313-1

RECEIVED
DEC 19 2024
Land Use Department

Wilson T. Carroll, Esq. – 2024-12-19 Closing Remarks

I. Introduction

[Copy of remarks into Record]

Good evening members of the Commission—for the Record, my name is Wilson Carroll, and I'm speaking to you tonight on behalf of Gales Ferry District and Lee Ann Berry. I'd like to begin with a few general statements about the special permit process. Robert Fuller's well-known land use treatise states:

"The rationale for special permits or special exceptions is that [although] certain uses are generally compatible with uses permitted as of right in particular zoning districts, their precise location and mode of operation must be regulated [by the special permit process] because of topography, traffic problems, neighboring uses, etc. of the site." (Footnote added.) R. Fuller, 9 Connecticut Practice Series: Land Use Law and Practice (4th Ed. 2015) § 5:1, p. 191.

Our Appellate Court has held that "When considering an application for a special exception, a zoning authority acts in an administrative capacity, and its function is to determine whether the proposed use is **expressly permitted** under the regulations, and whether the standards set forth in the regulations and statutes are satisfied. Daughters of St. Paul, Inc. v. Zoning Bd. of Appeals of Town of Trumbull, 17 Conn. App. 53, 56 (1988).

The proposed use is not allowed under the Ledyard Zoning Regulations, and even if it was, the Applicant has failed to meet its burden to prove, by substantial evidence, that it has satisfied the special permit criteria, the site development standards, and the excavation regulations.

II. The proposed use is a "quarry" or "mining" use that is not permitted under the Regulations.

a. Interpretation of Regulations

I'm going to hand out a summary of the relevant Regulations for this Application, for your reference. If you turn to the last page, you'll see that I also included quotes from binding, appellate caselaw regarding the interpretation of Zoning Regulations.

[Regulations/Interpretation Handout]

"In construing a zoning regulation, it is our primary goal to ascertain and give effect to the intent of the local legislative body as expressed in the regulation as a whole." *Essex Leasing, Inc. v. Zoning Bd. of Appeals of Town of Essex*, 206 Conn. 595, 601 (1988).

"We construe words and phrases according to the commonly approved usage of the language.... Where an ordinance does not define a term, we look to the common understanding expressed in dictionaries." *Azzarito v. Plan. & Zoning Comm'n of Town of New Canaan*, 79 Conn. App. 614, 623 (2003).

Now I'll turn to specific regulations in section 3.6:

Regulations § 3.6.F: "When two or more differing standards are provided in these Regulations for any use, the most restrictive provision shall apply."

Regulations § 3.6.E: "Except as expressly provided herein, these Regulations operate independently from laws and regulations established by agencies other than the Commission.

And this is an important point—the Applicant's entire strategy, recognizing that the Application does not meet the standards in the Regulations, is to find other standards that the Application might meet, and to argue that those, and not your Regulations, are controlling. But that isn't the case—you are tasked with applying the Ledyard Regulations—not regulations from other agencies.

Regulations § 3.6.D: "Any use of land, buildings or structures not expressly permitted by these Regulations as a principal use in a particular Zoning District, or allowable as an accessory use to such a principal use, is prohibited in that District."

b. The proposed use is "quarrying" or "mining"

There have been several dictionary definitions referenced on the record, but I'll reiterate that:

Webster's Dictionary defines quarry: "an open excavation usually for obtaining building stone, slate, or limestone."

Oxford English Dictionary: "A surface excavation from which stone for use in building and construction is or has been extracted by cutting, blasting, or other means."

Also in the record are excerpts from the 1971 Regulations, which reference quarrying as a use, and the 1975 Regulations, where quarrying was removed.

Removal of references to quarrying in 1975 is evidence that quarrying is no longer permitted in Ledyard.

I'll now hand you a printout from the Connecticut Secretary of State website's listing for Gales Ferry Intermodal.

[Gales Ferry Intermodal Secretary of State Exhibit]

And you'll see based on this exhibit, Jay Cashman is the principal of Gales Ferry Intermodal.

At last week's hearing, Jay Cashman stated:

- Jay Cashman, 22:35: "One thing I found about the silica is that the silica, the testing basically actually happens on the person working inside the QUARRY, and there's equipment on them, and there's monitors, okay, that will pick up any sort of erratic silica or dust that would be harmful."

