

MINUTES OF A HEARING HELD ON TUESDAY, NOVEMBER 30, 2010, REGARDING DOCUMENT #100 – A PETITION FROM ATTORNEY MICHAEL MIGLIORI FOR JOHN P. GIORDANO, REQUESTING A SPECIAL PERMIT TO BUILD A SINGLE FAMILY RESIDENCE AT 90 AMESBURY RD. WITHIN 500' OF A WATER SUPPLY; ASSESSOR'S MAP 465, BLOCK 3, LOT 2A

SUBJECT: Document #100 - A petition from Attorney Michael Migliori for John P. Giordano requesting a special permit to build a single family residence at 90 Amesbury Rd. within 500' of a water supply; assessor's map 465, block 3, lot 2A.

Present: Council President Michael Hart, Robert Scatamacchia, William Ryan, Michael Young, David E. Hall, Colin LePage, Mary Ellen Daly O' Brien, Sven Amirian, and William Macek

City Clerk Margaret A. Toomey: **Document 100** - A petition has been received from Attorney Migliori for John P. Giordano requesting a special permit to build a single family residence at 90 Amesbury Rd. within 500' of a water supply; assessor's map 465, block 3, lot 2A. Comments from City departments received as of this date were included.

President Hart: I am going to open the hearing on this at this time and we have speaking in favor of the petition.

Good evening Mr. President and members of the Council. My name is Michael Migliori. I am an attorney in Haverhill with offices at 18 Essex Street. I'm here representing Mr. John Giordano who is also here this evening to my right with respect to this hearing. What I gave you just a moment ago, because I was thinking today perhaps that you didn't have it, is a copy of the ordinance under which we are proceeding tonight. It's something that may have not been circulated to the committee. So I wanted you to have it this evening because it's a bit of a different ordinance. Hopefully, you know Mr. Giordano is hoping to build a single family home on property he owns on Amesbury Road. You have a plan of that property. The parcel itself is approximately four acres of land on Amesbury Road. Because some of the property, you can see if you look at the plan where the line is, is located within 500' of Kenoza Lake. Even though none of the property is located in the watershed, I think it's important to point that out because there has been some confusion as to what this 500 foot setback that was created by the Council some years ago means. It's not indicative of any land within being within a watershed. It's some arbitrary footage that was created back in 1986 by that Council. Even though it's not located in the watershed, if some part of the parcel happens to be within 500 feet of certain bodies of water, Kenoza Lake in this particular situation, we fall under that provision that I handed out. That 255-90, Ch. 255 Section 90 requires anyone wishing to construct a building within 500' of the high water elevation of Kenoza Lake to obtain a permit from the City Council and that such permit may be granted if the City Council finds, and I think these are the operative words in my judgment anyway and I've highlighted some of them, the proposed building does not have an adverse affect on the public water supply. The ordinance further states that the Council shall refer the request for the permit to the Conservation Commission for a review and recommendation prior to the vote by the Council, hopefully, this evening. It appears to me from reading 255-90 that the ordinance, the intent of the Council that passed it, was that the ordinance that the Conservation Commission seemed to be a major player in any such permit or anyone building within 500' of Kenoza. Conservation Commission will be the body charged with the significant oversight of anyone wishing to build within 500'. The Conservation Commission in fact is the only entity named in this ordinance for review and reporting back to Council. It is my opinion, looking at this and reading it many times that the Council has a limited role in this proposal and it's really to determine whether a single family home that we are looking to build would have an adverse affect on the public water supply. Robert Moore, the Environmental Health Technician for the City of Haverhill, has submitted the report that is required in the ordinance. I'm hopeful and

assume that all of you have received it and read it. His report indicates a number of important points which I will summarize. The first one, which I already noted, is that the land, this particular 4 acre parcel is not in the watershed of Kenoza Lake. Another point is that Mr. Moore has acknowledged that the land has sufficient area to comply with the City's 25' no disturbance and 50' no build zone. As I indicated a large parcel of land. We are not looking for any encroachments into either the no disturb or no build zone. This single family home can be built without any encroachments or variances to those items. And finally I think, the most important point, he states and I will read it "in conclusion, it's my opinion that implementation of the Massachusetts and Haverhill wetlands protection requirements, and the Massachusetts Endangered Species Act will sufficiently vet this project in ensure the protection of the City's natural resources". I've had conversations with Mr. Moore. He feels comfortable with allowing this to go forward. As you know, or perhaps you don't know, this is really the first step in the process. This starts things rolling. We go back to Conservation. As he said in his letter, I will be fully vetted there. Any additional requirements Conservation seems to think we need to do, we'll do. It has to go through all the various City departments. Building, engineering, water, wastewater, police, fire, etc. for their reviews comments. I believe we've met our obligations in connection with Ch. 255-90 which is the ordinance under which you are acting tonight. There has been no finding that the proposed home would have an adverse impact on the public water supply which is what you are charged with looking at; but rather you have assurances that the procedures to follow in the process are sufficient to ensure the protection of the City's natural resources. Again, as you know. This really is the first step in a very long detailed process. At this point I think I will end my presentation, sit down take questions or whatever your pleasure is.

President Hart: Is there anyone else speaking in favor of this petition? Is there anyone here who wishes to speak in opposition to this petition? Please just your name and address before speaking.

My name is Randall Townsend. I live at 79 Jaffarian Road in Haverhill. Before I get started I'd just like to address Councillor Ryan. Back in the day I thought I was going somewhere. I thought I was going somewhere, I was wrong. I joined the United States Air Force and was discharged honorably. Never thought it would happen, but I am a service connected disabled veteran. I was with you Bill, I thought I was safe. With regards to tonight, I think this is an extremely dangerous proposal that is before us. An extremely dangerous proposal. This proposal is so dangerous that no City head could say yes to this. In fact it is so dangerous that no one person, even the Mayor, can not say yes to this. With regards to all of the safety like we had across the street with the Burger King proposal, not even the Board of Appeals can hear this it's so dangerous. The danger that we have before us is assigned to you Councillors. And the danger is a polluted water system. Unlike you people who sit in front of microphones on a regular basis and speak, it's not something that I do normally. The few times that I've done it I've always left the podium wishing that I had become a better speaker. Unfortunately, for you I've never done anything to improve myself. So please be patient with me. I'm going to try and do the best I can here. I worked at Lucent Technologies in North Andover for many many years. At the time we had over 13,000 employees at that plant and they had an intercom system that was only used for emergencies. And somewhere back in the 1999-2000 timeframe an announcement came over the PA system telling everyone they were not to drink from the water fountains. That the City of North Andover had contacted Lucent Technologies and told them that their aquifer, I think it was Lake Cochickawick, had become polluted and that the water was dangerous to drink. Lucent Technologies went and shut off all of the water bubblers. They contacted Poland Springs. Put out hundreds if not thousands of these five gallon water containers so that their employees could drink water. Because the water supply was contaminated. I don't know all of the exact details but I do remember that the water was contaminated because some board, I suspect, like you, had allowed a developer to encroach on their aquifer. The same thing that is being asked tonight. And I am sure, although I was not there, that that developer gave the assurances that nothing is going to happen. Well it did. And it did for about three and a half months. I'm sure it cost Lucent tens if not hundreds of thousands of dollars to provide drinking water for 13,000 people. I'm sure as the lady on this Council and you gentlemen when you use a rest room, you like to wash your hands. You want to wash your hand because

you don't know if you have to shake someone else's hands and you don't want any issues from your body in visiting the restrooms to be passed onto somebody else. Well at Lucent, we had clean water to drink but when you were done with the restroom, you were afraid of passing on your bodily issues to someone else, you had to wash your hands in someone else's bodily contamination. Once these encroaching buildings move in you can't turn the clock back. Once you grant permission regardless of what happens they don't have to move. They don't have to get out. The clock on North Andover is ticking. Tick tock, tick tock, it's not a case that it won't happen again. It's only a case of when it will happen again. And I am here tonight to ask you to think about what I've said and not to start the clock ticking on 69,000 Haverhill residents having to put up with that kind of an issue for the betterment of one.

