INTRODUCTION

- Thank you all, including Captain Whitescarver, for serving on this Commission and for devoting so much of your personal time.
- I'd also like to say that I've received no compensation for preparing my remarks, nor do I have a vested interest since I no longer live in town. But I care about Ledyard still, and I don't believe a quarry belongs here.
- I have been a businessperson for my entire adult life, and therefore I am very much PRO-business. It goes against my grain to argue against new business. My intent in speaking tonight is not to harm Mr. Cashman or his organization, and I hope that the Cashman company will bring good business to our town and will be successful here. My only goal in speaking is to help this Commission determine whether the application before it complies with our laws.
- I would also like to say that I've come to recognize Mr. Heller's knowledge and strategies that were not immediately apparent to me. Many arguments I will make tonight conflict with what Harry and other experts have said, but nothing I say is intended to be a character judgment or to be taken personally by anyone involved.
- Lastly, I will make many declarative statements tonight, but if any of it sounds like I'm trying to tell this Commission how to do their jobs, I am not trying to do that. My goal is simply to share information for your consideration.

- **MY BACKGROUND:**
  - Credentials
    - For most of my career, I was General Manager and President of a custom-manufacturing company. We sold products to TV stations, to the military for operations like Desert Storm, and to the White House, to name a few.
    - One of my areas of expertise was the implementation of ERP systems into organizations. These are complex computer systems designed to manage all aspects of an enterprise.
    - Back in those days, I was certified by what was then the American Production and Inventory Control Society (APICS). This required formal education and testing in business management systems from start to finish, including sales operations, engineering systems and processes, inventory management, capacity planning, shop floor control, and quality assurance, among others.
  - Competency
    - So, I submit to you that I am fully capable of understanding complex enterprise operations and what it takes to control them.
    - I also have experience in writing and interpreting contracts and therefore I have a solid understanding of business language.

THE ROLE OF THIS COMMISSION

In a meeting with Liz Burdick and Rob Avena earlier this year, I asked Rob this question: "Do you agree that in a Special Permit public hearing, our Planning & Zoning Commission performs one and only one function, which is ensuring compliance with our regulations. He qualified it by saying that you also need to ensure that Special Permit criteria are met, but those, of course, are part of our zoning regulations. So, basically, in this public hearing, this Commission's sole function is to ensure that a proposed operation will comply with our regulations.

This leads to the conclusion that testimony, written submissions, exhibits, etc. are irrelevant unless they DIRECTLY relate to whether an application complies with our written zoning regulations. The applicant wants you to consider potential future economic development, for example, but that has ZERO bearing on whether their application complies with our regulations. Society's need for aggregate also has zero relevance to THIS hearing, because it has no bearing on compliance. The amount of revenue our town might receive if the application is approved? ZERO relevance.

A silly metaphor to make a point … "Sure, Ledyard, you've denied our toxic waste dump because it will pollute your entire town, but what if we offered you $1 million per year." Ridiculous, right? Would a $1 million annual payment make the waste dump less toxic? Of course not.

- Well, is that any different IN PRINCIPLE than the applicant's proposed "tipping fee"? Does this "payment in lieu of taxes" make this application any more compliant with our regulations than it would have been otherwise? No.
- Obviously, I'm exaggerating to make a point … I understand that a quarry isn't the same as a toxic waste dump.
- But it's not exactly an office park either.

I also see that the town retained a consultant to evaluate the fiscal impact of the project to the Town, but that study should be removed from the record or stamped "IRRELEVANT" because, legally speaking, it has no bearing on this hearing.

If the purpose of this public hearing was to MODIFY our regulations, then sure, a commissioned study of financial impacts on the town, factoring in society's need for aggregate, potential future economic development, etc. … topics such as those WOULD be relevant. In this Special Permit public hearing, compliance is the SOLE factor that this Commission is allowed to consider. All other topics must legally be excluded from your deliberations.

IF/THEN

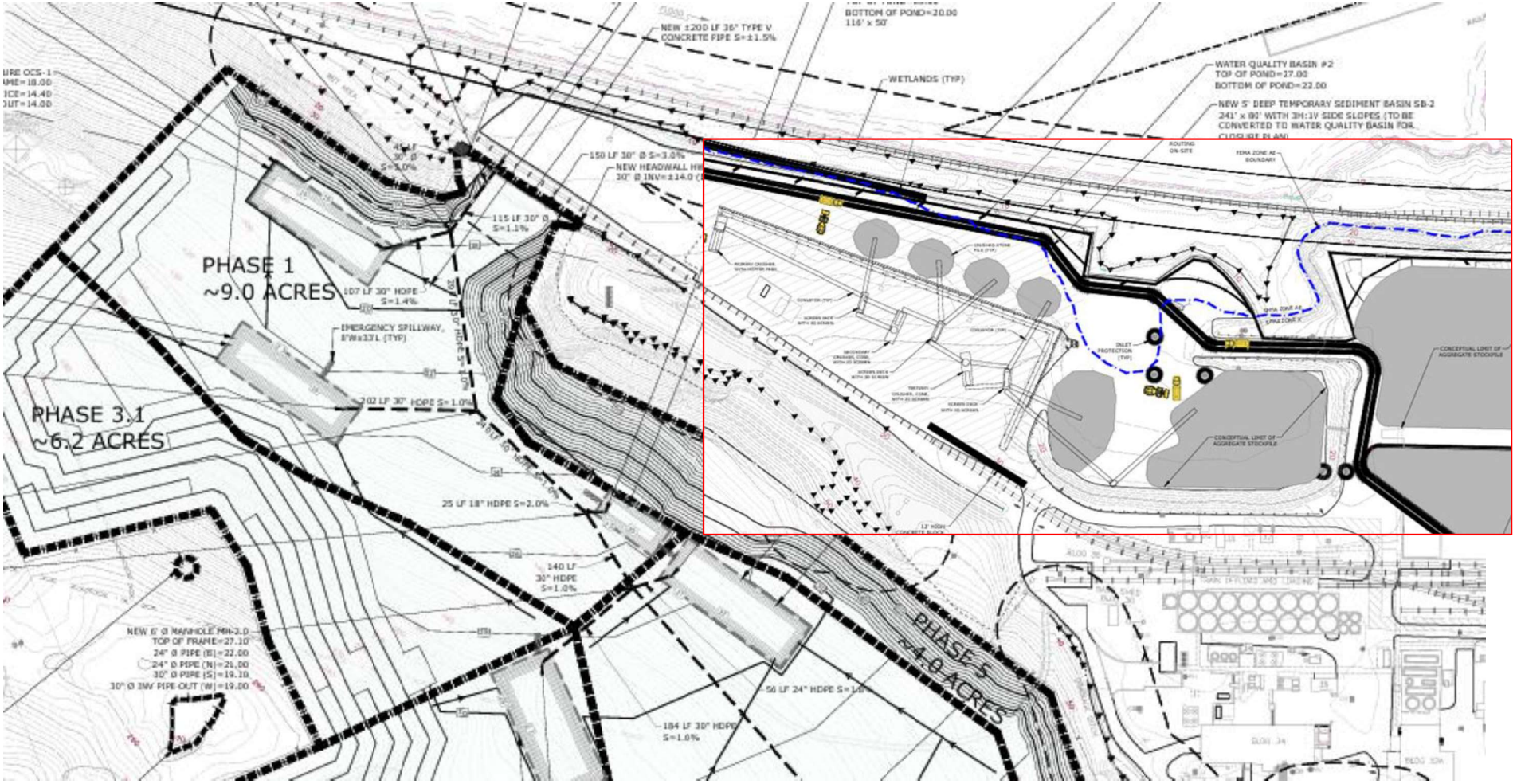
We are holding these hearings because the applicant is proposing a use … quarrying, a.k.a. blasting and rock-crushing … which is not a permitted use in our regulations. Quarrying was once permitted in our town years ago, but it is no longer. The applicant is asking for your permission to twist our regulations into a pretzel to gain approval for an UNPERMITTED USE. Is it any wonder that people like Eric Treaster are compelled to suggest strengthening our regulatory language to prevent this type of thing?

I would like to discuss one other related argument that makes much of what we're discussing moot, to the point where I believe this public hearing should be closed and the application withdrawn.

- As just noted, the application on the table is for "Excavation".
- Excavation represents the MOVEMENT of material … defined in our regulations as the filling, removal, relocation, of material. The definition of Excavation in our regulations does NOT include the phrase, "… and the processing of earth product and rock prior to its removal from the property."
- Rock quarrying, on the other hand … blasting and crushing rock … ALTERS THE VERY NATURE of material.
    - Blasting converts bedrock into pieces of blasted rock.
    - Rock-crushing, hammering, etc. converts larger rocks into smaller rocks.
- Rock quarrying is its own use, SEPARATE AND DISTINCT FROM EXCAVATION.
- Therefore, this application must be denied because rock quarrying/blasting/crushing are not permitted uses in our use tables. Not as a primary use, nor as an accessory use.

- But the applicant continues to argue that blasting and rock-crushing are an essential, integral part of Excavation.
- Because Excavation is permittable, they argue, blasting and rock-crushing should be permitted by association.
- For the sake of this discussion, let's accept this flawed argument. That Excavation and blasting/rock-crushing are one in the same. That they are inseparable parts of a whole as the applicant argues.
- If we accept that argument, then this application violates 8.16.N.5 because each phase of the proposed operation would exceed the allowable 10-acre maximum. The applicant's rock-crushing operation, INTEGRAL to Excavation according to the applicant, is located outside of the applicant's defined Phases, thereby exceeding the 10-acre allowable maximum for each Phase.

THE ILLUSTRATION BELOW IS A SECTION FROM PAGE C-12 OVERLAID ONTO PAGE C-6



So, it must be one or the other:

a) If blasting and rock-crushing are separate and distinct from Excavation, then the applicant is requesting approval for an unpermitted use and this application MUST BE DENIED … or

b) If blasting and rock-crushing are INTEGRAL to Excavation, then each proposed excavation Phase would exceed the 10-acre allowable maximum and therefore this application MUST STILL BE DENIED.

I believe my logic is sound, and that all subsequent arguments are moot. I've prepared a lengthy presentation to debunk the applicant's many detailed arguments one by one, but I submit that this argument alone is enough. The only way this application could possibly be approved in Ledyard is by changing our zoning regulations first to make quarrying a permittable use.

EXCAVATION VS. QUARRYING

- **EXCAVATION DEFINED**
  - In our zoning regulations, Excavation is defined as the REMOVAL, RELOCATION, or the MOVEMENT of earth, sand, gravel, clay, rock or other natural earth products.
  - 8.16 describes it as the FILLING or REMOVAL of soil, gravel, and stone.
  - The DEFINITION of excavating in our regulations does NOT include blasting and rock-crushing.

- **ROCK QUARRYING DEFINED**
  - As opposed to Excavation which is a "movement" function ("filling, removing, or relocating material"), blasting and rock-crushing are quarrying processes that ALTER THE VERY NATURE of material. For example:
    - Blasting converts bedrock into blasted rock.
    - Rock-crushing converts large rocks into smaller rocks.
  - Quarrying involves extensive processing of material that is purposely sought and extracted for its commercial value, NOT the type of activity envisioned by "Excavation".

- Excavation is a permitted use in our regulations.
- Quarrying was ONCE a permitted use, but it is no longer.
  - Side note: the applicant also uses the label "Industrial Site Preparation" to describe its proposed operation. That is not permitted in our use tables either.

- **SUPPLEMENTAL REGULATION 8.16, EXCAVATION**
  I submit that 8.16 must be taken in its entirety, and that section 8.16's language was clearly NOT intended to permit a rock quarry operation in Ledyard. My evidence:

  - **MINOR vs. MAJOR EXCAVATION**
    - First, the distinction between "minor" and "major", split at 300 cubic yards.
      - For reference, 300 cubic yds = 1000 sq ft foundation, 8' deep.
      - Think about the mindset that drove that distinction … once a house foundation exceeds a mere 1000 feet, it requires a Special Permit.
      - For reference, a miniscule 1-acre square quarry into a 1:3 slope would be something like 50,000 cubic yards. Hundreds of times greater than the 300 cubic yard demarcation.
      - The proposed Mt. Decatur operation would be millions of cubic yards … hundredfold again!

      - The regulatory demarcation between minor and major excavation at 300 cubic yards seems silly by comparison. Clearly quarrying was not the author's legislative intent when drafting our regulations.

  - **HYPOTHETICAL QUESTIONS ABOUT 8.16**
    - IF 8.16 DID intend to permit a rock quarry in our town, then:
      - 8.16.D.1 Why would you restrict the landscape from being "needlessly marred" when every rock quarry mars the landscape?
      - 8.16.D.2 Why would you require that "the work will not be a source of dust" when every rock quarry produces dust of various kinds?
      - 8.16.D.3 Why would you forbid adverse impacts on property values caused by open pits, rubble, or other indications of completed digging operations when every rock quarry leaves these things behind?
      - 8.16.M.1 Why would you require a "closure plan" showing how the ENTIRE site will be restored when a rock quarry site CANNOT be restored in its ENTIRETY?

