

## WITNESS STATEMENT

**DATE:** August 31, 2021

**TIME:** 10:06 a.m.

**INTERVIEW OF:** Jonathan Stevens , Planning Director  
Town of Cumberland, Rhode Island

**INTERVIEW BY:** Lieutenant Matthew Salisbury  
And  
Investigator Gerard Ratigan  
Rhode Island State Police Financial Crimes Unit  
And  
Assistant Attorney General John Moreira  
Rhode Island Office of the Attorney General

**LOCATION:** Cumberland Town Hall  
45 Broad Street  
Cumberland, Rhode Island 02864

**SUBJECT:** 21RIX1-1408-OF

**DETECTIVE LIEUTENANT SALISBURY:**

1. **Q.** Today is Tuesday, August 31<sup>st</sup>, 2021. The time is approximately 10:06 a.m. We're at the Lincoln Town--, I mean, Lincoln—Cumberland Town Hall 45 Broad Street in Cumberland. This is an interview of Mr. Jonathan Stevens. All right Mr. Stevens, can you spell your last name for me.

**A.** S-T-E-V-E-N-S.

2. **Q.** Okay. And you are currently the Planning Director?

**A.** Yes.

3. **Q.** And how long have you been in that position?

**A.** Five-and-a-half years.

4. **Q.** Okay. We're here today to speak to you about a wetlands permitting request for 45

Canning Street.

**A. Yes.**

5. **Q.** Okay. [Aside: Do you want to start it?]

**INVESTIGATOR RATIGAN:**

6. **Q.** Before you came here Mr. Stevens, where did you—where did you work? Could you give us a brief summary?

**A. Yeah. So, I um—Like I said, I went back mid-career and got my master's degree from URI in Regional and Community Planning. And then I was the planning director for Warwick for seven years, and then I worked for—as a, as a senior assistant to Senator Lincoln Chafee for seven years. And then when he was governor, I was a special projects director and um, and senior advisor for four years. And um, so I started here in January 2016, so I've been the planning director here. I --**

7. **Q.** [Indiscernible]

**A. -- enjoy working in municipal government, heh.**

8. **Q.** Okay. And what was your involvement as far as – specific involvement regarding the Canning Street property?

**A. Yeah. So, as the planning de--, The planning department works closely with the town engineer, who is also the public works director, in evaluating projects on an ongoing basis regardless of where they are and who's proposing. So, in this regard, my job was to look at this buil--, this permit application and to advise the mayor whether we wanted the, the town was to object or, or not object. And--**

9. **Q.** W--, Is, is something you do for every permit application?

**A. Yes. Yes. So, --**

10. Q. If it—If it involves wetlands or just period?

A. Yeah. So, a, a wetlands alteration permit will be f—, the town will be flagged by DEM. So, if there's any—And also, the counsel gets a notification that DEM is—has a wetlands alteration permit within the, the Town of Cumberland. And so we look at them, and a--, again, I talk to Public Works if there are other departments that may have an interest. But because of drainage, Public Works has the expertise and the ongoing experience in, in such things.

11. Q. When was the first time that you became aware that there would be an application to alter wetlands?

A. For this property?

12. Q. For this property.

A. I think it was in the fall of 2019. I believe that's when we got the, the, the first permit application. And so, I – That's, that's the first time.

13. Q. And so the—when you initially found out about the wetlands application, it was from the DEM notification, you didn't have prior knowledge--

A. No.

14. Q. -- from—You didn't get a call from the property owner--

A. No.

15. Q. -- or anything like that.

A. No.

16. Q. After you received the notification from DEM that the application had been filed, did you have any conversations with anyone before you started your own preliminary work?

A. No.

17. Q. It was just routine.

A. Right.

18. Q. Is that safe to say?

A. Yes.

19. Q. All right. And just walk us through what happened after you got the preliminary app--, information from DEM.

A. Okay. So, as we would do with any such permit application, you-- you analyze the, the site plan. And I noticed that, you know, there was just a significant amount of wetlands on this lot that was roughly 50' x 100'. Now, the lot in question is what they call a um, 'existing non-conforming lot,' which mean—'lot of record,' which means that if it was in existence before 1962, then it's grandfathered, you know: if there's no issues, then it can be built upon if the dimensional regulations are followed. In other words, the front yard setback; the side yard setbacks, and lot coverage and that kind of thing. So, in this regard though, is that there was um, the wetlands protrude—protruded into the, the lot significantly. In fact, I think 100 percent of it was within either wet or—wetlands or the—within the 50' buffer where you're not supposed to build anything.

20. Q. How is that—How is that determination made? How—How do you know that?

A. Because the wetlands are flagged by a--, either a biologist or a certified wetlands person, and they are denoted on the, on the plans.

21. Q. Okay. So—so basically, the person who put the application in is saying these are wetlands.

A. Yes.

22. Q. This is not a determination you make.

A. No, I have—Correct.

23. Q. Okay. So you--, So you um, you see the plans, and... If you could just continue.

A. Yeah, it--, And so I don't—I don't know if I've ever recalled have—seeing a wetlands (chuckles) permit where you actually are intending to build a, a, a structure within the wetlands. I don't think I've ever seen that in the years that I've been practicing at the municipal level. So, that was me,—To me, it was a pretty easy call to recommend to the mayor that we draft a letter opposing this application.

