

**MINUTES  
WESTPORT CONSERVATION COMMISSION  
DECEMBER 16, 2015**

The December 16, 2015 of the Westport Conservation Commission was called to order at 7:00 p.m. in Room 201/201A of the Westport Town Hall.

**ATTENDANCE**

**Commission Members:**

Anna Rycenga, Vice-Chair/Acting Chair  
Donald Bancroft  
Robert Corroon  
Ralph Field, Alternate  
W. Fergus Porter

**Staff Members:**

Alicia Mozian, Conservation Department Director  
Lynne Krynicki, Conservation Analyst

This is to certify that these minutes and resolutions were filed with the Westport Town Clerk within 7 days of the December 16, 2015 Public Hearing of the Westport Conservation Commission pursuant to Section 1-225 of the Freedom of Information Act.

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Alicia Mozian  
Conservation Department Director

**Changes or Additions to the Agenda.** The Commission may amend the agenda by a 2/3 vote to include items not requiring a Public Hearing.

Ms. Mozian noted the following items needed to be added to the agenda:

- a. Approval of the December 11, 2011 field trip minutes.
- b. **2 Silent Grove North:** Request for Conservation Certificate of Compliance.

Motion to add the above items to the agenda.

**Motion:** Rycenga **Second:** Porter  
**Ayes:** Rycenga, Porter, Bancroft, Field  
**Nayes:** None **Abstentions:** None **Vote:** 4:0:0

**Work Session I: 7:00 p.m., Room 201/201A**

**1. Receipt of Applications**

Ms. Mozian stated there were no applications to officially receive.

**2. Approval of November 18, 2015 meeting minutes.**

The November 18, 2015 meeting minutes were approved as submitted.

**Motion:** Rycenga **Second:** Porter  
**Ayes:** Rycenga, Porter, Bancroft, Field  
**Nayes:** None **Abstentions:** None **Vote:** 4:0:0

**3. Approval of the December 11, 2015 field trip minutes.**

Ms. Rycenga noted that she along with Commissioners Bancroft, Field and Davis attended the field trip.

Mr. Porter noted he visited the sites on his own.

The December 11, 2015 field trip minutes were approved as submitted.

**Motion:** Field **Second:** Bancroft  
**Ayes:** Field, Bancroft, Porter, Rycenga  
**Nayes:** None **Abstentions:** None **Vote:** 4:0:0

Mr. Corroon arrived at 7:13 p.m.

**4. Report by Colin Kelly, Conservation Compliance Officer on the status of existing enforcement activity.**

Ms. Mozian noted that the mediation for Grassy Plains begins on December 17, 2015.

**5. 21 Owenoke Park:** Request by John and Jayne Fatse for partial release of bond monies being held for sediment and erosion controls as a condition of Permit #WPL-9702-14.

Ms. Mozian reviewed a request for a partial bond release for monies held for the sediment and erosion controls. She recommended that \$2,386 be released and the remaining monies be held for plantings.

Motion to release \$2,386 for sediment and erosion controls.

**Motion:** Rycenga **Second:** Bancroft  
**Ayes:** Rycenga, Bancroft, Corroon, Field, Porter  
**Nays:** None **Abstentions:** None **Vote:** 5:0:0

6. **15 Owenoke Park:** Request by Michelle Williams for partial release of bond monies being held for sediment and erosion controls as a condition of Permit #WPL-9396-13.

Ms. Mozian reviewed a request for a partial bond release for monies held for the sediment and erosion controls. She recommended that \$2,495 be released and the remaining monies be held for plantings.

Motion to release \$2, 495.

**Motion:** Field **Second:** Porter  
**Ayes:** Field, Porter, Bancroft, Corroon, Rycenga  
**Nays:** None **Abstentions:** None **Vote:** 5:0:0

7. **4 The Fenway:** Request by Deborah and Thompson Reynolds for release of bond monies being held for sediment and erosion controls and plantings as a condition of Permit #IWW, WPL-7278-04.

Ms. Mozian reviewed a request for bond release for monies held for sediment and erosion controls and plantings. She recommended full release of the \$4,821.

Motion to release \$4, 821.

**Motion:** Field **Second:** Porter  
**Ayes:** Field, Porter, Bancroft, Corroon, Rycenga  
**Nays:** None **Abstentions:** None **Vote:** 5:0:0

8. **Other Business**

- a. Ms. Mozian stated the Clinton Avenue/Main Street/Compo Road North DOT intersection improvement project is slated to commence in spring 2016. As this is a State project, the local Inland Wetland Commission has no jurisdiction.
- b. **2 Silent Grove North:** Staff went to the Commission for advice on issuance of a Conservation Certificate of Compliance. The Commission visited the site during its field trip on Friday, December 11, 2015. The vegetative buffer is acceptable though different than what was on the approved plan. In order to get a CCC, the Commission advised the department receive a copy of the septic as-built and comments from Health Department and Engineering Department.

