

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

IN RE:

APPLICATION OF NEW CINGULAR	:	DOCKET NO. 408
WIRELESS PCS, LLC FOR	:	
A CERTIFICATE OF ENVIRONMENTAL	:	
COMPATIBILITY AND PUBLIC NEED FOR	:	
THE CONSTRUCTION, MAINTENANCE AND	:	
OPERATION OF A TELECOMMUNICATIONS	:	
FACILITY AT 95 BALANCE ROCK ROAD	:	
HARTLAND, CONNECTICUT	:	JUNE 15, 2011

POST-HEARING BRIEF OF THE TOWN OF HARTLAND

Pursuant to § 16-50J-31 of the Regulations of Connecticut State Agencies ("RCSA"), the Town of Hartland ("Town") submits this post-hearing brief in opposition to the above-captioned application filed by New Cingular Wireless PC, LLC a/k/a AT&T ("AT&T"). The Town opposes this application because (1) there is a lack of public need for this telecommunications facility; (2) there are significant negative environmental impacts from the proposed facility; (3) there are significant negative impacts to the residents of the Town of Hartland and a substantial number of the Town's residents oppose this facility; and (4) the proposed facility will have significant negative visual impacts on the scenic vistas located in Hartland; and (5) the proposed facility is inconsistent with Hartland's Plan of Conservation and Development and Zoning Regulations. The Town also submits its Proposed Findings of Fact in conjunction with this Post-Hearing Brief.

As is evident from the record, this brief and the Town's proposed findings of fact, the applicant has failed to establish a public need for the proposed Facility and any need for such facility is far outweighed by its significant negative environmental impacts including the negative visual impacts the proposed facility will have on both residents of the Town of Hartland and on the scenic vistas located in the Town.

I. BACKGROUND

AT&T applied to the Connecticut Siting Council ("Council") for a Certificate of Environmental Compatibility and Public Need ("Certificate"). On January 6, 2011, the Town was granted intervenor status in these proceedings.

AT&T proposes to construct a 190 foot steel monopole telecommunications facility on property owned by the Ring Mountain Hunt Club (the "Club") located at 95 Balance Rock Road in Hartland. The Property is currently used by a gun club and is located in a residential zone and adjacent to several dwellings located on Balance Rock Road. Construction of the tower and attendant equipment will require the disturbance of designated wetlands on the property.¹

¹ The owner of the property, the Ring Mountain Gun Club, is currently the subject of a June 1, 2011 unanimously approved cease and desist order issued by the Hartland Inland Wetlands Commission based on allegations of unpermitted activities in the wetlands on the property including (1) the filling of wetlands; (2) clear-cutting within the wetlands; and (3) potential contamination of the wetlands, and has been asked to show cause why such cease and desist should not issue and appear before the Hartland Inland Wetlands Commission. Copies of the minutes of the June 1, 2011 Commission meeting are attached as Exhibit A., see page 22 for particulars as to the cease and desist order discussion and vote.

The alleged purpose of the proposed facility is to provide wireless telecommunications coverage in an area of Hartland known as "the hollow" most particularly along a very short span of Route 20 in a remote, heavily forested, uninhabited stretch of road.

II. THE APPLICANT HAS FAILED TO SATISFY ITS BURDEN OF PROOF UNDER CONN.GEN.STAT. § 16-50P FOR THE ISSUANCE OF A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED

The Applicant bears the burden of proof in these proceedings. The general rule is that "the preponderance of the evidence standard is the appropriate standard of proof in administrative proceedings." Goldstar Medical Services, Inc. v. Dept. of Social Services, 288 Conn. 790, 821 (2008).

Pursuant to Conn.Gen.Stat.§ 16-50p, the Siting Council must find that the Applicant has proven that there is a significant public need for the proposed facility. Furthermore, the Council must also weigh the "nature of the probable environmental impact of the facility". The Town submits that there is no significant public need for this facility and that even if the Applicant were able to show otherwise, such minimal public need is outweighed by the anticipated negative environmental impact such facility will have both on and off the subject property.

A. No Significant Public Need Exists for the Proposed Facility

As a preliminary matter, Conn.Gen.Stat. §16-50p requires that the Council "shall not grant a certificate, either as proposed or as modified by the council, unless it shall find and

determine: (1) A public need for the facility and the basis of the need..". Based on the record and the testimony of both the Applicant and the Town, there is no significant public need for this facility.

The Town, through its first selectman Wade Cole, presented evidence of the following facts: (a) that there is currently cell phone service in the area of the Club and in the 'hollow' provided by Verizon; (b) he has had no requests for service from any town residents as to cell phone coverage in the hollow area; (c) he has had numerous requests for service from residents about cell phone coverage on a major thoroughfare, Route 179, in Hartland but the applicant admitted that the proposed facility will not offer any additional service in this much-traveled area of Town; (d) that he is not aware of any emergency service providers seeking to co-locate on the proposed facility (but did note that the State police are looking to co-locate on the other existing facilities in Town once the funding is available for same); and (e) that the Town residents are generally opposed to the construction of the proposed facility as evidenced by the signatures on the petition submitted as part of the record.

The Council is aware that there are two (2) existing telecommunications facilities in Hartland that provide cell phone coverage for many areas in Town. There is currently an area along Route 179 in Hartland where an actual public need exists for cell phone coverage. The fact that the proposed facility will not provide cell phone coverage in the area where there is an actual need, means that even if the proposed facility were installed at least one additional telecommunication tower will be required in Hartland to provide coverage on Route 179.

In his pre-filed testimony, the Town's First Selectman, Wade Cole, noted that he has

a responsibility to represent the interests and concerns of the residents of our community in Hartland. Many residents as evidenced by the petition provided to me ... object to the site chosen by the applicant for the installation of their tower. These concerns are based squarely on the tower's negative impact on our community including its visual impact on both residents and those visitors to our community who come to enjoy our scenic vistas; the impact on nearby residential land value; and its inconsistency with our Plan of Conservation and Development.

Our residents have also raised questions about the applicant's actual need for a tower in this location. There are already two existing towers in our community that offer service to other cell phone providers without coverage interruption. We would submit that there may be an alternative means by which the applicant may be able to increase its coverage in Hartland including adjustment of the placement and/or direction of its existing antennas on these towers.

Importantly, representatives of our Inland Wetland Commission and Planning and Zoning Commission have raised significant concerns with the application's inconsistency with our wetland and zoning regulations. Both of these agencies have prepared and are submitting written summaries of their concerns.

See, IV.B Town of Hartland Exhibits, 2, Pre-filed Testimony of Wade Cole, First Selectman, January 11, 2011.

The hearing evidence showed that the proposed tower would provide coverage to a small section of Route 20 in the "hollow" where the daily traffic count is only 450 trips per day. Most of the other secondary roads in the coverage area are actually gated. Thus, the majority of coverage afforded by the proposed facility is actually along a short span of Route 20 in a fairly remote stretch of uninhabited road in a forested area.

For all these reasons, the applicant has not established any real public need much less a significant public need for this facility and, therefore, the application should be denied.

B. There will be Significant Negative Environmental and Visual Impact

The applicant admitted that the construction of the proposed facility will require the disturbance and crossing of regulated wetlands on the property. Further, as noted above, the property owner, the Ring Mountain Hunt Club, is currently the subject of a pending cease and desist order issued by the Hartland Inland Wetlands Commission with respect to allegations concerning illegal activities in designated wetlands on the property.

Moreover, a letter from the Connecticut Council on Environmental Quality with respect to this application was submitted to the Council and made part of the record. The letter dated February 22, 2011, addressed to the previous Chairman of the Council states in relevant part:

1. The proposed site is within an area identified by Connecticut's Comprehensive Strategy as Key Wildlife Habitat...With the proposed tower being exceptionally tall and within a migration corridor, its potential impact on wildlife should receive exceptional scrutiny;
2. The proposed location is visible from several important scenic areas and should be evaluated as a potentially "relatively undisturbed area that possesses scenic quality of local, regional, or state-wide significance"...The potential scenic impacts deserve careful scrutiny and deliberation...
3. The CEQ recommends that the CSC consider the implications of approval of the location if it is was the site of illegal wetlands filling...[and if] illegal wetlands activity...occurred [and] included the access road or other areas essential to the proposed tower, approval to use those areas should be withheld.

I. E. State Agency Comments, 3. State of Connecticut Council on Environmental Quality, February 22, 2011.

In addition, the Town submitted the testimony of William H. Emerick, Chairman of the Inland Wetland Commission, which included a letter dated January 6, 2011. See, IV.B Town of Hartland Exhibits, 4, Pre-filed Testimony of William H. Emerick, January 11, 2011.

This letter details the Commission's concern with the proposed facility including, *inter alia*, its construction within the regulated buffer area and a new access road for the alternate site which would appear to require clear cutting of trees within and crossing of a regulated wetland area. In sum, the letter notes that the Inland Wetlands Commission has serious concerns with the development of any tower site on the hunt club property and suggests that "a more comprehensive wetland study of the parcel, particularly in the spring season as recommended by REMA Ecological Services, should precede any final determination of the Siting Council". As discussed above, the additional concerns of the Commission are currently the subject of a cease and desist order and order to show cause concerning the alleged illegal activities on the property.

The testimony and photographic evidence presented at the hearing made it abundantly clear that the visual impact of this tower from many scenic viewpoints throughout Hartland and the adjacent Tunxis State Forest, including Barkhamsted Reservoir and Pine Mountain, as well as from the nearby residences on Balance Rock Road would be severe.

For all these reasons, it is reasonable for the Council to conclude that the proposed facility will have significant negative environmental and visual impacts which far outweigh any need for this facility.

C. The Town residents are opposed to the Facility; it is not in conformance with the Town's Plan of Development; and its installation would contravene numerous Hartland Zoning regulations

As noted in the pre-filed testimony of several of the Town's representatives, including both the First Selectman, Wade Cole and the Zoning Enforcement Officer, Scott Eisenlohr, the proposed communication tower is not consistent with the Town's Plan of Conservation and Development (POCD), which emphasizes the protection of the Town's rural character and environment and its residential nature. As noted in the Town's testimony and accompanying exhibits, the installation of the proposed tower in the residential zone on Balance Rock Road ignores the criteria set forth in Hartland's POCD and contravenes many of the Town's Zoning regulations. See, IV.B Town of Hartland Exhibits, 2- 4, Pre-filed Testimony of Wade Cole, First Selectman, William Emerick and Scott Eisenlohr all dated January 11, 2011. Additionally, Mr. Cole submitted a petition signed by some 300 Hartland residents who oppose the construction of the proposed tower on Balance Rock Road because it will have a "negative impact on the character of the Balance Rock Road neighborhood and will depress the value of surrounding homes".

Although the previous Chairman of the Siting council dismissed the Town's POCD and zoning and wetland regulations as irrelevant to the proceedings, the legislature did place some import on a Town's position for a proposed facility. This is evident in Conn.Gen.Stat. § 16-50x which provides, "When evaluating an application for a telecommunication tower within a particular municipality, the council shall consider any location preferences or criteria (1)

provided to the council pursuant to section 16-50gg, or (2) that may exist in the zoning regulations of said municipality as of the submission date of the application to the council". Additionally, the Siting Council application guidelines require that applicants provide a narrative summary of consistency of a proposed tower with a town's regulations and plans. Such requirements indicate that the Town's position with respect to the proposed facility as well as how the proposed facility comports with the Town's regulations is important and should be considered by the Council in rendering its decision.

Here, the Town, as well as a substantial number of its residents object to this application for all the reasons discussed above and such objection should be given great weight given the significant negative impacts and lack of public need for this proposed facility in this residential area.

III. CONCLUSION

For all these reasons, AT&T's application for a certificate of environmental compatibility and public need to construct a telecommunication's tower at 95 Balance Rock Road should be denied.

