

PLANNING AND ZONING COMMISSION REGULAR MEETING SEPTEMBER 13, 2000,
7:30 P.M. PAGE 1 OF 23

Chm. William Holley III, Comm. Barbara Plum, Comm. James Fortuna, Comm. David Roane, Comm. George Lapadula, Comm. Carl Bolz, Comm. Andrew Rak, Comm. John Voli, Comm. Stephen Gadomski

COMMISSION
MEMBERS
PRESENT

Comm. Corrine Dorsey, Mayor Domenique Thornton, Ex-Officio,
Dir. P.W. Salvatore Fazzino, Ex-Officio

COMMISSION
MEMBERS
ABSENT

William Warner, Director, Wayne Bell, Zoning Enforcement
Officer, Thomas Nigosanti, Chief Engineer

STAFF

Chm. William Holley
Item 3.3 has been tabled. Item 3.4.

Comm. James Fortuna
Item 3.4. Proposed nineteen lot resubdivision of the property of the Bysiewicz Corporation

Chm. William Holley
Before we do show (inaudible) we expect Commissioner Bolz' removal here. At this point in time Commissioner John Voli will be sitting for Commissioner

William Warner
(Inaudible) still here. One, two, three, four

Chm. William Holley
All set.

William Warner
At the last meeting you closed the public hearing looking for, you closed the public hearing and you were looking for staff comment, which is appropriate, on some of the items that came up regarding drainage. In your packet is the staff comment from the engineering department regarding the drainage issues that were raised by one of the opponent's engineers. It addresses the drainage issue and concludes that by constructing the yard drain, it would solve the problem and decrease the amount of drainage going to that property. So now it's for, for, for action. Entertain a motion and discuss and provided you if you choose to move forward with an approval list of recommendations or conditions that I would suggest.

Chm. William Holley
Members of the commission?

Comm. David Roane
Mr. Chairman, to get it on the table for discussion, proposal proposed nineteen lot resubdivision of the property of Bysiewicz Corporation located on the easterly side of East Street across and south of the Westfield Fire Department to be known as Eastbury Hill (inaudible).

Comm. James Fortuna
Second.

Chm. William Holley

Motion made, seconded. Do you wish to discuss your motion?

Comm. David Roane

Mr. Chairman, if I may, I'd like to refer (inaudible) to Page 52 and 53 of the Subdivision Regulations. Maybe I should have done this in the very beginning, Mr. Chairman. At the last meeting, because of accusations that were made about the, I said that night I would sit on this meeting and listen to everything and make a decision based on no bias and no personal feeling towards the applicant, etcetera. Without reading our code of conduct again, I just want to make it clear (inaudible) that we're staying on the same position as last time.

Chm. William Holley

Noted.

Comm. David Roane

Mr. Chairman, I've read the recommendations from the, from the, from our director, I've listened carefully to the presentation, etcetera, the local residents in the area and (inaudible) that people brought forth and I think that there is a happy medium that will satisfy everybody and so, I would like to recommend that we approve this subdivision and, based on our regulations, that we can specify require open space. So, that's why I've got to ask the commissioners to refer to Pages 51 and 52 of, of our subdivision regulations that talks about 5.17 Open Spaces, 5.17.01 Open Space Objectives and 5.17.02 Standards and I would like to, according to (inaudible), the reason why I'm recommending and asking you to agree with the open space is that

Chm. William Holley

Just a point of clarification, are you planning to amend your motion?

Comm. David Roane

Yeah.

Chm. William Holley

Okay, okay.

Comm. David Roane

I just want to get it on the table.

Chm. William Holley

Okay, I just want to make sure you (inaudible). I appreciate (inaudible) whatever you do.

Comm. David Roane

I was just trying to

Chm. William Holley

I understand.

Comm. David Roane

explain. I feel that, that the, the again the issue of (inaudible) the situation of both the residents of the area and the developers themselves, we designate or require that a number of the lots be designated as open space and that he will still be able to do what he wants to do and satisfy the residents. Therefore, I'd like to amend the motion to the following: that this subdivision be approved with Lots 107, 108, 109, 110, 113, 114, and 115 be des not be allowed as building lots and be designated as open space.

Chm. William Holley

Just to interrupt you briefly, do you have a copy of the actual map of those that was submitted?

