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Chm Gionfriddo

It may very well end up being that the developer (change of tape)

(Change of tape)

Chm Gionfriddo

I would ask you to, as quietly as possible, if you are leaving, vacate the room, we still have another Public Hearing. Thank you. Commissioner Sbalcio has departed, the only one of us with any sense, Commissioner Patnaude is now sitting as a regular member. We are on Item #5 and I'd ask the Secretary to read the legal notice.

Secretary Carta

Item #5 - Feldspar Corporation application for Natural Resources Extraction in compliance with Section 41 of the Zoning Code/Agent Charles R. Wiseman.

ITEM #5-FELDSPAR CORP.
APPLICATION FOR NATURA
RESOURCES EXTRACTION I
COMPLIANCE WITH SECT.
#41 OF THE ZONING CODE
AGEN/CHARLES R WISEMAN

Chm Gionfriddo

The only thing that I would ask is, in all likeliness this public hearing is going to be continued, I gather, it may or may not be, but I would just ask in light of the time for brevity to the extent that it is possible, I know a lot of you have waited here quite a bit of time to speak on this matter, I would just ask you to be as brief as possible so that we can get out before dawn. Go ahead, Phil(Atty. Karpel)

Attorney Philip Karpel

Mr. Chairman, members of the Commission, my name is Philip Karpel I'm an attorney practicing law in Middletown and I also reside in Middletown. I'm here this evening representing the Feldspar Corporation and with me, seated to my left, is Charles Wiseman, the Plant Manager. Seated to my right is Mr. James Polk, the President of W & W Consultants, Inc., he is a Consulting Engineer and is responsible for the application that has been submitted. He has prepared it. May I ask-we will do everything in our power to comply to your request, Steve-Has every member of the Commission received a copy of this application? We will have Mr. Polk go through it, not line by line, and we will eliminate the brief introduction to the Feldspar Corporation and we will also eliminate the introduction to the surface mining techniques etc. which, if you haven't read, you can. Instead we will address ourselves to what is existing there, what is proposed there in the map that we have attached. We are here this evening either for the formalization of our extension of our permit or a new permit. We are not sure, and we don't take the position at this hearing that we are-don't-have an existing permit at the present time but we don't think that is a serious issue right now because whatever the Commission is looking for from us, we are here to tell you that we are, to the extent that it is in your jurisdiction, going to supply you with it. With that brief introduction I would ask Mr. Polk to quickly give his credentials and then go right into the application.

Mr. Polk

Thank you. Ladies and Gentlemen, I think (is it working) I appreciate the opportunity to speak before you and I would like to make notice of the map that we have attached to the board here and call your attention to the fact that the areas involved have been noted by the dash lines and circles, various shapes and sizes, these are areas that have had some mining involvement and I will address those point by point. You will note that each one of them is numbered and I will address each by number. In areas in purple here happen to be impairments of water that have occurred over the history of the mining operation there and the orange lines are the primary road, is, the primary road system throughout the mining area and is also subject to several comments. My basic background is nineteen years as a Consulting Engineer, I'm registered in the State of Connecticut along with a number of other states. I have a Bachelor of Science degree in Civil Engineering and a Masters

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Mr. Polk

degree in Environmental Engineering. I have been involved in hydrologic studies, erosion control for all of these nineteen years and had a number of projects that we have been involved in, my firm has. In examining the situation at Feldspar Corporation property there are approximately 380 acres there of which mining activities have encompassed, probably a total of about 40 or 50. During the past several months Feldspar Corporation has attempted to perform some stabilization on the access roads for those of you who were able to visit the mining area and noted, of course, that some gravel had been placed, some sediment traps had been cut on the sides of the road and these will be continue to be improved with time. Saucer shaped areas have been constructed in some of the tailings piles so as to additionally trap sediment and control erosion. A number of the reclaimed areas, some of them dating back quite a few years, have varying degrees of vegetation which I will address point by point. Their mine areas have been subject to some encroachment by all-terrain vehicles, motorcycles and so forth, have gone in there and created some of the minor erosion problems. We have, of course, proposed to try to police it a little more carefully and keep that type of activity to a minimum. All of the areas of encroachment are identified and some of the general measures that we want to try to encourage and propose to do in our report to Feldspar is to post NO TRESPASS signs in conspicuous locations along the property lines in 300' spacings completely around the large, dark solid line which is the perimeter which constitutes the basic property lines. Along all roads adjacent to the property on 100' spacings. To post DANGER signs in conspicuous locations on 50' spacings along the rim of any excavated areas. To replace the existing barrier that is a gate on the southwest entry road from Bow Lane with a more formidable barrier to motorbikes and ATV's and maintain it in a locked position. To solicit the cooperation of law enforcement agency in the identification, apprehension and prosecution of trespassers onto the mine area. General housekeeping effort are proposed to be intensified during the next six months alongside of the mine roads in order to promote better ground cover and reduce those exposed areas. All existing drainage along the mine road will be continuously monitored for effectiveness and accompanying sediment traps maintained. For those of you that visited the site it was obvious to you that there is a deficiency of topsoil throughout the mine area. It happens to be a characteristic of the material there and that's the reason that it is being mined is that it is predominantly rock. There is a substantial hardship in compliance with regulations for the replacement of 4 inches of topsoil and I'm getting to that in a moment, the alternatives that we have suggested. We are proposing that the reclaimed areas on which vegetation has not been successful that they be repaired and smooth graded and additional corrective measures taken and more vegetation planted. Specifically, sites #1, 2 and 3 are now, up in the upper left hand corner, are now areas of active mining activities, the overburden there will continue to be stockpiled on the site for placement in mined areas when extraction ceases. Sites 22, 23, 31 and 32 have already been reclaimed and have stabilized over the years with volunteer vegetation. No further activities are proposed for these sites other than minor grading and seeding and annual inspection. Sites 24, 28, 29 and 30 are more recent reclaimed areas which have poor vegetative covers and some erosion. Site 30 is presently serving as a sediment basin for these areas. Efforts are presently aimed at addition of tailings and overall site grading. Sites 24, 28 and 29 are scheduled to receive organic materials on an experimental basis and seeding in the Spring of 1986. Site 30 will be maintained as a sediment trap until the upper traps are completely stabilized and then reclaimed in 1988. Sites 11, 18, 19, 26 and 27 are areas of previous mine activities which have been temporarily suspended. These areas have been reserved as future sources of a poor grade of ore until such time as extraction becomes economically feasible. These areas are stabilized and represent little erosion potential. Sites 25 and a portion of 14 are areas of previous mine activities which have filled naturally with surface water runoff, those are the two areas noted in purple. These two areas represent attractive ponds for groundwater recharge and wildlife habitat, they will be maintained in their present state. Sites 5, 8, 9 and 12 are reclaimed areas which have been stabilized, some additional efforts will be exerted in 1986 to seed these areas with grasses and honeysuckle. Sites 4, 6, 7, 10, 13, 14 and 17 are previously mined areas which are scheduled for reclamation. Area 14