24. Q. What are the setbacks within a um, property—within that lot, in that [Indiscernible / voices overlapping] ...?

A. Yeah. If I recall, it—So, it depends on what the zoning is.

25. Q. Yup.

A. And I think in this zone, if I recall, it was 10' side yard setbacks and maybe 20, 20' front yard and 25' rear yar--, If I mis--, I know it was 10, 10' be--, side setbacks because that means that the biggest house that you could build of width would be about 30' on this lot with 10' either side.

26. Q. Is there any public sewerage in this area?

A. I don't—I don't think so, but I don't know.

27. Q. Okay. Would—would there--? If they were putting in a septic, would that be on the plans?

A. Yes.

28. Q. Okay.

A. Yes. But they—they would have to—Yes, they would. And that would be a separate permit from DEM. So, you have wetlands alteration, and then you have the septic system is the second permit. So, I don't recall—I don't recall that uh, honestly.

29. Q. All right. So, you write your letter and you—you run it through the mayor's office first: this

is what I recommend, is that correct?

A. Y--, Yeah. Yeah. I, I may have written the letter. I think what I did is I wrote the letter, and then I gave it to—Again, I did it in concert with the engineer / public works director, and uh, and then sent it to the mayor's office for an okay.

30. Q. Okay. And what's his name, the uh...?

A. Robert Anderson, PE.

31. Q. Okay. And what are his responsibilities regarding this wetlands application? D--, Does he have similar, overlapping, separate uh--?

A. We complement-- You know, in—in any town, there—there's a complement of, of responsibilities. And in this case, he—I mean, he's got—he's a professional engineer; I'm certainly not. And so he's going to speak to the physical manifestation of the permit in terms of drainage. And also as the public works director, he has a history of development all over the town, and in this case, previous houses and, and piping that have been done that speak to drainage for the street.

32. Q. After you sent the letter opposing the issuance of the application, or the permit I guess I should say, when did you get any—your first feedback?

A. Do you mean DEM response?

33. Q. Any response from anyone.

A. Um. (pause) I d--, I – I, I mean, that was probably in November of 2019. I don't really recall. I don't know if I got any feedback from an--, anyone.

34. Q. Did anyone ever reach out to you either from DEM or from—or the property owner, or the . . . Mr. Silva, I think who um, had some type of option on the pr--?

A. I don't—I don't th--, I don't think that, that Chief Silva reached out to me directly, I

don't think so. I don't recall. But the neighbors, there is a Michelle Burgoyne who is next door, and, and she, for this permit application and the subsequent one, you know, she was very um—She, she owns the property that not only abuts it, but is in the rear, which would be receiving additional drainage.

35. Q. Mm hmm.

A. And so um, uh—And but it did--, And DEM wouldn't contact us. Wouldn't contact us arbitrarily. I probably did talk to Marty Wensek, the DEM Wetlands staffer, who is—I have a lot of respect for him. I mean, he's been there a long time; he's a straight-shooter. So, I, I probably did talk to him, like um--, But it . . . it wouldn't have been of anything of substance.

36. Q. How about the neighbors, do—do you know if they had notification of the application? As part of the process, did that--

A. I would--

37. Q. As abutters?

A. I wouldn't know that. I, I think it is a DEM requirement that probably within 200 feet.

38. Q. Yup.

A. Yeah. But uh, we, we don't—we're not involved in that.

39. Q. Did—did any of the neighbors reach out to you or?

A. It would have been just Michelle for the first—first time. On, on the second one, there were additional neighbors that reached out to my office.

40. Q. If, if you recall, what, what did—how did Michelle reach out to you?

A. I think it was phone calls and e-mails once the—once the application was under consideration. Yeah.

41. Q. And do you recall the nature of the conversation?

A. It's like: How can this—(chuckles) How can they possibly approve this? I don't have—I haven't granted permission for this water to, to go onto my property or additional drainage to go on my property; it's so small; the lot's so small; I never thought that anybody could build on it; it's wet all the time; it's—everybody's—you know, the usual: our basements are flooded, and—And you get this—Frankly, you get a lot of this in, I'm sure, all throughout New England, you know, that, you know, the weather's changed; there's more development in places that you couldn't before, or, or it was too expensive. So, drainage is, is a chronic issue.

42. Q. You indicated that you had a conversation with Mar--, Marty?

A. Marty Wensek.

43. Q. Mar--Marty Wensek.

A. Yeah. I believe I—I would have.

44. Q. On—on the first application?

A. I believe so. Yes.

45. Q. Do you have any recollection of--? Would—would this have been in response to your letter that went out under your signature for the Planning Board?

A. Yeah, it, it probably is a follow-up: Hey, I just want to make sure that you, you got the, the letter and that, you know, maybe to—probably to ask, like, what are the circumstances of a--, or, or what standing does the town have if it objects. Because again, I f--, I don't recall ever (chuckling) having been in this circumstance before.

46. Q. Mm hmm. And do you recall what his response was?

A. No, I'd--, It—I w--, I think I was left with the impression that um, that . . . that it, it would be granted or not on the c--, the c--, circumstances according to the regulations. I don't think I really got a hard answer--



47. Q. Okay.

A. -- you know, from him.

48. Q. Did—Was there any discussion of going—of going out and visiting the site, the--

A. No.

49. Q. -- anything like that?

A. No.

50. Q. Do you know if they do that as part of their application process?

A. I, I know it does happen. I don't know if it always happens.

51. Q. Okay. So that's—So that's the first letter.

A. Yup.

52. Q. And then after your conversation with Marty, and—and after you've sent the letter, what was your impression as far as whether that application was going to be approved or not approved, or did you have any idea?