Comm. David Roane

Yeah. Also, I'm recommending that, based on the testimony from the developer's attorney and the other gentleman he had with him and they talked about blasting at they believed, they said most of the part of it would be on the front and at the beginning of the subdivision at the road, the front part of the road so I'm recommending that blasting be designated to that portion of the subdivision only with a forty-eight advance notice, notice and that no, that blasting will only be between the hours of nine a.m. and twelve noon. No other place will there, will blasting be allowed to take place. Mr. Chairman, my motion includes that of the director, that no rock crushing is allowed on the site and/or rock crushing equipment allowed on the site. Lots 118 and 119, I agree with the Director, be regraded and a yard drain be installed to reduce drainage to the neighboring property.

Chm. William Holley

Actually, for the record, it says regarding. You mean regraded? Okay.

Comm. David Roane

Regraded?

Chm. William Holley

For the record.

Comm. David Roane

Thank you. That is that is my amended motion, Mr. Chairman.

Chm. William Holley

Do you want to repeat that? Is there any way you can summarize that in writing so we all know what you're talking about, just clearly and again, as you point if you can point out just the specific lots so all of us can see them. To make it clear, reference the specific map and the lots that are on it (inaudible) for the record (inaudible) so we know what we're talking about.

Comm. David Roane

On the documents that were submitted by the developer, in the last set if you go to Page C,

Chm. William Holley

Do you want to say that again, David?

Comm. David Roane

If you go to Page C-2, it would be, the lots that I'm asking that the area be designated as open space would start at Lot 107, 108, 109, 110, 113, 114, and 115.

Chm. William Holley

And what is your reason for designating these specific lots as open space? Are you referring to the standards?

Comm. David Roane

During, during, if you're going to if you're going to our, our to our open space, 5.17.01(2) says the reasons that we can designate it as open space is natural features, improving but not limited to viewsheds along roads, rivers, streams, wetlands, flood plains, lakes, aquifers, steep slopes, forested areas and ridgelines should be conserved and enhanced to promote public health, safety and welfare and provide visual barriers. I believe that upon doing this that we will, we will be doing that in this subdivision. I believe that there will be no blasting needed on that ridgeline. The more expensive (inaudible) look has been presented to us in testimony and we, that property drainage problems, etcetera, that we talked about on both sides that there is a public health and safety issue there and, so therefore, I believe that this would eliminate a lot of that and keep both parties happy.

Chm. William Holley

Dave, you're referring to 5.17.01 Sub 2,

Comm David Roane

Yes.

Chm. William Holley

under Natural Features?

Comm. David Roane

5.17 says, says that the Commission may select and require that a particular area of land be reserved for open space.

Chm. William Holley

Can you address the standards for open space? 5.17.02?

Comm. David Roane

Standards for Open Space, 5.17.02, each area designated as open space shall be suitable in size, dimension, location, topography, and general character for the particular purpose envisioned by the Commission and when you look at, when you look at the area, it's, it's suitable in size and leaves the developer enough to, to build some nice homes there and still fulfill his, his, his goal of putting some nice houses out there and, in my opinion, will not (inaudible) and also, by doing that, testimony has been given that (inaudible) talking about the general character of the area and if you drive out there and look at it, I believe that the character should be kept somewhat from (inaudible) in that area. And, again, you can do that and allow for development to take the, take the remaining part and put in the, the good subdivision.

Chm. William Holley

Can you speak on the methods for open space dedication and maybe you might want to ask the Director with respect with anything of that nature.

Comm. David Roane

5.17.03 Methods For Open Space Dedication. The following are acceptable methods for dedicating open space in a subdivision. It may be: 1.) with the approval of the Commission, deeded to the City of Middletown and so designated on the Final Subdivision Approval; 2.) held in such type of legal entity including but not limited to those created pursuant to Sections 47-200 to 47-293 of the Connecticut General Statutes, as amended, entitled Common Interest Ownership Act, Chapter 828, as amended or Homeowner's Association, and I read that, went through that in detail and I went to the state statute and read it and I feel that we should ask, it does not necessarily need to be deeded over to the City, and we ask they establish a homeownership that would be responsible for the open space.

Chm. William Holley

Director, do you have any opinion and guidance?

Comm. David Roane

(Inaudible) my conclusion I, I believe that we are well in the realm of the, of the rules and regulations and abiding by the rules and regulations (inaudible).

Chm. William Holley

I respect your legal opinion but I just want to remind you that practicing law without a license is illegal in the State of Connecticut. I knew that wasn't your intent. Don't go away there. I just want to ask just I want to crank out your amendment in different areas to discuss so we're all clear on this. With respect to the open space in particular, in terms to the Methods of Dedication, I'd like to get the Director's opinion with respect to that in terms of, as he has presented us.