**Public Hearing: 7:10 p.m., Room 201/201A.**

1. **33 Sylvan Rd. North:** Application #IWW/M-10130-15 by Philip and Peggy Bernstein to amend wetland boundary map B8.

Philip and Peggy Bernstein were present on behalf of the application. They filed the application to determine the exact location of the wetland boundary as they suspected the Town's line was incorrect. They retained soil scientist, Otto Theall to flag the wetland boundary.

Ms. Krynicky explained that the Town retained soil scientist, Tom Pietras to verify Mr. Theall's wetland delineation. Both soil scientists are in agreement with the boundary.

Ms. Mozian clarified that the ditch does not qualify as an intermittent watercourse.

Ms. Krynicky confirmed it does not meet the criteria.

With no comment from the public, the hearing was closed.





- f. The upland soils have been identified as Charlton-Chatfield complex (73), Udorthents-Urban land complex (307) and Udorthents, smoothed (308).
7. Two very small, isolated Aquents wetlands were identified within an old bury pit at the far northeastern end of the parcel. These wetlands were artificially created when the excavation extended into the seasonal ground water table. During the wetter months of the year, groundwater seeps from the base of a slope into the Aquents wetlands and creates seasonally saturated soils. Minor sheet flows pass from these seeps and run a very short way down the slope and across the stony wetland soil before the water permeates back into the ground. The very small size, soil disturbance and seasonal nature of the Aquents wetland severely limits the wetland functional value.

The applicant is proposing to amend wetland boundary as it exists on town wetland map #E 9.

Soil Scientist, Alexandra Moch was retained by the Town of Westport. She is in agreement with the proposed wetland boundary delineated by Thomas Pietras as indicated in a report dated December 13, 2015.

**RESOLUTION  
APPLICATION #IWW/M 10134-15  
785 Post Road East**

In accordance with Section 8.0 of the Regulations for the Protection and Preservation of Wetlands and Watercourses of Westport, and on the basis of evidence of record, the Conservation Commission resolves to **APPROVE** Application #IWW/M 10134-15 by 785 Post Road East, LLC to amend wetland boundary map #E 9 on the property located at 785 Post Road East with the following conditions:

1. Conformance to the plan entitled: "Property Survey Depicting 785 Post Road East, Westport, Connecticut Prepared for 785 Post Rd E, LLC", Scale: 1"= 30', dated November 11, 2015, 2015 prepared by Redniss & Mead
2. An electronic file of the above referenced plan in a format acceptable to the Town Engineer must be submitted to the Conservation Department before permits for any further activity will be authorized.
3. This is a conditional approval. Each and every condition is an integral part of the Commission decision. Should any of the conditions, on appeal from this decision be found void or of no legal effect, then this conditional approval is likewise void. The applicant may refile another application for review.

**Motion:** Porter

**Second:** Field

**Ayes:** Porter, Field, Rycenga, Bancroft, Corroon

**Nays:** 0

**Abstentions:** 0

**Votes:** 5:0:0

8. **1141 Post Rd. East:** Application #IWW/M-10135-15 by David Ginter, P.E. of Redniss & Mead on behalf of 1141 Post Rd E, LLC, contract purchaser, on behalf of Kowalsky Properties, Inc. owner, to amend wetland boundary map G9.

David Ginter, PE of Redniss & Mead presented the application on behalf of the owner and the applicant. He noted that Bill Kenny, soil scientist, was also present on behalf of the applicant. Mr. Ginter showed a map depicting the proposed lines.

Ms. Krynicki stated the Town hired Otto Theall to review Mr. Kenny's line. Both soil scientists agree on the delineation.

Tim Walker, PE, stated he is a former member of the Flood & Erosion Control Board and the Conservation Commission. He indicated that he resigned from the Conservation Commission several years ago in order participate in the review of activity and development on the site. His daughter also

lives on Donald Drive. He is representing on informal basis 12 of the 14 neighbors. There are about 12 of those people in the audience tonight. He said that the floodplain boundary determined by the Jackson Study at the time was wrong.

Mr. Bancroft asked about the red line on the map.

Mr. Walker stated it was the 100 year floodplain.

Ms. Rycenga asked about the Jackson Study.

Mr. Walker and Ms. Mozian explained the history of the study and that it is used regularly to locate the 25 year floodplain boundary which is necessary to determine the WPLO boundary.

Ms. Krynicky stated that the definition of wetlands includes alluvial soils. She noted that she asked both Mr. Kenny and Mr. Theall to re-inspect the property for determination of whether alluvial soils were present. Both soil scientists confirmed there were none present.