Then, Corey Willingham stated:

- Corey Willingham, 19:57: "I am an employee of Jay Cashman, I've been working with Jay Cashman for about thirteen and a half years now.... I didn't come to speak against the facts of the QUARRY and stuff like that, but more about my experience working for this company."

Jay Cashman is the principal of the Applicant, GFI. He stated on the Record that this is a quarry. His long-time employee, Corey Willingham, also stated on the Record that this is a quarry. Mr. Cashman's statement, in particular, is a direct admission, by the Applicant, that the proposed use is a quarry use. He says it's a quarry, his employee says it's a quarry—let's take the Applicant at its word. Quarrying and Mining are not permitted under the Regulations, and this application should be denied.

c. The Regulations, read as a whole, do not permit the proposed use—even if it is not considered "quarrying" or "mining"

The Applicant's Application Narrative states: "[t]he instant application is an application for modification of Special Permit PZ#23-4SUP ... to add the following additional special permit use on the Property (as hereinafter defined) – 'Excavation Major' *including 'the processing of earth product and rock prior to its removal from the Property...*"

As I said in my initial presentation, that is an extension and a modification of the definition of "Major Excavation" that the Applicant has invented. "The processing of earth product and rock prior to its removal from the Property" is not included in the definition of "Major Excavation." The Regulations do not authorize on-site rock processing as a principal or accessory use in the Industrial Zone, nor is such a use "customarily incidental and subordinate to the principal use" as required for an accessory use.

If we consider the Regulations with which the Application cannot possibly comply, it is clear that the intent of the Regulations it to prohibit this use.

Regulations § 7.10, which is titled: "Stone crushing and temporary sawmills." "To facilitate the clearing of land on parcels that are being actively developed, temporary stone crushing equipment may be used…."

The applicant does not propose to actively develop this site, and therefore stone crushing equipment cannot be used.

Regulations § 8-16(N)(4), which requires that "upon completion of operations, no bank shall exceed a slope of one foot vertical rise in three feet of horizontal distance." The proposed use is not compliant with that Regulation.

I've already discussed the email from the former Town Planner on which the Applicant relies, compared to her subsequent staff report, which is clear that they application cannot meet this slope requirement, so I won't into that any further.

We also heard from Mike Cherry, who testified that there were sheer rock faces behind Ocean State, the Dollar Tree, and Eagle Quality Landscaping—but we don't have information in the Record regarding what approvals those developments may have received, and when—they may never have even been required to come before the Commission, depending on the nature of the use of the proposed development. And there is a significant difference between a sheer rock face that makes room for a permitted use, and massive sheer rock faces and benches associated with an un-permitted quarry.

Going back to the old versions of the Ledyard Regulations. In 1971, when quarrying was allowed, Regulations § 8.2 stated: "In the case of sand, gravel and other loose material, no bank shall exceed a slope of one foot of vertical rise in two feet of horizontal distance."

That's essentially the reading that the Applicant wants you to apply now—that 8.16(N)(4) only applies to loose material. But in 1975, after quarrying was removed from the Regulations, § 8.2.3 of those Regulations stated:

"Upon completion of operations, no bank shall exceed a slope of one (1) foot vertical rise in three (3) feet of horizontal distance." The "loose material" portion was removed, consistent with the prohibition on quarrying in Ledyard.

When quarrying was allowed, the benched slopes regulation only applied to loose material—which makes sense, because quarries generally cannot meet that bank slope requirement. But when quarrying was removed from the regulations, the slope requirement was changed to apply to all banks, which includes banks of sheer rock.

Turning now to the

9.2.C – Site Development Standards

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.

4. No vibration shall be transmitted beyond the boundaries of the lot on which it originates, with the exception of vibration necessarily involved in the construction or demolition of buildings or other structures (doesn't apply here)

Attorney Heller's "inconsistency" argument:

- 9.2.C.4, "no vibration shall be transmitted beyond the boundaries of the lot on which it originates," is inconsistent with 9.2.C, "uses shall be designed to minimize any injury or nuisance to nearby premises by reason of noise, vibration, radiation, fire…." And 8.16.I, "the use of explosive devices and rock crushing equipment may be limited as a condition of the permit."
- Attorney Heller argues that the "may" language "is permissive and assumes that under the proper conditions, explosive devices can be utilized."