William Warner

I believe the Method of Dedication should be a conser, a homeowners' association. I don't believe it's a piece of property that the City has any interest in owning because it doesn't abut any larger pieces of property. It would just be a maintenance problem. So if you wanted to proceed in that manner, you would have a homeowners' association. Proceeding in that manner is, is somewhat problematic because we have a subdivision with roads designed. Are you saying that they shouldn't build the roads, David, as designed? The two cul-de-sacs would have no purpose but at the same time all our plans are predicated on two cul-de-sacs. All the grading is predicated on two cul-de-sacs. It just completely, totally modifies the plan and that's a little problematic of how we, how we do that. I mean, essentially you're approving a subdivision and you're not even going to see how the roads are designed or graded or anything because it got all changed unless you going to have cul-de-sacs going to, big cul-de-sacs going to open space at the end of this property, which isn't going to accomplish what you want because it's going to have to be the same grading pretty much.

Comm. David Roane.

Ah. In my opinion, there would be, I think we would eliminate the cul-de-sacs and, from a financial standpoint, that's less money that the developer has to put out and there's no need, there

would be no need for those two key roads. Again, by eliminating those (inaudible) it stops the disturbance of the land and it, it lessens the chances of drainage problems on the existing neighbor, especially those neighbors that abut right up to the property. So the (inaudible) at that point.

Chm. William Holley

Did, did the Director refer to 5.17.02 regarding the percentages of the land? Do you understand?

William Warner

The percentage varies. It says as a, as a general rule, it's ten percent. Then it goes on to say the ten percent figure may be adjusted for conditions such as population, density, municipal facilities, topography, socioeconomic but basically the general rule is ten percent of the total lot area as open space and then we say that, let's say there's a particularly important ledge outcrop that we want to protect, well, this gives us the leeway to go, oh, well, we want twelve.

Chm. William Holley

Do you have any idea how big (inaudible) total?

Comm. David Roane

No, I just, no, I took, I took, in just looking at it and, and from remembrance from being out to the area, for the record, I have not been out there since I asked the Planning and Zoning Commission (inaudible) some of the statements that were made and I feel that it's, it's less than ten percent of the total acreage (inaudible).

Chm. William Holley

Just, just to interrupt you, I thank you for reminding me that, just for members of the public, since the last time (inaudible), members of this commission received letters. I received one. I believe other members of this commission from a woman who's spoke at the public hearing in opposition to the, to this in particular. We actually had some discussion about this earlier in private. This is just for the record for the public as discussed and it's clear not to consider anything we received and submitted after the time that the public hearing was ended. Those letters that were sent to us were disposed of and subsequently not read. If they were inadvertently read, they're not being considered by the members of this commission. Are you done?

Comm. David Roane

Just a short (inaudible) I want to report the fact that (inaudible) again the requirements of open space cut out the blasting (inaudible) roads (inaudible).

Chm. William Holley

Just for procedure, what I'd like to do, David, is, you've sort of done it through board discussion just now is the purpose of what you're talking about on open space, is ask to break your amendment into subsequent areas to discuss. What I'd like to do would be discuss the amendment regarding open space, discuss the amendment maybe regarding blasting and the other subsequent areas. So I guess, at this point, what I want to do is have some discussion regarding the amendments just as they pertain to open space, if that's acceptable to you. Vote yes or no or whatever, modify your (inaudible) to open space and move onto the other issues that you want to discuss. That's agreeable?

Comm. David Roane
That's agreeable.

Chm. William Holley
Any discussion regarding open space, any comment on open space? Sure.

Comm. Andrew Rak
If we modify this plan that David suggests how we modify it, does this, if, if the developer decides not to accept this, what would happen as far as his plan. I mean, say we approve it with these modifications that he's talking about, what will happen to this plan? Like you said, there's

William Warner
I, I don't, you know

Comm. Andrew Rak
situations that we don't know what will happen now regarding grading. Do we tell him to grade it without the houses or

William Warner
If you approve it the way it's proposed, basically, and the developer decides he's going to go forward, basically we would take the plans that you've reviewed, throw them out, and he revises them completely, because, you know, these are the lots being eliminated so it almost totally eliminates the need for these cul-de-sacs and David said he wants those cul-de-sacs eliminated. So that has a domino effect and changes the complete grading plan, the complete drainage plan. It just totally changes everything. So, you basically be approving something that you never saw.

Chm. William Holley
Do you want to comment on that?