A. I was assuming that it wouldn't get approved. But I didn't know.

53. Q. Okay. Did you receive--? Did you receive a follow-up notification of another application, or?

A. Yes.

54. Q. What—What exactly did you receive next?

A. If I recall, I think that was in maybe April there was a—The, the—the—there was a, a subsequent application.

55. Q. What—what year?

A. Of 2021.

56. Q. April of this year.

A. Yes.

57. Q. Okay.

A.G. MOREIRA:

58. Q. Could I just jump in for a second? So that first application, what was your understanding of its status? Was it like the town objected, and then what was the--

A. Yeah.

59. Q. -- status after that?

A. Yeah, I—I'm honestly don't know, you know. It . . . You know, you, you get a lot of correspondence from DEM. It's—Sometimes, heh, you, you know, I might get carboned, Anderson might get carboned and I don't get carboned. So it's hard to keep track quite honestly of—of all these ongoing development applications and petitions.

60. Q. But to your knowledge, you didn't receive any information that was granted, denied?

A. I've—That's correct.

61. Q. Okay.

INVESTIGATOR RATIGAN:

62. Q. The next thing you got was just a notification of another--

A. It's back.

63. Q. -- application.

A. Right.

64. Q. Okay. At that point, you had—you had presumed that it had been denied and / or in, in—in any event that more—more information was requested.

A. Yeah. All I knew is that it was being re-submitted, --

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65. Q. Okay.

A. -- and that it, yeah, you know, common sense will dictate it wasn't the same--

66. Q. Are--?

A. -- application.

67. Q. Are you getting the application or just notification—just notify...?

A. Just notification.

68. Q. So you're not seeing the plans.

A. We don't see them before they're accepted. But we—we do see them.

69. Q. Okay. After the fact?

A. After they're submitted D--, to DEM, yes.

70. Q. Okay. So, --

A. Within—within days they'll send us a, a formal letter saying we've rec--, received this application, and here is the site plan. Of course, you'd—you'd like something that's, you know, a large format, and you get an 8 ½ x 11. But.

71. Q. So, --

A. And again, it, it goes to the—The council is notified. And so it's on their docket.

Yeah. Yeah.

72. Q. So if I've got this right: You received the information from DEM, a wetlands application to alter the wetlands. It's been approved. And then subsequently say, whether it's a week, 10 days, you then get a copy, which I'm showing you now of an 8 x 11 piece ... which is a miniature version of what the plans are.

A. Y--, Yeah. Let me re-state it so—so it's clear: that when DEM rec--, receives it, stamps it in, then within a day or two or three, I, I, I would get a copy with notification that this

has been a--, this application has been received. And like I, I guess a, a, the public notice for a comment period is, is also included in that letter.

73. Q. Okay. So that was the first letter. Now you get a second notification.

A. Right.

74. Q. What was your thoughts when you received the second notification?

A. Um... Here... Well, what's (chuckles) different about this uh, than the first one, and I, if I recall—and again, I'm, I'm, I'm not the engineer, but it appeared that they had some more specifics about piping and swales. So in other words, more—more detail about um, having the drainage run through the property to the receiving water body to the down—downstream.

75. Q. Did you notice anything different about the public hearing or public comments as opposed to the first one?

A. I couldn't say off the top of my head.

76. Q. Okay.

A. But it--

77. Q. I want to show you um, show you a letter that you're cc'd on that came from the Office of Water Resources at DEM regarding the permit to alter the fr--, freshwater wetlands. And just take a moment to review the second half of this paragraph.

A. Okay. (pause) Okay.

78. Q. This is the letter of June 3<sup>rd</sup> of 2021. Did it strike you as odd that there was no longer the need for a uh, public hearing?

A. Yes.

79. Q. In—in your—in your experience now, you indicated there weren't a lot of applications for altering wetlands. Had you came across that situation before when--

**A. What—I think what I said is, you—you see a fair number of wetlands alteration permits. But in order to build a structure in the wetlands is where this departed from the norm I would say. So, -- I'm sorry, I—Rephrase your question for me.**

**80. Q. Well, the fact that no public hearing was necessary, whereas the first notice you received said that there would be a public hearing.**

**A. The first for—for this? You mean the first application or?**

**81. Q. The first application. The—the first --**

**A. If --**

**82. Q. First notification—What I mean, -- I don't want you to get so—Let me show you the, the letter. (papers shuffling) This letter is dated September 11<sup>th</sup>, 2019, and I would draw your attention to . . . let's see . . . this paragraph here: one, two, three, four, five down.**

**A. 'Responsible for reviewing a list of abutters provided in this program for the purpose of public notice in ensuring it's accurate and, and up to date. If necessary, please provide an updated list to reflect any recent land transactions or changes of ownership.'**

**83. Q. I, I thought—Let me take that from you. That talks about notices for abutters. I thought there was something in here that talked about a . . . Ah. I'm sorry, the very first paragraph.**

**A. Okay. (pause) Okay. 'So, it's complete and adequate for public notice for public comment.' Okay. So, I think what that means is that it's complete so that um, it can be—the, you know, the abutters can be notified.**

**84. Q. Okay. It's not necessarily that—it's not notification that there is a hearing required.**

**A. Right. I, I believe. I mean, I'm not an expert on DEM's process. But it would seem like they had determined that it was complete, and then you—the next step is to—one of the next steps is to mail registered letters to abutters.**

85. Q. Okay. So, the first time the notice comes out and it, it includes information that says you have to give us a list of the abutters so that they can provide public comment. And then the second letter goes a step further and says, 'But we've reviewed this, and we don't need to, to have a public hearing.' Is that...?