RESPECTFULLY SUBMITTED
THE TOWN OF HARTLAND

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CERTIFICATION

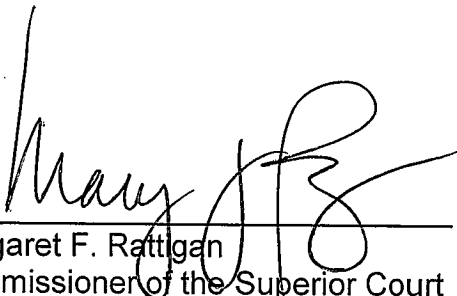
I hereby certify that a copy of the foregoing was mailed, postage prepaid, this 15th day of June, 2011, to the following:

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By: 
Margaret F. Rattigan
Commissioner of the Superior Court

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

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TOWN OF HARTLAND'S PROPOSED FINDINGS OF FACT

The Town of Hartland submits the proposed findings of fact in addition to its post-hearing brief for consideration by the Siting Council and in further support of its position that AT&T's application be denied.

1. There is a no significant public need for the proposed telecommunication facility at 95 Balance Rock Road;
2. The cell phone coverage area benefited by the proposed telecommunication facility will be a short span of Route 20 which span is not heavily traveled and is located in a forested and uninhabited area;
3. There are currently no proposed co-locators for the proposed facility and no emergency service provider has requested or suggested that they need or will utilize this tower location;
4. Route 179 is one of the major thoroughfares in Hartland and is an area where there is a public need for cell phone coverage based on the many residents who have requested same;

5. The proposed tower will not cover the Route 179 area where there is an actual need for additional cell phone coverage;
6. There are negative environmental impacts from the proposed facility including the disturbance of regulated wetlands for the construction of the facility;
7. There are significant negative impacts from the proposed facility to the residents of Balance Rock Road based on the fact that the proposed tower will be visible from their properties;
8. There are significant negative impacts from the proposed facility to the residents of the Town of Hartland and those visiting the Town of Hartland based on the fact that the proposed tower will be visible from many scenic view points including Barkhamsted Reservoir and Pine Mountain, as well as Tunxis State Forest;
9. Based on the negative environmental and visual impacts of the proposed facility, a substantial number of Hartland residents oppose it;
10. The proposed communication tower and its attendant facilities are not consistent with the Town's Plan of Conservation and Development (POCD), which emphasizes the protection of the Town's rural character and environment and its residential nature;
11. The proposed tower contravenes many of Hartland's Zoning regulations; and
12. The property owner is currently the subject of a pending cease and desist order issued by the Hartland Inland Wetlands Commission based on allegations of illegal activity in the regulated wetlands.

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INLAND WETLANDS COMMISSION
TOWN OF HARTLAND
22 SOUTH ROAD
EAST HARTLAND, CT 06027

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BY: *[Signature]*

MINUTES FOR WEDNESDAY, JUNE 1, 2011
HARTLAND ROOM OF THE HARTLAND TOWN HALL
22 SOUTH ROAD, EAST HARTLAND, CT 06027

PRESENT: William Emerick, Chairman; William (Willie) Bakken, Vice Chairman; Margaret (Peggy) Kawa; Kevin Kingsley; Donald (Don) Murray; and Henry (Hank) Prussing. Also present was Enforcement Officer Scott Eisenlohr and First Selectman Wade Cole.

Also present were: Brian S. Downs, Secretary for The Ring Mountain Hunt Club, Incorporated; Attorney James Oliver of The James Oliver Law Firm, LLC, 100 Pearl Street, 14th Floor, Hartford, CT 06103 (representing The Ring Mountain Hunt Club, Incorporated); Michael Klein, Principal and Certified Professional Wetland Scientist and Registered Soil Scientist of Environmental Planning Services, 90 Belknap Road, West Hartford, CT 06117; Attorney David F. Sherwood of the law firm of Moriarty, Paetzold & Sherwood, 2230 Main Street, P.O. Box 1420, Glastonbury, CT 06033-6620 (representing Thomas Sirman); George Logan, Registered Soil Scientist and Certified Professional Wetland Scientist from REMA Ecological Services, LLC, 164 East Center Street, Suite 2, Manchester, CT 06040; Thomas Sirman, 88 Balance Rock Road, East Hartland, CT 06027 and Heike Krauland, 64 Balance Rock Road, East Hartland, CT 06027

Absent: Thomas (Tom) Daukas and Brian Watkins. Note: Vice Chairman William (Willie) Bakken left the meeting at 10:15 p.m. prior to adjournment. Vice Chairman Bakken was present for the decision and vote regarding the Ring Mountain Hunt Club, but he was not present for the Commission's vote regarding James Fuller, the secretarial position and affirmation of the Commission's meeting date.

1. CALL TO ORDER

Chairman William Emerick called the meeting to order at 7:09 p.m.

2. REVIEW OF MINUTES

The Commission reviewed the Minutes of the Special Meeting of May 17, 2011. William Emerick made a motion to approve the Minutes of May 17, 2011. Motion seconded by Hank Prussing. Motion unanimously carried.

3. NEW BUSINESS:

- A. MDC – Andrew Hubbard, MDC Forester – Notification of Timber Harvest
Property Location: Route 20, West Hartland, CT - Map 21, Block 7, Lot #1
Approximately: 50 Acres

Andrew Hubbard appeared before the Commission and presented the Commission with a completed Notification of Timber Harvest form and a series of maps. Mr. Hubbard advised the Commission that there are no wetlands within the timber harvest area and no stream crossings. Mr. Hubbard advised the Commission they would be starting in August and the job would take about one month to complete unless there was some wet weather or equipment malfunction. The Commission reviewed the completed Notification of Timber Harvest form and a motion was made by Chairman Emerick to accept and keep on file the MDC's Notification of Timber Harvest form without any additional requirements as the Commission was satisfied that the activity is a 'permitted use' and there are no wetlands within the timber harvest area. Motion was seconded by Peggy Kawa and unanimously accepted.

JUN 10 2011

EXHIBIT A.

HARTLAND INLAND WETLANDS COMMISSION
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4. OLD BUSINESS:

- A. The Ring Mountain Hunt Club - Complaint, site walk review, and decision regarding the allegations of possible wetland violations.

Chairman Emerick stated that because Attorney Oliver was not able to have his soil scientist available at the Special Meeting held on May 17, 2011 in which to address Mr. Logan's comments, Attorney Oliver and Mr. Klein would be permitted fifteen to twenty minutes to do so.

Attorney Oliver asked if there were any questions of soil scientist Mr. Klein from the Commission members who went out on the site walk recently.

Chairman Emerick asked Mr. Klein what the distance was to the backstop from the wetland limit.

Soil Scientist Michael Klein responded and stated that in his best estimate it is about 130 feet from the wetland limit.

Commission Member Hank Prussing asked Mr. Klein: So there's no objective way of knowing how far away it is from the wetlands border; nobody took a measurement? Does it show clearly on the topo map or any other kind of map?

Mr. Klein responded: If you look at the survey which is titled "Site Access Map" that AT&T filed; that is being used as a base map, the area that is cleared, the backstop is very close to the end of the area that is patched up (inaudible) within five feet and if you scale that off how far a hundred feet is on that drawing, you're clearly (inaudible) a hundred feet.

Mr. Prussing asked: What kind of survey is that; an A-2 survey or T-2 survey?

Mr. Klein stated: I have no idea. It's not even our survey. Mr. Klein reads the reference on the survey map: Site Access Map sheet CO2; site ID SR2587 West Hartland, 95 Balance Rock Road, East Hartland, CT 06027, Hartford County. A copy of this map was also attached to my Report dated May 4th and I think it was also attached to January 5th letter to the Commission from Ecological Services. That drawing also has a graph scale used to determine that clearly it's more than a hundred feet.

Mr. Prussing stated: This first survey, sheet CO2, there is something you can reference off of which is the 75' x 75' gravel compound; if you scale that off and then you take that up to the wetlands boundary and site it over to where the backstop is shown which is right near the edge of the cleared opening; that would appear that you are about right about the 120' - 130'.

Mr. Klein stated: And there is also a graphic scale in the lower right hand corner.

Mr. Prussing responded: Oh there is a graphic scale there.

Mr. Klein stated: And based on that, it would be about a 140, a 150 feet. I think that is slightly longer than the distance, but again these are only approximations. It's clearly more than a hundred feet.

Mr. Prussing responded: Alright.

Chairman asked Mr. Klein: Did you have a (interrupted by Mr. Klein)?

Mr. Klein stated: Yes, Mr. Chairman and Commission. I want to thank you for giving me the opportunity to comment again tonight. Based on the timing and notification of last meeting and my calendar (inaudible). I want to confine my comments to the technical issues we're talking about here. Neither I nor my client disputes the fact that there has been vegetation removal from the site over the years. But we do not believe that the precise timing, the nature and the extent of any such removal or alteration of the area can be ascertained from the images of the REMA report. And that's very important. Let's not make any mistake. This is evolved into a proceeding that more or less adversarial and under those circumstances, neither I nor my client or the Commission should consider any information as being absolute fact verbatim without having the opportunity to analyze it critically. My assessment of the images in the original January 5th letter from REMA was significantly hampered by the inability to obtain even original prints. Now let's be clear. The images that are attached to that report and one of the basis of the complaint are photographs of photographs and they were then printed by an inkjet printer or maybe a laser jet printer. They are not photographic files. There are negatives that are available, stereo-pairs, that the complainant could have purchased and provided to the Commission which would have allowed a careful analysis of those images. Maybe it would have shown something, maybe it wouldn't. It won't always do that. But the information we got with no stereo-pairs I was relying on a photocopy of a fax of a who knows what generation document I ask.

Chairman Emerick stated: So you are saying those really say nothing because you really can't determine visually anything even a scale.

Mr. Klein responded: That's correct.

Mr. Klein stated: Second issue. What the Ottery Group lead data shows. In my judgment we have two (2) samples that have very low lead values, less than 10 ppm. Those samples were taken at the upper six inches of soil. We have one sample that's slightly elevated with respect to the other two - about 55 ppm.

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Chairman Emerick stated: There was only the one taken near the gun range, just the one.

Mr. Klein responded: It depends on how you define near. One of the samples that was higher was closer to the target than the samples that were further away. There is a statistical issue here that's preesoteric but it's very difficult to make reliable and verifiable conclusions based on one sample or based on three samples. There is a whole statistical procedure in the literature about how to determine how many samples you need to take to determine what background is to determine what's a valid sample that shows contamination. But the sample that's elevated is not very much higher than what's considered background. The typical range of lead in soil is about 15-40 ppm. That's according to the University of Massachusetts Soil and Plant Tissue Laboratory. The University of Maine's Analytical Laboratory and Maine's Soil Testing Service reports natural levels of lead up to 50 ppm. University of Rhode Island Landscape Horticultural Program reports natural levels from 15-40 ppm. I was not able to find a specific Connecticut DEP document that said natural level of lead in Connecticut is X to Y. The only Regulation that I was able to find was the Remediation Standard Regulations from the DEP which talks about a natural level of 500 ppm. The Connecticut Agricultural Experiment Station Bulletin that was cited in the May 17th letter from REMA doesn't say, nor can it be interpreted as saying, one, if you read it through carefully, reports one site, one sample, in Hamden, CT that's from a farm. That's where the 20 ppm came from. Also, I have a great deal of problem with the idea that we should take this six inch soil sample, which is all the data we have, and somehow concentrate it further by assuming that all of the lead is in the upper two inches so we should multiply, if you will, the lead values. I have a problem with that; one is a practical reason and one is a theoretical one. The lead that's at the site that maybe from shooting is almost certainly in discreet packets, if you will, a spent slug, a spent bullet, rarely a piece of shot. As we talked about before, haven't used lead shot there in some time. But if you pick-up a lead shot and take just that piece of lead shot the lead particles is a million ppm. So when you have discreet particles like that or discreet concentrations like that, that the distribution is non-randomly distributed that makes it even more important that if you are going to make a judgment about what the lead levels were and what that might mean, that you have a wide range of samples. So that's sort of the theoretical distinction I would make. There's also a practical distinction; for example, a number of EPA documents talk about the lead levels reported throughout the entire soil profile. Most of those documents didn't give the range of the soil profile that a soil scientist would typically look at throughout a number of years, 40 inches. Obviously, if you take, for example, that 6 inch level, and assuming that lead is relatively immobile and doesn't migrate rapidly downward, it might be more lower if you diluted that 6 inch concentration with the rest of the soil profile.