Comm. Andrew Rak
I don't think it's a good idea to do that, if that's what we amend into our approval. I'm not sure how to rectify that.

Chm. William Holley
Any other comments regarding open space?

Comm. David Roane
Just, just like what Commissioner Rak just said, it would not be a new issue in the sense, I believe, then if we do ask, because then the developer has to come back with a revised plan and that plan will show and the plan will show the elimination of (inaudible), which then means that other land that will be disturbed now in effect from the disturbance of those lands now will not have to take place. In terms of the rest of the subdivision in the way he has it laid out and the number of houses, where the houses sit and the type of houses, etcetera, all stays the same. Basically, what they'll be bringing back to us is a plan with less houses, less footage and on the road minus a few home sites and less disturbance of the land. Again, that would reassure us that there would be no additional blasting other than the front of the street. Along that ridgeline, if you're walking (inaudible) there will definitely be some more blasting other than what they

implied in the last, in the last hearings and so it's not, it's, in my opinion again, it's not approving something that we just (inaudible) an open book and don't know what we're doing. You can look at the map and see what they're doing. You're saving the area according to open space regulations and reasons and why we can require it and (inaudible) it when again, if you look at 5.17.01 2 if it gives you, gives you a number of reasons why. It talks about the area, it talks with regard to the same one, it goes to six natural drainage ways, natural flood water detention areas, preservation of time (inaudible) soils, historically significant sites (inaudible). Read, read what we have before us. There's enough there so that when you put that all together and review the maps that are in front of you, it's a very clear picture of what he can come back with.

William Warner

But on a procedural issue, David, you had the hearing, you've made your decision, you gave it approval, what is he coming back to you? The only time they come back to you is once it's built and ask for final approval.

Comm. David Roane

You, you, not unless I'm not hearing you correctly, you just stated that if this was approved, that you have to throw out these plans and you have to come back with some new ones.

William Warner

I'm saying

Comm. David Roane

(Inaudible)

William Warner

I'm saying that he wouldn't have to come back to you. We gave him approval with those changes. He doesn't have to come back to you and show them again and you went through the whole process and you said change them all, go change them all and build your subdivision, is what you're saying.

Comm. Andrew Rak

Here's my concern with the amendment.

Comm. David Roane

You must be more specific.

Comm. Andrew Rak

Now hold on, I'm speaking here. My concern with the amendment, David, is the, I understand the standards but my concern has to do with the scope and the, the number of lots. Why are you sticking with Lot 107 and not Lot 106? Why are you picking 108? In the testimony that I heard I can understand possibly talking about 115, 113 and 114 and maybe even 116 in terms of most of the testimony that we heard that talk in terms of flow of water and issues of water to that site. But in terms of 107, 108, 109, in terms of flow of water in the testimony that we, I haven't heard anything as to why those lots are being excluded. The other concern I have is the acreage in terms of how much area we're talking about in terms of what is what our parameters are in the regulations. We ought to calculate this out.

William Warner

I did a quick calculation, rounding off, you're at about forty percent.

Comm. Andrew Rak

Yeah. What I would suggest, my (inaudible), would be to scale the scope back if you were going to require open space in moving more towards the drainage sensitive lots that we heard a lot of testimony coming forward on in terms of 114, 115, 113, down to the cul-de-sac in the Bell Court area.

Comm. David Roane

You also added 110, 120 (inaudible). The reason why I took 107 (inaudible) because that's probably one of the areas that (inaudible) need some blasting to be done and the reason why I did not, did not (inaudible) on 106 is because (inaudible) 106 could end, could be an appropriate place to end the road right there and (inaudible) drainage and water problem and blasting may happen (inaudible).

Chm. William Holley

Any other comments from the commissioners? (Inaudible). If there are no other comments from the commissioners, are you willing to accept this scaled back amendment, do you want to move on this amendment on open space? My suggestion is, I can't support this amendment as presented in terms of the scope.

Comm. David Roane

That's the scaled back that you're recommending.

Chm. William Holley

I'm recommending that we take 113, 114 and 115, something in that area in the nature of the water coming down to that well. (Inaudible) respect that. Now, again, the other, you know, you look at the information received tonight that Tom presented to us and it talks (inaudible) 118 and 119 and the yard drain. (Inaudible) up on the other side. Specifically, the question to consider is 118 and 119 (inaudible) would drainage sense have been 115, 114, 113 based on what Tom has said here.