A. Yeah, I, I--

86. Q. Some [Indiscernible].

A. It—it sounds like what we do for subdivisions. It's—And, and—But . . . I haven't work at DEM (chuckles) yet, so.

87. Q. Okay.

**DETECTIVE LIEUTENANT SALISBURY:**

88. Q. May--, W--, I'm sorry,... jumping in.

**INVESTIGATOR RATIGAN:**

89. Q. When—

**DETECTIVE LIEUTENANT SALISBURY: Go ahead.**

90. Q. When the--, When you received the second application, did you send a second letter?

A. Yes.

91. Q. Okay.

A. Yup. The--

92. Q. And--

A. -- same process: talked to the uh, talked to the public works; talked to building.

We—we had a building director a--, at now. We—we really had—We didn't really have um, a functioning building director for the first round, --

93. Q. [Indiscernible]

**A. -- and then—And talked to the mayor and the solicitor.**

94. **Q.** And had anything—? Your position hadn't changed when the second notification came. Even though you might have gotten some more plans, your position didn't change regarding whether that application should be approved or denied, is that correct?

**A. Yes.**

95. **Q.** Okay. Thank you.

**A.G. MOREIRA:**

96. **Q.** If we could just focus on the, the time period Mr. Ratigan was just asking you that when September of 2019, so it would have been the letter you were just looking at from DEM that indicates to the property owner Ms. Mooney that the application was complete, I think my first question is: could you just give us a sense on what documents are flowing to you? I guess first of all, do you get this—this document, the letter, September 11<sup>th</sup>, basically saying the application was complete-

**A. Yes.**

97. **Q.** -- do you think? Okay.

**A. Yeah. And—and again, sometimes it would go-- A I--, Such a letter would go to en--, Engineering or Public Works and not come to us that um, -- But ultimately my office would get the letter regardless.**

98. **Q.** Okay. Do you think that was--

**A. It—This wasn't lost in the mail.**

99. **Q.** No, no, no, --

**A. Yeah, we, we, we definitely got it.**

100. **Q.** I guess what the, the lawyer had on it, I'm just trying to gauge the flow of documentation--

**A. Yup.**

101. Q. -- and things like that.

A. Yup.

102. Q. But do you think this is what triggered your involvement, or would you have been involved before this? Because ...

A. That's—That would have triggered it.

103. Q. Okay.

A. Right.

104. Q. Because it looks like the—the application may have been filed before now, but this is a DEM--

A. We would have not necessarily known that.

105. Q. So this is the notification you--

A. Correct.

106. Q. -- think you were referring to. Okay. It also talks about that 'the applicant has to provide a narrative in support of the application to alter freshwater wetland.' Is that—Do you think you received that?

A. If it was part of the application.

107. Q. Okay. So, you would res--, they would forward you your understanding of [Indiscernible] ...

A. DEM would have given us the application.

108. Q. Okay. And then the list of abutters, is that something that would make its way to you?

A. I don't know.

109. Q. Okay. And then um, not to be too repetitive. But then you en--, engaged in the process you were telling us about analyzing it in concert with the town engineer and DPW director, right?



A. Yes.

110. Q. One thing I think you said once or twice was that these plans were unique because there was a plan to build on wetlands, is that...?

A. Within a wetland.

111. Q. Within wetlands. Okay.

A. Right. I mean, I wouldn't say it's unique, but to m--, in my experience, let—let's just say it's pretty rare.

112. Q. Okay.

A. Unless there was just some extenuating circumstance.

113. Q. And would the town be aware that the area was designated wetland before—before this application comes in?

A. I, I think you—you really have to have a wetlands um, the wetlands delineated by a registered or certified expert. Because in--

114. Q. Okay.

A. —in Rhode Island the wetlands are determined by um, plant life that--

115. Q. Okay.

A. -- that can grow in wetlands. And so you have biologists and landscape architects and all that. So, we—the town wouldn't necessarily provide--, you know, have a legal definition.

116. Q. But there would be something that they could refer to...

A. But common sense, you know, I mean--

117. Q. Right.

A. -- you know, if you see standing water in there and, you know, I guess it might be (chuckles).

117. Q. I just want to show you this document. It looks like the—the plan that—it appears to be the plan that was submitted with the first application, and, and forgive me, you need a little magnifying glass potentially--

A. Yeah.

118. Q. -- to make much of it out on this 8 ½ x 11. But it looks like there's a date at the bottom: March 26<sup>th</sup> of 2018, and that's done by Commonwealth Engineering.

A. Yup.

119. Q. Does that look familiar?

A. That looks like the lot, yeah.

120. Q. Okay. And the lot would be um, towards the, the b-, bottom half.

A. S--, Southern.

121. Q. Okay.

A. Or, or southe--, southeastern.

122. Q. I just meant on the page. But okay,

A. Okay

123. Q. Yeah, it's better to refer to the, the directions [Indiscernible] ...

A. No. Yeah, here's the north here, so.

124. Q. Okay. So this rectangle that's outlined in bold, is that where the structure, does that represent where the structure...?

