6.1.1

October 16 2012 Hearing

# CITY OF HAVERHILL

MASSACHUSETTS
CITY SOLICITOR'S OFFICE
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Bradford, MA 01835
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WILLIAM D. COX, JR.
CITY SOLICITOR

September 6, 2012

TO: John A. Michitson, President and Members of the Haverhill City Council

FROM: William D. Cox, Jr., Esq.
City Solicitor

RE: Remand Order - John Giordano v. Haverhill City Council,
Land Court Docket No. 11 MISC 453400

At your meeting of August 23, 2011 the City Council voted 1 - 8 not to approve the petition of John P. Giordano for a special permit to build within 500 feet of a water supply, as required by the Code of the City of Haverhill § 255-90, on real property located at 90 Amesbury Road across from Kenoza Lake. Mr. Giordano appealed the Council's decision and the matter is currently pending in the Land Court. Mr. Giordano filed a Motion for Summary Judgment requesting that the Court issue an order directing the City Council to issue the permit. The Court heard both parties and denied Mr. Giordano's Motion for Summary Judgment on August 29, 2012. Enclosed is a copy of the Land Court Order.

The Judge has remanded the case back to the City Council for further deliberation and consideration of Mr. Giordano's petition. The Court, citing a procedural defect in the processing of this matter, has ordered that the Council refer the matter to the Conservation Commission for a formal review and recommendation as required by the ordinance - § 255-90. The Court also took notice that Mr. Giordano did not present expert testimony to the Council in the course of your deliberations, however, has presented such evidence in his Land Court appeal.

The Court's instructions for the remand of this matter are that the remand hearing shall be held at a duly-noticed City Council meeting, open to the public, after the City Council has requested and received a review and recommendation on the permit

application from the Conservation Commission. The Order provides that the Council "shall hear from Mr. Giordano's expert, Martin Weiss, and may take additional evidence as it deems necessary." The Council has until November 2, 2012 to complete the process and issue a decision.

It would be my recommendation that Document 100 of 2010, petition from Atty. Migliori for John P. Giordano requesting Special Permit to build a single family residence at 90 Amesbury Road WITHIN 500' OF WATER SUPPLY – Assessors' Map 465, Block 3, Lot 2A, be placed on the agenda for the next City Council meeting on September 18, 2012, that the matter be referred to the Conservation Commission for a review and report as required by the City Code § 255-90 no later than Friday, October 12, 2012 at 11 AM, and that a City Council public hearing be scheduled for October 16, 2012. The applicant and any abutters should be notified and the public hearing advertised, all as previously done.

Finally, where this matter is remanded by the Court to the Council for further hearing and consideration, and, there are several Councillors who were not serving at the time of the original hearings, it is my opinion that the full City Council may act in this remand hearing as it is a separate proceeding from the original hearing. I will be providing copies of the documents and minutes from the previous hearing to each Councillor prior to the October 16, 2012 hearing, which the Council may choose to accept as evidence for the remand hearing.

Please feel free to contact me should you have any questions or concerns in this matter. Thank you.

cc: James J. Fiorentini, Mayor
William Pillsbury, Economic and Planning Director
Robert Moore, Environmental Health Technician

(SEAL)

COMMONWEALTH OF MASSACHUSSETS
THE TRIAL COURT
LAND COURT DEPARTMENT

ESSEX, ss. CASE NO. 11 MISC. 453400 (KCL)

JOHN GIORDANO,
Plaintiff,
v.

MICHAEL HART, ROBERT SCATAMACCHIA, WILLIAM RYAN, MICHAEL YOUNG, DAVID HALL, COLIN LePAGE, MARY ELLEN DALY O'BRIEN, SVEN AMIRIAN and WILLIAM MACEK as members of the City Council of the City of Haverhill,
Defendants.

## MEMORANDUM AND ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND DIRECTING REMAND TO CITY COUNCIL

Section 255-90 of the Haverhill Zoning Ordinance prohibits construction of buildings within 500 feet of the mean high-water elevation of Kenoza Lake (a city reservoir) without a permit from the City Council. The Council may grant such a permit if it finds that "the proposed building does not have an adverse effect on the public water supply."

Plaintiff John Giordano applied for a permit,[1] was denied, and now appeals to this court pursuant to G.L. c. 40A, §17, contending that the denial was "arbitrary and capricious" because the residence he desires to build will have no such effect. Whether it will or won't is a factual question, subject to *de novo* review in this court. Only admissible evidence may be considered in connection with that review, and the issue of "adverse effect on the public water supply" requires expert testimony. The parties were ordered to make mutual expert disclosures by no later than

[1] His land is within 500 feet of the lake.

March 23, 2012. Mr. Giordano timely made that disclosure. The Council did not, and has thus been precluded from introducing any expert testimony in connection with these proceedings.[2]

Mr. Giordano has now moved for summary judgment seeking an order directing the defendants to issue the permit. That motion is **DENIED**. The expert affidavit he submitted is conclusory and does not explain the factual basis for those conclusions,[3] requiring a full examination of the expert at trial before judgment properly may enter, one way or the other. The question thus remains what the next step should be.

The Council did not have the benefit of a presentation from Mr. Giordano's expert before it made its decision to deny the permit. Had that presentation been made, the Council says, it may well (and, Mr. Giordano contends, *should*) have decided differently. The Council thus contends that a remand is appropriate to enable it to consider such a presentation and, also, to obtain a formal review and recommendation from the Conservation Commission as the ordinance requires. §255-90.[4] I agree. Far from being waivable, a formal Conservation Commission report is an essential pre-requisite to a valid Council decision on the permit application. Its absence flaws the underlying administrative process, making it inappropriate for this court to take action until the process is complete.

The motion for remand is thus **ALLOWED**, with this caveat. This court retains full jurisdiction over the case including the remand, the remand decision, and the review of that

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[2] Notice of Docket Entry (Apr. 26, 2012).

[3] Affidavit of Martin Weiss in Support of Plaintiff's Motion for Summary Judgment (Jun. 15, 2012). No facts or reasons are given in support of any of its conclusions — a lack of foundation that prevents it from being used to show the absence of a genuine issue of material fact.

[4] The requirement is stated as follows. "Any application for a permit under this section *shall* be accompanied by a report from the Conservation Commission setting forth a record of its action on and any recommendations as to the subject matter of the application. *No application shall be considered complete without such report* and the time within which to act on the application shall not begin to run until such report is filed." Zoning Ordinance, §255-90 (emphasis added). The Council never received a formal Conservation Commission report, only the comments of a Conservation Commission agent, which may not represent the views of the Commission itself. Moreover, it is not clear if the agent focussed solely on the ordinance requirements, nor how much of his commentary was based on actual study and fact as opposed to general, untested, concerns.

decision. The Council must base its remand decision solely on the ordinance criteria — will the proposed building have an adverse effect on the public water supply? Whatever decision is reached on that question must be fact-based, not speculative, with the facts and the evidence in support of those facts specifically identified. Moreover, the order precluding the Council from offering its own expert testimony in the court proceedings remains in effect unless and until the Council moves to have it vacated, which will not be granted absent good cause.