Comm. David Roane

Mr. Chairman, I would just like to point out (inaudible) the conservation easement that was shown to us includes 109, 110 and includes more of the lots that you're, you're recommending, 115, 114, 113 and I also don't see the lots that are 110, 109, and again, that was my intent to include (inaudible) try to do the same thing. (Inaudible) putting his cousin's (inaudible) in that area and if it was okay then, let's, let's not just do it half right, let's do it all right (inaudible). The last point

Chm. William Holley

Yeah.

Comm. David Roane

This whole point would be is that this whole plan has been presented to us. If you recall at the last meeting, it was very valid amid changes that the developer proposed which lead me to, as I

believe he was trying to address some of the problems (inaudible) some of the residents in the area and none of them wanted him to put in the conservation easement along the back of their property lines to satisfy the neighbors to the back.

Chm. William Holley
(Inaudible) which lots, in your recollection, were those lots?

Comm. David Roane
10, they included 108, 109, 110, 113, 114, 115 and that's it.

Chm. William Holley
Does the Director recall

William Warner
The opponents said 118 and 119 is where that water was going to settle and they proposed a yard drain just to pick all that water up but I don't think they ever proposed any open space except for the conservation easement.

Chm. William Holley
Which is required.

Comm. David Roane
But I'm not saying that, that they were saying that (inaudible) easement back there and that's the reason (inaudible) sloping back and that was, in your opinion, was going to take care of the drainage, the runoff problem back there.

Chm. William Holley
Am I correct, you're saying you're taking it a step further to open space (inaudible)

Comm. David Roane
(Inaudible) open space because, again, part of part of the problem that exists out there is going to come from the moving of land and putting in those two cul-de-sacs and building those houses. So the best way, in my opinion, to eliminate that and again, keep both parties happy, is to designate that as open space and not disturb that land at all.

Chm. William Holley
Let me ask just a quick clarification of the comment that the Director put forth on his summary to us, Item Number 4, where he talks about conservation easement as displayed on the plan be established as it relates to David's proposal. Can you explain the difference in scale?

William Warner
The conservation easement is the area in the brown. It doesn't take away from the buildability of the lots. What it does is it pushes the grading away from the property lines. As you remember in the previous plan, the grading went right to the property lines with two to one slopes. The conservation easement pulls the grading back and then the grading starts after the conservation easement and that really wasn't designed to address any drainage issue. The applicant is saying that there is no drainage issue and they've corrected it and they're actually reducing the drainage.

What it's saying is, is that they recognize that the grading two to one slope right to someone else's property line was probably a little extreme so they're pulling it back.

Chm. William Holley

Any other discussion on this? (Inaudible) at this point to go on any further.

Comm. David Roane

Mr. Chairman, just to, just, looking at it from that point of view as the Director just adequately put it, if you take my plan and leave it, leave it open space, then you have that problem again of disturbing that land just to pull that slope back and that never addresses some of the concerns of the residents.

Comm. Andrew Rak

My concern with that again is what's going to, you know, how's it going to be graded? Is it going to be, I mean, they were concerned about the water, the two to one slope and easement and they're saying the water is going to sit in this. We're saying it's not. This, just making it, eliminating the houses, we still have to

Comm. David Roane

The water.

Comm. Andrew Rak

I don't, I don't quite, I still don't quite understand it. We're eliminating the houses, we're telling him we're going to approve it the way it is but eliminating the houses.

Chm. William Holley

Basically, that is what he is proposing to have

Comm. David Roane

The houses change the road and by doing that again, part of, part of, part of the problem that is going to arise is there's a natural problem out there right now. That problem will increase with the disturbance of the land. So, up until the point of Lot 106, anything beyond 106 and 102 and 118, none of that land, none of that land will be disturbed because, again, he does not have to put a road in there, both roads, and he definitely does not have to dig for those foundations to put those houses in there. So, basically, by leaving it open space, you're going to leave, you're going to leave the land as it is presently and, not unless I was seeing it differently in keeping with their presentations, that they've realized that what they're doing is going to cause some problems out there. They admitted their plans to try to ease the tension and the misgivings of the people who don't want the subdivision done and you can imagine why (inaudible) and all I'm saying is doing this (inaudible) you eliminate a lot more. You leave that land from Lot 106 back, you leave all the rear portion, you leave that presently as it is. In it's natural state. And that's one of the reasons that you

Comm. Andrew Rak

When, when do we see this plan?

Comm. David Roane

Maybe, maybe we require them to come back, not to come back to us but bring it to the department.

