

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

Time: 7:05 P.M.
Date: September 2, 2009
Place: Swift Middle School
Media Library Room
250 Colonial Street
Oakville, CT

1. Call meeting to order

The Chairman called to order the public hearings at 7:05 P.M.

2. Roll call

The secretary executed the roll call.

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

Absent: Secretary, Mr. Michael Masayda
Alternate, Mr. Ray Rondeau

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

The Chairman seated Alternate, Mr. Ken Demirs for absent member Secretary, Mr. Michael Masayda.

3. Hearing of applications

- a. **Continuation of public hearing from August 5, 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 District.**

(verbatim)

Attorney Joseph Wellington

We have only a few technical points we want to cover to complete the record and then we will be available to respond on any questions the Commission may have. We would first like to thank the Commission for considerable efforts undertaken to listen and to consider the large number of documents that we provide and the large amount of information. I would like to open with Ted Crawford from Malone & McBroom to bring to date the engineering aspects of the records that have been submitted. As you recall perhaps the letter I sent last week I gave a written summary of what I understood the record to be and a description of the additional documents that have been offered since then.

(verbatim)

Ted Crawford – Professional Engineer – Malone & McBroom

Based on our last meeting it was my understanding that we had a couple of outstanding issues we wanted to address. Subsequent to that I had a meeting with town staff to discuss a couple of items and we submitted last week an access drive plan that outlined the controls that were desired at the entrance of the development to restrict vehicles from making a left turn out. The plan entails a bituminous paved island and several construction cones and drums in addition to that to create more of a vertical as well as a horizontal separation and control for that access way.

In addition the Public Water and Sewer plan was prepared to show the distances to existing water and sewer adjacent to the site. For example public sewers are approximately 1,500 linear feet to the west of our project site here and our project site is represented on the right side of this plan. Public water is further to the west approximately 2,900 linear feet.

We also submitted a wind born erosion report; this plan is essentially an outline and guideline for dust control during the fill placement of material. The highlight that was in that report we are intending to use water during dry periods not only in the access ways but on the site, this will help keep dust down. When placing the material, it will be used with a bulldozer, essentially to roughen the soil creating ridges that prevent dust from being brought up on the site as well as compaction which will keep material down. Following an inspection and modification system as required we will be inspecting the site to confirm that erosion controls are meeting with 2002 Connecticut guidelines.

Structural calculations report was prepared for the pipe traveling through the site. This pipe travels from the west to the east conveying a small water course. At the last meeting it was requested that we prepare an engineer's design for this pipe and we have done that. We have submitted that to Mr. Berger as well as the Commission. That plan was designed to accommodate 61 feet of fill and the pipe design we be approximately 7 1/2 inches thick with two layers of reinforcement.

Finally we made a minor revision to our maintenance and operation plan that we submitted last month. The only change was to our final paragraph where we felt it important to include an item specifically; any structural damage shall be immediately noted and brought to the attention of a professional engineer for review and repairs. This is an item under storm drainage pipe that is during the inspection process damage is noted we want to make it clear that it has to be repaired as well designed by a professional engineer.

Subsequent to those submissions I worked with Mr. Berger on a couple of items specifically focusing on the access way in and out of the project site. We were requested to prepare several turning movement analysis of trucks entering and exiting the site. For example this maneuver on the upper left shows a vehicle entering the site from the west bound traffic. Maneuver two shows a large dump truck exiting the site and so on. The final maneuver we did do was actually to show what would happen if the a vehicle attempted to go over the island, from the plan it shows that the truck cut through the island completely in half, we felt it was important to add that vertical separation of the drums and cones to add additional protection as far as the turning movements. This analysis did however cause us to make a few minor revisions to our entrance exit. We had to increase our radiuses at this driveway. I have revised documents that essentially cover that one specific item as well as lengthen the island to prevent vehicles from leaving. I believe that covers the items if you have any questions that were submitted last week I would be happy to go over them.

Board Member Concerns

Mr. Martin how does one affect repair on a pipe 60 feet below ground?

Mr. Crawford replied there are several ways depending on the damage caused, if it is blocked it could be removed through a cutting device, if there is cracking the pipe can be lined and we open that way.