Chairman Emerick asked Mr. Klein: Is that a correct assumption to assume that it's no mobile?

Mr. Klein responded: It's generally not really very mobile. It's less mobile at higher pHs and less mobile with higher levels of organic matters in the soil.

Chairman Emerick further asked: Because of the density of the weight, the density?

Mr. Klein responded: No, it's just the geochemistry.

Mr. Klein continued with his comments: But if you look at that Connecticut Ag Experiment Station report, they looked at the upper 8 inches of the soil. So, if you took that same argument and turned it on its head, the values that were reported by Ottery, if you assumed that it was concentrated differentially near the surface, you could dilute that further, the REMA letter suggests it's all in the upper 2 inches, you took that and then diluted it by 8 inches, you would come up with numbers that are even smaller. The point is that there is really no justification in the literature to compare these values or to alter those values that we have, the values from the upper 6 inches and somehow concentrate that in the upper 2 inches. I will tell you, though, that the last time when I was here when I talked about the Massachusetts DEP had done an ecological risk assessment specifically for lead from practice shooting ranges and that was the source that said it was less than a hundred was considered to have such a low risk that it could be considered background, 100 ppm. That report does cite an EPA study. EPA Region 1 was attempting to determine the risk associated with lead at shooting ranges located at Fort Devans in Massachusetts. And so they didn't have any good methodology or standards and so they canvassed all the other EPA Regions at what data they had. The information they were able to come up with was that 260 ppm was the lowest observed adverse affect level. That's toxicological jargon, we call it, L.O.A.L.

Chairman Emerick asked: So that's kind of the interface, that's the border, once you cross over that, you're into (interrupted by Mr. Klein).

Mr. Klein responded: That was the lowest level that they found in the literature, lead and soil, that was able to be documented as an adverse affect.

Mr. Klein continued with this comments: All of that is theoretical discussion. Now what I just want to end with is what's the situation at this site. There has been some testimony on the record and there had been some discussion about

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placement of fill at the site and remarks and some testimony from a resident about placing fill whether it was to the right or the left and so forth. So I was out at the site last week and looked at the site conditions with that testimony in mind. It's clear to me that the left of the Hunt Club building means the 'west' side of the driveway, the left side as you go in. There is some evidence of fill in that area but there's no evidence that continues on into the wetland area, in fact, if anything a (inaudible) across the wetland. As the Commission members saw that were there, there was also some questions about a presence or absence of a watercourse, it rained 40 days and 40 nights; there wasn't any evidence of a watercourse there either. The last thing that we already talked about was the location of the backstop and also that shooting bench with respect to the upper wetland review area. The shooting bench and backstop are both out of the wetland, the backstop is out of the upper wetland review area. And then we get to the bottom line here, in my judgment there's no question that there has been minor alterations to the wetlands at the site since the 1970; but, I do not believe it's clear that those alterations are subject to Regulations of the Hartland Commission. I don't think any specific evidence of any environmental harm has been presented. There's just some limited evidence of soil lead levels. They are well below Connecticut EPA actual levels. They are not significantly higher than background levels throughout New England. But most importantly, the facilities at the site can be easily modified to minimize the potential for lead to migrate and maximize the potential for the Club to reclaim the lead. And we talked about that before, it involves replacing the existing backstop with a backstop that would be primarily either sand or in some cases, they use blocks of rubber. The lead is easily removed from that material. By placing lime on the soil in the backstop and the immediate vicinity of the backstop raises the pH and further immobilizes the lead. None of those activities requires any work in the wetlands and upper wetland review area. If the Commission would like the Club to restore the wetland in the upper review area, we are happy to do that; we presented a plan to do that the last meeting using native seed mixes, wetland and non-wetland herbs and shrubs, and given the high productivity of vegetation in Connecticut we would expect that reseeded and restoration operations would be very successful, if the Commission requires it. And there is no question in my mind that could easily be done within the bounds of the cease and desist order processing or (inaudible) violations processes; no reason to apply to do that; your Regulations clearly allow for the Commission or the Enforcement Officer to require that. I have a letter (inaudible). Mr. Klein handed-out his letter dated June 1, 2011 to the Commission members.

Chairman Emerick stated and asked: The area just left of the Club house that you defined as filled at one time here under 3.0 Evidence of Past Filling. It says not in the vicinity of wetland area in question which is north of the building. What about the area that is very close to the road?

Mr. Klein responded: I didn't pay particular attention to that area. The dispute to the extent that I know it involves is the shooting range.

Chairman Emerick further stated: That area does seem to have closer to the road running water that seems to be running off the road.

Mr. Klein responded: There is a ditch on the side of the road, there is no question about that. Whether that constitutes a wetland or watercourse, I couldn't tell you. I would note that, again referring back to the AT&T Ottery Group document also known as Figure 10 in the REMA January 5th report. The limit of the wetlands in that area does not - that was identified by Mr. Gustafson - does not extend all the way to the tree line. So based on that I don't see any reason to believe that was, that that wetlands was filled at that location, but that wasn't the issue as far as I was concerned so I didn't pay particular attention to that.

Chairman Emerick asked Attorney Oliver: Did you have anything you wanted to add to that?

Attorney Oliver responded: I have two questions. One of the concerns that was articulated by a member of the Commission last time we were here was to inspect the property so that the Commission could determine for itself what the boundaries were for the wetlands. I am hoping that the tour that you folks were given gave you an opportunity to do that. I don't know if the Commission has looked at the maps and decided that those lines be adjusted or not. But I raise that because of two things: Number one, the Club has agreed in one of their earlier (inaudible) property back there. I think, now that you've seen it, you'll realize that there is a section of property where the horseshoe pits are out first strip of wetlands, that is the wetlands, hasn't been mowed. So one of my questions for the Commission is: At some point, can they mow that is the wetlands? And then, there is of course, the portion of the meadow which is on the far side of the wetlands where the backstop is which is wetlands also which hasn't been mowed, so the question is at some time are they allowed to mow that and in the meantime engage in remediation, if that's what the Commission wants, in the wetlands area. The reason I ask that, is that in order to answer that question it may be important to decide where those boundary lines should be in terms of the wetlands. My assumption is you have a map and since your inspection it

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may be that the Commission will have to figure-out if you are satisfied with what's depicted on the map. I know there seems to be a little bit of a variance between the two soil scientists as to whether it's all wetlands there or whether there's a high island there in the middle where there isn't wetlands. But I suppose the Commission has to look at and determine, one so we know what we can and cannot (inaudible) without a map. If the Commission does vote to decide to that it wants to initiate remediation where the material was cut, we need to know what that area is. So we are talking apples to apples and not apples and oranges. So I guess my question is the Commission going to want to see it again, how would you go about doing that, is it something you do in executive session? I don't know.

Chairman Emerick responded: Okay, well I appreciate that. We will notate that. I will definitely answer that. I don't know how soon we will be able to answer. We'll try to answer that. I can tell you, you are correct, that we have not met since last meeting and we are prevented when we go out in the field by State Statute from having any more than two members on the property. So that's why it was divided the way it was. There was two members each time to go onto the property. We couldn't have discussion to answer your question. So this is the first meeting since the actual site walk. So that's an absolute.

Enforcement Officer Scott Eisenlohr stated: To further expand on that, the site walk was to orientate the Commission with the site. Correct?

Chairman Emerick responded: Right.

Attorney Sherwood asked the Chairman: Can I ask you a question?

Chairman Emerick responded: I think it's probably about your turn. Are you finished Mr. Oliver?

Attorney Oliver responded: I'm done for now.

Chairman Emerick states: Okay, sure. The floor is yours.

Attorney Sherwood stated: Mr. Hayden checked the wetlands delineation when the proposal was to locate the tower on Site A which was (inaudible). I don't think, unless you tell me otherwise, that he has been out there since and subsequent to the delineation of the wetlands in May, the wetlands (inaudible) entire site review by Dean Gustafson I think in December 2010. Has anyone on behalf of the Commission, even though you were not allowed on the site, has anyone on behalf of the Commission checked the delineation that Mr. Gustafson did, and number two, are the wetlands flags that are shown on the information we have which was submitted by AT&T to the Siting Council, has anybody field located those flags. I can tell you there is not an A-2 survey of the site; that does not exist. That does not preclude, I don't think it precludes, field locating the wetlands flags. But I think that in order for the Commission to know where the wetlands are on the site, that, you can certainly agree that Mr. Gustafson's work is credible, but I think if Mr. Hayden were to go out there and just double-check his work the way he did initially, and that the flags were field located I think its in everybody's interest, ours and as well as yours, as well as the Club, to know where the wetlands are on the property.

Chairman Emerick responded: To best answer the question you had when you started off, Mr. Hayden has not been out there, to my knowledge, correct Scott?

Enforcement Officer Scott Eisenlohr responded: Correct.

Chairman Emerick further stated: Since the first time.

Chairman Emerick continued: The first time was the only time he was out there. So the Commission has had no soils representative other than that one time when he went out there on behalf of the Commission to sort of check what AT&T was doing at that time which was locating the tower near the Club house because that what was going on at that time. I guess that's still up as one of the sites, but it's not the only one.

Attorney Sherwood stated: But according to Mr. Gustafson, which is sworn testimony, he field located wetlands on the Hunt Club property and they are shown on this map that Mr. Klein refers to, but I don't how those are shown, I don't if they were (inaudible). A survey locates wetlands best, I'm sure you know that. Maybe; I don't know what you have in mind tonight but if you're gonna be making a decision about what's gonna happen, where, on that property; since we can't go on that property to do our own delineation so we're in the dark; we can't even go on the property to look at it. Maybe it would be a good idea before you make a decision to have Mr. Hayden doublecheck the flags and have the flags field located so we know where the wetlands are.

Chairman Emerick stated: You want to comment on that Scott?

Enforcement Officer Scott Eisenlohr responded: The last meeting we had the Hunt Club authorized Sean Hayden to on the property but would not allow for soil testing.

Attorney Sherwood stated: The Commission certainly has the authority to require that this be done. And I don't think it's an unreasonable request; particularly, in light of the fact that I think Attorney Oliver agrees that regardless of what

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has happened in the past, there can't be any wetlands activity now without a permit. And as I said, we are more than happy to go there and have Mr. Logan check, but they don't want that to happen. Mr. Hayden isn't carrying anybody's spear. I mean, he's going to give you an opinion. He gave you an opinion last time. The opinion last time was that he agreed with Mr. Gustafson. But I think you need to know where the wetlands are and I think you need to have it confirmed and that's up to you, not the Club.

Chairman Emerick responded: To reiterate what Mr. Eisenlohr said that because soil types are what define wetlands in the State of Connecticut and he was not permitted to do any soils testing this time around. He really did not go out at all.

Attorney Sherwood asked the Commission: Does the Commission think that it does not have the authority to go onto the property and take soil samples for purposes of delineating wetlands or checking the wetlands delineation.

Enforcement Officer Scott Eisenlohr responded: I don't think we do; unless, we have permission to go on the property to soil samples. I don't think we can force ourselves to go on the property. I would have to bounce it off the Town Attorney.

Attorney Sherwood responded: I strongly disagree. I've had many clients who have been put in a situation where a wetlands enforcement officer has come on the property without the permission of the client and cited violations and issued a cease and desist. The short answer is why won't they let you on the property?

Attorney Oliver stated: The short answer is we did let you on the property, the Commission was on the property and we invited the wetland soil scientist on. And this isn't rocket science guys. I went out there, it's very clear where the wetlands are.

Attorney Sherwood responded: Soil Scientist cannot tell; you cannot tell where wetlands are without checking the soil. This is a Wetlands Commission, they know that. It's not a visual test, it's a soil test.

Chairman Emerick stated: It's not defined by vegetation. If you're just looking all you can see is vegetation; it's not really defined by vegetation. You can get a general; but it's not accurate enough (Attorney Oliver interrupted).