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and 17 are almost complete. Additional grading to provide benches and slopes will be accomplished in time for planting a groundcover in April of '86. Area 6 is scheduled for reclamation in 1987, area 10 in 1988, areas 4 and 13 in 1989 and area 7 in 1990. Sites 15, 16 and 20 have been reserved as storage sites, 16 for ore, since it is close to the crusher and 15 and 20 for quartz sand. These are stable sites and present little sediment problems. Site 21 is maintained as a sediment basin. That basically summarizes what Feldspar is proposing to do as a part of renewal of their permit.

Attorney Karpel

Id like to do two things right now. First of all, just for any member of this Commission who is not aware of the fact, Feldspar has been operating in Middletown since 1959. Feldspar employs between 50 and 60 people and is indirectly responsible for in excess of 1,000 jobs that includes truckers and people in Connecticut factories that are dependent upon the Feldspar production and by it's own calculation there are approximately 3,000 employees in the Norhteast that are job related to the feldspar produced. As we may have mentioned to the members of the Commission who were on the site review, this happens to be the largest feldspar lode in the Northeast and has been mined actively since 1959. One thing that's clear, was clear to me, when I went up there prior to the Commission's view of the site the mining activity and the reclamation activity have to be almost a hand and glove operation. I am not suggesting that it has been, but as you went through you could see that mining in one area creates some of the tailings that can be used to be placed in other areas. Unfortunately, I think that this was the worst time of the year for the site to be reviewed but maybe that's a fortunate occurrence because as I mentioned, you saw it at it's very worse. You cannot expect to look at the site and anticipate that reclamation activities means that all the trees grow back. There weren't trees there or to the extent that there were, there had never been an intention in reclamation activities to put trees back, it is simply to restore the slope of the land and restore as much vegetation that can be done. We recognize that not has been done properly and part of the plan that we have provided you with tonight is to address that. Now, moving more importantly, I think, to matters that I'm sure may be on some of your minds, I did not, I may be the only person left in this room tonight, I did not read the Middletown Press. However, I am aware that there was an article in there relating to the Department of Environmental Protection. I would like to tell you, and I will tell you, that we have received letters from the Department of Environmental Protection's water resource unit in the nature of an order, there is nothing set forth in the letter that we did not anticipate, the only surprise for us and it came as an absolute shock to us is that it came in the nature of an order. Doug Cooper was up, visited the site on several occasions, indicated everything that is in this letter to us and told us to anticipate that we would be receiving a letter asking us to comply with it but he did not see the need to issue an order. We did not hear from Mr. Cooper until we received the letter in the mail. We have no - let's put it this way - we could object very seriously to everything set forth in this letter, particularly DEP's claim to jurisdiction. We have no intention of doing it because we feel that what DEP has done has probably shortened the task the Planning & Zoning Commission may have. DEP is addressing sedimentation and erosion control, it is our intention to comply with the terms set forth in the DEP letter. I will tell you very candidly that we spoke today with Mr. Cooper and he indicated - we indicated to him - that the only problem we had was the timing, the dates, that he had in order to get a new contour map you need a flyover and we could not assure him that all that work could be done by the 31st of January and his response to us was the dates were essentially negotiable and we told him we would report back to him immediately, our intention is, tomorrow, to contact one of the services that will do that type of a flyover for us and to comply with everything in that letter. Therefore, it is my suggestion that in whatever action the Commission takes we not only have no objection, but we encourage that the terms, not only of the DEP's letter from Water Resource Unit be made a condition, but any other DEP or agency suggestions that are in the jurisdiction of the Planning & Zoning Commission be made conditions because as I told you informally, prior to this meeting, at the last meeting we had here, it is our intention to do whatever is required and necessary to continue our activities. I would like to point out in closing that that is not the only

