

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

Time: 7:00PM  
Date: August 5, 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 7:03PM.

2. Roll call

The secretary executed the roll call.

**Present:** Chairman, Mr. David Minnich  
Vice Chairman, Mr. Gary Martin  
Secretary, Mr. Michael Masayda  
Mr. Carl Mancini  
Mr. Jim Blais  
Alternate, Mr. Duane George

**Absent:** Mr. Ronald Russ  
Mr. Glen Dupliesse  
Alternate, Mr. Ray Rondeau  
Alternate, Mr. Ken Demirs

**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. Dupliesse

### **3. Hearing of applications**

- a. **Continuation of public hearing July 15, 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 over approximately 600' of a piped stream for site restoration for future industrial use located at Echo Lake Road, Watertown, CT in an IR-80 zone.**

**(verbatim)**

#### **Joe Wellington**

We have two parts to our presentation this evening. Afterwards we hope for public comment and be in the position to close the public hearing on this matter. The first three points will be addressed by Ted Crawford, the Engineer for the project. He will be addressing the soil protection, O and M plan for the pipe maintenance and pipe strength. After that I will be addressing various other environmental matters.

#### **Ted Crawford – Malone & McBroom – Professional Engineer**

At the last meeting we felt there were 3 issues that seemed to be discussed in length regarding the engineering of the project.

The first was regarding the placement of the fill for the site. Since then we have prepared a filling compaction program and I believe you all have received a copy of it. I will briefly go through that and answer any questions you have on that. Starting off we are going to begin how we are going to place the fill, we fall back on state regulations, as I noted earlier on a previous presentation we will be compacting the earth 95%. What we have done is gone above and beyond that. The report you received calls out for 6 specific items to be done during the process of filling and I will just read those briefly.

1. Fill shall be placed in successive layers for the full footprint of the area indicated on the site plans.
2. No layer shall be deposited on surfaces of snow, ice, or frozen material.
3. The depth of each layer, before compaction, shall not exceed 12 inches.
4. The entire area of each layer shall be leveled off by suitable grading equipment and shall be compacted.
5. No rock fill or reclaimed material containing fragments over eight inches in their greatest dimension shall be placed above an elevation which is four feet below finished grade.
6. The entire area of each layer of the fill material shall be uniformly compacted by the use of compaction equipment consisting of rollers, compactors, or a combination thereof. The dry density after compaction shall not be less than 95% of the dry density for the fill material when tested in accordance with ASSHTO 180.

In addition to that we fall back on the standard specifications. Following that we have provided the guidelines for the inspection and verification program and I think is important. This falls back on the 2003 International Building Code and the 2005 State Building Code addendums. I have also attached the appropriate sections to this. But again we called out specific items to be included as part of this verification and inspection.

1. Specifications for the preparation of the site prior to placement of compacted material. These specifications will be created a licensed Geo Technical Engineer. This is something we have developed in accordance with the Town Engineer for his acceptance after construction and to provide a system and mechanism to monitor placement of fill during construction.
2. Specifications for material to be used as compacted fill.
3. Test method to be used to determine the maximum dry density and optimum moisture content of the fill to be used as compacted fill.
4. Field test method for determining the in-place dry density of the compacted fill.
5. Minimum dry density after compaction shall be not less than 95%.
6. Number and frequency of field tests required to determine compliance.

Then going on further following the completion of filling and construction activities, a professional Geo Technical Engineer shall provide a final summary including all testing and inspection logs to the owner and the Town of Watertown Engineering Department. This provides a final document that when future development comes for the site it will be utilized for anyone who wishes to develop it later on down the road.

The final phase of our program includes an as-built which is also important. To ensure that it was constructed in conformance with fill materials not in excess of what was originally proposed. The storm water features are in place and correctly installed, this is something that you actually have in your zoning regulations and I included that section 51.19 and it refers to subdivision roads and it does apply to this. In addition to your standard compliance we have included:

1. The outer control structures included the inlets and outlets.
2. The 36 inch pipe – line and grade of the pipe shall be as-built prior to the placement of fill over the pipe. We just want to make sure the pipe has been installed correctly prior to any construction activity.
3. High level overflow structure, pipe, and manhole will be as-built.
4. Flared-end outlet structure
5. Bio depressions for the west and east side of this project to make sure it is in conformance with the mitigation plan approved earlier.
6. Reverse bench slopes proposal on the property will be documented.
7. Random spot elevations throughout the entire project
8. The elevation of the plateau
9. Riprap channels
10. Fencing proposal on Echo Lake Road
11. The limit of clearing to make sure it is in conformance with the approved plans.

In addition to this a general conformance statement prepared by a professional Engineer shall be required for the Zoning Enforcement Officer similar to what you would receive for your plot lands or other developments showing that the project was developed in accordance.

There were some discussions regarding the piping of the water course. We developed an operational and maintenance program and specifically geared towards that program for that facility. I am not going to read the entire document but it covers items of **routine maintenance**, mowing of the slopes and areas adjacent to that inlets. **Inspections**, seasonal inspections to make sure that there is not any clogging and procedures on how to remove debris and litter. Then **non routine maintenance** is just sediment removal, if there is sediment built up in these basins we want to make sure that is removed accordingly. We do not anticipate much sediment based on the location, however we do feel it is important to inspect these and make sure they operate correctly.