Bill Kenny of William Kenny Associates, soil scientist, certified wetland scientist, landscape architect, agreed with Ms. Krynicky and noted there is a significant amount of disturbance on the site including that a large portion of Muddy Brook was piped, the sanitary sewer line was installed and there is stockpiling of soil and rock debris. He stated he found additional wetlands on the site than what is shown on the Town maps; one area of which is artificially created that acts as a sediment trap and to the north there is an intermittent watercourse. Mr. Kenny explained how the wetland law about address disturbed wetland areas and the amount of fill that is required to classify it as a wetland or non-wetland soil. Mr. Kenny noted he observed the stockpiles some of which have trees where there is growth that is so large in diameter (18 to 24 inches) that they must have been growing for a long period of time. He, also, investigated in-between soil piles and the water table is generally more than 2 feet deep.

Ms. Krynicky asked Mr. Kenny if he felt there was a larger area of alluvial soils.

Mr. Kenny stated he did but the brook was piped and the land disturbed. Statutorily, it would no longer be a wetland.

Tony Lisanti of 4 Donald Drive stated he has lived in his house for 20 years. He noted the piles have grown and now more can be seen. These are affecting the flow of water.

Frank Rogewitz of 1 Donald Drive stated that wetland filling has been going on for a long time. He encouraged the Commission not to reward someone for filling in the wetlands.

Bettina Wohlforth of 7 Keller Lane stated she is a 55 year resident. She indicated she wants more testing, especially under the piles.

Mr. Corroon confirmed that Mr. Kenny did do the testing.

Pam Tice of 6 Keller Lane encouraged the Commission to look at the bigger picture. She asked if there are federal wetlands.

Mr. Kenny stated that a federal wetland includes soil, water and hydrophytic vegetation. A Connecticut State regulations determine wetlands on the soils alone. He indicated that he believes there are federal wetlands on the site.

Ms. Mozian asked that the federal wetland be added to the site plan for future consideration.

Mr. Corroon asked what the case law is when the wetlands are buried.

Ms. Mozian read Section 4.3 into the record about grandfathering. She noted Westport's regulations were adopted in April of 1973.

Mr. Walker said there are several complaints in the Planning & Zoning file. He asked where the Waterway Protection Line is or will be as that is dependent on the wetland boundary.

Ms. Mozian explained the WPLO and the IWW regulations. She clarified that the WPLO boundary is established 15 feet from the 25 year floodplain or the wetland boundary, whichever is greater.

Mr. Ginter stated he believes that the WPLO line will actually be even further out into the property. He, also, reiterated that the Town line is not that different than the flagged line. The Town line goes back to the 1970's.

Mr. Rogewitz reiterated that the Commission should not ignore the illegal filling that may have led to filling of the wetlands.

Mr. Corroon asked if the soil scientists are required to auger deeper than 18 to 20 inches to determine if a wetland is filled.

Mr. Kenny clarified that there is sewer disturbance, piping disturbance, fill next to a watercourse that has 18 to 24 inch trees growing indicating the piles have been there a very long time.

Jackie Torrence, Atty. for the applicant, stated the Commission has what it needs to make a decision.

With no more comment from the public, the hearing was closed.

|                |   |                     |                 |
|----------------|---|---------------------|-----------------|
| <b>Motion:</b> | <b>Rycenga</b>                            | <b>Second:</b>      | <b>Bancroft</b> |
| <b>Ayes:</b>   | <b>Rycenga, Bancroft, Corroon, Porter</b> |                     |                 |
| <b>Nays:</b>   | <b>Field</b>                              | <b>Abstentions:</b> | <b>None</b>     |
|                |   | <b>Vote:</b>        | <b>4:0:0</b>    |

**Findings**  
**1141 Post Road East**  
**#IWW/M 10135-15**

- 1. Application Request:** Applicant is requesting a wetland map amendment to the Town of Westport Conservation Map #G 9.
- 2. Plan Reviewed:** "Improvement Location Survey Prepared for Coastal Construction Group, 1141 Post Road East, Westport, Connecticut" Scale: 1"= 30', dated November 6, 2015, and last revised to November 19, 2015 prepared by Land Surveying Services, LLC
- 3. Previous Applications Submitted:**
  - AA, WPL/E 6456-00 Sewer leak repair
  - AA, WPL/E 8267-08 Stream debris removal
- 4. Soil Scientist for the Applicant:** Bill Kenny of William Kenny Associates, LLC
- 5. Soil Scientist for the Town of Westport:** Otto Theall of Soil and Wetland Science, LLC
- 6. Facts Relative to this application:**
  - Property is outside aquifer protection zones and aquifer/primary recharge zones.
  - Property is outside Coastal Area Management zones.
  - The property is located on the north side of Post Road East. The 5.401 acre site supports an existing commercial building and areas of stockpiled soil materials. Muddy Brook enters the sight from the east and crosses the majority of the property through an existing culvert.
  - The Floodway and the 100 year flood plain as designated by the Federal Emergency Management Agency (FEMA) are located on this property.
  - Two inland wetland and watercourse systems were identified and delineated. The systems which are located in the eastern portion of the property, include an isolated stormwater sediment trap and a short segment of Muddy Brook and adjacent forested and marsh wetlands. Also included is an intermittent watercourse that extends and flows north to south from the northeastern corner