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Attorney Karpel
letter we have received, we also received a letter, and I believe that copies of all these letters were sent to the Planning & Zoning Commission, we received a letter from the water compliance unit that raises a couple of questions that wants us to point out things not directly relating to the mining activities but does indicate a very favorable compliance record for our wastewater treatment system. In addition to that we had received prior letters from the Solid Waste Management Unit that concluded on after their last visit on October 12, all solid waste observed in their prior inspection was removed and indicated that they were satisfied with the activities we had taken. The reason we touched upon the no trespassing signs, etc. is that a lot of the solid waste we can't control and a lot of the off road vehicles we can't control directly or on a continuing basis, we can only try and finally, we received a letter dated December 10th from the Soil Conservation Service that, again, makes several recommendations to the plan that Mr. Polk just went over. If you haven't seen it or read it even a copy was sent directly to the Planning Office I have absolutely no objection to all those suggestions being made conditions of the approval. And then last, to explain why I indicated to you I'm not sure if this an application for an extension of a permit or a new application is because, as I understand the regulation, and bear in mind that we have had a permit issued in 1973 for 10 years the regulations indicate that without a new application we are entitled to an additional 10 year period. If the Commission takes the position that it's a renewal, it is my contention the renewal started in '83 and therefore there are 7 years left and not 10. If the Commission takes the position that it is a new application we have complied to all the regulations, or attempted to submit everything necessary in the 10 years that start from 1985. Mr. Polk is from Spartansburg, South Carolina, he will be leaving this evening, if necessary we will bring him back here if there is a need to continue this Public Hearing, we will try to bring him back. If it is not absolutely necessary, we can get answers if the Commission so desires. We are now prepared to answer any questions you have at this time or later in the evening.

(change of tape)

Unidentified
....pictures (sic) were there?

Attorney Karpel
How many violations were there?

Comm. Patnaude
Yeah, well, you got an audit, there had some...they had to be in violation if you got an audit from DEP.

Attorney Karpel
You are talking about the letter from the Water Resources Unit?

Comm. Patnaude
Yeah, from Pat

Attorney Karpel
That letter, and if you haven't read it, I'll read the pertinent provision for you. It says "the erosion and sediment problems have, in past, and will continue to pose a threat to water quality for the Connecticut River. While certain measures to mitigate sedimentation had been taken on the site, such measures are not considered adequate to prevent carryover of sediment from mine to river." then they list, all they are asking us to do, Fran, is on or before January 31 submit an erosion and sediment control plan for the entire mine and then they list what they want shown on that plan. Within 45 days of their approval of that plan they want us to initiate, begin to initiate that plan and on or before June 30, 1986 they want to be able to verify that we have complied with that plan. So they haven't told us that there is a specific problem, what they have told us is they-it is their impression that there is an erosion and sediment control problem that is not being adequately taken

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Attorney Karpel

care of therefore, get them a plan. This is what they asked us for, or told us they would be asking informally for when they came up in October, as I say, the only shock that came was that they posed it in the form of an order. I would like to say it was a shock but it came out on December 9th, two days before this hearing, but I would be naive if I said that.

Chm. Gionfriddo

Are there any other questions members of the Commission would have at this time? If not, thank you. Any members of the public wishing to speak in favor of the Feldspar application? Any members of the public wishing to speak in opposition or to raise questions or points ?

Attorney Mike Dowley

Good evening, most of you know me, Attorney Mike Dowley and I'm representing Mr. Ray Roberts tonight, not Earle, but Ray Roberts. I have several points to make and I'm going to try to make them quickly but by the quickness I don't mean to demean any of the points because I think they are all important. The first thing that I think you have to do, sitting as the Commission, is to realize that the control of this mining facility has been placed in the hands of the Planning & Zoning Commission. When Attorney Karpel comes in and says he is not sure whether he is asking for an extension or he is not sure whether he is asking for an application for a Public Hearing, you, in your discussions, may decide that you want him to make that election and you may decide that you want to do that because you may decide that you want to promulgate some new regulations. Tonight before I go I'm going to submit copies of the Durham regulations which control not alone sand and gravel but any mining that would be done in Durham. But, in terms of what Mr. Karpel just said, a new application would carry with it a ten-year permit. I submit to you that a ten year permit is beyond belief, it might be one of the reasons that they forgot to renew the permit in the first place is that it took so long before it came up for renewal and yet the suggestion to you that it is better to give us an extension because you will only have to deal with us for seven years I think really begs the question. What you have to do is, you have to look at your own regulations, which probably nobody has looked at because they haven't been back here since twelve years ago, thirteen years ago. With the help of a legal assistant in my office I took, we took, the time to go through your regulations and in terms of your regulations I'm going to try and be brief but point several things to you. Concerning the section on an extension of an approval, you have the right, during the time that you are going to consider such extension, to see whether they have been complying with your existing regulations. First of all, I don't think you can extend something that doesn't exist. and I don't think there is anyone here tonight that believes that the permit is still in effect. You have to look first to see what they were given a permit to do. How many acres did that permit cover? You've got to look at it and see. How many acres did we give them a permit to do? After we look and see how many acres we gave them a permit to work on, then look at their map and see how acres they are working on. I think somewhere in that blue book the application says something like 352 acres. How many acres are they working on? And what is worse, I think, it would be nice if we had a map that showed what the zone is where they're working in. I mean, are they working in a residential zone? Mr. Roberts lives in a residential zone. How close to that residential zone did they get? Are they in the residential zone? There's no map in front of us that shows where the industrial zone ends and the residential zone begins. Your own regulations, 41.09, tell you that you have to look at your regulations concerning an extension to see if there has been any violations. Your regulations, 41.08, require that topsoil be used in reclamation. Their application to you says "that causes us a hardship". Even today when they come in for the new application they say "we're not even sure whether we are going to use topsoil because it causes us a hardship". But look at your regulations 41.08. Look at them concerning the use of topsoil. Why do we want to have topsoil? Because when they are through and they are gone that could be a very nice area. Those of us that took the trip on the Feldspar bus saw that it has a beau-