This case is therefore **REMANDED** to the Council for further consideration of Mr. Giordano's application for a permit to construct a single family residence on his property at 90 Amesbury Road in accordance with the directions set forth above. The remand hearing shall be held at a duly-noticed City Council meeting, open to the public, after the City Council has requested and received a review and recommendation on the permit application from the city's Conservation Commission. The Council shall hear from Mr. Giordano's expert, Martin Weiss, and may also take such additional evidence as it deems necessary. Both the Conservation Commission proceedings and recommendation and the City Council's hearing and decision after receiving that recommendation must be completed by **November 2, 2012** unless an extension is previously sought and obtained from the court. The Council shall file a copy of its remand decision with the City Clerk promptly after that decision is made.

This court retains jurisdiction over the case, including over any appeals which may be taken (or other actions brought) from or relating to the Council's further proceedings pursuant to this order. Anyone not currently a party to this litigation who claims aggrievement from the remand decision must, within twenty (20) days of the filing of the remand decision with the City Clerk: (1) file a motion to intervene in this action together with its complaint, (2) serve the motion and complaint on all current parties to this case, and (3) file with the City Clerk written

notice of having filed the motion to intervene and complaint, accompanied by true copies of those papers.

No one currently a party to this litigation and aggrieved by the Council's remand decision needs to initiate in this court a new lawsuit appealing the Council's remand decision, but any such aggrieved party shall, within twenty (20) days of the filing of the remand decision with the City Clerk: (1) file with the court (and serve on all parties) a proper motion for leave to amend the pleadings to assert a right to judicial review of the remand decision, with the form of the proposed amendment annexed, and (2) file with the City Clerk written notice of having filed the motion to amend, accompanied by true copies of the moving papers.

The parties shall file with the court, within ten (10) days after the Council files its remand decision with the City Clerk, a joint written status report on the outcome of the Council's deliberations on remand, accompanied by a true copy of the remand decision, and schedule a status conference with the court to discuss what other and further actions, if any, are appropriate in this case.

SO ORDERED

By the court. (Long, J.)

Attest:

Deborah J. Patterson, Recorder

Dated: 29 August 2012.

A TRUE COPY
ATTEST:
Deborah J. Patterson
RECORDER

100/10

100/10 Hearing November 16 2010

# FIORELLO & MIGLIORI

ATTORNEYS AT LAW

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MICHAEL J. MIGLIORI
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18 ESSEX STREET
HAVERHILL, MASSACHUSETTS 01832

TEL 978/373-3003 FAX 978/373-3066

Backup Not Granted Aug 23 2011

September 9, 2010

Attorney Michael J. Hart, President
Haverhill City Council
City Hall
4 Summer Street
Haverhill, MA 01830

Re: Special Permit Request Pursuant to Haverhill Zoning Chapter 255-90
90 Amesbury Road
Map 465 Block 3 Lot 2A
Owner: John P. Giordano

Dear President Hart,

Please be advised this office represents the Applicant, John P. Giordano, regarding his property located at 90 Amesbury Road in Haverhill.

Mr. Giordano is requesting a Special Permit from the City of Haverhill to construct a single-family residence on the above-referenced property.

A portion of the property is within the 500' buffer zone pertaining to Kenoza Lake, therefore, a Special Permit is required to construct the single-family residence.

I have consulted with Mr. Pillsbury, the Planning and Economic Director, along with Attorney William Cox, City Solicitor, and I have been advised that this Request does not require a hearing by the Planning Board.

This Special Permit Request should be referred to the appropriate City departments for review.

Kindly refer this matter to the appropriate City departments for their comments.

I have enclosed the appropriate number of plans for review by the City Council and all City departments.

Build 500' water supply

100/10



Should you have any questions or need any additional information, please do not hesitate to contact me.

Thank you for your efforts in this matter.

Sincerely Yours,

Michael J. Migliori

MJM/dma
enc.
cc. John P. Giordano

90 Amesbury rd. - Build 500'u Cter Supply

IN CITY COUNCIL: September 21 2010
VOTED: that CITY COUNCIL HEARING BE HELD NOVEMBER 16 2010
Attest: Mgr G Tomy
City Clerk

IN CITY COUNCIL: November 16 2010
POSTPONE TO NOVEMBER 30 2010
Attest: Mgr G Tomy
City Clerk

IN CITY COUNCIL: November 30 2010
POSTPONED TO JANUARY 25 2010
Attest: Mgr G Tomy
City Clerk

IN CITY COUNCIL: January 25 2011
POSTPONED TO JUNE 28 2011
Attest: Mgr G Tomy
City Clerk

IN CITY COUNCIL: June 28 2011
POSTPONED TO JULY 26 2011 as requested by Atty Migliori for applicant
Attest: Mgr G Tomy
City Clerk

IN CITY COUNCIL: JULY 26 2011
POSTPONED TO AUGUST 23 2011
Attest: Mgr G Tomy
City Clerk

IN CITY COUNCIL: August 23 2011
NOT GRANTED
Attest: Mgr G Tomy
City Clerk

RECEIVED

2011 OCT -4 A 9:59

CITY CLERKS OFFICE
HAVERHILL, MASS.

BACKUP Dated AUG 23 2011

CITY OF HAVERHILL
MASSACHUSETTS

AMENDED NOTICE OF DECISION

YOU ARE HEREBY NOTIFIED OF THE DECISION OF THE CITY COUNCIL ON THE APPLICATION OF:

JOHN P. GIORDANO
Applicant and Owner (If Different)

for property located at: 90 AMESBURY RD MAP 465 BL. 3 LOT 2A
Site location, Assessor's Map, Block, Parcel numbers

which was filed with the City Clerk on SEPTEMBER 9, 2011 as signified by the
Date

City Clerk's date stamp.

The Council, as authorized by Section 15, Chapter 40A of the M.G.L. held a PUBLIC

HEARING ON: AUG 23 2011 (CONT. 11/16/10, 11/30/10, 1/25/11, 6/28/11, 7/26/11, 8/23/11)
Date of Hearing (Continuance if applicable)

The Council voted to ~~GRANT~~/DENY said application
Vote On Special Permit With/~~Without~~ Conditions

| | YES | NO | ABSENT |
|---|---|---|---|
| PRESIDENT HART | | X | |
| COUNCILLOR SCATAMACCHIA | X | | |
| COUNCILLOR RYAN | | X | |
| COUNCILLOR YOUNG | | X | |
| COUNCILLOR HALL | | X | |
| COUNCILOR LePAGE | | X | |
| COUNCILLOR DALY O'BRIEN | | X | |
| COUNCILLOR AMIRIAN | | X | |
| COUNCILLOR MACEK | | X | |

See attachments for reasons for decision of the City Council.*

An appeal of this Decision shall be made pursuant to Section 17 of Chapter 40A and shall be filed with Superior or District Court within twenty (20) days after the date of filing of the above cited decision with the Office of the City Clerk. Procedual appeals shall be taken in accordance with Section 17 of Chapter 40A.