President Hart: Thank you. Anyone else wish to speak in opposition?

Robert Conrad, 141 Amesbury Road. Thank you Mr. Chairman. Thank you City Councillors for letting me speak. First I'd like to say I don't object to anyone building a piece of property. No matter where it is right across the street to me if it meets all the regulations of what is required. The problem I see is that not all of the regulations have been addressed and that's a concern. And I don't know the process whether this is one step and then you gotta do other steps. But forty to fifty years no one has been able to build on that particular piece of property and when Riverside Auto was there they were kind of forced out of there. Lakeside Autos, they were kind of forced out, moved down the road. Lakeside Restaurant came in with an ice cream stand. They had to put in a holding tank. They couldn't afford to run a restaurant with a holding tank and they went out of business. And the owners previously tried to sell the property and build on it for years and the City didn't allow it. Now all of a sudden we have another person. And I spoke to Mr. Giovanni when he bought the property. Did you ever get a contingency on this sale that you can get a building permit for this property? And he said no I only went to the Conservation and he said you need only two acres in a conservation land and a perk test done. He had done a perk test. The request is for a single family house. I noticed there is a 16x30 out building on that and which Mr. Giovanni said he would like to have a dog kennel. There's nothing mentioned about a dog kennel and I don't know what the building is used for. But the City Council should be aware that he feels that he had enough land to warrant a dog kennel and that would be putting a business property in the conservation land. The Conservation Department is not address the state environmental protection agency's requirement for 100 foot set back from water. And of course, Tilton Swamp is surrounding that property. In order to get an EPA approval from the state, needs to have 100 foot setback. Really not enough property there for 100' set back. The water abuts what is the proposed 50 foot erosion control area on the high level water in the spring. I have to go on. The test pits that were put in on a piece of property well within the highway right away. You are supposed to be I think its 60 feet from the highway. I tried to call the highway department twice in order to get the exact figure but I couldn't get it. And it's certainly not a 100' from the Tilton Swamp. Those test pits are certainly not within the requirement of that. He has been very generous to indicate he could put a two inch sewer pipe up and if the project went through that would be the ideal way to go with a 200 foot sewer pipe up to the sewer plant and that would alleviate anybody's concern over sewerage. The cellar floor indicates that ei 95 feet and I believe the ceiling is at 105 feet or 10 foot ceiling but it doesn't say what the high water level is in reference to that 105 for the basement for the cellar. It shows the garage being under, whether it's under the garage floor or under it. So there could be a difference in the water there. What type of erosion control is planned along there? It just says erosion control. I don't know. It doesn't, to my knowledge, specify how far back off the highway the house is going to be built. Again, I believe the setback for a house on a state highway, the part of Amesbury Road is a state highway, not a town road, is further that the typical City requirements and that should be looked into as far as what the setback is and apply for the 100 foot EPA regulations with the Conservation officer should have addressed in his report because that is a concern there. That water on that print goes right up to the water erosion area, not way back where it shows wetland. So it's a very small piece of property. It's an ideal piece of property for someone to live. It has a beautiful view of the Tilton swamp and the geese and everything there. I think we have vegetation growing that's becoming very evasive that that is going to

choke out Tilton swamp in time. I'd welcome him as a neighbor if he meets the requirement. I do think you need to have the sewer line brought up from there because I don't think the property has enough land to build a septic tank system on it. I don't know why the City objected to previous owners and not building on it to the last forty years and now all of a sudden we are here building again. I think the City should have bought the property when they objected to anybody building on it. They never did and that's unfortunate for a tax payer that's been paying taxes for many years. And now John Giovanni is now paying taxes on a piece of property and that's unfortunate if he can't build on it because it certainly is a nice piece of property. All I want to see is the City complies with the state and the City regulations. I don't feel it's a problem to Kenoza reservoir, myself. I think it's a problem with the State Environmental Protection Agency that I don't think that they would grant a building permit within the short of piece of property there. Thank you.

President Hart: Thank you. Is there anyone else here in opposition? Do you want to rebut?

Attorney Migliori: Thank you Mr. President, just briefly with respect to what initially Mr. Townsend's comments. This area is not in an aquapor of Kenoza Lake. It's been proven over and over there have been umpteen studies of it. I've done a number of developments on that side. It's not in the aquapor. You have it from Mr. Moore. Mr. Conrad even agrees with that he's lived down there a couple of years. I don't know what happened in North Andover. With respect to Mr. Conrad, I think he's right on the mark when he says as long as you meet all the requirements; I don't have a problem with it. It's our position that we will meet all the requirements. Again, this is just the beginning. This is the first step in a multi-step process. We will be dealing locally with Conservation. We certainly will be dealing with the Mass. DEP and every other agency that might have an interest in it. This is the first step. It is a nice piece of property and I think what Mr. Giordano hopes to build down there is something everybody will drive by and admire because he does have such a nice spot and has built such a nice home. It's a single family home. I think it's going to be something the City will be proud of. Again, there has been nothing presented and I think it's important to rely on your Conservation officer. There's been nothing that has been presented showing there will be any adverse impact on the water supply. Thank you.

President Hart: Thank you. At this time I am going to close the public hearing. What's your wish?

Councillor: Discussion.

President Hart: Put a motion on the floor and then discuss. Do I have a motion? Move for passage Councillor Scatamacchia. Do I have a second? Second, Councillor Daly O'Brien.

Councillor Daly O'Brien: I just have a few questions. I think it's pretty well known that there are other water supplies in Haverhill that have homes close to them. Certainly what we know as Round Pond or Pentucket Lake, Plugs Pond or Saltonstall. We know that there are homes close to those lakes. And there is no doubt in my mind and even on Crystal Lake. So it's not that I don't understand why we can have a home there. What concerns me is the amount of flooding that does come across from Kenoza to that side where it obliterates 110 and I didn't know if the owner realized that we have that. That's what I am concerned about. Does he realize the kind of flooding that we have that goes across that road and literally connects the swamp with Kenoza Lake during those times. I'm wondering if when you disturb that piece of land you're going to end up with real serious water problems because of the nature of the water and the way it travels in that area and we all know water will find its way. You can't really stop it. I just worry about that. I don't want to give him a permit and then when he's gone through all this process and builds the house and the first really bad, whether it's a rainstorm or a bad spring, he ends up with real water problems. That is my first concern. One of my other questions was, was it a home he was building to live in or to sell and I think through everything that has been said, I understand you are going to live there? Do you like Canadian geese? They are going to be your neighbors. (Inaudible response)

President Hart: You'll have to come to the mike.