Mr. Martin said then it is done within the pipe not above.

Mr. Crawford replied typically repairs are done within. He compared repairs typically done to the City of New Haven sewer systems.

Mr. Minnich asked if the access way given the plans you just described is it still with the barrels and the cones.

Mr. Crawford replied yes and with the bituminous island as well.

Mr. Minnich asked about the site plan application that was submitted in June you indicated that you had a 2 by 4 sign I did not note that on the site plan and if it is what is that sign?

Mr. Crawford replied it is shown on the plan on the west side of the access way and it says approximate location of proposed 2 by 4 sign just left of the driveway.

Mr. Minnich asked what is that sign going to do?

Mr. Crawford replied it would provide signage for the entrance for the project that we have identified the property.

Ms. Mulcahy asked if it was a freestanding sign 10 feet from the property line.

Mr. Crawford replied yes the post is.

Ms. Mulcahy said the edge of the sign has to be 10 feet from the property line.

Mr. Minnich asked then you will comply.

Mr. Crawford replied yes.

Mr. Minnich asked exhibit 8 Section A profile, I cannot read it is blurry and I do not know what it is for and if you could help us with this document.

Mr. Wellington replied the document you received and referring to is the best copy we could make the original was blurry. What is showed was the cross section of the original proposal back in the 90's with regard to the fill. It's purpose was to show that the original fill pattern for this particular site was to reach the upper portion of the property requiring the ease of 550,000 cubic yards of fill, whereas we are looking at the lower portion of the property using 212,000 cubic yards. The purpose was to show the ramp up going to the top portion of the top of the cliff on the property. That is not part of this application it is simply for historic reference.

Mr. Minnich asked Ms. Mulcahy to put that in the file.

(verbatim)

Attorney Joseph Wellington

What we will do this evening is try to tie up the last few what I think might be environmental issues with regard to the application. What I did to prepare for this evening was to go back and read the minutes and the transcriptions of the testimony and comments on the record to make sure that we did have a basis to cover all the bases, cross all the T's and dot all the I's. One of the questions that were raised by Mr. Mancini was is there any correlation between the volume of polluted soil that is used and the potential for contamination to leech from that. That question was asked of Diane Duva two hearings ago. Diane Duva is the Deputy Director of Waste Engineering and Enforcement Division at the DEP. Her response was that she recommended that

you get information from an LAP. What I did was I got a letter from LAP and I submitted it to you all on August 28th and it is a matter of the record already. In the interest of making sure that the questions were fully answered and fully developed, I asked that the LAP be present tonight, he is present and I will ask him to come forward briefly state his qualifications, briefly state his opinion as to the relationship if any between volume of polluted fill and the potential for migrating contamination. I will give you a duplicate of what has already been placed in the record.

Jim Ciaglo – Senior Project Manager – Berkshire Environmental Services & Technology, Torrington

I have been an environmental consultant for 20 years. I have a Bachelor's degree in Biology, and a Master's degree in Environmental Science and I am a Connecticut Licensed Environmental Professional. The question was whether or not the placement of polluted soil on the site would have a net effect impact on the ground water. The answer to that would be no, under the definition of polluted soil as defined in the mediation standard regulations of the state of Connecticut.

(verbatim)

Attorney Joseph Wellington

Mr. Wellington asked if there were any questions. If there are no questions then I will proceed moving forward expeditiously. One of the things that I was asked to do was to prepare for the application a model notice that would be used to be placed on the land records to give all future landowners notice of the obligation to service and maintain the piping beneath the property which will be there before they purchase it and prior to their development of it. I provided that on August 28th it has previously been submitted, obviously it will be reviewed by staff. Since I provided a package last Friday on August 28th, there are two more documents that have come to record. There is a letter from Diane Duva dated August 27th of this year, and my response dated August 31st which have been placed on the record. I just ask to confirm that those are part of the record.

Mr. Minnich replied yes they are.

