

DOCUMENT 87 - MINUTES OF A HEARING HELD ON TUESDAY, OCTOBER 30, 2012, FOR FURTHER DELIBERATION AND CONSIDERATION PER LAND COURT REMAND ORDER OF AUGUST 29, 2012: JOHN GIORDANO V. HAVERHILL CITY COUNCIL DOCKET NO. 11 MISC 453400 DOCUMENT 100/2010; 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 DENIED BY CITY COUNCIL ON AUGUST 31, 2011

SUBJECT: Document #87 – Minutes of a hearing held on Tuesday, October 30, 2012, for further deliberation and consideration per land court remand order of August 29, 2012: John Giordano v. Haverhill City Council Docket No. 11 Misc 453400 Document 100/2010; 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 denied by City Council on August 31, 2011.

Present: Council President Robert Scatamacchia, Michael Hart, John Michitson, William Ryan, Michael McGonagle, William Macek, Colin LePage, Mary Ellen Daly O' Brien, and Thomas Sullivan.

City Clerk Margaret A. Toomey: **Document 87-** Hearing requested for further deliberation and consideration per Land Court Remand Order of August 29, 2012, John Giordano v.. Haverhill City Council Docket No. 11 MISC 453400; Document 100/2010, Special Permit to build a single family residence within 500' of a water supply at 90 Amesbury Rd; Assessor's Map 465, Block 3, Lot 2A. Denied by City Council on August 23, 2011. There is a related Document 87 a related communication report from Robert Moore Jr. Conservation Commission.

President Scatamacchia: I declare the hearing opened. Is there anyone who wishes to speak in favor of the petition?

Yes Mr. President, my name is James Senior I represent Mr. Giordano. We were here a couple of weeks ago. At that time the hearing was not opened in view of the fact the Conservation Commission had not as yet issued to you a report with recommendations. Since that time last week we went before the Conservation Commission and the Conservation Commission has now issued to you a report with recommendations. I have a couple of documents I would like to submit to the City Council for consideration. Those documents are essentially what I believe you've already seen as addressed to the Conservation Commission. However, we've formally address them to the City Council so that they can become part of your record as well. The crux of those documents is a memorandum regarding our position with respect to a special permit application. This special permit application is under Chapter 255 section 90 of the ordinances and it relates to constructing a building within 500 feet of a water supply, in this case Kenoza Lake. The matter was before you a couple of years ago at which time the petition was denied. We have brought it to court and we are here pursuant to a remand order of the judge. The issue is whether or not the construction of a building as proposed, and you have those plans, would have a negative or adverse impact upon Kenoza Lake. In this particular case, although it is located within 500 feet of Kenoza Lake, the property is not located within your watershed protection district which is another ordinance that was passed for the purposes of protecting the same water supplies including Kenoza Lake. The subsurface and the surface water drainage is the condition for which the zoning district of the watershed protection district is drawn. It was concluded at the time that that ordinance was passed, that this particular property was not located within the watershed. We have engaged the services of a registered professional engineer, Mark Weiss. The second document that I presented to you this evening, in Mr. Weiss' original report, in the same terms as was given to the Conservation Commission on our first appearance there but addressed to the City Council. Mr. Weiss has done a study in collaboration with a hydro-geologist and he concluded in that report that neither the surface water, and everyone always agreed that the surface water runs in the opposite direction that is relatively easy to determine based upon