        - 8.16.N.4 Why would you limit finished grading to a gentle slope of 1V:3H when rock quarry banks consist of vertical faces and stepped benches which create a much steeper slope?
        - 8.16.N.5: Why would you restrict rock quarry operations to 10 acres at a time, and not allow a subsequent phase to be permitted until a prior phase was completed?
        - 8.16.N.7 Why would you require that ALL topsoil and subsoil to be retained for site restoration when this isn't necessary for a rock quarry?
        - 8.16.N.4 Why would you require topsoil, seeding, fertilizing, etc. upon completion of each rock quarry "phase", especially up on the quarry benches?
    - The answer to all these questions is … you wouldn't! If rock quarrying was what you had in mind, none of the language I just reviewed would exist in our regulations, and the DEFINITION of excavation would include blasting and rock-crushing.

- **<u>8.16.I</u>**

  But there's one section I skipped: 8.16.I. It says, "The use of explosive devices and rock-crushing equipment may be limited as a condition of the permit." So, what's up with that? Well, the applicant argues that the mere presence of these words implies legislative intent. The fact that explosives and rock-crushing were even MENTIONED, according to the applicant, suggests that you should approve their proposed rock quarry operation. But that logic is massively flawed.

    - **<u>INTEGRAL vs. INCIDENTAL</u>**
        - Integral means "necessary to make whole or complete; essential; fundamental".
        - Incidental means "accompanying but not a major part of something".
    - Blasting and rock-crushing are INCIDENTAL to excavation, because you can excavate WITHOUT blasting and rock-crushing.
    - But you cannot quarry rock without blasting and rock-crushing. Those functions are INTEGRAL … "essential, fundamental" … to rock quarrying. Those functions basically ARE rock quarrying!
    - So, back to the language in 8.16.I … if blasting and rock-crushing were INTEGRAL to excavation, then why would you give yourself the right to LIMIT these ESSENTIAL functions? The answer is that you would not. It would be like a "housebuilding" use that allowed you to restrict anyone from cutting lumber or nailing it together! It's ludicrous.
    - This review PROVES that blasting and rock-crushing are INCIDENTAL, not integral, to Excavating.

- Quarrying … blasting … rock-crushing … these are material-altering uses that are separate and distinct from "excavation" and none of them exist as primary or accessory uses in our use tables.
- For this reason alone, this application should be denied (or withdrawn).
- If the applicant, or anyone else for that matter, wants a quarry in Ledyard that badly, then they must change our regulations first.

- **<u>SECTION 7.10 OF OUR REGULATIONS IS NOT RELEVANT</u>**
  - Like the applicant's flawed assertions about 8.16.I, they did the same with section 7.10:
    - 7.10 STONE CRUSHING AND TEMPORARY (PORTABLE) SAWMILLS
    - 7.10.1 To facilitate the clearing of land on parcels that are actively being developed, temporary sawmills and stone crushing equipment may be utilized under the following conditions:
      - … they neglected to READ those conditions aloud, but that's moot anyway.
  - The applicant's attorney told you that 7.10's language is evidence that you should allow a stone crushing operation on the GFI property. I completely disagree. Just like the applicant, I spent considerable time with our prior Planner to ensure that I understood the legislative intent of our regulations before presenting to this Commission.

  - **<u>NOTES FROM MEETING WITH MS. HODGE</u>**
  - To support my opinion that 7.10 is not relevant, here is a compilation of summary notes from my discussion with Ms. Hodge last year about 7.10, which are in direct contrast to the applicant's assertion:
    - The key phrase in 7.10 is "actively being developed", as in a building permit has been issued. But there is no permit for a structure to be built in the vicinity of Mt. Decatur.
    - The principal use being applied for is "Excavation" which has its OWN supplemental regulations in Chapter 8.
    - 7.10 is not accessory to excavation as a principal use. If it was, its language would be included in 8.16.
    - And if "Stone crushing and temporary portable sawmills" were its OWN use, it would appear in our use tables as a principal or accessory use, and it would have its own section in Chapter 8, and NOT in Chapter 7.
  - Therefore, the applicant's reference to section 7.10 is irrelevant.

I might overly repeat myself here, but if the proposed operation would blend seamlessly into the surrounding area and if the operation would comply with our regulations, our community would NOT be opposed. But that is simply not the case here.

- **<u>SUMMATION OF EXCAVATION VS. QUARRYING:</u>**
  - Our “excavation” DEFINITION does NOT include the material-altering functions of blasting and rock-crushing.
  - There are at least NINE subsections from 8.16 EXCAVATION that would NEVER have been written if a rock quarry was the intent.
  - Although mentioned in 8.16.I, blasting and rock-crushing are INCIDENTAL to excavation, NOT integral.
  - Quarrying is NOT permitted as either primary or accessory uses in our use tables.
  - 7.10 … stone crushing and sawmills are not permitted uses in our use tables either, not to mention that they aren’t relevant to this application anyway.
  - Lastly, 3.6.D says: “Any use … not expressly permitted by these Regulations as a principal use … or allowable as an accessory use to such a principal use, is prohibited …”.
    - **Quarrying is not expressly permitted; therefore, it is prohibited.**

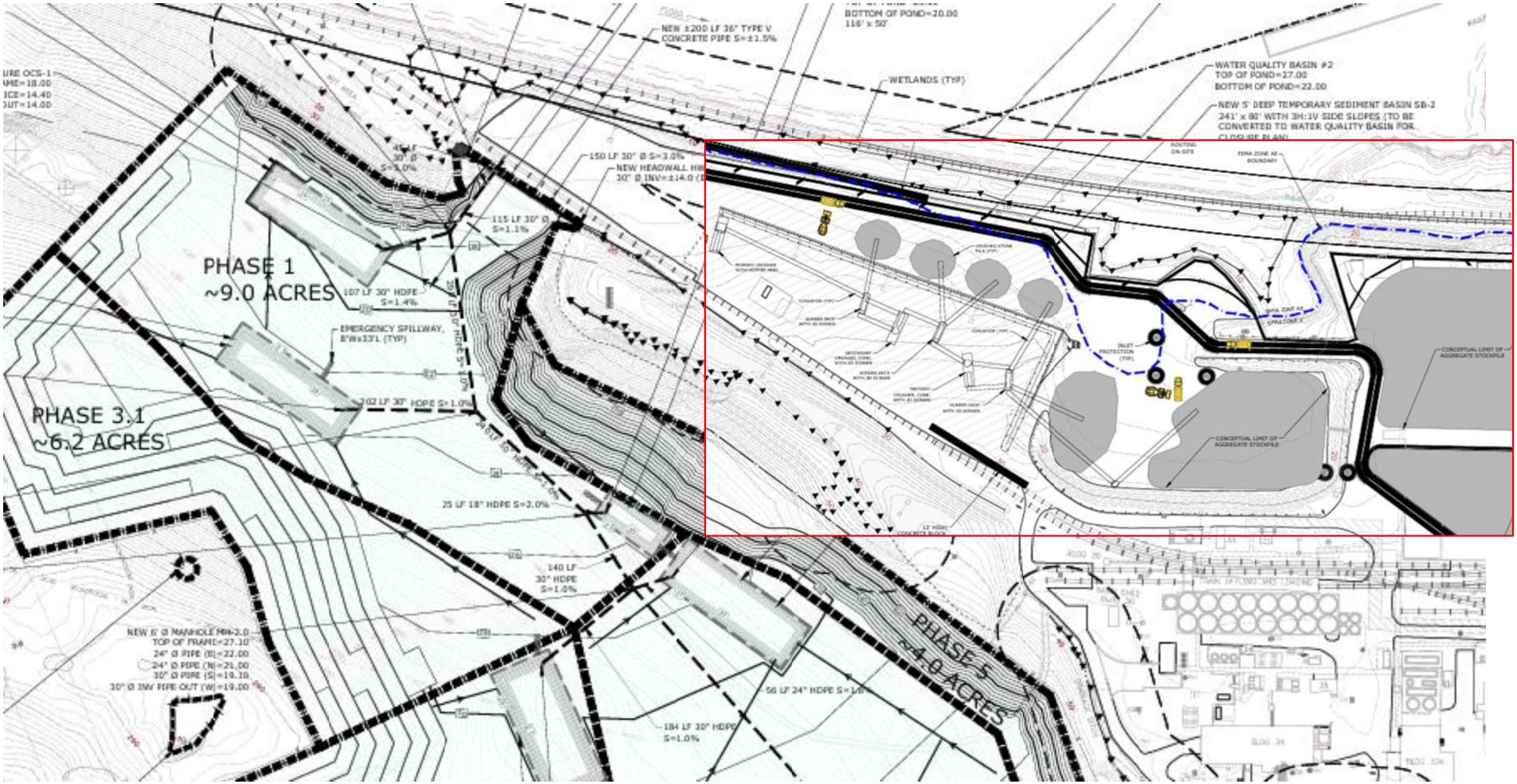
The use being proposed is NOT permittable in our town under ANY circumstances, at least under our current regulations, and this application must be denied.

10-ACRE MAXIMUM:

Here is more detail regarding the exceeded 10-acre maximum discussed previously.

- Please refer to the capped environmental area shown in this illustration. There is an "INTEGRAL" rock-crushing/processing area west of Phase 1, pushing this application over the 10-acre limit.

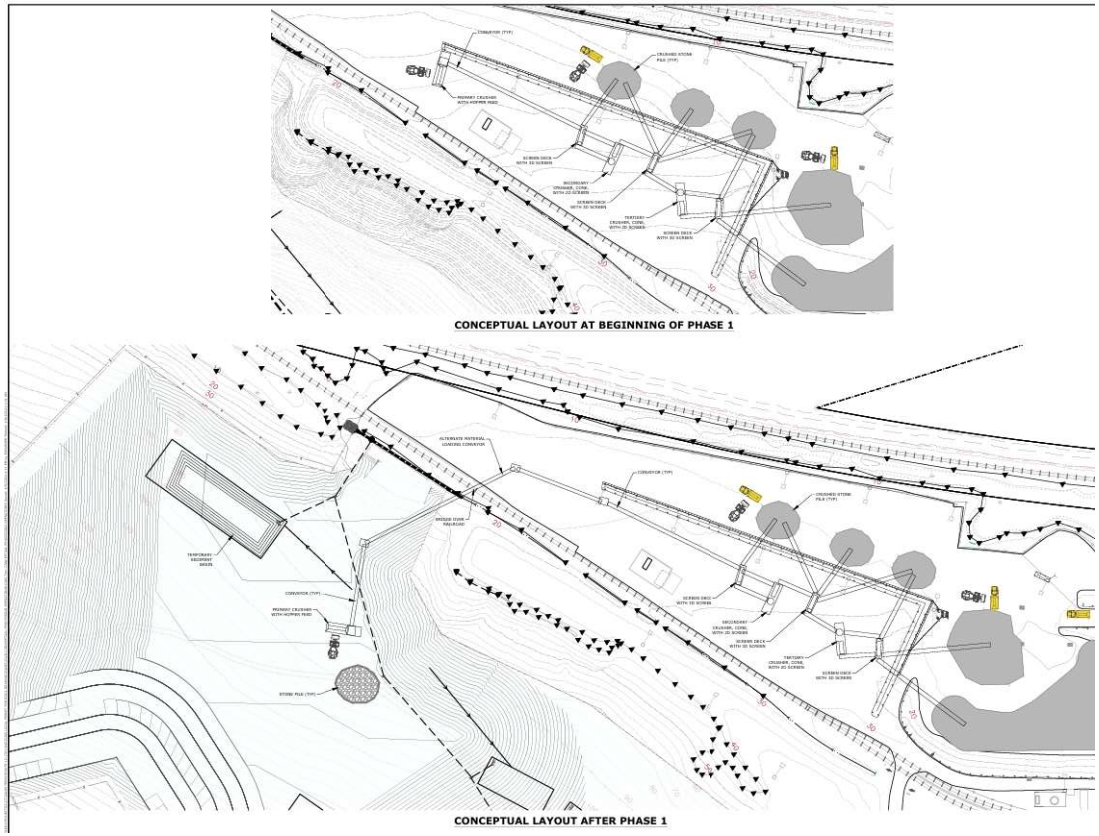
- THE ILLUSTRATION BELOW IS A SECTION FROM PAGE C-12 OVERLAID ONTO PAGE C-6



Portions of this processing operation will remain in this location for all 5 phases!

