

**TOWN OF SOUTH WINDSOR
INLAND WETLANDS AGENCY / CONSERVATION COMMISSION**

MINUTES: October 20, 2021 Meeting

MEMBERS PRESENT: Barbara Kelly, Adam Reed, John Blondin, Jack Phillips, Paul Cote, Richard Muller, Arthur Jennings, James Macdonald

ALTERNATES PRESENT: Daniel Katzbek seated for Elizabeth Warren

COUNCIL LIAISON PRESENT: Steven King, Jr.

STAFF PRESENT: Jeff Folger, Sr. Environmental Planner
Michael Lehmann, IT
Gina Saccente, Recording Secretary

THE FOLLOWING ARE MOTIONS MADE DURING THE REGULAR MEETING OF THE INLAND WETLANDS AGENCY/ CONSERVATION COMMISSION:

Chairperson Kelly called the meeting to order at 7:01 p.m.

PUBLIC PARTICIPATION: None

PERMIT EXTENSIONS: None

CORRESPONDENCE AND REPORTS: None

BONDS: None

MINUTES: 09/15/2021- The minutes of 09/15/2021 were approved by consensus.

CONSERVATION COMMISSION: Jeff Folger

Mr. Folger showed a series of photographs of the brook behind the Town Hall and the Eagle Scout bridge project that illustrated how the brook reacted to the storms in the summer. Photo 1 showed concrete block abutment blocks on either side of the bank from May 23 when they were installed. The brook was completely dry. Photo 2 showed the brook during a storm on August 17. The Scout took picture. The brook has risen and gone above one of the blocks and within 3 inches of the other block. That's about 10 inches higher than the 100 year flood elevation. In last photo take on September 30th shows what happened to the bank because of erosion that occurred.

Chairperson Kelly commented that we may want to rework the bridge a little and slight revisions to anchor or raise the bridge. Folger confirmed that they will be anchoring the bridge down to the abutments that are there. This is just an illustration of how the bridge reacted to the storm, and that they had far exceeding the 100 year storm event. Chairperson Kelly comments "Looks like it is going to make an effort to change channel at some point."

WETLAND OFFICER: Jeff Folger

Folger presented the violation order for 40 Sea Pave Rd An attempt to make contact with owner to get an idea if they intend to do further work or not has not been answered. The site is fully graded, which includes wetland area to the East. Chairperson Kelly suggests to take this up in other business.

PUBLIC HEARING:

Appl. #21-36P- Talbot Lane- 25 & 5 Talbot Lane, 475 & 551 Governors Hwy- IWA/Conservation Commission application for the construction of an industrial distribution center, parking and storage areas, storm water structures and associated utilities on property located southerly of Governors Highway and easterly of Talbot Lane- Industrial Zone (I) Zone. **(Continued from 8/4/21 & 9/1/21)**

Chairperson Kelly called for the continuation of the public hearing of Appl. 21-36P 25 Talbot lane. Chairperson Kelly seated Alternate Commissioner Katzbek for Commissioner Warren. Chairperson Kelly brought up the addendum to the application since the last public hearing. She, ask if the applicant would like to address changes to the application since the last public hearing.

Peter DeMallie from Design Professionals represented the applicant UW Vintage LLC requesting IWACC approval for a 359,640 sq. foot industrial building distribution center in the Industrial zone at 5 and 25 Talbot lane and 475-551 Governors highway and client has acquired the property. Mr. DeMallie introduced the consulting team for the meeting. Jim McManus principle of JMM Wetland Consulting Services out of Newtown, CT. Benjamin Wheeler professional landscape architect director of operations at Design Professionals, Colleague Daniel Jameson licensed professional engineer, design professionals project manager for this project, Emily Perko ecologist and soil scientist with GEI, Matt Glunt professional engineer with GEI consultants out of Glastonbury, and Attorney Jim Conner of Updike, Kelly and Spellacy Law Firm here for legal direction and he will conclude applicants formal presentation.

Mr. DeMallie stated that the applicant has "gone through great measures to reduce impacts beyond the minimum regulatory thresholds from a Wetlands perspective, and from the neighborhood perspective trying to mitigate any impacts on neighborhood. He showed new engineered plans which were previously submitted.

Emily Perko, addressed the Commission and read her habitat assessment. On September 27th she performed a site investigation to evaluate the two delineated water courses for suitable habitat. During her investigation she examined the hydrology, vegetation, site topography, wildlife, and soils in and around water courses and overall site. The watercourses contained sparse vegetation. She walked the length of each watercourse for signs of drainage features and patterns that indicate sufficient water flow and did not observe any such features. Numerous site visits have documented the lack of surface water within the watercourses, which is requirement for aquatic life.

The Painted turtle's primarily an aquatic species feeding on aquatic vegetation inhabiting shallow pools, rivers, wet meadows and bogs. They only feed underwater and require aquatic vegetation for protection from predators. These watercourses do not fulfill any of these requirements. The Common Snapping Turtle inhabits most any body of water and is highly adaptive. They eat a wide range of small vertebrate species and various plants. These watercourses do not hold water long enough for snapping turtles to inhabit them, and the lack of vegetation in the watercourses makes it sparse location for foraging. The Green Tree Frog lives in swamps, pools and semi-permanent ponds. Tadpoles will live in water until fully developed. She explains that the "Ephemeral nature of the watercourses do not provide the necessary criteria to support the documented species".

The Proposed storm water quality basin has potential to serve as an aquatic habitat. The proposed site plan includes a landscaped berm with a fifty foot vegetative buffer running along the southern and eastern property borders, in addition to buffers, a fifty foot planted buffer was a condition of the Cody circle sub-division approval. Adjacent town owned open space parcels located in southeast and southern portions of the property provide an adequate pathway for local and migratory species to travel.

Mr. DeMallie commented they have revised the plans to include a slight increase in the wetlands, and their surveyor's located wetlands flags based on the determination of Mr. Logan and site walk with the soil scientists.

Mr. DeMallie stated that the applicant has submitted an addendum for the Commission's edification with revised calculations for direct wetlands disturbance which is unchanged at 0.21

acre and upland disturbances 5.45 acres. Area of wetlands creation had a "modest" increase to 0.355 acre. Total wetlands onsite equal 2/3 of acre or 2.22% of the site and within the 30 acre site is roughly 29,397 sq. ft. this reflects an increase of 78 sq. ft. based on consultation with Mr. Logan. There is a 0.03% increase in amount of onsite wetlands and not in area of wetlands disturbance.

He highlighted plans looked at from last 2 hearings. Truck areas in first plan were concentrated in the northerly part of site, and away from the majority of residents, with twenty seven loading docks on each side, fifty four in total, and one hundred and eighteen trailer spaces. Seventy four in northwest corner and forty four in the northeast corner. There were two hundred and sixth nine car parking spaces split between two sides of the building. About 27.2% building coverage and impervious coverage is about 57.5 %.

Buffering far exceeding what's required under zoning. A total of a 90 foot buffer will be created between the neighboring property line and the start of the retention basin on the east.. An approximate 2 acre water quality basin is proposed, which creates a habitat that is not on the site presently. There are relatively small wetlands impacts.

Mr. DeMallie explained that the second plan before the Commission has been previously submitted, in response to a comment received on October 5th, 2021 by Michele Lipe director of planning which read "after further review of the proposed site plan the amount of public interest in the location of this facility as it relates to its proximity of the residential area is recommended that all of the loading docks be placed on the westerly side of the building."

While such a change would take away from buildings competitive position, the Clients agreed to the change and authorized Design professionals to commence design and engineer plans that have been submitted to the IWA/CC commission. The new exhibit shows the same building size, car parking now has increased to 33 spaces all on easterly side, office space is located in the northeast corner of the building. EV charging stations, all thirty four, are on east side where the parking is. The fifty-four loading docks are all on west side of the building as requested by director of planning.

There is a slight reduction in trailer spaces, down to one hundred and eleven, down from the previous one hundred and eighteen. All parking was moved to the west side. All trucks enter and exit from Talbot lane which is also on west side. The Industrial area goes to west which is where loading docks and trailer parking is and all commercial vehicle activities.