the typography, nor the groundwater flows in the direction of Kenoza Lake. The Conservation Commission in our first appearance there agreed that neither the surface water nor the ground water under normal conditions does flow in the direction of Kenoza Lake. However, they did raise the question which was presented in their original communication to you as to whether or not what they called assumed drought conditions it would be a difference in the direction in which the ground water would flow. Mr. Weiss then did additional study for their benefit, submitted to them a report as to whether or not ground water during assumed drought conditions, and by the way what that basically meant was if Kenoza Lake is lowered and even if we assume that the groundwater on this site stays at the same level, will the groundwater at this site flow in the direction of Kenoza Lake. The calculations which were performed indicated that, yes, it would in fact for a period of time, flow in that direction. However, we were furnished with twenty year's worth of Kenoza Lake levels from your Water Department, it was analyzed, and based upon your two most severe drought periods during that period of time, the groundwater does not come anywhere near reaching Kenoza Lake. Conservation Commission received that report last week as a result of which they issued to you a report wherein they recommend that the special permit be granted wherein they concluded and accepted the proposition that groundwater containing any contaminants even during drought conditions, would not reach Kenoza Lake. Parenthetically, there was a berm which has been constructed (inaudible) within the roadway in this area, route 113 I think it is, between this property and Kenoza Lake. Quite a number of years ago the city had a berm constructed and I think the reason was because they were concerned that pollutants would be going from the roadway into Kenoza Lake because at that time the roadway and the lake were approximately at the same level; so a large berm was constructed to prevent anything from getting into Kenoza Lake. That does exist, that could be impervious. However, we assume for purposes of all the calculations we could present to the Conservation Commission that it was pervious, and did the calculations, and still the groundwater does not reach Kenoza Lake at this site. Now on the other side of the property, is Tilton swamp. Tilton swamp does receive groundwater from this site and it does receive surface water drainage from this site. As a result of which, in order to construct a building that is proposed, the applicant will have file a Notice of Intent with the Conservation Commission and will have to get an Order of Conditions. At that time Conservation Commission certainly can impose whatever conditions they feel to be appropriate based on their concerns which is the protection of Tilton swamp. Where we are at this point is that you have received the Conservation Commission conclusion which is that the groundwater doesn't reach Kenoza Lake and they have made several suggested conditions for this permit which we would submit to you are not appropriate at least for your permit. The reason we say that is because all of the evidence is the groundwater from this site will not reach Kenoza Lake. Conservation's concerns relate to protecting Tilton swamp and the wetlands there. Those conditions which they suggest are primarily aimed at protecting Tilton swamp, but separate and apart from that, since they have agreed that the groundwater and the surface water does not go to Kenoza Lake, it would inappropriate to be placing conditions on the site under this permit. The groundwater does go to Tilton swamp. The surface water does go to Tilton swamp and a large portion of this site is within Conservation's jurisdiction. It would be appropriate for them to impose certain conditions consistent with Chapter 131 which is the wetland protection law in connection with their Order of Conditions. But we submit that since the water doesn't go in the direction of Kenoza Lake, conditions are superfluous and not appropriate. For example, one of the conditions that they have suggested to you is that the site, the entire property, not have a septic system. Well, the proposed plan does show two alternate forms of sewerage disposal. One of them would be connecting to the force main, which is what Conservation wants to require. The second is that there is a septic system, which has been designed, and the septic field is beyond the 500 foot boundary of your jurisdiction. Conservation, that septic field, is within their jurisdiction, 100 feet of Tilton swamp wetlands. So it might be appropriate condition for them to place but we submit that it is not appropriate in addition to the reason that our water does not flow to Kenoza Lake, it's not appropriate because the septic field is outside of the 500 foot jurisdiction of the City Council. We therefore submit to you, based on this evidence, that all of the evidence points to the fact that there will not be any negative impact upon Kenoza Lake as a result of the building of a building on this property within the 500 feet and that the special permit should issue and

it should issue without conditions. Now I've made reference to Mr. Weiss, he is here, should the City Council have questions regarding his opinion, he is here, happy to lucidate or expand upon anything that is contained in the report that was submitted to Conservation. Again, they have accepted the proposition that neither surface water or groundwater under normal conditions, flows into the direction of Kenoza Lake; and even during the most extended drought conditions, over the past assumed drought conditions, over the past twenty years, no groundwater from this site has reached Kenoza Lake. Therefore we submit that the applicant's petition should be granted. The special permit should issue without conditions.

President Scatamacchia: Is there anyone else who wishes to speak in favor? Is there anyone else who wishes to speak in favor? Is there anyone else who wishes to speak in favor? (There was no one.) Is there anyone else who wishes to speak in opposition?

President Scatamacchia: Excuse me Mr. Davis, we all know who you are, but just for the record, your name.

My name is King Davis. I tell you a little bit more about my motive in the community but I want to start off with a photograph that was presented to me which reflects the picture of the Haverhill Public Library in 1900 which tells the original hospital was planned up in the back corner of Kenoza Lake, in the area where Councillor Sullivan is residing and the hospital was relocated according to the following statement, "the city hospital remained on this location until it became inadequate to serve the community's needs. Moreover concern was expressed due to the proximity of the city's water supply". A new hospital was eventually built, it's the Hale on Buttonwoods Avenue. I appreciate the opportunity to address you and I appreciate the opportunity to speak to those who are watching TV and who have a similar concern that I have relative to this project. In August 23 with a letter, you disapproved a petition that Mr. Giordano for a special permit for the land within 500 feet of Kenoza Lake, our dry water supply and a most attractive entrance to the City of Haverhill from 495. I spoke against the request and will continue to do so for as a life-long resident of the city having been in the real estate business for 56 years, I am adamant that this development should not take place. Kenoza Lake was 200 feet from 90 Amesbury Road, the subject property which is our water supply and also Tilton swamp which is within the watershed with the Merrimack River via snow's brook and (inaudible) is pointed out by Robert Ward Jr. our environmental health technician. I concluded many years ago as a realtor that not all land should be developed. This parcel is one of them. Mr. Giordano purchased this land according to city hall records in 2006 for \$7,500.00 from Frank (inaudible) and it consists of 3.97 acres. I'm sure that you have observed that the land has been filled by Mr. Giordano with, in my judgment, questionable material. I'm sure (inaudible) area is surrounded by wetlands in the subject area. When we have heavy rain covering Amesbury Road it must also run into Kenoza Lake or in or near the subject property. Mr. Giordano has no hardship. He knew it was within 500 feet of Kenoza Lake or he should have known or his attorney should have known the laws of development in the City of Haverhill. It was not long ago that the taxpayer's money was used to connect Crystal Lake and Pentucket Lake to Kenoza Lake. I assume this was done to provide adequate amount of quality water for the future of our citizens. Reportedly another body of water under our control is Johnson's Pond and I am told that quality of water is polluted. Recently the Mayor proposed a study to determine the feasibility of connecting into the Merrimack River for a source of water for city consumption. Why? I assume he is concerned for the future. One of the concerns of this development at 90 Amesbury Road is the potential, according to our zoning laws, of the maintenance, the allowability of maintenance of four animals. In this particular case by Mr. Giordano, it could be horses and it could be pigs. Well I have in my past maintained two horses and they require a lot of care with the shoveling of a lot of you know what. The proposal for this house sewerage is a septic tank. Well, I have never seen a horse use a septic tank. The caretakers just shovel it out the stall to the rear of the building that houses the animals and let it pollute the surrounding water, in this case, within 200 feet of Kenoza Lake. Tonight you will hear the proposal of some twenty conditions including the use of this parcel of land, which is less than four acres and proposed by the Conservation Commission and also by some of you. Who is going to

