

Town of Watertown
Planning and Zoning Commission
Public Hearing
Special Permit #269 Echo Lake Brownsfield, LLC

Time: 7:24PM
Date: July 15, 2009
Place: Swift Middle School
Media Library Room
250 Colonial Street
Oakville, CT

1. Call meeting to order

The chairman called the meeting to order at 7:24PM.

2. Roll call

The secretary executed the roll call.

Present: Chairman, Mr. David Minnich
Mr. Ronald Russ
Mr. Carl Mancini
Mr. Jim Blais
Mr. Glen Duplissie
Alternate, Mr. Ken Demirs
Alternate, Mr. Duane George

Absent: Vice Chairman, Mr. Gary Martin
Secretary, Mr. Michael Masayda
Alternate, Mr. Ray Rondeau

Also Present: Land Use Administrator, Ms. Ruth Mulcahy
Town Engineer, Mr. Chuck Berger
Land Use Secretary, Ms. Carol Allen

D. George sat in for G. Martin
K. Demirs sat in for M. Masayda

3. Hearing of applications

d. Continuation of public hearing July 1, 2009 on Site Plan/Special Permit #269 from Echo Lake Brownsfield, LLC for placement of 212,000 cubic yards of fill including polluted soil as defined by the CTDEP for site restoration for future industrial use located at Echo Lake Road, Watertown, CT in an IR-80 zone.

Mr. Minnich said they received a couple of communications, a letter from Susan Cappola, Seymour and she has attached to her letter petitions 32 people of which the title of the petition says Petition for Public Hearing on Echo Lake Brownfield and the River Alliance.

Ms. Mulcahy said the River Alliance came in today and is in the packet.

Mr. Minnich asked if there was one from Margaret Miner, Executive Director.
Ms. Mulcahy replied she was unable to attend and she asked if it could be submitted to the Commission.

Ms. Mulcahy said the Michael Galante letter came in this afternoon.

Joe Wellington

He asked if there were any public comments from the interveners or any other members of the public.

Mr. Minnich asked if there were any comments from the intervener.

Intervener and Public Concerns

Judith Birdeau – 0 Echo Lake Road

Mrs. Birdeau read part of a letter:

Their request to bring in 212,000 polluted soils is an expansion of the landfill. In **section 6.6.1 of the Watertown Zoning Regulations** states under **Non Conforming Usage of Land**: “such non conforming use shall not be enlarged or increased nor extended to occupy greater areas of land that is occupied at the effected deed of adoption or the amendment of the regulations.” In **Article 1 Section 1, number 60 Planning and Zoning Purpose**: Is to protect and conserve the value and buildings throughout the town. **Number 11** states: “The Commission purpose is to prevent the pollution of watercourses and wetlands, safeguard the water and the ground water supply, avoid hazardous conditions in excess damage resulting from storm water runoff and flooding. Encourage the appropriate use and solid management of natural resources throughout the Town and conserve the town’s natural beauty and topography.”

Perhaps allowing them to cap the land for the required 4 feet of fill would best serve the town.

Joseph Biemkowski – Longhill Avenue, Shelton

Mr. Biemkowski read his letter and asked that it be submitted.

Echo Lake Brownfield proposal of over 212,000 cubic yards of contaminated soil into the Town of Watertown to comply with DEP closure order is a ruse of the highest order. The proposal to allow filling a stream valley with polluted soil to a depth of 60 feet over a 22 acres site in the interest of capping a 2.6 acre former land fill is bargain that the late showman PT Barnum would certainly appreciate. 212,000 cubic yards of polluted soil is a tremendous concentration of pollution to be located in a small community like Watertown with a limited municipal staff and limited resources. This is an extremely large amount of polluted material to concentrate in a small geographic area. The ramifications of this massive concentration of pollution may result in

unforeseen environmental and structural hazards creating an open ended liability issue for the Town of Watertown long in the future. How over 14,000 tri axle loads of dump trucks are able to safely enter or exit this site on a steep road with the proposed curb cut would be located on what can at best be described as a challenging curb with poor site line. Coupled with winter conditions at this location the Town of Watertown could be confronted with traffic accidents of the magnitude experienced on Avon Mountain. Especially the local school bus would be involved in a roll over or a collision. Have Downstream Interests been notified of this environmental travesty have the Council of Governments, Central Naugatuck Regional Planning Agency, Valley Regional Planning Agency, South Central Regional Planning Agency, Greater Bridgeport Agency been asked to comment on this application. This massive landfill would fill an entire valley and stream leading directly to the Naugatuck River, the fourth largest river in Connecticut which empties into the 2nd largest river in Connecticut the Housatonic and ultimately Long Island Sound. Despite Attorney Wellington's good indentations the bottom line that this company began cutting all the mature trees easily accessible along the front of their property and all the trees on the neighbors property before receiving any land use approvals from the Town of Watertown. If this is even a slight indication of the control of this company exercises over its employees or subcontractors, I fear for the liability that the Town of Watertown will incur.