Co. Daly O'Brien: You'll just have to give your name and address sir.

John Giordano, I am the owner of the current property. Co. Daly O'Brien – where do you live now in Amesbury. Giordano – right now we are living in Amesbury. Co. Daly – okay. Giordano – In my past life I had a home in Andover. My wife and I used to go down to one of the local ponds. They used to call her the goose lady because we tried to continually catch some geese that had been snared with the types of water. Co. Daly – Do you realize how many geese are there twice a year? Giordano – Most definitely. Co. Daly – Ya because of Kenoza Lake it won't be because of you. They have already been doing it my whole life. Giordano – I also had property out in the Midwest. I consider myself somewhat of an environmentalist. We used to watch the geese as they trained their young and they take flights over our property. We had five acres of a pond. We are used to the wildlife. Co. Daly – I'm just pointing this out. Stuff I know because Haverhill is my hometown. It's a beautiful piece of property there and I think your attorney is absolutely right. If you are able to do it, people are going to drive by there and say how lucky are you. I really think the fact that you bought that property without a permit to build tells me you really didn't know what you were buying. Because everybody in Haverhill did. I wondered what was going on there. It occurred to me many times when I had driven by there and saw trucks and people on that little piece of property and I am thinking what is going on. Giordano – Can I address that issue? I had looked at the property. I purchased it roughly three to four years ago. I had looked at it almost every square foot of that property. I originally bought it from Frank Bostick after I had tried to buy some property that was on the surplus property list from the City of Haverhill. That's how I became exposed to it. I surveyed the property. I looked at the water problems. I'm an engineer. As you look at the plans you find that the basement is approximately four feet above grade. It's on grade. At the worst flooding conditions which is about a year ago when Kenoza Street was flooded, and they had a foot of water on it. Co. Daly – No the worst was before that when we had really horrendous flooding which was about four years ago and it really not only ruined 110 but it also did a lot of damage downtown and a lot of property along the river. That was probably the worst I've seen in my lifetime but certainly not my parents lifetime. Giordano – In the past five years from what I've seen, that property is three to four feet above the highest water level. That I've seen. The other incidents that I've looked into is that right off of Gile Road extension, that culvert has not been maintained as well as the culverts on the 495. I've contacted both the state and the city. They've done an excellent job of maintaining the one off of Gile Road. They managed to get the beaver dam off of 495. I understand there was significant flooding from homes in the past in that area including the golf course and other issues. Right now with the cleaning of the culvert, which I expected just a couple of weeks ago, water level is down over a foot which moves it horizontally almost another twenty feet from when I had bought the property before the culvert was being maintained. That's the current issue right now. I am aware of the water, okay. Actually, if that house flooded, then most of the houses would be flooded along that route as you pointed out. Co. Daly – I think you are disturbing some land and that's what worries me. A disturbance to a piece of property. Actually my next question is for your attorney. Giordano – Let me address that once more with the Conservation Commission, with any impervious areas that are created you have to create drywells or some other issue for handling the run off that would normally permeate into the soils so that issue is addressed by conservation to some degree. Co. Daly – Is there sewerage there now? Is there sewer lines? Attorney – yes. Co. Daly – Were there sewer lines. When were they put in? Atty. – I have no idea. Someone answered – That sewer line is a high pressure line coming down from the college all the way up to 108 up to Kenoza Avenue. You can't tie into that with respect to.

President Hart: Would you go to the microphone, please. People are going to speak I need you at the microphone.

Mr. Giordano: With respect to the sewer line, the existing sewer line, I did check into it with the City of Haverhill along with some engineering modifications, they will not allow a tie-in into that sewer line. I've investigated the possibility of putting a sewer line into the interceptor which is up the road as well as, which is a possible alternative along with a ground absorption system which details still have to be worked out with the Health Department. Failing that there is the option of putting in that line which goes back as was earlier mentioned, the Lakeside Restaurant. Prior to the fire at the Lakeside Restaurant, there was a permit filed and approved for a sewer line. The owners of that property were in the process of addressing their wastewater problems via a sewer line. The sewer line would have been the first in Haverhill to have a pressurized system. The Boy Scout Camp immediately adjacent to my property is the first that was in Haverhill and they have a pressurized system. As you know, they are within 150 to 200 feet of Kenoza Lake. They have a pressurized system that they put in so they run into a sewer interceptor which in ties into the main. Yes, I did take a look at those issues. One of the reasons that the property hasn't been developed is nobody has gone through all of the details to see whether or not it was worth developing. Co. Daly – All right. Thank you very much. I have no other questions Mr. President.

Councillor LePage: A couple of questions I have that were actually raised by Rob Moore you spoke about earlier. The eastern portion of the parcel. Is there a reason why that's outside of the 500' buffer is there a reason why that wouldn't be developed? Atty. – That would pose more complications to building. We wouldn't be here obviously if we could have moved in that direction and it made sense to. But because of the challenges that exist, the further you go east on the parcel, the decision was made to locate it where it is on the plan. Unfortunately, part of that is within the 500' buffer zone. There is no impact on Kenoza. The difficulty of moving it east with wetlands crossings and other conservation issues made it sensible to put it on the western side. Co. LePage – The plans we have in front seems to be documented all to the, like you side, all to the westerly portion and it's just blank on the eastern portion. I drove there, looked around and walked around it myself. I have little experience as far as what could be built or not. But there seems to be some things on other maps talking with the City engineer and looking at other maps maybe there is some area. I don't know if it was surveyed. You looked at it, or if you can possibly do it. Atty. – If was examined. As Mr. Giordano told you. He is an engineer. (tape change) Obviously, if we could have avoided coming to the Council, not that I don't like appearing before, but if we could have avoided this one step and it made sense, we would have. Co. LePage – My next question is, there is City property adjacent to it on the easterly portion. Was that ever looked at as far as possibly exchanging the land or doing something that would put you out of the buffer zone? There seems to be a larger parcel than. Atty. – I don't think that works. An exchange wouldn't help or make any things easier. Co. LePage – It seems to have a lot less wet area to it. Just looking at the maps I went and saw. Atty. – You are talking. Co. LePage – I just found this out today. I don't know if that was explored or thought of. Atty. – A land swap, no. It was not explored. Co. LePage – He commented that he had looked at this thing for quite some time and the City does own the land adjacent to it a little farther up the street. It seems just by the swamp, where it's mapped on the swamp, there's a lot more bare area to build than there is in the actual portion that he looking at building. Atty. – I don't know if that's the case but at the same time I think Mr. Moore would probably be hard pressed of creating that parcel or something else. Co. LePage – I am not proposing that. Did some research today looking into things. I spoke with Mr. Moore today for a little bit about this. He did have questions about the eastern portion. If it could be built on was one of the ones he put in this as a memo. Was it looked at? Is there things there. Again, the plans that were given to us didn't include that information on it. Some of the department heads, a lot of them had comments on it. A lot of this stuff is more building construction that I'm not going to say that I am the most savvy in the jurisdiction of what shouldn't be and should be done. But as he said, it would be vetted through conservation and other things. I know the Building Inspector. I showed him the plans and he didn't even know this was going forward. Atty. – Who didn't know? Who didn't know? Co. LePage – The Building Inspector Dick Osborne. Atty. – He signed off on the permit. His signature is on the application for a special permit. Co. LePage – That's what he told me. Maybe he did. Atty. – I sat with him and showed him the plans. He signed the application. Co. LePage – Okay. Atty. – That's part of your packet. Co. LePage – What is allowed by this