police the conditions in the next two or three years? And if a violation is found, do you force the owner to take the house and barn down? Let's be realistic. If you grant this permit, even with conditions, it is impossible to oversee hostile violations. For the first time in my knowledge, Mr. Giordano's attorney appeared at the Conservation Commission at the meeting last Tuesday night that a potential problem could exist relative to the flow of water from the 3.9 acres in Kenoza Lake. It is my conclusion after research that Mr. Giordano has been badgering department heads along with a Conservation Commission and the City Solicitor and they have given up. This is not in the best interests of the citizens of Haverhill. It is my opinion, the city administration wants to sweep this likely problem under a rug. Should you agree with me and turn down the application and the judge overrides you, you should then have the foresight and the guts to appeal the judge's decision with the city's legal department and a professional engineer would be in the best interests of the citizens of Haverhill. The city has spent hundreds of hours on parking problems but not many hours to preserve one of our most important assets from being polluted. I represent tonight, many silent voices who have contacted me on this potential problem. I thank you for letting me express my opinion and the opinion of many other people. Thank you.

President Scatamacchia: Is there anyone else who wishes to speak in opposition? Is there anyone else who wishes to speak in opposition? Would you like to respond sir?

Attorney Senior: First of all, I don't recall anything that I've said which could be construed as saying there could be a problem with Kenoza Lake. So I contest that. Secondly, this isn't a matter of guts which was just stated. I think it's a matter of applying the legal principles of the law. Again, there are two agencies in this city which govern this project. One of them is the City Council. The City Council's jurisdiction relates to Kenoza Lake and whether or not the construction of this building would have a negative effect or impact upon Kenoza Lake. The second body is the Conservation Commission. They are charged with the responsibility of protecting Tilton swamp and that's a whole separate jurisdiction. As far as the other Merrimack River or Tilton swamp, your bylaw has definitions as to what a water supply is that is protected by bylaw under which we filed this application. And the only water supply is Kenoza Lake that we are within 500 feet of; and all of the other reservoirs, it's not the rivers, it's not wetlands. The wetlands are under the jurisdiction of the Conservation Commission. I forgot to mention in my original presentation that I understand today you received a letter from the Water Department which is supporting the imposition of conditions of the special permit. I would direct your attention to the fact that even in that letter the focus there is protecting Tilton swamp. What we are asking you to do is properly apply your bylaw. Be fair. There is no evidence that there is going to be any negative impact upon the water supply of Kenoza Lake and not to allow other things like whether or not somebody paid \$75,000.00 or \$7,500.00 just isn't relevant to this concern. The concern is protecting Kenoza Lake. The evidence is that this will have no negative impact on Kenoza Lake and we are not in the watershed which is defined to protect Kenoza Lake and the other water supplies. You have certain definitions and only asking people to apply the law as written. As far as the conditions Conservation Commission has suggested, those may be appropriate under the Order of Conditions. If they impose them to protect Tilton swamp, that's within their jurisdiction. It's just no germane to this particular application. Thank you.

President Scatamacchia: Is there anyone else who wishes to speak in opposition? (There was no one.) I am going to declare the hearing closed. Council, what are your wishes? I know we have some questions.

Councillor Macek: I have a number of things that I would like to go over and also at the appropriate time move to attach to the special permit, prior to its vote. I would like reference to a letter that I just received this afternoon which was just referenced, from Robert Ward, Deputy DPW director. In that he says that there was a "lack of definitive hydrogeological data and it is assumed that the groundwater discharges from the site will be part of the Tilton swamp watershed which will drain to the Little River. The Water Department supports a requirement to confirm the groundwater flow is away from Kenoza Lake. Item 20 of the Conservation Commission's recommends special permit conditions requires the applicant to monitor the groundwater for contaminants." I would like to make sure we include that in the list of

