

February 15, 2012

Public Hearing

5:00 p.m. Land Use Meeting Room

MEMBERS PRESENT: Mr. Bedini, Mr. LaMuniere, Mr. Wadelton

MEMBERS ABSENT: Mr. Bohan, Mrs. Hill

ALTERNATES PRESENT: Ms. Cheney, Mr. Martino, Mr. Papsin

STAFF PRESENT: Mr. Ajello, Mrs. J. Hill

ALSO PRESENT: Atty. Olson, Atty. Andrews, Atty. Williams, Mr. Klein, Mr. Cohen, Mr. Logan, Ms. Gadwa, Mr. Smith, Atty. Marcus, Mr. Allan, Mr. Virbickas, Mr. Canal, Mr. Piskuscas, Ms. Zelenko, Mrs. Crumrine, Mr./Mrs. Klein, Mrs. Silk, Mrs. Buonaiuto, Mr. Dutton, Residents, Press

PUBLIC HEARING

The Gunnery, Inc./22 South Street/#W-11-40/Athletic Fields/Con't.

Mr. Bedini reconvened the public hearing at 5:12 p.m. and seated Members Bedini, LaMuniere, and Wadelton and Alternate Papsin for Mrs. Hill. Mr. Wadelton read the list of documents submitted for the record since the last session of the hearing.

For the interveners, Atty. Marcus submitted the 2/15/12 letter from Mr. Logan regarding the proposed level spreaders.

Mr. Virbickas, engineer, submitted a copy of the map he had presented at the last session of the hearing, "South Street Athletic Fields," by Smith and Co., revised to 12/9/11 on which he had colored in slopes over 15% and his 2/15/12 letter to Atty. Marcus regarding information about infiltration trenches from the 2004 Connecticut Stormwater Quality Manual (2004 Ct. SQM.) Points made by Mr. Virbickas included the following:

- 1) According to the Manual, drainage areas served by level spreaders should not exceed 5 acres, while 2 acres is recommended. He stated the drainage areas proposed for level spreaders #2 and #3 were both over 5 acres in size.
- 2) All soils in the area are Class C or D based on a soils map from 2000.
- 3) It is recommended that level spreaders be located at least 50 ft. from slopes exceeding 15%, which is a problem for both level spreaders #2 and especially #3, which is on a 30% slope.
- 4) He recommended additional soil testing to ensure these facilities would be located at least 3 ft. above bedrock.

Atty. Marcus submitted a copy of the composite soils map from 2000 submitted by the applicant for a previous application, which indicated different soil types than shown by the applicant in the set of plans for the current application.

Mr. Logan continued his report begun at the last session of the hearing. He said he had used the 2000 soils map for his review. Mr. Logan's lengthy presentation included the following points: 1) 100 ft. wide riparian buffers are usually able to trap sediments and protect water resources, but in this case because the level spreaders are located on slopes in excess of those recommended in the 2004 Ct. SQM, much wider buffers are needed. He provided information regarding the slope