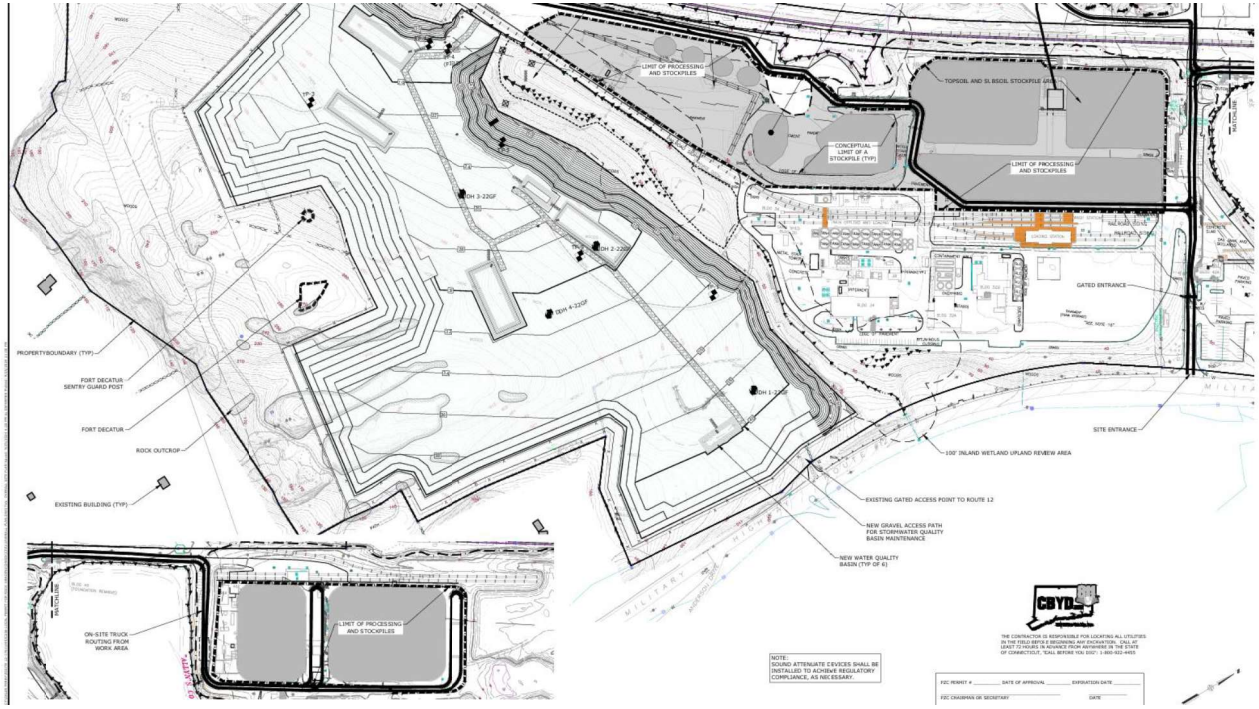
- Here's how it is described in the company's ZCM:
  - "The Processing Operations will initially be set up within the AOC-S1 area to facilitate the first phase of the excavation project. (AOC-S1 is the environmentally capped area). Once the first phase of the excavation is complete, MOST, IF NOT ALL, of the processing will be relocated to the Phase 1 area."

- Well, first of all, "most, if not all" conflicts with what they say next, which is:
  - "Upon completion of the Phase 1 work, the primary crusher equipment will be relocated from the material processing area to the newly stabilized Phase 1 area … The secondary and tertiary crushers will remain at their former location. A new conveyor belt will be installed to move the processed material from the primary crusher to the secondary and tertiary crushers."
    - That matches their original site plan page C-12, shown here.



  - Also, a portion of Phase 5 would apparently be completed simultaneously with Phase 1, adding yet more acreage over the allowed maximum of 10.
  - How can the Phase 1 "active removal area" be PERMANENTLY seeded and stabilized prior to moving on to the next phase if primary crushing would now take place in Phase 1?
  - Benches/shelves … I presume the applicant would use those to access additional phases, but how could they if each phase is stabilized before moving onto the next one. Won't they be driving over the newly planted grass and trees up on those ledges?
    - By the way, HOW exactly would those benches be irrigated?

- **<u>LIMIT OF PROCESSING AND STOCKPILES</u>**
  - Furthermore, on pages C-4 and C-6 of the applicant's revised, 9/25/24 Plan Set, there are areas labeled "Limit of Processing and Stockpiles" which are located OUTSIDE of the main processing area, adding even MORE acres over the 10-acre limit.
  - What exactly will occur in these "processing and stockpiles" locations?
  - One of these areas is NORTH OF ALLYN POND in the company's "laydown area" which is already reserved under the existing Special Permit, related to outdoor storage for repair and maintenance building(s). The use of this area was not permitted for aggregate and therefore this represents a conflict with the current application. Is the company abandoning that Special Permit?
  - Also, this represents a change from the original application, different than what was discussed with Inland Wetlands at the time. Shouldn't this application go back to IWWC?
  - And I don't recall that these processing and stockpile locations were included in the air quality model. Or the sound study.



I will continue to argue that the rock processing operation being proposed is not permittable in our town and is certainly not INTEGRAL to excavation, requiring that this application be denied. But even if we allow that bastardization of our zoning language, the application must STILL be denied because it violates the 10-acre rule covered in 8.16.N.5.

DUST, POLLUTION, SILTATION, ETC.

- **Regarding dust and similar concerns, I will cover:**
  - **Our specific regulatory language in 8.16.D.2.**
  - **The Verdantas study.**
  - **Comments from the applicant's ZCM.**
  - **Dust control features from sample machinery.**
  - **My discussions with dust suppression industry professionals.**
  - **Related regulation 9.2.C.1.**
  - **The "slipstream effect".**
  - **My personal familiarity with pulmonary fibrosis.**

- **8.16.D.2**

EXCAVATION, MAJOR

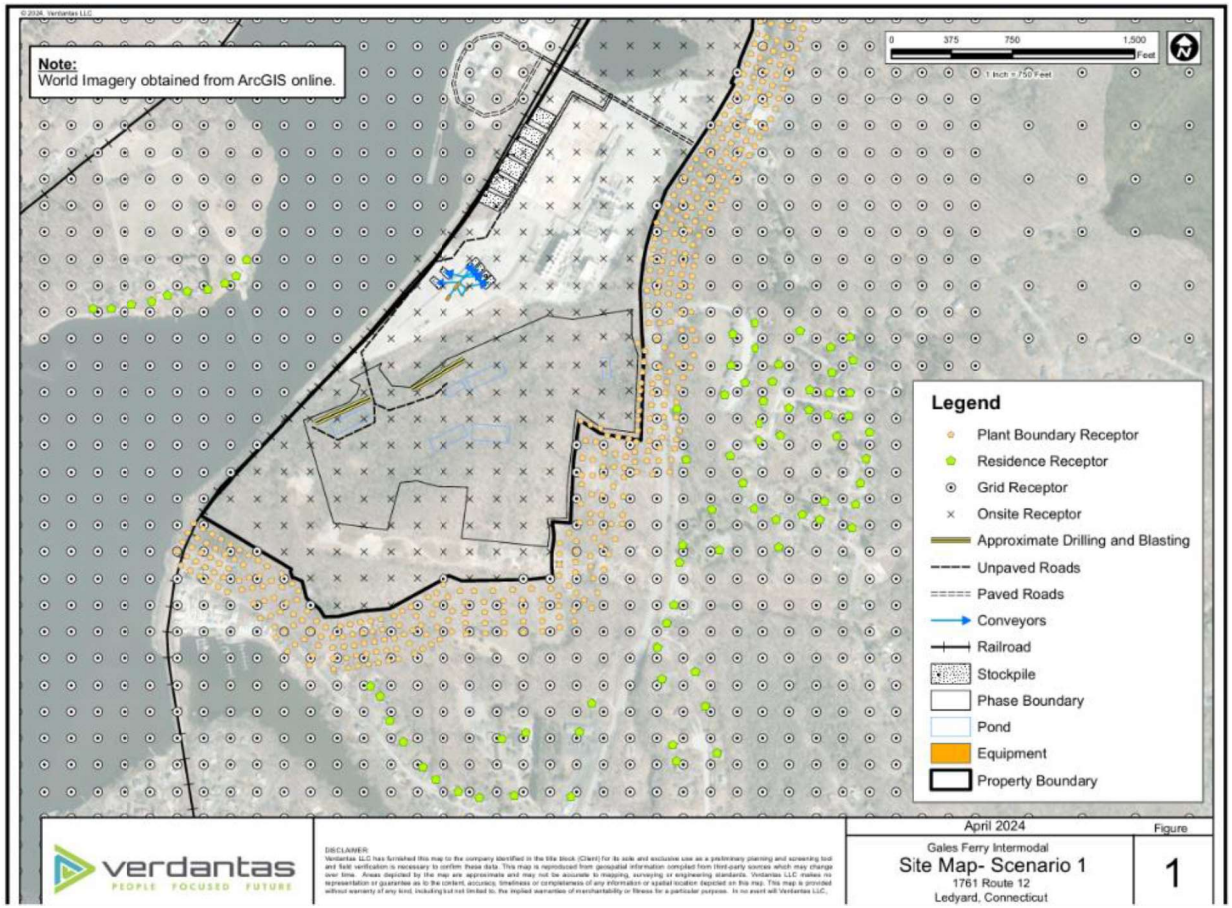
- **8.16.D.2 The purpose of these regulations is to ensure the following: the work will not be a source of dust, pollution, and/or siltation.**

DEFINITIONS:

- "Pollution" = the contamination of air, water, or earth by harmful substances.
- "Contamination" = making something impure from mixture or contact with a foreign substance.

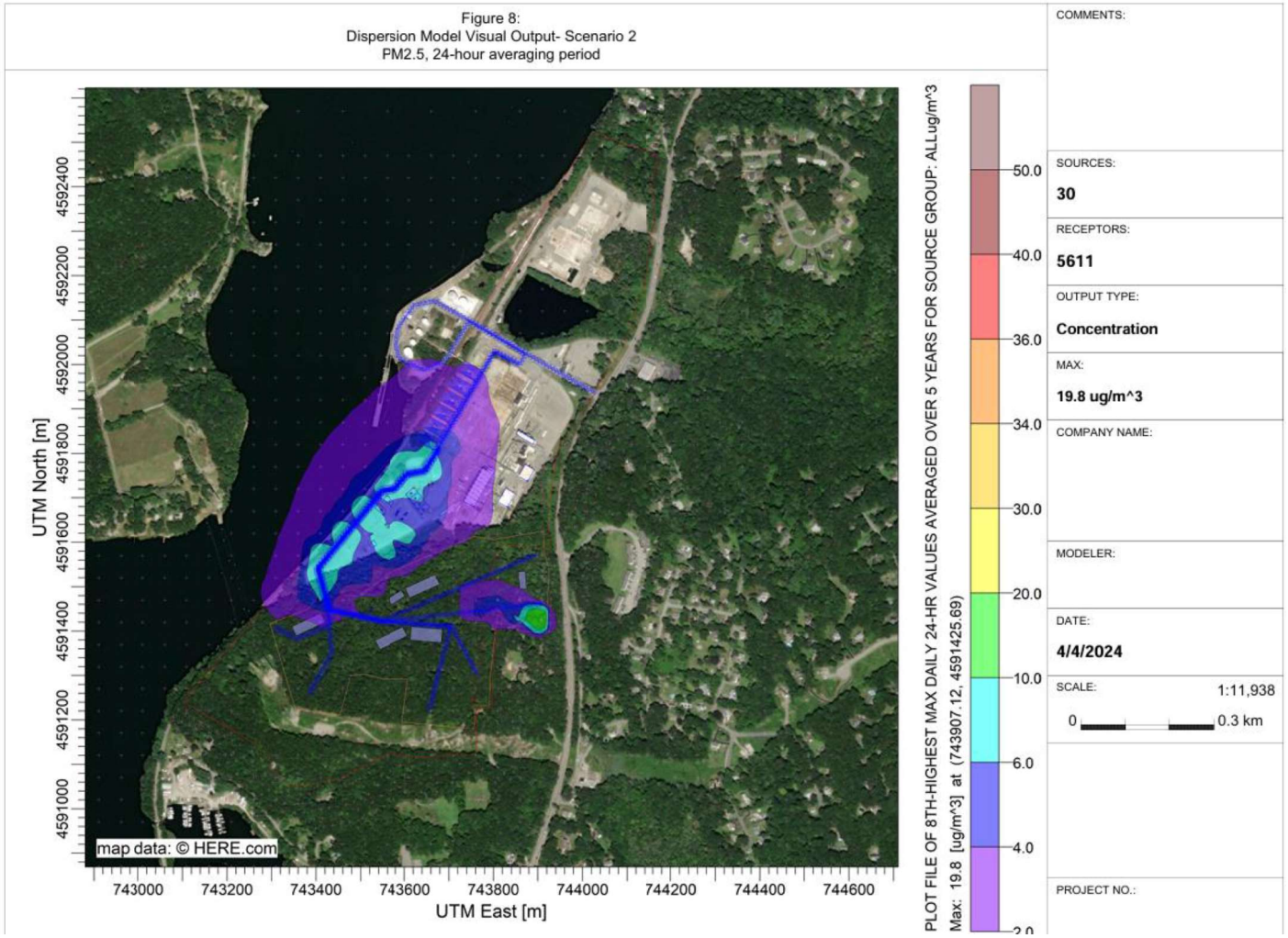
  - 8.16.D.2 does not say that "some" dust is allowable. It does NOT say that the applicant, the Commission, and the community must argue over exactly how much dust is allowable. No, it says that "the work will not be a source of dust", period. So, why would the language in 8.16 be so restrictive about the creation of any dust, when every rock quarry creates dust?
  - And why would 8.16.D.2 prohibit ANY pollution (which is simply defined as "the contamination of air, water, or earth by harmful substances"), when every rock quarry creates silica dust (a Group 1 carcinogen), SOME of which will inevitably contaminate the surrounding air, water, and earth … not to mention human health?
  - Clearly, 8.16.D.2 was never intended to be used to approve a rock quarry.
  - 8.16.D.2 will absolutely be violated, and this permit should be denied.