I agree with Attorney Heller that under proper conditions, explosive devices can be utilized. Those proper conditions are when it is necessary involved in the construction or demolition of buildings. There is no discrepancy or inconsistency in the Regulations. The Regulations are clear that unless vibration is "necessarily

involved in the construction or demolition of buildings," "no vibration shall be transmitted beyond the boundaries of the lot." Explosive devices and rock crushing equipment could theoretically be allowed in Ledyard, but only if (1) no vibration is transmitted beyond the boundaries of the lot, or (2) it is necessarily involved in the construction or demolition of buildings. This application does not concern the construction or demolition of buildings.

Read as a whole, the Ledyard Zoning Regulations do not allow the proposed use, regardless of what we call it. The Regulations I just discussed are not inconsistent—they consistently apply to prohibit the proposed use.

d. Baldwin Hill was approved as a pre-existing non-conforming use

I think it's important that we talk about Baldwin Hill. The fact that this Commission approved the Baldwin Hill quarry does not set a precedent for this application, and in fact, that approval supports a denial of this application. The reason that Baldwin Hill was approved is simple—it was a pre-existing, nonconforming use. Now, what does that mean? We've all heard the term "grandfathered," but the technical term in land use law is pre-existing, nonconforming use.

Here's an exhibit for your consideration:

[pre-existing nonconforming use handout]

PRE-EXISTING NONCONFORMING USES

Ledyard Zoning Regulations

7.7 NON-CONFORMING USES, STRUCTURES, AND LOTS

7.7.1 Non-conforming Uses:

A. Any nonconforming use *lawfully existing* at the time of adoption of these Regulations, or any amendments hereto, may be continued as a nonconforming use.

General Statutes § 8-2

(d) Zoning regulations adopted pursuant to subsection (a) of this section shall not:

4) (A) Prohibit the continuance of any nonconforming use, building or structure existing at the time of the adoption of such regulations;

Caselaw

"A nonconforming use is merely an 'existing use' the continuance of which is authorized by the zoning regulations." *Melody v. Zoning Bd. of Appeals of Town of Glastonbury*, 158 Conn. 516, 519 (1969).

"A nonconformity is a use or structure prohibited by the zoning regulations but is permitted because of its existence at the time that the regulations are adopted." *Adolphson v. Zoning Bd. of Appeals of Town of Fairfield,* 205 Conn. 703, 710 (1988) (quoting Tondro, *Connecticut Land Use Regulation* (1979), at 70).

"[A] lawfully established nonconforming use is a vested right ... entitled to constitutional protection...." *O & G Indus., Inc. v. Plan. & Zoning Comm'n of Town of Beacon Falls*, 232 Conn. 419, 430 (1995)

"Regulation of a nonconforming use does not, in itself, abrogate the property owner's right to his nonconforming use.... A town is not prevented from regulating the operation of a nonconforming use under its police powers. Uses which have been established as nonconforming uses are not exempt from all regulation merely by virtue of that status. It is only when an ordinance or regulatory act abrogates such a right in an unreasonable manner, or in a manner not related to the public interest, that it is invalid." *Ammirata v. Zoning Bd. of Appeals of Town of Redding*, 65 Conn. App. 606, 613–14, *rev'd on other grounds*, 264 Conn. 737 (2003).

"The town ... has the right, under its police powers, to require a land management plan although it cannot attenuate the scope of the plaintiffs' nonconforming use." *Ammirata*, 65 Conn. App. at 614.

"[W]e affirm the judgment of the trial court on the alternate basis that the requirement that the plaintiff obtain a [special] permit was a reasonable regulation of its nonconforming use under the town's police powers." *Taylor v. Zoning Bd. of Appeals of Town of Wallingford*, 65 Conn. App. 687, 698 (2001).

Now, let's turn to the Baldwin Hill Application itself. I already submitted full documents to the record, including links to the videos of the public hearings on the Baldwin Hill Application, but here are some excerpts.

[Baldwin Hill Excerpts Exhibit]

- Application form: "Existing rock quarry, application is simply to show what is proposed on a site that had this type of activity since prior to the adoption of zoning regulation."

- Site Plan, Note 4: "Use of this property is for processing and removal of rock/stone/gravel/sand and other materials that has been ongoing since prior to zoning regulations being enacted."
- Staff Report: "The chairman also acknowledged that the part of the gravel operation that involved processing of material 'from the site' was also a legally existing, non-conforming use, and as such could continue, but not be expanded."
- Notice of decision: "*for continued processing of earth materials and removal of ledge material.*"

The Baldwin Hill Application was approved to allow the Town to have a mechanism to regulate the use on that property, by imposing conditions related to public health and safety. The Commission could not have legally denied the application—the Baldwin Hill property owner has a constitutional right to continue the quarry use, since it pre-dated enactment of Ledyard's first Zoning Regulations in 1963. It is a pre-existing, NON-CONFORMING use—it does not conform to the Ledyard Zoning Regulations, because the Regulations do not allow quarrying.