October 4 2011
Date

Michael Hart
City Council President MB.

*Record of evidence and detailed record of proceedings of the City Council hearing have been filed with the City Clerk and are incorporated herein by reference and considered a part hereof.

CITY COUNCIL

MICHAEL J. HART
*PRESIDENT*
ROBERT H. SCATAMACCHIA
*VICE PRESIDENT*
WILLIAM H. RYAN
MICHAEL P. YOUNG
DAVID E. HALL
COLIN F. LEPAGE
MARY ELLEN DALY O'BRIEN
SVEN A. AMIRIAN
WILLIAM J. MACEK

Hearing Minuts August 23 2011 Packet

# CITY OF HAVERHILL

HAVERHILL, MASSACHUSETTS 01830-5843

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4 SUMMER STREET
TELEPHONE: 978-374-2328
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**MINUTES OF A HEARING HELD ON TUESDAY, AUGUST 23, 2011 REGARDING DOCUMENT #100 of 2010 – A PETITION FROM ATTORNEY MICHAEL MIGLIORI FOR JOHN P. GIORDANO, REQUESTING A SPECIAL PERMIT TO BUILD A SINGLE FAMILY RESIDENCE AT 90 AMESBURY RD. WITHIN 500' OF A WATER SUPPLY; ASSESSOR'S MAP 465, BLOCK 3, LOT 2A**

**SUBJECT:** Document #100/2010- A petition from Attorney Michael Migliori for John P. Giordano requesting a special permit to build a single family residence at 90 Amesbury Rd. within 500' of a water supply; assessor's map 465, block 3, lot 2A

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

City Clerk Margaret A. Toomey: **Document 100 of 2010** - A petition has been received from Attorney Migliori for John P. Giordano requesting a special permit to build a single family residence at 90 Amesbury Rd. within 500' of a water supply; assessor's map 465, block 3, lot 2A.

Good evening Mr. President and members of the City Council, my name is Michael Migliori. I'm an attorney in Haverhill, 18 Essex Street. I am representing Mr. Giordano, the owner of land located at 90 Amesbury Road. It's approximate 4 acre parcel. Mr. Giordano hopes to build a home on this property.

President Hart: Excuse me one moment Mr. Migliori, in going through the history of this thing. This would be considered a continuance of a hearing that we had back in January. Atty. Migliori: I think it was November. President Hart: Okay in January you wanted more of a, okay, so it's a continuation. You are speaking for the applicant? Atty. Migliori –yes. President Hart – proceed.

Atty. Migliori: Just in summary, because a portion of the property is located within 500' of Kenoza Lake, he is required to obtain a special permit from the Council. Again, this matter was postponed at the end of 2010 in order for the parties to obtain more information on the requested proposal. Again, just as a way to refresh everybody's recollection, the ordinance, Ch. 255 Section 90, says in part "that such permit may be granted if the City Council finds the proposed building does not have an adverse affect on the public water supply." Since that postponement in November Mr.Giordano has received a finding from the Massachusetts National Heritage and Endangered Species Program, that states that the site preparation will not adversely affect the actual resource area habitat of the State protected rare wildlife species. You have been given that document along with a lot of other information on this project and the history of the site. In addition, Mr. Giordano has been dealing with the Conservation Commission. There have been a number of meetings held since last year. That matter has not been resolved. Those hearings will continue for some time regarding the site. Hopefully we will get some order of conditions before the end of the year. I'd like to take a minute to highlight a number of facts that were discussed at the prior hearing or can

be found in the reports/ documents which have been supplied to the Council. First is the fact that everyone who has reviewed this proposal agrees that this property is not in the Kenoza Lake watershed. There are people out there who disagree with that but the experts all agree that this property is not in the Kenoza Lake watershed. The parcel and any home constructed on it would have no adverse impact on the public water supply based on the fact that it is not even located in the watershed. Second item, I think we can hopefully agree on is that the two city departments that should have the most say over this matter would be the Water Department and the Conservation Department. This is obviously based upon the language in the ordinance which has this Council determining whether the home will have "an adverse affect on the water supply". Mr. Jessel, supervisor of the Water Department, who in my opinion is a well respected long time employee of the city, in his report has cited that he has no objection to the proposal to build a home on the site. He found no adverse affect on the public water supply and clearly states that the land again "is not within the water supply watershed". He did have some comments which he asked to be incorporated into any vote that the Council takes and we don't have any objection to the rest of his comments in his letter basically meeting other City standards which obviously we'd have to do. Again, this review is from the Water Department and I would ask who is better to determine whether something would have an adverse affect on the water supply than the Water Department and the Water Department clearly states that this proposal would not. Next are the findings which come from Conservation. Here's where things tend to get a little sticky because Conservation wants to address many more items than what the ordinance we are proceeding under requires to be addressed. The ordinance, again, states whether the proposed building would have an adverse affect on the public water supply. If we remain on that issue, the adverse affect issue, you'll find in the report from Mr. Moore the following: "In conclusion, it is my opinion that the implementation of the Massachusetts and Haverhill wetlands protection requirements and the Mass. Endangered Species Act will sufficiently vet this project to ensure the protection of the City's natural resources". That's in his report of November 5, 2010. In his report June 28th, 2011, he restates his finding that "this project can be allowed while ensuring the protection of the city's natural resources". Also, in this report Mr. Moore notes that and acknowledges that the Water Department had no opposition to this request. Therefore the project leads him to believe that this in not a significant concern. Again, he's discussing some subsurface hydrology. As I mentioned earlier, conservation review is where things get a little sticky and become confused. The Conservation report and comments contained therein deal with a number of issues unrelated to whether the project has an adverse affect on the public water supply. We know this project will not have an adverse affect on the water supply because we've been told that by the Water Department and the Conservation Department. We don't mind addressing all of those other issues that Conservation wants discussed. It is our opinion it should be discussed in a proper forum. I don't believe that by asking the City Council to act as a Conservation Commission and attach twenty conditions to this proposal is appropriate. We are more than ready and eager to deal with all of the conditions that Mr. Moore has suggested in front of the Conservation Commission. Therefore, at this point in time I don't believe those conditions should be part of any decision that the Council makes because, again, I think it's limited to whether or not we are going to have a negative impact on the water supply. That's been shown not to be correct at all. I am hoping that the Council can distinguish between what its role is as set out in the ordinance and what it would like its role to be which are two different things. I think I am going to end my presentation at this point and certainly here with Mr. Giordano to answer any questions.