- **<u>The Verdantas study.</u>**
  - Note that the results of the Verdantas study say this: “The values listed as “Maximum Impact at Property Boundary” … demonstrate that the Facility particulate concentrations at the property boundary would comply with the NAAQS.”
    - But where in our regulations does it say that dust/pollution is acceptable as long as it doesn’t leave the property?
    - There are American Styrenics employees working on site who would be exposed to elevated dust levels WITHIN the property boundaries.



- And notice that the Verdantas model doesn’t appear to include “plant boundary receptors” outside the western border of the property. Is dust migrating into the river not of critical concern?
- Also please note that the study does not appear to account for dust generated by rocks being dumped onto the paved surface near the pier or dropped into barges by the Sennebogen material handler’s clamshell bucket!
- These are key dust sources that were not even entered into the model!!!

- This image is also from the Verdantas study. It shows dust encroaching into the river, but I don't recall Verdantas speaking of the impact of dust on the river's ecology or wildlife?



- **<u>From the Zoning Compliance Manual.</u>**
  - Next, from the ZCM … "Backfilling of the excavations will be completed, utilizing a combination of the previously stockpiled overburden material, stone dust generated from the processing operations." Our regulations don't say, "the work will not be a source of dust … except for stone dust"! And … where will the stone dust be stockpiled? What is the makeup of the stone dust? What volume of stone dust will be generated? So many open questions.

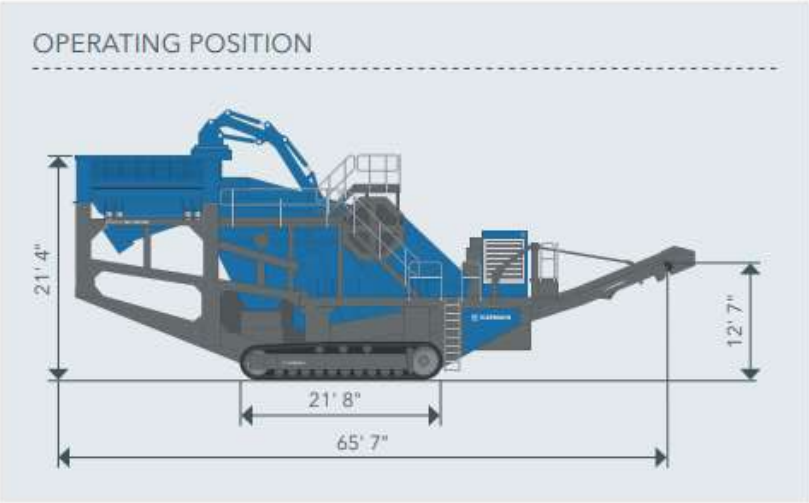
- **Sample machinery dust control features.**
  - If dust was a minor concern, then why would this proposed machinery include a control cabinet with "double dust encapsulation"?
    - Also note that the machine has a "spray system for dust reduction". Not dust elimination, but REDUCTION.

STANDARD FEATURES

Feed hopper / Frequency-controlled vibrating feeder / fill level monitor at crusher inlet / Radio remote control / PLC control with LCD display / Control cabinet, with double dust encapsulation, lockable, suspended and with over pressure system / Lighting

OPTIONS

Side discharge conveyor / Electromagnetic separator, permanent magnet, magnet preparation / External power supply / Extended crusher discharge conveyor / Rock chisel / Preparation for installation of belt scale / Belt covers (aluminium, steel) / Spray system for dust reduction



- **My discussions with industry professionals.**
  - At the end of last year and early this year, I spoke with several people in the dust suppression business. One worked for a manufacturer of dust suppression equipment. One worked for a manufacturer of various quarry equipment including dust suppression equipment. A third was a quarry-dust-suppression consultant.
    - All three of them said to me that it is impossible to suppress 100% of quarry dust, especially silica dust. They all indicated that the likelihood of dust control goes down the more exposed and windier a site might be. Comments included "just use your common sense" … "picture mixing a bag of cement on a windy day" … and so on.
    - I find it puzzling that I could literally find no one in the dust suppression business who said that quarry dust can be 100% controlled, yet the applicant's experts want us to believe that there's "nothing to see here".
    - If you haven't spent any time down by the river in that area, it might be worth a quick field trip. I used to live just north of the site and the wind is incredible! Please try to imagine controlling dust in that environment.
    - And if everything is going to be just fine, please ask yourselves why there are so many newspaper articles about elevated health problems near quarries?

- **Related regulation 9.2.C.1.**

SITE DEVELOPMENT STANDARDS - SUSTAINABLE DEVELOPMENT
- Performance Standards

- **9.2.C.1**

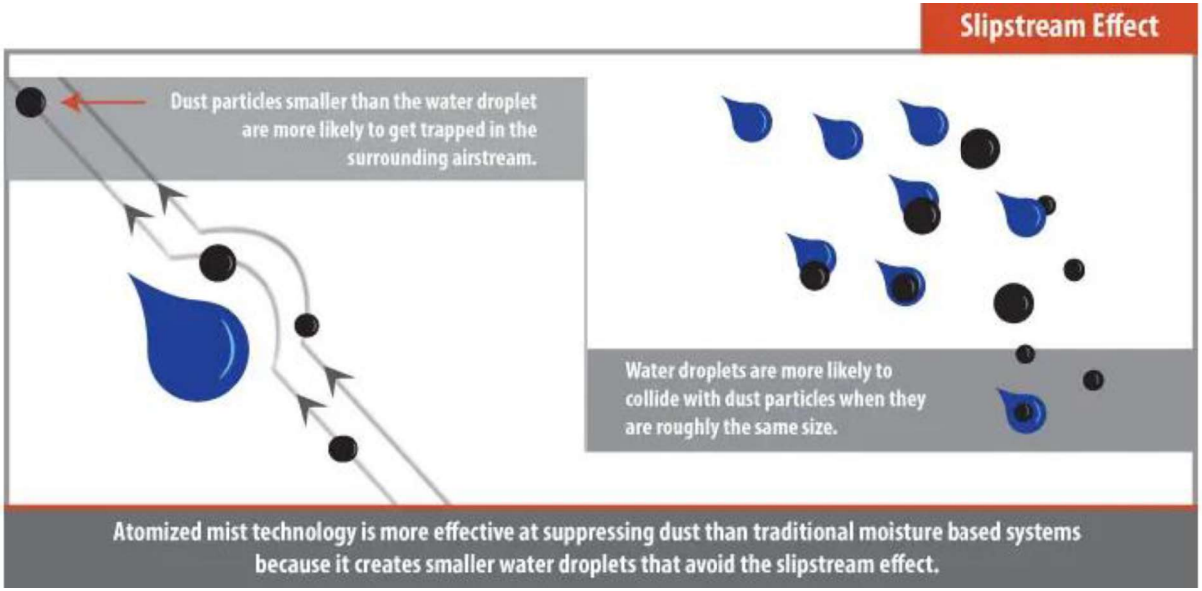
No dust, dirt, fly ash or smoke shall be emitted into the air so as to *endanger* the public health, safety or general *welfare*, or to decrease the value or enjoyment of other property or to constitute an *objectionable* source of air pollution.

DEFINITIONS:

- **"Welfare" = the health, happiness, or fortunes of a person or group; well-being.**
- **"Objectionable" = arousing distaste, opposition, or protest; undesirable, unpleasant, or offensive.**
- **"Offensive" = causing anyone to feel hurt, upset, angry, resentful.**

  - More about dust in 9.2.C.1
    - What this language means is that NO dust (dirt, fly ash, or smoke) shall be emitted into the air so as to:
      - Put public health at risk.
      - Decrease public happiness.
      - Decrease the enjoyment of other property.
      - Contaminate the air to a degree that it arouses distaste, opposition, or protest, or is undesirable, unpleasant, or causes anyone to feel hurt, upset, angry, or resentful.
    - From silica dust alone, every part of 9.2.C.1 would be violated by the proposed quarry and therefore this application must be denied.

- **<u>The slipstream effect.</u>**
  - One other tidbit … the applicant's experts tended to discuss "misting" and "watering" in a very general way, giving the impression that, as long as you see water being sprayed, dust will be adequately controlled.
  - This is an illustration shared with me by one of the dust-suppression people I spoke with, covering what's called the "slipstream effect". The gist of it is that unless the water droplets are roughly the same size as the dust particles in question, dust particles are more likely to get trapped in the surrounding airstream, in some cases giving the dust more LIFT!!



    - So, the mist must be atomized to effectively suppress silica dust. VERY IMPORTANT.

- **<u>Personal familiarity with pulmonary fibrosis.</u>**
  - One more thing about silica dust … our expert, Phil Fiore, said this during his past testimony: "Exposure to silica dust particles causes permanent lung scarring, called pulmonary fibrosis." This is commonly known.
    - If anyone would like, I'll put you in touch with my wife, who HAS pulmonary fibrosis. I'll let her explain what it's like to spend your life with an oxygen canula in your nose all day long. Oh, at night, too! I'll let her explain the elaborate prescription protocols that she must follow to try and minimize the disease's progression. I'll let her tell you what it's like to always be short of breath.
    - And my wife is "lucky" because the cause of her pulmonary fibrosis is known (it's secondary to another disease). When you have idiopathic pulmonary fibrosis (IPF), which means that the cause of your fibrosis has NOT been conclusively determined, life expectancy is 2-5 years.
    - So, trust me, you don't want any silica dust in your lungs. None at all!

- **<u>Conclusions about dust, pollution, siltation, etc.</u>**
  - This application will violate section 8.16.D.2 which prohibits the generation of dust, pollution, and siltation.
  - The Verdantas study did not include “plant boundary receptors” on the river side of the property, and it also omitted key dust sources, namely material movement right at the pier, making the study less than complete and reliable.
  - The ZCM references another prohibited source of dust, stone dust, but insufficient information about stone dust is included in the application.
  - Sample machinery has “double dust encapsulation” and dust “mitigation” (NOT elimination) features.
  - My discussions with dust suppression industry professionals concluded that it is impossible to control 100% of quarry dust, especially silica dust.
  - Related regulation 9.2.C.1 will also be clearly violated.
  - The “slipstream effect” raises concerns that proposed water suppression will effectively control silica dust.
  - Silica exposure can lead to pulmonary fibrosis which is an irreversible lung disease.

  - To conclude my discussion about dust, 8.16 was not written to permit a rock quarry operation. A typical “excavation” job, as anticipated by our regulations, would not be harmful to the environment.
  - This proposed quarry would absolutely be a source of dust, pollution, and/or siltation (according to expert Steve Trinkaus), therefore 8.16.D.2 would be violated, and this application must be denied.

NOISE

- **Regarding noise, I will cover:**
  - **Our specific regulatory language in 9.2.C.3.**
  - **Commentary on the applicant's sound study.**
  - **The applicant's significant omission of information for this Commission.**

- **<u>9.2.C.3.</u>**
  - First, this application is NOT for "the construction or demolition of buildings or other structures". Therefore, our regulations prohibit ANY noise beyond a property border that **<u>most people</u>** would deem not reasonable in terms of its volume, intermittence, frequency, or shrillness. This application does not overcome that hurdle.

SITE DEVELOPMENT STANDARDS

- **Performance Standards**
  - **9.2.C.3**
    - **With the exception of … noise necessarily involved in the construction or demolition of buildings or other structures** *(which this is not)***, no noise which is unreasonable in volume, intermittence, frequency, or shrillness shall be transmitted beyond the boundaries of the lot on which it originates.**

DEFINITIONS:

- **"Unreasonable" = anything beyond what would be considered common sense.**
- **"Common sense" = perception that agrees with the generality of people.**

- **<u>The applicant's sound study.</u>**
  - Here is text from the applicant's sound study:

