding, just as the land  
6 that goes across Franklin Street into a residential  
7 neighborhood of 80 to 100 homes. You bought the  
8 land, and you own that problem. You have to fix all  
9 of the problem. And you can argue any which way you  
10 want, but I think we have a good argument going in  
11 our direction.

12 And I would refer to counsel to follow up  
13 on that and find out exactly what the liabilities  
14 are there. Thank you. (Applause)

15 MR. CICATELLI: Mr. Chairman, my client has  
16 not purchased the property at this point. So that  
17 is not correct.

18 CO-CHAIR PARSONS: I don't know if you  
19 heard that or not. The attorney for the Applicant  
20 said the property has not yet been purchased by the  
21 Applicant.

22 MR. DAY: Forewarned is forearmed.

23 CO-CHAIR PARSONS: I guess along those  
24 lines, those issues that you were referring to, I

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1 think, are a concern to all of us. So through this  
2 process, technical review, we're hoping to resolve  
3 those and to understand what those problems are and  
4 how we're going to resolve them.

5 MR. SOLOMON: Bill Solomon, Town Counsel.  
6 Just to follow up on Selectman Boussy's question and  
7 to follow up on the comment about practice for 20 or  
8 25 years, I would just say that frankly, in my  
9 experience as Town Counsel, I don't think I've ever  
10 been at a hearing where the legal point, much less  
11 based on a regulation, was raised and counsel for  
12 the applicant said, "Well" -- didn't say "I need to  
13 look at it" or "I'll think about it" or "articulate  
14 it," but had a very clear response, albeit  
15 conclusory, that they read it differently.

16 And I understand how someone would want to  
17 read it differently, because the regulation talks  
18 about -- the last phrase talks about it shall be  
19 deemed to have been applied for, all permits  
20 obtainable at the time of filing. There's a phrase,  
21 "At the time of filing." And that time of filing  
22 clearly means the time of filing of the Notice of  
23 Intent, that at the time of the Notice of Intent you  
24 have to have the Comprehensive Permit or been

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1 denied.

2           So I would again, through the Commission,  
3 say that I don't think I've ever seen anyone refuse  
4 to provide a basic answer as to the basis of their  
5 legal opinion. We're not asking for a legal memo.  
6 We understand people reserve the right to put it in  
7 writing, to further respond. But not to at all say  
8 what the basis is for the opinion that the  
9 regulation, which seems clear on its face and  
10 consistent with the whole purpose of the Wetlands  
11 Protection Act, I don't think I've ever seen that,  
12 even in the smallest, most inconsequential hearing  
13 I've ever attended.

14           So I think I repeat, again through the  
15 Chair, following Selectman Boussy's comment, some  
16 explanation as to the different reading would be  
17 helpful. Particularly as the Commission, through  
18 its counsel, will be writing to the DEP, it would be  
19 nice to know what the basis is for the different  
20 reading. (Applause)

21           CO-CHAIR PARSONS: Thank you, Bill.

22           Anybody else from the audience? Question,  
23 comment?

24           MS. O'NEILL: Ann Marie O'Neill, 118

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1 MacArthur Road, also on the Board of Selectmen. One  
2 of the things I heard you say tonight and it  
3 concerns me is that you're looking at the DEP  
4 regulations, and it's the history of what you're  
5 looking at, rainfall, et cetera.

6 But one of the things that concerns me, and  
7 I think the rest of the room will share this concern  
8 with me, is that if you look at this winter alone,  
9 we had record snowfall. So what you're looking at  
10 isn't really taking into account what's going to  
11 happen, and based on this winter and some of the  
12 last seasons that we had, quite likely will have.

13 I would like you to address that. I mean,  
14 frankly, you all look a little bored with this,  
15 because we're looking for answers, and you're just  
16 saying "No comment."

17 This is our town. You do have a  
18 responsibility. You have ethics to the town that  
19 you're going to come into, to these folks who own  
20 property. You don't seem to care about that at all,  
21 and it's just maddening. (Applause)

22 MR. MAHONEY: Peter Mahoney with John  
23 Corcoran Company.

24 I think the point was raised by another one

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1 of the Commissioners about what standards the plans  
2 are going to be measured by. Right now we've  
3 measured them by the standards that the DEP have.  
4 If the Board or the Commission is requesting  
5 something else, we can attempt to take a look at  
6 that. I don't know what other standard to go by in  
7 our initial application, our initial filing.

8 CO-CHAIR PARSONS: Thank you. Any  
9 additional comments, questions? (No response)

10 MR. WITTEN: So, Mr. Chairman, members of  
11 the Commission, I think the next course of action  
12 will be to schedule -- to continue the hearing, but  
13 first obtain the Applicant's agreement to continue  
14 the hearing to a date certain, just to be sure we're  
15 in agreement with the continuation.

16 I will prepare a written decision  
17 reflecting the Board's vote denying pursuant to the  
18 Bylaw. That decision should then be signed by the  
19 Commission members. A copy will be sent certified  
20 mail to Attorney Cicutelli, and that decision and  
21 the wetland form will be therefore recorded at the  
22 Registry of Deeds. The Applicant has an appeal  
23 process to the Superior Court, if it chooses to take  
24 one.

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1           So I would say, Mr. Chairman, that before  
2 the Commission continues the hearing, that we obtain  
3 from Attorney Cicutelli or Attorney Gallogly an  
4 assent to continue the public hearing to a date  
5 certain.

6           MR. GALLOGLY: Do we have a date?

7           CO-CHAIR PARSONS: I think we said April  
8 9th. April 9th we start at 7:00, but you will  
9 probably be third or fourth on the list that  
10 evening. We've stop assigning times, because we run  
11 over --

12          CO-CHAIR McBRIDE: It makes people mad.

13          CO-CHAIR PARSONS: With advertising, it  
14 makes it difficult. So you're the third -- Weiss  
15 will be the third item on the agenda for April 9th.

16          MR. CICATELLI: And that's fine, but I  
17 think we still should put the times.

18          CO-CHAIR PARSONS: We'll say 7:30.

19          MR. WITTEN: Could I just ask, Mr.  
20 Chairman, for the record, Attorney Cicutelli, do we  
21 have your assent to continue to that date?

22          MR. CICATELLI: Yes.

23          MR. WITTEN: Thank you.

24          CO-CHAIR PARSONS: With that, then I would

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1 welcome a motion to continue.

2 CO-CHAIR McBRIDE: I make a motion that we  
3 continue the public hearing for the Commons at Weiss  
4 Farm to April 9th at 7:30, probably here. I think  
5 tonight people could hear a little better than last  
6 time, and it's a little warmer. Thank Cathy. She  
7 runs the Town. Everybody knows that. So we'll see  
8 you all then.

9 Can I just please ask, we have a bunch more  
10 items on our agenda. I know you all want to talk  
11 about this. Can you please either stay and hear all  
12 this other fascinating stuff, or please take your  
13 comments outside so that we can keep running the  
14 meeting. Thank you very much.

15 MS. DAY: Second.

16 CO-CHAIR PARSONS: All in favor? (Chorus  
17 of ayes).

18 (Whereupon the hearing  
19 was adjourned at 8:57 p.m.)

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C E R T I F I C A T E

I, Carol H. Kusinitz, Registered  
Professional Reporter, do hereby certify that the  
foregoing transcript, Volume I, is a true and  
accurate transcription of my stenographic notes  
taken on March 19, 2015.



Carol H. Kusinitz

Registered Professional Reporter

- - - -

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