Attorney Oliver stated: What was presented to me the last meeting, if my impression was wrong, I apologize; it was that the Commission members wanted to go on the property to see get a sense of what the property looked like and the soil scientist would go on the property to look at the flagged area to determine if he agreed that's where the wetlands were located. The Hunt Club has been more than happy to make that happen and we are willing to have the soil scientist to go on again if he wants to confirm where the wetlands are. Soil testing, I have to talk to my soil scientist and Club members. I've been in these kinds of situations and have not had huge debates about where the wetlands are and the fact that soil samples have to be taken to determine where the wetlands are. This is pretty obvious when you go out there's a high spot where the original shooting benches were, there's two strips of wet property and then it gets high again; this isn't not hard, this is not rocket science. And so, I understand that opposing counsel wants to have yet another inspection and soil testing done. It doesn't seem to make any sense to me that that would have to happen. I would be more than happy to talk with my soil scientist and the officers of the Club to find out to what extent they want soil testing done by the town soil scientist. But it seems to me that this is really (inaudible).

Commission member Hank Prussing stated: Could I say something at this point. And correct me if I'm wrong Scott and Rick, but I think that Sean Hayden would love to go out and verify where the wetlands boundaries are, but he could not commit to that verification unless he was able to do soil testing because he could not just visually and say for sure that this is where the wetlands were, he has to do a soil test. Is that the correct assessment?

Enforcement Officer Scott Eisenlohr responded: Yes, he more comfortable with a soil test.

Mr. Prussing continued and stated: He actually wasn't willing to say this is where the wetland are unless he did have a soil test.

Attorney Sherwood stated: We're not talking about taking a sample of soil and sending it to a laboratory. We're talking about Mr. Hayden with an auger, putting a hole in the ground, and looking at the core.

Mr. Prussing stated: Right. He could not verify that those were the correct locations for flagging unless he was able to dig in the ground and do that.

Attorney Oliver responded: What was presented to me at the last meeting, nothing was said to me about soil scientists from the Town needing to take soil samples. My impression if you reference the Minutes was that he was going out to inspect the property along with the rest of the Wetlands Commission. Now you are asking me to do something I have spoken to my client about so I can't commit to something without talking to them and seeing what their position is on this. I am more than happy to take a break to talk to them. But it seems to me that two soil scientists go out to mark

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the wetlands, now a third. There doesn't seem to be any major dispute between these two soil scientists as to where the wetlands are, the only issue that has been raised is some high island.

Attorney Sherwood stated: (tape did not record a few words) Site A which is toward the wetlands. Mr. Gustafson disagreed with The Ottery Report. The only person who has flagged the balance of the property is Mr. Gustafson. I don't think it's unreasonable to ask that your guy, Mr. Hayden whose integrity is unimpeachable, to go out there and confirm the delineation and then the delineation be shown on a map by field location. That's not, I was here at the last meeting, that's what I thought the Commission requested permission to do. Now, I didn't stay after the Commission came out of executive session. I don't know what permissions were given, but, you are a wetlands commission you need to know where the wetlands are in order to determine (a) whether or not there has been a violation (b) whether the structures that are there can remain there (c) whether the area can be mowed (d) if you're gonna mitigate, or if you're gonna try to remediate or restore, what areas gotta be restored, I think you need to have that information.

Chairman Emerick responded: To try to answer your question what happened when you left. The agreement was that the Commission had the permission to go on the property, but there was to be no soils testing by anyone. It was basically a visual walk. It was not a walk for any analysis of any kind of any soils.

Attorney Sherwood stated: I guess what I would say is if we follow the logic of the Club which is you can't come on our (inaudible) and I think, Mr. Eisenlohr's logic, without being derogatory; if the Club is saying you can't come on the Club property, you can't test, we're not going to allow you to check the wetlands, we're not going to allow you to do what a soil scientist has to do, we can control access to the property, we're not going to let the neighbor on. How would there be any wetlands violations? You'd never know. You'd never get access to the property. Mr. Sirman has a brook on his property, could dam it, pipe it, do whatever he wanted and if the Commission was concerned about it, he can't come on the property. We'll have George say there are no wetlands violations. That's ridiculous.

Enforcement Officer Scott Eisenlohr commented: Just to verify a question that was asked. (Mr. Eisenlohr quoted from the Wetlands Commission Minutes of their May 17, 2011 Special Meeting): "Mr. Eisenlohr stated (to the applicant): Would you allow us, would you authorize the use of our soil scientist going on the property to do testing for us because you each have soil scientist and we don't have one to represent us? Mr. Oliver responded: We would allow the soil scientist on with the small groups. But we do not want soil testing."

Commission Member Don Murray asked Attorney Sherwood: Mr. Sherwood: Are you suggesting you would like to see the entire lot delineated.

Attorney Sherwood responded: The entire lot has been delineated.

Mr. Murray asked: Do you want it double-checked?

Attorney Sherwood stated: Yes, I think Mr. Hayden could go out there in an afternoon, George, to check it?

Soil Scientist George Logan responded: Sure.

Attorney Sherwood further stated: It's not a particularly big job. He's not going to check every wetlands flag. He's going to look at the property. He's going to auger along the delineated boundary and tell you whether he agrees with the delineation. That happens all the time.

Commission Member Hank Prussing stated: First of all the complaint didn't have to do with the entire property. It had to do with three (3) specific complaints, right? One was the clear and the grubbing of the wetlands area and the target range, and one had to do with the possible lead contamination and filling was the third one. Right? So maybe it's not the entire site that we need.

Attorney Sherwood stated: I agree. I apologize.

Mr. Prussing continued and stated: Maybe it's not the entire site. We need to have the area that is the subject of the complaint. Is that correct?

Attorney Sherwood further stated: Yes.

Mr. Prussing further stated: Okay. So that involves this area which is pretty much the cleared area within the shooting range, is that correct?

Attorney Sherwood responded: Right. There's a belt of wetlands that goes right through the center.

Mr. Prussing stated: So that's the area we are talking about. And the original visit by Sean Hayden, he did not, at that point, without having an auger with him, he figured they're probably in approximately the right place. So if he went on again, he might discover something a little different; but would it be significantly different. Would he find a new wetlands way up at the top (interrupted by Attorney Sherwood.)

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Attorney Sherwood stated: That's not what he delineated when he went up. When he went up, the only wetlands that were delineated were the wetlands associated with 'A' which is right above the (inaudible). The shooting range area had not been delineated.

Mr. Prussing stated: Oh, he didn't go back in the shooting range?

Chairman Emerick stated: He's correct.

Mr. Prussing stated: Oh okay.

Commission Member Don Murray stated: I was with Mr. Hayden. He was just doing Site #1.

Mr. Prussing stated: Okay. He didn't actually do up into the area where the complaint was.

Chairman Emerick stated: With that being said, the Commission has seen the property. Just going on your own visual site walk, if anyone has any comments on that site walk, please feel free to speak in regards to that. Any observations.

Commission member Kevin Kingsley commented: I think as far as filling of the wetlands, we were told that to the left hand side of the driveway was filled, yet, it's not on any map whether its wetlands or not in there. So I think if we are going to determine anymore wetlands that should be an area that we look at, to the left side of the drive, so to the left side of the Club house.

Mr. Murray stated: I'd add to that, really there's been no discussion by any of these professionals about the parking area or the entrance. They state observational comments, really nothing scientific. There's been no digging to see what (interrupted by Attorney Oliver).

Attorney Oliver stated: But that has nothing to do with the complaint before the Commission.

Mr. Kingsley stated: The complaint was about the filling of the wetlands. They brought a gentleman in that lived up the road stating that he dumped in the past on that side of the driveway.

Attorney Sherwood stated: And that is part of the original complaint.

Attorney Oliver responded: But the maps that the town has don't indicate that as wetlands. And now what I'm saying is we don't have a map that shows these wetlands and so now we want a test to show determine if its wetlands. Well it has a map that depicts where the wetlands are. And with all do respect to the soil scientists that are here, within three feet of either direction of the band of wetlands is the wetlands. (a wetlands map was reviewed by the Commission).

Attorney Oliver continued and stated: Yah but, just because someone but fill on the property unless there's a showing that there's even a remote possibility of having wetlands, I don't see the connection to say that we want soil testing done on that part of the property. I had fill put on my property in Simsbury. It's not in wetlands. There's no wetlands anywhere near my property.

Attorney Sherwood responded: If it's not a wetlands, what do you have to worry about. Let them test it. He's got to out there with an auger. He's going to spend a half hour, if its not wetlands, you're all set.

Attorney Oliver responded: Because we live in a State that when a police authority of the Town is going to be exercised it has to be done with restraint. It has to be done with respect to the property rights of private property owners. Just because a neighbor is upset about a cell tower going in doesn't give a Wetlands Commission jurisdiction to start doing testing in what's been a parking lot for the last thirty-five years.

Attorney Sherwood responded: According to you.

Attorney Oliver stated: According to the Town map, it's not a wetlands area, it's not even near a wetlands area, it isn't.

Commission member Hank Prussing stated: Well it is near a wetlands area. There is a wetlands area shown on the far south/southwest corner of the property. That's not the same wetlands we were looking at before. But it goes off the site.

Attorney Oliver responded: But, you were there with me earlier this evening. That property drops off a good six feet before you get into the wetlands.

Mr. Prussing responded: Yah, it drops off. Right.

Attorney Oliver continued and stated: On some level we are starting to enter the absurd here. Where we're gonna start having the Town incur costs for a soil scientist to take soil testing in a parking lot that isn't depicted on any map in Town anywhere or on any State map as being in wetlands to determine if that was wetlands at some point in time. That's not what this complaint is about, guys. It's about a Club house and a strip of wetlands that's maybe twenty feet wide.

Attorney Sherwood responded: And about the Club house; take a look at my letter, Jim. The property rights of Connecticut citizens are subject to the inland wetlands and watercourses act and if you have a case that says that they are not or says that a wetlands commission does not have the right to investigate a complaint and send their wetlands enforcement officer onto your property, I'd like to see it.

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Attorney Oliver responded: I don't. I guess my point is I don't see the building that's on that property anywhere near wetlands.

Attorney Sherwood responded: You're not a wetlands scientist.

Soil scientist Michel Klein stated: Mr. Chairman, I guess I'd also not that Mr. Sherwood's original letter has no problem with citing and using Dean Gustafson's delineation as a bases of his complaint. No one has suggested that this wetlands is not. No one has suggested that its boundaries are substantially different that what was shown. And as far as the idea that Mr. Sherwood has that soil scientist can go on an area that's been filled substantially for many, many years and with a hand auger determine what the wetland boundary is, I respectfully suggest that he stick with the law and I'll stick with the soil science; you can't do it. It will require, at a bare minimum, a backhoe. And that's assuming the original soil profile is still present and that the topsoil wasn't stripped off when the fill was placed. I all likelihood you could never determine what that situation was. But we have a map that Mr. Sherwood relied on with his complaint to the Commission, and now he's telling you, he doesn't think that map is accurate.

Attorney Sherwood asked the Chairman: Could I respond to that?

Chairman Emerick responded: Sure.

Attorney Sherwood continued and stated: I'm relying on the information that is available because we can't go on the property. I agree with that. We can't go on the property with the Club's permission. You can. Mr. Logan, do you agree that you need to get a backhoe out there to determine whether there's been filling of wetlands adjacent to the Club house based on what you've seen.

Soil scientist George Logan responded: The times that I've had to use a backhoe to determine past filling have been very few and far between.

Soil scientist Michel Klein stated: That wasn't the question and that wasn't the answer. The question is, does Mr. Logan think he can go out there with a hand auger and a spade and dig through 3 or 4 feet of fill that's been placed there for twenty or thirty years and then assuming he can get to the original soil profile to determine whether that original soil profile is wetlands and when the fill was placed. You can't do that without a backhoe.

Enforcement Officer Scott Eisenlohr asked the Chairman: Mr. Chair, can we move on with the letter? I'm going to quickly state that I agree with both of them. And they're going to go back and forth. So, I agree with both on this; some areas can, and some areas you can't.