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Attorney Mike Dowley

tiful view of Hartford and the river but we've got to reclaim it and it's got to be done. The other thing you've got to be concerned about is suppose this particular company is not around. Have we posted sufficient bond so that when they are gone the land is going to be able to be reclaimed and Middletown is not going to be left with holes in the ground. If you look at your regulations you'll see, and the application, you'll see that they suggested the unapproved use of tailings - what tailings are, is what is left over after they do their mining. Take a look and see what your regulations say about using those tailings and also the use of topsoil. Section 41.08b does not include "tailings" as a suitable reclamation material. See what the application says that they want to do, but as I missed his name, the Engineer indicates they are going to experiment with some topsoil. Well, your regulations don't say experiment your regulations don't talk about hardship. Compliance assurance 41.09 and that is the issue of the bond. In that application I don't see any reference to a bond. At the present time, you have the authority under your regulations to call a bond. Do we even know if there is a bond in effect sitting in the Planning & Zoning office now? What's the bond that is presently in effect? Do they have a bond for 352 acres? 41.11 requires progress reports, progress reports shall be made by the applicant at not less than two year intervals. When was the last time we got a progress report? Yet, they are coming in here for either a "extension" or maybe a new application, and in the meantime they are operating without a permit. You have to also be concerned about the poor fellows who come in here who decide to get an lawnmower fixed in their garage instead of a TV station, instead of a TV. I mean you have to keep your credibility about you for the people. Just because someone is big doesn't mean-and my client particularly isn't intending on stopping Feldspar from operating, but I think as the Commissioners your role is to control and properly reclaim the land in Middletown and if you look at the regulations that are presently in effect, I think you would not want to grant the ten year permit and what I am giving you now is reasons to deny the permit. I think I am also going to be giving you the Durham regulations to consider your job may be to pass new regulations and then accept a new application from the applicant which would require proper monitoring, a proper bond, a proper monitoring. Keep them operating but just make sure that just because Earle Roberts or Ray decided to come down here last July and say that he didn't think that everything was going right that all of a sudden the experts said over the last several months we have made some efforts to clear the roads up there. The scope of the original permit has to be looked at and look at what they are mining instead of what they were given the original permit for. 41.07 -"Criteria during Extraction-Proper drainage shall be maintained throughout the project area during the entire operation."-there has been no attempt from Feldspar, I don't believe, to deny that they haven't had the proper drainage. In order to keep everybody awake this is the letter from the State of Connecticut, Department of Environmental Protection, and it is not a letter, it is an order. I don't know if anyone here has dealt with the State of Connecticut trying to get an order, and what it says, and I have taken the liberty to emphasize certain items,"several areas of the mine site are contributing significant amounts of sediment to the water courses which exit the property. The erosion and sediment problems have, in the past and will continue to pose a threat to water quality in the Connecticut River. This Commission was charged with the supervision of this facility, and the State of Connecticut is saying that the way it is being run is that it posed in the past, and poses in the future, a threat to the water quality in the Connecticut River. While certain measures to mitigate sedimentation have been taken on the site, such measures are not considered adequate to prevent carryover of sediment from the mine to the river. The final paragraph is,"management of the tailings disposal areas that run off from the site need immediate improvement." And then set up a schedule on or before January 31, 1986. As an exercise, if you take a look at what the DEP wanted Feldspar to do, and I also think the certificate said, Feldspar said, "they're not even sure if the DEP has jurisdiction over them. They are not saying whether they are asking for an extension or they are asking for an application. I think that someone has to make Feldspar make up their mind who does have jurisdiction over them. In my mind it is this Commission. Rightly or wrongly, whether you want it or you don't want it, you've got the jurisdiction over them and I think you have to at