(verbatim)

Attorney Joseph Wellington

Mr. Wellington one of the things that we did and we have provided a potential draft permit for the Commission's consideration and for the Commission's staff consideration primarily because this is a matter of first impression we believe. I do not think you deal with these types of issues all that frequently and we wanted to give you the opportunity to have the benefit of our analysis of what we believe needs to be in a permit. We can't emphasize enough the importance of several things required by your regulations including a termination date. That is included in the particular document, we also propose a bond. We would ask that the bond for this Commission be the same as the bond for the Inland and Wetland Commission, in other words we would submit one bond for both Commissions. We have received some information about the bond, we

have achieved it this afternoon, we will certainly provide comment on that as quickly as we can and that is a matter that can surely be resolved and addressed further down the road.

Now with regard to the draft permit language there is only two points that I would like to cover very briefly. As I read the minutes there was some question or confusion perhaps as to what is the temporary filling that we are talking about. There are places on the property that cannot be reached safely the way they are currently configured. Temporary fill has to be brought in we are estimating 300 to 400 hundred yards for the entire property. I say brought in there are three options. We could find it on site and use it on site, we could bring in native clean fill or we could bring in polluted fill presuming the DEP approved it. The purpose of adding that fill would provide safe access to waste that need to be removed and to do investigations. For example there are piles of barrels; we do not know what is buried underneath. We are going to have to do test pits; we don't know what might be buried out there. There will be a need from time to time to do temporary filling. We have addressed that in section 9 of the draft permit. Again it is limited in scope it is required to satisfy our federal obligations under the Occupational Safety and Health Act. We note that the primary concern of the Commission under the fill site plan regulations and soil erosion is in fact erosion. The erosion control equipment will all be in place prior to any temporary fill, in fact I believe it is already in place right now and will be fully operational prior to any temporary filling occurring.

The next point that I would like to address are a couple of very quick comments in a letter from Diane Duva that would think help clarify a couple of points, this is also of record. A letter addressed to Ms. Mulcahy dated August 27th. I am only going to cover a couple of technical points. I anticipate that this letter was provided as a follow up to Ms. Duva's testimony at the prior hearing to clarify what would be the role of the DEP regarding the site. Both in the context of the closure of the land fill and in the context of development of the site beyond the closure of the land fill. What you will note on the first page I have highlighted some text which provides that any filling of the property relating to site development for future reuse is a separate local and potentially federal permitting issue. If the property owner proposes to import fill material we will continue to recommend that any permits issued note that the fill must conform to the regulatory definition of clean fill.

At the bottom of the page there is a note for further statements to the effect that the uses of soil that has detectable concentrations of polluted soil as defined in the RSR's requires Commissioner's approval if proposed for reuse. Since the definition of clean fill includes polluted soil reused in accordance with the reuse rules of the DEP. Now we agree that the phrase is defined in state regulations should be adopted as the standard for this particular application. In doing that what I would ask you to do is to consider the fact that clean fill as defined in the state law includes native soils, bricks, concrete, asphalt and other materials of similar construction nature that do not represent a leeching hazard to the environment and polluted soil so long as the DEP approves the use of that soil.

Now the public has expressed actual concerns in their concerning the use of polluted soils. Those comments are in fact evidence of the public's concern. We would ask the Commission consider the fact that we have provided other evidence directly on point. We have provided the definition of clean fill from the DEP regulations. We have provided the remediation standard regulations that pertain to soil and the numeric criteria for clean soil and polluted soil. We have provided the regulation that provides for DEP approval of the use of polluted soil as fill and as clean fill. I refer you to section 133K2H3 of the regulations I previously provided. With my last submission I also provided a copy of the DEP fact sheet pertaining to the remediation of standard regulations. That fact sheet says that the regulations were to protect human health and the environment.

Additionally we presented evidence in the form of the LAP opinion, that the volume of polluted soil will not affect the quantity of any contaminates leech because the regulations are designed preclude the leeching of any contaminates at a level that would be harmful to human health or the environment. I would respectfully suggest that evidence that the use of polluted fill at this site as defined by state law is not going to effect the environment. I again refer to Ms. Duva's letter where she encourages the use of the state regulatory definitions of clean fill; we adopt that as our recommendation as well.

We note that when Ms. Duva said that the development portion of the site and soils on site is a matter of local determination, with the last sentence saying however if polluted soil is going to be used it still requires DEP approval. So in fact it is would be a joint effort of the Commission and the DEP.