- of the property to Muddy Brook. Muddy Brook enters and flows through two subsurface culverts in the eastern central portion of the property.
- f. A report dated October 30, 2015, prepared by William Kenny describes the wetland soil types found on property to include wetland soil types, Aquents (1) and Saco silt loam (108).  
Aquents (AQ): This soil is found on slopes of 0 to 3 percent in disturbed areas that generally have less than two (2) feet of fill over naturally occurring poorly or very poorly drained soils, or are located where the naturally occurring wetland soils are no longer identifiable, or the original soil materials have been excavated to the ground water table within twenty (20) inches of the soil surface, have an aquatic moisture regime and can be expected to support hydrophytic vegetation.  
Saco Silt Loam (Sb): This nearly level, very poorly drained soil is on low flood plains of major streams and their tributary. It is subject to frequent flooding. The water table is at or near the surface most of the year. The permeability of the soils is moderate in the
  - g. The upland soils have been identified as Ninigret and Tisbury fine sandy loam (21), Udorthents-Urban land complex (306) and Udorthents, smoothed (308).
7. The applicant is proposing to amend wetland boundary as it exists on town wetland map #G9. Soil Scientist, Otto Theall was retained by the Town of Westport. He visited the property on December 7, 2015. Mr. Theall is in agreement with the proposed wetland boundary delineated by Soil Scientist Bill Kenny as indicated in an e mail received on December 10, 2015.
  8. The amended line would expand the amount of regulated wetlands on the site. However, the motion to approve the wetland boundary amendment failed to pass because of the concerns raised by the neighbors concerning the timing, amount and location of fill activity and the need for further investigation of these issues.

**Resolution**  
**Application #IWW/M- 10135-15**  
**1141 Post Road East**

In accordance with Section 8.0 of the Regulations for the Protection and Preservation of Wetlands and Watercourses of Westport, and on the basis of the evidence of record, the Conservation Commission resolved not to **APPROVE** Application #IWW/M-10135-15 by David Ginter, P.E. of Redniss & Mead on behalf of 1141 Post Road E, LLC to amend the wetland boundary on Map #G-9 on the property located at 1141 Post Road East with the following conditions:

1. Conformance to the plan entitled: "Improvement Location Survey Prepared for Coastal Construction Group, 1141 Post Road East, Westport, Connecticut" Scale: 1"= 30', dated November 6, 2015, and last revised to November 19, 2015 prepared by Land Surveying Services, LLC
2. An electronic file of the above referenced plan in a format acceptable to the Town Engineer must be submitted to the Conservation Department before permits for any further activity will be authorized.
3. This is a conditional approval. Each and every condition is an integral part of the Commission decision. Should any of the conditions, on appeal from this decision be found to be void or of no legal effect, then this conditional approval is likewise void.

**Motion:** Rycenga

**Second:** Bancroft

**Ayes:** Rycenga, Bancroft

**Nayes:** Porter, Field, Corroon

**Abstentions:** 0

**Votes:** 2:3:0

**The Motion Failed.**

9. **7 Owenoke Park:** Application #WPL- 10132-15 by Barr Assoc. LLC on behalf of Robert & Bonnie Adler Trustees for a proposed house lift with additions. Work is within the WPLO area of the Saugatuck River.

Mel Barr presented the application on behalf of the property owners. This is a ¼ acre lot on Long Island Sound. The property owners want to elevate the house to meet FEMA regulations and add two small additions. There is a small area of regrading in front of the driveway to accommodate the raised house. The plantings are to remain. The stockpile will be in the front yard.

Mr. Bancroft asked where the oil tank will be located.

Mr. Barr stated it would be above-ground in a double tank.

Ms. Krynicki asked about the original drainage appurtenances and whether they would remain.

Mr. Barr indicated that he assumes they would remain but more drainage would be added. He noted that the driveway will not be expanded. He reviewed the proposed conditions in the staff report including the reinstallation of the vegetative buffer along the seawall, which was part of the previous condition of approval when the house was reconstructed and indicated that he agrees with all but the need for a site monitor. He stated that he feels that it is not necessary.

Ms. Krynicki stated this is consistent with what other owners on the street have had to do.

Ms. Mozian offered that the monitoring reports could be curtailed to only specific times.

Ms. Krynicki offered that a Pre-Construction meeting might be a better solution.

Mr. Barr agreed that they are very useful in getting the project off on the right foot.