Chm. William Holley

Alright. That's the amendment that we discussed. Then, the amendment that we are going to vote on just physically is the amendment to hear on open space. We're only voting now just purely on the open space that David proposed, that lots 7, 8, 9, 10, 13, 14, 15, one hundred (inaudible) be the ones designated for open space for David's amendment. Could you do a roll, please, Mr. Secretary?

Comm. James Fortuna
Stephen Gadomski.

Comm. Stephen Gadomski

I wasn't here for the public hearing so I'm not going to vote.

Chm. William Holley
You didn't review the

Comm. Stephen Gadomski

I just got into town today from a long trip, so.

Chm. William Holley

Thank you for mentioning this to us. Mr. Voli, are you prepared to vote on the public hearing?

Comm. John Voli
Yes.

Comm. James Fortuna
John Voli.

Comm. John Voli
Nay.

Comm. James Fortuna
Carl Bolz.

Comm. Carl Bolz
Nay.

Comm. James Fortuna
Andrew Rak.

Comm. Andrew Rak
Nay.

Comm. James Fortuna
George Lapadula.

Comm. George Lapadula
I wasn't there for the last meeting.

Comm. James Fortuna
David Roane.

Comm. David Roane
Yes.

Comm. James Fortuna
Corrine Dorsey. Jim Fortuna. I say yes.

Comm. Barbara Plum
Nay.

Comm. James Fortuna
Bill Holley.

Chm. William Holley
Can you count all those eligible to vote please? One, two, three, four, five, six. Six. I vote nay.
What is the result of your tally, Mr. Secretary, do you have five ayes?

Comm. James Fortuna
I don't think so.

Chm. William Holley
Alright, the amendment dies. What were the other issues or amendments?

Comm. David Roane
Okay, let's try. Blasting

Chm. William Holley
Just, just so it's clear now, Commissioner Lapadula and Commissioner Gadomski aren't participating. Go ahead, David.

Comm. David Roane
It's recommended that the blasting be to the front part of the road only. Remember on the maps, if I recall, that they claim that in the development the heaviest part of the blasting is down around Lot Number, that portion of the road leading to Lot 101. And I'm recommending that the blasting be allowed in that area only, that there be a forty-eight hour notice sent directly (inaudible) and that there be no, there be no blasting allowed in any other area of the subdivision.

Chm. William Holley
Is there a second on that?

Comm. Barbara Plum
Second.

Chm. William Holley
Motion made and seconded. Do you want to discuss that, David?

Comm. David Roane
I just believe that, that, for the sake of argument, I just believe that that is the best case scenario for everybody concerned and, again, the developer put heavy emphasis on that he believed that the most blasting, I believe he said something like two weeks maybe of blasting time, (inaudible). That's why (inaudible) benefit of the doubt (inaudible) not so much benefit of the doubt (inaudible) when blasting will be done. That's the area where the blasting probably will be done and the area it should be allowed.

Chm. William Holley
Any other discussion? Commissioner Rak?

Comm. Andrew Rak
This would be to our engineer, to the City. Do you have any feeling for what blasting will be required based on what has been submitted to your department?

Thomas Nigosanti
No, nothing on the new portion as far as blasting. I don't know if, the thought that blasting was for only one small section of the subdivision would make even some water. That wouldn't change this amendment at all.

Comm. Andrew Rak
That's all.

Chm. William Holley
Any other comments? John?

Comm. John Voli
Bill, in your comments you say absolutely nothing about a three hour notice. What if we wanted to limit certain sections? What's your deal on that?

William Warner
I don't have any problem with that. If, if he does encounter something that's a problem, he may have to come back and try to modify the condition but I don't think he will. So, I think his amendment is valid and recommend you approve it.

Comm. John Voli
Also, I want to know if you agree with the hours of nine to twelve.

William Warner
It's fairly restrictive but the last one you did was nine to three in Russell Ridge so you might want to go nine to three.

Comm David Roane

The reason why I said nine to twelve is because everybody's, mostly everybody's up by that time and out at places of employment, etcetera, and at twelve noon you have, have children, after twelve noon you have children in grammar school or lower grades doing half days of school. They're coming home and they have buses in the area, etcetera, and I was thinking that at three o'clock people are getting on the bus coming back home after a hard day of work listening to the boss and certainly they don't want to hear no blasting when you have enough of that during your job. The hours of nine to twelve ends in enough time to do what he needs to do and again, it satisfies everybody concerned. He gets his blasting done and the people don't have to hear it and they can be notified so that they can secure anything that the blasting may disturb or possibly disturb in their home or disturbing their foundation.