where each of the three spreaders is located and several charts and tables to show how far the silts in Paxton soils can travel. He concluded that level spreader #1 required a 317 ft. wide buffer in order to trap the silt before it reaches the wetlands, #2 required 450 ft., and #3 required over 450 ft. 2) He noted that his 2/15/12 supplemental letter re: level spreaders highlighted his concern that those proposed will fail either during construction or soon after. 3) To further support this opinion, Mr. Logan submitted the article, "Modeling Sediment Trapping in a Vegetative Filter Accounting for Converging Overland Flow," by Helmers, Eisenhauer, Franti, and Dosskey, 2005, concerning the sediment trapping efficiency of buffers, said he had consulted stormwater quality manuals from other states, which all recommended that level spreaders should not be used on slopes greater than 5% to 10%, and also submitted the article, "Evaluation of Level Spreaders in the Piedmont of North Carolina," by Hathaway and Hunt, July 2006, which he discussed in detail, specifically noting the reasons level spreaders fail. 4) In response to Mr. Klein's claim that Mr. Logan had made an assumption regarding the water quality of the brook below the construction site, Mr. Logan said the burden of proof is on the applicant to prove this is not a Class A stream. 5) Mr. Logan stated the Commission is "almost mandated" to complete a full application review because a public hearing was held due to the high potential for impacts to wetlands and watercourses. 6) Mr. Logan noted that Mr. Klein had stated that he had done additional soil testing on site but had not provided him with the results. 7) Mr. Logan disagreed with Mr. Klein about how well the primary treatment system would handle dissolved pollutants. 8) He stated the hundreds of trips of truck traffic needed for the project would result in short term impacts to the hillside wetland seeps near the existing paved driveway. 9) Mr. Logan argued that the less expensive slit drainage system, which, he said, the applicant proposed because it would require less sand and result in less truck traffic, would be "woefully inadequate." He explained how a slit system would work and the materials that would be required for the underdrain layer. He said the 1 inch of sand proposed by the applicant would not be enough to allow the fields to drain well. He added that to bring in enough material and to take out excavated bedrock would take 600 to 700 truck trips over the applicant's estimate. 10) Regarding the diversion of water from the hillside wetlands, Mr. Logan did not agree with arguments by Mr. Klein and Mr. Allan who stated that this was not an issue. He suspected that most of the soils in the area were tilled soils with a hardpan layer. He said the water would travel along the hardpan and would then be intercepted by the underdrains 3 ft. below the surface. He said this would significantly impact these wetlands by denying them water and changing their character. 11) Mr. Logan said the applicant should have studied the groundwater recharge volume and submitted his 2/15/12 response to Land Tech's 2/8/12 report. He again stated that the soils on site aren't what everyone thought they were.

Ms. Gadwa, soil scientist and wetland scientist, agreed with Land Tech that spreading a 6 inch thick layer of woodchips on the forest floor would be harmful, but disagreed regarding a 2 inch layer, which, she said, would also be harmful because it would inhibit seedlings from germinating. Some of the other topics she covered were: 1) She agreed with Land Tech that it was difficult to assess the impact of logging on the discharge of water from the forest when there was so much regrading proposed. 2) She stated that silt has a high phosphorus content and so due to the concentrated flows resulting from the steep slopes below the level spreaders phosphorus would reach the stream. She hoped that concentrations of nitrogen and phosphorus from the fields would not exceed acceptable levels because they can cause adverse impacts to streams when they do. 3) Ms. Gadwa noted there is currently no erosion on the steep slopes partly because of the trees there. 4) Ms. Gadwa explained how the ecological community changes when the water supply does and said the diversion of water from the hillside wetlands would result in the spread of some types of invasive species. 5) She corrected her calculation of the amount of wetlands within 80 feet

of the driveway, but said studies of airborne particulates had shown there would be impacts from construction traffic within 80 ft. of the driveway. In addition to the airborne particulates, she said pollution from road runoff would also impact the wetlands. She said these impacts had not been analyzed by the applicant, but they should be because hydrocarbons and heavy metals are a common cause of stream impairments.

Mr. Bedini asked if the existing South Street traffic was a concern to this area. Ms. Gadwa said this had not been analyzed and she did not know whether untreated runoff was reaching the wetlands. She said that dense planting along the roadside could help reduce impacts.

Mr. LaMuniere asked what was the critical number of trips of truck traffic above which would cause significant pollution of the wetlands. He also noted that a recent court case had ruled that pollution from traffic could not be grounds for denying an application. Ms. Gadwa said the critical level of traffic would depend on how close the wetlands were, the direction of the wind, whether flows to the wetlands were diluted, how large the wetlands were, etc. She said since these wetlands were small, self contained, and did not have much flushing out, 600 to 700 trips had the potential to degrade the ecological community. She thought 800 trips could have a real impact since Ct. does not enforce the EPA emission standards.

Mr. Bedini referred to Mr. Logan's statement that the level spreaders were sure to fail and pointed out that in the corresponding literature submitted it had been noted that many had failed due to improper design, bad construction, and/or no maintenance, and not due to steep slopes. Mr. Logan responded that the study was the "real world" and the real world was not perfect, so to make sure they don't fail, they should not be placed on steep slopes.

Mr. LaMuniere thought the change from Charleston soils to Paxton was significant due to the fines. He asked why Mr. Logan assumed some of the material would have to be taken out and not used in the cuts and fills. Mr. Logan said he had not made that assumption. He said that per the plans it was expected that 55,000 cubic yards of material would be moved and what was not suitable would be removed from the site. However, he noted that "unsuitable" was not defined. He said that because there will be a lot of fines in the disturbed soils, care must be elevated during construction.