Sincerely
Joseph Biemkowski
Planner II Coastal

James Birdeau – 0 Echo Lake Road

Mr. Birdeau was questioning the strength of the pipe being buried 60 feet deep and if buildings could be built on top. He was also concerned about the pipe being clogged and how to get down there to remove it and there was no maintenance plan in place. He was also concerned about the state forest getting flooded with the clog and washing the polluted soil down. He also said as far as calling it a land fill I brought the minutes in from Wetlands and previous P & Z meetings where even this board called it a land fill. So I would like to submit these minutes that gives some of those statements that I just made.

Susan Copia

Susan expressed concern for the aquatic life in the river and if an environmental impact study should be done.

Mr. Wellington said I would like to take proper response to each and every comment.

Ted Crawford – Licensed Professional Engineer – Malone & McBroom, Cheshire

(done verbatim)

I wanted to address the **pipe issue with the fill**. 60 feet is the allowable height for the American Concrete Standards and I do have a pipe cable that I would like to submit to the Commission that indicates that adequate cover of 60 feet can be handled by classified concrete pipe. I do want to go further and indicate that we have specifically specified that this pipe has to be specifically designed. We have met with concrete manufacturers in the eastern part of the state regarding this

pipe and what they are going to do to rectify this, is they are going to increase the diameter of this pipe and it will increase the strength. Even though a standard of the shelf classified concrete pipe can handle the loads we have been prudent to go beyond that and designed the pipe for additional loads. So I feel we have adequately addressed the load issue on the pipes. I will submit that to you for the record. I have indicated in red a 36 inch pipe with 60 feet of fill classified a Type I bedding. On our site plans specifically sheet 4 it is a water tight pipe shall be especially designed by the manufacturer in accordance with the depth of fill.

To address the **plugging issue**, I want to make it clear that the pipe actually has four inlets on the southern side coming off of Mattituck State Forest. The lowest point is a 6 inch or aphs which is a small 6 inch pipe inlet in our concrete structure that will take most of the flows. To clarify we are creating another wetland, we are enhancing the wetlands on this part of the site, and this is part of the mitigation plan for that watercourse. We are increasing the wetlands on the west and east side of this portion coming off of Mattituck State Forest. The control structure has a small inlet, above that is a large rectangular weir that is about 3 feet higher than that, so in the event that smaller or aphs would plug the water it would rise and pour over to this larger wide weir probably about 4 feet wide. If that was clogged the water would rise again another two feet and again completely contained in our wetland area here, that water would pour into essentially a 4 1/2 by 5 1/2 foot graded inlet and it is very large, twice the size of the catch basin in a street that has a grade on it should keep any debris from getting in. In the event that was clogged that is where our high level overflow another half a foot higher is a rip rap 36 inch inlet pipe and that will convey the water back into our system. If the pipe was ever clogged in between the two main holes, a robotic pipe cleaning system, similar that is used every day on sewer pipe can be sent down this pipe and it has cutters and it will essentially will remove the debris and any obstacles or plugging that is happening in this pipe. This will be monitored by the property owner if this clogging is ever to occur. But we do have four inlets so it would take quite a bit too plus our inlet and in the event the pipe was clogged we would then send this robotic machine down and clean up the pipes. Now in the event that was ever clogged the water would eventually back up but then it would pass on either side of the property traveling along our rip rap drainage swales backwards and then cascading down on either side of the property on the west and the east. We do not foresee that happening.

I was told there was an issue regarding **compaction of the material** on site. I want to be very clear we've noted the materials to be placed per the DOT specs that are the highway specifications 816; we have discussed this with Town Engineer we feel this is appropriate; it gives the town flexibility to an oversight on the placement of this material up to 95% compaction. In addition we have noted on general notes several items: Items directly out of the zoning regulations: Pertaining to the fill material shall consist of a minimum of 80% earth and fill. Fill material shall be done in accordance with the requirements of Section 69 of the Watertown Zoning Regulations. Filling of the site shall be carried out in a safe and orderly manner, all fill shall be compacted to provide stability of material and to prevent undesirable settlement. The Town Engineer may require tests or other information to verify the placement and cover of fill materials. That would go on to say that the people placing the fill would require possibly a density test to ensure that this material being placed at the proper compaction.