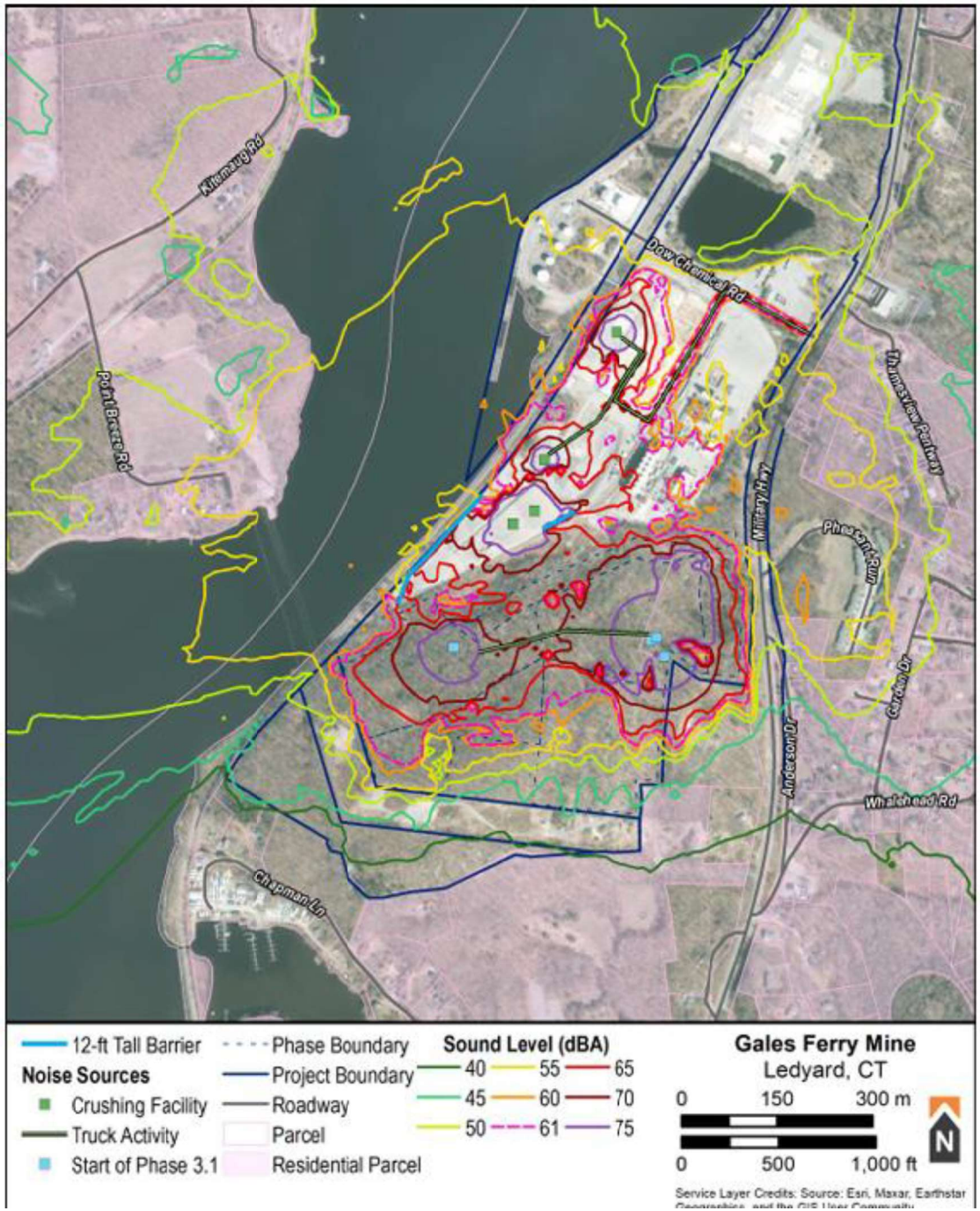
We assumed the following equipment in the extraction area would be operating at maximum capacity simultaneously:

- A crushing plant, containing one jaw crusher, two cone crushers and three screening decks, along with conveyance and loaders.[3] After Phase 1, the primary jaw crusher is located within the excavation area.
- At the stockpiles, a loader loading the crusher and moving to and from the stockpiles,
- A tracked top-hammer rock drill. In each modeled phase, the drill was placed at the highest representative location within the phase.
- At the floor of the excavation, a loader, excavator, and an excavator mounted rock hammer.
- Dump trucks on the internal roads.

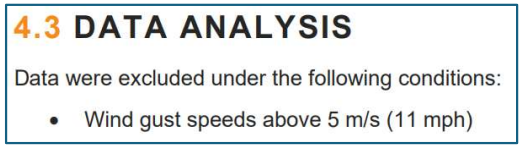
- The application elsewhere states that “the vast bulk of the rock and processed materials will be exported via barge”.
- Please note that the sound study appears to have omitted noise at the pier caused by their Sennebogan material handler’s clamshell bucket dumping rocks into barges.
- Notice in this illustration that there is no noise “epicenter” at the pier.
- The dropping of rocks into barges, which is RIGHT ON THE PROPERTY line, is not going to exceed 61db??? Of course it will!
- This is another example where key data was not included in a model, making the model’s conclusions insufficient and unreliable.

- I also found no data in the sound study about noise generated by the clearcutting of trees, another significant noise source that appears to have been omitted.

- And don’t forget the “processing and stockpiles” north of Allyn Pond. Those don’t appear to have been included in the sound study, either.



- And what about this excerpt? This is probably a stupid question, but does this mean that noise regulations will only be met if it isn't windy?



- Sorry, one last example from their study conclusions:

> 6. The results show that all residential properties are modeled to have project sound levels at or below Connecticut's 61 dBA daytime residential noise limit.

  - But the 61 dBA limit is at the PROPERTY LINE, not at "all residential properties".
  - Maybe it's a small thing since they'll clearly violate the 61 dBA anyway, but discussing noise limits at residential property locations as opposed to limits at GFI's property line is just another example of flawed language.

- **<u>Significant omission by the applicant.</u>**
  - I believe noise was the topic in a prior hearing when Ms. Cobb expressed concern for the people living at 1721 Rt. 12. The applicant's attorney quickly jumped up to the mic and said, "Gales Ferry [Intermodal] owns that property now", and then sat down. After that, there was no further discussion.
  - Well, my understanding is that Ms. Cobb's concerns were, and STILL ARE, legitimate. To my knowledge, the Cerveney's still live there as tenants and are under no obligation to leave for the foreseeable future. Their quality of life is VERY MUCH something to be protected. That they've sold the property to Cashman is irrelevant!
  - But instead of receiving a thorough, full response to her question, Ms. Cobb's concerns were blown off without the applicant disclosing ALL pertinent facts.
  - Contrary to the applicant's claim that community opposition is based upon unfounded fears, I would submit that this type of flawed communication is, instead, what "fuels opposition".

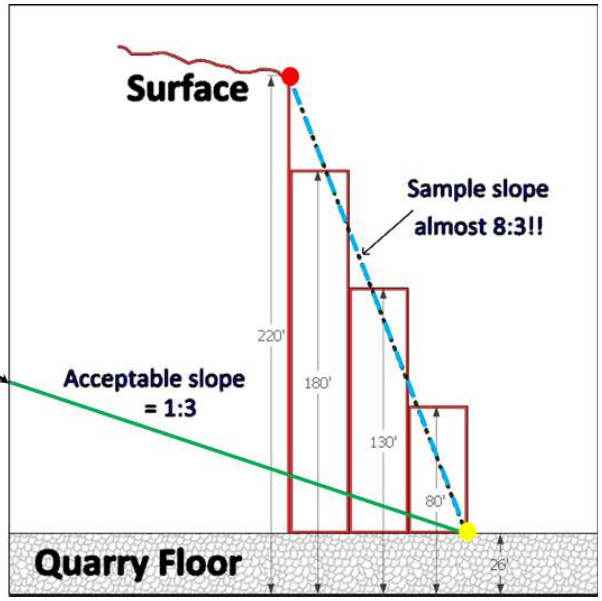
- **<u>Noise conclusions.</u>**
  - This application will generate noise that MOST PEOPLE would deem unreasonable. Ref. 9.2.C.3.
  - The applicant's sound study omitted a significant noise source located RIGHT ON THE PROPERTY LINE.
  - And the applicant was not fully forthcoming regarding the closest residents to the proposed quarry, AND the sound study excluded the Cerveney's home in its analysis.
  - For these reasons alone, this application must be denied.

QUARRY BANKS SLOPE VIOLATION

- **Regarding the limitations on excavated slopes, I will cover:**
  - **Our specific regulatory language in regulations 8.16.N.4 and related regulation 8.16.N.3.**
  - **The definition and an illustration of a quarry bank.**
  - **The applicant's Exhibit 73.**
  - **CLA Engineers peer review.**
  - **Public hearings regarding regulatory language changes.**

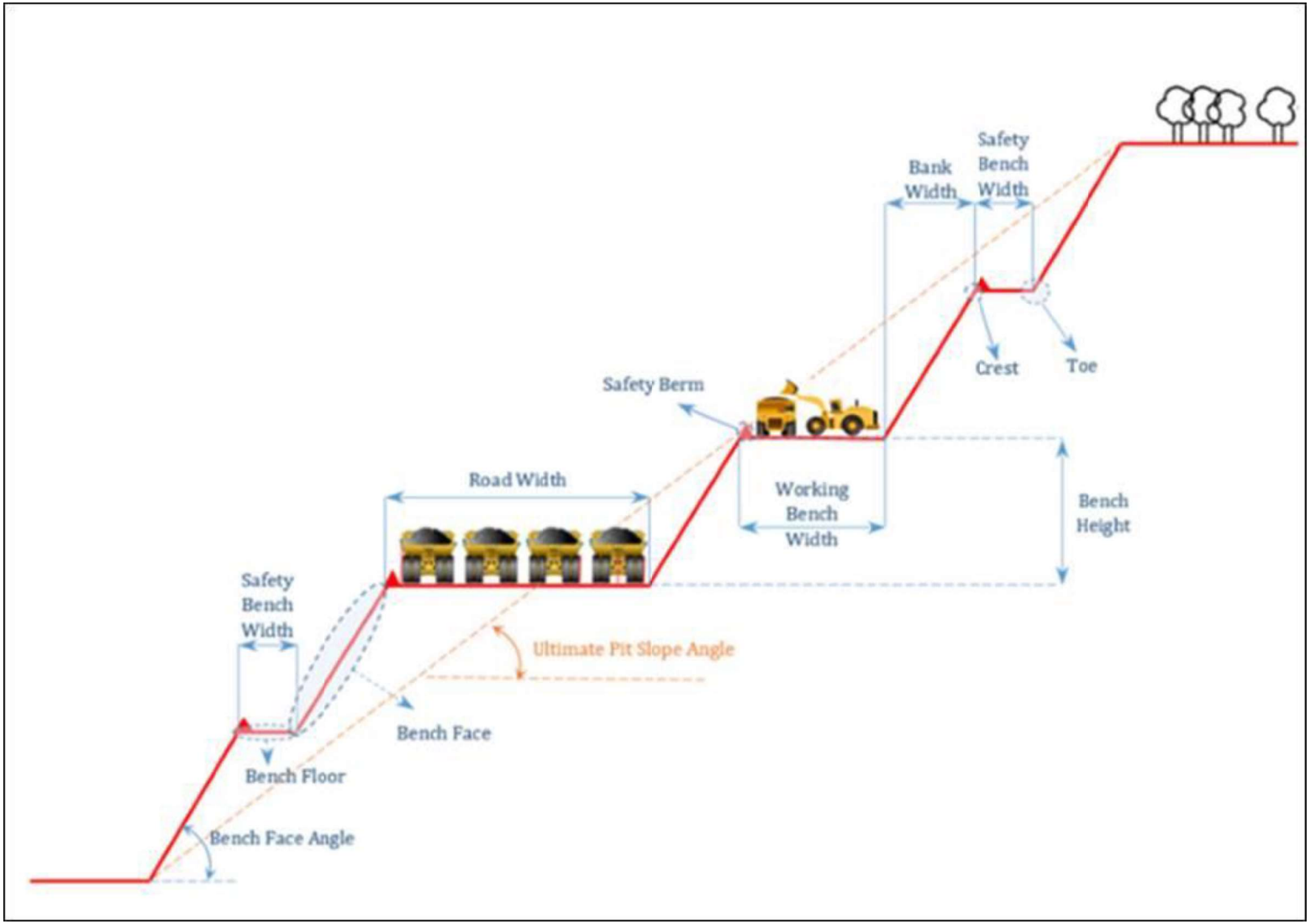
- **<u>8.16.N.4</u>**

EXCAVATION, MAJOR - Operations
- **8.16.N.4**
  - **Upon completion of operations, no bank shall exceed a slope of one (1) foot vertical rise in three (3) feet of horizontal distance.**



  - Note that 8.16.N.4 does NOT say "except for banks consisting of rock". No, it says "no bank", period. It is not qualified in any way.
    - The illustration to the right is a sample cross section from the applicant's site plans, clearly showing that the 1:3 slope requirement will be violated.
  - Related section 8.16.N.3 talks about an excavation's required distance from property lines and highway property, saying, "… such distances to be measured from the top of the BANK."
  - Here is a common definition of a quarry BANK for reference: The angle, measured in degrees of deviation from the horizontal, at which the earthy or rock material will stand in a terracelike cut in a mine or quarry.
  - The company themselves have referred to the sides of their proposed quarry as "embankments", for example, saying, "… sound will be buffered … to the east by the cut EMBANKMENT down into the finished area from Route 12."

- **<u>Quarry bank illustration.</u>**
  - And here's a sample illustration of a quarry bank and its components:



    - Note the "ultimate pit slope angle".
  - Clearly the terracelike cut being proposed by the applicant qualifies as a "bank" as called out in 8.16.N.4.