Chm. William Holley

Did I hear you correct, Mr. Commissioner, that you're saying that for health and safety reasons you're restricting the blasting between nine and twelve and not beyond twelve for those reasons that you submitted? John?

Comm. John Voli

At this point would I be able to be allowed to see (inaudible).

Comm. David Roane

I would allow that the time be sustained from nine to twelve. (Inaudible).

Chm. William Holley

Great. Let's see. (Inaudible).

Comm. Andrew Rak

When you specify blasting, do you mean drilling or is this the actual blast?

Comm. David Roane

The actual blast. Any preparation that it takes, takes and the blasting itself (inaudible) and the blasting will have to occur between that time of nine and twelve. If it's going to take them two hours to drill, they will be ready to blast at nine, start blasting at nine or at whatever time he needs to start as that does not appear to be as much of a problem for drilling (inaudible) and the problems that blasting causes.

Chm. William Holley

Okay. Any further discussion on the blasting amendment? (Inaudible).

Comm. James Fortuna

John Voli

Comm. John Voli

Yes.

Comm. James Fortuna

Andrew Rak.

Comm. Andrew Rak
Yes.

Comm. James Fortuna
David Roane

Comm. David Roane
Yes.

Comm. James Fortuna
James Fortuna. Yes.

Comm. James Fortuna
Barbara Plum

Comm. Barbara Plum
Yes.

Comm. James Fortuna
William Holley

Chm. William Holley
Yes. The amendment passes.

Comm. David Roane
Moving to the next one, Mr. Chairman,

Chm. William Holley
If anyone else has any amendments, they'd be more than happy to jump in.

Comm. David Roane
The next one is more detailed. The Director recommended, the Director recommended no rock crushing be allowed at the site. I want to take that further and be specific and say that there be no rock crushing of any kind and there be no rock crushing equipment or any equipment that can do that kind of work allowed on the site period. Now, before somebody tries to make me look like a dummy, that excludes trucks that will have to be taken to, take, take the rocks that are oversized, take them out of the ground and off the property with equipment, shovels to pick up the rocks and put them on the truck. I'm not talking about that. I'm talking about rock crushing equipment, anything that is associated with crushing large stones down to fine stones, not be allowed on the site at all.

Chm. William Holley
Any comment regarding or is there a second, excuse me, regarding your amendment about there not being any equipment out there?

Comm. Barbara Plum
Second.

Chm. William Holley

Motion made and seconded and I think you already discussed it. Anyone else want to discuss this amendment?

Comm. Andrew Rak

I don't think that we can actually specify the type of machinery down to the actual truck. Who's going to actually exclude, I mean I don't quite follow that.

Chm. William Holley

I have a problem with that too, David, in terms of

Comm. Andrew Rak

I mean, it's kind of all over the place there.

Chm. William Holley

You're talking about (inaudible) building and construction in terms of what you can do there.

Comm. Andrew Rak

Could our Director assist here?

William Warner

I think, I think David's just referring to a rock crusher. Rock crushing and you can't have rock crushing equipment, which is a rock crusher.

Comm. Andrew Rak

Is that what you are referring to?

William Warner

That's what I'm talking about. (Inaudible)

Comm. Andrew Rak

Is that what you're saying?

William Warner

is a rock crusher and we're saying you can't have that.

Comm. Andrew Rak

So there really shouldn't be an amendment (inaudible).

William Warner

Again, it's (inaudible)

Chm. William Holley

To remind the Commission to proceed with what we're doing here since David is no longer amending issues you want to qualify here, we're basically going through the various points of the original motion as presented, qualifying different things, whether to include or not include these sub-amendments, if you will, the overall vote we will take on the overall application that was

submitted and if we will attach these or not attach these. We're just purely looking at whether or not these things that we refer to them or not as David's proposed these amendments to be (inaudible) issue.

Comm. Andrew Rak

A friendly amendment just to say no to rock crushers?

Comm. David Roane

On the friendly amendment, may I address, address that?

Chm. William Holley

Go ahead.

Comm. David Roane

If, if he wanted to, if the developer wanted to go and, and, and have such equipment on there, he would, by us, by us doing this, he would have an avenue to travel and that avenue that he would have to travel, he would have to go to DEP and he would have to apply for permission to do that. So, and then it becomes a matter of whether DEP can override us as the Commission. But he would have to, the Director (inaudible) he said no and I (inaudible) on the record but he (inaudible) but I have

Chm. William Holley

Please speak to the motion.