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

Mr. President and members of the City Council, my name is King Davis. I live at 14 Concord Street in Haverhill, Mass. and I am in opposition to the efforts as presented by Attorney Migliori. It is my opinion for many reasons that it is not suitable for any structure to be built on this piece of land which has been filled by the current owner I'm told and the quality of the fills I understand is in question. The area is within the 500' of our most important asset, Kenoza Lake. That in itself, in my opinion is justification for

declining the proposal. Secondly, Amesbury Road and Rte. 110 is one of our most attractive approaches to the City of Haverhill. It shouldn't be built upon. This parcel of land should not be built upon by an out of town speculator, who in my judgment, bought a hunk of land that only holds the road together and required fill in what I understand is wetlands. He must have known when he purchased the property and if he didn't know, he should have known before he went through with the acquisition. I trust that you will protect the area from development not only for our current residents but for the future generations. I want you all to know that I do live on Round Pond, Pentucket Lake. My house was built some forty odd years ago prior to the lake being used as a water source for the City. My neighbor has a house there too. That house to the best of my knowledge was built prior to the lake being connected to Kenoza Lake. I want to acknowledge that fact and I request that you not only look upon this decision tonight as a current decision but also look on it as you think about the future generations for the City of Haverhill. Thank you.

President Hart: Thank you. Is there anyone else here who wishes to speak in opposition? I am going to close the hearing. Councillors, does anyone wish to make a motion?

Councillor Ryan: I'll make a motion to put it on the table for a final vote. Move the, second by Co. Daly O'Brien.

President Hart: Motion to approve the petition Councillor Ryan, second Councillor Daly O'Brien.

Councillor Ryan: Obviously I put this on the agenda so we can discuss it. I've driven by and I feel for Mr. Giordano. He's invested some money obviously in purchasing this and trying to make work. It really doesn't look to me, and I go by it over and over again, it's not an appropriate place to build a house. Not only is it in the watershed close to Kenoza Lake and we need to do everything to protect that. It's also a beautiful vista as Mr. Davis pointed out. Coming into the city looking out over Hale's swamp, it's a beautiful vista that everybody enjoys every day. When I was young, that was a hamburg stand there. How that, obviously before approvals were necessary, that was there for a few year and it finally closed down. The sign was up for many years. But I just don't think its appropriate use of this land. Everyone I have talked to feels the same way. It doesn't make any sense. The site, I've got out and walked up and down. I can't figure out where you can build a house and not have it sinking into Hale's swamp. It's a very narrow stretch. You don't want to be too close to the road. You don't want to be close to the water. There's no room. I'm sure you can get somebody to do a plan to show I can build a house on this narrow strip. It just doesn't make any sense to me. I think in today's standards that we put in protecting the environment I just could not vote for this. I am sympathetic with the person trying to build it. Good luck if you can get the votes to build it. It's going to be a great location to build a house and look out on Kenoza Lake and Hale's swamp. I don't think I could vote for this in good conscience and do what I think what's in the best interest of the City of Haverhill. I'd be voting no on this Mr. President.

Councillor Daly O'Brien: Mr. Migliori, could I ask you a couple of questions. The interpretation is that the water that would be located to the side and behind this project, it doesn't matter if there's a house near that.
There's a large body of water, he refers to it as a swamp but it hasn't looked like a swamp for a long long time. It's seems to have gotten bigger and developed a real body of water appearance. Having lived in Haverhill all my life it certainly doesn't look like it did when I was growing up. I am surprised to hear was the Councillor was alive when they first developed hamburgers down there. Anyways, I'm just going by, I have driven on that road so many times. It just appears to me that it looks much different now than it did say thirty or forty years ago. It looks like a body of water. Now that doesn't count, the fact that we have that water there? It doesn't influence this project at all? Atty. Migliori – no. Co. Daly O'Brien, in reviewing your information, part of the argument if you will, is there are these other houses that are very close to ponds and lakes in Haverhill. Atty. Migliori – King Davis' for example. Co. Daly O'Brien – is that part of your argument? Atty. Migliori – part of my argument is that all of these houses that are within

500' of various bodies of water in Haverhill, to my knowledge have never caused a problem. For you to be able to come up here and say, well my house was built forty years so I am okay living on Round Pond is a bit hypocritical I think. Co. Daly O'Brien – I think the point though, that I see, I didn't think of it in those terms, was the fact that since the bodies of water have been connected to provide back up systems to our water system, nobody has built on any of those lakes and ponds. It hasn't been allowed. There hasn't been anything that close. Atty. Migliori – there have been additions. I know of home additions. Co. Daly O'Brien – but nobody's built, nobody has built a new home on any of those ponds. Atty. Migiori – I don't know the answer. Co. Daly O'Brien – well, I did some research and the answer is no. That's where I am coming from. I'm concerned that we are going to establish a precedent that we may not be happy with in the future, that's my concern. Nothing that I've read in the material provided to me has convinced me otherwise. That's where I stand right now. I'm still listening though. Not disavowing you but I just feel there is something about the tone. I think that when Mr. Moore is telling us the wetland protection requirements in the endangered species act will sufficiently vet this project, I think you may not end up with what you are looking for. Atty. Migliori – we may not. That's the reason the Conservation Commission is the appropriate forum in my opinion to vet this whole thing. Not the City Council acting as a Conservation Commission. Co. Daly O'Brien – Unfortunately, the way the City has established the chain, we go before they go. Atty. Migliori – It's a very arbitrary ordinance that someone decided years ago let's pick 500' from any body of water and if somebody wants to build, and Conservation has even acknowledged that the 500' mark is arbitrary. They were not in favor of that. You need to go back to what your role is under the ordinance you're acting. Because what I see is pretty much what I anticipated when we talk about a beautiful vista, it's not an appropriate place. You don't find those things in the ordinance, Chapter 255 – Section 90, is there any adverse impact. Co. Daly O'Brien – I haven't said that. Atty. Migliori – I know you haven't. Co. Daly O'Brien – So my thoughts are coming from another place. I have to act as the Council is directed. Right now I have been given this body of material and have tried to see where I should be convinced that this is a project that should go forth and I'm not seeing that. I'm seeing other issues brought up about where things happened years ago. It doesn't convince me about what's going on today. And one of the things I'm concerned about is what's happened behind and next to that property with that body of water that is called a swamp because it hasn't looked like a swamp in a very very long time. That concerns me. That means that the land has changed. Maybe it changed because of the building of 495. I'm assuming that that had an affect on it, I really don't know. It seems like that is what happened over time that has become a more significant body of water. So that is my concern. I really don't have anything else to say Mr. President.

President Hart: Just for a point of information for the Councillors as they are directing their questions to Attorney Migliori. Attorney Migliori is correct in terms of the special permit and what the special permit requirement says for the protection of the public water supply, no building shall be constructed within 500'. But, we can or you can come to the conclusion, if you wish, through the reviewing of all this material that in your opinion, you feel that with the information in front of you, that a building taking place in this particular spot could possibly be or would definitely be a threat or not healthy to the public water supply. In coming to that conclusion, you have made a decision within the bounds and the language of that particular ordinance. So I think that's what the attorney is directing us at and keeping that in mind as you go forward with your questions. There is the parameter of the statute.