conditions as we move forward in our discussions. I would also like to say that that letter says that the Water Department would provide a list of the items that should be utilized. It also says that the proposed household ejector system, which is on the plan, would need to meet Haverhill Wastewater standards. I would like to propose at the appropriate time, as we discussed, at the Conservation Commission and I was at the last two meetings as an observer, that there be no private systems for either water or sewerage. I would like that to not even be an item of discussion. (Inaudible) the disposal system in compliance with Title V as mentioned here. And the other one is, should the special permit be passed, we would have also recorded at the Registry of Deeds. I guess that I would like to speak to Mr. Weiss, if he is available, I have a few questions that are relative to your report but also relative to the conversation that I heard at the Conservation Commission. Your report speaks of the two examples that you found and utilized when the groundwater was flowing toward, from the Tilton swamp side of crossing on the roadway toward the reservoir. In it you stated the rate of .48 feet per day should there have been any contaminants the harmful substance was released at the applicant's building site and if the groundwater flowed toward Kenoza Lake it would be filtered throughout the soil and during the drought periods it would only travel less than one half the distance to the lake and therefore not reach the lake. Those are your words in your report. And then you go on to say "therefore, even if the groundwater flows towards the lake, some of the time there will be no adverse effect on the public water supply as a result of the construction proposed." My next logical conclusion is that if there were some type of contaminant that were flowing during these periods when Tilton swamp was higher and water flowing downhill as we all know it does, as you are saying here, there may be especially in drought conditions where water might be flowing toward Tilton swamp side where the project is proposed to the alternate side where our reservoir sits, my question is, if there were, as you called it, a harmful substance that would flow, you are saying that the drought season would not be long enough. However, what if the next year through similar conditions, we experience another drought season, what happens to that contaminant? Let's say it's half way across the road at the end of the first one, does it just go away? Does it go back to Tilton swamp or back to the developer's property? Or might it be pushed further the next time toward the reservoir and ultimately maybe through two or three seasons that contaminant would land on the reservoir side.

Mr. Weiss: Let me say we did that study under the very worst possible conditions and that is the despill, a release of a harmful substance, took place on the first day that the groundwater at the lake was lower than the groundwater at Tilton's swamp. So that's one (inaudible) that it had to have and it did. The two drought conditions were identified by Mr. D'Aoust (inaudible) pick it out at random and what happened is that say on the first drought period it goes about one hundred feet then the water, and if the water at the lake was higher than Tilton's pond, that would push the water back towards Tilton Pond. It depends just how long the period, that it got pushed back (inaudible) it would get pushed back and forward and pushed back.

Councillor Macek: So there's almost like a tug of war going on between the harmful substance and what's going on underground. Thank you. I do have a number of other things going along with the Conservation Commission's recommendations that I would like to add to the special permit that I would also like to wait until perhaps my colleagues have other comments to add.

Councillor Ryan: I'm not sure Mr. Weiss if you could answer this question. I just wanted to make the attorney aware that the berm that was constructed, I was involved with that when the late (inaudible) Neckerson was director of our water/wastewater system, was constructed for the purpose of enlarging the water supply at Kenoza Lake. Not to make a barrier to keep contaminants from coming in. It's basically a pile a gravel raised the level of the lake back in the 1980s. And you did refer to route 113, we are talking about route 110, the community that is watching. At some point, probably back before 1900 or maybe 1800, Kenoza Lake, Hale's swamp, were all one body of water. There's been a lot of adjustments. Route 110 is relatively new road that was constructed right through the lake and the swamp. There must have been a little dry area there. The former airport, that's on the other side, Dutton's airport, we all know that

everything in the world has been dumped to make that runway and to make that expand. At one point it went all the way to the other side of Newton Road. I believe there was a bridge across there. So it was a very substantial body of water, it's been of course abused over the years. I am very concerned about the further abuse of land around Kenoza Lake and it is, as someone pointed it, it's a primary drinking water. The applicant, Mr. Giordano, and I don't know if it's him, is him, but this project first of all has not been approved yet. There's been people out there with backhoes and bulldozers and dump trucks filling that land in anticipation of what the building permit or to make sure there's enough solid ground to build a house. Everyone in the city goes by there. I have questions just last week, there were a bunch of pipes there and somebody came along and dumped dump loads of stuff and buried the pipes. Talk about, and I didn't see that happen. One of the residents on Amesbury Road brought that to my attention. I don't think that's a good way for the applicant to be acting. At least for the city, Conservation, City Council and everybody goes through the process and if you are successful and you do get a permit, then you start filling it in and improving the land. There's been lots of activity down there and it's concerned everyone. What is going on? Isn't anybody in the city, when I say the city officials watching this? There's things going on there. I'd like to know if it's you or Mr. Giordano's attorney can tell me what has been going on there with all the fill and everything being brought in over the last several years.

Mr. Weiss: I don't know anything about the fill but I will tell you (inaudible) we put in some pipes in the ground to determine where the groundwater level was so we could tell which direction the groundwater was going. We put in four or five pipes. (inaudible)

Councillor Ryan: Have you concluded that test?

Mr. Weiss: Yes.

Councillor Ryan: Those pipes still in the ground?

Mr. Weiss: Yes we wanted to wait to see what the outcome was and whether or not we are going to be putting in more water pipes.

Councillor Ryan: Well I mean if you don't get approval you (inaudible) pipes there, I guess.

Mr. Weiss: Inaudible

Councillor Ryan: No one really has a clue. There's so much going on that piece of property. Obviously in anticipation of getting a building permit. The height of the land has gone up substantially. It used to be fairly level with the road. Now it's up several feet. That concerns me and it concerns I know, a number of neighbors who live around the Amesbury Road area. What is going on over there? Isn't city officials keeping an eye on that. I assure them that they are. I have spoken with Bob Ward and he has assured me that he is right on top of it and I have every confidence in him. I think he does a terrific job. Those are concerns, you are asking us to approve something tonight and part of my decision is based on, in this case, a record of what's gone on up this point and that has an impact on the way I am going to vote tonight. With that, I will yield back to you Mr. President.