The reconfigured water quality basin is essentially the same size of 2 acres, and a fountain for aeration was added to it. No change at all to wetlands disturbance,

They reviewed Mr. Sipperly's letter to chairperson Kelly on behalf of the Interveners. The basin he referred to in his letter on the southwest corner of site is no other than the stilling basin leading to 36 inch pipe which was designed by Design Professionals on behalf of Carla's pasta their client at the time, to accept the flow from this 30 acre site through the Carla's pasta site and into the drainage system for constitution landing industrial park. The stilling basins sole purpose and 36 inch pipe behind it is to convey the water from applicant's site to surface run off through the Carla's pasta site into the Constitution Landing development. Approved by the PZC, IWA/CC and Town engineer and installed about 4-5 years ago. The stilling basin, part of storm/drainage design, was installed in recent history.

Daniel Jameson was available for questions with respect to that system. He designed that system and the system on applicant's site as a licensed professional engineer. Mr. Logan was accorded all the time he needed under the direction of the commission and Mr. Folger, to review the entire site's Wetlands for the wetland determination and his clients have allowed him and other soil scientists to review his work. Entire design team available for any questions. Mr. DeMallie introduces Jim Connor- Legal representative from Updike, Kelly and Spellacy Law Firm.

Attorney Connor addressed the Commission to review some legal issues that were raised by Interveners. Mr. Connor states his client asked him to address certain legal issues that have come up in the course of the prior nights of the public hearings and he would also like the opportunity to rebut any other testimony from the town's soil scientists or from interveners. First night of hearing raised concerns that Commissioners were not proceeding via "two-step" administrative process where 1. Application is made by the applicant for the revision of the map. May have already heard from Staff/ Commissioners aware from past practice that typically an

application for permit is taken in and the map is revised in accordance with actual wetlands delineations that are made in the course of that process.

Mr. Connor cited Branhaven Plaza LLC vs. Branford IWACC also Lewis vs. Clinton PZC. This is a practice that's followed throughout the state and recognized by the Courts. In 1994 on enforcement side there was delineation made by this commission (IWA/CC) in a case that went to the CT Appellate Court HEARN vs. IWACC of TOSW- that indicated the Commission was able to enforce these deregulations with respect to the Wetlands as actually determined whether or not they were already shown on the official map.

The Interveners have expressed objections to this project on issues that are far from this Agency's jurisdiction- "the Agency doesn't regulate air pollution, traffic, noise, light pollution, or aesthetics of the architecture that's built in the TOSW". Limitations on the rights of Interveners has been the subject of many cases over the years-.

Mr. Connor cited one of the original cases on this subject CT Fund for the Environment VS. The City of Stamford, CT which made it clear that local Inland Wetlands bodies are not little environmental protection agencies that can cover a wide variety of environmental issues. He cites a case in 2003 Avalon Bay communities VS. IWACC, the CT Supreme Court said that what the IWACC must take into account is not the general environmental impact of the proposed project but the impact on the regulated area that is pertinent. .

Mr. Connor confirmed hearing a number of allegations made and great deal of documentation and publication submitted with regard to a variety of plants and animals, among them Tiger beetles, Luna moths, Bald eagles, Bob cats, Grey frogs, Spotted salamanders, Snapping turtles, Painted turtles, Rabbits and Brown bats. He reiterated that the Commission's decision is concerned with Wetlands. "Just because an animal was observed in the general vicinity of the project doesn't lead to conclusion that they are using the wetlands or makes it part of the defining Wetlands in the regulated area". Quoting Supreme Court case section 22A-41D states that "Inland wetlands agency shall not deny or condition an application for regulated activity in an area outside Wetlands or watercourses on the basis of an impact or effect on aquatic plant or animal life. Unless such activity is likely to impact or effect the physical characteristics of such Wetlands or watercourses." Testimony from Ms. Perko confirms there is substantial evidence in the record that for the watercourses and wetlands on the site there is insufficient habitat to support the species or aquatic species that have been identified by the Interveners.

Mr. Connor made the point, so there is no confusion with regards to the Wetlands statutes, do with the presentations that they made concerning feasible and prudent alternatives. In definitions of Inland Wetlands and Watercourses ACT section 22A38- There are 2 separate terms: Feasible-Means able to constructed or implemented consistent with sound engineering principles. Prudent-Means economically and otherwise reasonable in light of the social benefits to be derived from the proposed regulated activity provided cost may be considered and deciding what is prudent and further provided a mere showing of expense will not necessarily mean an alternative is Imprudent.

The Applicant did testify at September 1st, public hearing from Shawn Duffy of Cushmere and Wayfield indicating lack of demand for spaces configured as shown in the alternative studies which translates directly to those being not economically reasonable, therefore developing it would not be prudent under the definition in subsection 18 of the definitions act. Mr. Connor stated he would like to reserve some time to rebut any testimony contrary to the Applicant's submission.

Mr. DeMallie addressed Commission and explained that the whole team is available there are any questions.

Chairperson Kelly, Wants input from the Towns' Consultant on the soils. Then comments from the other two soil scientists that were with him on the site investigation. She then would like to get to Commission questions, then will open for other comments, inputs or questions. Chairperson Kelly stated someone had a written list of points they wanted added to the minutes that were previously approved. There will be an opportunity for the Applicant or Intervener to add comments or information after the Commissioners get their questions in. The Town invested in a Soil Scientist and we have a report.

George Logan Soil Scientist for TOSW addressed the Commission: Qualifications he holds a Master's degree in natural resources science, concentration in conservation biology and wildlife management. He also holds several professional certifications: a Certified Senior Ecologist through the Ecological Society of America, Professional Wetlands Scientist through the Society of the Wetlands Scientists, a Registered Soil Scientist through the Society of Soil Scientists of Southern New England since 1989. He talked about the report submitted to the Commission a few days prior dated 10/14/21. He summarized his findings and work product regarding this application which was to "review the site for accuracy of Wetlands Delineations and soil types". Two site walks were conducted. Each one approximately 3 hours in duration. First one on September 21st, the second was on September 25th, both in afternoon. A total of 6 hours on site. With an additional joint meeting on October 4th at that time, with Wetlands Agent Folger, also present was Mr. McManus, Mr. Sipperly via video conference and Council for the Intervener. Mr. Logan stated that during the 2nd portion of site visit they were joined by some members of neighborhood group. The joint site visit started at the wetlands next to Talbot road, then extended off to Northwestern corner of the site. They then drove around to neighborhood in the back and looked at some areas there.

Prior to his site investigation and discussions with Mr. Folger he was provided with the electronic PDF format and also paper plans of the site which were existing conditions without the Wetland Delineations. They were both 50 and 60 scales, there was no indication on the maps of any delineations by others.

He understood that there have been historic delineations by Mr. John Ianni and possibly others but the decision was made that Mr. Logan would have a "clean slate", and not be biased by any other previous delineations, that as a soil scientist he would get onsite and do his own work and come to his own conclusions.

The report summarized Mr. Logan's findings. He provided the GPS, tracking of the routes that he took plus or minus 15 ft. as well. Mr. Logan wanted to prove that he had looked at the site enough to determine whether there were Wetlands that were not delineated and to look at the Wetlands that were delineated. Mr. Logan noted the flags by Mr. McManus were very obvious in the field, the numbering was as expected in sequence so he was able to follow the wetland delineation.

On the Talbot Rd. wetland, there were two additional flags that were determined to be substantially correct in agreement between Mr. Logan and Mr. McManus. There were another couple flags he put up after discussions in the field Mr. Logan agreed that two (flags) would be dropped and two would remain. They have been surveyed and placed on the submitted revised plans. The northern forested Wetland by Governors highway up near the north eastern corner was also looked at carefully. Mr. Logan's determination was that this was a conservative delineation, and he found on some of the areas within that delineated Wetland that there were moderately well drained Non-wetland soils but overall the soil mapping unit that qualifies as a Wetland. Mr. Logan looked at all of the areas of concern that had been pointed out by Dr. Steve Danzer.