I would like to address the **traffic issue**; we did receive a letter from Frederick Clark late today and just to read the summary. We provided to them the required information, they requested on a previous letter. The findings are based on results and review of additional information provided by the applicant's traffic consultant, the majority of the comments have been responded to appropriately. Any changes to the analysis of the intersection of Rt. 262 and Park Road are insignificant therefore we accept the results of the analysis and each of the responses. They do go in the body of the letter to each point addressed in the original letter. I will submit a copy of our letter that was submitted.

Mr. Minnich asked if this was the July 14th letter.

Mr. Crawford replied this is our letter right.

Mr. Crawford said the **end use of the property** we are providing a one point 6 acres padded building site atop our plateau of the fill. It can be used in numerous and different ways. The IR80 zone has several permitted uses that storage other industrial uses. We are not proposing any buildings at this time simply because there are not any utilities available at Echo Lake Road at this time; I think at some time the Town will be providing sewer and water so until those utilities become available we probably will not be building up there.

Board Member Concerns

Mr. Minnich asked to help him to understand the reference you made to the State DOT whatever that compaction reference you made related to the property that would then have buildings on it.

Mr. Crawford replied our intention is that they will be placed in a manner that would support future development through buildings and parking lots.

Mr. Minnich responded my question is that given that whatever is the compaction rate of this soil that is needed to whatever is most stringent at that property, I do not understand how the DOT rating and how that relates to the more comprehensive question of the buildings, parking lots that are on that property.

Mr. Crawford replied we referenced the specifications from the DOT because it comes with several items the manner to which the fill can be placed in shallow lifts in several inches and compacted and rolled as that material is placed. That will insure that you are achieving that compaction throughout the entire filling of the property as it is being placed. Essentially if you could imagine placing several feet you are not going to reach that compaction from top to bottom. But if you compact it in lifts of 6 inches or less you will achieve that, you will spread the material you roll it and you will compact it and then you will achieve that goal of 95% of compaction and that will provide the adequate strength for future development.

Mr. Minnich responded so you are saying to us that 95% compaction rate is what you would find for a building that could be put on there to the maximum permitted by zoning regulations.

Mr. Crawford replied right, it would be the building however they put it on.

Mr. Mancini asked Mr. Birdeau stated that there was no maintenance plan for the 3 foot pipe. You stated that if there was a blockage all you would have to do is run this pipe cleaner through and chop up and grind out and you said the owner is responsible for that. Is there a maintenance plan or not for the pipe?

Mr. Crawford replied we do not have a written maintenance plan.

Mr. Mancini asked if you going to have a maintenance plan the owner of the property in the future whoever takes it over will have to maintain that pipe.

Mr. Wellington said if all goes well we will not own the property 10 years from now, the goal is to develop it so it could be sold in the near term. I would fully expect that end user would be asked that very question and required to prepare the plan. The way that the system is designed now it would certainly last without being clogged during our period of ownership, future development I am sure will be subject to your scrutiny and that is the point that I would like to raise in future development.

Mr. Dupliese commented should that not be placed on the land records that there should be some sort of maintenance program to follow with this site plan rather than just to say that we should ask that at the next development.

Mr. Minnich responded we may want to consider doing that.

Mr. George asked when you are doing the lifts what stages will you be testing and what different intervals will you be doing tests for the compaction.

Mr. Crawford we left that open for discussion with the Town Engineer, we have not set a method yet that is something we could do.

Mr. Minnich asked it is not the intent of the Public Works to be this Commission's experts on this matter, as we have a traffic study to look to getting a third party to assist us in that matter. Is that the case?

Mr. Berger replied that is correct. We will do performance inspection services for those things that end up in town ownership when they are completed this is not one of those and we would expect someone other than the department to perform those inspections.

Mr. Minnich said my thought is we do have some authority with regards how this gets placed and what gets placed there. I think as part of what we are going to need to verify what Mr. Crawford has told us with regards to the 95% compaction.

Mr. Minnich said in regards through staff that Inland and Wetlands in whatever manner they wish to either through staff or whatever to present to us a report verbally using the information the documents have be helpful to my understanding and addressing this issue. I think it is both important from their perspective as well as the applicant to get an understanding on the record with regards to what this is.

Ms. Mulcahy responded she has copies from the Conservation Commission.

Mr. Duplissie asked the inlets that are in the east and west, these inlets are for water that is coming from the state forest above this site. So this is not polluted water that might have gone through the stack of soil. This is clean water that is going to going in the inlet not something that has been filtered through the soil.

Mr. Crawford replied the majority of it is, there is the runoff from our site, I will reference sheet 4, there is the existing watercourse entering from Mattituck Forest form the west, in addition we have provided drainage swales on the outside of the property the portion of the property that is going to be filled to collect storm water runoff from the site as part of an earlier condition from Wetlands. We have designed our system to continuant the peak flows through the system to not increase any flows of the site. We have done that through plantings and most through mitigation of our wetland areas. So there will be some surface runoff on our site that will be collected in the swales and discharging in this wetland area settle then pass through our system.