A. That is the buffer. That's a wetlands buffer, 50' buffer.

125. Q. Okay. And I know you said you're not an engineer, but could you explain then where the wetlands are--

A. Yes.

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126. Q. -- based on that buffer--

A. Yeah. So, uh, so these—these triangular, right here, these triangular bounds are—are—, So, wetlands is everything within those triangular bounds.

127. Q. Okay. And those triangular bounds seem to be all within that buffer that—Am I understanding--

A. Yeah. Yeah.

128. Q. -- right?

A. So, --

129. Q. Okay.

A. -- so to be specific: the wetlands is here, and then the 50' buffer is just measured around the wetlands.

130. Q. Okay. So I'm not understanding. What—what does the rectangle represent then?

A. This rectangle?

131. Q. Yeah.

A. This is the lot lines, 50--

132. Q. Okay.

A. -- by 100, --

133. Q. Okay.

A. -- roughly.

134. Q. Yeah, it's—it's tough because it's so small. And then the—the squares inside of it would repre--, which represent the proposed structure?

A. Yes.

135. Q. Okay. So, the stru-, the, the structure itself would be within these—within the triangle, one

of these triangles, right?

**A. Yes.**

**136. Q. Okay.**

**A. You can see like, right there; right there.**

**137. Q. Okay. And then if we could maybe jump to your letter, and bear with me, I just wanted to walk through each of the reasons that you objected, and I think it's the November of 2019 letter. Let me just get that.**

**INVESTIGATOR RATIGAN: [Indiscernible utterance]**

**(pause)**

**INVESTIGATOR RATIGAN: The second le--, Which letter?**

**A.G. MOREIRA: November I think of 2019.**

**INVESTIGATOR RATIGAN: I've got September of 2019.**

**A.G. MOREIRA: No, I'm sorry, from Mr. Stevens.**

**INVESTIGATOR RATIGAN: Oh, I'm sorry.**

**A.G. MOREIRA: Okay.**

**138. Q. While I'm getting that though. So you—I think you said leading up—from the time you're notified—between the time you're notified to when that letter is submitted, you consulted with the town engineer--**

**A. Yes.**

**139. Q. -- and the director. Was there a consultation with other people in town government?**

**A. Um, it, it, it may have been the solicitor. She was my predecessor, so I frequently discussed . . . my cases that um—or cases, development proposals and such things with her.**

**140. Q. The solicitor was the prior town planner?**

A. Yes.

141. Q. I didn't know that.

A. Planning Director, yes.

142. Q. Planning Director, excuse me.

A. And she's a former council person and um, chairman of the zoning board. So--

143. Q. Okay. That's good.

A. -- she knows.

INVESTIGATOR RATIGAN:

144. Q. She's a woman of many hats.

A. She's m--, um, is great to work with.

A.G. MOREIRA:

145. Q. That's good. And I think you had said you were tasked by the mayor to look into this, or it would have fallen ... one of your--

A. It, it--

146. Q. -- responsibilities, right?

A. It's one of my responsibilities --

147. Q. Okay.

A. -- to take the lead on—I'm the ad--, what they call the Administrative Officer, and so that I would do that as a routine.

148. Q. And prior to submitting the letter, did you give feedback to the, the mayor?

A. Yes.

149. Q. Okay.

A. He, he saw the letter and approved it--

150. Q. Okay.

A. -- before it went out.

151. Q. Okay. So your understanding this is the town's position--

A. It is the town's--

152. Q. -- [Indiscernible]

A. -- position, --

153. Q. Okay.

A. -- yes.

154. Q. Just one of those questions--

A. Yeah.

155. Q. -- I have to ask.

A. Yup.

156. Q. Okay. All right. So November 22<sup>nd</sup>, 2019, letter . . . this is the letter that you wrote, right, it's a--

A. Mm hmm.

157. Q. -- two-page letter.

A. Yup.

158. Q. Okay. All right. Now directing your attention to the first objection: 'Excessive disturbance.' Could you just explain, if you can, the basis for that objection.

A. Well it says that the wetlands disturbance of at least 5196 square feet, or 93 percent of the lot, and the ratio of disturbance to the lot size is extreme--, extremely excessive and unreasonable.

159. Q. So perhaps referencing back to the plan, --

A. Yup.

160. Q. -- so, that 93 percent of wetlands would be contained within the, the rectangle on—in laymen's terms--

A. Yeah.

161. Q. -- Can you...?

A. Yeah. And um, so I'm looking at 93 percent, and I'm looking at this. I'm—I'm pretty—I mean, I did the calculation. I don't—I see this as less than 93 percent but still significant, and 100 percent within the wetlands buffer. So, I would still stand by that it was excessive.

162. Q. It's 100 percent within the wetlands buffer?

A. Buffer.

163. Q. Okay.

A. Either the wet--, Yes.

164. Q. Okay. And you know, I'll speak for myself, but I'm just trying to understand--

A. Yeah.

165. Q. -- some of how the wetlands are interacting and what the proposal was. But so this wasn't a situation where it's near wetlands, it's—it—the, the project or structure is near or adjacent to wetlands. Like you said, it's --

A. It's in the wetlands.

166. Q. Okay. And it's not um, that there's a drainage issue into wetlands, like this is building on top of wetlands, is that accurate?

