

and indian corn hills. The NRC files contain attendance sheets for five of these meetings, with a median attendance of fifty-five, although the local newspaper reported that one meeting was attended by more than 100 people. There are approximately 10,800 registered voters in Concord, so ½ to 1 percent of the citizenry took an active role in these proceedings.

A year after taking up the Middlesex proposal the NRC denied the permit. To no one's surprise, Middlesex announced that it would appeal the decision to the state Department of Environmental Protection. More surprising was the school's announcement that it would withdraw its not-yet-final donation of fifty-six acres to the campaign. Opponents were surprised and disappointed; the school's donation had been assumed to be a fait accompli.

Matters soon got worse. The town's counsel recommended to the Board of Selectmen that the town not contest the appeal. The NRC decision was based on three grounds, none of which was defensible on appeal. The first was the NRC's claim—denied by Middlesex—that the project would affect more than 5,000 square feet of wetlands. This is considered a “does so—does not” kind of argument that the school would eventually win by making further modifications to its wetlands crossing. The second was the threat to critical habitat, but a few days after its decision the NRC received official notification from the state's Natural Heritage and Endangered Species Program that the project raised no serious questions. There is some disagreement about whether this decision came as a complete surprise.

The third basis on which the NRC denied the appeal was less tangible: in its capacity as custodian of the town's natural heritage and resources the commission did not think that the project should go forward. But the law does not empower local conservation boards with this kind of wide-ranging discretionary authority, so absent any merit in the first two claims, the commission's decision was what in an earlier era might have been termed “arbitrary.”

Thus, after five years of activity, two years of intense politics, and thousands of dollars of expenditures, the land conservation drive had regressed. It was not just back to square one, but even further back: the Middlesex project would go forward, and the drive was fifty-six acres poorer than it once had been.

At this point cooler heads finally intervened. The Selectmen—elected town officials—who had taken no visible role in the proceedings, proposed that the parties go to mediation. Middlesex and the town agreed to split