Mr. Duplissie asked about the 3' concrete pipe are you pouring concrete over the existing pipe so that we increase the strength of the pipe, is that a possibility for this.

Mr. Crawford replied we did look at that, again the pipe will be water tight, in addition to possibility sealing the joints, and increasing the thickness of the pipe we have also discussed a concrete bed for this pipe to reduce any settlement. We looked into several different ways and actually the finally system we intent we have to be approved through the Town Engineer as well.

Mr. Blais asked you mentioned there are no utilities in that area now but expectations in the future to that area if utilities come and they disturb that area could that be possibility it will cause your construction to fail.

Mr. Crawford replied no they would just dig the trenches for our laterals, our water and sewers, and the electrical compact it and back fill those trenches.

James Birdeau

Mr. Birdeau asked how do you build on top of what is already not settled and not compact it. Are they going to pull out what is there and compact it. How are you going to build on top of a land fill?

Mr. Wellington replied with the compaction issue of the current land fill. It has been there for 30 years, it is probably settled as much as it is going to settle naturally with its current conditions and its current contents. There should not be an expectation of further settling with regard to that because the soils are going to be topped as part of the closure will also be compacted. So it is not just the land fill is going to have 4 foot of soil and the compaction is going to start after that there will be land fill, there will be the soil cap required by DEP for closure which will be compacted and during the process of that if there is any reason to expect any further compaction we would take care of it at that time.

Judith Birdeau

If the land fill can be capped with four feet of soil, it seems unnecessary to bring in all this other soil and use that as a land fill. I have notes from the Inland and Wetlands minutes in their autumn report it says that they had purchased the Brownfield and they were going to dispose from their transportation and disposal segments. If the true idea is to really develop this as industrial land there is no need to bring in 212,000 cubic yards and I would also like to say that Joseph Biemkowski is here on our behalf so as intervener I would ask that you allow him to speak.

Joseph Biemkowski

Joseph Biemkowski said during the wetlands meeting we asked if you could put a foundation on this building and the answer was the only thing we could do is dry piles and put a building on it, so piles would not be feasible on pilings of 60 feet.

Audience asked the Engineer mentioned that there were several structures as inlet structures upland where the stream would enter. What would be the ponding depth if we had to go to the highest structure?

Mr. Crawford replied 5 to 6 feet.

Audience asked if that were to occur the water would flow around both ends can you depict that on the plan here for us.

Mr. Crawford said that is not exactly what I said. If every inlet was compromised water would eventually back up to a point where it would travel on either side of the property, traveling backwards up our rip rap swales.

Audience asked so in other words the entire property on both ends would be rip rapped if that should occur.

Mr. Crawford replied there are two rip rap swales.

Audience asked are you expecting it to soak in or topple over.

Mr. Crawford said there is a proposed swale along an access road.

Audience asked it is my understanding that the entire 22 acres will have a footprint available for development of only 1.6 acres.

Mr. Crawford replied the entire property is 22 acres; a large portion of this property is actually cliff going up to the rear of the property. The actual area of disturbance is roughly 8 1/2 acres our intention is to leave 1.6 acres of plateau area at the top, the rest of the slopes would be 3 to 1 and it could be modified if required, there is no plateau tied into a higher elevation along Echo Lake Road.

Mr. Wellington

(done verbatim)

Mr. Wellington there has been a lot of discussion about a lot of points many of which are based on incomplete information or lack of understanding. Before I start there is a document handed out during discussion and I am not sure if I have a copy moments ago.

Mr. Minnich said you may have that copy.

Mr. Wellington what I have provided and I have available for the public are a series of very brief comments that I hope will capture the essence of what we have been talking about and put it in context. There have been a lot of comments made and they have been sincere from a lot of different people for a lot of different reasons.

I would remind the Commissions of the comments of Diane Duva from the Department of Environmental Protection who was here and spoke to this Commission at the last hearing. She said if you went out in my front yard and took a shovel and dug up the dirt it would not be clean fill. If you are looking at any soil that is being used other than virgin soil it will by definition be polluted fill. Polluted fill does not mean either that the contamination is mobile or that it represents a threat to human health or the environment.

Previously I have submitted documents into the record last hearing I submitted a bond, set of documents including permits, and various pieces of information. I recently submitted a proposed an outline for a permit and perhaps it is helpful in the case of first impressions. I also submitted the remediation standards for the Department of Environmental Protection. I don't intent to go into any kind of detail but I will reference it in a few moments. What I have done in this matrix I have gone through and I have identified what I have heard as comments. I would like to address them one by one and take them head on and say hopefully for the last time on some points what the law is and what the facts will be because if the facts were not that way I guarantee, that we would be sued by the state of Ct or the subject with an order of penalty and we are not in the business of having that type of activity.