Therefore, not only is the Baldwin hill application not a precedent for approving this application, but it actually proves that quarrying is not allowed in Ledyard—it is only allowed to continue as a pre-existing NON-CONFORMING use.

Ok. Let's turn to the specific special permit criteria, starting with traffic.

III. Traffic

- Traffic is an issue that does not require expert testimony – Commissioners are entitled to rely on their own knowledge of local traffic conditions.

- *Feinson v. Conservation Commission*, 180 Conn. 421, 427–28 (1980): "We have … permitted lay commissioners to rely on their personal knowledge concerning matters readily within their competence, such as traffic congestion and street safety."

- Facts bearing upon the effect of the operation of a business upon traffic safety are not such that expert testimony is necessary for the enlightenment of the agency. Dadukia v. Zoning Board of Appeals, 135 Conn. 706, 710-11 (1949). Members of a commission are entitled to consider any facts concerning the area, traffic intersection and surrounding circumstances, and the use of the network of roads, without the need for expert testimony. Such

information may be learned from personal observation, and may be considered to the same extent as though the facts had been offered in evidence. Gulf Oil Corporation v. Board of Selectmen, 144 Conn. 61, 65 (1956); Mrowka v. Board of Zoning Appeals, 134 Conn. 149, 154 (1947).

Hesketh Traffic Report

Conclusions and Recommendations

also results in an increase in accidents along the roadway. We recommend that the Town of Ledyard petition the Office of the State Traffic Administration, to reduce the posted speed limit to 35 miles per hour. The reduction in the posted speed limit would likely result in a reduction in the 85% speed and in the number of accidents. In the

The capacity analysis outlined above indicates that traffic exiting the Middle School driveway operates at a LOS E during peak hours with delays in excess of 45 seconds. We recommend that the applicant work with the School Board to develop a circulation plan for the site. We recommend that all school traffic should exit to Route 214 and make use of the traffic signal at the intersection of Route 12 and Route 214 to access Route 12. This would likely reduce delays and improve safety at the site.

But see Exhibit 240, from Superintendent of Schools Jason Hartling:

We trust that the Commission is addressing concerns regarding increased traffic caused by heavy equipment during school hours and its potential impact on the Route 12 corridor. While Ledyard Public Schools has not been contacted or consulted on this or any related matter by the applicant, it has been brought to my attention that the application includes recommendations concerning traffic impacts, specifically referencing the "Route 12 at Gales Ferry School Driveway."

We understand and share the traffic concerns of community residents, parents, staff, and our transportation providers. As you may recall, in 2019, the Town of Ledyard and the Board of Education completed a "renovate as new project" at Ledyard Middle School. This project included a site circulation plan carefully designed to optimize traffic flow for the three schools located on the property. Upon reviewing the submitted recommendations, I must express significant concern and disagreement with the included proposal that recommends eliminating the established entry and exit points, as was outlined in the F.A. Hesketh document included in the application.

Clearly, the schools and the Applicant are not on the same page here.

The Applicant also admits, as you'll hear tonight, that at least one phase of the proposed use has the potential to require closures of Route 12.

You all have personal knowledge of the traffic on Route 12, and you are entitled to rely on your personal observations to inform your decision on traffic impacts from

this proposed use. You've heard the concerns of your community and the superintendent of your schools. The Applicant has not proven by substantial evidence that the application would not cause traffic congestion or undue traffic generation.

IV. Dust

Kim Pisano – Verdantas Air Emissions Modeling

The Applicant has not proven by substantial evidence that the proposed use will not be a source of dust, in violation of Regulations §§ 8.16.D.2, 9.2.C.1, and 11.3.4.C. The Applicant has shown only that its plans include measures intended to *minimize* dust generation, not eliminate it.

There are also specific issues with the particulate emission modeling that have been discussed thoroughly throughout the course of this public hearing—whether the inputs of the Verdantas Model, which were not provided to the HMMH peer reviewer, were appropriate, particularly with respect to wind and meteorological data measured from Fort Griswold.