Ms. Gadwa stated that concentrated flows get through wood chip berms and silt also flows through. Mr. Logan said a compost berm would be much better.

In response to comments by Mr. LaMuniere, Ms. Gadwa said that woodchips could be scattered here and there on the forest floor, but should not blanket the ground.

Atty. Marcus said the interveners reserved the right to comment and to summarize their position at the end of the proceeding. He also told of a site in Danbury where it had not been foreseen that there would be unsuitable material that would have to be trucked off site and as a result, 500 truckloads of clay had been taken off site and new material had to be brought in.

Mr. Bedini called a 5 minute recess.

The public hearing resumed at 6:58 p.m.

Representing the applicant, Atty. Williams submitted the 2/15/12 letter, which addressed prior

reports by Mr. Virbickas, REMA, and Land Tech, from Mr. Buck, engineer, who was not able to attend the hearing. Atty. Williams said the interveners' consultants had misunderstood the purpose of the level spreaders, noted that there are examples of level spreaders in Washington that work fine on much steeper slopes than those on this property, and the determination that there may be Paxton soils on site does not change anything because for the drainage calculations the applicant had already assumed that Class C soils were present. Mr. Smith, surveyor, noted the level spreader that had been installed on a 49% slope at Rumsey Hall School functions well and shows no evidence of scouring. He circulated a photo that had already been submitted for the file. He then read his 2/15/12 letter to Mr. Bedini regarding the history of the wetland mapping and noted six soil reports and sketches done between 1/7/99 and 11/30/11 were attached. Mr. Smith noted that the 7/19/2000 map used by the interveners to question the soils information submitted by the applicant was unsigned, unsealed, and marked, "Preliminary – For Discussion Only." He explained that the cumulative soils reports provided a summary of the wetland boundaries on site and he read the 1/14/12 letter from Mr. Beroz, soil scientist, which stated the non wetland soils were not studied in detail. Mr. Smith also noted that in his 2/15/12 letter to the Commission, Mr. Buck, engineer, stated that the drainage calculations had been done using Class C soils, and so no modifications were required.

Mr. Klein, biologist and soil and wetland scientist, submitted his 2/15/12 letter in response to REMA's 2/8/12 report and also copies of some of the literature cited by REMA in that report. He stated that in every case REMA's comments were either based on inaccurate assumptions or the sources cited did not support REMA's position.

1) Regarding wetlands delineation, Mr. Klein noted that both Mr. Allan and Mr. Beroz agreed the small wet area near the two proposed fields was not a wetlands or a watercourse, and he concurred.

2) He pointed out on Sheet #2 the location of the flagged watercourse below level spreader #2, said its only function was to convey water from an existing drainage pipe, and explained that when the fields are constructed, that pipe will be abandoned, the erosion there will cease, and the area will restore itself.

3) Mr. Klein stated there were no moderately well drained soils within the work area except for the small wet area. He also said the presence of Paxton soils did not alter any of his conclusions or recommendations because Paxton is a well drained soil and as Paxton is a common soil in Litchfield County it is commonly the site of construction projects. He described the measures proposed to address the constraints due to the potential for seepage and the need to avoid working on it when wet. He noted there would be a shallow berm above the work area to intercept runoff, work would be done in the dry season, two drains would be added during the first stages of the earthwork, and the contractor was experienced working with Paxton soils.

4) Mr. Klein referred to his map, "Soil Samples Collected at South Street Athletic Fields," dated 1/29/12, pointed out where he had done soil testing, and reported that per a soil lab study, soils from these sites were not fine sandy loams, but were coarser. He said he used a hand auger to sample down 30 inches and had found data to show the soils were well drained. He noted the soils notations in the driller's log had been written by the driller and not by a soil scientist and said the soils present cause no unusual constraints.

5) Mr. Klein said the applicant understood that the proposed slit drains would not work if they ended in an impervious layer.

6) He said that any materials unsuitable for the fields would be used for the base and side slopes.