That report recalled figures that showed one area that he had delineated off site along the southern property boundary and two other areas one- in the northeastern quadrant and the other in the north western corner, there were two Wetlands, and he looked at both those areas carefully. Mr. Logan had also been given some coordinates from staff to look at specific areas and was able to find those with GPS, and be within 10 ft, and again, didn't find wetlands there and didn't find wetlands in the areas of concern.

The wetlands that were delineated by Mr. Danzer were examined by him during the joint October 5th visit, and by Mr. McManus. They both determined and agree that there were no Wetlands to be had on those two properties or on the subject site itself.

Mr. Logan noted that there was a small excavated area on the northern portion of the site close to Governors Highway that contained water. He considered it a "Disturbed area, couple of pipes thrown in there and I determined too small to be delineated and therefore I considered it as an inclusion within an upland soil unit."

Mr. Logan came across several old flags probably circa 8-10 years ago. Mr. Logan didn't delineate that area so when he found one of the flags he dug holes below those flags to make sure that there were no wetlands missed.

Mr. Logan noted "the soils are somewhat challenging".

Mr. Logan found certain areas more recently in agriculture, for instance, the northwestern corner of site, or adjacent to or in between the two delineated watercourses, which was probably the reason they were dug in order to dry out the and make it more conducive to longer growing season for crops. Mr. Logan notes that old aerial photos show 50-60 % of site in woods since then but in certain areas within the 30+ acres of those wooded areas you find a "plow layer" Mr. Logan found an "OI" horizon which could be 1-4 inches or more, this is organic duff horizon typically where you have that you haven't had agriculture or plow layer very difficult for that to develop.

He noted that the delineations that were done by Mr. McManus were substantially correct, if not conservative in the Northeastern quadrant of the site. Mr. Logan did not find any other delineated Wetlands or any other poorly drained soils that should've been delineated as Wetlands.

He speculated on the delineation done by Mr. Ianni and why those other flags were out there in the field. "The soils are difficult to interpret and you need some experience, "If someone was digging and did not take into consideration the fact that you had to start your investigation from the top of the mineral horizon, you have to discount the OI horizon, and start from there, at 20 inches, and if the total of OI, A, and disturbed were deep enough that they went down to 24 or more inches, that someone would put their auger down to 20 inches and pull up and say this looks like wetlands because I have a Chroma of 1 within 20 inches and I don't need to have mottles and determine that something is poorly drained class therefore wetland".

Mr. Logan speculated this is why there's been controversy of wetland delineation on this site for many years. After reading Mr. Sipperly's report Mr. Logan mentioned the possibility of potential vernal pool habitat, and notes he didn't see anything that qualified as a vernal pool habitat. He was there in September and October, which is not the proper season to see the flooding, to look for egg masses etc. But, Logan did not see any adult wood frogs, which would be apparent at this time of the year. "If there was a viable productive verbal pool in the vicinity of the area I'd be seeing wood frogs.

Chairperson Kelly: Thanked Mr. Logan. She states that the new information would be from Mr. James Sipperly, the Consultant for the Intervener. They just received his report tonight and asks is there is another report besides the one they received tonight.

Mr. John Parks, Attorney for Interveners spoke. He was present at the October 4th meeting and was carrying around a cell phone on FaceTime so Mr. Sipperly could watch what went on so they decided it made sense that Mr. Parks spoke first and explained his perception of this situation and process and then Mr. Sipperly and others will add to that.

Mr. Parks spoke: For background he wasn't at the September 1st meeting or August 4th meeting but he did watch the videos and have familiarized himself with the documents and the records so he does understand what's before this Commission. Mr. Parks explained that in the record there are 2 Wetlands maps, a 1987 Wetland map flagged by Mr. Ianni which shows approximately 13 acres of Wetlands, and then there's the Applicants map that shows approximately 2/3 of an acre of Wetlands. The difference is about 12 1/3 acres that are gone from the Mr. Ianni map to the Applicants map. Mr. Parks brought that up because, in his opinion, watching and listening to the board members, that, the reason of that 12.5 acre disparity between 2 licensed soil scientists is the reason that Mr. Logan was brought into the process and it made sense. The regulations have a provision that allows for that, and the board seized on that opportunity and did just that. The issue that Mr. Parks has is that based on the methodology, he is not sure that Mr. Logan's report and the process he went through to reach that report is going to shed very much light on that discrepancy. One of the reasons is, that there is a decade's long connection between Mr. Logan and Mr. McManus on both business and personal level which brings questions to the independence of this investigation.

Mr. Parks also had concerns with this investigation as heard from Mr. Logan. He was not given any of the history of this property, just a plan, and sent out. There were flags in the field so he was queued in to at least what Mr. McManus has done because of the flags that were fairly recent in the field. They heard from Mr. Logan, that he spent two- 3 hour days to cover a 30 acre

parcel of property. They hired their own Soil Scientist, Mr. Sipperly, who says that to start from scratch, which is essentially what was done on the 30 acre parcel, you would need at least 2 full days and Mr. Logan used less than one day.

Mr. Parks spoke on methodology of how the independent (Mr. Logan) was selected and has issues with the methodology that was chosen. He doesn't know "what direction" was given to Mr. Logan but we're talking about 12 1/3 acres of wetlands that are on the Towns Wetlands map, which GIS shows clearly the wetlands, which agreed with the Mr. Ianni's initial delineation.

Mr. Parks appreciated Attorney Connors commenting about the effect of this application, because if this Commission were to approve this application, that would remap the wetlands that the Town has inventory of, and that the Town displays on its map. Rather than the 13 acres that shows here this property. These wetlands would extend onto abutting properties that are already developed. But if this Commission adopts the applicants wetlands delineation, those wetlands will all disappear exactly along the property line, however the abutting properties that have been developed, like the Temple and Cody circle neighborhood will still have the wetlands as shown on this because they were delineated years ago. He explained that the wetlands don't "follow property lines, the wetlands follow where poorly drained soils are. It's really suspect that there could be that degree of error in the Towns mapping and the prior soil scientist.

Mr. Parks explained that there are questions in the Interveners mind about the location of the wetlands and the Commission's ability to rely on that. However, even if there were no questions about the wetlands on this property and even if the Interveners agreed with the wetlands as delineated by Mr. McManus, the application has to meet the criteria contained in regulations in order for commission to approve this application.

Mr. Parks reiterates what Mr. Connor addressed the standard 6 criteria which the commission is well aware of in the statute and it's also in Commissions regulations. One of the criteria is the finding of no feasible and prudent alternative. Mr. Parks pointed out the four feasible and prudent alternatives that have been submitted, two of them were residential and two of them were industrial. The most recent hearing on September 1st showed a building half the size and the previous hearing there were discussions about residential developments that could fit on the parcel and another industrial one that was just a plan of smaller industrial buildings. The standard is if the application meets the prudent and reasonable alternative is that the proposed development is the only alternative that is both feasible and prudent.

Mr. Parks reminded the Commission that the CT Supreme Court language about the burden on the Applicant. It is the only alternative that is both feasible and prudent. Mr. Parks listened carefully to all of the witnesses and had a transcript prepared of any of the Applicants witnesses that discussed the feasible and prudent alternative. The residential applications are not feasible because this is industrially zoned property. No residential approvals can be granted on an industrial property.

There are two industrial alternatives one was given on August 4th and the other presented on September 1st and both of those proposals are both feasible and prudent.

The Intervener has witnesses that will address this. One of the witnesses is Mr. Butler who's been in the trucking industry his entire life and he takes issue with the representation that the cost for a building half the size is the same as the cost for the building twice the size because buildings are estimated on a price per sq. foot.

Mr. Parks has several witnesses including Mr. Sipperly. And Mr. Holowczak has some information to give to the board. Mr. Parks states he would like to reserve some time at the end of the hearing to speak one more time in summary of the intervener's position.

Mr. Holowczak spoke as a Cody Circle resident and Intervener: He gave a brief background stating he is an engineer by profession and training and has bachelor's degree in ceramic engineering. He holds a Master's degree in Ceramic Science, some of that coursework overlaps a little bit with Soil Scientists. Mr. Holowczak stated he does hold a Professional Engineering license and is not holding himself out to be a Soil Scientist. He heard that a lot of this area was previously cultivated, therefore the wetlands are suspect.