special permit? Is it just a residence and all. Atty. – A single family residence with an out building. Co. LePage – What is the purpose of the out building? Atty. – Storage. Co. LePage – Could it end up being some kind of commercial enterprise? Atty. – No, no. If you look at the zoning ordinances, Co. LePage – Forgive me, I'm new to all of this. Atty. – That's fine. If you look at the zoning ordinances, the SC zone allows very little by right. And especially, I can give you some examples of things that permitted. Co. LePage – 255 attachment 11, I have something. It gives me something about special. I know it's a little far for you to see from here. It talks about 255 attachment 1 is the special permit granted by City Council, Residential, Commercial, Industrial and special SC. It seems that one family detached dwelling has to be a special permit from the Council and pretty much everything else is not but I didn't know if this was allowed would other things be able to happen on that property other than a single family house. Atty. – The short answer is no.

President Hart: May I just say something, concerning the ordinance itself. It says “for the protection of the public water supply no building shall be constructed within 500’ of the main high water elevation within the contiguous reservoirs” then it goes on to name the reservoirs. I would say that any building that was going to be constructed within that 500’ area would have to get the approval of the Council. The building would have to get approval of the Council. So if we approve this building, we are approving this building. You couldn't say this is a cart blanche approval to build anything in this buffer. I think if the developer/owner changed his mind and wanted to put in a different kind of building, I would say the permit wouldn't apply to that. We could tighten it up by stipulating in our permit that the permit applies to this building and this building only and probably wouldn't be a bad idea. I would say that's how the ordinance should be interpreted.

Co. LePage – So we are looking at two buildings on this plan. President – We would be approving both buildings on the plan. Co. LePage – I guess another one to Attorney and maybe other Councillors have been here much longer than I. Have any other special permits been approved since the implementation of 255-90 of 1986? Atty. – Yes. Not very often. But I would guess there's one every two or three years that comes to through the Council. They are rare. Co. LePage – I'm looking at other experience from my fellow Councillors that have gone through this in the past also. Another question that was raised by health is the water supply in. Would that be City water or would that be a well? Giordano – With respect to the water supply. The intention at this point is to tie-into the city water supply. If I was able to tie into a good aquaphor, which is a chance of one in a million, I would probably do that. I like well water and having my own controls. But the City of Haverhill has a nice water treatment facility and there is no reason not to tie into the water line. Co. LePage – Thank you Mr. President.

Co. Macek: Attorney Migliori, Mr. Giordano, we've spoken a couple of times I think by phone. I don't even remember exactly why and when we spoke. I know we had a little bit of discussion about property. I'll hit on some of that discussion as I go thru some of my little checkpoints here. First off, I want to say, as others have stated, everybody has a right to build and have the usage of their property as long as they can do it within the guidelines the City has established. I'm trying to see how your proposal fits into those. The question that was just raised. I too wanted to raise. You say you are intending to look at a force main. Is that correct? Giordano – If I can't satisfactorily meet the requirements of the Health Department my option is a forced main. I haven't made that decision. Co. Macek: So your first intent will be to try and use the test pits for something on site disposal then. Giordano – I have to actually go thru all of the engineering. On a preliminary review I find that it is cost effective because of the perk, the ground absorption system cost. That it is actually cost effective to go into the forced main. I have researched that. I would be limited as to the size of the house, as you know, even though property costs have decreased dramatically, building costs have not. In order to be able to put in a home that would have some value, I would have to have something more than a two bedroom home. That septic system, ground absorption system would be relatively small. Unless I came up with something innovative that would probably be more expensive and risk denial by the Health Department. I am not foregoing the option of using the

option of the ground absorption system but it appears that cost effective wise, the ground absorption system may be the better option. Co. Macek: Okay. I appreciate that answer. I understand that answer and I want to say that that's part of my problem. Is that what you applied for, and I just want to read into the record, from the letter from November 12th from the Board of Health, Les Godin, he writes "that the current plan proposes sewerage disposal via a 1200 foot long force main to the municipal sanitary sewer system. This department requests that connection to municipal sewer be stipulated should any special permit be issued for this project". So the Board of Health representative is saying without that force main they don't want to see your plan approved. Giordano – What Les has said in that letter that I needed some special permits to be able to cross over to be able to put that system in. Co. Macek – That's not what he says. He says without the force main he does not want the special permit approved. I don't want to read it again. I want to also go onto the next letter, which says, this is from John Pettis, City Engineer, "should a special permit be granted additional detail will be needed with the site plan submission including detail plan and profile for a proposed sewer ejection force main." Stone driveway, it goes on after that. So once again, for some reason all the department heads have picked up that you are going to use a force main. Yet tonight I am hearing you saying that you've got test pits and you're going to have to evaluate them and that the most financially friendly might be to keep the sewerage on your property. And it doesn't appear that the departments are even discussing that. They are discussing a force main for removal of all your water and wastewater, your septic from the property. That's what I'm reading into this. Atty. – Councillor Macek, this is very preliminary. A lot of money hasn't been spent. I should say a lot of money has been spent. But a lot more money will be spent assuming the Council votes in favor of this. He has had discussions with every City department head trying to get feedback from them. For tonight's meeting, my opinion anyway, tonight's meeting, conservation is really the driver of this. The ordinance says you are going to get a report from conservation. The other department heads will have their time once the process goes forwards. That's when discussions will be had and maybe we can show them why one option is better than another option. I don't even know why this went to other department heads. It's supposed to be directed to conservation under the ordinance. Other department heads got it and felt like they needed to respond. All of those are going to be thoroughly vetted assuming we move on after tonight. Co. Macek – The problem with that is we get to see it and vote at once. We don't get to review it later on down the road. I have to tell you, and I've sat through a lot of special hearings. I was on the Council back in the 80's when we permitted over 3,000 condominiums in the City. I know what usually is here before us. I got to be honest with you. To me, for a project that you are trying to convince us that it meets all the conditions, there's a lot of gray here. And I don't want to say no, but on the other hand I'm having a hard time saying yes because I don't think all the I's are dotted and all the T's are crossed and there is a lot of conflict in what I am looking at. What you failed to read when you read the letter and the conclusion from Bob Moore was the balance of his conclusion where it said "I would recommend the City Council spend sufficient time on my latter two points, enhanced open space protection and land use alternatives. It is in these areas that I believe the applicant must provide additional information as part of the hearing process to demonstrate how the project will continue to ensure the protection of Kenoza Lake." I understand why you didn't read that, but, I read it. And I haven't heard anything tonight to hear about how you are ensuring future protection of Kenoza Lake. Atty. – By not utilizing the rest of the property. Co. Macek – You are not even telling me if you are going to remove your septage from the property. You might decide to leave it there. You might go against the wishes of the department head saying that it should be pulled away. Let me just do one other thing and then I'm going to yield the floor. I don't remember exactly where I heard it first but I hear that the 30x16 building may be used as a kennel. Is that true? Atty. – Can't be. Co. Macek – Private kennel for your own animals? Atty. – Can't be. I don't know what a private kennel is. Co. Macek – If you have dog runs or animal runs. It has to fit within the. Maybe it won't be a commercial kennel but another thing that I want to point out is that yes, the zoning does specifically limit an SC zone. But you can always go to the zoning board for an appeal for many of these things after we have given you your special permit. You could do other things because I am also concerned (Atty. – no you can't.) when I read in your application which I have in my hand, which says that you want a residential family comma any other permitted use. That means that you also want to have