One thing we followed up on with the **outlet control structures** which are actually inlets, we inspect those 3 times a year, typically spring, fall if the leaves are falling and during the winter for ice buildup anything that could essentially block those inlets. I know there was concern about regarding plugging of those inlets so we provided a mechanism to inspect those 3 times a year and if debris is found it will be removed.

**Maintenance of the storm drainage pipe** we have acquired an annual inspection using a TV device we send up the pipe. In the event that blockage is found it will be eliminated through mechanical means such as a cutting machine or something along those lines. In the event that a structural issue is determined a professional Engineer shall be immediately contacted and brought in to look to repair this issue and brought to the attention of the Town Engineer as well. We intended this plan to be similar many other maintenance plans for subdivisions and parking lots which allows for a system to keep the pipe functioning properly for many years.

Then finally the integrity of the pipe and the actual design of it was discussed at length. What I received recently and submitted to the Town Engineer this afternoon was an email from Hansen Pipe, they have been asked to look into the design of this and we have met several times and they have come up with specific guidelines and minimum design requirements that they wish to use for the design of this pipe. Such as the D load, you remember on the table that I gave you last meeting showed that the standard type can withstand a sixty foot fill that had a D load of 6,000. The pipe that we are designing and intending to use on this project is 6,500 that is twice the capacity for a standard pipe. That is to accommodate buildings and travel of vehicles on top of the surface however it is important to note that column load is the main issue on this project. We have the 60 foot column load any items, buildings, and vehicles placed on top the load gets dispersed throughout that column load so there is really not much impact on the pipe however we have significantly increased the capacity of that pipe. Essentially it is going to be 7 1/2 inches thick wall for that pipe, so it would be a very substantial concrete pipe and I have that documentation here. This covers many issues of our engineering that we had last month and I would be happy to answer any questions?

**Board Member Concerns**

Mr. Minnich was concerned about the plan you have before you dated July 15<sup>th</sup> that shows the physical restriction in turning right.

Mr. Crawford replied that plan that we submitted was attempting to compare the difference between the existing landfill and the proposal, it actually was not directed towards traffic and I apologize if there was any confusion.

Mr. Minnich responded then that is not the document then to reinforce the narrative for the traffic.

Mr. Crawford replied the actual discussion regarding the means to physically detour traffic from making a left would be the creation of an island or something along those lines, we felt it would be worthy to discuss with the Commission or with Town Staff we can determine a requirement at that point. Most likely a paved island with a curb to it would direct trucks to make that right turn and prevent them from making a left.

Mr. Minnich said he would like to know what that proposal is before the approval. There is no statutory authority for the Watertown Police to enforce from private property any directional turn. Therefore I am certain we do not want to be as Commission involved in that means of enforcement and so I look to that physical barrier as a means. We all know the people coming on to your property are not employees of your property and they are going to be doing what they wish to get to the road quickest. We have all understood that turning left is not in the best interest of traffic safety. Both the exit and the entrance roads as I see on that plan is two roads both are only temporary curb cuts for construction there is no need to have to any town standard. The right hand turn is an important aspect in my mind to the traffic reports that we had talked about.

Mr. Crawford replied it would be anything that we would use in town, it would simply be just a physical island that would turn to the right coming out of the entrance and it would not be anything more complicated than that. We have agreed to beyond the physical requirements of eliminating the truck turning movements, we have also agreed to a driver education program, essentially we will hold our people coming on the site responsible and educate them the limits of access onto the property, so the intent would be even though they might not be an employee, they would understand the requirements of entering this site and that a right turn out only is the only way to leave the site for their vehicles.

Mr. Minnich asked if this could be written on paper with a drawing or a sketch as to what you are proposing. My concern as well as the traffic report is that there is a physical restriction to only allowing turning right from exiting that property.

Mr. Masayda commented that is due to the site distance for right turn only. Did the designer ever consider a wider bypass lane so the truck vehicles could turn left and there would not be the hazard of someone being able to maneuver around the vehicle trying to make a left on a wider shoulder?

Mr. Crawford replied we felt it was more appropriate to limit the exiting of the traffic, which is why we propose our driveway in the farthest west location to allow for the greatest site line. Echo Lake is very wide but in addition to that turning lane we also agreed to provide stacking area on our property for vehicles.

Mr. Minnich asked our third party consultant said he is not recommending an additional turning lane on Echo Lake Road.

Mr. Crawford responded it is only for temporary use during the construction.

Mr. Minnich asked about the 60 feet of fill that you had in the last proposal was the threshold of what would be acceptable for that particular pipe. You have gone back and looked at the design of that and have done some additional thickness of the pipe and other reinforcements engineering wise...

Mr. Crawford said the reason I gave you the standard forms last meeting was to let you know that we always intended for this pipe to be specially designed. We felt we were reaching the limits of the shelf pipe and in addition that is why we contacted the piping manufacturer to have them begin the design of that piping and we provided this information which is actually double the standard pipe.

Mr. Minnich said the Commission and Mr. Berger will look at this as well. To put in the record my concern which has been shared with many here is that the end product of this from our perspective is to have the property cleaned up as DEP and EPA require it to be and then to have the site filled appropriately to encourage industrial growth and development. If the soil that is going to be put on their inclusive of the pipe that is going to be underneath, that soil is adequate to which is going to support the industrial growth in that particular property then we have done what I think is our job to make sure that it is done. Our job is easy we are going to listen to our engineers and they are going to tell us. I have asked in an earlier conversation that perhaps it was not necessary to have a building in terms of looking at the standard now and if indeed you have a site and you do not have that plan and I will take from my standard the worst case scenario what may be there and that is what the pipe should be designed to withhold to the standard.