First point is **attitude** – In March 2008 there were trees cut on the property, they were inadvertently cut we have said that several times before, people disagree about that. The person who is responsible for those activities his employment was terminated promptly after that. We received a cease and desist order saying among other things that we had a deal with that situation, we had to deal with Wetlands, and we had to deal with a number of other matters. We have submitted a revised Planning and Zoning Commission application to include all activities we believe we have been asked to provide. We have obtained Wetland permits from the Town of Watertown and US Army Core of Engineers. Those documents were submitted at the last hearing. The Inlands and Wetlands heard this same project and have approved the deposit of 212,000 cubic yards on this property pursuant to this same plan and they have exercised their jurisdiction. Likewise the Core of Engineers have approved the wetlands mitigation and the stream impacts that will occur. The stream will be filled in and it will be piped, the wetlands in the center will be destroyed. But we have complied with the law and we have gone to the appropriate state and local authorities.

Beavers - There was a comment at one point about filling the pipe and how it might get filled. It was suggested a beaver could fill the pipe or clog it in two days with a series of sticks and so forth. There is a metal grate on the upland side the beaver could not get through. There are rip rap rocks at the far end which perhaps they could get through but I doubt they would. The purpose of the grate in the uplands is to keep objects from entering the pipe and clogging it. So whether it is attributable to animals or attributable to storms the design is to keep material out of the pipe to avoid clogging.

Clean fill - Department Environmental Protection as I mentioned a few minutes ago Diane Duva said there is very little clean fill except in virgin territory. However there is enough fill that is useable that is appropriate to be used in development projects. It may not necessarily be called clean fill it was called polluted fill. The important thing about polluted fill is go back to the definition of where that comes from. The definition of polluted fill under the DEP regulations is any soil that has a detectable limit of any substance. One part per billion is polluted; the standard for that particular substance may be one thousand parts per billion, but that notwithstanding the fact that you found one of them makes it polluted. So I try to emphasize again polluted fill does not necessarily mean and would not mean that the fill at this site will represent a threat to human health or the environment. I provided the remediation standard regulations to these standards they are in the public record at the P & Z office, for members of the public who have chose to already look at them. What you will see when you look through those regulations is a very detailed analysis of risks both to human to the environment.

Formulas – Detailed explanations and numeric criteria that are provided saying how much contamination is too much and below that it is alright. I suspect that you will find that the DEP was conservative in their estimates because regulatory agencies are typically conservative of human health and the environment.

Clean Fill/Planning and Zoning – New regulations do not define the term clean fill other than suggested is dirt and rocks. We are suggesting that for this application and the purpose for this permit that clean fill be described as one of two different things. Either soil contamination that meets soils that meet the remediation standard. In other words any contaminate in the soil would be below the remediation standards established by the DEP or any other astringent standard established by the DEP. Now when you look at the materials they gave you, you will see an attachment; the attachment comes from remediation standard regulations and expressly provides the second page in paragraph H3 that polluted soils can be reused from one site to another with the permission of the Commissioner of the DEP. We will not have the unilateral right to decide whether or not soil polluted or transferable or useable without permission from the DEP and that might be given on a site by site basis or maybe given in the context of soil or fill acceptance plan.

At the last hearing I provided a copy of a permit for a specific facility called the **tire pond**. It was allowing dredged materials from the Hudson River to be used that was a unique site it had a lay base I will acknowledge that. But it shows that the DEP on an individual or an individual site can determine what will be placed in there including soils coming from out of state and sediments from the Hudson River. You will also see in the context of this regulation that there are a number of rules that have to be followed. The polluted soil has to be shown on a map. It can't be placed below the water table. It can't be placed in an area that is subject to erosion. If any amount exceeds the pollutant mobility criteria applicable GA areas will not be placed over soil or ground water that has not been effected by the same contaminate already and for soils and GB the Commissioner can issue approval. Diane Duva also stated to this Commission that the DEP is in the first of three steps for the beneficial reuse of contaminated soils also known as polluted soils. The first general permit has already been issued; the second permit is in the process. If we do not rely on the general permit we will be relying on express DEP approval or a site specific permit with regards to the quality of the fill. What that means is that whatever fill comes into that site will not affect the ground water, will not affect the Naugatuck River, will not affect downstream, down gradient neighbors because it will meet the standards that allows it to be left in place by the DEP.

Compaction has been addressed at some significant length, I understand the issue and appreciation it. I sincerely doubt that this Commission will allow a 14 story building to be built on that site. Obviously a smaller building will have a lesser pressure footprint but by the same token I spent four years in the Naval Academy and they have built some very large buildings on wetlands fill when it was legal back then. So things are available, I am not suggesting it is going to be done here. What I am saying here the soil will be compacted and it will available for use for development at a later date.