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Attorney Mike Dowley

Least hold them to your regulations. This is an order of the Commissioner of Environmental Protection, it is signed by Stanley Pak. It says that the drainage is not proper, that there is a threat to the Connecticut River. They have been operating for 2½ years without a permit. Your present regulations, not the new regulations, say "4.07 Criteria during Extraction - no waste products or process residues from an extraction area shall be disposed of in any stream or any natural drainage system without any proper treatment approval". If you review the reports that the state has given you I think you will see that there has to be more supervision. There is a section 42 that talks about an aquifer area. "Within the designated aquifer areas no land shall be used, filled, excavated or reshaped". Where on the maps do they show the aquifer areas? Where are they on this application before you? In fact, they have admitted that there is an unapproved landfill that has been out there. You can't just come in and make the admissions and think that, "fine, give me another approval and we'll do better". All of these items that I have set forth to you I believe are a basis for a denial of either the "extension or the application for a new permit". The real business that I think this Commission has before it is to examine its own regulations and make the reclamation work for the City of Middletown. I don't think Feldspar has any desire not to reclaim its property. Attorney Karpel said they have been there since '59, I think as I have looked at the records someone has been doing feldspar mining since '59 there may have been some corporate changes and corporate name and I think that is something the Commission has to worry about because of the bond issue. You don't want someone to be mining out there and then disappearing, that's an important issue not to forget about. The problems that I have with the immediate application in front of you are several. It fails to indicate the specific acreage involved, how many acres are we really dealing with in terms of mining? It fails to identify what zone they are mining in. My quick review showed that the residential area did not just begin with Mr. Roberts' property, but began with the former Bitgood property that they are mining in. Are they, or did they, mine in a residential area? I think that is something that we have to look at. The graphic material is totally inadequate, look at what they have submitted and what the state has required. I think it lacks a specific reclamation plan. What are they going to reclaim? When are they going to reclaim? How are they going to do it? My review of the chronology shows that the lapsed permit covered a 10 acre parcel. I can go on and tell you about the chronology, I don't have to do that tonight. I think you need a A2 survey. I think you need to know where it fits into with your zoning regulations and I think you need what a proper reclamation plan is. I think that the Commission would not be doing a service to the City of Middletown by giving a 10 year permit or a seven year permit. I think that these people are in violation and they are admitting it. I think that the Commission, the people concerned in the area and Feldspar should come up with some really good regulations that are going to govern everybody and keep everybody happy and then go on about their business. But I think you have to be careful from a legal point of view what you do, I think you should look carefully to see if this is an extension or an application, Attorney Karpel. What do you have in front of us here? I don't think it is anyone's intent to issue a cease and desist order and shut them down but I think you have to be careful about what you have in front of you. In Durham, just to give you a quick review, any permit issued under the regs shall expire twelve months from the date of issue unless renewed by the Planning & Zoning Commission. Every year they come in and say, "look, this is where we were going to go, and this is what we dic, and this is what we want to do next year". (inaudible) it keeps it under review. They look at the reclamation to see where they are going to go. The Planning & Zoning Commission may renew or extend upon application at a regular monthly meeting under the following conditions, they give notice....and so on. There is a set procedure that the applicant has to follow, if they don't follow it, they stop them. They issue a cease and desist order. I don't want to take up everybody's time, I think I've expressed myself and I don't...I know I've expressed Mr. Roberts' views that it is not his intent to close Feldspar down. I believe that you have enough information to deny the permit, I believe you have enough information to deny the extension but what I think will be in the interest of everyone is if you promulgated some new regulations and took a new application in after the denial. If you are going to do any denying you have to do it according to your present

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Attorney Mike Dowley
regulations. You can't say I'm going to deny you because I would like my regulations in the future to be. Your denial has to be under the present regulations. That's why I think I have given you the information that I have.

Secretary Carta
We have a request of you, if it is possible. I would like-you've made sort of a series of points and it would be difficult, if not impossible, to retain them all by listening to you. If you could or would ...

Attorney Dowley
That doesn't say too much for my representation...

Secretary Carta
You know, I can retain them but for how long am I going to retain them and with what degree of accuracy am I going to retain them, is my question. I want to be able to review them to see what's legitimate, you know, what is opinion and then (inaudible)..on that. If I am going to look at...

Attorney Dowley
I can type them up for you and send them.

Secretary Carta
Great. That's what I'm interested in, that we get an accurate recount of your points so that we can look at them and then act accordingly. I think some of them are very good and there is something that I would like to address. Thank you.

Comm. Leinwand
Mike, is it really our regs or is it the enforcement of our regulations that are the problem?

Attorney Dowley
I think it is both. I think the enforcement is obvious, and I think the regs, if you analyze them, you'll see, if you compare them with other places you are going to see a disparity. The ten year permit is....

Comm. Leinwand
(inaudible)the issue of the detail but for the reclamation and for the ten year issue? Those are the two places where....

Attorney Dowley
Right, the number of times they have to come in to apply and with what information they have to come in with. Don't forget about the bond-that's the key to the whole thing, I mean, it's easy for corporations to dissolve. I think the City shouldn't be left holding the bag.

Comm. Leinwand
So, you were saying that what this Commission ought to do is, let it continue as is, not go after a cease and desist order, let them go deal with DEP on those kinds of matters and in the meantime change your regulations and have them come back in for a new permit under new regulations? That would satisfy you?

Attorney Dowley
As far as I am concerned, I think Attorney Karpel has made that easy for you because he hasn't said whether he is seeking an extension or an application - he doesn't know what he has done tonight. so you don't have to act on anything and so you could take the reg-

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Attorney Dowley

ulations, promulgate new regulations and then deny whatever he submitted and have them make a new application.

Comm. Leinwand

I simply heard him giving us the discretion to make that decision.