One specific omission that I'll call to the Commission's attention is that emissions generated by the existing AMSTY operation have not been included in any of the Applicant's emissions modeling, so we don't know whether the *total* particulate emissions on the site will be beneath the National Ambient Air Quality Standard, which is what Ms. Pisano used as a benchmark in her modeling. Regardless, your Regulations do not say that all applicable dust Regulations are satisfied so long as the Applicant meets National Ambient Air Quality Standards—the specific provisions of the Ledyard Regulations apply, and those Regulations require that the proposed use will not be a source of dust. The Applicant has not proven that by substantial evidence.

V. Noise

I'll start with a reminder that noise is not a hyper-technical issue that requires expert testimony, that you as commissioners are not required to believe any witness, including an expert witness, and that, as the court stated in the Blue Camp case, you are not tasked with measuring the noise level of the use—you are tasked with whether the proposed use complies with your regulations.

The applicable Regulations state that a proposed use cannot be offensive or detrimental to the area by reason of noise (11.3.4.C), and that no noise which is

unreasonable in volume or frequency shall be transmitted beyond the boundaries of the lot on which it originates (9.2.C.3).

The Applicant has designed its proposed use, in theory, to not exceed the Department of Energy and Environmental Protection's noise regulations, which set a maximum of 61dbA under these circumstances.

As I've been repeating, the relevant test under the Zoning Regulations is not whether DEEP's noise regulations are satisfied—it is whether the Ledyard Zoning Regulations are satisfied. And the Regulations call on you as a commission to determine whether the proposed use would produce unreasonably loud and frequent noise.

[DEEP Noise/Nuisance handout]

Take a look at this portion of the DEEP Regulations, which is in the same section as the standards the applicant is relying on. It is titled: "Compliance with regulations no defense to nuisance claim," and it states "Nothing in any portion of these Regulations shall in any manner be construed as authorizing or legalizing the creation or maintenance of a nuisance, and compliance of a source with these Regulations is not a bar to a claim of nuisance by any person."

Ok. Why is nuisance relevant here? If you turn the page on that exhibit, you'll see an excerpt from a Connecticut Supreme Court case called *Pestey v. Cushman*, in which our Supreme Court discussed the "unreasonableness" requirement in the context of a nuisance claim. On the second page of that handout, you'll see my highlighted sections, which state: "We conclude that in order to recover damages in a common-law private nuisance cause of action, a plaintiff must show that the defendant's conduct was the proximate cause of an UNREASONABLE interference with the plaintiff's use and enjoyment of his or her property."

So under Connecticut law, a nuisance claim requires that the nuisance conduct be "unreasonable." And the DEEP noise regulations say that compliance with those regulations is not a defense to a nuisance claim. In other words, compliance with the DEEP noise regulations does not mean that noise from a proposed use is reasonable. So, even if you believe the Applicant's expert that noise levels will be beneath the DEEP limitations, you are not required to conclude that the noise from the proposed use is reasonable.

The HMMH peer review concluded that "excavation noise at many of the nearby homes will be continuously audible for most of the duration of the project and will be very intrusive for considerable periods of time."

In response, the Applicant modified their plans to include the addition of a 12-foot tall sound barrier around portions of the operation, and now their model apparently predicts that the noise levels will be no more than 5 dBA above the background noise levels.

But the HMMH peer review also stated that "The Pheasant Run Condominium community is at an elevation more than 130 feet above the developed part of the project site, so the area will have clear sound paths from the operation to the homes during much of the excavation process. Many of the homes on Thames River Pentway are also elevated and will also have clear sound paths to ... much of the excavation operations."

A 12-foot tall noise barrier is not going to affect noise levels at homes far higher in elevation than the site—plain and simple. And as a final point on noise, the 61dBA DEEP noise limit is intended to cover continuous noise, as opposed to impulse noise, which is typically very loud but very short duration noise, like noise from blasting. The DEEP impulse noise limits for impulse noise, which are in the noise exhibit I passed out, state: "no person shall cause or allow the emission of impulse noise in excess of 100 dB peak sound pressure at any time to any Noise zone."

The blasting noise can apparently reach a threshold of 130 dB peak sound pressure, in excess of that DEEP limitation.

The Applicant has failed to prove by substantial evidence that the proposed use will not cause unreasonably loud and frequent noise.

VI. Vibration

Vibration is a relatively simple issue under the Ledyard Zoning Regulations. "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." There is no dispute that the proposed use would transmit vibration beyond the boundaries of the lot on which it originates.