There has been some comment about **22 acres**. This particular diagram which is figure 4 on the application is also depicted here in this particular map shows that there is a significant cliff across this area approximately 8 acres for the lower area and that is all that is inaccessible. Fill will not be placed on 22 acres of land it cannot be reached, there is a cliff there. Secondly the fill will be terraced, if you look at the application as I know the Commission has and the public will, there is a plateau but it is graded downward in steps at a level of one foot vertical to 3 foot horizontal. It will also be planted and seeded and dealt with that prevents erosion. When one talks about filling the land fill and the idea the 22 acres of land are going to be covered with fill that is not the case, it is a smaller footprint than what has been talked about.

DEP Oversight – There has been a comment to the effect that DEP is too busy and has too small a staff to become involved in overseeing this project. Let me tell I have met in Hartford on one than more occasion meeting with DEP and I have no doubt that I am going to be there many more times meeting with DEP on precisely this site. As a matter of fact we will have been involved in mitigation on this matter that is about to be settled, the DEP is a intervener in that matter and we have been working the Attorney General's Office and the DEP for the closure of the land fill. We are not aborting the DEP we have met with them and we are meeting with them. They have jurisdiction of the Transfer Act, they have jurisdiction of the landfill closure, they have jurisdiction under the solid waste and they have jurisdiction under PCB's. They all know about us because we sat down and met with them.

There has been a series of comments about the **development plan** being in adequate because in use description and showing that it could be feasible used down the road. This particular parcel of land when it is filled and when it is developable will have 1.6 acres including an access way directly to Echo Lake Road. It should be developable as I understand it under your regulations. So as far being feasible it is feasible because it meets the size limits as required by your regulations. However I might point out the end user might have a different use or may want a different configuration. So when they come in and they talk about fill in additional areas in what we are proposing. If this was going to be landfill the whole thing would be filled at a certain height. But no it is being terraced and it's being developed. One point I would like to make about that there has been a lot of discussion "gee this is another excuse to create another landfill non conforming use" when this project is done we will have a parcel that is certified clean by the DEP. We will have a parcel that does not have any wetland issues, we will have a parcel that no other legal environmental issues. To the best of my knowledge the PCB's will be taken care of, the solid waste will be taken care of, the contaminated fill will be taken care of, and so forth. So those are rare things to find in this state at this time. So when the next developer comes in they will not be facing a Brownfield like we are, they will be facing a site that is developable and will have an environmental pedigree that be worth a great deal of money. So this site is worth more once it is developable as we are taking it than if it were simply a landfill if we brought it all up to the sane height. I also would point out that section 65.2.2 of your regulations provides that this Commission may modify the contents of a site plan when it determines that portions of the site plan requirement are not applicable. Section 51 of your regulations it describes what suppose to be on a site plan, including that has been pointed out utilities, location of buildings, streets, parking any number of things. However this is not a proposal to develop this parcel as an in use. So therefore we respectful submit that the issues pertaining to the quality of the site plan are irrelevant in light of your power, your authority to say what is relevant in other words you can say you don't have to show us where the well is going to be, you don't have to show us where the septic tank is going to be however I would note that the directly downgrading of this parcel is a transfer station that apparently has water available and a septic system s it is doable in this area because they are doing right next door. There is also a junkyard right across the street, I am not sure if it is active they have been operating there for a number of years, I suspect they also have a septic system and a well which would mean that it is feasible.

Erosion & Sedimentation - Significant issues have been raised about the impacts and potential impacts on the Naugatuck River and the Housatonic River and so forth. When you go back and look at the application and you look at sheet 8 you will see that there is a soil erosion sedimentation plan to deal with precisely that issue to prevent sediments from getting in waters while the project is being built. Once it is completed it still will have sedimentation and erosion control facilities on the site. When we complete our work it still will have sedimentation and erosion control facilities on the site and they are depicted on the application. They are depicted by these lines for the public benefit on the down gradient side of the property.

Fill Quality – Using 212,000 cubic yards is excessive were not there to close the wetlands, were there to develop a property for the future benefit of this town and for the tax rolls of this town.

Fill Quality Control – It is crucial that this town and the citizens know about what is going into that area, it is crucial. We fully anticipate that we are going to be required to maintain records by the DEP in form of a fill acceptance plan like the one I submitted at the last portion of this hearing. It will require generation certifications; it will require analytical testing of the soils before it leaves the site. It will also require quality assurance and quality control testing of certain portions of the fill after it gets to the site. These are the types of things that DEP does to ensure the quality of materials in a site. Will it be every single truck? No it will not. That would be financial irresponsible and unnecessary. Will it be sufficient in light of the law as administered by the DEP? We believe it will be and we have suggested that may be useful to this Commission as well.