Councillor Macek: My comments on this particular special permit are along the lines that I am looking at it as a unique filling. I am not looking at the historic construction in the city whether it be at the hundred foot previous limit for the 500' limit that came in the middle eighties when I was sitting on the Council. At the time I remember the dialogue and I think Councillor Mary Ellen Daly O'Brien is correct that there hasn't been anything before this body for any exemption from that regulation since it was put into place. This particular application I have reviewed it numerous times. While I may agree that it may seem that the cart is in front of the horse, with the conservation issues not being settled, I do believe this Council on special permits always looks at recommendations from departments and will attach special conditions to

special permits so I don't think we would be out of line should we choose to do that this evening. I also think, with all that being said, I would like to move at the appropriate time Mr. President to add the twenty conditions that came from Rob Moore just in case this should be passed this evening, as a safeguard, to the applicant's request for the special permit. However, what troubles me most is not anything that's been said tonight but what was said at the first hearing. And that's that the size of the house was in question. I remember having the conversation with the proposed developer/owner whether it was a 100' long house for 50' long house. He couldn't tell me. I remember discussing what the use of the large out building believe, I believe it's 15x30 and we were talking about, if I remember correctly, his wife has had horses and like horses and was it going to be used for dogs, was it going to be used for horses? What's going to be the system if we do have animals of any kind on that property? What's the clean up? While the expert reports do somewhat reflect that the water does not go across the street but leaves to the rear of 110. I have my own concerns as to what may happen in the future because, as we have seen as Co. Daly O'Brien has mentioned, we've seen a change in that area, at least in my lifetime it's changed considerable as to the amount of water its currently holding and what might happen. I also see an exhibit 15 that came along with an old report that there's large chunks of asphalt on that land. I don't know if they are still present but that shows a disregard if that's a kind of fill that's already been brought in. I do have a concern as to what may, and I'm not sure that we can cross all the T's and dot all the I's to protect the City's water and we have great water here in Haverhill. I don't want to risk that. I think that what we have is a protective ordinance is there for a reason. For the reasons that I stated before I really can't (change in tape) as much as I would probably like to because I believe people should have a right to use their property. I would like to mention a couple of other things that came in, the last thing. There is still talk in your application that you might want to use septic or use a holding tank. You won't commit to using City services. You won't commit to using a force main. It's those kind of things that worry me about what concerns there really are for our drinking water and for that area of our City. At this point I've heard nothing to convince me that I should go forward with going along with this request. I would like to move at the appropriate time of this hearing. Would you like me to do that now Mr. President? President Hart: Let's get the comments and then we will. Co. Macek – okay, fine. Thank you very much.

Councillor Young: Attorney Migliori you cite the watershed act, endangered species act and I'm not a lawyer, but I am not sure that they override this 500' buffer zone ordinance that we have here in the City. I don't think, my personal, that the benefit of this one individual in this project should risk the water supply of our entire City and all our citizens. So, I will be voting against this as well. Thank you.

Councillor Hall: From day one I was against this project. I think it's terrible. I think it's a disgrace to the neighborhood down there. What I am basing it on is this. I can remember as a kid in back of where this proposed house was, there was an area where it was considered wetlands. Once they put that project up there on Newton Road the whole thing changed. This is like a little lake down in back of your client's property. If you go down there in the wintertime and you see the traffic situation down there right on that curve that is coming from that lake. I guarantee you if you are allowed to put a residence in there or any kind of a building, it's going make more of a danger to the public safety in this City. Now 110 is a state routed highway. It's maintained by the State of Massachusetts. When you see the average person out there listening sees where this proposed house is going to be, it's a total disgrace to the neighborhood down there. It's going to be a bump in the log when you see what's there. I can remember last summer, not this summer but last summer, when the Essex County Gas Company was doing excavations, they were dumping all that fill that they were digging up onto this gentlemen's property. All of a sudden, his property enlarged. I don't know if it was from this debris that was taken from the streets. It was gone. This gentleman down there worked this property. I used to go by there everyday because my daughter lives on the next street so I am very familiar with the area. When I heard somebody talk, I think Co. Ryan talked, when I was a kid I used to go to the Lakeview Restaurant that was there. Subsequently when it went down, there was no problem then. Like I said, the water situation is going to create more of a danger

now to the motorists in the city. I think it's within the 500' buffer zone. Like I said, I was against this from day one and I am going to vote against it tonight. Thank you.

Councillor Scatamacchia: Sometimes this process works very well and sometimes it doesn't. I think sometimes it's backwards. I think this one of those backwards situations where we have a lot of questions. We really don't have, and to your credit, you tried to answer these questions by going to the appropriate boards. I'm just wondering. I could support this if these twenty stipulations from Rob Moore were included in the special permit. I think these are all concerns that even if we pass it and you go to conservation you are still going to have to comply with it. What difference would it make if we attach them as conditions for the special permit or the Conservation Commission does? Atty. Migliori – I don't have any problem with the conditions being attached as long as the Conservation Commission is given the ability to modify these things because a number of these things in the abstract just don't make any sense. I think one of them is to "within sixty days of granting of this special permit the applicant shall deed the eastern portion of lot 1.8 acres to the City of Haverhill, Conservation Commission". That's not reasonable. We are willing to donate land to the City of Haverhill. You can't do it within 60 days of a special permit being granted because we've got another six months or a year with conservation. As somebody pointed out, we may not even get the right to build the house once conservation is finished. We don't know. As long as you give flexibility back to Conservation to change some of these where it is appropriate, I don't mind attaching them for now so long as they do have the ability. Just to throw these twenty on that really came from Rob Moore without being vetted by the Conservation Commission, his thoughts, more of his than the Conservation Commission. Some of them are just not appropriate. I don't mind them being attached with the understanding or the additional language that Conservation Commission may modify any or all of the twenty conditions. Co. Scatamacchia – I think that's fair. You came before us back in November and we asked you to do certain things and you did. You came back with these recommendations. I think everybody here wants to protect the water in the area. But you did what we told you to do. As long as these are part of the special permit and as long as there is some flexibility so that the Conservation Commission can, has some latitude as far as approving it or extending time limits or doing some of the things that they think that should be done to protect the area. Only because you did what we told you to do and you came back and like I said, I could support this. Thank you Mr. President

Atty. Migliori: I would just point out your Water Department and Conservation Department has stated, they put it in writing that this project will have no adverse impact on the water supply.