the door allowed to be ajar for anything else that you can legally do within the SC zone, today, tomorrow or thru the zoning board of appeals. Atty. – Again, President Hart was correct. You can't do anything than what's on this plan tonight without coming back to this body. Co. Macek – I just want to be sure that we are not approving this. Ya, I know he's right. But if we allow it to be wide open like that, any other permitted use, we approve these building sites. Atty. – But no other building can be constructed. Co. Macek – That's a huge house first off. And I wish him the best of luck. It also says garage under. Are you going to have level garage under and go up an extra story. Is that what you are going to have about 6,000 square feet? Or you doing a cellar hole? Giordano – The garage will probably be about a foot foot and a half over the finished grade. And I am bringing fill in to grade the house. Co. Macek – You are going to raise it up. Giordano – Ya, it's going to be raised up. Co. Macek – And your main level be probably be above that garage level. Giordano – Ya. That is a preliminary plan. What I've done with that plan is scope out the size of the buildings and so forth that we will be permitted on that property. That's a footprint. Co. Macek – Once again I just want to say we don't usually look at footprints. We usually look at renderings for special permits. Giordano – I really feel it's kind of difficult to be spending five or six thousand dollars on architects and engineering fees to come up with detailed engineering without having permission to build. Co. Macek – I understand that. That's why the special permit is one that isn't easily taken by a developer or an individual. Just a few other things. I do recall the incident that Mr. Townsend mentioned in North Andover. I recall it to be based upon the new homes that were built around the reservoir and the fact that they wanted to keep their lawns nice and green and they were using a lot of fertilizers and outside companies that would come in. No? Fecal matter. Well, once again. Fecal matter is another concern that I have been trying to address between the on site septage and also the possibility of animals in a 30x16 out building. I have a real hard time at this point. I am going to allow my colleagues to continue the discussion. But at this point I have not been convinced this would not adversely impact our water. Thank you.

Councillor Hall: I think my opening remark is that I am kind of surprised that the Essex County Greenbelt Association or some of their representatives are not here tonight. This project is so important to the City of Haverhill. I have lived in this area all my life. I can remember distinctly going to Lakeview Restaurant when it was there. I'm talking over sixty years ago. My concern is this in regards to the sewerage down there. This is a high powered line that comes from Northern Essex and I think it goes over to 108. There is no way this gentleman can tie into that, into city sewerage, can he? Atty. – You want to go through it again? Co. Hall – I know he didn't explain it sufficiently for me to understand it. Giordano – I have addressed that with the City engineer and so forth. But will not allow a tie in because they are afraid of breakage and so forth. They would want a separate independent line. Co. Hall – Are you going to have a septic system there? Giordano – They way it looks. It appears in order to get the proper permits and go through the agencies that I have to. From what Bill Macek has said, Les Godin is not going to approve a ground absorption system so that kind of eliminates that right off the get go. There are a lot of checks and balances in building on that particular site. As I've mentioned, or tried to mention, what I established was battery limits on that property. Now I do have an out building there. I do a lot of work myself. I have a boat and other little toys. I've had horses for 25 to 30 years and animals all of my life. I don't have any horses now but that doesn't preclude the fact that the ordinances in that section and the City of Haverhill, with permission and permit from the Department of Health, again, another permit is required, you can maintain up to two horses for residents of the site in Haverhill. That's fair. Those are the battery limits. They may change. If they do, they'll get smaller. I may not put up the 100 foot house. I may make it 75'. Those are the limits of the construction. And when I go before the Conservation Department, we come up with detail plans as to the systems to protect the environment and other things. As they've said the plans will be well vetted. The pitch of the roof, the collection system for surface water runoff and so forth. Those are all detailed engineering parameters. And anything that I do on that property is going to require additional permits. This Council is permitting a facility within 500' of Kenoza Lake. The structure, the plumbing, the electrical, the ground absorption system, the plumbing systems all have to go thru various departments and extensive scrutiny. And as Attorney has mentioned, they are all tied very closely to