A. Yes.

167. Q. Okay.

**DETECTIVE LIEUTENANT SALISBURY: Can I ask—**

**A.G. MOREIRA: Sure.**

DETECTIVE LIEUTENANT SALISBURY:

168. Q. As far as, we, we were told—we haven't verified this—this information, yet we were told that this lot at 45 Canning Street was the last lot before the town sewer picks up. So, this would be a lot--

**A. The town sewer?**

169. Q. Yes.

**A. Okay.**

170. Q. So, this would be a lot that would require a septic, --

**A. Okay.**

171. Q. -- [Indiscernible], s--, septic system.

**A. Okay.**

172. Q. I'm not sure how deep your ISDS experience goes, or, or--

**A. Yeah.**

173. Q. -- knowledge, but can you answer if they were building a structure on top of the wetlands and they needed to put a septic system, would there be enough room to do that?

**A. (pause) I mean, it—it looks like a challenge because it, it wouldn't--- I don't know if it would perc. Again, that's . . . I don't know. I, I probably don't want to wander (chuckles) into that area.**

174. Q. Okay. But every structure that is a domicile, somebody's going to live in it, they need--

**A. They have to have --**



175. Q. -- some kind of a septic or--

A. Yes.

176. Q. -- town sewer.

A. Yes.

177. Q. That would be the problem.

A. And there have—there have been a lot of innovations, like sand—what they call sand filters--

178. Q. Right.

A. -- and A & R—Alternative Innovative Systems, which pre-treat the, the waste so that it, it minimizes the, the f--, the field, the leach field--

179. Q. Right.

A. -- but ...

180. Q. To—to your knowledge, can they install one of those? Even though it's a sand filter, which is above ground, --

A. Right.

181. Q. -- there's still a tank in the —in the ground, --

A. Right.

182. Q. -- could they do that within the wetlands?

A. In this case we would have to take a closer look.

183. Q. Okay.

A. And, and frankly, I'm not—I'm not qualified to answer that question.

A.G. MOREIRA:

184. Q. Getting back then to the November 22<sup>nd</sup>, 2019, letter, and number two, you raised the issue of chronic flooding.

A. Yup.

185. Q. And I'll—I'll just read a little bit of it: 'The area of Canning Street suffers from increasingly chronic local flooding, especially in the last decade since the last FEMA map was completed.' Completed. Excuse me. 'Displacing this wetland with additional impervious services stands to adversely affect downstream residential properties.' So with regard to the first sentence that it's—it 'suffers from increasingly chronic local flooding,' where did you get that information from?

A. I would have gotten that from Bob Anderson.

186. Q. Okay. And is there a FEMA map that details that, that you're aware of?

A. Uh, ...

187. Q. Probably more --

A. Pr--

188. Q. -- Mr. Anderson's domain?

A. Probably. I w--, I would think so.

189. Q. Okay.

A. Yeah.

190. Q. And then as far as just get—to get my bearings of the area, the downstream residential properties, I printed out, -- And just for the record, I going to show you like a, a an arial photograph, a map. So, the—Do you recognize the property that's designated, it looks like a little red balloon, 45--

A. Yeah.

191. Q. -- Canning Street.

A. Yes.

192. Q. That would be the, the subject property--

A. Yes.

193. Q. -- so to speak. Okay.

A. Yes.

194. Q. What would be downstream then from there?

A. Well, to the, to the south, this whole area. And--

195. Q. Okay.

A. -- we have to I--, And I, and I guess I've . . . You would have to look at the—the sub-watershed (chuckles)--

196. Q. Okay.

A. -- you know, it's, it's, it's not just relegated to, you know, this—this um, you know, arbitrary 500 feet in any direction.

197. Q. But your—your understanding was that it would be south of there.

A. Yes.

198. Q. It would be downstream.

A. Yes.

199. Q. Okay. And then the—the neighbor you had spoken with, is her house depicted on—on--

A. Yes.

200. Q. -- this?

A. It's Burgoyne's house. And this lot actually comes down like this. So, the drainage would run onto her property.

201. Q. Okay. It looks like Bur--, Burgoyne's house on here has a little '55' and a small—small numbers on top. Can you see that? Sorry.

A. **Yup.**

202. Q. Okay.

A. **Yes.**

203. Q. Okay. Just so we get our, our bearings [Indiscernible] ...

A. **Yup.**

204. Q. And then you also used the term, 'additional impervious surfaces.' I think I know what that means, but could you just explain that (chuckles).

A. **Roof and driveway.**

205. Q. Okay. So, places that a structure, water can't get into?

A. **Yes.**

206. Q. Okay.

A. **Yes.**

207. Q. On top of a wetland (chuckles)?

A. **Yeah.**

208. Q. O—Okay.

A. **Exactly (chuckles).**

209. Q. (chuckles) Okay. And then you—you quote some language, and just kind of looking at the DEM rules and regulations, it looks like that's where it was quoted from, does that a ring a bell where it starts with 'protection of wetland (phonetic) property.'

A. **(pause) Hmm. [Indiscernible] I'm gonna make that assumption.**

210. Q. Okay.

A. **I'm sorry I didn't give a cite.**

211. Q. No, no, no—No, no problem at all. (pause) And then the—the—the next item is drain--,

number three is drainage pipe. Could you tell us where that drainage pipe, I guess by, by reference to the ariel photo, if you remember?