7) Mr. Klein stated that flocculants are effective in controlling erosion and sedimentation when they are properly applied and maintained. He said the vendor would determine their precise

composition and locations when the work is ready to begin. He also described how the construction plans included “lifts,” to control the flow and direction of any discharge and protect against erosion. He thought it unlikely that significant changes would have to be made to the plans as the work would be done in the dry season and water diversion techniques would be used. 8) Mr. Klein spoke in detail about the adequacy of the existing vegetative buffers. Using Ct. data in the model submitted by REMA, he determined the general buffer width recommendation was 50 to 100 ft, not 450 ft. as Mr. Logan had reported.

9) Mr. Klein noted the interveners claimed there would be impacts from the diesel exhaust from the thousands of truck trips necessary to remove thousands of stumps from the site. However, he noted the trees are 15 to 20 feet apart on site, meaning there will be far less stumps to be removed and that most would probably be ground for the erosion barrier between the two silt fences. 10) He stated there would be adequate space for staging upslope of the major earthwork.

11) Mr. Klein referred to the data submitted by REMA regarding pollutants from traffic along Ct. Rt. 190. He said there was a big difference in finding there were pollutants present and there were toxic levels of pollutants present. He also stated the Rt. 190 study with its 15,000 to 20,000 vehicular trips per day was not comparable to the traffic at the South Street site. He noted Ms. Gadwa had said impacts from exhaust were temporary, not long term.

12) Mr. Klein said the interveners had presented no evidence there would be adverse impacts to human health, to the wetlands, or to the aquatic biota due to the proposed turf management, noting that phosphorus and nitrogen would be applied in amounts only as needed based on soil testing.

Mr. Klein then commented on this evening’s presentation by Mr. Logan and Ms. Gadwa.

1) He said there was no question that steeper slopes were not as effective as gentle slopes for buffers, but he pointed out again that the Rumsey Hall level spreader with the same design as proposed here works “very effectively” on a much steeper slope.

2) Mr. Klein said the purpose of the level spreaders proposed for this project was not to control stormwater, but to convert concentrated flows to shallow sheet flow so the assumption that they had to meet the standards for detention or infiltration basins or other types of stormwater detention facilities was not correct.

3) Mr. Klein said he was comfortable with Land Tech’s analysis and recommendations to date.

4) He stated that bringing material to the site would not necessarily result in pollution and noted the brook already receives untreated runoff all the time from Rt. 47.

5) Mr. Klein stated it was an incorrect assumption that the trees would be cut and the site then left as is. He said that a level shelf would be created that would result in a change in the time of runoff concentration. He also stated that Land Tech had confirmed that the applicant’s drainage calculations are correct.

6) Mr. Klein noted Mr. Bedini had pointed out there were many reasons level spreaders could fail, but said those proposed would be lined with rip rap, not an erodable material, and would be carefully installed.

7) Mr. Klein submitted Table 8 on the effectiveness of riparian buffer strips from the US Army Corps of Engineers Jan. 1991, “Buffer Strips for Riparian Zone Management,” which concluded that buffers 30 to 135 feet wide are effective. He said 450 ft. wide buffers are not required.

Mr. Cohen stated he would address the points raised in documents submitted at the last session of the hearing.

1) He said the graph that Mr. Logan had presented, “Attachment F,” based on 6.5 inches of rainfall on Class D soil was not applicable because site specific data was needed. He reported that after having contacted the author of the formula and using level spreader #3 on a 25% slope with a two

year storm event of 3.2 inches and TR 20 calculations, when the REMA method was used, a buffer width of 58 ft. was required.

2) Regarding other graphics presented by REMA, Mr. Cohen stated the calculations had been done for the Orlando Florida area and/or Ct. standards had not been used and so they were not applicable. Mr. Cohen said the literature submitted by REMA did not support his opinion that buffers hundreds of feet wide were needed. Mr. Smith measured the distance between level spreader #3 to Rt. 47 and found it was 230 feet. He also measured and found there were 570 ft. from level spreader #2 to the watercourse and 750 ft. from level spreader #1 to the watercourse.

3) Citing a white paper from 2007, Mr. Cohen said that when buffer widths increase, you get to the point of diminishing return so there was little benefit for buffers more than 30 to 40 feet wide.

4) Mr. Cohen noted that nitrogen would be removed by a 60 ft. wide buffer; 450 feet was not needed.