Now when I look back at the zoning regulations and I will touch on these briefly, I wanted to make sure there was no conflict on what we propose and what your regulations provide. I know that section 65.3.2 of your regulations provides that fill must be 80% earth fill. Section 5.2.62 provides that earth means soil, loam, sand, gravel, rock, stone and clay. Earth fill does not distinguish between clean fill, native fill, and polluted fill under your regulations. The zoning regulations do not contain a requirement or authorization to acquire a particular mixture at any given ratio of those particular types of soils. However very importantly the zoning regulations do authorize this Commission to require that applicants comply with local, federal and state laws. We respectfully submit that section 61.3 of your regulations which provides that there could be no discharge into any water course or ground water except in accordance with state, local or federal law. It is precisely what is addressed by the clean fill regulations that we have been talking about for these many times that we have been together. These are the same points that we have addressed before and I am addressing them one last time for clarity and to make sure that it is clearly understood what we are meaning when we say clean fill and polluted fill. Again polluted fill means fill that does not represent a threat to human health or the environment.

I would also ask you to look at section 4 of the draft permit where we require that the applicant comply with all laws consistent with your regulations. We would also ask you to look at paragraph 7 of the draft permit where we use the definition of clean fill.

What I would like to do very quickly is to read a very short amendment to that clause that we would like to see in the record and hopefully in the permit.

Paragraph 7 Use of Clean Fill: Subparagraph A definitions: Shall have that definition in the state regulations as recommended by Ms. Duva. The definition of polluted soil shall have that meaning set out again in the state regulations of the RSR's again commented by Ms. Duva.

Paragraph B would require the use of the clean fill at the site; of course clean fill meaning native fill and those soils approved by the DEP who are polluted soils. The permit detail use clean fill as defined herein for filling operations at the site.

Subparagraph C: use of polluted soil as fill, the permits only use polluted soil as defined here, as fill at the site where such use is authorized by the Connecticut Department of Environmental Protection. We are proposing that as the language that would be used in Section 7 and we are proposing that as a substitute for the language that we previously provided in the draft permit. That is the substance of the additions that I would like to add, if there are any questions I would like to respond to them.

Board Member Concerns

Mr. Martin said the statement was made that asphalt is considered a clean fill.

Mr. Wellington commented we are not proposing to use that, so if you want to create an exception to that it would be fine.

Ms. Judit Birdeau – adjacent property owner

Ms. Birdeau read her letter to the Commission dated September 2, 2009.

Ms. Birdeau referenced and highlighted some of the lines in the October 8, 2008 & November 14, 2008 quarterly report regarding capping the property with soils and generating revenues. (Copies were given out to Commission members)

Susan Kouhia

Dear Watertown Planning and Zoning Commission

I am concerned about the potentially dangerous Echo Lake Brownfield project. Especially the complex proposed draft permits by the applicant and the inability to disclose where the fill would be coming from by the applicant. The enormous amounts of contaminates in an isolated spot right off the highway on a stream running into a river in a small town. We do not know what is in the landfill now just a few feet deep, how will we know what is buried 60 feet deep. I agree with the Rivers Alliance and the importance of cleaning up this site. I am also puzzled by the town's willingness to issue permits prior to an approved plan for closing the land fill. Without a more complete analysis of the contamination present when the shield of a state approved plan for a cleanup of part of the site, the town would be permitting work with a considerable degree of risk. However if the Commission decides to take this risk, I urge that the permit include conditions that would maximize protections from natural resources in the town itself, anything that the town

wants done should be spelled out in the permit and enforced by the town. For example if the town wants to be sure if specifications for the fill are being met, the testing of the soil that is brought in by truck should be done by an unannounced schedule by an independent laboratory. The construction work plan should be reviewed by the applicants consultant and should report to the Commission on progress and permit compliance each month. Town employees and officials should be invited to accompany the consultant on review visits. The permit should include not only strict controls for storm water but also for ambient dust. The applicant should inventory the problems and materials expected to be found on this site and should be required to report any unexpected materials or problems. Given the complexity of the project and the potentially serious impacts if it goes wrong there should be a performance bond or an escrow established to cover this adventure. I would also recommend that full review of the related documents from the DEP and the Army Core that the town is relying upon. These should be attached to the permits so the town has a clear record of agencies are responsible for what aspect of the work and precisely what has been approved so far or is pending. The recommendations listed above are only suggestions they are not meant to be complete or absolute. Because the Army Core has suspended the permit for their portion of the project and the DEP is requesting a meeting in September. I ask that the town postpone the decision on this application till the state and federal requirements have been clarified. Thank you.