- **<u>Exhibit 73</u>**
  - Related to this topic, the applicant introduced Exhibit 73 into the record, purported to be a copy of an email from Attorney Heller to Cashman VP Alan Perrault after Mr. Heller apparently met with our prior Planner, Juliet Hodge. One of the two topics referenced is section 8.16.N.4.
    - In his email, the applicant claimed that "the Planner does not interpret the provisions of proposed Section 8.16.N.4 to prohibit a vertical rock cut as long as it is stable" and "She interprets the language to apply solely to slopes that are constructed of surficial material, and not rock."
  - Like Mr. Heller, I had many conversations with Ms. Hodge about our regulations. Regarding 8.16.N.4, she told ME that banks consisting of rock were NOT intended to be excluded from her regulation.
    - I even think I emailed my wife about it at the time. I should dig up that email and submit it as an exhibit!
  - Kidding aside, in submitting Exhibit 73, Mr. Heller is asking you to prioritize his hearsay email over the ACTUAL LANGUAGE in our own regulations. But of course, you cannot do that, any more than you could take my word for it. Unless Mr. Heller's or my understanding was memorialized in writing into the regulations themselves, they mean nothing.
  - That said, who should you believe? Me or Mr. Heller. The answer is NEITHER OF US.
  - Please note that Ms. Hodge was not cc'd on the email shown in Exhibit 73. If she HAD been cc'd, she would have taken exception to Mr. Heller's interpretation of 8.16.N.4. Why am I so confident? Because Ms. Hodge, IN HER OWN WORDS, in her 1/11/24 planner comments, wrote this:
    - The use being applied for is "Excavation Major." However, it is much more like a rock quarry than anything. … **<u>The 3 to 1 slope required in 8.16 N(4) cannot realistically be met.</u>** These regulations are really meant for typical excavation operations (sand and gravel) NOT ROCK QUARRYING. The applicant is attempting to deal with the slope issue and bank stabilization by using benches. But even with these benches, the current site plan shows the slope of at least 75% in some places (175' horizontal to 230' vertical). To achieve a 3 to 1 slope (3' horizontal to 1' vertical) for each 25-foot horizontal bank, the vertical rise could only be about 16 feet [*For the record, it's actually 8'4"*]. That is not the case with this application."
  - Ms. Hodge's WRITTEN words indicate that Mr. Heller did not accurately interpret her intent regarding 8.16.N.4.
  - AND … by entering Exhibit 73 into the record, the applicant is inadvertently admitting the obvious: upon completion of operations, their quarry banks WILL exceed a slope of one (1) foot vertical rise in three (3) feet of horizontal distance. Their OWN site plans show this, and for this reason alone, this application must be denied. This is a black & white issue.

- **CLA peer review.**
  - Regarding the CLA Engineers "peer review", the very first comment was that "Benching of the rock face is a common practice for rock excavations. In our opinion, the rock face would not constitute a "bank" based on 8.16.N.4 of the Zoning Regulations and would not be required to be graded to a 3:1 slope."
    - About that comment, I would ask:
      - Did they also have conversations with Ms. Hodge about this matter?
      - Can this random "opinion" override Ms. Hodge's own WRITTEN comments about her legislative intent, any more than could hypothetical understandings or emails from me or Mr. Heller?
      - And why would CLA Engineers ask us to redefine the generally understood definition of a quarry "bank"?
      - And, most importantly, why would a civil engineering firm go out of their way to try and interpret this SPECIFIC zoning regulation, seemingly out of place relative to other technical opinions presented in their report? Very odd.
    - I submit that their opinion on this regulation is not credible nor pertinent.
    - And, for what it's worth, relative to the MASSIVE amount of engineering data supplied by the applicant, I question whether a 3-page summary of findings is sufficient to qualify as a legitimate, substantive peer review.

- **Participation in public hearings about regulatory language changes.**
  - At the risk of beating this topic to death, in a prior public hearing, right after he entered Exhibit 73 into the record, the applicant's attorney explained why they declined to participate in the 2022 public hearings about zoning regulations language changes.
    - He said that the applicant relied on the drafter's interpretation of that regulation in making a decision not to appear before your commission in the public hearing process on the adoption of the regulations …
  - In other words, on the very same night that our community was chastised for not participating in the 2022 zoning regulation changes, the applicant then proceeded to tell this commission that they decided CONSCIOUSLY to NOT participate in those public hearings because of some vague interpretation of what they THOUGHT our Planner's intent was at the time.

- **<u>Quarry bank slope conclusions.</u>**
  - Language in regulation 8.16.N.4 does NOT make an exception for banks consisting of rock.
  - “Quarry bank” has a common definition, and the slopes to be created by this proposed operation were even referred to as “embankments” by the applicant.
  - We supplied a quarry bank illustration clearly indicating the component parts of a quarry and how to calculate a quarry’s “ultimate pit slope angle”.
  - Exhibit 73 submitted by the applicant is improper and irrelevant, not to mention the fact that its contents conflict with the WRITTEN legislative intent by our former Planner, Ms. Hodge.
  - CLA Engineers peer review oddly opined about this specific regulation 8.16.N.4. That aside, their opinion has no merit, and it also conflicts with our regulations author’s written legislative intent.
  - The applicant consciously decided to NOT participate in the 2022 regulatory language public hearings, the only time when their interpretation of our regulations might have been appropriate.
  - In summary, the applicant’s quarry banks WILL exceed the 1:3 slope requirement and this application must be denied.

VIBRATIONS

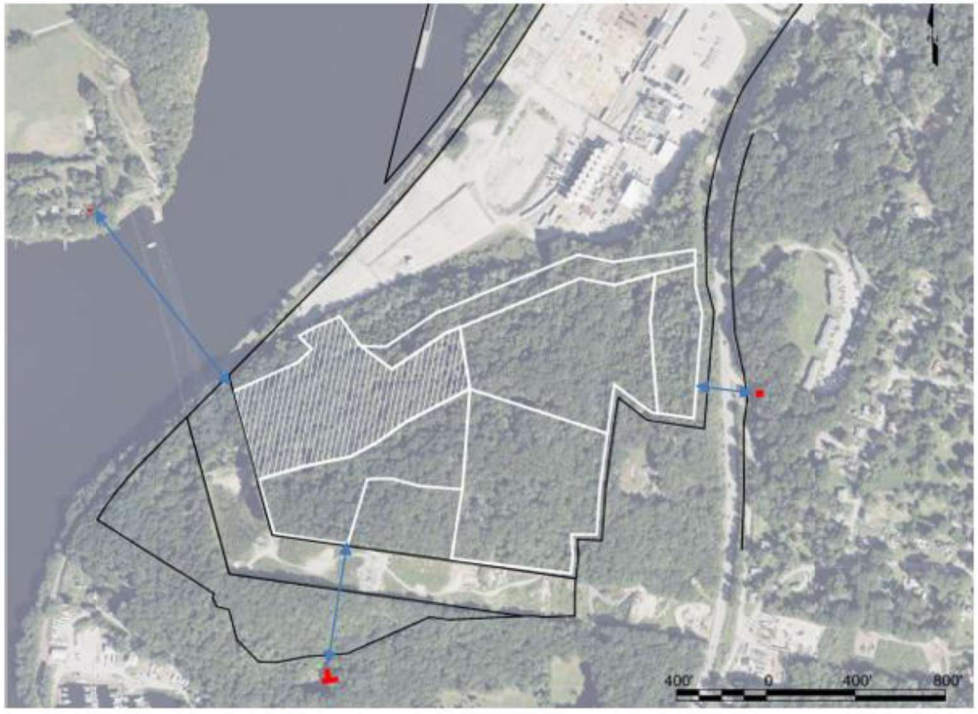
SITE DEVELOPMENT STANDARDS - SUSTAINABLE DEVELOPMENT
- Performance Standards

- **9.2.C.4**
  - **With the exception of vibration necessarily involved in the construction or demolition of buildings or other structures** *(which this is not)*, **no vibration shall be transmitted beyond the boundaries of the lot on which it originates.**

- First, note that this language does not say "no vibration except for blasting". Nor is it qualified in any other way, other than construction related. No … it says no vibration AT ALL shall leave the lot on which it originates.
- You might ask why this language in 9.2.C.4 is so restrictive. The answer is because our zoning regulations were not written to approve a rock quarry in our town.
- The applicant has brought forth numerous experts, but what is striking to me is that few, if any, of the applicant's experts have tied their testimony back to the EXACT LANGUAGE in our regulations.
- For example, their blasting expert discussed, in great detail, things like blasting protocols, the timing of blasts down to milliseconds, the allowable frequency of vibrations, pre-blast home surveys, and the like.
- BUT … did the applicant's blasting expert testify that no blasting vibrations would leave the property? No, he absolutely did NOT! And, of course, blasting is not the only cause of vibrations in a quarry operation … more on that later.
- And don't forget air overpressure? That, too, is classified as a "vibration".
- So, the applicant must do two things, 1) claim that NO VIBRATION will leave the property, and then 2) satisfy the burden of proof that this assertion is valid. They have done neither. They have not met the requirements of section 9.2.C.4, and this is yet another reason why you must deny this application.

- While we're on the subject, please see this illustration from Sauls Seismic's vibration impact analysis:

The closest locations were determined to be 22 Anderson Drive (east), 40 Chapman Lane (south) and 89 Point Breeze Road (west) as indicated in the aerial image below.



- Please note that, once again, the closest property to where the blasting would occur, where Paul and Chrissy Cerveney STILL live, has been omitted from this analysis! Does the vibration expert believe that Paul and Chrissy don't need running water simply because they're now renters?
- I submit that this study is incomplete and not credible because it neglected to include the closest property whose well is barely 100 feet from the nearest quarrying location.

BALDWIN HILL

- **In this section I will discuss many significant differences between Baldwin Hill's approved operation vs. what is being proposed at GFI. I will address the applicant's inaccurate claim of inconsistency in our regulations. And I will cite pertinent testimony from the Baldwin Hill public hearings.**

- **<u>DIFFERENCES BETWEEN BH AND GFI</u>**
  - First, here is a brief list of significant differences between Baldwin Hill and GFI:
    - GFI has many more residential abutters on all 4 sides of its property,
    - GFI would be a new, 40-acre quarry vs. a 7-acre expansion of an existing operation,
    - GFI would move more than 10 times the amount of earth,
    - The topography drop at GFI would be roughly 3 times as high,
    - GFI's quarry might destroy historic artifacts,
    - GFI's quarry would be near a village listed on the National Historic Register,
    - GFI's property abuts the Thames River,
    - GFI is an exposed site with significant winds,
    - GFI's ugly quarry would be forever exposed to every driver, boater, and some homeowners, forever.
    - And lastly, GFI's duration is estimated to be 10 years.

- **<u>INVALID CLAIM OF INCONSISTENCY IN OUR REGULATIONS</u>**
  - Next, in trying to make the Baldwin Hill approval relevant, the applicant claimed that various sections of our regulations are inconsistent when it comes to vibrations, therefore creating "probative evidence" regarding whether this Commission has consistently applied our regulations.
  - But the sections referenced by the applicant are NOT inconsistent nor are they in conflict with each other:
    - 9.2.C **Performance Standards**: Uses shall be designed to minimize any injury or nuisance to nearby premises by reason of noise, vibration, radiation, fire and explosive hazard, electromagnetic interference, humidity, heat, glare, and other physical impacts that may be caused by the use.
      - Ok … the overriding paragraph of performance standards.
    - 9.2.C.4 With the exception of vibration necessarily involved in the construction or demolition of buildings or other structures, no vibration shall be transmitted beyond the boundaries of the lot on which it originates.

    - Please note that 9.2.C contains SIX subsections. Each of them ELABORATES and CLARIFIES what is meant by the summary language in section 9.2.C.
        - 9.2.C.1 elaborates on dust, dirt, fly ash, smoke.
        - 9.2.C.2 … odors, fumes, gases.
        - 9.2.C.3 … noise.
        - 9.2.C.4 … vibrations.
        - 9.2.C.5 … glare and radiant heat.
        - 9.2.C.6 … fire and explosion hazards.
    - Just like these other five sections, 9.2.C.4 does not CONFLICT with summary section 9.2.C as the applicant would have you believe. No, it simply CLARIFIES how to regulate vibration.
- Next, 8.16.I The use of explosive devices and rock-crushing equipment may be limited as a condition of the permit.
    - 8.16.I relates DIRECTLY back to 9.2.C.4 … when would you LIMIT the use of explosive devices and rock-crushing equipment? When vibration would leave the property on which it originated.
    - This is NOT a conflict! It is simply a clarifying CONDITION of operations.
- Lastly 11.3.4.C … the proposed uses and structures would be in harmony with the appropriate and orderly development of the Zoning District in which they are proposed to be situated, and that the use(s) would not be noxious, offensive, or detrimental to the area by reason of odors, fumes, dust, noise, vibrations, appearance, or other similar reasons.
    - This section directly echoes 9.2.C, Performance Standards. Therefore, it is also consistent with the other regulations being discussed.
- Mr. Heller claimed that a literal interpretation of 9.2.C.4 would prohibit you from blasting ANYWHERE in town for ANY reason, listing a septic system as one example.
    - First … are we really trying to compare a 40-acre quarry to a septic system?
    - That aside, the existing excavation regulations do not prohibit all blasting and processing of stone. On the contrary, they allow it under specific limited conditions. These limited conditions outlined in 8.16 and other sections (Special Permit Criteria and Site Development Standards) would be absurdly restrictive if the principal activity was quarrying, which ALWAYS involves drilling, blasting, and processing.
    - The language of 8.16 acknowledges that in some instances the operator may have to remove ledge, and that it must be done in a manner that will not create vibration or dust. That is something that

can be controlled on the scale of excavation. It is not, however, something that can be controlled at the scale of quarrying.

- 9.2.C.4 is consistent with 9.2.C, 8.16.I, and 11.3.4.C. The case law referenced by the applicant is moot.