conservation. I don't know what else I could say, what else I could present with respect to that. Co. Hall – You say that you have owned that property for three or four years? Giordano – It was approximately four years. I forgot the exact date. Co. Hall – Let me see if I can just recall some issues that I am kind of concerned about. Directly behind your parcel there's Tilton swamp, so called. Is that correct? Giordano – Yes. Co. Hall – Am I correct in saying this comes in from rte. 108 up near the New Hampshire line? Giordano – Yes. Co. Hall – Okay, now there was a beaver dam and it has been subsequently been removed? Giordano – The beaver, as I understand it, in talking to the state had taken up residence in the culvert running under 495 which runs over 108 on the New Hampshire side. That water in turn flows underneath what is it rte 8? Co. Hall – Rte. 108. Giordano – Rte. 108 and there are several culverts under 108 that in turn run across Gile Road. The Gile Road extension has other culverts in it. Sure if I am standing here if somebody could run a transit they'd find out that those culverts are probably a little bit too high because there are a number of residents that stopped by to talk to me with respect to the property. And they talk about playing in the sand pits behind the property. And they can remember when the property wasn't as inundated with water as it is now. The road construction and poor culvert maintenance and so forth has attributed to the high water table. In fact immediately behind my property there's a test well because of pollution that supposedly came from the old airport. So that's immediately behind my property. There's also what looks like a former pond that they attempted to put in. In my research I found that they tried to put in an agriculture project behind in that area. I suspect that's it. The problem was is that the fish were contaminated with mercury and couldn't be eaten and so forth. So the project was abandoned. Just a little history. Co. Hall – Okay, I just want to see if you can give me some more history. I have been travelling that road ever since I was a kid, 65 years. In all the years until recently when they did that development up on 108, when Doherty put that development in, that's when that area in back of your property started to rise tremendously. That's when, in all the years that I travelled, I'd never seen a flood like this last year. Just before your property if you are coming west. The state got involved with it. If I go by your property, right at the end of Kenoza Street, every single winter there is an icing problem there. I am sure you know what I am talking about. Giordano – yes. Co Hall – Serious. When I read these reports from these department heads telling me about an environmental issue, for the sake of one house, am I going to sit here tonight, I'm going to push aside the environmental, the area that is going to be destroyed as far as the view goes. The possibility of a sewerage system if it ever leaks, where is it going to go? There are so many issues in my mind that I am not sure of. And I am saying to myself, I'm elected by these people to represent these taxpayers who are here tonight, to represent and take care of that area down there. There's a serious doubt in my mind if I can really truthfully vote for this saying this is the best thing for the City of Haverhill. And I know where you are coming from. I'd like to be in your corner and I know that you have a right to probably do this. I am looking at the big picture here of other projects that we've approved, not me myself, by Council or whatever boards have and they have come back to haunt us. As far as the environment is concerned, as far as the water table, the water issue, wells and stuff. In good conscience I know that if I vote for this tonight, I will vote against the betterment for the city of Haverhill. I'm trying to be so up front with you because I know what I am talking about. I am not a rocket scientist when it comes to problems like this. When I rely on Rob Moore giving me an alternative, so to speak, what am I going to do? I have to follow his lead. I was hoping that I could get a true answer from all these boards, either yes or no, not in between. Don't put me in a spot where I have to make a decision and I'm not the board to do it. I am kind of disappointed in some of the boards saying there is a possibility it could be in violation of the 500' Kenoza Lake. It's going to damage some of the water fowl down there. I'm upset because the Essex County Greenbelt Association, they didn't take the opportunity to tell me to what their feeling is. This is an environmental issue. It's a health issue. I honestly sir, I respect you and I respect your presentation but I can not vote for this tonight. And I am being honest. Giordano – If I can respond very quickly. Atty. Migliori – Could I respond Co. Hall because I mean I don't see his report anywhere about environmental issues. Co. Hall – I think Co. Macek hit it right on the head. Co. Macek – It's the last line. Co. Hall – “recommend that the City Council spend sufficient time on my latter two points. Enhanced open space and land use alternatives”. That since it's in this area, “I believe the applicant must provide additional information as part of the hearing process to demonstrate how his

project will continue to ensure the protection of Kenoza Lake”. Having that in mind, is the thing. Nobody knows the area like me. I have been travelling that road for 60 years. This gentleman sitting in the back, he knows as well as I do, that deep down, this is not the place for this and it’s going to have a serious affect down the road on this project. I don’t what somebody down there saying Dave Hall came and he voted for this based on whatever. I am basing my opinion and my feelings on what I think is good for the environment and what I think is good for the City of Haverhill. There are a lot of issues. The sewerage issue is a big point. I’m on septic down on Kenoza Street. I know what septics do. They fail. And what happens, where is it going to go? It’s going to where all the water fowl is. Take a look at the geese down there. It’s beautiful. People stop and see all the geese. They were in your yard the other day. I don’t want to see this thing destroyed. That’s how I feel about. I am convinced beyond a reasonable doubt they when I vote against this I am voting on the right way to go. I sincerely believe that I am making the right judgment call.

Councillor Young: I think this packet that we received is about 13 pages long. I, like other Councillors, read every page of it and highlighted almost all of it. And although you point out Attorney Migliori some positive things that Rob Moore wrote here, virtually every person has some reservations on this project whether it’s Rob Moore, whether it’s Les Godin, whether it’s Paul Jessel, whether it’s John Pettis. The only person that doesn’t comment is the Fire Department but reserves the right to comment at a later time. Every one of them have reservations in regard to this project. I am not going to beat a dead horse because Co. Macek said it quite clearly along with Co. Hall moments ago. I have my reservations as well. I think it would be very prudent at this time and moment to be proactive when it comes to protecting our environment. So I too as well, will not vote in favor of this project. Thank you.

Councillor Scatamacchia: I think the problem is the process. And I think some times we are confusing the first step with the last step. Whether we have a 300 unit development or a single family home that is looking for a special permit. The probably is the initial investment. Although Mr. Giordano is an engineer, before we get to the last step, I am sure there’s going to be a tremendous cost whether it be his time or whatever or whether he hires somebody. I think the process is sometimes convoluted. We should be the last step but we are not. We are the first. My problem is voting against it. Actually, it is going to go to every City department. Every concern that was in any of the correspondence that we received from any department head that was asked for an opinion or you are not going to get the final okay to build. I guess I look at it from a different perspective. I certainly don’t want to harm the environment. But if Mr. Giordano can comply with all of the concerns that have been presented by the department heads and by my colleagues, then good luck to him. Atty. – I couldn’t agree with you more Co. Scatamacchia. I think it’s a terrible ordinance. You should be on the other end of it. You shouldn’t be on the front end of it. And if you look at that ordinance, you are only supposed to go to conservation at this point and get a report from them. That’s it. It doesn’t say anything about going to any other board or body at this point in time. We went to conservation. Conservation responded. “In conclusion it’s my implementation of the Massachusetts and Haverhill Wetlands protection requirements and the Massachusetts Endangered Species Act will sufficiently vet this project to ensure the protection of the City’s natural resources”. We have to go back to conservation where vetting will address what he references in his last two items. I can tell you because nothing is going to be built on the other land or can be built on the other land, Kenoza Lake won’t be impacted. Again, assuming we get the conservation. They are going to put us thru the ringer over those issues. This process is backwards. I couldn’t agree with you more no matter what happens today. Maybe the Council ought to look at this ordinance. There was some indiscriminate footage that was selected. Rob Moore tells me the conservation didn’t want 500. The Council wanted 500. It really is a backwards process. Co. Scatamacchia – I’m guessing these plans, depending on what the recommendation is from the Conservation Commission is they are going to maybe change significantly. The property maybe not cost effective. Atty. – There could be a lot of reasons why going forward this project collapses. We don’t know because at this point it didn’t seem prudent to spend \$100K to find out there was no way the Council was going to let it go forward. Thank you Mr. President.