(verbatim)

Attorney Joseph Wellington

I think there are a number of instances, where we remember a radio commentator by the name of Paul Harvey his bi-line was “now for the rest of the story”. What you will find if you research the internet completely and look at the assets of pure environmental you find they have five Brownfield sites in New Jersey that are used for the collections of approved soils. The most significant cost of dealing with soils is transportation. To suggest to people who drive from New Jersey to Watertown to dispose of soil or even provided as fill suggests they will not drive New Jersey when there is five sites available in that state owned by the same company. The statement that it will be used and the soil will be delivered by the transportation and disposal division is talking about the people who will be driving the trucks, they have that title and they will be delivering soil. The key point is that the soil that will be delivered will either be native that means clean without pollution, or it will be approved by the DEP prior to arrival. That approval will be documented by laboratory testing; it will also be documented by approval from the DEP. So the question about where the soil is coming from it does not matter where it comes from so long it is legally clean fill we would suggest.

Now with regard to the tipping fee it is going to cost a great deal of money to do an environmental investigation at this site to remove 250,000 plus or minus tires, to remove and dig up 55 gallon drums, and the money for that will come from a tipping fee. The people who are bringing the fill to the facility will have the benefit of having a place to put the fill. The company will have the benefit of using the fill and also getting money to help pay for the investigation. As you also look back at the prior application that is what the applicant had said was the ability to do this gives them the money necessary to prepare the site for development.

With regard to 550,000 cubic yards that was provided as a historic reference and I am not suggesting that is a guide post for this particular application.

With regard to tree cutting this particular Commission has been advised by the Town Attorney that is a private matter for Ms. Birdeau, this Commission does not have jurisdiction. She has gone to an attorney they made a 2,500,000.00 claim it is being handled separately from this Commission.

Now with regard to the impact on the river that has been raised time and time again, Mrs. Yagloff has testified before this Commission there will be no impact on the ground water at the site. There will be no impact on the surface water at the site; therefore there will be no impact on the Naugatuck River.

With regard to the closure plan if go back to Ms. Duva's letter, the second page I highlighted a portion but I did not touch on it. What is said was apparently Echo Lake Brownfield is confused about the need to submit a closure plan. We find that somewhat confusing because in October and November of 2008 we met with the DEP. We told them at that time we could not prepare a closure plan until such time as we did an investigation of the site. At that point we were not allowed on the site to do the investigation. We met with the DEP in March 31, 2009 we were told to comply with all local requirements and we have been. So as a result we have not been in a position to prepare a closure plan. But we will and we will do it and we are meeting with the DEP hopefully meeting mid month of this month. Although I am quite confused about why the DEP does not remember what they said to us in meetings that occurred previously.

With regard to the Army Core suspension there are documents in the file that I gave you from Ms. Rose who said that the particular suspension letter was triggered because Mr. Birdeau called and complained that we did not have an approved storm water pollution prevention plan and that we did not have an approved closure plan. That is in the record, that is an e-mail from Ms. Rose to me and it is in this record. We had an approved storm water pollution prevention plan as of February of this year. But when the Core of Engineers called the DEP, the DEP point, Ms. Duva did not know about that and she said I do not know. I already covered the closure plan. So the two reasons that the Core suspended our client's prior authorization, one has already occurred and they did not know about it and the second could not occur and the DEP knew that it could not occur because of prior discussions and activities.

So I would suggest we have presented an awful lot of information about an awful lot of points the DEP is not going to do an investigation of the site we are and we have to pay for it. The DEP is not going to close the site we are and we have to pay for it. The DEP is not going to approve the development of the site but they will approve the in use and they will improve the quality of the fill to make sure it is clean fill. We are going to comply with the law and that law is going to be the local law, the state law, and the federal law. As we propose in our draft permit that is required by your regulations and that would be imposed upon us by your permit.