Ground Water Quality Impacts – When you look at the remediation standard regulations that I gave you, you will see that there is two different types of standards that apply to the soil. These are in sections 22a 132-2 once called direct **exposure criteria**; the other is called pollutant mobility criteria. The first one is designed to prevent humans from coming into contact with soils that are excessively contaminated. And what it says if it is excessively contaminated either you remove it or you cover it that is what the DEP applies in the regulations or you leave it in place under a building with environmental land use restrictions. The **pollutant mobility** criterion is precisely what this Commission is concerned about. The pollutant mobility criterion says how much contamination can remain in the soil with the expectation it will not leech out and enter the ground water. For example as I provided last time its 500 parts per million for petroleum hydrocarbons. That means if you got 490 parts per million you could leave them because it is not expected to leech into the environment and people with a great deal of experience and expertise has spent a great deal of time coming up with these numbers. We would respectively suggest that neither that this Commission nor the Wetland Commission would probably would want to try and duplicate that effort since it has already been done by the state government. Further what you will find those standards are also standards that are applicable to Federal Super Fund sites in the State of Connecticut. These standards are applied both at Federal and the State level for properties in the state of Connecticut.

Landfill Closure - it has been suggested that any permit should be limited to land fill closure. This application is not closing a land fill but for developing a site for future use.

Non Conforming Use – it has been said that if we add polluted fill to an area to create this plateau that can be used for future development and terrace the areas that were actually doing activities as a landfill.

- 1). we would not compact it
- 2). we would fill it as high as we could everywhere we could
- 3). we would not quite care about the configuration as it finally ended up.

This has been purposely designed for business use; it is not designed as a landfill.

PCB's – They will be addressed in the contact of the transfer act work.

Pipe Cleanup – I will suggest to you that every municipality that has sewers cleans them out. Sometimes every 3 years, 5 years, 10 years whatever we address this and we will address it by notification on the land records.

Pipe Drains – have been addressed.

Polluted fill - I have covered.

Remediation Standard Regulations/Soil Criteria - I have covered.

Final Site Grade - will be excessive.

Site - to be used as land fill I have covered.

It is Developable - 1.6 acres with an access route directly to the high end of Echo Lake Road farthest away from the curb.

Soil Sources – There has been concerned expressed both before this Commission and before the Inland and Wetlands about “we don’t know where this soil is going to come from” the answer to that question is it does not matter where it is coming from what matters is the quality when it crosses the threshold at that site. If it is clean enough and if it meets standards it does not matter where it comes from because it will not leech contamination, it will not affect human health or the environment.

Town Oversight – How will the town know what is going on. We would certainly expect and appreciate comments or conditions in the permit which would require us to share communications with the Town P & Z office. All records and communications of the DEP would be sent to the town. All records would be shared with the town and provided for the community to come and look at it.

Traffic Study – has already been addressed.

Wetlands Impacts – There has been considerable suggestion that perhaps we could do things differently to avoid impacts to the wetlands. The Army Core of Engineers and the Inland and Wetlands Commission has approved the filling of those wetlands and the piping of them. I would like to suggest that the battle has already been fought and it was fought vigorously and it was resolved and it was resolved by the Inland and Wetlands Commission on how to proceed. You certainly have jurisdiction however over the configuration of the pipe and so forth and the building of the site. So if we felt there was not a need to address those we would not have addressed them. However the wetlands impacts have been addressed vigorously and we have provided you copies of the permits.

What I would like to say in **conclusion** is sincerely the public has done a tremendous job on raising issues, that they believe sincerely in their hearts are relevant and are based on facts. It was suggested that perhaps that I was trying to be something like Barnum and Bailey by having 22 acres filled with certain amount of soil, they certainly made more money than I did. The bottom line is that we are going to comply with the law as it exists. We are not bringing in soils that would represent a threat to human health or the environment. One things that we have done and some might presume that we have provided a proposed language to be used in draft permit because this is a matter of first impression, because this is a matter of significance concern to the public we thought it would be useful to the public to be able look at the face of the permit and know those things that this Commission considered the deliberations it went through and the conclusions it reached on the various points that have been raised. So as we offer solely as a suggestion, you of course have complete discretion to ignore or do whatever you want. We have also taken the step of suggesting paragraphs and you might want to include making sure that permit is as thorough as I am sure it would be. But do so in an environmental context which is an area that I work in and a reason that I am standing in front of you. I suspect the environmental issues you dealt with in the past were probably not been of this magnitude and having said that I would like to nominate myself available to answer any questions by the Commission.