With no comment from the public, the hearing was closed.

|                |  |                     |              |
|----------------|--|---------------------|--------------|
| <b>Motion:</b> | <b>Rycenga</b>                                   | <b>Second:</b>      | <b>Field</b> |
| <b>Ayes:</b>   | <b>Rycenga, Field, Bancroft, Corroon, Porter</b> |                     |              |
| <b>Nayes:</b>  | <b>None</b>                                      | <b>Abstentions:</b> | <b>None</b>  |
|                |  | <b>Vote:</b>        | <b>5:0:0</b> |

**FINDINGS**  
**7 Owenoke Park**  
**#WPL 10132-15**

- 1. Receipt Date:** N/A
- 2. Application Classification:** N/A
- 3. Application Request:**

The existing 4 bedroom residence will be elevated for FEMA compliance with several small additions to include an additional garage bay and expansion of the footprint (2 stories). The first floor of the proposed dwelling will be at least 1 foot above the 100 year flood elevation. The proposed site improvements will create approximately 493 s.f. of new impervious area. The applicant also proposes additional drainage provisions for the increase in impervious area.

An application, #WPL 7203-03 was approved on March 17, 2004 by the Commission for the demolition of the existing home at the time and the construction of the new 2 story dwelling that exists on the site today.

Work is proposed within the WPLO area of the Saugatuck River.

The existing building coverage is 18.72 %; proposed is 20.53% and the proposed total lot coverage will increase from 27.72% to 28.92%.

P&Z regulations govern 25% total coverage therefore this application will go before ZBA in attempt to obtain a variance above the 25% coverage regulation.

- 4. Plans Reviewed:**
  - a. "Existing Conditions Plot Plan Prepared for Robert and Bonnie Adler, 7 Owenoke Park, Westport, Connecticut", Scale: 1"= 10', dated July 25, 2014 and last revised to August 13, 2015, prepared by Leonard Surveyors LLC.
  - b. "Site Plan, Details and Notes, Robert and Bonnie Adler, 7 Owenoke Park, Westport, Connecticut", Scale: 1"= 10', dated November 9, 2015, prepared by Chappa and Paolini Engineers, LLC

- c. Architectural Plans entitled: Adler Residence, 7 Owenoke Park, Westport, CT” (4 sheets), dated November 4, 2015, prepared by Franzen Associates

**5. WPLO**

Waterway Protection Line is 15’ from 9’ contour on this property. The property is wholly within the WPLO jurisdiction.

Property is located in a 100 year flood hazard zone AE (el. 13) and a VE (el. 14) and lies within the Limit of Moderate Wave Action Line (LIMWA) as shown on F.I.R.M. Panel 09001C0551G, Map Revised July 8, 2013.

**6. Permits/Applications filed:**

- a. #WPL 7203-03: for the construction of a new 2 story residence

**7. IWW Defined Resource (wetland or watercourse)**

There are no inland wetlands or watercourses located on this property. The property borders Long Island Sound and is within the 25 year floodplain of the Saugatuck River which is governed by the WPLO. Tidal wetlands have been identified south of the existing seawall.

**8. Property Description**

- a. FEMA Designated Floodplain- Property is located in a 100 year flood hazard zone AE (el. 13) and a VE (el. 14) and lies within the Limit of Moderate Wave Action Line (LIMWA) as shown on F.I.R.M. Panel 09001C0551G, Map Revised July 8, 2013.
- b. The subject property exists within the Coastal Areas Management Zone, with coastal resources identified as “coastal hazard area” and “tidal wetlands”.
- c. Property occurs within the groundwater recharge area and is underlain by an aquifer. Said aquifer is characterized as a fine grain stratified drift. The property however, is not located within the Aquifer Protection Overlay Zone.

**9. Vegetation Description**

Vegetation observed includes pines, maples and other ornamental plantings around the existing house. Spartina was observed within tidal wetlands and in 2003, a row of rosa rugosa existed along the tidal wetland along the retaining wall. Tidal wetlands were flagged for the original application.

**10. Coastal Management Zone**

The Coastal Resources Map for the Town characterizes this property as a “coastal flood hazard area” and occurring adjacent to “tidal wetlands”. According to the DEP CAM Manual dated 2000 these resources are as follows:

Coastal flood hazard area is defined by the DEP as “those land areas inundated during coastal storm events or subject to erosion induced by such events, including flood hazard areas as defined and determined by the National Flood Insurance Act and all erosion hazards as determined by the Commissioner [Connecticut General Statutes (CGS) section 22a-93-(7) (H)]. In general, coastal flood hazard areas include all areas designated as within A-zone and V-zones by the Federal Emergency Management Agency (FEMA). A zones are subject to still-water flooding during so called “100 year” flood events. During 100 year flood events, V zones are subject to direct action by waves three feet or more in height. **Coastal flood hazard areas encompass most other important coastal resources, can serve as flood storage areas, and provide numerous open space and recreational opportunities. They are, by their nature, hazardous areas for structural development, especially residential-type uses”.**

Tidal wetlands are defined as areas of high nutrient and biological productivity that provide detrital products forming the base of the food web in Long Island Sound. Tidal wetland provide habitat, nesting, feeding and refuge areas for shorebirds; serve as a nursery ground for larval and juvenile forms of many of the organisms of Long Island Sound and of many estuarine-dependent oceanic species; and provide significant habitat for shellfish. Tidal wetlands also improve water quality by trapping sediments, reducing turbidity restricting the passage of toxics and heavy metals, decreasing biological oxygen demand, trapping nutrients, and buffering storm and wave energy. Tidal wetlands provide recreational opportunities for fishing, wildlife observation and hunting; are important to commercial and recreational shell and finfisheries and are areas of scientific and educational value. Tidal wetlands are a major source of coastal open space.