Councillor Ryan: I think the important thing that needs to be pointed out, and it's been pointed out over and over again. Councillor LePage brought it up. Is this a regular order of business here at the Council? It isn't. It's very rare that we get a situation when we are put in the beginning before Mr. Giordano can have his day in court, that he can go and actually present to the community what exactly he wants. We all have questions. We've asked them tonight. He has to get thru this barrier. The City Council has to look at a lot of issues and one of them is. Is this a serious proposal? Is everything that in mind or in the City Council's mind that any issue that might be of concern be brought up and addressed? You can hear tonight that it is. And it isn't really so much that we are for or against it, I think it's a serious proposal. Mr. Giordano has obviously invested a lot of money. He wants to be able to make his case. We are really not the professionals tonight. We hear everything from A to Z every Tuesday night. We kind of take a look and I think correctly pointed out by my colleagues that the Conservation Agent said that the City Council should be thoroughly looking at certain points. We really don't have the wear with all to do that and we don't do it. We don't go into detail on issues. We kind of, that's why we have this process. Before the Planning Board and the Conservation Commission can actually sit down and dig into this and have engineers and everyone else, the wetlands experts the Greenbelt, everyone involved they want to find out if this has any standing whatsoever. We haven't even had a hearing yet on this. We are City Council which is basically a pass thru. An opportunity to stop something. In this case, and I am not saying I'm for it or against it, it isn't so much on that issue, whether we are for something or not. I think if you are really opposed to it, probably the place to go, even as Councillors, go to the Conservation and Planning Board and speak against if you were personally against the issue. I think it's basically giving the opportunity to Mr. Giordano to have his day in court. To be able to go and make a presentation. Believe me, there are no guarantees. He probably will have a tough time making a case because there are so many issues on this particular parcel. I think as everyone has pointed out in their own way, they have concerns. They all have to be addressed. Atty. Migliori you said at the very beginning you wouldn't be here if you had not addressed all of the preliminary concerns and issues that you are required to do. You've done that. Basically to go over and get this thing referred to the City Council and then back to, it goes to planning back to conservation. Atty. – Conservation is going to be the biggest. Co. Ryan – It goes right direct to Conservation? It goes to Planning and then over. Atty. – The next step is Conservation. Co. Ryan – Okay so that's the most important hearing. Then its' going to go to he Planning Board which they are going to take and deliberate over all the information that comes up from the Conservation. There will be a recommendation a vote by Conservation. They are tough. Anyone who goes to those hearings or ever attends them they are tough. Again it's just their day in court. I just want to ask a couple of question Mike. I wasn't confused. Is there going to be a slab or a cellar? Giordano – No, there's going to be a basement. Co. Ryan – There is going to be a basement. Giordano – You have to look at what the definition of what a basement is. Again, going back to the building regulations. In order to be classified as a basement a certain percentage of it has to be up ground. If it's a cellar there's a certain has to be under the prevailing grade. I would say we would have a basement where probably 50% is above grade and the rest is back filled. Co. Ryan – That is probably going to be decided at Conservation. They are going to tell you whether you have a slab or where you are going to be. Giordano – What conservation will tell me and what conservation will promote after we have our meetings, bringing in engineers and so forth is an order of conditions in conjunction with the; Co. Ryan – And that could be one of them. Giordano – Everything. The order of conditions is going to lay out exactly what the typography is going to be. Where the wetlands are. Where the runoff water is going to go and so forth. There is a considerable amount of engineering that goes into whatever the order of conditions is. Co. Ryan – I understand. I was really interested in you mentioned the cellar. I thought it might be more practical to have a slab. One other issue you mentioned. Now with the high pressure line coming down. I know it is very difficult. All of us have been thru this so many times about getting into that system. They don't like any company because of I guess the size of it and they don't want anyone else getting into the system. Where is the interceptor located? Is it Kenoza St? Giordano – It's right up at the intersection of 108 and 110. Co. Ryan – So you would have to go around the Boy Scouts. Giordano – In front of the Boy Scout and up the grade. Co.

Ryan – You would be getting into the interceptor where the height pressure line goes in the regular city line. Giordano – Yes. Co. Ryan – Just a question I had. I thought it might be the other way. Giordano – There are engineering methodologies that would allow you to go into the pressure line but the town won't permit them. Co Ryan – I know the Building Inspector, I had asked him some time ago, before you ever filed because I drive by there and I see somebody stacking wood and I asked him. I know he is very familiar with it. He probably didn't know the hearing was tonight because he is not really part of it. I think probably his answer was I didn't know, he's not part of this hearing tonight. He doesn't know we delayed it. We wouldn't expect him to know. We've heard from the head of our water department that anyone who is on or near a water line you must hook up to the water line. That's one of the ordinances we have in the community. You don't have the option. You can have a well only if you are in an area where there is no city water. If there is City water in the area, you must hook up to it. That's a business decision by the City more than anything else. Giordano – I listened to the budget a little earlier. Co. Ryan – I would like to give you an opportunity to take your case to the Conservation Commission and the Planning Board. I think that's what I am basing it on. You are trying to address a very complicated difficult issue. I'm surprised there are not more people here tonight. It's an issue, you need to have a chance to at least explain what you are going. Why you are doing it. I think it's great that people want to come to Haverhill and invest. It is a great community and we've got some great opportunities like you've discovered. We want people to know that we are a fair and open community even if we don't like what you are going or we are concerned with it we give you a fair and above board hearing. That's what I am going to vote for tonight to give you a chance to have a good fair hearing. Thank you.

Councillor Amirian – Attorney Migliori thanks for presenting tonight and doing a good case in presenting your case. I am generally feeling here that there's a lot of trepidation from this Council tonight. I don't get a good feeling that this is going to go thru tonight. I consider myself an environmentalist. I am very much a protector of our open space and our environment. I temper it with my desire to promote smart growth and smart development. I am certainly not anti-development. What I get a sense of from this discussion is there is just not enough information to make the Council feel comfortable in moving forward with this. This is our one chance for control of this project. To allow it to go thru and then, outside of our realm of control, I don't see it being successful tonight. What I'd like to propose to you, if you are amenable, is that we continue this and give you the opportunity to provide us with more information that is going to make myself and my fellow Councillors feel more at ease with this proposal. I know it's a little backwards, and I agree with Co. Scatamacchia, that the process is convoluted we rule on it first, loose control and then it goes to the various boards for approval where I feel that the information those boards would provide would allow us a better understanding of the situation and certainly allow us to feel a lot better about rendering a decision. So that being said, allow it is not required of you to do so of your client to present us with more information. Perhaps that's the better choice here than to risk a no vote tonight and to continue this so you could provide us with some more information and maybe have a further discourse about that. Atty. – thank you Co. Amirian. I don't have any problems with that. I am hoping though that somehow more can be framed a little information can be framed a little better. I don't know what it really means if you are asking me to go thru the whole process and then come back to you, which is not this badly drafted ordinance calls for. Co. Amirian – I agree. Atty. – If you can give me some framework about what more information is. I would be happy to go back and see if we can assemble that. Co. Amirian – Just speaking from a personal perspective, I feel that maybe some renderings of the proposed structure. I feel that a 30x100 foot proposed dwelling is a little bit vague. I look at this map. I see a block on a map. I see a 30x16 out building. Perhaps a narrative describing the proposed structure. The ultimate end use. Some description of what that out building is going to contain. I heard talk about a proposed kennel. I heard talk about horses. All of that raises concern. I agree with you that it's been shown this is not in the Kenoza Lake watershed. However, it does about the Tilton swamp which is another large watershed area which it's been shown in the documents that ultimately drains into the Little River; which goes into the Merrimack River. We've got some proposed issues with storm water runoff from the EPA that has massive implications. I am kind of thinking in the big picture here. All these kinds tie