Chairman Emerick responded: Okay.

Mr. Eisenlohr continued and stated: To move on. We handed-out an informational outline tonight to the Commission and maybe we can move to that and discuss the thoughts of the Commissioners who walked the site and what their observations were.

Commission member Hank Prussing commented: I was just there before the meeting tonight and just based on visual observation, it appears that the wetlands are in the right place. But, of course, I did not have an auger and I'm not a soil scientist, so I don't know for sure. If another soil scientist goes and shows it little differently it might be ten feet over one way or another, but it wouldn't be a big difference. If it turns out that we agree that it's a larger area than whatever Regulations apply to the work you might be doing in the future, or that you might have done in the past, they might be changed at little bit based on the boundaries changing. I don't see a fundamental difference. I think it would be a good idea to have an independent soil scientist go because we have had soil scientists that have had specific purposes for going there and marking them. Like, Gustafson, and the others early on, they were there at the behest of AT&T. I know it had to do with that one project. It didn't have anything to do with your complaint. It didn't have anything to do with us observing in an independent way where the wetlands are. They had specific purpose for doing it. We'd like to have a third party to give us a balance so we can weigh two or three to determine where the boundaries are.

Commission member Don Murray asked: For the entire lot?

Mr. Prussing responded: No, not for the entire lot just the area that would be the subject of the complaints. So I think that's a good idea.

Mr. Eisenlohr asked Commission member Kevin Kingsley: Well, Mr. Kingsley was out there and I realize that the Commission are lay people and I don't want to put you on the spot, but just being on the Wetlands Commission for a short time that you've been on by walking in the driveway, if that Club had come to us and asked us if they needed a wetlands permit, by you just standing in the driveway, do you think your answer would be 'yes' or 'no'.

Mr. Kingsley responded: 'Yes'.

Mr. Eisenlohr responded: I agree with you. As Mr. Sherwood said, it's not a very difficult decision to make, but I'm not the one who makes the decision.

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Commission member Don Murray asked: Concerning what aspect?

Mr. Kingsley responded: Visual.

Mr. Eisenlohr further responded: Visual. From the time you walk into the parking lot, by the time you walk in the parking lot, there is a swale that you cross when you leave Balance Rock Road, there is a slight swale. And as Mr. Klein says, we don't know if it's wetlands. But if you walk in, you can hear the water running; it comes in from one side of the parking lot and out the other side. It's not really part of the complaint, I don't think. But it is in a regulated area. So, if you want to start right there and as you move into the land, I'm going to say 'yes' there has been fill within a regulated area, it has been done without a permit. I'll just go a tad bit further. That the information outline that you have says if it's a 'no' you vote against a cease and desist for show cause hearing, it denies that a 'regulated activity' has not occurred or if you vote 'yes' for a cease and desist for a show cause hearing, it affirms that you believe that a 'regulated activity' has occurred on 95 Balance Rock Road. So, instead of going, with no disrespect to the attorneys, instead of going tit-for-tat on this spot we complained about and this spot we haven't talked about, if you stand in the road and you walk into the site, has there been a 'regulated activity'? I think the answer would be 'yes'. And if the Commission agrees that there has been a 'regulated activity', what we do is, I would send a letter to the Club and I would say that the Commission agrees that there has been a 'regulated activity'. Now the burden is on you to come I with a plan to show us why the cease and desist should not remain in effect and that burden would be to have more soil tests, your soil scientists map out the wetlands and show us that it is either 'regulated' or 'not regulated'. And if it's not 'regulated' than the Commission could say: Okay, it's a permitted use you don't need a wetlands permit or we could say 'yes' it was a regulated activity and then you do need a permit. So, we vote 'yes' then the burden would be put on them and we wouldn't need Sean Hayden to go out there at the Town's expense to review the site.

Mr. Murray asked Mr. Eisenlohr: Are you referring to the culvert before the gate, as you go through the gate, then there's a culvert diagonally underneath the parking lot.

Mr. Eisenlohr responded: If you stood in the road and they were proposing to put a hunt club in there, would you or would you not require a wetlands application?

Mr. Murray asked: You mean visualizing what it looked like before the land was developed? How can I do that?

Attorney Oliver stated: That's not what's before the Commission.

Mr. Eisenlohr responded: Mr. Sherwood is talking about a part of it, you're talking about part of it. This is how simple I wanted it to be before the attorneys got involved. I said to Mr. Downs; I said, listen, I really think this is the way it's going to work. I think if you submit an Application for a wetlands permit, say if you filled in some wetlands, and the shooting range maybe is in some wetlands, okay. I think if you have your soil scientists or wetlands scientist come in to say, listen, you can't pull the material out of the wetlands because it would do more detrimental harm removing it. So, I am sure your guy would say, listen, we recommend that it stay there. And I am sure the Commission would agree with his thoughts. And I am sure that the Commission, as long as I am on a roll, may have a little issue with the backstop but we hadn't talked about the backstop. Okay, if you could update the backstop to modern technology and if it's in a regulated area (interrupted by Attorney Oliver).

Attorney Oliver stated: It's not (interrupted by Mr. Eisenlohr)

Mr. Eisenlohr continued and stated: Wait one second. Let me finish. Whether it is or it isn't, show us what the new standards are for a backstop, I really thought, and this is the impression I gave them, Mr. Downs, and correct me if I'm wrong, I really thought that Application would have went through. That's how simple I thought this was gonna be. And no disrespect, until you two got involved.

Attorney Oliver responded: With all due respect it was never that simple. Because we are all sitting here as adults and we know that this isn't about wetlands it's about a cell tower, okay. So it was never that simple. We know that from day one.

Mr. Eisenlohr responded: And I agree with you. But I was trying to keep it simple with Mr. Downs.

Attorney Oliver stated: And I appreciate that, but what you are suggesting has nothing to do with what is before the Commission tonight. What is before the Commission tonight is a specific complaint that contains three elements: clearing, lead contamination and fill. And that's all that is before the Commission. That's it. Nothing else.

Mr. Eisenlohr responded: You know the longer this goes on the worse it's gonna get. And I think now it's gotten pretty bad because now we are talking about the parking lot which I don't think was even an issue, was it?

Attorney Sherwood stated: Mr. Eisenlohr whether I made a complaint or not, it's the Commission's responsibility to look into it.

Mr. Eisenlohr responded: It's up to the Commission.

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Chairman Emerick stated: I'd like to add a couple of things. One thing I want to add going back a ways. I don't think the Commission should necessarily pay attention to whether it was two feet or four feet of fill, the question is was it fill; 'yes' or 'no'. I've heard estimates range from two feet to four feet. I don't think it's a question of 'Also I think the Commission needs to make a decision and define so that we can come to a conclusion based on the information that we have at this time. We've tried as best we could to obtain information. And this is all that we have. I don't think we're going to be obtaining that much more in the near future. So I think the Commission needs to make a decision and I'd like to read the outline out loud so that everyone here can hear it and everyone in the audience can hear besides the Commission. We'd like to take a vote tonight to give people an answer which is why everyone is coming here. Number one, I want to tell everyone that a 'yes' vote for a cease and desist with a show cause hearing affirms that you believe a regulated activity has occurred at 95 Balance Rock Road owned by The Ring Mountain Hunt Club. A 'no' vote for a cease and desist with a show cause hearing denies that a regulated activity has occurred at 95 Balance Rock Road owned by The Ring Mountain Hunt Club. Just to define; regulated activity means: (1) any operation within or use of a regulated area involving removal or deposition of material, or any obstruction, construction (that's a building), or any other type of construction, alteration, or pollution of such regulated areas and/or any earth moving, filling, construction or clear-cutting of trees as measured horizontally from (a) one-hundred feet of such regulated areas. (Because that is our current buffer, as you know).

Commission member Don Murray asked: Could I have a copy?

Commission member Peg Kawa stated: Willie doesn't have one.

Commission member Don Murray asked: Part 2 is the upland review area?

Chairman Emerick stated: That's right.

Mr. Murray asked: And the specific definition of clear-cutting? Which is?

Chairman Emerick responded: That's in the Regulations. You'd have to get them out exactly.

Mr. Murray asked: I'd like to review that.

Chairman Emerick responded: Okay.

Mr. Prussing stated: It's kinda like the oldest definition from 1975.

Chairman Emerick responded: But you're going by today.

Mr. Prussing stated: If this clear-cutting, if this is what we're talking about, is back in the early days.

Mr. Eisenlohr stated: You're gonna go back as far as our Regulations that were originally adopted on February 25, 1974.

We had Wetland Regulations in place at that time and they were adopted at a town meeting in Hartland.

Chairman Emerick gave Commission member Don Murray a copy of the most current Wetlands Regulations.

Mr. Prussing asked: Does anyone have the old one?

There was some discussion among Commission members regarding the Regulations and a copy of the 1974 Wetland Regulations was distributed to Commission members.

Mr. Prussing asked Attorney Oliver: Your argument was that the Regulations did apply because they weren't in effect at the time. I think that was your earlier argument.

Attorney Oliver stated: I think that was my earlier argument. I think that we have already proposed what is a reasonable well-thought-out approach to solving the clearing issue. What the Commission is about to do with this resolution is to make a mis-step. You don't know where the regulated area is, gentlemen. You've had discussion tonight about that fact from the soil scientists. Now you're gonna vote that there has been a violation in a regulated area you haven't defined. And under this resolution, you're not defining what the misconduct was. You're making a general statement. You're not making a determination as to whether fill was put someplace improper, no evidence of. You're not making a determination of whether there's a lead contamination issue here; specifically, in this resolution here; that's what the complaint contains. You're being asked to vote on something which isn't going to survive scrutiny. You don't know where you regulated area is. And now suddenly a proposal which was drafted by I don't know who on this Commission, or town counsel or Mr. Eisenlohr. And you're going to vote generically that there's a violation because you can hear running water at the entrance of the property. That's not scientifically based. That's not even based in the law. The only evidence that you have from soil scientists that are presenting material to you is of a twenty foot wetlands strip that runs through a meadow. That's all you have. And what you're now deciding to do is go down a road because someone's got a bright idea. If you're gonna vote for violations generically with this resolution that doesn't outline specifically on the property where those violations are or whether those violations took place in a regulated area. How is that gonna work for this Commission?

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Mr. Prussing stated: There's no dispute as to where, maybe about the exact boundaries, but where this twenty foot strip is. You've got the flagging right there.

Attorney Oliver stated: You've expanded it to way beyond that. You've expanded it to a parking lot.

Mr. Murray asked the Chairman: I'd like to say something.

Chairman responded: Mr. Murray has the floor.

Mr. Murray continued and stated: When I look at this, the information outline, I have a hard time bundling these complaints together. I think that this is going to be a problem if this goes to a courtroom. Now, what you're doing is you are throwing in, you're gonna like have a big argument about the lead thing, or the clear-cut, or filling. It's too vague.

Mr. Eisenlohr stated: It is vague.

Mr. Murray asked Mr. Eisenlohr: Do you like that?

Mr. Eisenlohr responded: Yes, and this is why. Do you believe a 'regulated activity' has occurred - period. If they come back and the backstop is not in a regulated area, then there is no issue. And we don't know that because one side says this thing and one side says that. So I've left it generic because now I've left the burden of proof upon the Club to come back and tell us where or where not the filling has occurred.

Attorney Oliver stated: Your Commission's decision will be arbitrary and capricious. It will fall squarely within a lot of cases.

Attorney Sherwood stated: Where is your support for these comments. I mean, have you got a case?

Attorney Oliver responded: Will you let me finish, counsel. Then you can rebut, if you want.

Attorney Oliver continued and stated: But a Commission cannot simply vote out of thin air that there's been a regulated activity in a resolution without describing what that activity is, where it took place on the property, and establishing that that regulated activity was in a regulated wetlands or an upland area and that in the upland area, by the way, that activity adversely affected the wetlands. You don't have any evidence of that. Nothing.

Mr. Prussing responded: With respect, I mean, you've got the wetland defined already. We might disagree with exactly where they are, but they are defined. We can see clearly that it's been cleared.