Mr. Crawford responded when this pipe is designed as required under site plans it will be designed for the maximum building that can be constructed on that site which I believe is four stories or 40 feet for the zone.

Mr. Minnich said if they could put together as far as a statement for that as Engineer with your signature on it.

Mr. Crawford said our plans that the pipe has to be specifically designed and in addition a design will be required to be submitted to the town for final sign off. A drawing and a detailed design will be submitted to myself and to the Town Engineer for review that meets the requirements set forth in the possible approval saying that the pipe will be required to withstand a load of a four story building or the maximum building for this zone and that will be signed and sealed by professional Engineer.

Mr. Minnich on this matter and the history progressing to this point I want to see something signed by you as the applicant with your license and stamp on it as to what exactly you have just told me, and having our Town Engineer have a third party for us also sign and seal with a licensed Engineer stamp with all the parameters set are met. On this particular matter I want to see those now with your license on them.

Mr. Crawford replied you want to see the actual design of the pipe.

Mr. Minnich responded I want to see the design of the pipe and what you are proposing. You may modify it later on and change it but in terms of this approval I want to see exactly what it is that you are proposing with your licensed stamp on it.

Mr. Crawford said it would come from the manufacturer, professional Engineer.

Mr. Minnich asked you provided the issues relating to the storm water management control plan and it seems to address the issues we have talked about and you also addressed the maintenance issue, for my information how is that going to be managed, who is it going to be, the way I conceive this is that you have several different contractors for doing different things on that site is this the owner that is going to make sure that this is done.

Mr. Crawford replied yes and it should be filed on the land records so that the owner now and in the future will be required to maintain this pipe to these minimum standards.

Mr. Wellington said that was the comment made by the Commission made in the prior hearing saying that the maintenance would be put on the land records for anyone who bought it and realizing that they are buying it subject to that condition and that is how we propose to handle that.

**Joe Wellington**

We recently received a letter from the Army Core of Engineers which I will touch on and only in the general sense and briefly. It is significant reason because it addresses a matter outside of the jurisdiction of the Commission. That notwithstanding, it is important to make clear to the public record, because issues were raised in that letter which are based on inaccurate facts and inaccurate reading of the record before The Army Core of Engineers and I will show that in a few moments. Before I do that thought I would very briefly touch on what we talked about before because I can see a potential for issues coming up down the road and that I would like to make sure that it is clear on the record as to what the Commission's approval is and what it pertains to.

What we have before it a site plan and the site plan shows the development of this parcel for final industrial use incidental to that will be closure of the landfill which is located at the parcel. What we have before you is the final grading plan, the final depiction of the site, what we do not have before you is a lift by lift depiction of how we are going to do the lifts and when the lifts are going to be done other than to say that when the lifts occur they will be compacted in accordance with the compaction plan and so necessarily we do not want to run afoul with the Commission where someone says you are filling but you are not filling in accordance with the approval, because if the approval is the final grade I would like to clarify that point. And I will address that in just a moment.

As we talked about so many times before there are four physical elements to this property being redeveloped for industrial use.

- 1). **Removing the surficial solid waste** that is under the exclusive jurisdiction of the Department of Environmental Protection the waste has been there for thirty years it will be removed.
- 2). The second element is the **environmental investigation** and remediation of contamination at the site that has been there 30 years and it is under the exclusive jurisdiction of the DEP and the contamination will be addressed in accordance with the law. So that anything remaining on site following the remediation will be consistent with state standards, which is also consistent with your regulations as I will point out in a moment.
- 3). There is a component about **landfill closure** there are some who have decided or perhaps taken a position that landfill closure is in, in of itself. Landfill closure under the DEP regulations involves the top 4 feet above it. The industrial development project involves the soil above that, so while it is true that the landfill closure is part and parcel of this process and application, it not the beginning and the end of it and as you will see in a few moments the description of landfill closure is not what this project is about nor what it was the project was about in 2001 with the Core of Engineers.
- 4). **Fill of the wetlands**, piping of the intermittent brook to fill the wetlands, which is under the jurisdiction of Inlands and Wetlands Agency and the Army Core of Engineers. We have represented to you before that we have gone before those agencies and we have their approvals.

As you will see in a moment the Core of Engineers has suspended their approval based upon assertions made by someone and that is a matter that is going to be ascertained and a lack of review of their internal records and we will show that in just a moment.

The most important thing as I stand here now to make sure that we do not run afoul and get involved in orders and so forth down the road about intermittent filling. What do I mean about intermittent filling, there are tires that have to be removed and we have to get access to them safely as your regulations say the fill has to be orderly and safe. Likewise we have to do work in the wetlands and we have to do it safely. There may be a necessity to have fill on an interim basis as part and parcel of other portions of the property and the activity. It will ultimately be

part of the fill that we use as the overall site development, but are not part of the site development as you made on an interim basis, they will be later when more fill is added on top because obviously we are not going to put fill down then take it out. They are not part and parcel of the final grade at the time they are made on an intermittent basis but they are made for the purpose of safe and orderly access.