Attorney Dowley

I think you may have to force him to make a decision himself. I don't think it is up to you to decide what is before you. I think the applicant should tell you what is before you. If you have to make the decision what's before you, he's going to say it was the other thing when he takes the appeal. He's the one that has to tell you what is before you.

Chm Gionfriddo

Are there any other questions? George, you have a question?

George Reif

Yes, one detail we should clarify is that Natural Resources

(change of tape)

Bob Taylor

Gentlemen, I'll try to finish before midnight. The name is Bob Taylor, I'm from Roland Drive in Portland. I'm also Co-President of the Rivercrest Action Committee which represents 30 families living on the river opposite Feldspar. I don't boundaries here are important i adhere to the belief that in a small planet of ours New Jersey shouldn't be dumping crap on New York and Portland shouldn't be throwing its junk on Middletown. We have been plagued with noise and dust pollutions periodically by Feldspar. If you were not to grant them permit you would be giving us a significant amount of relief. If you did grant them a permit we would urge to make sure that they are required to live up to DEP standards on noise and dust. New laws aren't required here. The laws already exist. One gentleman on the Commission asked about citations. There have been numerous citations. against Feldspar in the past. You would have to be an economical idiot not to be concerned the jobs Feldspar creates about the tax benefits to Middletown and about those very important products that Feldspar goes into. What we are interested in is, we are not going into a boring litany about feldspar dust, you know feldspar dust on furniture, on windows the mornings you get out in your car and you have to turn on the windshield wipers to remove it and feldspar in't only a nuisance, it is toxic if anyone wants to argue that with me I have a citation from the State Department of Health taken from the encyclopedia on toxicology. We're not asking that the plant be shut down, we are asking that a clean operation be run over there with respect to noise and pollution. My neighbors from Portland are sitting over there if anyone has anything to add to this I'm sure you will benefit from hearing about it. Thank you.

Chm. Gionfriddo

Anyone else wishing to speak? Thank you, by the way.

Earle Roberts

Earle Roberts, Bow Lane. I'll keep it as brief as possible myself, even though it seems like we will go all night with our briefness. In remarks to Mr. Karpel's statement to Doug Cooper, I had spoke to Doug Cooper when I expressed my interest on a wetland infraction on land that they were leasing from Northeast Utilities amongst some other interests on a watershed diversion of which Doug Cooper shared the same concern with me, even though he found on the watershed diversion there wasn't an impact as yet and therefore he would be very concerned with their future impact of the area, not getting into your zoning regu-

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Earle Roberts

lations. At an onsite private meeting it was expressed that I had some concerns about a town road that's adjacent, or between the property of Northeast Utilities. The company acknowledged at that meeting, I only have my brother as a witness to it, even though Bill Keuhn was there and Ed Aucaine and I believe, yes, Fire Chief Gallitto was present. The company said that they would remove those rocks. My concern is, at that time, they had since put the signs up in that area, I'm not here to badger them, I like that area a lot of other people in town-it just seems that they are not listening to what people have asked for through the years. Again, Mr. Dowley has expressed regulations and people to implement them. I don't think I need to go through all the regulations I had listened and adhered to, happily in most cases and some Mr. Reif would recall back 10 years ago when I spent an extra \$10,000 building a house so that I would adhere to a certain zoning by you people and I was told that I couldn't ask for a certain variance to it because of the fact that it is all for one and one for all and so forth. I just think that two years without forgetting to apply for this is and all these past violations seems to set a pattern and if they want to express the fact that there are different people in charge of the corporation, fine, we've all been there. If we want to get into the discussion of jobs, fine. My job and livelihood is at the discretion of you, the consumers, every day. You buy a foreign product, I may be out of a job. I don't think what we are saying here tonight that that should be the issue. The issue is, environment, laws and and people to implement them. If you have difficulty with that, I'll even volunteer some free time but let us not forget what is at hand. If it wants to be a legal world of zoning regulation fine, then we are going to play that game. That game being I don't want to pick up the tab ten years from today if I financially can't afford it, having been here 10 years earlier and hope we are all here looking at one another so we can go at it again. I don't think that that's needed this is 1985 and I'm sure you people have been through enough of this that you should be reciting to us. To brief it up, I'm not going to get into the expert's proposal even though he's got some major infractions, in my opinion, and that is the two to one sloping and that is a big factor in gravity, it doesn't take a genius to figure that and topsoils are things if, they claim, they are sparsely covered to begin with than the DEP map shows trees there, any conservationist, any practical layman can go out and check the habitat in that area that doesn't belong to them and you will find mounds of topsoil sufficient, we won't get into where they have been, it's not relevant, I don't think, where they have gone to. Again, the best I can recommend is new rules, implementation and possibly a performance bond which whatever plan is agreed upon let's prove our honesty a little bit, you ask that of every taxpayer in this town with all your regulations. I don't see where we are different. Thank you.