## **11. Consistency with Waterway Protection Line Ordinance & Staff Recommendations**

### **Waterway Protection Line Ordinance**

Section 148-9 of the Waterway Protection Line Ordinance states that the applicant shall submit information to the Conservation Commission showing that **such activity will not cause water pollution**, erosion and/or environmentally related hazards to life and property and **will not have an adverse impact on the preservation of the natural resources and ecosystem of the waterway**, including but not limited to **impact on ground and surface water, aquifers**, plant and aquatic life, nutrient exchange and supply, thermal energy flow, natural pollution filtration and decomposition, habitat diversity, viability and productivity and the natural rates and processes of erosion and sedimentation.

The Flood & Erosion Control Board (F&ECB) reviewed and approved this application on December 2, 2015. The primary environmental issues associated with this project relate to the increase in impervious area and the proposed stormwater treatment.

The Commission finds that the original mitigation measures that existed on site as a result of the previous review should be reestablished and supplemented with additional measures for that which has been proposed with consideration given to the further increase in impervious area.

The total coverage will be increasing from 27.72% to 28.92%. According to an article written by the University of Connecticut Cooperative Extension for the American Planning Association, Spring 1996, "Impervious surfaces can be defined as any impenetrable material that prevents infiltration of water into the soil. While rooftops, roads and parking lots are the most prevalent and easily identified impervious surface, the list also includes sidewalks, patios, bedrock outcrops and compacted soil. As development alters the natural landscape, the percentage of land covered by impervious surfaces increases, initiating a chain of events that begins with alterations in the hydrologic cycle, works its way through physical and ecological impacts on riparian areas, adds on water pollution and culminates in degraded water resources."

The Draft Connecticut Stormwater Quality Manual, prepared by the DEP discusses impervious cover relating to the health of a watershed as follows:

"Impervious cover has emerged as a measurable, integrating concept used to describe the overall health of a watershed. Numerous studies have documented the cumulative effects of urbanization on stream and watershed ecology (Schueler, 1994; Schueler, 1995; Booth and Reinelt, 1993, Brant, 1999; Shaver and Maxted, 1996) Research has shown that when impervious cover in a watershed reaches between 10 and 25 percent, ecological stress becomes clearly apparent. Beyond 25 percent stream stability is reduced, habitat is lost, water quality becomes degraded, and biological diversity decreases (NRDC, May 1999)"

The DEP Coastal Area Management manual, dated 2000, states the following relative to impervious areas and stormwater runoff impacts:

**"Impervious surfaces, such as pavement and buildings, reduce the area of soil into which rainfall can infiltrate, thus increasing the volume of runoff that flows over the land.** As this runoff flows over impervious and pervious surfaces, it can pick up and transport floating, suspended, and dissolved constituents such as pathogens, toxic materials (heavy metals, oils, antifreeze, pesticides, etc.) high levels of nutrients (fertilizers and organic matter) eroded sediments (topsoil and road sand) and trash. This runoff flows down gradient over the land to the nearest water body or depression where it not only deposits the contaminants it carries, but it alters the temperature, pH, and/or salinity of receiving waters. It should be noted that even clean, potable freshwater can be a pollutant when introduced to a brackish or saline environment in the coastal area. Freshwater dilutes the salt concentrations in the receiving area, adversely impacting the flora and fauna that are uniquely suited to such salty environs. Over the long-term, sediment settles out of the water column and can degrade habitat in stream bottoms, tidal wetlands and shellfish beds."

To counter some of the stormwater impacts to water quality, the Commission finds that vegetated buffers be implemented on both the north and be replanted on the south property boundaries. A 15' wide planted buffer for the southern property boundary was imposed as a Condition of Approval of the first application review. A planting plan was designed and pictures of the site taken in 2006 show that the planting buffer had been installed. The Commission finds this buffer will be replanted.

The Commission finds a second similar buffer also be imposed on the northern property boundary as the existing topography indicates this would be the main surface runoff direction for stormwater. As roof drains which are a large portion of the stormwater runoff are directed to subsurface infiltration, staff feels biofiltration for stormwater quality of the surface stormwater runoff will be need to be implemented through the use of the vegetation.

The proposed patio stairs are intersecting the AE and the V zone and will need to meet FEMA construction methods. The Commission finds a construction detail should be provided to Conservation to assure this is accomplished prior to the issuance of a Zoning permit. All construction for the additions are located solely within the AE zone. Due to the small site and the close proximity to tidal wetlands, the Commission finds a pre-construction meeting be held on site prior to any site disturbance.