He showed the 1994 Re-subdivision map of the French Social Circle and had the images analyzed, and what's colored are basically areas inside the wetlands and then specifically subtracting the potato fields of Mr. Reichle, and those tend to be tilled relatively deep. Potatoes

are typically plowed 18-19 inches under and that's right around the specification for soil sampling depth. Specifically subtracted out these former agricultural lands, if you total those up, it's about 7 acres that are within areas that the tree growth occurs. This has been there since at least 1946. That's as far back as the aerial surveys of the town go. He doesn't think it's a reasonable thing to say it's previously agricultural therefore the wetlands are disturbed. Mr. Holowczak explains its "very hard to disturb wetlands when the trees have been growing there since prior to 1946".

Mr. Holowczak was present for the second half of the site meeting and wants "emphasis so that everyone understands our Soil Scientist was not given access to the site". The delineation work that was to be jointly done that this Commission all agreed on at the end of the September 1st hearing that did not take place. Mr. Holowczak had no access to site and it is still ringed with no trespassing signs, and the only time they had on site was brief meeting following Mr. Logan's work.

Another Intervener came along, at second half of meeting that Mr. Sipperly attended via FaceTime, and they observed that when doing bore hole analysis, both Mr. McManus and Mr. Logan, "tended to sample at a boring angle of about 45 degrees, and it's my understanding after talking to a great many Soil Scientists in order to recruit the 2 that we have, that the idea is it's a depth of 18-19 inches, if you're going to bore at a 45 degree angle in order to reach the same depth you have to go in anywhere from 25.5-27 inches depending on whether your trying to go depth of either 18 or 19 inches, that was an observation we saw". One of the other Interveners witnessed this back at 66 and 74 Edgewood Drive to look at the soils that have previously been sampled by Mr. Danzer, and "we just found it very strange if the spec is 18-19 inches down why not drill down?"

Mr. Holowczak speaks specifically to the soil science discussion, but does have other discussions affecting hydrology and specific comments on whether this application needs to be submitted for consideration by US Army Corps of Engineers. He notes that specific rule changes that have occurred recently around September 16th, by US Army Corp of Engineers- "they've rolled back the rules to the pre 2015 regulations, just want to make the commissioners are aware of this."

Commissioner Phillips:- "Army Corp issues and whether other permits are necessary from the state or federal government are not within the purview of this commission."

Mr. Sipperly spoke: Certified Soil Scientist here on behalf of Interveners. He read his report into the record and to commissioners (**SEE EXHIBIT A**). Also reiterates Attorney Park's comments about feasible and prudent alternatives, "that's very important and should be looked at very carefully. Thank you."

Mr. Holowczak commented on what Mr. Sipperly touched on. It has been several months since application was first brought before Commission, but he listened to the August 4th hearing pretty carefully and he also has a version here of the August 3rd 2021 letter of JMM- Mr. McManus, where the soils based Wetlands Delineations previously conducted by John Ianni of Highland soils were sited extensively both here in the prior July 7th dated report that talked about the whole creation of the artificial storm water ponds.

On August 4th Mr. Folger stated that if the Applicant was going by Mr. Ianni's delineations from 2017, then they needed to be submit his soil report as well. Later in August, the Applicant instead did their own field delineation. He referred back to the Highland Soils LLC letter of September 4th 2018, which refers back to a site walk that Mr. Folger took with Mr. Ianni in the summer of 2017. This was "something I missed 3 times looking though all the paperwork on this but caught it on the 4th time. If you look at the September 4th 2018 letter carefully, it refers only to the 475 Governor's Highway parcel. If you look at the maps provided extensively by the Design Professinals-475 Governor's Highway is a 2 acre triangularly shaped parcel that is bounded by Governor's highway to the north and south easterly by the old Newberry road that extends out onto the property. Mr. Ianni found either a wetlands buffer or wetlands he refers to the delineations in his letter. It is confusing that Mr. Ianni if found wetlands and wetlands buffer within this 2 acre triangle how were they missed by Mr. Logan?"

Chairperson Kelly: 'That is part of the packet, we have that in the packet the September 4th letter.'

Mr. Folger: "Yes, this was presented in the original application packet."

Chairperson Kelly commented: "This decision is going to be made based on the wetlands that are present on the site and we are trying to determine that to the best of our ability here. We have delineations that were provided initially, and we had a presentation based on previous work that was done, I believe Town Staff directed the applicant to have their soil scientist go out and re delineate from the start on his own, and we have that presentation. The town asked for a 3rd party independent review selected by the Town. The Intervener was allowed to be present, along with the applicant to at some point after the towns 3rd party person went out. I know there were opportunities for that. What we're looking for here at the Commission is current new information. So we have some input now on the techniques, and the things that were used. I would appreciate comments on for whatever portion of soil work that was done by Mr. Sipperly Then I would like Mr. McManus to speak to what they saw on that day in the field when all the parties were present."

Commissioner Phillips: "Should they give Mr. Logan a chance to respond to the critiques that were made of his methodology?"

Chairperson Kelly: "Yes I think we could, but first I would like the discussion on the soils itself and what was seen and if Mr. Sipperly could comment on anything that they were showing, and I know it was on a phone and its hard, but was there something that appeared to be missed or not missed?"

Mr. Folger: He commented that when he scheduled the field visit with all of the soil scientists, He was in contact with Attorney Parks to set a meeting schedule that would be conducive for their Consultant to attend. The meeting that occurred on that Monday morning at 10:30 was scheduled based on the availability of the Intervener's Consultant. This was scheduled through communication with Mr. Parks. So there was an opportunity for the Interveners Consultant to enter the property. Those were the events that occurred and why the meeting took place when it did.

Chairperson Kelly: My understanding is we were trying to get at not a series of complete delineations but to address some points in question. If there were discrepancies. That was an opportunity to address those areas of concern.

Mr. Folger: It was about insuring the accuracy of the delineation that's being proposed as part of the application.

Chairperson Kelly: And had you directed the Towns Consultant to look at the specific things that are noted- those 3 special locations.

Mr. Folger: No, my direction was to enter the site, as if he were the one doing the initial information. Mr. Logan obviously had access to the NRCS soil mapping so that would show the broad scale of hydric soil on the site from the NRCS mapping.

Chairperson Kelly: And that's the basis for the Towns soil map?

Mr. Folger: Yes.

Mr. Sipperly spoke about his report: As mentioned in my report behind 74 Edgewood, Mr. Logan made a soil auger hole and I strictly recall him looking in to the camera saying "I have mottling right under the A horizon" the camera was maybe 20 ft. away from him, I don't know how deep he was at that time, I expected them to come back to that area a little bit but after that hole he joined Mr. McManus who was already into the property by 50-60ft behind the wood pile. They checked some areas there, then headed down this path that was cleared. That was the only question I

had. At that point why didn't they go back to that area, and then I was surprised that they found some wetland delineation flags out there that didn't seem to make sense to either one of them, as I mentioned in my report it was probably done by a Soil Scientist. The flags were there since 2010 and maybe that area was looked at by them. I didn't see any of the soil plugs or anything they were looking at, they just indicated that these don't meet the criteria for a wetlands soil. Those are the 2 areas that I had questions about. And then the fact that the Ianni delineation does line up with the wetlands map and it also lines up with the areas that were shown that were never farmed by the farmer either because most likely they too wet to grow crops or too wet to till. Those are my 3 concerns with the process going forward.

Chairperson Kelly: Okay thank you. I would still like to hear from the other soil scientist.

John Holowczak: He read an Affidavit: 'On September 10th I did receive phone call from Mr. Ian Cole soil scientist registered with the Soil Scientist of southern New England. I previously left a voicemail asking whether he would provide soil scientist services on behalf of the neighborhood in which I live in South Windsor. Mr. Cole asked me how far the neighborhood and proposed application developments site was from the CT River, and asked about the sites topography and size acreage. Mr. Cole told me it would take 2-3 days of effort to assess the soils on the site given its location and the CT river valley and relatively low topography.