**A. I—I would probably defer to Anderson.**

**212. Q.** Okay. It's—[Indiscernible] You describe it anyway as a westerly—westerly property line of 186; so it would be um, as this is facing you, it would be on the left side of the lot I guess would be...

**A. I, I --**

**213. Q.** -- westerly.

**A. It—I would recommend you--**

**214. Q.** Okay.

**A. -- query Bob on all the details.**

**215. Q.** Okay.

**A. I know there was – He had mentioned there was a crushed pipe somewhere. But**

**that's really his...**

**216. Q.** Okay. Just one other question comes to mind--

**A. Yeah.**

**217. Q.** -- in terms of drainage or piping. I'm forgetting her name. But the neighbor--

**A. Burgoyne.**

**218. Q.** -- Burgoyne, was concerned that water was being diverted across her property?

**A. To her property.**

**219. Q.** To her property.

**A. Yes.**

**220. Q.** Okay. Could you just explain that by looking at--

A. Yeah, --

221. Q. -- the [Indiscernible]?

A. A, again, her lot—In fact it may be . . . Yeah, I believe her lot—This is the, the um, 45 Canning; her lot actually is like this. So, it—this would rece--, It—Her--The back of her lot would receive the additional flow.

222. Q. Okay. And was there a drainage pipe that was going to run along her property, does that...?

A. I th--

223. Q. Okay.

A. You got to talk to, to Bob about that.

224. Q. Okay. Sure.

A. Sorry.

225. Q. No. No problem at all. At the—at the bottom of the first page of your letter—maybe it's easier if I just kind of read it from there.

A. Okay.

226. Q. 'As the drainage pipe is partially located within a Canning Street right-of-way, the applicant will still be required to obtain written permission from the Public Works director whereupon existing storm drain modifications are required for this application to be fully considered by DEM.' So that's—Is that going back to the, the drainage pipe that had been there, um, ...

A. Yeah. Again, that's—that was— probably came directly from Bob Anderson.

227. Q. Okay. Just a last question about--

A. Yup.

228. Q. -- that though.

A. Mm hmm.

229. Q. Do you know was permission obtained then from Mr...

A. I don't--

230. Q. -- Anderson?

A. -- know.

231. Q. Okay. And then the, the letter concludes by you requesting that the director issue a denial. Is --

A. Yeah.

232. Q. -- that right? Okay. In terms of a response or a designation from DEM, are you aware like, what they considered this to be?

A. I didn't—I, I don't think we in practice, receive responses. At least we didn't in this case. The mayor did ask me to check with—with Marty as to whether there would be a hearing. And um, um, I believe that Marty um, I, I-- I don't recall getting a, a clear answer from Marty. Then the mayor soon thereafter indicated that he wanted to send a letter to DEM re-stating his interest in, or, or wanting to know—Now, this is after the—after it was approved, he, he wanted—he sent the letter.

233. Q. You—You're fast-forwarding to the--

A. I'm fast-forwarding.

234. Q. [Indiscernible]

A. I'm sorry. Yeah.

235. Q. No, that's okay.

A. Yeah. Yup.

236. Q. So, ...

**A. That's right. I'm sorry.**

**237. Q.** No, that's a—quite all right. So, getting back to the time period shortly after you submit the November 22<sup>nd</sup>, 2019, letter.

**A. Yup.**

**238. Q.** There's um, terms used in like the, the DEM, you know, public information website about the application: Substantive objection filed. Do you remember hearing that term in terms of the town's position?

**A. No.**

**239. Q.** Okay. But this, like you said, was very clearly the town objecting--

**A. Yeah.**

**240. Q.** -- to the permit. Okay. All right. So then let's jump to the, the second application and then your second letter. (pause / papers shuffling) And this one's dated April 22<sup>nd</sup> of 2021. Do you recognize that?

**A. I sure do.**

**241. Q.** It's your letter. Okay. And then you had described what led up to this a bit: you received the notification. Was there anything different about the notification and then the materials provided by DEM in—for the second application than the first one?

**A. I'm—I believe that I relied on, on Bob Anderson's critique--**

**242. Q.** Okay.

**A. -- again. Because it, it appeared-- I mean, to a lay person, it, it w--, it would appear that it's pretty much identical.**

**243. Q.** Okay.



- A. **The same. But that would have been a techn--, If there were changes, it would be, you know, something that an engineer would be able to cri--, critique.**
244. Q. Okay. But the same application package, so to speak, came with the plans, and--
- A. **Yes.**
245. Q. -- that was reviewed--
- A. **Yes.**
246. Q. -- by you and Bob.
- A. **Yes.**
247. Q. Okay. So you noted the, the prior letter from November of 2019, where the town strongly objected, is that right?
- A. **Yes.**
248. Q. And then there's a statement [Indiscernible] the amendments to this revised application justifies the town changing its objection, right. So then under paragraph--, Well, you note again in number one there's an astonishing 93 percent of existing wetlands on the lot, is that right?
- A. **Yup.**
249. Q. Okay. And then it gets into this concept of a, a drainage swale to divert existing off-road storm water flows through the property? Could you speak to that a little bit?
- A. **In general, yeah. I think what I recall is that they were going to create a swale either side in the side yards so that the f-, so, so storm water would flow into these swales and, and, and onto Burgoyne's property. But otherwise, I, I'd have to defer to Bob.**
250. Q. Okay. And we completely understand that and respect that. Just--
- A. **[Indiscernible]**
251. Q. -- so I have a (chuckles), a ...