Councillor LePage: I have a couple of questions. I, too, attended the Conservation Commission meeting this past Thursday. Couple questions I have go back my original questions, or questions that Rob Moore asked back in December of 2010 and John Pettis also. First one being, we are talking about the eastern portion and also there's half of the parcel is on the western portion (inaudible) building on it. It's never been answered if it's buildable to build somewhere else or to build something outside the 500 feet. It keeps being that this is the only location that seems to be, in my opinion, proven that this is the only place that you could build. There's other land parcels, that the applicant owns actually as a portion of the parcel

that hasn't been surveyed, given records of the city on that. Also talking with Engineer Pettis, there is a question in December '10 about the hundred year floodplain. Again, looking to see if part of that area is in that. Again, I am not an expert. I am just a member of City Council. I go and I listen to meetings, I read information, gather as much information as I can. Those are two of my things with the conditions that go with what the Conservation Commission says. My understanding of the ordinance is that we look at the report. So if the Conservation Commission meets and they originally had twenty, they've actually revised this list to be twenty and I would think another two should be added to that and they changed some of these things, then I think that's what the Council did, because that's what they are asking for. So them being the experts, being the Conservation Commission, I think that we should have those conditions in because that's what we are asking for in their report. Again, I am not an attorney. I leave that to the attorneys to figure that out. With that again, Councillor Macek mentioned what Deputy DPW director Bob Ward wrote is confirmed that the groundwater flows. Your assertion is that it flows that way. Again we asked the questions, if it moves, and your discussion has been that it moves back and forth, my question would be, when we talk about monitoring wells, if they are on the applicant's property and we are concerned, as a city, what's going to happen to Kenoza. We are also concerned, and the big question before this Council, is Kenoza, and I would suggest that maybe we should have monitoring wells on the other side and if something was to, as you said, go back and forth back and forth then you could see the levels being high because I believe the attorney for the applicant mentioned that between his property and Kenoza Lake and route 110 and there's traffic and there's a lot of different chemicals that are associated with traffic and what could be there. I think that if something were to be shown on that side of the property, my concerns are Kenoza side, you can monitor on that side and you can see what's happening both sides, not just one. I believe Councillor Macek, and I agree with him, I would like to see these conditions in and I would like to see some others added to these.

Councillor Michitson: Couple of questions for you. Who actually pays your fee for this study?

Mr. Weiss: Mr. Giordano.

Councillor Michitson: Second question that I have. It's clear from Mr. Ward's letter that he has not confirmed your results.

Mr. Weiss: I haven't seen his letter. Is that a recent letter?

Councillor Michitson: Yes, let me just read what he states. He states that "the fact that this lot is outside the watershed, Kenoza Lake, and the lack of definitive hydrogeological data, it is assumed that all groundwater discharges from the site will be part of the Tilton swamp watershed which will drain to the Little River" and then it says "the Water Department supports a requirement to confirm the groundwater flow is away from Kenoza Lake," So hadn't he seen your report when he stated this to us? It sounds like he hasn't confirmed the results of your report. The third point that I have, is that, don't hydrogeological characteristics change over time?

Mr. Weiss: Inaudible...constantly changing.

Councillor Michitson: And they are constantly changing, so, could it be that you know, the results of your study would change over time as well.

Mr. Weiss: As I mentioned before, I did the study on the very worst possible conditions that could take place. Any other conditions, you could say the groundwater wouldn't travel as far as it would under these conditions.

Councillor Michitson: Your conditions had to do with the drought but not necessarily the geological makeup of the land. Right, that could change. You didn't model that which could change over time.

Mr. Weiss: The calculations were based on the type of soil which between the proposed building and (inaudible).. and that I consider geological.

Councillor Michitson: Okay, thank you.

Councillor Macek: Thank you Mr. Weiss. I believe that on, maybe you are the right person. I have a few questions on the map that was provided to us. As was also stated at the Conservation Commission, we've seen multiple maps with different size dwellings and out buildings. Who would like to answer a question about the size of the building, both the primary residence and the out building structure?

John Giordano, the owner of the property, 90 Amesbury Road, and sitting here to answer many of your questions. This hasn't been a project over months, weeks. It's turning into years. I have come before several committees and I would like to just as an opening statement correct what appears to be a deleterious spins or misstatements of facts with regard to this property.

President Scatamacchia: Mr. Giordano, we opened the hearing. We had the hearing opened. You had your chance. I think your attorney did an excellent job of presenting your side of the issue. But Councillor Macek had some specific questions that he wanted to ask. I am not going to reopen the hearing.

John Giordano: Very well, thank you. I am sorry.

Councillor Macek: Mr. Giordano just a few questions, it was brought up by one of my colleagues and I, too, had seen over the years as you said, your ownership of the property that different things have been dumped and spread. I do recall actually walking in that area and seeing some of the dumpings, it contained bituminous or asphalt along with the dirt in there. Could you please let me know if that was plowed into the ground, if not, why was it there to begin with and what happened to it?