Comm. David Roane

But I have checked with DEP, I have talked extensively with them and he would have to apply to have that stone crusher on that land and they would give him permission or not give him permission so to have that to pursue, if he wanted to pursue (inaudible).

Chm. William Holley

Isn't that, in fact, can you basically see that that is within their jurisdiction without having this amendment?

Comm. David Roane

(Inaudible) within their jurisdiction that they can override us.

Chm. William Holley

And what is your opinion? Do we need this?

William Warner

They actually cannot override us. If we put a condition on, it's a local land use issue. They cannot override us. DEP issues air permits for rock crushers. They cannot override a local restriction. If we didn't restrict it, he'd have to go to DEP for a permit. I agree with David on that. But DEP cannot override a local land use decision.

Comm. David Roane

(Inaudible).

Chm. William Holley
David, do you disagree with that?

Comm. David Roane
No, that just makes me feel that much better. There will be no rock crushers on that site.

Chm. William Holley
Any other issues regarding the condition there not be a rock crusher on the site at all? Any other discussion regarding this? Go ahead.

Comm. James Fortuna
John Voli.

Comm. John Voli
Yes.

Comm. James Fortuna
Andrew Rak.

Comm. Andrew Rak
Yes.

Comm. James Fortuna
David Roane.

Comm. David Roane
Yes.

Comm. James Fortuna
James Fortuna. Yes. Barbara Plum

Comm. Barbara Plum
Yes.

Comm. James Fortuna
William Holley.

Chm. William Holley
Yes. The resolution passes. Any other issues or amendments you want to make?

Comm. David Roane
No. I guess I rest.

Chm. William Holley
Commissioner Fortuna.

Comm. James Fortuna
On lots 118 and 119 with regard to the yard drainage (inaudible)

Chm. William Holley
You want to make a motion to include that?

Comm. James Fortuna
Yes.

Chm. William Holley
An amendment made to include departmental comment.

Comm. Andrew Rak
Second.

Chm. William Holley
Second. Any discussion on this particular comment? I say none. Well, just for the point of continuance for the rest, anything else you want to add from here? Other than departmental comments? Seeming that it's pretty clear that we've seen

Comm. James Fortuna
That all department conditions be addressed.

Chm. William Holley
(Inaudible) I will accept the amendment for all the departmental comments listed. Item 3.4. Someone want to make that amendment (inaudible) talking about.

Comm. James Fortuna
(Inaudible) all department comments and conditions be approved, conservation easement be established and all department conditions be addressed, Lots 118 and 119 be regarded and yard drains be installed to reduce drainage on neighborhood properties, no rock crushing allowed on the site, that no (inaudible) without forty-eight hour notice prior to blasting.

Chm. William Holley
Okay and as, as modified and subject to the additional conditions that we put forth and are already included for the overall amendment. Are you clear what we are talking about here?

William Warner
I got it.

Chm. William Holley
Mr. Director?

William Warner
All set.

Chm. William Holley
Any other comments or discussion regarding the solidified and synthesized amendments and motions in terms of where we are as a Commission? You don't want to discuss this? (Inaudible) overall approval with all of the conditions and amendments?

Comm. David Roane
You're talking about the overall

Chm. William Holley
The whole thing. The whole thing.

Comm. David Roane
As, as presented.

Chm. William Holley
This is for clarification and including the departmental comments, is the motion that's before us.

Comm. David Roane
Mr. Chairman. I believe that we no longer (inaudible) if the amount of space that I presented earlier, I believe the Commission should look hard and long at it before it get voted on, to make this a good, sound subdivision development and that they, that we should require open space and the elimination of a number of those rear lots and the condition that some of the road work (inaudible) has been done (inaudible) one of the reasons (inaudible).

Chm. William Holley
Any other comments? If there are no further comments, Mr. Secretary, we'll vote on the application, motion with the conditions as amended and approved as attached.

Comm. James Fortuna
John Voli.

Comm. John Voli
Yes.

Comm. James Fortuna
Andrew Rak.

Comm. Andrew Rak
Yes.

Comm. James Fortuna
David Roane

Comm. David Roane
No.

Comm. James Fortuna
James Fortuna. Yes. Barbara Plum.

Comm. Barbara Plum
Yes.

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Comm. James Fortuna
William Holley

Chm. William Holley
Yes. Motion passes. Item 3.5

Respectfully submitted,

Ellen Stevens
Planning, Conservation and Development Secretary II