Now what I needed to do is refresh my recollection of the regulations of your agency pertaining to fill activities before I came over tonight. I don't want to be so presumptuous as to share those with you but I thought for the benefit of the public that I would do that for their benefit.

**Section 5.270** of your regulations defines the word filling to mean the process of depositing clean such as soil, sand, gravel, rock, clay, concrete or asphalt paving fragments. So your regulations define the act of filling as placing clean fill which includes soil.

I refer next to your regulations **Section 65.2.3** provides that the Commission may grant approval of the filling project for a limited time only. Which is why we are proposing a time limit be placed in the permit. Now it does not say it has to be a short time but it has to be limited by time, in other words we can't have an indefinite permit because we have to come back if the time expires. I would anticipate that would be in the permit.

We could be required to submit an amended site plan. When you go to **paragraph 65.3.2** it says the fill material shall consist of 80% of earth fill and with the remainder being woody vegetation and masonry only. We have been told we are not allowed to put in woody vegetation by the inland and wetlands, so we will not be using those materials. This time we are not contemplating using masonry.

Finally **65.3.7** says the filling of the site shall be carried out in a safe and orderly manner. All fill shall be compacted to stability of material to prevent undesirable settlement. The Town Engineer shall require tests and other information to verify the placement and cover of the fill materials. We listen very closely the comments of the Commission and put together a grading compaction plan which has been submitted to the Town Engineer for the express purpose of addressing that point in your regulations.

Finally in **Section 61** of your regulations which is entitled *Environmental Performance Standards* it provides under **section 61.3** Water pollution, It says no discharge under any water course, ground water, wetland, or storm sewers shall be permitted except in accordance with applicable state, local and federal requirements, so obviously to comply with your regulations part and parcel that is complying with the Army Core of Engineers regulations as they have concurrent jurisdiction within the wetlands.

Now what I did submit last Friday was a compendium of documents highlighted in yellow which are in the public record in the Town Zoning Commission and I am going to address them in a few moments using slides that I have used in other forum. What I am going to show to you is very briefly is that someone has told the Core of Engineers that our project is different from what

the Core reviewed in 2001 and approved in 2003. The premise of that difference is that the original application was solely for landfill closure and that our application is for landfill closure and for industrial development.

Now on Monday I provided a copy of a package that we sent to the Core of Engineers. The good news is that we do not anticipate you are going to read it. But we have provided it to complete the record and we ask that you include it as part of the record of this particular public hearing. Because what it shows is the links to which our client has gone to respond to the DEP and to point out that we are doing exactly the same thing which was approved before.

The first document I have is a copy of the **cover letter** that went to the Army Core of Engineers. You will see in the over letter it says I have decided to suspend the authorization of your permit pursuant to federal regulation 325.7. The application supporting the documentation and additional information submitted at the request of the Core all indicates the primary purpose of this proposed activity is closure and capping of the landfill. Re development of the site originally appeared to have been a secondary consideration and mentioned only in supporting documentation as a return to the landfill site to industrial use. Therefore piping of the stream and adjacent fill of the adjacent wetlands does not appear to be necessary to capping and closure of the landfill. Taken as its face, what the Army Core is saying the original project for capping the landfill you are not going into development you have expanded it beyond what was originally approved. The Army Core letter continues it appears that the filling of the wetlands and piping of the watercourse is not necessary to meet the stated purpose of the original project which was closure and capping of the construction and demolition of the landfill, consequently further evaluations are necessary. So that means that the Core of Engineer's permit is suspended until such time as a review of the information that I provided.

I would also like to note in passing and I only intend to address one issue, is they make reference to standards performance and pre treatment standards. Pre treatment standards pertain to the discharge of industrial waters to a sewer. Our project has never involved nor did the one in 2001, the discharge of industrial waste to a sewer. So the letter that was written basically address all kinds of issues, it raises all of kinds of issues for the apparent purpose of slowing down this application on the grounds that wetlands portion has now been suspended or is no longer viable.

When you look at the regulations cited in the Army letter you will see that the District Engineer has the authority to reopen a prior approval and thereafter suspend, modify or revoke the prior approval, typically one of four scenarios:

- 1). The engineer is decided so on the engineer's own purgative.
- 2). Secondly because the permit tee has asked that it occurs.
- 3). The third party submits a request for the review.
- 4). If there is a series of inspections and they turn up evidence to something needs to be done, it can be reopened

Planning and Zoning

Wednesday, August 5, 2009

Special Permit #269 from Echo Lake Brownsfield, LLC

**Page 11**

We had never heard word one from the Core of Engineers from 2005 until July 21<sup>st</sup> of this year, with regard to the application and fundamental purpose. We did go over one point about the mitigation plan and you have made a comparison to the mitigation plan that is being proposed and approved by the Inland and Wetlands agency far exceeds that which was proposed initially. So we did not request it, the Engineer did not request it, there have been no inspections. We never heard anything from the Core of Engineers about the fundamental issue of change of process which means that the third is the person who reciprocated this review.

Now you recall the comments were to the effect, that the development of the site for industrial purposes was an afterthought, it was in secondary documents. It was therefore not part and parcel to the original application. This is the transmittal letter for the original application in 2001. It lists the following primary documents, the application form, the closure plan, two copies of certain drawings and certain other documents. The Core of Engineers had not made a decision without the documents therefore they are primary documents. Again who have these not only in the hand out I gave you but also the full package that I gave the Core of Engineers.