Councillor Amirian: Thank you Attorney Migliori I appreciate your clarification of the special permit and what we are voting on tonight is different from some of the other issues that cloud this application. That being said, back when we first heard this, there were many concerns that the Council had. I had recommended that we postpone this and give you more time to come back to us with some more information. What I was hoping for tonight and certainly in this span that we've had was to really see a more complete presentation. I still have lots of questions as to what is really going to be built there. Initially on the plans there was a 30x100 foot residence proposed as well as an out building. That out building may have held horses, it may have held dogs. We weren't sure at this point. I really wanted something to knock my socks off and address environmental concerns on your own. I see these orders of conditions that Rob Moore has suggested that we place on this special permit. A lot of them I agree with. There are some that maybe aren't appropriate but I feel that had you come back with some of these on your own accord, and a complete plan of what's actually going to happen here, that really would have settled my mind a whole lot better. I've lived in Haverhill all my life. I grew up on East Broadway and have travelled that section of 110 hundreds of times if not thousands of times and I often see spring floods come across the roadway to a depth of almost a foot in some cases. I'm not convinced there isn't a potential for the swamp to, for some of that water to leech across the street through the walls that hold Kenoza Lake back. I'm thinking about those floods. I'm thinking about what happens if a house is sitting

there. If these orders of condition are not placed on this house, even if they are, what happens if the ejector pump breaks? What happens if the holding tank breeches? What happens if during a flood all these things happen at once? It's not inconceivable to have a disaster like that happen and then that gets into our water supply. Now I understand they are not in the same drainage plain or whatever, but we don't have subsurface hydrology reports, anything really to put my mind at rest. I am really having a hard time getting my brain around this and seeing that a house there couldn't have the potential to harm our water supply. Atty. Migliori – So I understand it Councillor, the reports from the City departments, you have absolutely no faith in? That's what it sounds like. Co. Amirian – Well, if that's the way you want to read it, I guess you can read it that way. I am not saying that. I have the evidence in front of me and I'm making my own decision. I am one of nine and that's the way it's going.

Councillor LePage: Attorney Migliori when you were here in front of us back in November, I asked just a couple of questions and some of my fellow Councillors have asked some of these questions that were actually asked in answer to these questions. One of the first questions I had was on this site we were given a map, it was very detailed on the western section but the eastern portion of his lot. Has anything been done as far as describing or showing how much area is on the eastern portion of the lot. Atty. Migliori – No. Discussions have taken place with Conservation about deeding the parcel, putting a conservation restriction on it of trails. We are amenable to those things but we are in early discussions on those and this putting the cart before the horse. We have no objection to doing that. We haven't invested any money and any additional plans on that parcel because that parcel is really is kind of worthless. Co. LePage – The portion of the parcel is all one parcel. Atty. Migliori – The easternly portion I think is about 1.8 acres is the parcel that Mr. Giordano is willing to either transfer to the city or I know there is a trail agency over there. To do something, whatever conservation wants us to do with it he's amenable to doing it. Co. LePage – Having a conversation with Rob Moore on this a few times and actually his resubmittal on June 20th he writes "he questioned whether eastern portion of lot was reviewed as a building (mumbled)..so the applicant could reap the development of developing the lot while complying with the 500' offset of Kenoza Lake". I asked that question in November, that hasn't happened. It hasn't been looked at. Another question I asked was what is allowed by the special permit and that has been explained. I asked have any other special permits been approved since implementation of 255-90, again, this is my second year on the Council. I believe Councillor Daly O'Brien answered that with her research that that hasn't happened and others concurred. Atty. Migliori – No, I mean that's not totally true. It may be true with respect to new construction. But there maybe people who put on additions to existing homes that have required this special permit. Co. LePage – And that is written up in a lot of the documentation that was given to us about how this originated back in 1986 and there are some revisions in '97. My last question and what I proposed to you also is adjacent City property to the eastern portion of this land. It is parcel 465-2-12, I was hoping to have a conversation of a land trust transfer or something like that's outside of the 500'. I have a quick little thing that I got from City Engineering that seems to show a lot more available space than wetland to build on. Is that been considered or looked at to possibly work with the City do what I talked about back in November? Atty. Migliori – To moving it away to outside of the 500'. Is that what you are talking about? Co. LePage – The City owned property is well outside of the 500'. Atty. Migliori – Are you talking about trading with the City, land? Co. LePage – Or some kind of conversation, I asked that question back in November, that's not been discussed at all? Atty. Migliori – I think in a situation like this the City would be disinclined to give up any land over there. I don't think that's going to happen. Co. LePage – You haven't discussed a possibility of it. I mean Rob Moore talks about a possible land swap on the eastern portion. So it was never explored to look at possibly building outside of the 500' and just swapping some portion of land with the City. Atty. Migliori – We can't build outside of the 500' it's a problem. Co. LePage – You can't? Atty. Migliori – we can not. Co. LePage – Why? Atty. Migliori – Because the land isn't suitable. Co. LePage – You said it but you haven't actually gone out and surveyed it. Atty. Migliori – It's been looked at. The eastern portion is not suitable for construction of a single family home. Co. LePage – You don't need to do any surveying to that effect? Atty. Migliori – It's been researched. Co. LePage – I'm asking because it was asked for and it's not part of this drawing that was

provided the first time doesn't show the eastern portion. It's just blank. It shows where a proposed house might be, where a driveway might be, where a second building might be, where a (inaudible) stock pile is, but the rest of the land, the other half of the land doesn't give us the information as far as the wetland boundaries or any of that information. It's hard to make an informed decision without the information. Atty. Migliori – Make an informed decision on what. Co. LePage – You're just telling me that the eastern portion is unbuildable but you haven't shown me or given anything me that says that. Atty. Migliori – Do you really think we'd be here before you tonight looking for a special permit if we could build on this site outside of the 500 foot. Do you really think we would come looking for a special permit just for the kicks? Co. LePage – I don't know. I'm not saying that. When I asked you back in November if there is any other potential possibilities any other solutions that could be made that would accommodate. Atty. Migliori – And there aren't any. Co. LePage – Okay, thank you. Atty. Migliori – You're welcome.

President Hart: My point here is that this letter that we got from Robert Moore, our environmental health technology expert in the city who guides the Conservation Commission as their expert also; I don't read his letter as saying that this building would not pose any threat to the water supply. I believe what he is saying is that he thinks Con Com could sufficiently vet the project to see that it didn't but then he gives us twenty conditions that he'd like to see us attach to it and because of the severity of those conditions and what those conditions represent, I would say he's concerned with the public water supply wanting all these conditions put in place. Even though we can make an amendment to attach these conditions, several of the conditions as Atty. Migliori pointed out might be either impossible to enforce or might be outside our ability to enforce them as being legal such as requiring, unless they agree to it, the deeding of some of their land within a period of time that is too short obviously. The insistence that the sanitary sewer service associated with the project be connected to the municipal system. The things that he is asking for, I think, would be to protect the public water supply and I think there is a concern on his part by asking us to put these conditions in; and he's asking us to put these conditions in. And then I look at some of these and the City's ability to enforce these conditions in the future concerning roof runoff and making sure there are no discharges that could possibly go to the river. Who's going to enforce them when we don't have the people out there that can do it? We can put it in, as a condition, but it could be easily just overlooked or just avoided. We have to worry about the future too. There will be future owners. How does this get, we actually have to get it as a deed restriction in order to make sure it applied in the future. But even then, the enforceability of it. Based on the above, I am going to read this because this is going to be my reason for my vote, "based on the request for conditions and the information contained in the communication received from Robert Moore, the City Environmental Health Technician, dated June 28, 2011, I believe the proposed building poses a direct threat to the City's water supply".

President Hart: Co. Macek, do you want to make your amendment?