Again I want to thank you all for considerable amount of attention that you have given us over a long period of time. I would ask that the record be closed when it is convenient and the matter proceeds forward. I do not know if there are any questions from the Town Engineer, but if there are Mr. Crawford and I would be available to address those. Are there any comments on my response to the environmental interveners or other members of the public?

Board Member Concern

Mr. Martin asked you said the DEP will be testing all soils be brought into the site. Is that what you said?

Mr. Wellington replied that is not what I said the DEP will establish a protocol either for what we can use as template or they will approve each individual shipment. The way it works under the regulations for the approval process is the party who wants to ship the soil has to submit a package to the DEP saying this is the soil I have, this is the contamination in it, this is where I want to send it, and this is how they are going to use it. That is one way that you can get prior DEP approval. When the DEP says okay you can do it. Then we get that package and we can accept the soil. Alternatively in our permit which we will receive for this site to develop the site and to deal with the fill we have a fill acceptance protocol. You may or may not recall that I provided one of those in a permit in a place called the tire pond. What it will say generically you can accept soil as long as it meets these particular criteria. If we did not have testing presented by the shipper with a written certification that the testing pertains to the soil and the testing is accurate then we would not be in a position to accept it, so no the DEP will not be testing any soil. We will be submitting all of those records to the DEP and we will also be providing to the town the same time we submit them to the DEP. Likewise the question was a lot about progress in the project, we will be submitting monthly reports, we anticipate if our draft permit is adopted. That would require us to submit monthly reports on the progress showing the amount of fill used and the amount of fill placed at the premises.

Mr. Duplissie asked Phoenix Soils have done tests on this site 14 or 15 years is it possible to have access to the sites with the tests that they took.

Mr. Wellington replied we have not been able to find that documentation. We have found PCB's on site and will be doing a thorough investigation to determine the rest of the PCB's to the extent if there are any and as you may or may not be aware of on March 31st we were at meeting at the DEP that we requested to address technical issues. Present at that meeting were the landfill closure people, the remediation people, and the PCB people and we have submitted documents to the person responsible for PCB oversight at the premise. So they will be addressed in a comprehensive plan.

Ms. Kouhia asked if the statement that did not matter where the soils come from if they come from other states and go across state lines isn't that something that should be federally regulated.

Mr. Minnich said my understanding it is regulated by DEP regardless of the source. Mr. Minnich asked Mr. Wellington is my response correct.

Mr. Wellington replied it has to meet DEP standards and we have to show what we got, where we got it from, and how it met those standards. Either as a result of testing submitted directly to the DEP for approval or pursuant to any approval we have for a template for testing. We have to document the quality of the soil.

Mr. Minnich I want to make sure that it is clear that where we are headed here. Upon closing this public hearing if that is what we do, the process and the rules to which this Commission has is all that the discussion at that point forward is that of the Commission and we will accept no discussion directly to the Commission after we close the hearing. So I want to make sure by asking at this point the interveners do you have any further comments or questions to us, if you could please state that for the record so we hear that and document that response.

Ms. Judith Birdeau said I have no further comments, I gave the report where all the information came from and I think upon examination it will speak for itself. Thank you.

Mr. James Birdeau I no more comments thank you.

Mr. Minnich asked Mr. Wellington if he has the September 2nd letter from Robert Isner from DEP.

Mr. Wellington replied no I do not.

Mr. Minnich said if Mr. Wellington and the interveners could have a copy. If they could clearly say they have read it and we can close the record. Mr. Minnich asked Ms. Mulcahy you gave them the September 2nd letter prior to their response that they have no further comments.

Ms. Mulcahy said yes. It is a response to Attorney Wellington's letters and further enforcement action.

The letter was read into the record:

Dear Ms. Mulcahy,

The Department of Environmental Protection, DEP has received both directly and by a copy numerous letters regarding the Echo Lake Brownfield L.L.C. pending special permit application #269. Among the letters received, are letters dated August 28, 2009, and August 31, 2009 from Attorney Wellington to Chairman Minnich.