First primary document the application form itself, the application form provides that the name of the project is the closure of the Echo Lake landfill, that is the name of the project in 2001. But if you go to the second page what you will see it that the project purpose is to close, cap and return to commercial use the Echo Lake landfill, close, cap and return to commercial use. Someone will say perhaps that is ambiguous, maybe they were not talking about industrial activity.

The gentlemen who owned the property earlier received a letter in April 2000 from the Connecticut Department of Environmental Protection. The Department of Environmental Protection authorized the use of 300,000 cubic yards of fill material to cover the landfill and another 250,000 cubic yards outside the footprint of the landfill for 550,000 cubic yards. Our approval is for 212,000 cubic yards. The wetlands that are being filled are exactly the same wetlands. The brook is being re piped is exactly the same brook, there is absolutely no distinction. The difference in the two projects is the quantity of fill. Would someone say "Gee how does it still relate to what the Army Core of Engineers was looking at back in 2001, 2002, & 2003." You recall the one of the documents that was listed on the application as a primary document was the closure plan for the landfill and it is entitled *Closure Plan for the Closure and Reuse of Echo Lake Construction and Demolition Landfill*. Perhaps some would like more clarification, you will look at page 2 and they would see that the grading portion of the landfill closure plan expressly provided and quote "a closure plan that depicts on S1 and site plan drawing P1 section 8a1.profile service load and so forth. But this cap is designed to allow for future site reuse for building construction and or site development." So the closure plan expressly provided for future building construction and site development had enough fill to minimize infiltration of water.

What did the Army Core do with that original application? They had a meeting with the EPA, Fish & Wild Life Service, DEP, Phoenix Soil who is the original party requesting the approval and permit, Corey Rose who is from the Army Core of Engineering was also the person who

appointed contact on the most recent Core letter. On November 15, 2002 at a meeting by various Federal and State agencies it was said that the proposed activity associated with closure and capping of construction demolition landfill and to allow access to the adjacent uplands for future industrial development. If you compare Echo Lake Brownfield's application is for development of the lower parcel. These folks had approval to build a ramp to the upper parcel and to develop the upper parcel. What about the Core of Engineers did they have any discussion at that meeting is there any capping and use. They say they did. According to their own internal memorandum, they ask whether the purposes for the proposed activity were simply to close and cap the landfill or also to develop the site. The Army Core's memorandum provides the purpose is twofold. Close the landfill to provide infrastructure, to allow construction of road access to adjacent uplands portion of the parcel. The entire property is zoned as industrial. The applicant is willing to bear the expense of closing the landfill in order to proceed with the construction of the adjacent uplands. The Army Core expressly addressed the issue was this landfill closure and or development? The answer was both. The Army Core also evaluated the extent of fill they said is there any way to minimize the fill? The Army Core came to the conclusion, the Army Core is satisfied with the proposed fill has been minimized to the greatest extent possible. We are filling the same stream bed, piping the same stream, and affecting the same wetlands. And you will also see with Corey Rose is the person that signed those minutes.

On March 6<sup>th</sup> 2003, The Army Core of Engineers approved the application that had been filed in 2001 for the fill of wetlands and development of the property for industrial purposes. That approval expressly provides, we inform you have received your application of so many feet and so forth in association with closure and capping of construction demolition landfill and the construction of access to adjacent up lifts for future industrial development in Watertown, Ct. That is the approval letter from 2003. Yet we received a letter in 2001 saying we have changed the entire project because the original project as approved was only for landfill closure.

This particular slide goes on to point out that the other approval required was a water quality certification we have it, we had it, and there has been no change, no reason to change the water quality certification.

This is a depiction of the original approved fill by the Army Core of Engineers. You recall that our application is to develop the lower portion of the property with a plateau in the center area gently sloping down to both sides with wetlands mitigation at both ends of the stream. They propose to build a ramp to the upper area and that is where the other 300,000 cubic yards of fill are involved. This project as designed was approved by this Commission at an earlier date, but we are a different application in so far as we providing more detail.

This is unfortunately a poor depiction of the plan P1 it is the best I could give, what it shows is the center of the area there is a huge mountain, now I say a huge mountain the top of the area on this depiction is identical to ours 350 feet. The slope is significantly different, our slope is gentle. That was also approved by the Army core of Engineers. As you know from the original site plan, the materials that I gave you in 2001 when you compare it they were building a ramp to the upper area.

So in conclusion the Army Core of Engineers wrote us a letter on July 21<sup>st</sup> saying our permit is suspended to fill wetlands on the grounds that we have changed our application from that which was originally was submitted and approved. I have just shown you one of the issues raised in that letter. What I provided you are the materials this past Monday are 21 point papers supported by over 30 exhibits expressly pointing out why we are doing exactly what was originally approved and why suspension should be lifted.

Now out of respect to the Commission I did give these materials to you and I do ask that they be made part of the record because it is part of the approach this particular company is taking to comply with the law. But also to point out that there are limits and we are trying our best to comply but as these issues are being raised particularly now two weeks before we are suppose to hopefully wrap this matter up not having zero conversation with Core of Engineers before does make things a bit interesting.