Felicity Markham

My name is Felicity Markham, I'm Co-Chairman of the Middletown Citizens' Action Group. I don't have any suggestions, just some questions I would like to have answered if you can. I'd like to direct a question, I hope you can answer it later, Mr. Karpeta, referring to the land reclamation it is my understanding from your opening comments that land reclamation requires sloping of the land and nothing else. I'd like an answer on that, when you can. When speaking with Mr. Wiseman earlier he said they use polymers, polymers are chemicals. What precise chemicals, I would like to know and how much, if any, are removed. Mr. Wiseman quoted 32 persons, approximately, were employed yet his lawyer claims thousands of jobs are at stake. Can either of you relate to me why there is a discrepancy there? Mr. Polk, do you work at the mine? How can you possibly validate your beginning remarks if you don't work there. When will the town of Middletown, which includes myself, take some responsibility here? Where do these so-called permits that are supposed to be around somewhere come from? Where are they? I don't know. I'm new at this so, you know, anytime. Mr. Reif, do you honestly believe that, should Feldspar leave, which, I suppose, is a reality, in some ways, that they would call you up and say, gee, George we are leaving Middletown would you send us a bill so that we can clean up?

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Felicity Markham

If you believe that, then I have a bridge in Brooklyn. Who pays to clean up Feldspar's messes, the taxpayers? If it is taxpayers, I pay the rent. Probably most of you own homes, what's the mill rate going to up, how much are we going to have to pay? It's something to think about. Thank you very much.

Chm. Gionfriddo

Thank you.

Denise Schlenner

I was wondering if I would get a chance to say good morning. Good morning, my name is Denise Schlenner, I'm the Regional Director of the Connecticut River Watershed Council, offices here in Connecticut in Hartford. The Council is a non-profit conservation organization supported by about 2200 members in the four state area of Vermont, New Hampshire, Massachusetts and Connecticut. Since 1932 a primary goal of our work has been to improve water quality in the Connecticut River watershed. In 1983 we were able to expand our effort in the Connecticut office, into Connecticut with the opening of the Hartford office. Our other offices are in Hanover, New Hampshire and Easthampton, Massachusetts. Based on a site inspection, review of records, discussion with State and Federal officials it is clear to the Council that existing operating practices at Feldspar Mining Corporation are causing significant erosion problems resulting in degradation of water quality in the Connecticut River. The State DEP action taken within the last few days is a positive step to control and mitigate this erosion problem, now the next step is up to this Commission. We believe a major area is still to be addressed is the adequacy of reclamation plans for the site. Our assessment of Feldspar's permit application with regard to reclamation is that it is neither adequate as a application nor as a specific plan of action to carry them through the next ten years. Well I understand, according to the Feldspar Mining Corporation, that this was meant to be an overview we believe it is incumbent upon this Committee to ask for additional information, specifically, how will these areas be reclaimed? A detailed plan should be prepared outlining such things as the materials to be used, the adequacy of those materials, the past and proposed contours, the widths of the benches, maintenance required after reclamation. A topographic map of the site should also be included. In preparing a reclamation plan consideration should also be given to how the lands reclaimed should be used once the mining operation ceases to be in existence and this refers back to several people saying, "how are we going to use these lands afterwards?", and that should go into what kinds of materials we should be using for reclamation of these lands. I think that a lot of these issues and concerns will be addressed through the DEP order but I do think it's awfully important in the next couple of months for this Commission to work very closely with the DEP and to go beyond what they are requiring of the company. Another major concern we wish to express is the surface water drainage patterns, we believe these have been largely ignored by the Feldspar Corporation to date. The DEP's order requires the company to identify these on their lands and we believe this type of information is essential to this Commission's understanding of the soundness of the reclamation plans that we hope will be prepared. Presently, the location and the size of the sediment basins, for example, appear to be an afterthought with no consideration of the volume of water that enters these basins. Likewise, the difficulties experienced in stabilizing certain areas. maybe from lack of, or poor understanding of drainage patterns through the area. Another item that we noticed in their permit application is that there is no discussion of future mining activity after they complete their existing sites. We assume that separate permits will be applied for unless it is in a contiguous area, which is covered by the existing regulations. We urge this Commission to request that additional information be prepared before any decision be made. Also we recommend that the Commission consider granting a permit for less than ten years and we believe this is possible under 41.11b and we say, given the difficulties the company has had in complying with existing regulations, a shorter period of 4 to 6 years may be more appropriate. Finally,

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Denise Schlenner

we ask the Commission and the Middlebury, excuse me, Middletown, town fathers consider additional staffing for inspection and monitoring required for this and other permits. Our last note is that a lot of us are very well aware how the Connecticut River has been transformed in the last two decades and the efforts that have gone into by citizens to clean up the river and this has paid off and we see a lot of increased recreation on the river today, nowhere perhaps is that more evident than in the Middletown area. We hope that this Commission will take the ball from here and continue that cleanup effort with a strong effective permit. Thank you.

Chm Gionfriddo

Thank you. Is there anyone wishing to be heard? Phil, you wanted to...