Board Member Concerns

Mr. Minnich asked the site you are going to be putting in 212,000 cubic yards of fill, how is that integrated and phased with how the site is going to be cleaned out. When is this fill going to be put in?

Mr. Wellington replied as you know from prior presentations that I made the current landfill footprint has contamination in soils, there are certain materials in there that are likewise contaminated, the DEP may or may not choose to have those removed. It is called disruption the DEP prefers not to have materials removed and disrupted if they are not providing or causing contamination. We have downgraded monitoring wells at the very lowest point of the site and the water is meeting state standards. So as a result and the DEP has said this you are not going to put fill in there until you clean and show up and show you have cleaned up the contamination that we want you to clean up. In other words certain types of contamination might be left in place and might be covered by fill. PCB's will likely have to be removed and they will be located and removed. That is a very sensitive contaminate. Petroleum contamination there may be hot spots that they want removed. There may be other contaminations below standards that say leave it in place. Land use restriction on the property which makes it non residential and then provides a

description of where the contamination is, what the contamination is, and how the Commission who is the beneficiary of the land use restriction has approved the leaving of the contamination in place. So the procedure will be to remove the surficial tires and drums and the second step which may take a year or more will be investigating of the site and remediating the contamination. During that period of time we will be meeting with the DEP to determine the fill procedures that they find acceptable because as you saw from the document I gave a moment ago you have to have the DEP approval to bring in fill from another site either in context of direct DEP approval for particular fill or alternatively a permit with a portion in their for a fill acceptance plan like I showed last time. So I would anticipate the fill activities are probably 18 months or 2 years down the road is my best guess. I do not know how quickly the DEP will be satisfied, typically what they want you to do is remove the contamination and test the ground water for one year at least four quarters to prove that you got it all. If the contamination remains below standards at that point they may require a second year ground water monitoring or they may say okay we will allow you to do certain activities. So the contamination will be removed second after the solid waste on the surface.

Mr. Dupliese commented you are bringing in a third of what was approved 18 years ago and you are bringing it in as a terrace instead of one flat site, you are going to take care of the contamination, you limited the amount of fill that you are going to bring in, you are taking it to one third the amount that was brought in before and you are making a much better site than it is today.

Mr. Wellington responded and when we leave it, it will be terraced and will be planted and soil erosion control operational facilities there. I thank you for bringing up that point; I did not recall the details of that.

Ms. Mulcahy asked about the follow up on the phasing, when would the scales, they are typical part of a land fill operation, when would you be removing those from the site at what point.

Mr. Wellington replied I cannot answer that question directly but my suspicion is that when we are doing filling and we have planted the surface, and we completed all the arrangements for final development and there is no more fill, then the scale would be removed. As long as there is going to be any more fill brought in then the scales would be needed. I cannot give you a particular page or citation in the application.

James Birdeau

What Mr. Wellington just said you got to remember what Diane Duva said this is a three phase project. One attesting to what is there, and then the mediation of what is there and as far as what they are calling redevelopment bringing this in. She will be involved with the first two of that after that if I remember after they finished the mediation this is a clean site and it is a clean site without bringing clean fill in. After that the DEP is not going to be involved and neither will there be LEP on this site and she said to the board that is where you come in, you have put restrictions, what type of soil you may want, if you want somebody to oversee this project. It is basically all on you the 212,000 yards of soil that is coming in, they are stepping out of it. I just do not want a repeat of what happened 30 years ago and nobody is going to oversee it.

Mr. Wellington if I could respond to that very briefly, what Diane Duva said was in the context of her responsibilities particular to the solid waste division of the DEP. I have handed to you and provided this evening the DEP regulations signed by the Commissioner and the Commissioner says the Commissioner shall approve, so Diane Duva solid waste people may not have any role in the fill beyond the land fill closure but the DEP will and because the Commissioner has to grant approval. So unless we have DEP approval for the fill material then we would not be able to bring it on site. So that is the information that we have and as I said I left out to remove the surficial waste, to clean up contamination, close sure of the land fill, and then the fill activities. Again as the regulations says the Commission has to approve the fill that is used from another property before it could be moved to yet a different site.

Mr. Minnich asked if there are any questions from the Commission or the public.

Mr. Minnich suggested to the Commission that we take what we received in forms of the traffic report and other information and continue the public hearing and at our next meeting in August and consider where we are going with this in terms of public direction. I need to understand what we just received this evening and then I can better comment on. I think it is only appropriate that we leave the public hearing open so that we could ask questions and they can respond and the public could do the same. Is there a motion to continue this public hearing?

MOTION: Duplissie moved to continue public hearing to August 5, 2009

SECOND: Mancini.

Aye: 7 Nay: 0

Michael Masayda _____
Secretary