Now what I have asked for earlier was a point of clarification. It will be necessary to do interim filling to get access to the tires and the drums. The final site plan does not depict the precise locations of those filled and quite frankly do not know where they are going to be quite yet. It may involve moving some soil around that is already on site that has been tested and found to be not contaminated by any material. It was put there by the prior owner I believe approximately 23 years ago. As a result the clarification that we want to have in this record is that the Commission is not saying that they intent to micro manage every single lift or require us to come back and obtain approval for every single activity once the entire site plan is approved, the site plan is designed for final grade. When you go back and look at the materials I gave you a copy of the closure plan, what the DEP will look at is final grade. The land fill we be buried under considerable fill, the final grade established by DEP regulations will be irrelevant.

What I would like to request is that this particular application not be held hostage to activities which may require approvals down the road. But simply go back to your regulations and say you shall comply with federal and state and local requirements. Then should we not then certainly we would be in a position to be the object of an enforcement action and certainly as I pointed out in these materials we are not going to bring fill which has not meet DEP standards. We do not plan on doing that we never have planned on doing that. The fill meets DEP standards are designed not to effect human health or the environment. I previously provided a copy of the DEP standard and will be glad to elaborate on those. Although I think at this point you have had enough elaboration and enough points from one environmental attorney to last you a life time. So having said that are there any questions about the concerns we have and the clarification we are asking for with regard to the interim filling aspect?

### **Board Member Concerns**

Mr. Minnich said he did read all what you sent to us and I am satisfied that you are addressing the concerns that were in the letter of July 21<sup>st</sup>. This leads to the question it's my understanding that the landfill closure plan has not yet been approved by the Department of Environmental Protection is that correct?

Mr. Wellington replied that is correct. It is not approved yet because we have not completed the investigation to indicate where on the site we are going to be removing contaminated soils and other materials. The reason that it is important is that the solid waste portion of the DEP said they want us to minimize disruption. Which means they don't want digging up waste that is already buried and taking it off site. Until we complete our investigation we won't know what areas have to be dug and which don't. Then we have to go to the DEP and give both the environmental cleanup side and the solid waste side approvals before we have a final plan.

Mr. Minnich was concerned about approving the 212,000 cubic yards of fill that is requested without the knowledge and understanding that there is a plan approved by the state.

Mr. Wellington replied I have 3 answers I would like to share with you. The first answer is that the inlands and wetlands piping area are outside the footprint of the landfill. So filling of the wetlands area and the piping of the brook have nothing to do with the landfill, they are separate and apart. Secondly the piping of the brook and the plan that the wetlands has been approved by the Inlands and Wetlands Commission and has further been approved subject now to the suspension by the Army core of Engineers. So when you come back full circle to the question. Do you need to know the specifics of a fill plan that is approved by the DEP? The answer to that would be very simply say okay we condition our permit on you ultimately having approval before you close the landfill of the DEP approval of the closure of the landfill. I recall a moment ago, I pointed out to you in the DEP regulations of which I have given you a copy and the closure plan, the DEP concern and landfill closure is final grade. It is going to be buried, there will be no final grade on the landfill it will be completely buried. They are concerned about rats; rats are not going to be down there. They are concerned about landfill gases, the odds after 30 years of gases going through 30 some odd feet is remote. If there is a concern that this Commission would want to see final approvals before the landfill closure takes place then I suspect when we want have an approved plan before landfill closure occurs. However that having been said that does not mean that we will not need temporary fill in some areas to reach the drums and to reach the tires and to address the piping and the other approve activities in the inlands and wetlands area and so to a person perhaps the length of a closure permit is something is extremely focused on environmental protection. Its essence is a cap that is the essence of the landfill closure plan, plus ground water monitoring which is part and parcel of the environmental cleanup in exactly the same place. So when you go back to the regulations what you will find is that the closure regulations are dealing with a cap and other activities that require to prevent vectors and to prevent a buildup of gases, which have nothing to do with the grading of the ultimate site plan to be approved by this Commission. Now the only other aspect would be the aspect of the quality of fill that is going to be used, that is subject to a separate approval in any event. Now the materials that you find that I gave you with regard to the Core of Engineer response in there I provided two express approvals by the DEP on Phoenix Soil treated materials. One of them is to be used as surficial fill in an old folk's home in Waterbury. And the local press which I also included in their said that is 99.7% pure. The DEP is twice authorized the use of Phoenix Soil materials, one at this site. They have previously approved it I just showed that a few moments ago. We have to give the same type of approval before we bring in fill for the purpose of developing the site. So whatever fill we use will meet those standards and have those

DEP approvals or alternatively will be clean fill and so therefore the concern about protecting the environment is really the concern about the quality of fill and it is not the slope of the landfill or vectors or the other aspects. So I would respectfully suggest that if there is a concern about ultimately having the landfill closed that that could be addressed as a condition of the permit saying you will get landfill closure before you close the landfill. But we may need activities over the top of landfill before we actually close it. That is why I am trying to make that distinction and seek clarity on the record as to what the Commission desires and expectations are.

Mr. Minnich following up on that there are two quality standards for the fill, one is a quality standard where it is at water level of the low water level and the other quality standard fill above the water table is that correct?