Co. Macek: I would like to do that and let me just preface by saying the reason I'd like to attach these conditions to the special permit in case the petitioner does seek any appeal rights that he may have so these would also be moving forward with the special permit denial. I would move that the conditions as proposed by Robert Moore be added to the special permit and that in number 5, on the first line after no septic, we add the language "or holding tank or tanks". That number 6 not be included. That on number 17 a period be placed on the first line after "any wetland resource area"; and "for the purpose of lawn maintenance" be removed/stricken. Also, that language at the bottom after the conditions be added "should any of the conditions be determined to be unenforceable or illegal in whole or in part that shall not effect any of the other conditions. The conditions may only be altered or deleted with a six vote approval of the City Council". Second by Councillor Young.

President Hart: Okay, that's the motion to amend. I know Madame Clerk there's no way could have gotten it. Co. Macek – I have it. President Hart – Co. Macek has it and he will provide it to you. He's been working on the language. His motion to amend by us conditioning the special permit with the

conditions that were submitted by Robert Moore as amended by him is on the table, seconded by Co. Young. Co. LePage – I am not sure if it's appropriate but I see City Solicitor Cox is in the room, I don't know if there are any questions that he could answer. President Hart – I don't think, unless he wants to get up here. I don't think we need that right now. Unless he wants to get up here, I didn't think so. Co. LePage – I just want to make sure everything is appropriate for the City. Thank you.

President Hart: Call the roll on the amendment please.

City Clerk: Co. Scatamacchia-yes, Co. Ryan-yes, Co. Young-yes, Co. Hall-yes, Co. LePage-yes, Co. Daly O'Brien-yes, Co. Amirian-yes, Co. Macek-yes, President Hart-yes. 9 Yeas, 0 Nays

President Hart: Now please call the roll on the application to the special permit as amended.

City Clerk: Co. Scatamacchia-yes, Co. Ryan-no, Co. Young-no, Co. Hall-no, Co. LePage-no, Co. Daly O'Brien-no, Co. Amirian-no, Co. Macek-no, President Hart-no. 1 Yea, 8 Nays.

Atty. Migliori – Thank you for your time.

President Hart – Thank you. Thank you Council.

Respectfully submitted,

Barbara S. Arthur
Administrative Assistant to the City Council

September 9, 2011

**Petition from Attorney Migliori for John P. Giordano requesting a Special Permit to build a single family residence at 90 Amesbury Road within 500' of a Water Supply, Map 462, Block 3, Lot 2A**

## REASON FOR VOTE

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

President Hart: Based on the request for conditions and the information contained in the communication received from Robert Moore, the City Environmental Health Technician, dated June 28, 2011, I believe the proposed building poses a direct threat to the City's water supply.

Councillor Scatamacchia: I voted for the special permit because the developer had complied with all the conditions imposed by the Council. Also, that the Council agreed to attach all the conditions proposed by the Conservation officer.

Councillor Ryan: The proposed house is not suited for this site and it is within 500' of the water supply area.

Councillor Young: I voted no because it did not satisfy my concerns relative to the 500' ordinance restriction.

Councillor Hall: I voted no because it is within 500' of the City water supply and because of traffic and safety issues.

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

Councillor Daly O'Brien: I voted no on this special permit because I believe this project could threaten our City water supply. The applicant did not provide sufficient information and details about the possible buildings where they might be sited, their actual size, and the usage of the out buildings.

Councillor Amirian: I voted against the special permit based on the report from Rob Moore and the special conditions he advised we placed on the permit in the event it should go forward. There was enough evidence to convince me that a potential danger could be posed to the public water supply at Kenoza Lake.

Councillor Macek: My vote was based upon the applicant's failure to present any comprehensive evidence that the request was viable and that permitting the request would definitely not impact in any way the City's drink water supply located within the protected area as defined in the ordinance in question.

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# Haverhill

Economic Development and Planning
Conservation Department
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rmoore@cityofhaverhill.com
conservation@cityofhaverhill.com

MEMO TO: President Michael J. Hart, Esq. and Haverhill City Councilors
FROM: Robert E. Moore, Jr., Environmental Health Technician
DATE: June 28, 2011
RE: Special Permit – Building Within 500' of Kenoza Lake
John Giordano for 90 Amesbury Road – Parcel ID: 465-3-2A
Review #2

I have reviewed the applicant's June 17th communication and its attachments. At this time I wish to clarify some of the points in the applicant's new submittal, as well as provide the Council with updated comments.

The applicant notes that the Notice of Intent filed with the Commission "served to vet the proposal in detail". The Notice filed with the Commission only proposed site preparation and vegetation control activities. The applicant did not propose the construction of a single-family house (or a sewer/septic system) on this lot. The applicant also only filed this Notice under the Massachusetts Wetlands Protection Act. The Commission subsequently deemed this Notice "invalid", as the applicant failed to also apply for approval under the City's wetlands protection ordinance. With an "invalid" Notice and a project that proposes far less than the construction of a house, the applicant recently submitted a lesser application with the Commission to obtain approval for landscaping activities. The Commission's discussion of this application was continued last week to allow the applicant time to submit additional information.

It should also be noted that the Massachusetts Department of Environmental Protection (MassDEP, noted as MA DEQE in the submittal) has not "approved the project". MassDEP's issuance of a file number is merely a perfunctory step acknowledging its receipt of the application and filing fee. The Massachusetts Natural Heritage and Endangered Species Program (noted as MESA in the submittal) has issued a finding that the applicant's site preparation and vegetation control activities "will not adversely affect the actual Resource Area Habitat of state-protected rare wildlife species".

In my initial comments, I questioned whether the eastern portion of the lot was reviewed as a building alternative so that the applicant could reap the benefit of developing the lot, while complying with the City's 500' offset to Kenoza Lake. Although it does not appear the applicant has submitted any information relative to this issue, I have walked the area with him. Based on my field observations, it appears that the construction of the house on the eastern portion of the lot would require either relief from the Board of Appeals (front yard setback), or the Conservation Commission (50'-No Build Zone from wetlands), or both. In essence, this would provide the applicant with an opportunity to demonstrate that the development of the proposed western portion is the better alternative in terms of environmental protection. As I previously noted, it appears the western portion of the lot has sufficient area for the project to comply with the City's 25'-No Disturbance and 50'-No Build Zones. Although the focus of this application is Kenoza Lake, the development of the western portion of the lot would likely allow for better protection of Tilton's Swamp.

During my discussions with the applicant, open space protection was a focal point. With respect to open space, this parcel obviously provides excellent views of Tilton's Swamp. The Essex County Greenbelt Association owns and protects 29+ acres of land immediately to the north and west of this lot. The City owns and protects 5.6+ acres of land immediately to the east. The applicant has noted an interest in donating the eastern portion of his lot to either the City or Greenbelt as useful public open space, linking the City's parcel to the east with the Greenbelt parcel to the north and possibly aiding in a future trail connection to the Isaac Merrill Trail on Kenoza Street.

I previously mentioned zoning land use alternatives. "What are the potential uses of this property if a special permit is issued? Should the permit be conditioned to ensure the future use remains that of a single-family residence?" I'm not aware of any information being submitted to address this matter.