Mr. Cole asked who the site engineering firm was to which I replied was Designs Professionals. That Mr. Cole stated he had a conflict of interest and he's currently had two projects with Design Professionals. That he did describe as "Lock Jobs" he suggested I contact Mr. George Logan of REMA ecological services, then I explained to Mr. Cole that I previously spoken with Mr. Logan and although he was originally quite interested in helping our neighborhood, upon learning that the applicants wetlands specialist was James McManus of JMM LLC, Mr. Logan said that he had to decline, citing his lose personal friendship with Mr. McManus. That Mr. Cole did then exclaim "that's right, Jim McManus started out working for George Logan. "Thank you.

Chairperson Kelly: If Mr. McManus wants to make any comments about observations made on the 4th if not MR. Logan can make comments.

Mr. McManus: Certified Professional Soil Scientist JMM Wetland Consulting Services. On the joint investigation, unfortunately Mr. Sipperly has a bum foot so he had to do the FaceTime video. Dr. Danzer wasn't able to join us. So what we first did was when Mr. Logan went through and found some discrepancies we reviewed that and once we were done with that ,as he stated, we took some flags down and left some flags up. We then went to the areas that the Interveners had concerns with, which is in Southern areas. We took many probes where we bumped into these mysterious wetlands flags.

It's hard to describe; yes sometimes we go in at an angle sometimes in very stony soils, not here, but that's how we have to get leverage. We don't just stop at 20 inches, we build a picture, we don't just use one hole, and we use everything our experience, landscape position, looking at many different holes particularly on difficult sites.

We went until we got the answer. We did that through numerous locations, now Mr. Sipperly might have thought we did it a little quick but if you recall we've already been through this site. Mr. Logan had spent a day or 6 hours plus out there plus the work that we did that day. I've been all over this site on numerous occasions.

Mr. Folger, Mr. Ianni, and Madam Chair were also out at the site on different occasions. We did numerous auger holes and didn't find any wetlands where Dr. Danzer found wetlands. We didn't see any soils at all that would meet the criteria of a wetland soil and then we continued into the site beyond the wood pile, and dug a bunch more holes all over these areas. We double checked the coordinates given to us. We did a thorough investigation and the Interveners soil scientist had an opportunity to join us. One couldn't make it, and one just had surgery, it's not our fault. We did show Mr. Sipperly augers with the colors, the bright Chroma colors that we're looking for indicating at these locations where people thought there were wetlands. What we're finding which indicated clearly that those were not wetlands soil. The Army Corp does not look at just soils the

Army Corp looks at soils, vegetation and hydrology. Both of those ditches will not meet an Army Corp Wetland due to the lack of one of those 3. Thank you.

Chairperson Kelly: Mr. Logan, if you would try to give us soil information.

Mr. Logan: The bottom line in my view, at the end of the day we look at soils. And we determine soil drainage class which is what determines wetlands in CT. This is primary. My job was to determine this to the best of my ability. I am very satisfied that spending 6 hours was more than enough because, the physiography of the site is very similar. If I had an area that was not as homogeneous in a sense, as far as this topography and vegetation I'd be digging a lot more holes.

As you look at the GPS tracking you'll see that I covered just about everywhere. A few other points: Mr. Sipperly noticed that on the neighbor's lot off Edgewood was that I saw "Mottling under the A horizon" I did and that was unusual. What matters is what you see at the diagnostic depth. So I didn't see anything else at the diagnostic depth of 20 inches. Therefore I determined that was not a wetland. It is not proper to get into discussion about if I'm friendly with Jim McManus or anyone else or if we have a business relationship. We don't. Mr. McManus has never worked for me,

I don't know where Mr. Cole got that.

We have done projects together, and were doing one now at the South Hartford Tunnel for MDC. There have been times where he has been the delineator and I've been the ecologist- that happens. I've worked with Mr. Sipperly on some things in the past. If I found something that was amiss I would've had to say it, and that would've stressed the relationship but I'm fine with that. Question was "why is there an OI? Which is basically an organic Horizon, not typically formed where there's wetness. Yes, it does but not necessarily. This kind of OI which is more of a duff is not typically formed in wet soil but formed in moist soils because if you had water going into the IO it would be anaerobic and aerobic conditions would make it into something of a "muck" rather than something that's fibrous. I've mainly often found these OI in well drained soils and moderately well drained soils. I do have a question that might allow me to answer. He asks Mr. Folger "Did I understand right that Mr. Ianni's first delineation was in 1987?"

Mr. Folger: Yes I believe the initial Delineation was in 1987.

Mr. Logan: Ok so beginning of his career. After several years of more experience you may change your views on soil. That doesn't surprise me. We learn as we go along. Does the Commission have specific questions?

Chairperson Kelly: If you can confirm since it's the Town that brought you in, we do have complications or difficulties with soil with the red soils the sandstone derived soils here in SW. within the last several years NRCS gave out new guidelines for delineating those soils. And recognizing the subtleties.

Mr. Logan: Yes that's true. I wanted to mention this. Actually, there are no red soils- no Triassic red soils onsite. Nothing in the 7.5 YR or 5YR page it's all 10 YR so it's all yellow-brown.

Chairperson Kelly: addresses commissioners for questions.

Commissioner Blondin: He was onsite for 2 days, was the other soil scientist not available on those 2 days? I'm asking a question.

Attorney Parks: We were directed not to go on the property we had the limited opportunity to be there the day that the soil scientists were talking about what they had already done but we had believed that we would be able to get on the property when the actual testing was being done and new testing, we did not get that from the applicant. We did not get that permission. The only permission we had was permission to be there the day it was discussed.

Chairperson Kelly: We asked for it to that way. We wanted to give our soil scientist specific instruction that he would complete his assessment and then have the meeting and I think the minutes should reflect that.

Commissioner Blondin: At the end of the meeting all 3 were supposed to be present onsite to do the sample.

Mr. DeMallie: We agreed that they would be able to have all 3 people onsite, to review what was being done. There wasn't an agreement that they would be able to be onsite every time.

Commissioner Blondin: Yes, that was my understanding coming out of the meeting when it was agreed that the Intervener would be joining in on the 3 party assessment.

Chairperson Kelly: I'd like to let the Commission ask any questions they may have on the soils or any of the other aspects of this project.

Commissioner Katzbek: He would like a summary on the importance of the 475 Governors Highway submission.

Ben Wheeler speaks: Mr. Wheeler cited his credentials. Licensed landscape architect in state of CT with design professionals. The letter that has been submitted for the record was addressed to Mr. Wheeler's attention from Mr. Ianni, of Highland Soils back in 2018. "I understand the confusion with it being addressed regarding 475 Governors highway but very similar to the way that exhibit before you tonight just labels the project 25 Talbot Lane, back at that point in time we were referring to the property collectively as 475 Governors highway. And to evidence that, as has been noted, we did submit 4 plans as part of our feasible and prudent alternative analysis." The two residential plans that were submitted in the title block for the first one dated June 21, 2006 at that time that plan used the same entirety of the parcel as the proposal before you and of you look in the title block on that one it was labeled 475 Governors highway and again on the other residential concept that was prepared by Mr. Wheeler on December 18th 2017 "with my initials on that Title block is labeled 475 Governors highway. It doesn't specifically mention each of the 4 parcels that comprise this entire project." That might be a portion of the confusion with that." Mr. Wheeler clarified that when Mr. Ianni wrote him that letter, it was based on a subsequent delineation that he had done on this property. Not the original delineation that had been referenced for the French Social Circle Club that was done back in the 1980s.

Commissioner Muller, Question for Mr. Folger, the issue seems to be old maps vs. latest inspection. I'd like to get some idea how much confidence we have on the overall Wetland's map for the TOSW. We had an instance where 3 or 4 months ago we had somebody claim there was Wetlands on their property because it had vegetation and the maps that we looked at were maps that were interpretation for aerial photos and it was my impression that a lot of times certain characteristics of the land determines whether its Wetlands or not in a broad picture. Whenever you need to develop a piece of property you're then on the applicants got to get detail and hard evidence of the type of soil. How good is the overall Wetlands map of South Windsor?