- **BALDWIN HILL PUBLIC HEARINGS**
  - Finally, I'd like to revisit some comments from the Baldwin Hill public hearings:
    - First, Baldwin Hill came to the Planner's attention due to complaints about blasting.
      - Interesting … vibrations apparently were leaving the property on which they originated!
    - The Baldwin Hill property was called a "**legally existing, nonconforming, grandfathered**" site.
      - GFI is none of those things.
    - The Planner said that when she discovered there was no permit, "you've got to have something in", she said, because otherwise there is no way to stop operations right now. That's a hardship for people nearby.
    - She said that what's being done there and wants to be done there doesn't fit our Excavation regulations, but it's the only thing that comes close.
      - Repeat: she said, "… what wants to be done there DOESN'T FIT OUR REGULATIONS!"
    - Of note, the current operator of the site explained to this Commission that residents could get on a list to be notified of blasting in advance, "because the shock can make you jump", he said.
    - Lastly, Ms. Hodge commented that although the entire grandfathered site exceeded 10 acres, the proposed active area would be limited to 6.4 acres. "That's the only reason it was approved", she said.
  - So, basically the intent of Baldwin Hill's approval was to provide a means of controlling a legally existing, nonconforming, grandfathered site … to protect nearby residents from "shocks that can make you jump" … in an area covering less than 10 acres.
    - So, no, Baldwin Hill is not a legal precedent for GFI's application.

- **CONCLUSION**
  - There are many significant differences between Baldwin Hill's approved operation and what is being proposed at GFI.
  - There is NO inconsistency in our regulations concerning vibrations, therefore the case law referenced by the applicant's attorney is moot.
  - And testimony from the Baldwin Hill public hearings proves that it was approved for a completely different set of reasons than the GFI proposal, therefore no precedent exists whatsoever.

PROPERTY VALUES

- **Regarding property values, I will comment on:**
  - **Our specific regulatory language in regulations 8.16.D.3 and 11.3.4.D.**
  - **The applicant's appraisal "expert".**
  - **The Goman and York peer review.**

- **<u>8.16.D.3 and 11.3.4.D</u>**

EXCAVATION, MAJOR

- **8.16.D.3 The purpose of these regulations is to ensure the following: the site will not be generally characterized by unsightliness as evidenced by open pits, rubble or other indications of completed digging operations which would have a deteriorating influence on nearby property values.**

11.3.4 Special Permit Criteria: … the applicant shall have the burden to prove:

- **11.3.4.D**
  - **That *<u>no adverse effect</u>* would result to the *<u>property values</u>* or *<u>historic features</u>* of the *<u>immediate neighborhood</u>*.**

  - If 8.16.D.3 was intended to apply to a rock quarry, why would it include such restrictive language, since every quarry, including this one, is "generally characterized by unsightliness as evidenced by open pits, rubble or other indications of completed digging operations which would have a deteriorating influence on nearby property values"?
  - The answer is that 8.16.D.3 was never intended to approve a rock quarry operation.
  - Please pay attention to language in this regulation that clearly broadcasts the author's legislative intent:
    - When discussing open pits, rubble, etc., notice that it does not say, "IF it would have a deteriorating influence on nearby property values."
    - No, it says, "… WHICH would have a deteriorating influence on nearby property values."
    - The word "which" is a determiner pronoun that "refers to something previously mentioned when introducing a clause giving further information." It means "because", not "if".
    - In using the word "which", the deteriorating influence on property values is ASSUMED.
  - But even if you don't buy the argument that a 40-acre quarry would, for certain, adversely impact property values in nearby neighborhoods, you should STILL be convinced that the use of the word "which" indicates that 8.16.D.3 was not intended to permit a rock quarry operation.

- **The applicant's appraisal expert.**
  - I will only spend a moment on this since our real estate expert will cover this topic in more detail. I will, though, share my opinion that the applicant's appraisal expert was not credible.
    - "Nearby" comps in Thompson and Putnam were too far away to be relevant.
    - Features of those quarries were not analyzed and compared to GFI's proposed quarry.
    - The sample sizes of home sales were insufficient.
    - Too many key variables were omitted that are typically used to appraise residential properties, such as main road vs. back road, attached garage vs. not, age of utilities, renovations vs. not (inside and out), views, proximity to services, and so on.

- **Peer review.**
  - As to Goman and York's self-described opinion piece, I respectfully struggle to find merit.
    - First, out comes the predictable, dismissive NIMBY label. Here's the reality: EVERYONE is a NIMBY, including most companies. If asked, "Where will you be placing your egregious operation?", most owners and stakeholders would reply, "I'll tell you one thing … Not In MY Back Yard." So, spare us the NIMBY rhetoric.
      - What's worse than NIMBYs, in my humble opinion, are ideologues who believe that ALL development is good. But that is simplistic, binary thinking. Decisions like this are always far more complicated.
    - Next was this statement from Goman and York: "While the proposed application before the Ledyard Planning and Zoning Commission IS NOT FOR A QUARRY …
      - Let's stop there … I find it fascinating that this independent peer review would seemingly go out of their way to opine that this application "is not for a quarry". Very odd.
    - Next, they say that … the SITE PREPARATION ACTIVITIES and extraction of earth material are SIMILAR TO THE ACTIVITIES OF A QUARRY USE."
      - Please note that "Industrial Site Preparation" is not a permitted use in our table of uses, either.
      - And notice the language "similar to the activities of a quarry use". No, they ARE a quarry use.
    - Then the peer review says, "… if this [existing] site and the associated uses were proposed today, I am confident to say that application would face a strong NIMBY response and opposition."
      - To that I would say, yes, if Dow wanted to come back as one of the "filthy five", NIMBYs would object to the Thames being polluted.

- Next, "… those negative impacts on property value may already be capitalized into the value of neighboring and proximate residential properties."
    - That statement exposes that the writer does not grasp the concept of INTENSITY OF USE.
    - Also note the vague language … impacts "MAY" already be capitalized.
- Next, "There is nothing about the proposed use and activities contained in this application that raises concerns about health threats off-site."
    - Well, now I'd like to understand the extent of this realtor's medical background. Or their air quality expertise. Environmental health? Marine ecology?
- Finally, the writer "finds it unlikely" that the proposed operation would adversely impact property values … AND QUALITY OF LIFE.
    - Finding something "unlikely" does not meet the burden of proof.
    - And why would a property value peer review insert a "quality of life" opinion?
- I find this peer review to be hollow and unsubstantiated by factual analysis directly related to this site.

- **Quick question.**
    - I'd like to ask a quick question to provide some additional evidence to this Commission:
        - Please raise your hand if you would pay the same price for a house NEAR a 40-acre rock quarry as that same house if it was NOT near a 40-acre rock quarry?

- **Conclusions about property values.**
    - Language in 8.16.D.3 ASSUMES that "open pits, rubble or other indications of completed digging operations" WOULD adversely impact property values, clearly broadcasting the author's legislative intent that this regulation never intended to be used to approve a rock quarry.
    - The applicant's real estate appraiser "expert" was not credible.
    - The related peer review was a NIMBY-focused opinion piece devoid of analysis directly related to this application.
    - As with many other sections, in discussing 8.16.D.3 and 11.3.4.D, the applicant has NOT satisfied the burden of proof that property values and quality of life would be protected. Violation of these two regulations alone is reason enough for you to deny this application.

SPECIAL PERMIT CRITERIA

- **11.3.4.B**
  - **that transportation services would be adequate and that the uses would not cause traffic congestion or undue traffic generation that would have a *deleterious effect on the welfare* or the safety *of the motoring public*.**

DEFINITIONS:

- **"Deleterious effect" = does harm or makes things worse.**
- **"Welfare" = the health, happiness, or fortunes of a person or group; well-being.**

- What this language means is that traffic from the proposed use cannot decrease the happiness, fortunes, well-being, or safety of the motoring public.
- Mr. Hesketh's presentation was impressive in the amount of data provided. And at least in HIS case, he did mention the specific language in our regulations. I give him credit for that.
- BUT, like many other experts, he glossed over key WORDS in our regulations … notably "welfare" … and what it truly means. **His study only addressed safety and NOT welfare.**
  - 100 heavy truck trips per day WILL make things worse. That's what "deleterious effect" means!
  - 100 heavy truck trips per day WILL make the driving public less happy Who in this room would be happier if 100 heavy truck trips per day were added to Route 12?
  - And if there was no safety concern, why would Hesketh make a completely unrealistic recommendation to route all school traffic out to Route 214 and why recommend reducing the Route 12 speed limit to 35 mph?
- Unfortunately, the traffic peer review by Weston & Sampson also ignored the welfare of the driving public which, again, is defined as the health, happiness, and well-being of a group of people. Even if we accept that driving safety won't deteriorate, the traffic study and its related peer review are ignoring significant language in this regulation. You're not allowed to pick and choose which words you need to address vs. not.
- 11.3.4.B will be violated because there WILL be a deleterious impact on the welfare of the driving public, and possibly on safety as well.

- **11.3.4.C**
  - **That the proposed uses and structures would be in harmony with the appropriate and orderly development of the Zoning District in which they are proposed to be situated, and that the use(s) would not be *noxious*, *offensive*, or detrimental to the area by reason of odors, fumes, dust, noise, vibrations, appearance, or other similar reasons.**

DEFINITIONS:

- **"Noxious" = harmful or injurious with regards to human health or the environment.**
- **"Offensive" = causing someone to feel hurt, upset, angry, or causing resentful displeasure.**

  - What this language means is that the proposed use would not generate odors, fumes, dust, noise, vibrations, appearance, or other similar reasons to the area what would:
    - Be harmful or injurious in any way with regards to human health or the environment (noxious).
    - Cause anyone to feel hurt, upset, angry, or resentful displeasure (offensive).
  - Blasting, rock-crushing, and other quarry operations will absolutely be dusty and noisy, will cause vibrations, and will create an ugly wall where there now exists a beautiful tree-covered hill. Fugitive dust, including silica dust, noise, vibrations, appearance, etc. will certainly be harmful, and residents already feel hurt, upset, angry, and resentful.
  - PS The applicant's attorney continues to argue that this regulation only applies to the Industrial District, i.e., primarily the GFI property itself. That is incorrect because this section prohibits uses that would be detrimental "TO THE AREA".
  - If the language in our zoning regulations is interpreted correctly, 11.3.4.C would be violated and this application must be denied.

11.3.4 Special Permit Criteria: … the applicant shall have the burden to prove:

- **11.3.4.E**
  - **That the *character of the immediate neighborhood* would be preserved in terms of scale, density, *intensity of use*, existing historic/natural assets/features and architectural design.**

DEFINITIONS:

- "Character of the immediate neighborhood" = the distinctive traits, qualities, or attributes; the appearance and essential nature, pattern of uses, and sense of community of the surrounding area.
- "Intensity of use" is measured by requirements for water, gas, electricity, or public services, the number of vehicle trips generated, hours of operation, the amount of noise generated, etc.

11.3.4.E

- This language means that the use must preserve the "character of the immediate neighborhood" … the distinctive traits, qualities, or attributes; the appearance and essential nature, pattern of uses, and sense of community of the surrounding area … in terms of its intensity relative to past uses.
- Without question, the "distinctive traits … essential nature … and sense of community" of the surrounding area would be drastically altered by this proposed operation. And by virtually all measures of "intensity of use", including demand for utilities and public services, vehicle trips, hours of operation, noise, etc., this operation would be dramatically greater than anything ever done on this site.
- For this quarry application to be approved, the language in 11.3.4.E would need to be modified first. Without that, 11.3.4.E would clearly be violated and therefore this application must be denied.

CT PUBLIC ACT 21-29

- The applicant would have you believe that recent language changes to CT Public Act 21-29 negates your obligation to protect the surrounding neighborhoods.
  - First, think about that … the applicant is asking you NOT to force them to preserve our neighborhood's character or protect our property values! Why even suggest such a thing?
  - That aside, the language in CT 21-29 was modified for the purpose of preventing discrimination against homeowners based on race, color, national origin, socioeconomic status, etc. The language tweak in CT 21-29 was NOT intended to be used by a Company to circumvent its responsibility to protect neighboring residential districts.

COMPARISON TO "BANK STREET"?

- Lastly, if we are to believe that character is no longer relevant, then why did the applicant's attorney ask you to envision the "immediate neighborhood" as if it was a commercial area like Bank Street in New London just because there's a CVS, a Dollar Store, and a gas station down the road? I submit that he did that because the character of the neighborhood DOES, in fact, still matter, when it comes to industrial/residential zoning conflicts.
- Ask people on Anderson, Chapman, River Drive, Point Breeze, by the way, what they think. They'll tell you that these are quiet, quaint, peaceful neighborhoods, no different than other parts of Ledyard in terms of character and quality of life. Nothing "commercial" about those neighborhoods.

11.3.4 Special Permit Criteria: … the applicant shall have the burden to prove:

- **11.3.4.F**
  - **In accordance with CGS §22a-19, that the proposed uses would not cause any *unreasonable pollution*, impairment or destruction *of the air, water and other natural resources* of the state.**

DEFINITIONS:

- "Unreasonable" = anything beyond what would be considered common sense.
- "Common sense" = perception that agrees with the generality of people.
- "Pollution" = the contamination of air, water, or earth by harmful substances.
- "Contamination" = making something impure from mixture or contact with a foreign substance.

- What this language means is that the use must not cause the air, water, or earth to be mixed or come in contact with any foreign substance to a degree that the generality of people would deem it as not reasonable.
- I would submit that the "generality of people" would label human and environmental exposure to ANY silica dust as "not reasonable". Therefore, 11.3.4.F would also be violated and this application must be denied.