Mr. Wellington replied it is actually not if I could there are two soil standards, there is a pollutant mobility criteria which is designed to say that any contamination in the ground will not be subject to mobilization. When acid rain comes down it flushes the contamination in the ground water and moves off site. The second criterion pertains to direct exposure that is called the direct exposure criteria. That deals with soils within the top 4 feet which humans may come in contact with eventually consume them on food or whatever. The two criteria are pollutant mobility criteria and direct exposure criteria. The point that you are raising is the one that I pointed to earlier in the context of the soil remediation standards which is the DEP approval criteria and what they said is any soils that you are going to use will not be placed below the water table. So if you are using quote polluted fill you can't place it below the water table. However that does not stop you from using clean fill and placing on top of and in the water table and then using polluted fill above it. So long it is above the seasonal height water mark for the ground water.

Mr. Minnich asked is any of it 212,000 cubic yards that you are requesting of us going to be below the water table.

Mr. Wellington replied in fact if you go back to the original core application what you will see and that part may or may not be in the materials you will see that the pipe is filled with clean fill around it, so that the level of ground water will go up and down seasonal in the clean fill. On top of that will be placed whatever is deposited as quote "polluted fill." To emphasize that point one more, polluted fill simply means there was a release and we can detect it, it does not mean it represent a threat to human health or the environment, obviously pointed out with DEP approval of Phoenix Soil reuse. I hope that was responsive.

Mr. Martin asked on the access roadways that you would be constructing obviously those would have to fall in the same compaction requirements that is being placed on the rest of the site for one foot compaction levels. These access ways are going to remain and then fill would be coming on top of it, so I am assuming they will all meet those compaction levels that you have identified.

Mr. Wellington replied I would assume so as well because after all that is where traffic is going to be going and the idea of the compaction as I understand it to make sure that the soil will not mobilize and migrate. However we will have improved erosion and sedimentation plan, which expressly addresses the fill activities during the course of the development. So not only would there be an effort to ensure that it does not mobilize but also be an effort to make sure that should it mobilize for some unknown reason our approved soil and erosion which I think is sheet 5 of your current application would be in effect to preclude any off site migration of sediments or premature impacts on the wetlands of sediment. We are not going to impact them until we are ready to fill them. When we fill them we are going to impact them in a big way in accordance with the permits.

Ms. Mulcahy asked Mr. Crawford I am assuming there is no water and sewers on this site. How far would someone who wanted to build the building, how far would that person have to bring the water and sewer, do you know how many feet, how far the closest is, usually on the site plans we have an approval for some kind of signoff that there is water available or sewer or a design of where you are going to put it.

Mr. Crawford replied there are preliminary plans I observed in the Water and Sewer Authority Office to bring water down the road years ago and I am not sure what the town plans are and intent to construct that.

Mr. Wellington commented the regulations of this agency provide that they can deviate from the final site plan requirements including such things as sewer and water if they determine it is in the total best interest of the public and meets the requirements otherwise. It is true that we are not presenting the final development of the site which as we have said several times before will be done by somebody at some point down the road when the site is ready for development. We anticipate those issues will be addressed at that time and perhaps water will be by then. I do not know how long it is going to take to get there. Clearly when they come before this Commission with a site plan layout there are going to have to show sewer and water. To the extent there are other people in the area, I believe there is residences across the street, I maybe wrong, I anticipate they have well water and they have septic systems. I believe it is under site plan section 65.2.2 filling of land acceptance where exempted in the section above shall be subject to site plan approval in accordance with section 51 the Commission may modify such requirements if it determines that they are not fully applicable and may hold a public information hearing in its judgment the nature of the site plan shall be such that the public should have an opportunity to be heard. I interpret that it applies to directly what we are doing. We are preparing a site for future development and so therefore we would not have a plan consistent with section 51 of the zoning regulations which necessarily would include sewer, water and the other utility type matters that are addressed in a site plan.

Mr. Minnich asked the public if there were any questions from the public.

**Susan Copia – Magmore Avenue, Seymour**

Would it be possible to look at the first Army Core that Mr. Wellington had? I think it was July 21<sup>st</sup>. I know you folks know about this because you have the letter and I have some people here that signed the petition and I just wanted them to know about this too. Is that okay?

Mr. Minnich said yes.

Ms. Copia said the statements in support of the original proposal indicate that placement of fill and waters and wetlands as well as piping of the water course was a requirement of the Connecticut Department of DEP to close and cap the landfill in accordance with the state guidelines. We have been informed by staff at the Connecticut DEP that this is not the case. That it is quite feasible for excavation and relocation of the contaminated material from the watercourse and wetlands and subsequent packing within the boundary of the landfill closure. Therefore piping and filling on the stream and its adjacent wetlands does not appear to be a necessary activity for capping and closure of the landfill. The decision to issue an authorization for this activity in 2003 appears to have been based on incomplete or inaccurate information, consequently pertinent evaluation necessary to determine whether issuance of authorization for this activity is in the best interest of the public. Utilization of our discretionary authority in this case will best serve the public interest.