John Giordano: (Inaudible)...using the property there was a (inaudible). There was a (inaudible) pipeline, gas pipeline being put in across the street. I had seen a possibility to get some fill and I made some arrangements with the contractor and he put the fill on the property (inaudible)...At that time I was working with Robert Moore and your other departments to find out what type of parameters were necessary, what I had to do and so forth and Mr. Moore had been down there consistently. (Inaudible) we don't want to get (inaudible) any of the wetlands (inaudible). So we go in there near an area that was outside of the curfew for hunting season away from the wetlands. If you look at that area (inaudible) triangular shape that was all staked out 100 feet away from the wetlands. Unfortunately it had a sign out of state and the contractor that was putting the pipeline, was going to level the fill and so forth and grade the property suddenly the fill that was deposited there disappeared. Subsequently, somebody dumped the rocks there and sand and so forth. It cost me \$3,000.00 to clean it up. During that period, (inaudible) the site of the old Lakeview Restaurant and that site was leveled flat with a parking lot. During the time that I had the contractors come out, it cost a substantial amount of money and they removed the asphalt that was already on the property. I know of no asphalt that was dumped on the property. I had an opportunity to replace some of the (inaudible) leveled it so that it was aesthetically pleasing. Put seed on it. If for no other reason, when I put up a home, with the plans that I had in front of this committee initially, showed a grade up to the house. (Inaudible) with the fill to the house. That was also submitted to the Conservation department, during that time (inaudible) and it showed the grading going up to the house. So I had an opportunity to pick up some fill so we did. The fill that you have seen there, I had an opportunity to pick up some fill from Haverhill happened to be from the Y across the street. All certified fill, they have some hundred loads of fill there because they had to move some of the fill for the construction of the Y. That

will all be graded as an elevated section, as you know with a lot of roadway there and if for no other reason I would like to be able to enjoy my own property, which I have. Simultaneously, I was going to 500 foot setback requirement that you have, I have also managed to get an Order of Conditions for landscaping activity from Conservation. I have also, from the report that you have, have gone through the Massachusetts State Species Act as well as the Massachusetts Department of Environmental Protection which has determined that I have a completed application per Notice of Intent for a home so forth as per the plans that you see. There's some problems with Conservation, with fees and so forth, but they the Notice of Intent which they have decided to reject and we went along with them at that time and we filed for determination of (inaudible) after which we went to several hearings and we went to a landscaping plan and so forth. So right now as a matter of fact on the landscaping plan approved by Conservation we have (inaudible) Massachusetts Invasive Species Act as well completion of the Notice of Intent with the Massachusetts Environmental Protection and we have to reactivate plans contingent on what we do here this evening, reactivate the plans and the application, plans (inaudible) I don't know what that procedure would be. But, I have been working right along with the departments before I had ever submitted any applications here. And I thoroughly researched the property prior to acquiring it in determining what the restrictions were and I looked at the regulations. I looked at the law, I looked at the fact that we are not in the watershed district and there was a report that we had written consistent with recommendations based on your department heads with what I should have and one of them was an environmental assessment by wetland services. Then we had the wetlands delineated, had the survey and so forth, all of which was in preparation to comply with Conservation's determination of (inaudible) as well as the Notice of Intent. (Inaudible) which you also have a copy of. I don't know what else I can say. There's been no illegal dumping of fill or any other deleterious event that has occurred from what I consider a major investment on my part on my own property which I intend to be (inaudible). I hope that answers your question that you mentioned (inaudible).

Councillor Macek: That was a very long answer to what actually what I really want to know whether you have any knowledge of any dumping of asphalt material that may have been plowed into the ground.

Mr. Giordano: Absolutely not.

Councillor Macek: Thank you. I would like to also you a couple of questions about what was the proposed dwelling and the outbuilding and the reason I want to preface that by saying the reason I believe this is very important to our decision tonight is because the ordinance that you are here, 255-90, says that "such permit may be granted if the City Council finds that the proposed building does not have an adverse effect on the public water supply". I bring this up and I emphasize it in this hearing tonight because I heard reference that once this permit is given you can do anything you want within an SC zone. I don't believe that this special permit allows you to do that. (tape change) both the size of your dwelling and any other outbuildings and anything other than what we approve tonight on your plan would need to come back and go through this whole procedure over as an additional dwelling or as an additional building because we are looking only at what you are telling us what you are going to have on that lot. There are other things that would be allowed in an SC zone such as a farm stand and I don't believe you should just as a matter of right be able to go and change your dwelling or your outbuilding to a farm stand without having to go through this procedure to protect our water from start to finish. That's my opinion. That's the way I read this ordinance. Based on that opinion and my concern you have provided us, and the last time you were here I believe I might have asked the question, I know it was asked, you gave us a plan of a 30x100 dwelling and a 30x50 dwelling.

Mr. Giordano: I gave a 30x16, I believe.

Councillor Macek: That's your outbuilding.