The Applicant's Saul Seismic study concludes that vibrations from the blasting operation will be within particle velocity limitations set by the United States

Bureau of Mines. Again, that isn't what your Regulations require. The Regulations are black and white with respect to vibration that is not associated with the construction or demolition of buildings. It is not allowed, and that is also excellent evidence that the proposed use, overall, is not permitted under the Ledyard Regulations.

VII. Property Values

a. Expert testimony

[Caselaw handout]

Turning now to property values—here's an excerpt from a couple Connecticut Supreme Court cases—the first one is called Cambodian Buddhist Society. If you turn to the bottom of the highlighted page, which is the Court's discussion of property values, you'll find the following statements:

"The credibility of witnesses and the determination of issues of fact are matters solely within the province of the commission.... The commission was not required to credit the appraisal firm's conclusion that the proposed temple would have no effect on property values.

b. Realtors can provide expert testimony on property values

The conclusion that property values would decrease if this Application is approved is supported by the expert testimony of Joanne Kelly. At the public hearing on November 21, attorney Heller cross-examined Joanne Kelly regarding Connecticut statutes and regulations governing real estate appraisers. He was trying to argue that because Ms. Kelly is not an appraiser, she cannot give an expert opinion on the value of property. But our Supreme and Appellate courts have held that realtors can be considered experts as to reduction of property value, as long as (1) the witness has a special skill or knowledge directly applicable to a matter in issue, (2) that skill or knowledge is not common to the average person, and (3) the testimony would be helpful to the court or jury in considering the issues."

If you turn to the Connecticut Appellate Court case, Taylor v. King, and the highlighted portions specifically, you'll find that our Supreme Court has held that realtors can provide expert testimony as to diminution in value of property. The last highlighted paragraph states: "Section 20-501 (which from the same set of statutes that Attorney Heller referenced in his cross-examination of Ms. Kelly), is a licensing statute and does not preclude a witness from testifying as to his opinion

of the diminution in value of the plaintiff's property, where the trial court found that the witness' education, training and experience qualified him to testify as an expert."

Finally, the last case I handed out to you was the Connecticut Supreme Court case Wheelabrator v. Bridgeport. I highlighted a few pages of relevant information, but the bottom line is that a trial court, and you as a commission, have the authority to determine whether an expert witness on property value has "special skill or knowledge directly applicable to a matter in issue, that the skill or knowledge is not common to the average person, and that the testimony would be helpful to you in considering the issues." That's the test for expert testimony. And this case makes it very clear that no appraisal license is required for a realtor to give an expert opinion, so long as their education or experience indicates that they have knowledge on a relevant subject significantly greater than that of persons lacking such education or experience.

It is your task to determine what testimony on property values is persuasive. You are not required to listen to only a licensed real estate appraiser on this issue.

VIII. Historic Features

Based on the testimony and evidence in the Record, I'm certain that the Commission understands the historic significance of Mt. Decatur, and I trust that the Commission will give due consideration to the impact of this Application on that history. It is up to the Commission to determine whether this Application goes far enough to protect the historic features of the site.

IX. Character of the Neighborhood

Regarding the character of the neighborhood special permit criteria, I think I covered it pretty thoroughly in my initial presentation, but I'll summarize:

Attorney Heller's argument is that General Statutes 8-2 was amended to prohibit denial of a special permit application based on "a district's character, unless such character is expressly articulated in such regulations by clear and explicit physical standards for site work and structures." But your Regulations don't say "character of the district," which is Industrial—they say character of the neighborhood, which includes neighboring residential properties.

This Commission can deny the Application on the basis that the "intensity of use" of the proposed blasting, quarrying, and excavation would not preserve the character of the immediate neighborhood.

X. Unreasonable Pollution – 22a-19

As an intervenor under General Statutes 22a-19, I have alleged that the Application is reasonably likely to have, the effect of unreasonably polluting, impairing or destroying the public trust in the air, water or other natural resources of the state. In some circumstances, if you find that substantial evidence supports a determination that the application is reasonably likely to have an unreasonable effect on the environment, then there is an addition inquiry into whether there are feasible and prudent alternatives to the Application.

But your Zoning Regulations are unique in this regard. Special Permit Criteria 11.3.4.F specifically references 22a-19 and recites its same standard—that the proposed uses would not cause any unreasonable pollution, impairment or destruction of the air, water and other natural resources of the state. So if you find that substantial evidence supports a conclusion that it is reasonably likely that this Application will have unreasonable environmental impacts, then the Applicant has failed to satisfy Special Permit Criteria 11.3.4.F, and the Application must be denied.