The current application proposes to maintain the pervious driveway. The Commission finds a construction detail be provided that will assure long term permeability and that this requirement be placed on the land records so the surface remains permeable in perpetuity. The Commission finds a portion of an existing patio is to be removed for coverage calculations. Gravel driveways and pervious material used for walkways and patios can assist in allowing some infiltration of runoff into the soil in comparison to the use of impervious material.

Some of the original drainage appurtenances such as the two 4' deep drywells for the roof leaders and the drywell for the driveway trench drain may still be in place. The Commission finds these existing drainage structures should remain in place.

The Commission finds tree protection fencing should be installed at the dripline of all existing trees on sight to protect the root zones as no existing trees are designated to be removed.

The Commission finds a soil stockpile area needs to be identified and proper erosion and sediment controls be proposed and as the entire property is located within a flood hazard zone. Existing site plan shall be revised to show stockpile area and submitted to the Conservation Department for review and approval prior to the issuance of a Zoning permit.

**Conservation Commission**  
TOWN OF WESTPORT  
**Conditions of Approval**  
**Application # WPL 10132-15**  
**Street Address: 7 Owenoke Park**  
**Assessor's: Map D 03 Lot 166**  
**Date of Resolution: December 16, 2015**

**Project Description:** For a proposed house lift to become FEMA compliant and to construct two additions. Portions of the work are within the 25 year floodplain, the WPLO area of Gray's Creek.

**Owner of Record:** Robert and Bonnie Adler Trustees  
**Applicant:** Barr Associates, LLC

In accordance with Section 30-93 of the *Waterway Protection Line Ordinance* and on the basis of the evidence of record, the Conservation Commission resolves to **APPROVE** Application #**WPL 10132-15** with the following conditions:

1. It is the responsibility of the applicant to obtain any other assent, permit or license required by law or regulation of the Government of the United States, State of Connecticut, or of any political subdivision thereof.
2. If an activity also requires zoning or subdivision approval, special permit or special exception under section 8.3(g), 8-3c, or 8-26 of the Connecticut General Statutes, no work pursuant to the wetland permit shall commence until such approval is obtained.
3. If an approval or permit is granted by another Agency and contains conditions affecting wetlands and/or watercourses, the applicant must resubmit the application for further consideration by the Commission for a decision before work on the activity is to take place.
4. The Conservation Department shall be notified at least forty-eight (48) hours in advance of the initiation of the regulated activity for inspection of the erosion and sediment controls.
5. All activities for the prevention of erosion, such as silt fences and hay bales shall be under the direct supervision of the site contractor who shall employ the best management practices to control storm water discharges and to prevent erosion and sedimentation to otherwise prevent pollution, impairment, or destruction of wetlands or watercourses. Erosion controls are to be inspected by the applicant or agent weekly and after rains and all deficiencies must be remediated with twenty-four hours of finding them.
6. The applicant shall take all necessary steps to control storm water discharges to prevent erosion and sedimentation, and to otherwise prevent pollution of wetlands and watercourse.
7. Organic Landscaping practices are recommended as described by the Northeast Organic Farming Association.
8. All plants proposed in regulated areas must be non-invasive and native to North America.
9. Trees to remain are to be protected with tree protection fencing prior to construction commencement.
10. The bottom of all storm water retention structures shall be placed no less than 1 foot above seasonal high groundwater elevation.
11. The applicant shall immediately inform the Conservation Department of problems involving sedimentation, erosion, downstream siltation or any unexpected adverse impacts, which development in the course or are caused by the work.
12. Any material, man-made or natural which is in any way disturbed and/or utilized during the work shall not be deposited in any wetlands or watercourse unless authorized by this permit.
13. A final inspection and submittal of an "as built" survey is required prior to the issuance of a Certificate of Compliance.
14. Conformance to the Flood and Erosion Control Board Conditions of Approval of the meeting of December 2, 2015.

#### **SPECIAL CONDITIONS OF APPROVAL**

15. Conformance to the plans entitled:
  - a. "Existing Conditions Plot Plan Prepared for Robert and Bonnie Adler, 7 Owenoke Park, Westport, Connecticut", Scale: 1"= 10', dated July 25, 2014 and last revised to August 13, 2015, prepared by Leonard Surveyors LLC.
  - b. "Site Plan, Details and Notes, Robert and Bonnie Adler, 7 Owenoke Park, Westport, Connecticut", Scale: 1"= 10', dated November 9, 2015, prepared by Chappa and Paolini Engineers, LLC
  - c. Architectural Plans entitled: Adler Residence, 7 Owenoke Park, Westport, CT" (4 sheets), dated November 4, 2015, prepared by Franzen Associates
16. A pre-construction meeting shall take place with Town staff, the construction manager, the engineer and the architect prior to the installation and the inspection of the sediment and erosion controls. A Contractor Compliance agreement shall be executed prior to the issuance of a Zoning permit.
17. A revised planting plan shall be submitted to the Conservation Department for review and approval that includes native, salt and wind tolerant species for plantings along the existing seawall for a width of 15' and a 5' planted buffer added along the northerly property line adjacent to the roadway. Said plan shall be submitted to the Conservation Department staff for review and approval prior to the issuance of a zoning permit.