Mr. Folger: In some areas it's accurate and some areas it's not accurate. Again, it's all done based on the NRCS soil mapping that's done via aerial photo interpretation, and we adopt that as a general planning tool, and there's even a disclaimer in the bottom of the Town Wetland map that does say that this is for general planning purposes only and is subject to field verification.

Chairperson Kelly: Question, based on the new plan will the Town engineer be rechecking or reviewing the storm water calculations?

Mr. Folger: Yes. I talked with him after getting that question from you and he does plan on reviewing all of the storm water calculations based on the new layout.

Chairperson Kelly: Question for Design Professionals: Based on the rearrangement of the parking, are there any changes in what we understand about the stormwater system?

Daniel Jameson: Professional engineer in the state of CT and project manager at Design professionals. Regarding the changes to the storm water design based off of the change layout, we actually achieved a reduction in our 100 year storm elevation and were still able to match all peak flows leaving the property as well. Storm water design maintained, and able to stay consistent, the pond got a little bit bigger. Basically we were able to maintain peak flows as required.

Chairperson Kelly: And had infiltration units?

Daniel Jameson: "Yes, we are providing underground chambers on the west side to provide conveyance to the large truck parking area on that west side. Those underground chamber units will promote infiltration, but we're not accounting for infiltration, but due to the fact that the gravel underneath it, it will control ground water and we did provide isolation chambers to provide water quality for all the water collected off the surface area there.

Chairperson Kelly: So the changes to the surface parking, did that change anything about that underground structure?

Daniel Jameson: We did have to reorganize some things based off of the new grading, and as stated in the last meeting Mr. Jeff Doolittle asked us to evaluate the water quality for the 2 years storm so we actually sized those chambers to account for 3 inches of rain, instead of the 1 inch that's normally recommended by the 2004 CT storm water quality manual, so it was our opinion that yes we did meet all the requirements and some and with that were able to maintain and still meet peak flows and maintain the reductions that we stated with the original plan.

Chairperson Kelly: I think you had something added for the record.

Attorney Parks: In my presentation regarding the feasible and prudent alternative I had indicated that we had a witness to talk to the comments made at the September 1st meeting about the feasible and prudent alternative not being feasible or prudent. And this is Derrick Butler. I'd like to call him to the podium.

Mr. Butler speaks: He lives at 596 Governors Highway, my family has been in distribution and warehousing for many years. I have some exceptions to the statements made on the September 1st meeting, Mr. Duffy was advising that marketing disadvantages of the smaller 152,000 sq. foot building that was shown as an alternative was inefficient and not viable, too many marketing disadvantages to that.

I currently run a 200,000 sq ft. distribution center in New Britain CT. It's a public warehouse. Contrary to what Mr. Duffy reports, that smaller user is a very active market for us in the area. Sq. footage amounts from 120,000 sq. ft. to 40,000 sq. ft. both long and short term users we get 3 to 4 potentials a month. Currently about half of those I can't service because we are just about full right now, as are most commercial warehouse in the area.

I went out to our commercial consultants because they're dealing in warehouses quite often and they also verified that that user from 150,000 sq. ft. down to 40,000 sq. foot is very active. I don't believe from a marketing standpoint there's a disadvantage to the 150,000 sq. foot alternative that was shown on September 1st. I do feel that there's a push to remain a 350,000 sq. ft. building because it's for specific use for specific tenant that's not being mentioned or name at this time. My consultant also advised me that it's unusual to build a 350,000 sq. ft. box on spec. unusually it's for a specific tenant. On September 1st meeting, Mr. Wheeler states that a building one-half size of the proposed 350,000sq ft. building mentioned would have the same construction cost as the larger building. I went out to our consultants and I got the average costs for building a commercial distribution warehouse facility. What was told to me by the people that build the boxes, is that construction cost of 150,000 sq. ft. building distribution center space, on average, is

\$100-125 a sq. foot. They also mentioned to me that construction costs of a 350,000 sq. ft. building average construction cost is also \$100-125 dollars per sq. ft. The only way that you would have the smaller box be more expensive than the larger box is if there some sort of automation or something that's planned that's not in the big plan. I called PDS in Windsor, and they advised me that they could very easily build 150,000sq foot distribution center facility and bring the budget in under \$125 per sq. ft. Can be done, cost not disadvantage with the smaller alternative. Based on that, in my opinion, its prudent feasible alternative for our area is that if it has to happen it should be that smaller 150,000sq ft. alternative.

Commissioner Phillips: Question for Mr. Butler: Does that \$125 per sq. ft. estimation include the purchase of the property, the site improvements that are necessary, or is that strictly the building?

Mr. Butler: Construction and site.

Commissioner Philips: So under that \$125 sq. ft. that includes all the site costs including the purchase price?

Mr. Butler: Correct.

Commissioner Phillips: Ok, that sounds low from my experience doing industrial construction management for a good part of my career.

Mr. Butler: And I was advised that the \$100 a sq. ft. is more customary.

Commissioner Phillips: And how much was factored in on that for cost of the property and cost of the site improvements?

Mr. Butler: I went out to them to get a handle on how a larger box could cost more than a smaller box, that's what I asked for. I asked for development construction costs, what their averaging today.

Commissioner Phillips: And they did confirm that includes all the site work and the cost of purchasing the property?

Mr. Butler: Correct.

Mr. Parks: To follow up on Commissioner Philips comment about Army Corp "I don't see anything in your regulations so I think you're correct about the Army Corp, however under section 6 it does state that when discharges of water are waters of the state the state meaning the DEEP, has it looks like concurrent authority with this agency or with this commission because it says "In addition to any permit approval required by the agency the commissioner of environmental protection should regulate waters affecting Wetlands and watercourses" and it lists 5 things and one of them is discharges of waters – discharges into waters of the state. It's our position this site discharge waters into waters of the state and Mr. Holowczak is going to explain how we learned that.

Mr. Holowczak addresses the Commission "I started with Mr. McManus letter where they mentioned the low vegetative state and the watercourses and words to the effect of because of that low level vegetation that the Army Corp of Engineers would not be involved in regulating this. I've already mentioned changes in regulations." Talk about state waters here: It's important to realize that the watercourse on the easterly side of the site, does discharge through the storm water system of Cody Circle and Beldon Road. Some neighbors took a film of water heading northward off the Governors Highway side and onto the properties. 570 Governors Highway was one of those properties. His understanding was we were in the sub-water shed of the Podunk River and that's where we resided. "I was learning more about hydrology and surface water flow

and the US environmental protection agency has the waters GeoViewer system and what you see before you is the applicants site, there's a USEPA sub water shed divide running through the property and in fact most of these water courses that the applicant wishes to fill in are part of the Podunk River water shed." "Most of the site is part of the Stoughton Brook water shed and the Stoughton Brook therefore should be given some consideration here." Hydrological connections of the Stoughton Brook and the applicant's site we have some pictures and a diagram to show those connections." "I do believe if this site is altered it's going to effect, the Stoughton Brook. He shows hydrological connections on maps. He shows water flowing northerly. Some concern as this site develops changing the surface water hydrology.

Chairperson Kelly: "Do you have those bullet points that you wanted added to the minutes have you given that document. They'll be added to the minutes of this meeting. Summary of Interveners points. Are they the same points that were handed out at the September 1st meetings?"

Mr. Holowczak: "Yes these main bullet points and sub bullet points." **(SEE EXHIBIT B)**

Chairperson Kelly: Asks Commissioners if they all have that paper in their packets. Added to minutes then rather be in general record of the meeting. Asks Mr. Mr. Holowczak if there's any other new information he's presenting and if he has new expert testimony.

Mr. Holowczak: Calls entomologist to stand for brief testimony.

Matthew Narsocki introduces himself for the record: Lives on 344 Hilton drive in South Windsor. Recently graduated with a BA of science at the University of Delaware- specifically in Entomology specifically study of insects.