together in some regard. So, we as a Council need a more complete set of information in order to feel good about making a decision. We just don't have that tonight. I hate to make you jump thru hoops. If that's going to ensure the success of your proposal, then I think that's the prudent course of action. I, myself, would like to see a proposed rendering of the building. (tape change) That would certainly make me feel a lot better as well. Atty. – Understood. Just one item. The size of the building. It's typical at this juncture where it is just starting to propose something that you won't exceed. If anything, it would be shrunk down. These structures, in my opinion, were proposed probably oversized but staying within the no build zone. This was an attempt to show you what the biggest thing that could be built. Co. Amirian – I do understand that. Atty. – Without coming in with a smaller version and then for some reason it gets larger and they say you showed us a smaller home originally. Look what you built. This covers that. It's not to say it's going to look like that footprint. But I understand what you are saying with respect to the description of that building and the details of the out building. Co. Amirian – I mean I know your client referred to a structure of at least two bedrooms. It's hard to conceive of two bedrooms vs. a 30x100' structure. We are talking a mansion. Atty. – Big bedrooms. Co. Amirian – I know it's just a block on a map. It raises the alarm bells a little bit. I believe also if you were to poll the Councillors and find out what their concerns are and can address those concerns, before you make a second proposal, that would certainly go a long way to put their fears to rest. Maybe if we were able to have a conversation and talk a little further about this. Atty. – I have no objection to doing that. I think in perhaps in light of the time of year if a continuance seemed to make sense to the Council I would suggest maybe to mid-January sometime. I would certainly try to get as much information from other Councillors you are looking for. We may not be able to provide it at this point in time again, because some of it is very expensive. I am not going to be able to come back here with an order of conditions. So if somebody is looking for a final order of conditions that's probably not in the cards. I have no objection to continuing to sometime mid-January attempting to get the Council more information more detail. Certainly if anybody has any specific detail they would like addressed, I would appreciate it if they let me know. Co. Amirian- I think the extra time would give the Councillors to talk to the respective department heads too and maybe have some of their concerns addressed as well.

President Hart: Did you want to make a motion of that?

Councillor Amirian: Yes Mr. President. If you want to frame it in the correct.

President Hart: Just make a motion to postpone to whatever date you want to postpone it to.

Councillor Daly O'Brien: There's the 11th or the 18th. What works better for you?

Atty. Migliori – Probably the 18th. Co. Daly: We know December is a busy month.

Councillor Amirian: Mr. President I'd like to make a motion that we postpone that we postpone this to our meeting in January 18th. Second by Co. Daly O'Brien.

President Hart: Discussion on that.

Councillor Macek: If we postpone we have already closed the hearing.

President Hart: We have closed the hearing. We are just postponing it to get additional information.

Councillor Macek: If they come in with plans and renderings we would have to ask to see them, correct? Or would they be able to present?

President Hart: We'll have to see what they come in with. They may have to start the process over again if it varies considerably.

Councillor Macek: Because the other thing is we could do this without prejudice and allow them to re-file and then it would be clean. We could have a new hearing.

President Hart: That's another possibility but we have the motion to postpone on the floor right now.

Co. Macek: And you are comfortable with that?

President Hart: I am comfortable with the motion to postpone. My comments would be, in looking at the statute itself, I don't have the limited view that Attorney Migliori seems to put on the Council in terms of what our role is in this process. Whether it's a good ordinance, I think it's a good ordinance because I think the past City Council was concerned for our important reservoirs in the City. Our drinking water in the City and they passed this. I focus on the words in the ordinance that "such permit may be granted if the City Council finds that the proposed building does not have an adverse affect on the public water supply". It's completely up to the City Council to make this decision. And that is what we are looking at and what we should be looking at. The affect on the public water supply. But I do think that most of the comments were in the direction of that responsibility. Yes, the ordinance does say that the City Council shall refer requests, if we get a request for this, we should refer it to the Conservation Commission for a review and recommendation before the City Council shall vote on the request. That was done. It doesn't say we can't send it to other boards and I think we should send it to other boards. I think we should get their comments. Because we are the ones making the decision. Not the Conservation Commission as far as the special permit goes. It is our responsibility. We get as much information as we can. As far as the response from the Conservation Commission, I don't think there has been an adequate presentation or response to Mr. Moore's comments which I think Co. Macek was the first to bring up. I'm reading from it, "what is unclear is the eastern portion of the applicant's parcel. The site plan shows a current limit to the area of development. What is the intent? What is intended for the eastern portion?" Later on again, as Co. Macek pointed out, although there was a conclusion in here, the final words of the conclusion were "I would recommend that the City Council spend sufficient time on my latter two points, enhanced open space protection and land use alternatives". So if you come back, focus on that. Focus on that. I want to know. Here's what I'd like to see based on what I've seen and I want to protect the public water supply. I want to protect Kenoza Lake. I am concerned with the inability to tie into water and wastewater. If you can't do it, I don't think I want to see this go forward. I don't want to see a septic there. And I want to see a tie into water. Come back showing me that you could do that. Explain how you are going to limit development on the rest of that land and what you are going to propose to build and only build. Voluntarily limit further development on that land not developable. Do that and come back and tell us that you are going to do that. Its things like that will enhance and protect and put at ease the concerns that the Councillors have for the protection of the public water supply. It's a beautiful piece of land but it's a delicate piece of land. It abuts a very very important resource that the City has. If you can do it, that's fine. I was going to suggest that if we went forward with this the only way I was going to vote positively on this tonight was with stipulations and restrictions on that special permit that would basically require connection to the municipal sewer. Connection to the municipal water and I would want limitation on the further development which I don't think were addressed. Those were directly questions that were put to us by the Conservation officer to address and get answers for before we vote on this and we didn't get them. I think it's reasonable to postpone this and if you can come back and address those. Make the Council feel comfortable that there is no reasonable threat in any way shape or form to our public water supply. I don't think the statute is intended to say we have to prove there's no threat. We can feel there is a threat based on comments that come in and how it's presented to us. It can give a feeling that with all things considered, what the Board of Health is saying, what the engineer is saying, when I put it all together I feel there is a threat basically to the public water supply. That threat has to be eliminated. And

that feeling of a threat has to be eliminated. If we do get a vote successfully on the postponement then that's the direction I think you should go in. I think Co. Ryan has

Councillor Ryan: Just to add to your limit Mr. President. I think maybe the size, the structure, the physical size, 100 by whatever, you might want to consider reducing that because that was raised by a number of Councillors. The size of the building.

President Hart: Right, a limitation on this is what we are going to build and only this.

Councillor Ryan: One other issue. The 18th is a possible day I may not be around. Could we do this the 25th instead?

President Hart: Would you like to withdraw your motion and make it on the 25th?

Councillor Amirian: Yes, I withdraw my motion and make a new motion that we postpone til January 25th.

President Hart: Is that date fine with everyone? Do I have a second on that? Co. Daly – second.

President Hart: No further discussion. Call the roll on the postponement.

City Clerk: Co. Scatamacchia-yes, Co. Ryan-yes, Co. Young-no, Co. Hall-no, Co. LePage-yes, Co. Daly O'Brien-yes, Co. Amirian-yes, Co. Macek-yes, President Hart-yes. 7 Yeas, 2 Nays

Attorney Migliori: Thank you for your time this evening.

Respectfully submitted,

Barbara S. Arthur
Administrative Assistant to the City Council

September 12, 2011