5) At Mr. Cohen's request Mr. Klein had taken additional soils samples to verify the soil types.

6) In response to Ms. Gadwa's comments about pollutants from truck traffic, Mr. Cohen said that she presented no information on exposure, based her opinion on 600-800 truck trips, while the applicant said only 300 would be needed, and she presented no evidence to show there would be impacts to the wetlands.

Mr. LaMuniere asked if the data presented on the impact of herbicides was still valid. Mr. Cohen said it was. Mr. Cohen said that both his 2/2/12 report and his site specific quantitative analysis showed there would be no impacts based on the pesticide usage he had recommended.

Mr. LaMuniere noted that some of the water now feeding the western wetlands would be diverted by a curtain drain. He read from Mr. Allan's 2/8/12 report and asked him to comment on the interception of this water. Mr. Allan noted the western wetlands is a hillside wetlands primarily fed by groundwater and seeps. He explained the soils upslope and said Paxton soils are well drained so that the normal water table is at least 60 inches below grade. In brief, based on his knowledge of curtain drains he did not think there would be much impact on the deeper groundwater or on the wetlands. He said if the Commission was concerned about these wetlands some of the drainage from the groundwater interceptor could be drained to a level spreader, but again, he did not think there would be a major impact. Mr. Klein agreed with Mr. Allan. He said the curtain drain's area of influence was small and the time of year when the most water would be intercepted was a time when the wetlands were not active. Mr. LaMuniere asked how deep the curtain drain was. Mr. Allan stated that at the west end of the driveway it was approx. 5 ft. deep.

Atty. Williams reserved the right for summary statements later in the hearing.

Public comments were taken.

Ms. Zelenko asked Mr. Klein how it could be possible that the trees were 20 feet apart and what impact the existing trees have on the water and the water table.

Atty. Marcus said he would assemble a list of questions for the applicant.

Mr. Piscuskas said the plans were so uncertain due to the steep slopes on the property. He thought the applicant did not have a lot of site specific information and said the engineering kept changing. He said the proposal would irrevocably change the soil and the landscape. He spoke of how in 1889 Mr. Rossiter had saved another hillside slated for clearing and that this had become the heart of Steep Rock and he read a quote from the Steep Rock website.

Mrs. Stern noted that Mr. Cohen had admitted to a reduced risk using pesticides and fertilizers, which, she said, implied there is, indeed, a risk. She also noted that many chemicals are approved for use and years later are found to be poison. She also asked, assuming there would be more than one application of pesticides and fertilizers, does that increase their seepage into the ground? How many times a year would the chemicals be applied? And would the chemicals run into the water and into the ground?

Mr. Canal, president of WEC, asked if in the turf management plan consideration had been given to avoiding the use of pesticides.

Mrs. Buonaiuto noted all of the maps that had been submitted and asked if a detailed signed map showing the location of all of the wetlands had been submitted so that the Commission could consider the impacts. Mr. Bedini responded that the Commission has an accurate signed and sealed map in the file. Mrs. Buonaiuto asked again if it was a comprehensive map with all of the wetlands shown. Mr. Bedini said it did not have a lot of information on the upland soils, but had detailed information on the wetlands. Mr. Smith noted the 8 sheet set of plans was signed and sealed and the wetlands soils were shown on a map to A-2 survey standards. The exception was the wetlands along Rt. 47 north of the proposed fields because they were so far from the project and off the applicant's property. Mrs. Buonaiuto asked if all the areas to be disturbed were also shown on the signed map. Mr. Smith said they were. Mrs. Buonaiuto asked if all of the information was given on one map. Mr. Smith said the plans were a set of maps, but that Sheet #2 showed an overview of the whole site with all of the wetlands delineated.

Mr. Woronick asked how many pesticides could be used on the fields and who would apply them, a trained professional or Gunnery staff?

Mr. Canal noted the purpose of the Washington Environmental Council was to provide leadership in protecting and enhancing the environment and to prevent environmental degradation before it occurs. He said that WEC balances the rights of the property owner vs. significant environmental impact and that this application had reached the point where it merited careful consideration. He recommended that an environmental impact statement be done by an independent source agreed upon by the three parties involved.

Mr. Cohen responded to the above questions.