Mr. Giordano: That is the outbuilding. It was a plan roughly, for the house 30x100. I asked the question, because I referenced the word battery limits, what else would be done, I said very specifically for the record is that that would be the battery limits and that would be the (inaudible) of the building. The building scope could be smaller but wasn't going to be bigger. That was the maximum size. What I did essentially is I maxed out what I could put on there for a building and meet all of the requirements. The building may be 30x50 but it's not going to be 30x200. That would meet all the requirements.

Councillor Macek: I would want to have that language in the special permit for a single family dwelling not to exceed 30x100.

Mr. Giordano: Ya, I would assume, and I said this to my attorney, that if I put up a bigger building or I dramatically change the scope of instead of 30x100 it was going to be 75x100 or I am going to put in other buildings, that I would have to come before this commission again. If I wanted to put a barn behind my building, and then the setback requirements of Conservation, I would still have to come before this commission.

Councillor Macek: So we are in agreement on that? We are in agreement on my earlier statement that you would (inaudible) do any other construction beyond what is on this proposed plan?

Mr. Giordano: Ya, and I understand the way your ordinance is interpreted that anybody is also put additions onto their home within 500 feet of Kenoza Lake also has to come before this commission.

Councillor Macek: Correct.

Mr. Giordano: I don't have any issue with that. I am aware of that.

Councillor Macek: The outbuilding, are you still proposing that as being the largest that you would build, being 16x30?

Mr. Giordano: Yea, that's what I propose. It's a good size utility building, use it as a workshop or whatever. Everybody has a garage. I've had garages, several homes both out of state. Here in Andover and so forth, I am still waiting to use the garage as a garage. It usually ends up as being overflow or workshop. The car is out in the yard. I'd really like to have some day to have a garage to put a car. It would be nice to have a workshop. (Inaudible) for storage or whatever.

Councillor Macek: So you don't have any, you wouldn't have any problems with a restriction on either large animals or farm animals being kept on the property?

Mr. Giordano: I absolutely would. It's permitted within that zone and my wife and I have had horses for 25/30 years. (Inaudible) I know when I had the horses in Andover and you could call up Everett Penney and (inaudible) the horses died and went to heaven. (Inaudible) I've seen the sloppiness of (inaudible). They are extensively regulated by the Department of Health. In Andover we had (inaudible). Right water and so forth and all this other stuff. They have a manure pile next to your house flies and so forth (inaudible) it either gets spread or taken off site. You have regulations that cover that.

Councillor Macek: We do have regulations that cover that. We are also looking to protect drinking water not just a nuisance.

Mr. Giordano: As we said, the drinking water, and one of the things that was addressed here, was the worst possible conditions. Can you picture, honestly, have a drought at Kenoza Lake and not having a drought in the other areas surrounding Kenoza Lake. In other words, Kenoza Lake is the only area that is

going to suffer a drought. The worst possible conditions, if (inaudible) was to say, okay we are going to conclude that the drought only affects Kenoza Lake, it is not going to affect the rest of the world? So, the rest of the area that have high water tables...

Councillor Macek: I believe we are off topic.

Mr. Giordano: No, we are not off topic.

Councillor Macek: I haven't asked you that question.

Mr. Giordano: (Inaudible) you have horses walking around Kenoza Lake all the time. I don't know.

Councillor Macek: Thank you for your answer. Thank you Mr. President.

Councillor Macek: Mr. President I would like to make a number of various motions. I would like to adopt all of the recommendations that were made to us on a recent report from the Conservation Commission. I would also like to make a few changes to those. Perhaps we could adopt them and then address changes should the Council agree with my thought process on the changes.

Councillor Ryan: Call up the main motion. Councillor Daly O'Brien: Second

Councillor Macek: I would like to amend the special permit request by adding all of the conditions as recommended to us by the Conservation Commission. There are twenty items that were brought forward to us.

Councilor Daly O'Brien: Second.

President Scatamacchia: Madame Clerk would you call the roll. You are going to amend?

Councillor Macek: I'm going to ask to maybe amend some of those twenty.

President Scatamacchia: Should we do that now?

Councillor Macek I think we should put it in effect and then we could amend it after. Because, it case it doesn't pass, it will stay in its original form.

President Scatamacchia: Madame Clerk would you call the roll.

Clerk Toomey: Councillor Hart-yes, Councillor Michitson-yes, Councillor Ryan-yes, Councillor McGonagle-yes, Councillor Macek-yes, Councillor LePage-yes, Councillor Daly O'Brien-yes, Councillor Sullivan-yes, President Scatamacchia-yes. 9 yeas.

President Scatamacchia: Passes.

Councillor Macek: I am going to move back to our first attachment of these very similar motion, there are only three added to; but the first 17 are pretty much verbatim to what we already attached to this in our first go around with this special permit request. One of the things that the Council supported, I move for the conditions as proposed by Robert Moore, move #5, in the first line, where it says "No septic" and we add the language "or holding tank or tanks" and then it goes on. I could read the whole thing if you prefer. No.5 says "Sanitary sewer service associated with this project shall be connected to the municipal system. No septic system, and right there I would add "or holding tank or tanks" shall be used on the property.

Councillor Daly O'Brien: Second.

President Scatamacchia: What else Councillor Macek.