In summary we do not concur with all of the statements made by Attorney Wellington specifically we take strong exception with the insinuations and reference to coincidental timing of the DEP's August 27, 2009 letters to the town and to Attorney Wellington as found on page 6 of Attorney Wellington's August 31, 2009 letter.

Our intention in our correspondence was simply to provide clarification to the town on jurisdictional matters and to remind the property owner of the need to address the outstanding enforcement letter regarding the property. The fact that the two letters were prepared on the same day August 27, 2009 reflects the nature of the project management not a coincidence. More over DEP and the town staff members have been working to coordinate on our respective jurisdictions and it is in fact common for DEP to provide correspondence on or just before the date of local land use Commission meetings for the purpose of making clear the role of DEP or a lack there of.

In the town decision making we have repeatedly have said that DEP does not have the particular regulatory position on the pending application before the Watertown Planning and Zoning Commission, as this application is a matter of local jurisdiction.

The department issued Echo Lake Brownfield L.L.C. and other parties a notice of violation on March 6, 2008. The meetings and the dialogue with Echo Lake Brownfield L.L.C. since then as well as the recent resolution of a separate legal action involving Echo Lake Brownfield L.L.C. and those other parties as we affirm the need to ensure that a action plan acceptable to the Commissioner is in place to bring the property into compliance with environmental laws and regulations.

The department's August 27, 2009 letter was intended to document that need, particularly as the issues with the town move towards a decision point. Specifically regardless of whether the Planning and Zoning Commission grants or denies the subject permit or permits. Echo Lake Brownfield L.L.C. must obtain the department's authorization either through permitting or enforcement authority with a closure of the solid waste disposal area. They must adhere to an enforceable schedule to resolve regulatory programs requiring the investigation and the remediation of environmental conditions. The department's August 27, 2009 letters simply document that compliance concerns remain.

Sincerely,
Robert T. Isner
Engineering and Enforcement Division
Management and Compliance Assurance

Director Ace
Bureau of Materials

(verbatim)

Attorney Joseph Wellington

Attorney Joseph Wellington's had two comments. With regard to the litigation that is referenced in the letter, that litigation was a civil action in which Echo Lake Brownfield was a plaintiff seeking to cause the current then permit tee to close the landfill in accordance with the law. That settled in July and it was another reason why we could not prepare a closure plan until that litigation was settled.

With regard to with the other point is that the Mr. Isner references the notice of violation and the need to bring the property into the compliance with environmental laws. My response to that is that Echo Lake Brownfield voluntarily accepted the responsibility to clean up the property and to close the landfill one year and half ago, it had been there or 35 years. We are moving forward in lots of directions at once in lots of jurisdictions it appears that there is some issues with what I said and how I said it. I also have issues with some of the things that DEP said in their letter and I will take that up them separately. Those are the comments I have in response.

James Birdeau commented Mr. Wellington mentions that they settled the lawsuit for the closing of the landfill. There was also I believe that it was also who they closed the landfill with was paying for the cleanup of the landfill, that was part of the closure settlement. So when he mentions that they got to bring soils in to pay for this, it is twofold.

Mr. Minnich said the process is that this Commission has established an adheres to strictly is that once we close the public hearing there is no comments permitted from anyone nor is there any further documentation allowed to be presented to the Commission the record is closed. I am going to ask again for the record again does the interveners have any further comments or questions or any documentation to present to the Commission. To please state that so the record is clear.

Judith Birdeau said no.
James Birdeau said no.

Mr. Minnich asked Mr. Wellington if there are any final statements.

Mr. Wellington replied we do not have any and asked if the hearing could be closed at your convenience.

Public Hearing must be closed by September 2, 2009

MOTION: Russ moved to close the public hearing.

SECOND: Blais.

VOTE

AYES: Minnich, Martin, Russ, Mancini, Blais, Duplissie and Demirs.

NAYS: None.

MOTION UNANIMOUS PASS 7-0.

Michael Masayda _____

Secretary

Planning and Zoning
Wednesday, September 2, 2009
Special Permit #269 from Echo Lake Brownsfield
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