1) He said the chemicals recommended in the turf management plan had been registered with the EPA, had a quasi regulatory designation, and were less of a risk to the environment. He noted that there are few chemicals and pesticides in the EPA's reduced risk category, and these would be the ones used on site.

2) Mr. Cohen said the fertilizer and pesticides would be applied three times during the growing season, which was half the rate cited in the REMA report.

3) Mr. Cohen reviewed a spread sheet for groundwater contamination, noting for most chemicals, two applications per year would not contaminate ground or surface waters.

Mr. Canal noted that consideration had been given to organic management and thought this was an integral approach because if done correctly, no chemicals would be needed. Mr. Cohen stated that 28 of the 32 pages in the turf management report have nothing to do with the use of pesticides. He mentioned other products such as a parasitic nematode that he thought would work well at this site.

Mr. Woronick again asked how many pesticides could be used. Mr. Cohen said that seven products including two organic insecticides are recommended, but that after three years the entire plan was to be reevaluated. He noted, however, that the EPA has registered more than 50 products, which could be used legally for turf management. He also said the Commission could enforce a condition that only those products listed in his report may be used on site.

Mr. Stern asked about the impact of the products on birds and about the implications for animals. Mr. Bedini responded that was not under the jurisdiction of this Commission.

Mr. Woronick asked who would apply the products. Atty. Williams responded this would be done by trained professionals from Premier Turf.

Atty. Marcus asked that Mr. Stern, intervener, be permitted to address the Commission. Atty. Olson said he had the right to do so.

Mr. Stern stated that he had looked up the 1974 Ct. Inland Wetlands and Watercourses Act and read sections of it to the Commission. Mr. Stern noted the Act requires the Town to minimize the disturbance and pollution of wetlands and watercourses, prevent damage from erosion and water turbidity and siltation, prevent loss of aquatic, vegetable, and animal life, protect the quality of wetlands and watercourses for sake of conservation, economics, aesthetics, recreation, and other uses, protect potable fresh water supplies from pollution and other misuse and mismanagement, and to provide an orderly regulatory process that balances the need for economic growth and need to use the land and water with the need to protect the environment for the sake of generations to come. He said it was apparent the Commission must deny the application and detailed six reasons why. In short these were potential environmental impact, feasible and prudent alternatives that exist for the site, short and long term impacts, irreversible damage to and/or irretrievable loss of wetlands and watercourses, threats to health, safety, and the reasonable use of property, and impacts to wetlands and watercourses off site. These are explained at length in his undated letter to the Commission that he submitted for the file. He asked that the Commission reject the application or at least postpone its decision until it has reliable independent data to resolve the conflicting expert testimony.

Mr. Bedini noted that feasible and prudent alternatives apply only to the site under consideration.

Mr. Virbickas, engineer, responded to the letters from the applicant's professionals submitted this evening.

- 1) Mr. Virbickas stated the effectiveness of the level spreaders could be compromised if they are full of groundwater.
- 2) He questioned the effectiveness of the proposed curtain drains, saying they were dependent on the soil type, time of year, and groundwater level. He recommended that additional soil testing be done to address this concern prior to construction.
- 3) The way the contours have been drawn on the plans, according to Mr. Virbickas, the reverse benches would not function. He said that spot elevations were needed so that the contractor can grade the site properly.
- 4) He again stated there was a proposed section of pipe at the east edge of the field that would stick out of the ground if it was installed per the inadequate plans presented and said this must be addressed prior to the start of construction.
- 5) Mr. Virbickas questioned the drainage calculations saying that the width of level spreader #2 that was used in the calculations differed from its width on the plans.

6) He urged that great care be taken during construction because he said there is potential for erosion no matter how flat the area.

Mrs. Crumrine stated she was scared and concerned about the massive project proposed. She asked if the Commission had the right to ask for more detailed plans and to require a bond. Mr. Bedini responded that it does.

Mrs. Buonaiuto read and then submitted her 2/8/12 letter against the application in which she stated the Commission would ignore its Regulations and set a bad precedent if it voted for approval.