He recalled sightings of a bobcat with 2 kittens, bald eagle, various owl sightings all of which were in 500 ft. nearest to the Talbot lane site on Governors Highway. "There were lots of grey tree frog sightings, however green tree frogs are on the applicants list and were mentioned earlier but are not found in CT and their north most range is Maryland." He mentioned Tiger beetles. "There were 7 observed on the site but that could be 7 adult beetles, 7 larva burrows, 7 species, and even 7 beetles would be enough to confirm that there is a population established in the sandy soil at the site and surrounding areas.

Does the applicant have a list of which tiger beetles species were found during the site survey? What did their entomologist say?" Toadflax flower species reserved small area off Governors highway. Notes that common Toadflax was a typo on the ecological report summary and there is no such species. "The correct species name is" Blue toadflax" not common toad flax. Was that what the applicant meant to say?" "Toadflax is not on the CT DEP species of special concern list but the Blue Toadflax requires sandy soil and upwards of 900 sq. ft. might be enough to let it survive in that plotted area." Yellow or common toad flax-native to Europe and parts of Asia introduced in North America and very common has seen it on the site and surrounding areas. Mr. Narsocki's professional opinion is that if Tiger beetles are present on site there is not enough space preserved for them. "Regardless if the tiger beetles are here or not at the site there's an overwhelming abundance of native biodiversity at the site as the town's residents have shown. The watercourses around 25 Talbot lane site are said to be "last for a short period of time" "Vernal pools are also called ephemeral pools how will this affect the amphibian spring migration when traveling into vernal pools to breed? Considering the chemicals and other things that leach into the watercourses from the runoff."

Commissioner Phillips: "Do you have evidence of vernal pools?"

Mr. Narscoki: "I have evidence that is anecdotal of seeing vernal pools in the past but I have not been able to be on site in the last over a year. Not current."

Commissioner Phillips: "In what way do the Tiger beetles effect Wetlands and Watercourses?"

Mr. Narscoki: "Multiple species listed in CT under special concern one of them is which being only in the state of CT which is Ghost Tiger Beetle and if they were to be on the site then that would cause complications and they will most likely have to be removed and relocated or they would pause construction evidently."

Commissioner Phillips: "That may be true but in what way is that something that should be dealt with by this Commission and in what way does it have a probability of causing irreparable harm to Wetlands and watercourses?"

Mr. Narsocki: "What other Commission could be considering the Tiger Beetles because the Wetlands are one of the ecological aspects of the landscape and with the sandy soils surrounding it which the applicant has preserved a small area for Common Toadflax which was a typo then why would the tiger beetles not be of concern if the plants are?"

Commissioner Phillips: "My suggestion is you should bring it up with the correct Commission here in Town or the correct Agency of the State or Federal level, because I still haven't seen how it is pertinent to this Commission."

Mr. Narsocki: "Ok, so has any of the ecological animals that I have mentioned been part of the Wetlands commission because I believe they are all effected by it."

Commissioner Phillips: "Still waiting for you to tell me how this has the probability of causing irreparable harm to Wetlands and watercourses from these species that you listed?"

Mr. Narsoki: "Can you repeat question?"

Commissioner Phillips: "As an intervener you are to show that there is probability of irreparable harm to in our case the Wetlands and Watercourses of the data you are presenting. And these varying species like the tiger beetles or bobcats, I don't see a relationship between them and other things you have mentioned. I haven't heard you give me information on how their presence in conjunction with the proposed activates cause irreparable harm to the Wetlands s and Watercourses."

Mr. Narsocki: "I'm stating what I stated at the last Wetlands meeting and what I'm going over is the discrepancies in the applicant's ecological survey and then comparing it with what the town's people have brought up."

Commissioner Phillips: "There may be wonderful wildlife there, but for a Wetlands permit we are limited to Wetlands."

MR. Narsocki: "Ok thank you."

Chairperson Kelly: "The Intervener needs to provide evidence for the Commission to consider and to weigh in terms of Wetlands and Watercourses."

Mr. Holowczak: "The Intervener petition does cover the air, and I think the air is relevant here. As an Intervener you bear some responsibility for your neighbors who maybe don't understand everything that's happening or don't understand dialogue., we have a new neighbor, a company came in they purchased the property for 26 million dollars and frankly right now if this goes forward there will be large number of loading docks, you've already heard from Mr. Butler that due to the federal motor highway regulations below a certain ambient temperature those trucks have to idle for 27 minutes and they're 40-50 yards from the air intakes at Carla's pasta. I know it's not directly the purview of this Commission."

Commissioner Phillips: "No it's not in purview of this Commission. We cannot, by law, consider those things and I also would like to correct myself I used the term irreparable when I was talking and I should have used the term unreasonable."

Chairperson Kelly: Is there any new information, not debate.

Mr. Holowczak: "Only new information we have left is there were 2 videos submitted some confusion with Town Staff, issues playing them on the PC, given that the South Windsor sports teams are called the bobcats, and we thought we'd play that quick video and also play the eagle video. Both of these videos were filmed within the 500 ft. abutter line."

Commissioner Phillips: "I've watched the videos, again my question is how is that reasonably likely to cause unreasonable harm to Wetlands and Watercourses?"

Mr. Holowczak: "Watercourse function analysis animals drink there and plants draw their water from there to be able to grow."

Commissioner Phillips: "Won't they be able to drink somewhere else?"

Mr. Holowczak: "Not if they're leveled by an earthmover, no."

Commissioner Phillips: "As we pointed out earlier and I have pointed out at other sessions we are limited as to what we can do. We do not do wildlife, we do not do air."

Mr. Holowczak: "Perhaps I over interpreted Conservation Committee"

Chairperson Kelly: "The Commission has all heard and understood the presence of these plants, animals and so forth, I think we all live in town and I have personally observed all of those in my neighborhood. We recognize their presence in the area. Does the applicant feel like there is anything else that should be mentioned that hasn't been mentioned?"

Attorney Brain Smith with Robinson and Cole Hartford CT: "My client does have concerns of what has been mentioned now." Reads letter written on behalf of client NFP real estate LLC owner of 50 Talbot lane. "Carla's pasta has concerns over the construction of over 300,000 sq. ft. distribution center, generate considerable amount of storm water runoff, and other impervious surfaces. Do not disturb Newberry Brook or onsite wetlands. If you determine that what has been prosed is inadequate we propose the commission revise the scope of the project to comply with your requirements. He suggests that evaluations of proposed water quality basins done every 3 years instead of every 5 years due to the increasing number and intensity of storm events. "Thank you for consideration of Carla's pastas concerns and requests."

Mr. DeMallie: "We had designed the drainage system for Carla's Pasta and also the drainage system to handle this site which is a separate drainage system to handle this flow. It was designed in consultation with Carla's pasta. It was designed with that in mind and reviewed by the Town Engineer and reviewed by this Commission and the Planning and Zoning Commission. It was included in the approved application for Carla's Pasta and it's been built and is in place. Town Engineer will look through all storm water drainage."

Chairperson Kelly: Wants to confirm when designed it with this site in mind you had a similar percentage of impervious coverage to what is on this site.

Mr. DeMallie: "Yes, We designed it for the maximum impervious coverage on this site under zoning which is 65 %."

Chairperson Kelly: "Is this is a lower percentage?"

Mr. DeMallie: "This is a lower percentage. There is plenty of capacity in the pipe."

Chairperson Kelly: "We did reserve a few minutes to hear from Attorneys from both sides for conclusion."

Mr. Sipperly: "To answer Commissioner Philips question about how wildlife and things play into this it actually does, I don't know if there's been a complete evaluation of the functions and values of the Watercourses and Wetlands on site. One of the functions of a Wetland and Watercourse that is listed wildlife habitat. When looking at projects, you have to determine what the existing functions and values of the Wetlands are, including that wildlife habitat, as opposed how it's going to be effected by post development. Commission should determine in order to approve an application that the functions and values of the wetlands and watercourses are not going to be impacted and are not going to change, tie in."

Chairperson Kelly: "Did any commissioners go the site?"

Commissioner Philips: "I went to site"

Commissioner Blondin: "I've been to site."