Attorney Karpel

It's past my bedtime. I'm not going to try to go through every persons' comments. I would like to say first, before I forget, Lou, you've asked Attorney Dowley if he would put in writing some of the points he made, I would request that I be given a copy of it and an opportunity to give a rebuttal of them so that you can have both points to take home and to digest. Let me cover very quickly so that you don't leave here with a lot of lingering questions and I'll try not to quibble over a lot of words. Let me first point out to you that the regulations that you now have were adopted, I believe, in 1972 they came from South Caroling, they came from a state that does an awful lot of mining - a great deal more than we do here in any part of Connecticut and they were adapted to meet the type of mining that is being done. I'm familiar with the Durham regulations, the Durham regulations are sand and gravel extraction regulations and there is a significant difference. I submit to you that your regulations are not only better for this type of operation but better, in general. Bear in mind, your regulations require that you can call the permit at any time. I think that Steve Leinwand has hit upon the central problem. The central problem has been, and I again am not running from the fact that Feldspar did not come in every two years with a map, there was no person in the City of Middletown responsible for running out to check on what was taking place. The map we submitted doesn't show specific mining areas because the intention, bear in mind, is each two year period you are supposed to get an update. Now, two years from now I cannot tell you sitting here, categorically, that we are going to mine only the areas we are in and reclaim this first and this area second, but you will know in that frame of time what has changed and why because the economy may change and make an oil mine area a better area to move into. It may be better to reclaim an area next to it, it may be better to reclaim an area further away. You have an opportunity to say no. You have to give us notice, call us down here, have a hearing and withdraw our permit if we are not complying with what you consider to be the best development methods. So you have-now why do we think that we would prefer to do it this way/ Well, very simply you can't expect, from an economical point of view, to have an operation the size of Feldspar dependent on a Public Hearing every single year and the possibility that we are going to have to go through this every year if there is no reason for it. If there is a reason for it the Commission has a right to bring us in every other week by calling our permit. So you've got that safeguard. The next thing that Mike(Dowley) pointed out that there is no zone line shown and I think George (Reid) covered that. It is permitted in any zone. The question of what did our original application apply to, it applied to all our land. The ten acres, bear in mind, we came in as an existing mining operation seeking a permit under new regulations. We had a one year grandfather clause from '72 to '73, then we needed a permit. We came in with a mine in place and the ten acres is what we were mining and to take the next logical point, there is a bond in place. There is a bond for \$20,000 that bond covered the ten acres that were then being being mined. The regulations require \$2,000 for every disturbed acre. Now, at the present time, we have eighteen acres being actively mined, in addition to that, there are areas that are not being actively mined. We certainly aren't going to object to the fact that the bond will be recalculated based on the areas now being mined and the areas that are inactively mined, but we complied with your regulations. We have given you a bond that is still in effect. This

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Attorney Karpel

bond is good, there is no termination date on it, it's issued by Aetna Life & Casualty and it was given to the Planning & Zoning Commission and I'm sure that George (Reif) could find a copy of it. So, we presently have in effect a \$20,000 bond it didn't have to accompany our application, it preceded our application. If it is insufficient, you tell us. All you have to do is, look at your regulations, compute it and tell us. Topsoil, there is a misunderstanding. Yes, there is a hardship but we are not saying we are not going to put topsoil there, the hardship is there is no topsoil there, it's rock. We are proposing to create topsoil and Mr. Polk will go into that in greater detail for you, the various methods, but they are covered in the application. (Inaudible)...body made here tonight I urge the Commission simply make them a condition of our continued permit. There's no problem at all. We--it would be foolish for me to sit here and tell you that we complied with all of your regulations, you are talking about 380 acres, it is impossible to be sure at all times there aren't problems, we've had problems with the State, everytime that we have had a problem with the State we have corrected it. We have the present problem with the State, it will be corrected. I think any of you that went up there can't deny the fact that we at least had a lot of activities involved to attempt to control sedimentation and erosion. Fine, if the State says it's not sufficient, then we will do whatever is sufficient. My question is not one of quibbling over who has jurisdiction, I think that the state of Connecticut has now suddenly appeared, in the last two weeks as far as I can determine from the newspapers, and said towns no longer have Inlands/Wetlands jurisdiction. I'm not sure that that is correct but as I said to you earlier, I don't really care, I would prefer that our town had Inlands/Wetlands jurisdiction and that the town agency and this agency worked hand and glove. If it is going to be the State of Connecticut, so be it, I don't want to argue the point. Whoever wants us to do it, just tell us and it will be done.

Chm. Gionfriddo

Phil, (Karpel) My suggestion is, considering the time, I think we have been hit with a lot of information at 11:30, 12:00 at night, I would like to continue the Public Hearing 'til next meeting to give us an opportunity to digest some of what we have received here this evening and to get some resp...to look at what Michael (Dowley) is going to submit to us and maybe if we get it in time to get to you, I doubt that will happen between now and next week but I think at this point to continue this at 12:15 is getting counter-productive.

Attorney Karpel

I mentioned to you earlier that Mr. Polk is leaving for South Carolina, I don't want to have him come back if he is just going to be sitting and listening, if there--if the Commission feels that he would be helpful in assisting you, I have no objection to bringing him back I just want to know.....

Chm. Gionfriddo

What is the Commissions' feeling, would you like him to be back here next week? I would think at this point it is not necessary.

Attorney Karpel

We would prefer to have him here... if there is going to be any question that's going to come up that you would like to address toward his plan or what you feel because of his expertise he can assist you.

Chm Gionfriddo

In that case, perhaps you should bring him. I would prefer if we held off...if it is going to be very brief...all right I'll time you.

Unidentified from audience

At the next meeting, are we going to be first or last?

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Chm

Gionfriddo

You are going to be fourth. No, next meeting will not be like this. Okay?

We are going to take a 2 minute recess and then we are going to polish off.

Public Hearing is closed

ADJOURNMENT 12:15

Transcribed by

Dorothy Wilson