MISCELLANEOUS

EXCAVATION, MAJOR - Operations

- **8.16.N.7**
  - **All topsoil and subsoil shall be stripped from the operation area and stockpiled for use in site restoration.**

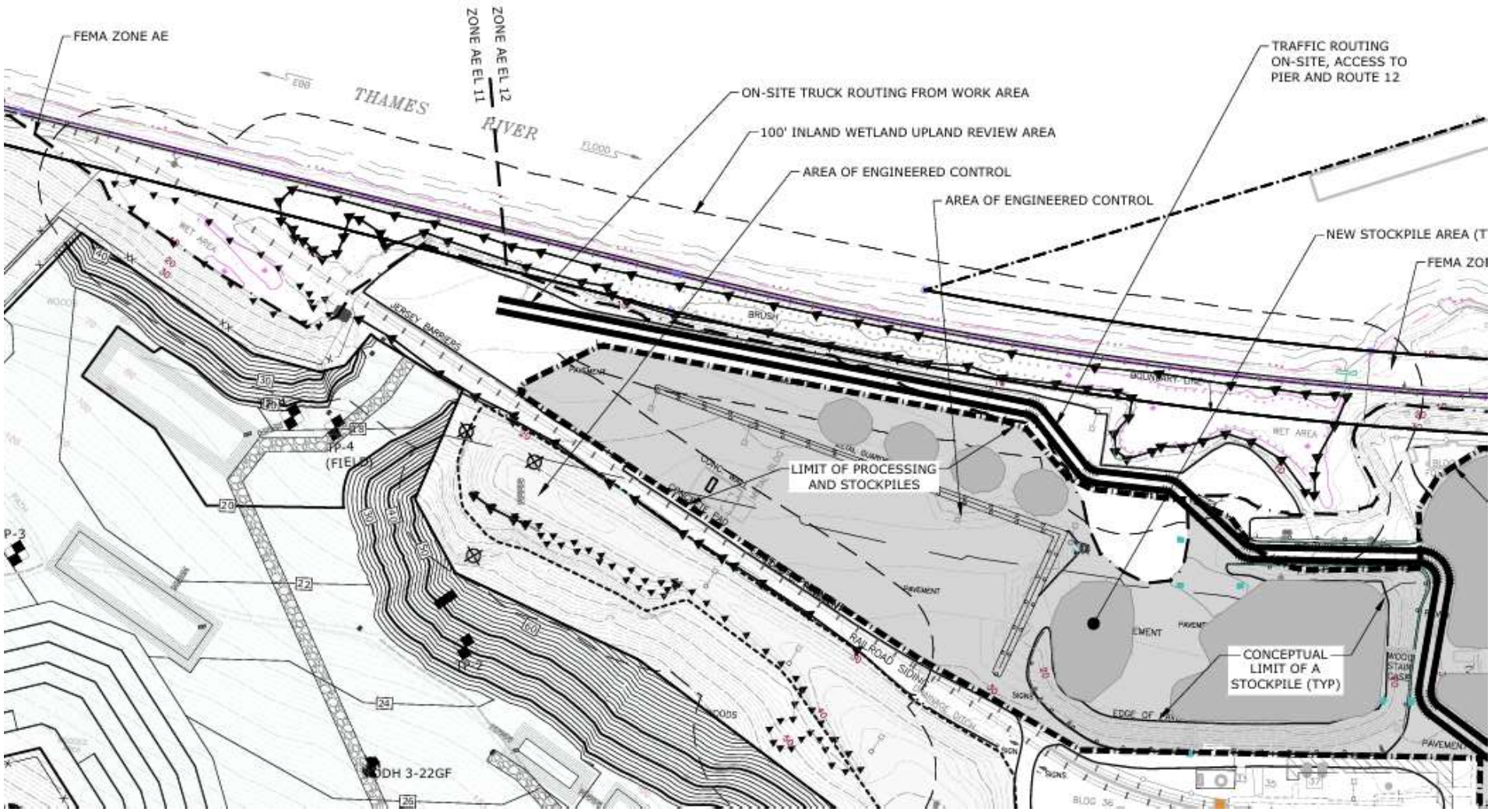
8.16.N.7

- Our regulations would not include such restrictive language if they were meant for a rock quarry, because in a rock quarry, there would be no need to retain ALL topsoil and subsoil. But language in our regulations does, in fact, say that ALL topsoil and subsoil shall be stockpiled for use in site restoration, as would be the case for an excavation envisioned by these regulations.
- The company's "zoning compliance manual" says this:
  - "Overburden soils will be PARTIALLY reused … with excess materials temporarily stockpiled and ultimately exported for sale."
  - "Excess overburden will be exported from the site via dump trucks and railcars."
- Since the company themselves admit that they would NOT be retaining ALL topsoil and subsoil for site restoration, this means that they will NOT comply with 8.16.N.7 and that alone is reason enough for you to deny this application.

WETLANDS

- The ZCM discusses Allyn's Pond as well as X, Y, and Z wetlands, saying that "Wetland mitigation was proposed and approved by the Town of Ledyard Inland Wetlands and Watercourses Commission."
- IWWC minutes where the first revision of this quarry proposal was approved said this:
  1. The applicant is providing 19,000 square feet of new, higher quality wetlands to mitigate the 1,700 square feet of direct impact to Wetland Z and potential indirect impacts to wetlands X & Y;
  2. Mitigation must be completed prior to the completion of Phase 1.
- I could find no reference in the company's ZCM indicating that the new wetlands would be completed prior to the completion of Phase 1.
- Also, in the original Wetlands application, I also found no information about how much water would be used to mitigate dust or where it would go. Therefore, I remain puzzled why this 3rd rendition of this application can claim to have been comprehensively reviewed by IWWC, when this critical information about dust suppression water was not available to the IWWC at the time of approval.

- One other quick question … did our IWWC know that the company is proposing stockpiles that encroach onto the 100-foot inland wetland upland review area? Not to mention "truck routing" well inside the 100-foot buffer?



ENVIRONMENTALLY CAPPED AREA

- First, I don't recall the company ever explaining the EXACT status of this area, what is underneath it, when it will be remediated, CAN it be remediated, etc.
- The ZCM proposes a "temporary protective interim cap" to theoretically prevent a breach of the "existing bituminous concrete engineered control cap" at the rock material processing area." Is this really the best place to locate a 10-year rock-crushing operation? Over the most environmentally sensitive spot on the entire 165-acre property? Mere feet from the Thames?
- Has DEEP blessed this entire plan?
- Will the "temporary" cap truly be sufficient to protect the area below it for up to 10 years of rock-crushing and other heavy machinery? Is it worth the risk?
- The ZCM says that, at the end of all operations, "The existing bituminous concrete engineered control cap will be inspected for damage, and any necessary repairs will be made to restore the integrity of the engineered control as required to meet with the satisfaction of the Connecticut Department of Energy & Environmental Protection." RESTORE THE INTEGRITY? Can the temporary cap be removed without environmental exposure risk?

FORT DONATION

- I assume that you all noticed that the 3.44-acre Fort Decatur is apparently being donated without condition, but an additional ~6 acres (on the other side of the Eversource power lines) has been offered **only** if GFI gets their permit.
- Also, apparently GFI is only willing to nominate Fort Decatur to the National Register of Historic Places, funding for educational materials, "and more" … only if GFI's permit application is approved.
  - Making these offers contingent upon permit approval diminishes their significance.
- Note that the TAC letter includes the label of "industrial re-grading", another interesting choice of words from an independent 3rd party.

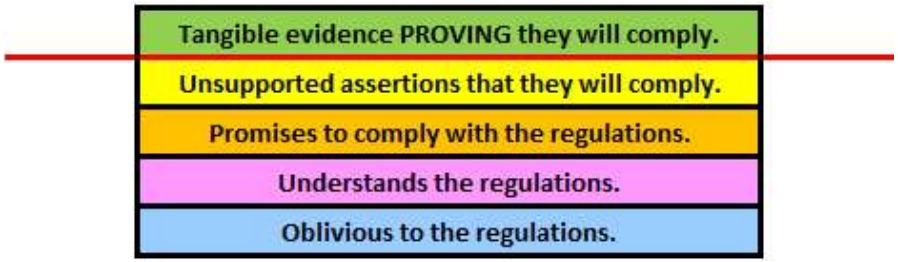
> I am pleased to share that representatives of GFI have graciously agreed to donate 3.44 acres of their property, which contains the main portion of the site of Fort Decatur, to the Conservancy for permanent preservation. This has been outlined in a signed agreement that further stipulates that an additional 5.87 acres, located to the south of the Eversource corridor on the property, will also be donated to the Conservancy if GFI is able to secure approvals for proceeding with their plans to engage in the Industrial re-grading of its property. In addition to the protection of this additional acreage, which contains deposits associated with the use of Fort Decatur, GFI has also committed to a number of preservation-minded stipulations, including the preparation of a nomination of the site to the National Register of Historic Places, funding for educational materials, and more, which will be implemented if a permit is granted.

- Also, the TAC letter ends with a request that this Commission take into consideration these offers of land, a request which of course is completely irrelevant and inappropriate.

> The Conservancy is appreciative of GFI's engagement of Heritage Consultants to survey the cultural resources on their property, their ongoing negotiations with the State Historic Preservation Office, and their commitment to seeing the site of Fort Decatur preserved for the benefit of the people of Connecticut and this country. At this time, I suggest that the Planning and Zoning Commission consider these preservation benefits when evaluating GFI's permit application.

BURDEN OF PROOF means "the obligation to prove your assertion."

- A simplified way to say it is that one party (the applicant in this case) has the burden to prove that they are correct, while the other party (our community) has no such burden and is PRESUMED to be correct.
  - Therefore, our community's concerns must be presumed valid unless PROVEN otherwise by the company.



- There are various levels to burden of proof:
  - The company must, of course, understand the rules, but that's simply the first low bar.
  - Promises of compliance or unsupported assertions (both of which we've heard from the company), also carry no weight.
  - No, the ONLY thing that matters is tangible evidence PROVING that the applicant WILL comply. I believe that the applicant has not come remotely close to satisfying that burden of proof for ALL pertinent regulations.

CONCLUSIONS

In their first public presentation in July 2022, the company told us that they thought they bought the GFI property "for a competitive price, given what waterfront industrial property [was] worth." We also learned that the purchase was done, at least in part, on speculation that they would be awarded wind farm contracts. One reason for that speculation, they explained, was that "Trinseo, which owned this property as successor to Dow, was not going to wait two years for [Cashman] to get their permits." Essentially, they bought the property on the cheap, on spec, and in a hurry.

The company's attorney has, in the past, lectured neighbors about performing due diligence when buying homes near an industrial property. In that same vein, the Cashman company purchased GFI with the "constructive knowledge" of residential neighborhoods, churches, and schools surrounding this piece of industrial property. This was a business decision which brought with it significantly more responsibility to protect its neighbors than would have been the case had they purchased in a primarily industrial, likely much more expensive, alternate location.

Regarding my presentation, I won't stand here and claim that every argument I've made is 100% perfect. The applicant might be able to poke small holes in SOME of my arguments, but NO WAY can they prove that EVERY applicable regulation will be met. And keep in mind, the burden of proof is on the applicant to convince you that ALL our community concerns are unfounded. But they simply have not done that and CANNOT do that.

This Commission has appropriately advised our community to focus ONLY on the application at hand, to keep our comments relevant, and to minimize repetitive arguments. We are doing our best and I hope that the applicant will do the same. And if anyone other than the applicant argues in FAVOR of approval, please require them to prove their arguments by tying them back to SPECIFIC LANGUAGE in our regulations, just as I have done. Even if it's Liz or our Town Attorney … they must back up their opinions, regulation by regulation, with specific references to our zoning language. It's not enough for ANYONE to state a general opinion as to whether this application complies or does not.

When this Commission is modifying or writing new regulations, you MAY consider variables like economic development, society's need for aggregate, revenue to the town, etc., but not when ensuring compliance with existing regulations! If history repeats, the applicant's attorney will close by AGAIN, discussing many topics that have literally no bearing on whether this

application complies with our regulations. I respectfully remind you that you must ignore those irrelevant arguments and, if you do, I trust that you will deny this application.

And I do trust this Commission. In the public hearings about the applicant's repair and maintenance buildings, you have demonstrated that you prioritize logic and reason over emotion. I truly respect that. I did not leave town out of fear, because I never believed in a million years that you would permit a rock quarry operation, at least under our current regulatory language. My leaving town was driven by my own set of reasons.

Having said that, please keep in mind that the stakes are not remotely balanced. Meaning, what if this Commission makes the wrong decision? What are the stakes?

- If you incorrectly deny this application, then the applicant might make less profit, and the town could lose some tax revenue. Not good, but not life-altering.
- But if you incorrectly APPROVE this application, meaning, if after operations begin, citizens' concerns are proven to have been valid, it WILL be life-altering.
    - If dust migrates further than what is modeled … if vibrations leave the property when they're not supposed to … if noise keeps people awake or contributes to their PTSD or simply annoys them … if increased traffic causes frustration or, worse yet, less safety … if our environment is polluted … any of those results would cause irreversible harm.

So, I would implore you, if you're in ANY way undecided, please give your community the benefit of the doubt, and make your decision on the side of caution.

That concludes my presentation, and I thank you for giving us so much time to be heard.