Attorney Oliver responded: And if that was the narrow issue that this board was voting on, I wouldn't have a problem with it.

Mr. Prussing stated: But that's contained within this (interrupted by Attorney Oliver)

Attorney Oliver stated: But that's not what's being voted on.

Mr. Prussing stated: What's being - it's vague enough (interrupted by Attorney Oliver)

Attorney Oliver responded: You cannot tell from this resolution whether you are talking about a lead contamination violation, whether you are talking about a backstop violation, whether you are talking about fill violation in the wetlands that are on the maps, or whether you are talking about an alleged fill violation that appears to have occurred by the building which isn't anywhere near a wetlands as we've seen on the maps. You don't know what this is talking about and the courts are going to want to know what you folks were talking about.

Attorney Sherwood asked: Can I speak?

Chairman Emerick responded: Are you finished Mr. Oliver? Okay. Just one thing I want to remind counsel is we are not in a courtroom, we are only a Wetlands Commission in a small town. Mr. Sherwood you have the floor.

Attorney Sherwood commented: What Mr. Eisenlohr is saying, and I understand your concern Mr. Murray, what Mr. Eisenlohr is saying that because you know, you're virtually certain because the Club has admitted that there's a wetlands violation on the property, that it's reasonable to say to them, show us that there's no regulated activities on your property. It's not a free for all. It puts the burden on them. A show cause hearing; what happens at a show cause hearing: They show cause why there's no regulated activities by providing you with a wetlands map, they show you where the wetlands are, they answer your questions, it's a public hearing, there's a record. There's nothing wrong with that. That just puts the burden on them. I can't go on the property. No one has suggested from the Club that we can save a lot of money by having George go on the property and providing a report with respect as to what he thinks are regulated activities. And I understand that they're not going to let us do that. But asking them to show you that there's no regulated activity. I mean, if they did that with my property, I wouldn't have a problem because I'm not doing anything in the wetlands. And there's no way to enforce the wetlands Act and the Wetlands Regulations if you don't have the ability to issue a cease and desist like this. Because you can't get the information Attorney Oliver you need in order to issue the cease and desist without going on the property. I just don't understand his logic. Not only don't I

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understand his logic but there's no legal basis for it. Ask your own attorney. I think you have; but if you haven't, you should ask him.

Attorney Oliver commented: Ask your attorney what's gonna happen if you pass this resolution in the generic form you have tonight. Even if you vote tonight to pass this resolution it doesn't give the Club any meaningful information as to what your finding is a regulated activity, where it is. How can we possibly respond to the show cause hearing. We have to respond to all of the things that have been talked about tonight; generically, the parking lot, the fill in the parking lot. We have to talk about all of this. That's not appropriate. You folks, as a Commission, if your gonna vote and find a violation with all due respect you need to base it on evidence and you need to base it on the wetlands map that you have and it should be specific enough so that it give The Hunt Club the ability in a show cause hearing to respond in an intelligent fashion. And what's been written here doesn't do that.

Mr. Prussing responded to Attorney Oliver: I think part of the reason for a show cause hearing is that you provide evidence about the concerns that there were (interrupted by Attorney Oliver).

Attorney Oliver asked: What concerns?

Mr. Prussing responded: The concerns that were raised in the allegations.

Attorney Oliver stated: What, the complaint?

Mr. Prussing responded: Yah, the complaint. Those three.

Attorney Oliver continued and stated: We've already provided you with a huge amount of information on that, okay. And what we're gonna want to do is replicate it, the presentations made by Mr. Klein. If you guys want to do that, you can do that, okay. The fact of the matter is that there is a simple procedural approach to solving this issue, the issue of trees being cleared, is to issue a cease and desist order with directions to remediate that problem. Not a problem, I wouldn't have a problem if you folks did that tonight. We've already proposed a solution to that issue. But it appears to me that the Commission, some members of the Commission, and certainly opposing counsel, wants to broaden this to something that is unarticulable as to what the regulated activities are, not articulate what they are, but have us come in and try to guess what the regulated activities are that you want us to address.

Attorney Oliver continued and stated: With all due respect to counsel, I'd like him to show me a case which says that a Wetlands Commission can make a finding that a regulated activity occurred without articulating what that activity was, without articulating when that activity occurred, or where on the property it occurred, or whether that activity was in a wetlands or a buffer zone and whether that Wetlands Commission decision passed scrutiny in a Superior Court. I don't a case like that exists.

Chairman Emerick stated: A couple of things: one is the reason why there is so many of us is because you're gonna get differing of opinions. The reason we are a board instead of one person or two persons is because hopefully, you are going to get a combined opinion not just one person's thought; that's what you are getting from this board. Another thing is there has been some informational stymieing going on for a few months. I think that's rather obvious. I don't think that anybody's that's in their right mind would disagree with that fact. It's has not been easy to obtain information. It's taken quite some time. We usually don't have to spend this much time to obtain information. So I think it's unquestionable that there has been some informational stymieing occurring. We haven't been rushing anyone by any means. We haven't been trying to escalate.

Chairman Emerick continued and stated: We are just trying to make a very general definition that there's probably or no there's not anything going on or has gone on. That's all the Commission is going to say. There not gonna say we are moving to another level or another dimension. We're just gonna say, like it says, that the Commission feels in their own best judgment, and we are all volunteers, none of us are paid, that this is our judgment. That's the only thing we can do. So, if anyone on the board disagrees with that, let me know; but I think we can all support that fact. But, we are all here tonight as we have been for several nights just volunteering. And I appreciate counsels, both of you, your avid responses and your devotion of time into this matter; I really do. And I think it's been discussed very well. I feel that the board needs to vote at this time. Does anyone on the board disagree with that? If so, feel free to speak up.

Commission member Don Murray asked Enforcement Officer Scott Eisenlohr: Would you like to explain why you like the way this is set-up, Scott.

Enforcement Officer Scott Eisenlohr responded: I'll explain it a tad bit further for you. I'm read out of the 2004 "What's Legally Required"? And there's two types of violations. The second type of violation and I'll read out of the book: "Concerns the finding by an Inland Wetlands Agency or its authorized agent that a person who is conducting or maintaining a regulated activity in an inland wetland or watercourse without having first obtained a permit for that activity. Upon finding that such a violation, the Agency or its agent may issue a written order by certified mail requiring

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that the activity be stopped or the condition corrected. A hearing must be held by the Agency within ten days after any such order has been issued specifically to provide the person with an opportunity to be heard and to show cause why the order should not remain in effect."

Mr. Eisenlohr continued and stated: So, for instance if they say the shooting range is out of the wetlands. Fine. If the backstop is out of the wetland. Fine. This issue will go away. That simple.

Mr. Eisenlohr continued to read: "Within ten days after the hearing the Agency must notify the person by certified mail that the order remains in effect" if we find that there's an issue. If they give us information, then the order may be withdrawn. And I can point to several different things in the information they present to us, but I'm not going to pick it apart because there is so much information. Even in the Minutes dated May 4th, "Mr. Klein stated: Fill was placed in a few isolated spots." They realize that fill has been placed in a few spots. And I agree with their plan to remediate those areas. But in the meantime the longer this has gone on, the larger this is getting. Instead of picking all of the apart, that generically I'm going to just issue a cease and desist and let you come back to us and say, listen, Scott you're wrong (and I'd love to be wrong) here's our information, here's the information from our soil scientist, you are way off base and I'll apologize and lift the cease and desist.

Attorney Oliver stated: I can't cease and desist unless I'm told what to cease and desist from. And that's not what's in this resolution.

Mr. Eisenlohr stated: If I have to expand on the language, I will. But I'm going to start with the whole thing. I'm gonna start with the parking lot. I don't want to go there. What was supposed to be between Mr. Downs and I to keep this fairly simple, but like Mr. Sherwood says, I don't really need to point to any specific thing. A show cause hearing is to show us why a cease and desist order should not remain in effect.

Attorney Oliver responded: That's a star chamber. That's the equivalent to accusing somebody of a crime and not telling them what the crime is and not giving them an opportunity to defend themselves. You're in essence accusing, or they're accusing The Hunt Club of violating Wetlands Regulations and conducting some type of regulated activity in the regulated area without a permit, okay, that's fine. If the Wetlands Commission is going to issue a show cause order, order a cease and desist on the property, it has to articulate for us what specific activities we will be ordered to cease and desist from. If you don't do that for us, then we can't respond in an intelligent fashion. And what we have is literally the star chamber approach of you then found violating this statute and but we're not going to tell you what it is, and we're not going to tell you who the witnesses are, and we're not going to let you give a defense about a (inaudible), we're building a gallows, that's what happened in the middle ages. We don't do that in this country; there's due process. We have a right to be told specifically by this Commission what activities we have done that were found to be in violation of the Wetland Commission Regulations. And I'm more than happy to respond to doing that. We have a (inaudible). We're not mowing that property. If you're not mowing the property in Connecticut, it's gonna reforest itself over time. We're not shooting there anymore. What is the current activity that you are asking us to cease and desist from? You haven't articulated it.

Chairman Emerick stated: Can I just add one thing? I believe that both counsels have done an excellent for your clients and your clients should be proud that you have good attorneys on contract. One of the reasons why we have run these meetings in a hearing fashion, which you've done well, very well, and the Commission has absorbed all that and it's quite a bit to absorb. And I think the Commission, like I say, has absorbed enough to a point where they make a decision. But we have listened to just about everything we can listen to in regards to any defense, any offense, any evidence by the soil scientists, any kind of, as you said a few months ago, strategies. We've tried to listen to all different angles. We're trying to be as fair as possible. We not trying to put anybody in a corner here, or paint anybody in a bad spot. A show cause hearing gives every applicant or client, whatever you want to term yourselves as, time to defend yourselves. That's what a show cause hearing is about.

Attorney Sherwood asked: On what specific charge, sir?

Chairman Emerick responded: Any of the regulated activities that we have in our Regulations.

Commission member Prussing comments: I liked to have a discussion on that; maybe, we need to be specific. I know what you're saying, Scott, about it being vague on purpose and all that. But I'm thinking we want to stick to the charges in the letter, original allegations. Why don't we stick with those three?

Mr. Eisenlohr responded: This is the reason why I didn't. It's because, for instance, let's say we tell the applicant what areas we want them to come back at and then Mr. Sherwood comes in and says, oh, they didn't tell you everything. So to prevent this back and forth I included everything on the property including the parking lot. So this way here, once we

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finished with the applicant nobody could come back and say that you missed this or you missed that and that's the reason why I didn't point out any specific areas.

Mr. Prussing stated: Well I think this whole task was defined by the initial complaint though and there were very specific complaint items. I don't see why we need to expand beyond that. Can't we limit um, you know, a show cause hearing to address those specific items?

Mr. Eisenlohr responded: As they said, they haven't been allowed on the property so let's say they (interrupted by Mr. Prussing).

Mr. Prussing further stated: Well, the show cause would allow them the opportunity to present evidence related to those three (3) charges?

Mr. Eisenlohr responded: Yes.

Mr. Prussing continued and stated: And isn't that what we want to explore, not a lot of other charges?

Mr. Eisenlohr stated: Okay, I'm listening.

Mr. Prussing continued and stated: So in other words, I think what was submitted; of course, a lot of this, like the Ottery report, it wasn't really met to be used for the purposes that we're using right now. It was asked for by the AT&T and they specifically wanted the Ottery Group to look at the area that they were considering developing for a cell tower use. But that's not the same purpose that we would want soil tests made for lead, for instance. But they do make a compelling possibility that there was lead contamination. That's like, leads you to believe that maybe it's a good idea to have further investigation in that area. We don't have to have final absolute proof in order to request a show cause hearing. We just need a reasonable assumption that contamination might have happened and so that's why we're looking for more in a show cause hearing. Isn't that what's it all about. We don't know for certain that a violation has occurred when we ask for a show cause hearing, we want to explore it further. That's the whole idea. It's part of the process.

Chairman Emerick stated: That's a good point.

Mr. Prussing continued and stated: I think we want to restrict ourselves to the three (3) items that are in the complaint so we don't go to far afield. I think there's plenty there in those three items.