For the interveners Atty. Marcus questioned why the applicant had not submitted detailed information about the upland soils. He saw this as an intent to withhold data due to "how it came in" and said the applicant had thought it could side step the Commission. He said that as a result the application was haphazard, which put the Commission at a tremendous disadvantage. He said the Commission would make an error whichever way it acts and either the intervener or the applicant could sue. He agreed there is a lot of Paxton soil in Litchfield County, but questioned the amount of earthwork proposed and the scope of the activity proposed. He said that although the applicant had observed no problems with another level spreader in Town, he thought the proposed spreaders "pressed the envelope" due to their location on steep slopes and he said he did not think the DEEP would approve this. Although Mr. Cohen had asked Mr. Klein to do additional soil testing, Atty. Marcus questioned why this testing had not been done last August before the application had been submitted. He said the quality of the applicant's professionals was not in question, but the quality of the materials they had submitted was. Atty. Marcus stated the applicant had failed to consider feasible and prudent alternatives, which would include wells, classrooms, and single family dwellings. He stated the Commission's choice was clear because the application is deficient and the process flawed. He asked the Commission to err on the side of caution and to deny the application without prejudice. He said if the application was approved, the interveners would appeal. He concluded saying the proposal was not good for the environment, it was the Commission's responsibility to protect wetlands and watercourses, and he was not confident there would be no adverse impacts from the use of pesticides on the property.

Representing the Commission, Atty. Olson stated that it was not a foregone conclusion that the Commission would err when it acts on the application.

Atty. Williams noted that the application process had taken five months and had not been rushed. He stated the process had been thorough, the proposal had been designed to avoid negative impacts to the wetlands and watercourses, and the plan was solid and designed by top notch professionals. He said the applicant had supplied all the necessary information. Atty. Williams then said the interveners had alleged pollution of the water resources, but had submitted no evidence for the record. He stated there would be no direct wetlands impacts, that improvements to the stormwater management facilities had been made based on comments from the interveners, and that the applicant had attempted to address all concerns raised. He stated the professionals, Mr. Buck, Mr. Smith, Mr. Klein, and Mr. Cohen had done scientific analysis regarding risk to the site, the existing buffers were ample, the contractor was experienced and knowledgeable, a similar level spreader on steeper slopes in Washington was functioning well, and Mr. Allan, the Commission's independent consultant, had confirmed that if done correctly the plan avoids all impacts to wetlands and watercourses. He noted the applicant had agreed to adopt all of Mr. Allan's recommendations. He stated that the applicant was not required to consider feasible and

prudent alternatives because the project would not cause any impacts to wetlands and watercourses. He said the applicant had not tried to side step the Commission and that the proposal was the same as it had been early on in the process. He referred to the interveners' memo, noting litigation had been threatened if the Commission approved the application. Atty. Williams made many additional points.

1) There was no evidence there would be any harm to the wetlands. 2) The question of whether the level spreaders would be efficient for stormwater detention was not relevant because stormwater detention was not their purpose.

3) The Commission must judge the credibility of the opposing arguments presented; the applicant's side having many experts and the other side having REMA, who, he said, vastly overstated much of the information it presented, used flawed assumptions and over estimations, provided studies that did not prove their beliefs, and who used inappropriate sites as comparisons. He thought REMA had stretched its presentation beyond the bounds of sound science and said the Commission had ample reasons to credit the applicant's consultants.

4) The presence of Paxton soils on site made no difference as Class C soils had been used for the drainage calculations.

5) Upland soils had not been studied because the purpose had been to identify and locate wetlands and that it was common practice to use the soil survey for the purpose of identifying upland soils.

He concluded by advising the Commission it could not base its decision on speculation and exaggeration; that facts and evidence were needed.

MOTION:

To close the Public Hearing to consider Application #IW-11-40 submitted by The Gunnery School, Inc. for athletic fields at 22 South Street.

By Mr. Bedini, seconded by Mr. Wadelton, and passed 4-0.

Mr. Bedini closed the public hearing at 9:32 p.m.

There was a brief discussion about when a Special Meeting to deliberate on the application should be scheduled. Mr. Allan thought he would have his final report ready in two weeks. The Special Meeting was scheduled for 5:30 p.m. on Thursday, March 1, 2012 in the Land Use Meeting Room, Bryan Memorial Town Hall. Mr. Allan was asked to attend.

Mr. Bedini adjourned the Meeting at 9:40 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Janet M. Hill, Land Use Administrator