The applicant submitted a significant amount of documentation outlining the legislative history of this special permit ordinance. It seems clear that the ordinance was built on the "protection of the public water supply". While this ordinance has indirect benefits, such as the protection of open space, scenic vistas, and areas of "small town" community aesthetics, there is little in the ordinance to guide the Council in determining whether a project will have an "adverse effect" on our water supplies. Consider the City's watershed protection ordinance, Chapter 255, section 19. This ordinance outlines a more detailed purpose, including definitions and use regulations. In fact, this project would be allowed without the need for Council approval as a "permitted use" under the watershed ordinance, if it were actually within the Kenoza Lake watershed. This brings us to a significant point. Though this lot is a mere 200' from Kenoza Lake, it is not within the lake's watershed. This lot is ultimately within the watershed of the Merrimack River, via Snow's Brook and Little River. The special permit "application" section of the watershed ordinance outlines information requirements for such applications. Most notable is the review of surface and subsurface hydrology. For the applicant's project, we know the surface hydrology; water flows northerly into Tilton's Swamp, not Kenoza Lake. We have no definitive information in the applicant's submittal to detail subsurface hydrology. However, the Water Department's lack of opposition to this project leads me to believe that this is not a significant concern. Does the Council look for the applicant to provide data from a hydrogeologist, akin to the Brandy Brow Road projects? Or, for one house, does the Council conservatively assume groundwater to flow towards the lake and consider conditioning the project.

**I offer the following conclusions and recommendations:**

- It is my opinion that implementation of the Massachusetts and Haverhill wetlands protection requirements and the Massachusetts Endangered Species Act will sufficiently vet this project to ensure the protection of the City's natural resources.
- It is my opinion that the applicant's plan should graphically show the wetland boundary on the eastern portion of the lot, along with zoning setbacks. If my field observations hold true, my opinion is that a new house on the previously developed western portion of the lot would be more desirable than on the more natural eastern portion of the lot where wetlands and/or zoning setbacks would likely be compromised.
- Should the eastern 1.8 acres remain undisturbed by the project, I would support its being deeded to the Conservation Commission or the Essex County Greenbelt Association as open space.
- I would again request the applicant provide additional information on land use alternatives. It appears that the City's zoning code would allow for the proposed 30'x100' "dwelling" and 30'x16' "building" to be converted into a church without the need for review by Council or the Board of Appeals. Similarly, the buildings could be converted into retail farm stands without the need for further review. There are uses that

could also be allowed by the Board of Appeals through its special permit process, such as a daycare or kindergarten. The Council should be aware of all the permitted possibilities it would be approving by the granting of this special permit, not just the presumed house that is shown on the current plan.

- Should the Council desire to move on this application this evening, I've attached a number of project conditions for consideration.

C: Haverhill Conservation Commission (via email)
Site Plan Review Departments (via email)
Attorney Michael Migliori (via email)
John Giordano (via email)

CONDITIONS:

1. The applicant may construct only one individual single-family dwelling on this lot.
2. The proposed "dwelling" may only be used as a primary residence, with the proposed "building" being only its accessory structure. No other use, permitted or otherwise under the City of Haverhill Zoning Code, shall be allowed.
3. The maximum total coverage of the dwelling, detached building, driveway, and parking areas shall not exceed 8,500 square feet. (Roughly 10% of the western portion of the lot)
4. As the project regulated by this Special Permit allowed controlled encroachment upon the City of Haverhill's 500'-No Construction Zone from Kenoza Lake, the City Council hereby conditions that no future construction for accessory structures shall occur within this Zone, on this property, without the formal approval of the Haverhill City Council.
5. Sanitary sewer service associated with this project shall be connected to the municipal system. No septic systems shall be used.
6. Within 60 days of the granting of this Special Permit, and prior to the commencement of work on this site, the applicant shall deed the eastern portion of the lot (1.8± acres shown as being outside the "area of development" on the applicant's site plan) to the City of Haverhill Conservation Commission or the Essex County Greenbelt Association.
7. As proposed by the applicant, all roof runoff shall be collected from the proposed structures and directed to roof runoff recharge systems to provide groundwater recharge. The systems shall be equipped with overflows for protection during periods of heavy rainfall. The systems used shall meet the design criteria outlined in the MassDEP/MCZM Stormwater Technical Handbook. The systems shall have a volumetric capacity sufficient to contain 1.0" of rain across the proposed roof areas.
8. Prior to the installation of the proposed roof runoff recharge systems, the applicant shall ensure there is a minimum of a 2' separation between the seasonal high groundwater elevation and the bottom of the proposed systems. Should insufficient groundwater separation or poor soil infiltration conditions be found, the applicant shall submit a revised roof runoff recharge system design for the approval of the City Engineer.
9. The roof runoff systems shall be separate from all other drainage systems, including perimeter/foundation drains, associated with this project.
10. Roofing for the proposed buildings shall not be constructed with flat metal materials, such as galvanized metal or copper.
11. The property owner(s) shall maintain the roof runoff recharge systems in accordance with the intent of the maintenance criteria outlined in the Stormwater Technical Handbook, prepared by the Massachusetts Department of Environmental Protection and Office of Coastal Zone Management, to ensure their continued functions.
12. The final locations and discharge points of all proposed perimeter, under, trench, and/or curtain drains shall be subject to the approval of the City Engineer. Every effort shall be made by the applicant to apply such drains in a manner that shall mimic pre-construction groundwater flow patterns.
13. All paved travel ways, driveways, walkways, and patios shall be constructed with pervious materials, such as porous pavement, concrete pavers, or like materials.
14. The applicant shall make every effort to minimize the use of winter sanding. Each spring, the applicant shall make every effort to remove winter sand from the pervious paved areas.
15. The City of Haverhill reserves the right to schedule an annual inspection with the property owner(s) as part of an "Operation and Maintenance" program to inspect any and all components of the drainage systems for proper function and maintenance (i.e. roof runoff recharge systems, pervious driveway…).

16. When de-icing is proposed on the lot, alternative compounds such as calcium chloride ($CaCl_2$) and calcium magnesium acetate (CMA) shall be considered for use. Sodium Chloride shall not be used within the project site for the purpose of ice control.
17. Pesticides, herbicides, and fungicides shall not be used within 100' of any wetland resource area for the purpose of lawn maintenance.
18. Fertilizers utilized for landscaping and lawn care within this property shall be slow-release, low-nitrogen types and shall not be used within 30' of any wetland resource area.
19. There shall be no unprotected storage of deleterious or hazardous materials (such as auto parts, debris, oil drums, batteries, car washing fluid, etc.) allowed on this lot.
20. Prior to the issuance of an occupancy permit for this house, the applicant shall submit the following information to the Building Inspector to demonstrate full compliance with the conditions of this Special Permit:
    a) A written statement by a professional engineer or land surveyor registered in the Commonwealth of Massachusetts certifying compliance with the approved plans and these conditions and setting forth deviations, if any exist; and
    b) Two sets of as-built site plans prepared by a registered land surveyor or registered professional engineer showing grades, utilities, drainage systems, building footprints and detailed landscaping (i.e. limits of work, etc.).