Councillor Macek: I would (inaudible) along to say #6, which the Conservation Commission, did they delete that Colin? No. 6 says there is supposed to be a deed but I think that is already out. Councillor LePage – yes. I would like to add to the restrictions that “all water services for the property shall be obtained from connections to the Haverhill Municipal water system”.

Councillor Daly O'Brien: Second.

President Scatamacchia: Anything else Councillor Macek?

Councillor Macek: Yup, I would also like to add that the dwelling size not exceed 30x100. That the outbuilding not exceed 16x30. No other construction shall be allowed without approval from the City Council and any other permitted SC use including secondary buildings or the keeping of any large animals such as horses, cows, swine, large animals or farm animals, just as horses, cows or swine. I would like to add that this is from Robert Ward's letter dated today, that all of the special permit conditions be recorded at the Registry of Deeds.

Councillor Daly O'Brien: Second.

Councillor Macek: I would yield to Colin LePage because he wants to add another item we discussed the other night.

Councillor LePage: These two are previously in, I'm not sure why they were omitted this version. “All paved travel ways, driveways, walkways and (inaudible) shall be constructed with pervious materials, such as porous pavement, concrete pavement, and (inaudible). The next one was, the applicant shall make any effort to minimize the use of winter sanding, (inaudible) The applicant shall make every to remove winter sand from the pervious paved area.

Councillor Macek: Second.

Councilor LePage: I believe also, one more that I would ask Councillor Macek to help with.

Councillor Macek: We are going to add that at the end. I have one other thing that I would like to add and that would be in #7, it may not be #17, it was #17, it's about pesticides, herbicides, fungicides, could you check that Councillor LePage to see what it's currently at from our original list.

Councillor LePage: Currently it is 16 and we have 15. I'm sorry 15.

Councillor Macek: #15 Attachment B, Where is says pesticides, herbicides and fungicides shall not be used within 100' of any wetland resource area. We initially put a period there and we struck “for the purpose of lawn maintenance”. I move that period be inserted and we strike for the purpose of lawn maintenance.

Councillor Daly O'Brien: Second.

Councillor Macek: I would like to add, what we initially also added, and that's language at the very bottom of the conditions, “should any of the conditions be determined to be unenforceable, or illegal in

whole or in part, that shall not effect any of the other conditions. The conditions may only be altered or deleted with a six vote approval of the City Council.

Councillor Daly O'Brien: Second.

Councillor Macek: I move all the amendments be adopted.

President Scatamacchia: Would you call the roll on all the amendments.

Clerk Toomey: Councillor Hart-yes, Councillor Michitson-yes, Councillor Ryan-yes, Councillor McGonagle-yes, Councillor Macek-yes, Councillor LePage-yes, Councillor Daly O'Brien-yes, Councillor Sullivan-yes, President Scatamacchia-yes. 9 yeas.

President Scatamacchia: Now the roll call on the special permit.

Clerk Toomey: Councillor Hart-yes, Councillor Michitson-no, Councillor Ryan-no, Councillor McGonagle-no, Councillor Macek-no, Councillor LePage-no, Councillor Daly O'Brien-no, Councillor Sullivan-yes, President Scatamacchia-yes. 6 nays, 3 yeas

President Scatamacchia: Does not pass.

Respectfully submitted,

Barbara S. Arthur
Administrative Assistant to the City Council

November 2, 2012

Remand Order – John Giordano V. Haverhill City Council, Land Court docket No. 11 MISC 453400- Special Permit request to build a single family residence at 90 Amesbury Road within 500' of a Water Supply, Map 462, Block 3, Lot 2A

REASON FOR VOTE

In granting the Special Permit, those members voting in favor found that the application fulfills all of the general conditions contained in 255 of the Haverhill Zoning Ordinances.

President Scatamacchia: I voted for the special permit because I felt all the conditions placed on the project would safeguard the public water supply.

Councillor Hart: In my opinion, I thought the applicant met the requirements of the special permit with the conditions attached to it that were voted for.

Councillor Michitson: The applicant's expert failed to present conclusive evidence that the property in question would not have an adverse effect on the public water supply.

Councillor Ryan: After listening to the testimony, I had many concerns and voted against it because I thought it could have an adverse effect on the public water supply. Subsequently, after learning more about the project and issues, I have moved for reconsideration.

Councillor McGonagle: I voted to deny the special permit based on the evidence presented at last night's meeting as well as the records from previous meetings. I could not conclude that permitting the single family home would not have an adverse impact on the water supply over time. Mr. Giordano's engineer stated (in regard to a question by Councillor Michitson) that the groundwater flow could change over time.

Councillor Macek: My vote was based upon the applicant's expert's failure to present detailed and conclusive evidence that permitting the request would definitely not impact in any way the City's drink water supply located within the protected area as required in the ordinance in question, Chapter 255-90.

Councillor LePage: I voted no on this special permit because I believe it could have an adverse effect on the public water supply.

Councillor Daly O'Brien: I voted no because the applicant was not specific about the type of buildings he would construct, the size of buildings and the use of these buildings. I believe this project could have an adverse effect on the public water supply.

Councillor Sullivan: I voted to approve the special permit with 24 conditions attached based on the evidence presented at last night's meeting. I could not conclude that permitting this single family home would have an adverse impact on the water supply, which is the only criteria we could use to base our decision.