Chairman Emerick asked: Would you like me to read the three items?

Mr. Eisenlohr responded: You can read the three items. It was hard for me to pinpoint because Mr. Klein said in his summary conclusions: "That while minor alterations in the wetlands 'at the site' have occurred over time". 'To the site', so that let it open. And the last paragraph: "I also recommend the Club restore the wetlands "in the immediate adjacent areas" as noted. On the letter from Mr. Oliver, it says: "The Club will voluntarily reseed the wetlands 'and its vicinity' ". That's number one of part three. And number three of part three: "The Club will reinvestigate relocating a shooting range to 'a portion of its property which is outside of the wetlands'." So, you know, it's all generic, that's why I left my letter generic.

Mr. Prussing responded: Well, I'm talking about the original complaint now which is from Sherwood. Those are more specifically related to the wetlands areas, and activities that may or may not have occurred during the wetlands area.

Mr. Eisenlohr responded: Okay.

Mr. Prussing continued and stated: So, don't we want to restrict our cease and desist and our show cause hearing to those three (3) items?

Mr. Eisenlohr stated: I will do whatever you would like.

Mr. Prussing further stated: I'm thinking that's the clearest way of addressing the complaint rather than other things which might be open-ended which I can understand why you wouldn't want it to be completely open-ended.

Mr. Oliver stated: I appreciate that.

Chairman Emerick stated: Just to remind the Commission what the three (3) items are that he's referring to is: (1) filling of wetlands, (2) clear-cutting within wetlands, (3) is limited to what I would call 'potential' of contamination because it hasn't been conclusively proven by either side. Our Regulations allow us to make a determination based on potential pollution and contamination. So it would be potential soil contamination due to the deposit of lead at the gun range and the installation of the backstop at the gun range which would be involved with the potential for pollution.

Mr. Prussing further stated: My rational behind wanting to go further. It's not that we have definitive proof of these. But for instance, at the very last sentence of the Ottery report says, "There's a high probability that the concentration of lead detected in the soil samples is a result of on-site uses at the subject property." They're not saying that it is, they're saying there's a high probability based on what they had done at that point. So that leads us to a justifiable desire to get more information.

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Attorney Oliver stated: So the backstop that was established to be 135 feet outside of the wetlands is suddenly (interrupted by Mr. Prussing).

Mr. Prussing stated: I'm not talking about the backstop. I talking about the third soil sample. It appears to be within the wetlands area. That's the one with the highest concentration of lead in his report.

Attorney Oliver responded: But with all of the scientific evidence that you've been given, that lead level is a multitude lower than any lead level that you could come up with that would require remediation under State Regulations.

Mr. Prussing further stated: I don't think the State has established a level, has it?

Chairman Emerick stated: No.

Attorney Oliver responded: I think the State has established a level. What is it, 500 ppm?

Soil Scientist Michael Klein stated: 500.

Attorney Oliver stated: 500 ppm and that evidence was presented to you.

Chairman Emerick stated: Is that for residential? (interrupted by Attorney Sherwood.)

Attorney Sherwood stated: Human health, it has nothing to do with wetlands.

Mr. Prussing continued and stated: I'm just saying it needs further investigation. And based on this last statement within the Ottery report to request more, so we can make our due diligent determination. We don't have enough information to make a decision on that.

Enforcement Officer Scott Eisenlohr asked: Would you like me to add those items in the cease and desist if that's the route you decide to take.

Chairman Emerick stated: Is that affirmative that the Commission wants to add the three (3) items that Mr. Prussing has mentioned and I've mentioned also. Is that a go?

Mr. Murray stated: Well, it helps. It's not specifically specific. It defines it a little bit better.

Mr. Eisenlohr stated: Again the reason I wasn't was because this side was saying that there were unfounded accusations by that side so I was trying to stay in the middle.

Mr. Prussing stated: I think it's good to keep it generic to a point.

Mr. Eisenlohr further stated: And as Mr. Oliver stated if the backstop is 130 feet from the wetlands, then its outside the regulated area. It would be a dumb issue. It's that clear to me.

Mr. Prussing stated: No question about that.

Mr. Murray stated: That's not even an issue. So these wetlands are all going to have to be delineated again?

Mr. Prussing responded: Within the area that we are talking about that the accusations are made. Not the entire property.

Mr. Murray stated: When you say filling wetlands, then that's going to bring in the driveway, that's going to bring in the parking lot, that's going to bring in the culverts. It's going to bring all that.

Mr. Prussing stated: Those are the wetlands in that part of the property, not way back in the woods.

Attorney Oliver stated: It doesn't show wetlands in the parking lot. I've seen the map, the map doesn't show wetlands in the parking lot.

Mr. Prussing stated: It shows it pretty close to it though. I think its probably I the regulated area.

Mr. Eisenlohr stated: It shows a stream, I don't think it shows wetlands.

Mr. Prussing stated: (while looking at the wetlands map) Well, what's this? Am I reading this wrong?

Chairman Emerick stated: I don't think so.

Mr. Prussing further stated: (looking at the wetlands map with Mr. Eisenlohr and the Chairman) No look. Come here. Here's a wetlands. And it goes into here.

Mr. Eisenlohr stated: Oh yes, yes.

Mr. Prussing continued and stated: I think the parking lot is probably within a regulated area.

Chairman Emerick responded: Yes, it is. You can see that on the observation when you did the site walk. You can see that much.

Mr. Prussing continued and stated: All we are asking for is a show cause hearing. It is within the regulated area.

Attorney Oliver stated: If you look at the photograph that Mr. Klein just showed me, the parking lot and the driveway were there in 1970. 1974 the Wetlands Commission and the statute didn't even exist.

Attorney Sherwood stated: Not according to the Assessor's card.

Attorney Oliver responded: I don't care what the Assessor's card said. Look at your own map.

Attorney Sherwood stated: Look at the REMA report.

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Attorney Oliver stated: You're issuing a show cause order on a parking lot and a driveway that been in existence since 1970.

Attorney Sherwood stated: Let's just let them vote.

Attorney Oliver further stated: One last question: Are all the Commission members going to vote? And I'm raising this because there are some Commission members who have made public statements concerning The Hunt Club and the cell tower which suggests to me strong evidence of bias. And I don't know, I know at least one who did that and who included in his testimony to the Siting Commission, the Complaint and the aerial maps that were submitted by Mr. Sirman. It raises to me an issue of bias. And I'm raising it with the Commission and ordinarily I wouldn't do it and, I think, in my twenty-five years I've never done it in front of the Commission but it's something that is of serious concern to me tonight. Because this is not how wetlands complaints go down. I don't know. But is there going to be anyone here who recuses themselves?

Mr. Eisenlohr responded: I would say you should probably wait to see how the Commission votes and see if that person will abstain. They may or may not. I don't know the accusations he is being accused of. But the only person that would know that would be that person. So, I'm going to leave that decision up to that person or persons.

Chairman Emerick stated: To me, there has been no issue of bias. We've been as impartial as possible. We have not gone into the other area that you mention. We have purposely stayed away from any mentioning of the other issue. We have stuck to our Complaint issue which was quite enough to deal with. And if you go back and look at the Minutes and the testimony, you are not going to find testimony and evidence in regards to personal feelings of the issue you are bringing to the floor.

Mr. Prussing stated: May I also say something. What we are voting on tonight is not a permit approval or rejection. That's not what we are voting on. What we are voting on is whether we decide there should be a cease and desist to show cause hearing. That's all we are voting on.

Chairman Emerick further stated: It doesn't have the same magnitude by any means.

Chairman Emerick continued and stated: At this time, the Chair's going to make a motion that a cease and desist motion be voted upon in regards to 95 Balance Rock Road owned by The Ring Mountain Hunt Club.

Mr. Prussing stated: Do you want to clarify?

Chairman Emerick stated: (tape did not record) actually at the December meeting and discussed from December up until now which included filling of wetlands and clear-cutting within wetlands and potential contamination of soil due to deposit at the gun range. Those are the three (3) items that were mentioned by two Commissioners here just a few moments ago.

Mr. Eisenlohr asked: Your motion would be to what? Issue the cease and desist with a show cause hearing?

Chairman Emerick responded: Correct.

Mr. Eisenlohr further asked: regarding those allegations?

Chairman Emerick further responded: Right. Issue the cease and desist and have a show cause hearing that was presented to us at the December meeting and began discussions in January.

Mr. Prussing responded: I'll second the motion.

Chairman Emerick stated: Motion's been seconded.

Commission member Kevin Kingsley asked: Just before you mentioned about maybe you would talk to your members and your President about letting our independent guy go on there and do some test boring and nothing came of that. Would that make this easier?

Attorney Oliver responded: I don't know if it would make it easier or not if you're gonna issue a cease and desist order, the folks are going to have deal with a cease and desist order and we're gonna still at the end of the cease and desist order and at the next hearing be at the same place we are today with the same evidence.

Mr. Kingsley stated: But maybe wouldn't have to go through this if we were allowed to do that. I just wondered if you wanted to present that your members and your President.

Attorney Oliver stated: I am more than happy to present that to our Officers. I'm not going to talk about it in this room. I'm more than happy to have a discussion about it? Do you want to step outside?

The Commission took a five minute recess to allow The Hunt Club to discuss the item mentioned above.

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Chairman Emerick stated: We can resume the meeting at 9:30 p.m. after the brief break. Where we had left off we had a motion on the floor which had been seconded. The board needs to make a vote at this time and the vote will be recorded in our Minutes.

Mr. Prussing asked: Was there some additional discussion before the vote? They went on recess to discuss something with the client.

Mr. Eisenlohr responded: One of our Commission members had asked Mr. Oliver a question and I think Mr. Oliver is ready to respond to that Commissioner.

Chairman Emerick stated: So, we'll delay the vote until Mr. Oliver wants, to give him a chance to respond to the question.

Attorney Oliver stated: I did have an opportunity to confer with my client at the break. My client is willing to allow the Town soil scientist onto the property so he can inspect the property visually and so he can conduct the soil samples that he needs to determine the location of the wetlands on the property. One of the caveats we want, is my understanding from the soil testing done by the soil scientists in terms of wetlands locations is it doesn't require the soil to be taken off the property. It's a visual inspection. So, I would request that any soil samples taken by the Town soil scientist remain on the property. He can look at them wherever he wants to but they shouldn't be off the property. The second concern that the client has, there's been some members of the Commission who articulated a desire to determine if the parking lot located on the property that they think has been there since 1970 was placed on wetlands. To the extent that the Town wants to invade the parking lot, dig a trench with a shovel, dig a trench with a backhoe, then we request that the Town, obviously, repair that intrusion into the parking lot and that parking lot wind-up in the same condition it was prior to the testing. The other question I have for the Commission is, I guess it's a question of procedure, but to the extent that the Town soil scientist makes a determination of where he believes the wetlands on the property are located, is that going to be a determination that is binding on this Commission. And the reason why I ask that is that I don't want to get into an endless debate after we've had the Town scientist out to determine where the wetlands are located with additional testing or additional inspections that need to get done. There needs to be some finality to this Commission's position as to where the wetlands on the property are located. And I've respected Commission's concerns that there have been a number of scientists who have gone out and looked but who primarily weren't looking for the purposes that are before the Commission. I understand that. But, at the same time, I don't want it to be an open-ended analysis that once the Town soil scientist comes back and says the field of wetlands is basically where the map shows they were that there's some kind of additional debate that goes on with the Commission that, we're not gonna follow his opinion, we have our own opinion. I just want some clarification that the Commission is going to respect the opinion of its own soil scientist. I can't control what the opposing counsel is going to do. And I don't expect to and it may well be that they don't like what the Town soil scientist concludes. Frankly that's not my concern. My concern is the Commission here and that the Commission be satisfied so we have some kind of closer as to where the wetlands are and whether the activities were occurring on the wetlands. So, to that extent, the soil scientist can come on. Obviously, we are going to have our soil scientist present when that takes place and one of the Officers of The Hunt Club. And it is also my assumptions that the soil testing is going to be done at the Town's cost?