Mr. Wellington responded with regard to the comment made by the DEP that the filling of the wetlands is not necessary landfill closure. That is true, the filling of the wetlands is occurring in the wetlands that is outside the footprint of the landfill and has never been part of the landfill closure. What occurred in 2001 they looked at the name of the project which is landfill closure and assumed that was the scope of the project. If you go back to the primary documents that I pointed out grading, for future industrial use, filling for future industrial use, someone in the Core of Engineers has decided that was a question about the original scope being limited solely to landfill closure. However Corey Rose who signed a memorandum in November 2003 said the purpose of the activity was to close and cap or to develop. The purpose is twofold to close the landfill, provide infrastructure of the development adjacent to the upland parcel, her own memorandum from the Army Core of Engineers. If there is misunderstanding perhaps it is because people did not read their own record and that is why I found it necessary to give them 40 some odd exhibits and 21 pages of comments to point out the original approval was for industrial development as well as for the purpose of landfill closure. However those notwithstanding the wetlands are outside the footprint of the landfill. You do not need DEP approval for a closure plan to fill the wetlands. I just offer that from their own memorandum for their own files. We would like to ensure that my response to the Army Core is part of the record of this proceeding.

Mr. Minnich said the letter that you have written to the Army core dated July 31<sup>st</sup> as well as the exhibits number 1 through 38a and power paper 1 through 21 without an objection is there any objection to the Commission, there is not any ...

Mr. Wellington commented and that is the pending exhibits as well sir.

Mr. Minnich said so they are part of the record.

**Judith Birdeau – 0 Echo Lake Road**

I wanted to state since Echo Lake Brownfield has had their Army Core of Engineers permit suspended, the Planning and Zoning Commission should not approve their project. It is my understanding that landfill will be closed regardless of bringing in the 212,000 cubic yards of fill enough. Of course I am not opposed to closing the landfill or developing a new parcel. But I am opposed to bringing in 212,000 cubic yards of polluted soil which translates into over 14,000 truck loads and piping the stream. This appears to be unnecessary if the only thing you want to do is make the parcel suitable for development. I also question why and this has not been answered if the project is only for development why there are landfill scales on the maps. I would like to see the Planning and Zoning Commission request that a plan is made up showing the development of the parcel with only the four foot minimum cap required by the DEP and the stream being left open and un piped. I would like to submit this into the record if I can.

Mr. Wellington responded this is an issue that was addressed in the inlands and wetlands called alternatives to the project. The Inland and Wetlands Commission determined there were no feasible and prudent alternatives to doing other than what we propose and I can provide that record and make sure that it is available.

Mr. Minnich said that is already part of the record.

**James Birdeau – 0 Echo Lake Road**

I have two questions for Mr. Wellington. Are they asking for full approval of all this at one time or does he mentioned that soils have to be brought in for capping the landfill and that is why he needs full approval. The DEP is overseeing the capping of the landfill and we recognize that the fill will be coming in to do that. Why do we need approval for the whole thing if DEP is overseeing the capping of it at that point? Of course they are going to have to bring fills in to cap it but is that not separate from this project all together.

Mr. Wellington replied you have before you a site plan which shows the final grade of the parcel following the preparation for development for industrial purposes. Underneath that is a landfill that will be closed. We have to ultimately close the landfill to satisfy the requirements of the DEP. But it will be buried under the soil which is the subject of the final site plan that is before this Commission. There is not a necessity to get separate site plan approval for closing the landfill which will be anywhere from 30 to 30 feet below the surface of the final grade which is depicted in our application.

Mr. Birdeau asked his second question, you said there was no other alternative for doing this and at the last meeting I mentioned two things I think on that site the way it sits you can get a building on the east and west side the way it sits on either side of the landfill. Mr. Wellington said himself that he believed after 30 years what they are able to be built on the way it sits because I thought it being a landfill over 30 years it should be able to be built so we need over 212,000 yards to build we have two and half acres right now with flat land and thirdly the forest for the DEP when they found out about it said they would be willing to give up if the applicant asked and applied for they would have to do it 2 acres on one side for a building rather than seeing the stream capped, piped and all that. So they do have other options, other than just bringing all this soil in.

Mr. Wellington commented is our application is our application it speaks for itself. It does not involve subdivisions, alternative development projects we believe it stands on its own merits and we request that the public hearing be closed and let it be tabled if appropriate until the next hearing. I know there is a lot on your agenda and I am not sure if we can get this to finality tonight or not unless you want to.

Ms. Mulcahy said we do not have an extension.

Mr. Minnich said that Mr. Crawford is going to be preparing some additional documentation. Certainly that is of the kind of material our Town Engineer could receive and review I feel compelled that because there are interveners in this project that all the material to which is being submitted for the record that everyone has an opportunity to comment on. So given that fact the lateness of the hour here could we request some additional time that only you could grant for this public hearing to stay open.

Mr. Wellington responded it will be extended sir. We would ask that you extend it to the next available hearing date.

Ms. Copia asked the letter on July 14th is part of the record and asked that this statement be added.

Rivers Alliance has expressed concern about the proceeding of this project prior to an approved plan for closing the landfill. Now that the Army Core has suspended the permit for their portion of the project there is even more important in my view that the town postpone the decision on this application until the state and federal requirements have been clarified. Thanks for your attention.

Margaret Miner  
Executive Director  
River Alliance, Litchfield, Ct.

Mr. Minnich asked is there a motion that we continue this public until Wednesday, September 2, 2009 at 7PM in this room.

Planning and Zoning  
Wednesday, August 5, 2009  
Special Permit #269 from Echo Lake Brownsfield, LLC  
**Page 20**

MOTION: D. George table to September 2, 2009

SECOND: C. Mancini

Michael Masayda \_\_\_\_\_  
Secretary