Chairperson Kelly: "I went to site twice and visited and once was with Jeff, and I did take a look at selected places in the site where I was interested in seeing what the soils looked like. Just for disclosure and record I am also a professional member of the society of Soil Scientists of Southern New England, I know the soil scientists in the room, and I have served with Mr. Sipperly on volunteer Commission as part of my day job at the North Central Conservation District. I serve as the Wetland agent for one of the towns in the Harford region. As a District employee, I also check wetland lines at the request of municipalities in some of the towns in that area, and yes I have reviewed the work of some of the scientist in this room. So I do have that bit of background. I'm also a Certified Professional in Erosion and Sediment Control."

Commissioner Philips: Questioning the cost estimates. "My professional credentials are a Licensed Professional Engineer, retired, with last 20 years of career doing industrial construction management for Pratt and Whitney."

Chairperson Kelly: "Alright onto the concluding points. The Intervener can make theirs first and then wrap up with the Applicant."

Mr. Parks: on behalf of interveners "We appreciate your consideration of these issues raised by the Intervener. We request that the Commission apply the 6 factors contained in your regulations I think it's 11.2 to this application I think the one factor is problematic for this application is the feasible and prudent alternative.

The cases Samperi vs. Inland Wetlands 226 CT 579 Supreme court stated "That the applicant must demonstrate to the local inland Wetlands agency that the proposed development plan and so far as it intrudes on the Wetlands is the only alternative as both feasible and prudent."

The applicant has fallen short of that high standard, and they have produced alternatives that are both feasible and prudent. We have testimony on that and that's the problem with this application. If the application did not intrude onto wetlands it would be a different scenario because that's required for the standard to apply but the fact that it does, makes Samperi applicable and is really the stumbling block for this application because this Commission needs to put on the record based on the evidence before it that this application this proposal isn't the only alternative that is both feasible and prudent. Thank you."

Attorney Connor on behalf of the applicant: "I think it's pretty clear that the Commission is very well aware of its jurisdiction and what constitutes a Wetlands impact and what doesn't. I think it's clear that the Commission understands the rules it is not to second guess what might take place

in an application before other agencies that are in charge of other aspects of environmental regulation, in this case to note a few things:

He suggested that US Army Corps of Engineers jurisdiction is not something that this Commission is going to second guess or condition its decision on. The DEEP regulates discharges to the waters of the state, and the DEEP has a system of individual permits and general permits. The applicant and its design team are very well aware that it is going to need to have DEEP water discharge permits. We are presuming those will be general permits that we will qualify for and we have been working with DEEP on that.

There will be an evaluation before that Agency based on their criteria for general permits as to whether we are providing adequate protection for water quality in the development and operation of this site. In the process the DEEP currently uses the storm water discharge construction period dewatering discharge that they consider a variety of non-wetlands species of special concern. This month the applicant has been working with its consultant and working with the Town with regard to the translocation of tiger beetles which were identified on the site, which have dwindled apparently from the consultant after spending several days on the site from what had been identified previously as 7 beetles to a single beetle that is able to be translocated likely due to the natural ongoing encroachment of invasive nonnative species on the site that's destroyed the sandy habitat.

The Commission is aware that certain aspects of this are outside of their jurisdiction. The main point I want to come back to is the standard that the decision of the Commission has to be based on substantial evidence we have produced extra witnesses on a wide variety of topics including whether this development is prudent as I mentioned earlier Mr. Duffy. He testified back on September 1st about the configuration of the site a large building as opposed to several smaller buildings. Mr. Duffy's qualifications are in the commercial real estate business.

Mr Butler has great deal of experience in the aspects of transportation logistics that he handles but not on the finance side, and I do appreciate he made phone calls to a number of people in his business network but those people are not here and they were not available to ask questions by the Commission. I don't think that a second hand, here say, statement about what other people say can be credited to a level that it would constitute substantial evidence for any decision by this commission.

As Mr. Phillips asked, one of the issues here is whether or not the costs that are involved include land. Well the land has already been acquired in this case so that's what's done with the land and what's prudent is different than if you're just determining what the cost is for delivered product to an end user. Number of costs to developing the site. He referred back to the September 1st, and Mr. Duffy with regard to the issue of prudence of developing a different plan. There's been a lot of should of, could of, would of, by the Interveners for better methodology, and the issue of Wetlands delineation.

This has not involved any testimony by anybody on the Intervener's side who was actually on the site. They have presented the evidence from Mr. McManus, Mr. Logan, and the Towns independent expert. All they've gotten from the Interveners expert is a critique explanation of things that he saw over FaceTime, and that is secondhand information. Or innuendo that there's an improper business relationship of some kind between the Applicant's expert and the Town's expert. This in any way does not constitute evidence, let alone substantial evidence, that ought to be part of the decision that this commission makes.

There is substantial evidence from the Applicant and all of the other information that has been contributed by Town Staff and the Town's consultant that each and every one of the criteria for approval of this application has been met and that the Commission should grant the application. Thank you."

Commission Phillips: Moves to close hearing on **Appl. #21-36P**

Second by: Commissioner Jennings?

Commissioner Phillips: "Thank you to those of you that have presented testimony here for the efforts you have done. And that the Commission will now proceed to weigh all of the testimony

and based on the whole testimony given during the public hearing, render a decision when we get into that phase of our discussions.”

Chairperson Kelly: All in favor.

Commissioners: AYE, vote unanimous.

Chairperson Kelly: Close public hearing regarding **Appl. #21-36P** at 10:02 pm. She appreciates all the information everybody gave. “We got documents and things that we have also received and I think everything warrants a second look.

Commissioner Phillips: “I suggest we postpone to our next meeting.”

Chairperson Kelly: Agrees. Moves onto other business deferred earlier.

Mr. Folger: Couple items of business. We received an application from the town **Appl. #21-49W** which is TOSW Beelzebub Road construction.

Mr. Folger: “There are 2 watercourses that cross Beelzebub 1- Northern most one it is in existing culvert and there is a proposal as part of reconstruction to rework the outfall of culvert. There will be some direct Wetland disturbance associated with that operation. The question for the Commission is would you like to have public hearing for that application? If so we will have to set a date for it and advertise it?”

Commissioner Phillips: “Historically we’ve held public hearings on Town projects because it’s public money being spent and the chances there may be someone concerned about how their tax payer’s dollars are being spent.”

Chairperson Kelly: “Even though that’s not in a Wetland?”

Commissioner Phillips: “Of the 3 criteria we can do for public hearings the probability of public interest is one of those. Move forward to hold public hearing on **Appl. #21-49W** based on the possibility of public interest.”

Second by: Commissioner Muller

Chairperson Kelly: “Any discussion on that motion?”

Mr. Folger: “Our next public meeting is November 3rd.”

Chairperson Kelly: “So would we want to set it following the deliberations on the other application?”

Commissioner Phillips: “Normally we would hold public hearings first, before we would act because the Talbot road application would come under old business now.”

Chairperson Kelly: “Ok. Motion to set public hearing for Beelzebub road for November 3rd.”

Commissioners. All in favor.
“AYE, unanimous.

Mr. Folger: “We touched on this at the beginning of the meeting, under other business is the violation occurring at 40 Sea Pave Rd. My inclination is to issue Cease and Desist order which would also result in show cause hearing. Timing of that we have to issue one within 10 days of

the opportunity for the show cause hearing. Would you agree that's the appropriate move and we time that for the meeting on November 3rd?"

Chairperson Kelly: I would agree that it's time for a cease and desist.

Commissioner Philips: "Do we want to postpone it 2 weeks and not have too many things to be doing on the meeting on November 3rd?"

Chairperson Kelly: "Then I think you'd have to wait and issue it. I don't expect this would be a long show cause hearing."

Chairperson Kelly: "The Town public hearing will be relatively brief because there's very little wetlands. I think we can do both of them that night."

Motion to adjourn the meeting at 10:09pm

Was made by: Commissioner Philips

Second by: Commissioner Mullen

The motion carried.

The vote was unanimous.

Respectfully Submitted:

Gina Saccente, Recording Secretary