Mr. Eisenlohr stated: I'm going say, yes.

Chairman Emerick responded: We had a motion a while ago that was basically voted on, I'm thinking it was maybe the March meeting, if I remember correctly, that soil testing, at least in the initial phases, would be done initially at Town costs. There would be a cap on it and that would be determined by the Board of Selectmen.

Attorney Oliver asked: What would that cap be? And who has to make up the difference?

Chairman Emerick further responded: First of all, our soil scientist that we have on staff, if you will, doesn't operate with an hourly kind of thing, he has a certain kind of fee that he is paid, his organization is paid, each year. So, he doesn't really charge us so much per day or so much per hour. So that we have that available without going into this cap. But if we needed some other outside expert other than our initial Conservation District, that would be a cap of, say, \$600.00 - \$700.00 in that neighborhood for an outside expert. But the initial person that we use, we do have the utmost respect for and we don't disagree with and that's the person who went out after AT&T initially came here, that's Mr. Hayden, that Mr. Sherwood mentioned awhile ago. So, if that helps answers some of your questions.

Mr. Eisenlohr stated: There's still an open question and his question is: If Sean Hayden finds that there's wetlands, what's going to happen? Correct?

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Attorney Oliver stated: I have two questions: one, if Mr. Hayden exceeds his budget whose going to be responsible for that?

Mr. Eisenlohr responded: Let's take them one at a time. I don't think there's going to be a budget issue here. The Town of Hartland belongs to a (what is it?)

Commission responds: Soil Conservation District.

Mr. Eisenlohr continued and stated: That's like a membership to the Soil Conservation. Both soil scientists know Sean Hayden and they think he has a pretty good reputation. But his services would be free. That's the answer to your first question.

Attorney Oliver responded: Okay, that answers that.

Mr. Eisenlohr stated: I would try not to excavate your parking lot to find out where the wetlands are, if we had to go down six feet. I'm going to try to stay away from excavation, I going to rely on Mr. Hayden's word if there's wetlands there.

Attorney Oliver responded: With all due respect to Mr. Hayden, he may be excellent, I've never met the man. That sounds like dousing. There's gotta be some scientific approach to determine where the wetlands are based upon soil and whatnot. It seems to me that if we wind up in a dispute, in a court somewhere, it's not going to do the Town any good to have an expert come into the wetlands zone (inaudible) testing. I'm actually arguing against my own client on this one because that means that at some place in this parking lot something's going to have get augured in, dug, something's going to have to happen to get down to the soils. Let me talk to Mr. Hayden about that.

Mr. Prussing stated: Could I say something at this point? My understanding, maybe I'm wrong, is that basically, what Sean Hayden would do would be to go in there and kind of verify the wetlands boundaries that have already been established and see if he agrees with them or not and he would probably dig close to the same area and if he doesn't agree, go a little further afield. In other words, there are wetlands flags that are already there in the area that has been developed by The Hunt Club over the years, there's that area that we talked about, there's also another defined area to the left of the driveway and I assume that there are flags there, I didn't notice when I went in. And he would probably go to those areas and see if he agreed with boundaries that were established on this, that you have there.

Attorney Oliver responded: That's fine. I wanted some level of agreement about the scope of the testing. You have eleven acres? It seems to me that eleven acres doesn't need testing.

Mr. Prussing responded: It's just the areas that have been developed over the years by The Hunt Club.

Chairman Emerick: Most of your eleven acres haven't been touched.

Mr. Prussing stated: It's just that area in the south/southwest.

Attorney Oliver stated: I understand the area that is in contention within the meadow. That makes perfect sense. There has been an articulation by some Commission members about whether the parking lot was placed on wetlands so I can understand some testing there. But quite frankly, based upon that aerial photo from 1970 (interrupted by Mr. Prussing).

Mr. Prussing stated: I'm going on the CO2 drawing. There's one that is shown to the left of the driveway. He would probably verify if he agrees those are not wetlands.

Attorney Oliver stated: I don't know if there is a dispute or not to the left of the driveway or if there are wetlands or not. I don't know if that is relevant.

Mr. Prussing stated: It depends how close it is to an area that might be developed or filled or added.

Mr. Eisenlohr stated: Whether its wetlands or watercourse.

Attorney Oliver continued and stated: The entryway in to the driveway existed in the 1970s.

Mr. Prussing stated: All of this can come out in the show cause hearing.

Chairman Emerick asked: Does The Hunt Club offer the invitation that you're offering the Town also to Mr. Logan?

Attorney Oliver responded: No. The answer is absolutely not.

Mr. Eisenlohr stated: So anyhow to get back to your questions.

Attorney Oliver stated: Location on testing was my second question. I think we have an understanding that it was going to be the meadow, the area of the parking lot, the area adjacent to the parking lot whether there seems to be some

Mr. Eisenlohr asked: So if he finds wetlands have been filled, altered then I think the only procedure after that would be for the Club to apply for a permit.

Attorney Oliver stated: No, because if these wetlands were filled in 1970s before the wetlands laws existed, you don't have any jurisdiction over that.

Attorney Sherwood stated: Mr. Chairman?

Chairman Emerick responded: Mr. Sherwood, you have the floor.

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Attorney Sherwood stated: It's great that the Club will allow Mr. Hayden on the property even though there is twenty-five conditions, but, that's not going to obviate the need for the cease and desist and it is their responsibility to show you that there's no regulated activity because you certainly have probable cause to think that there was.

Commission member Peggy Kawa: I would just like clarification from Attorney Oliver saying that any of the testing for the wetlands will be done right on the premises itself and nothing will be taken off, but where does that leave the soil test due to deposit of lead at the gun range.

Chairman Emerick responded: It doesn't, you really wouldn't be able to test for that.

Attorney Oliver responded: That's right. We're doing a test to clarify where the wetlands are.

Ms. Kawa further stated: So there's going to be nothing to clarify (interrupted by Kevin Kingsley).

Commission member Kevin Kingsley: The end of the Complaint; the last item on the complaint is the contamination of the soil due to deposit of lead at the gun club. If he was to test the soil that he took out of there, this would finalize this whole issue, I would think.

Attorney Oliver stated: My position on that is that there hasn't been any evidence of a scientific nature to establish lead contamination beyond background levels or require remediation.

Chairman Emerick stated: The vote would be on the potential of lead contamination. It would be probable cause. It's in the record.

Chairman Emerick continued and stated: Just to summarize and reiterate, we have a motion on the floor and a second is the board ready to vote on that. We'll take the motion to a vote now.

Mr. Murray asked: Will the outcome of this vote change the possibility of our Town soil scientist going out?

Attorney Oliver responded: No.

Mr. Murray further stated: Okay. That's already agreed.

Attorney Oliver responded: Yes.

Mr. Eisenlohr responded: This is what I think it changes. If the Commission votes for a cease and desist hearing, then it's the applicant's responsibility to do the testing and bring it to us and then our soil scientist on our end will go and double-check it. So, if for instance, if they say that the backstop or shooting range is 130 feet away, that is not in our Regulations and if Sean Hayden agrees with what they said, then we have no issue concerning the backstop.

Attorney Sherwood stated: And neither do we.

Mr. Eisenlohr stated: So, now that we're gonna do this, Sean Hayden would still be involved, but now the burden is on them to submit the information to us and I think Sean would be allowed to review.

Chairman Emerick stated: All those in favor of issuing a cease and desist at this time in regards to the property at 95 Balance Rock Road owned by The Ring Mountain Hunt Club. And by saying 'Aye', also raise your hand so that the Secretary knows who voted in the affirmative for the record.

Mr. Prussing stated: This is based on the previous description of the motion that you have on the record.

Chairman Emerick stated: That we have on the record. If anyone would like it read, we will re-read it if you like.

Mr. Kingsley stated: They don't seem to agree that they will have to do their part in show and tell here.

Chairman Emerick responded: Well, that comes later.

Mr. Kingsley stated: Okay.

Chairman Emerick stated: All those in favor of a cease and desist say "Aye".

The Commission voted unanimously to issue a cease and desist with a show cause hearing, no abstentions and no opposed.

Attorney Sherwood asked: Will the cease and desist be issued before the next meeting date?

Mr. Eisenlohr responded: The cease and desist will be issued within ten (10) days prior to our next meeting date.

Between now and our next meeting, I will come out with Sean and look at it. To expedite this.

Mr. Brian Downs, The Hunt Club Secretary asked the Commission: Can we still have our Club next Monday, gentlemen?

Chairman Emerick responded: We don't have any trouble with that.

5. WETLAND AGENT REPORT:

A. Connecticut DEP Statewide Inland Wetlands & Watercourses Activity Reporting Form

Commission discussed the Form noted above. Secretary Joan Emerick advised the Commission that this Form has been updated by DEP and is now available to complete online. Chairman made a motion to specify that the Enforcement Officer Scott Eisenlohr and Joan Emerick, Secretary interface on the completion of the Connecticut DEP Statewide Inland Wetlands & Watercourses Activity Reporting Form notifying the Second Selectman

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Magi Winslow and the Treasurer Karen Eseppi in order to issue the appropriate check and include the customary cover sheet to send to DEP.

B. Approval of Enforcement Officer's Bills

Mr. Eisenlohr advised the Commission that he did not have his bills with him but would be taking it up with the Selectmen's Office right away.

6. COMMUNICATIONS

A. James Fuller - Driveway drainage issue at 150 Pinehurst Road, West Hartland, CT

Chairman received an email from James Fuller regarding his intention to improve his driveway drainage located at 150 Pinehurst Road, West Hartland, CT. Mr. James Fuller appeared before the Commission to discuss this issue and he provided the Commission with an Application for a permit, along with the Application Fee of \$150.00. Commission discussed this matter with Mr. Fuller. Mr. Fuller advised the Commission that his contractor, Mr. Eugene Allen, looked at the driveway drainage issue and Mr. Allen provided Mr. Fuller with a plan for improving the drainage which was also approved by the Hartland Pond Association. The Commission reviewed the plans with Mr. Fuller. Chairman made a motion to accept the Application from James Fuller for consideration at the next meeting and as well as the analysis of soil scientist Sean Hayden. Seconded by Peggy Kawa. Commission voted unanimously. Mr. Fuller was also advised to bring a check in the amount of \$60.00 payable to The Town of Hartland to cover the fee required for processing the DEP Statewide Inland Wetlands & Watercourses Activity Reporting Form.

7. CHAIRMAN REPORT

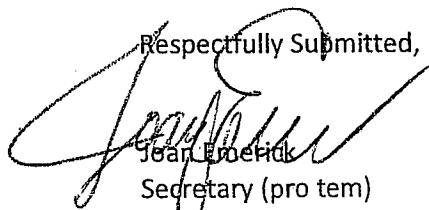
- A. Discussion of the following:** Discussion of the following: Secretarial position with the Wetlands Commission; Transition proposal and time frame from temporary secretary Joan Emerick to previous secretary Connie Irwin; and changing the Schedule of Regular Meeting Dates of the Wetlands Commission.

Chairman advised the Commission that he had received a copy of a letter of resignation dated April 25, 2011 from Connie Irwin stating that she was not able to continue as the Wetlands Commission secretary. The Commission accepted Mrs. Irwin's resignation. A motion was made by Hank Prussing to recommend Joan Emerick to the Board of Selectmen as the permanent secretary to the Hartland Inland Wetlands Commission, motion seconded by Peggy Kawa, Commission voted unanimously. Chairman Emerick made a motion to keep the Commission's meeting dates on Wednesdays pursuant to the Schedule of Meetings already on file at the Connecticut Secretary of State's Office. Motion seconded by Peggy Kawa. Commission voted unanimously.

8. ADJOURN

The Chairman made a motion to adjourn the meeting at 10:45 p.m. Motion seconded by Peggy Kawa, Commission voted unanimously.

Respectfully Submitted,



Joan Emerick
Secretary (pro tem)
For the Hartland Inland Wetlands Commission

cc: Wetlands Commission members, First Selectman Wade Cole, Town Counsel, Town Clerk Liz Essel, Enforcement Officer Scott Eisenlohr, File.