There is substantial evidence in the Record regarding the environmental effects of this Application in the form of Mr. Steve Trinkaus's expert testimony and reports—and here is his response to the Applicant's review of his initial report and testimony.

[Trinkaus Letter]

The main environmental issue Mr. Trinkaus identifies is that after overburden and bedrock is removed, the fill that replaces it will be essentially impervious. It will be compacted and lose its natural porosity, and that will prevent water infiltration and increase stormwater runoff, pollutant loads, and the discharge of turbid, coffee-colored water into the onside wetlands and the Thames.

Paragraph 6 on this report I handed out states:

"The applicant states that between 11' and 36' of the previously removed overburden will be placed on top of the blasted rock and are claiming that since the overburden was considered a Class A Hydrologic Soil Group (extremely well

drained), this material will also be a Class A Hydrologic Soil Group. This is a false and invalid statement. Hydrologic Soil Group designations are based upon naturally occurring soils which take between 100 and 1,000 years to be created in nature. You simply cannot place previously excavated material back on the site and expect the soil to have the same properties as a naturally occurring soil. First, when you cut and then fill soil, you significantly reduce the soil porosity (amount of void space between the soil particles). As the porosity is reduced, the infiltrative capacity is also reduced. Secondly, the placement and spreading of the fill will increase the degree of compaction of the soil, further reducing or eliminating the porosity of the soil."

The other significant effect of the compacted, impervious soil is that the Applicant's proposed stormwater basins will not function as infiltration basins because the soil will be too compacted—the basins cannot function if water cannot infiltrate through the soil.

Mr. Trinkaus concludes that "The stormwater management basins and design computations are not in compliance with the CT DEEP 2023 Storm Water Quality Manual and will result in increased pollutant loads being discharged from the site which will reach the Thames River."

And that "The erosion and sedimentation control plan are not in compliance with the CT DEEP 2023 Guidelines for Soil Erosion and Sediment Control and will result in the discharge of turbid water during the excavation period."

Mr. Trinkaus is a recognized expert in this field, and his reports and testimony, if you rely on them, will be considered substantial evidence. This application is reasonably likely to have unreasonable environmental effects, and it should be denied.

XI. Plan of Conservation and Development

Finally, the Special Permit Criteria require that the proposed use would be consistent with future development as identified in the Ledyard Plan of Conservation and Development.

Here's an exhibit in which I've taken excerpts from the POCD and highlighted the sections with which this application is inconsistent. I won't read them all, but there is a significant focus in the POCD on protecting the rural and residential character of the town, protecting the environment, maintaining property values, minimizing

the impact of development on natural resources, and protecting residential areas from incompatible forms of development.

This application is inconsistent with the POCD and should be denied.

XII. Conclusion (reasons for denial)

To conclude, I want to highlight for the Commission that no matter how you decide this Application, there is very likely to be an appeal. And I'd like to explain how one aspect of the appeal process works. If you choose to deny this application, the law of the State of Connecticut requires you to state, on the record, your reasons for denial. This is called the "collective statement" requirement. You don't have to chant your reasons for denial in unison, but isolated comments from single commissioners don't count, and the staff letter of approval or denial doesn't count—there is supposed to be a collective statement of reasons.

And when you give those reasons, the Court on appeal is limited to reviewing those collective reasons for denial. For example, if you denied this application and your only collective reason for denial was that the application would create unreasonable noise, then the only thing the Court can consider is whether that noise determination is supported by substantial evidence in the record.

So, if you choose to deny this application, I would recommend stating as many collective reasons for denial as you believe are supported by substantial evidence in the record. Only one of your reasons for denial needs to be upheld on appeal in order for the Commission to win on appeal—so please, if you do choose to deny the application, state as many collective reasons for denial as you believe are applicable.

Finally, I've prepared for your reference a proposed list of reasons for denial, which I'll hand out now.

[Proposed reasons for denial handout]

This is an historic moment for Gales Ferry and the Town of Ledyard. I trust that you will apply the Regulations to this Application fairly and accurately and that you will reach the correct decision. I'd also like to thank you for your significant investment of time throughout the course of this public hearing, and the valuable service you are performing for your community. And with that, I conclude my closing remarks. Thank you.