A. I wasn't good enough in math and--

252. Q. (chuckles)

A. -- science to--

253. Q. Me either. Generally though, so, it would be diverted, like you said, to Burgoyne's property and towards like, the rear--

A. Yes.

254. Q. -- of the property?

A. Yes.

255. Q. Isn't this--? Is this wetlands down here too, the, the--

A. I believe so.

256. Q. -- whole area?

A. Yes.

257. Q. Okay. So, your understanding anyway, you're diverting the water off the proposed property to other peoples' property and wetlands--

A. Yes.

258. Q. -- is that fair? Okay.

A. Yeah.

259. Q. And when you submitted the April 22<sup>nd</sup>, '21 letter, this was the town's position regarding the application ...

A. Yeah, the—the mayor signed off on it.

260. Q. But the town is--

A. Yeah.

261. Q. -- still objecting. Okay.

A. Yes.

262. Q. I s--, I suppose I should ask you: For either application, the one that you addressed in the—your first letter or the second letter, April 22<sup>nd</sup>, 2021, was there any public hearing that you recall?

A. That the town held?

263. Q. Uh, well—The DEM I think would—would have--

A. We were never notified that there was a public hearing.

264. Q. Okay.

A. Right.

265. Q. So, you don't remember anything like--

A. I--

266. Q. -- any—any neighbors coming in.

A. No.

267. Q. Okay. How about by the town?

A. The only—Again, the town council . . . any wetlands alteration application, permit application is uh, the council is notified of, of it in a council meeting.

268. Q. Okay.

A. But it's—it's, you know-- It, it um, it's just a record that—of the—of the application.

**DETECTIVE LIEUTENANT SALISBURY:**

269. Q. Is—is it procedure for—for your department to, once you receive this notification that the application has been submitted, being—being the town planner, to send out a notice to the abutting neighbors, is that true?

A. No.

270. Q. No?

A. **No, we don't do that.**

271. Q. Okay. So, they don't have a forum to-- The neighbors surrounding this property don't have a forum to object?

A. **W--, w--, So—I mean, DEM notifies them.**

272. Q. Right.

A. **They-- I, I suppose they could go to the town council and, and um, you know, ask during public comment period. But in general, there's no specific procedure.**

273. Q. Okay. I'm—I'm curious. I mean, is—is it possible that's different with each municipality?

A. **Uh, I d--, I don't know the answer to that.**

274. Q. Okay.

**INVESTIGATOR RATIGAN:**

275. Q. Did anyone ever ask you to withdraw your objection...?

A. **No.**

276. Q. Do—Do you know if anyone ever asked anyone else in Cumberland to withdraw their objections?

A. **Just hearsay.**

277. Q. Okay. No--, no one ever told you that the request had been made. The mayor never told you that and Bob Anderson never told you that.

A. **Only after the denial.**

278. Q. Mm hmm.

A. **And, and recently that—that--**

279. Q. What was told?

A. That the mayor told me about a conversation he had with Mr. Silva in the—that the re--, Pha-, Phantom Farms.

280. Q. Okay. And what—Briefly, what was that?

A. Just that, that Mr. Silva had wanted the town to change its position.

281. Q. Okay.

DETECTIVE LIEUTENANT SALISBURY:

282. Q. And I have one more question: You mentioned that you had worked for Senator Chafee's

A. Yes.

283. Q. -- administration. Was it as mayor of Warwick or as when he was a senator?

A. Both.

284. Q. Okay. Again, hearsay is hearsay. But it has been alleged that there was some kind of a political [Indiscernible] somehow being attempted by you as the town planner, posting this objection for the town against Mr. Silva and there was a political reason for it. Do you have any knowledge of that, or can you explain to us why he would say something like that?

A. Can you give me a little bit more of a hint?

285. Q. Um, ...

A. It seems like a bit of a stretch. I mean, I'm here—I mean, first of all, you know, my employment with—with Mr. Chafee ended in 2015 as in—in my governmental--, I mean, I've been in government pretty much my entire career. And uh, it's—it's—it's just one of--, I mean, I was a political appointee of the senator and the governor. I'm not in this t--, this town.

286. Q. Right.

A. It's—it's a--, Frankly, it's, it's refreshing. I'm here because I'm good and, and

dedicated, and I succ--, I, I survived a succession of, of one mayor to the next. So, no, I—I categorically deny anything.

287. Q. Do you—Do you know of any issue when you worked for Senator Chafee that he would have—or his administration would have had with Tony Silva or his [Indiscernible] connections?

A. Any issue?

288. Q. Yeah. Any kind of negative issues?

A. No.

289. Q. Okay.

A. I think—I think the governor appointed Chief Silva to be DM--, DMV. His--

290. Q. Okay.

A. His DMV--

291. Q. Chafee?

A. Yeah.

292. Q. Okay.

A. His DMV director.

DETECTIVE LIEUTENANT SALISBURY: That's it.

A.G. MOREIRA: I think that's all. Yeah,

293. Q. I really appreciate it.

A. Great.

293. Q. I think that's all we have.

DETECTIVE LIEUTENANT SALISBURY: All right. The time is 11:02. Thank you.

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WITNESS STATEMENT OF STEVENS, JONATHAN

Ref: 21RIX1-1408-OF

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**STATEMENT TAKEN BY:**

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**WITNESSED BY:**

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