18. Revision to the plan to include tree and vegetation protection measures and a soil stockpile area properly secured for location within a flood zone shall be submitted to the Conservation Department for review and approval prior to the issuance of a Zoning permit.
19. Submission of a performance bond estimate in the amount that includes the cost of plants and erosion control materials to be submitted to the Conservation Department prior to the issuance of a zoning permit.
20. A construction detail of the stairs within the VE zone, and the permeable driveway shall be submitted for review and approval to the Conservation Department prior to the issuance of a zoning permit.
21. Walkways, patios and driveway to remain permeable in perpetuity with said restrictions placed on the land records prior to the issuance of a Certificate of Compliance.

**This is a conditional approval. Each and every condition is an integral part of the Commission decision. Should any of the conditions, on appeal from this decision, be found to be void or of no legal effect, then this conditional approval is likewise void. The applicant may refile another application for review.**

**This approval may be revoked or suspended if the applicant exceeds the conditions or limitations of this approval, or has secured this application through inaccurate information.**

**Motion:** Rycenga

**Second:** Bancroft

**Ayes:** Rycenga, Bancroft, Corroon, Field, Porter

**Nayes:** 0

**Abstentions:** 0

**Vote:** 5:0:0

10. **15 & 16 Fresenius Road:** Application #AA,WPL/E-10073-15 by Barr Associates on behalf of Patricia C. Davis for a proposed 4-lot subdivision with two reconfigured existing lots and two, new proposed lots with an open space parcel.

Ms. Rycenga read the following statement into the record:

If I may, I would like to make some opening remarks regarding this application prior to the applicant making his presentation please.

First, I would like to submit my resume and photographs I took from the site walk held on December 11, 2015 into the record for this application.

Second, I did a complete review of the application on December 5, 2015 with a list of questions and comments that I had of which some questions have been answered. I can distribute a copy to the staff and members. I find that the application and the documents currently in the file to date to be incomplete based on my review. Just to go over a few of the items... I reviewed the plans dated June 15th and September 17, 2015 Sheets 1 through 3 and all the supporting documents in the file.

This commission has criteria to consider under our Inland Wetlands and Watercourse Regulations Section 5.0. In accordance with Subsection 5.1 we have to take into consideration all relevant facts and circumstances, including, but not limited to, subsections a through g all related to the wetlands and watercourses.

Some are:

- (a) The environmental impact of the proposed regulated activity.
- (b) The applicant's purpose for, and any feasible and prudent alternatives to, the proposed regulated activity which alternatives would cause less or no environmental impact.
- (c) The relationship between the short-term and long-term impacts.

This section goes on but I won't go through them all.

We also have Standards of Review in accordance with section 6.0 that helps us determine that an

activity will not have a significant impact on the wetlands and watercourses. Example, in our regulations under Subsection 6.3 Erosion and Sediment we have to find that the activity will not cause erosion and/or sedimentation will not have a significant impact.

*I found the plans as submitted inadequate and incomplete. The plans only reflected control standard notes and typical details on filter fabric fencing and anti-mudtracking pads for the access driveways. The legend shows filter fabric fencing and haybales. However, I could not locate it on the plans and I could not even locate any stock piles. I would like to see a full detailed sheet solely for an E&S plan.*

The other concern is under Section 5, Criteria Considered by Commission under Subsection 5.1.B. What is the applicant's purpose for the proposed regulated activity and would a feasible and prudent alternative cause less or no environmental impact to the wetlands?

*I don't understand the purpose of the proposal as an Impact Assessment Report has not been submitted to date and no Feasible and Prudent alternatives have been submitted for review and consideration.*

To go on, under Section 9 Application Procedure, Subsection 9.5.1 Site Plan and/or A-2 Survey, going into the 3<sup>rd</sup> sentence of that paragraph in the regulations it states...Detailed information to be included on the site plan may include, but not limited to, the following information, both existing and proposed, as "applicable" to the particular application:

*In that section of the regulations it lists subsections A-N. However, I am stressing concerns over subsections G-N. It includes drainage, regrading, construction in regulated area, vegetation, landscaping, soil erosion and sedimentation controls practices, and any other management practices and mitigation measures to prevent or minimize pollution and it goes on.*

Again under Sections 6.4 Natural Habitats and 9 Application Procedure, Subsection 9.5.3 Biological Evaluations. A Biological Assessment and a Natural Resource Inventory reports has not been submitted with the file. So how does the Commission evaluate the effect of the proposed activity on the plant species and the animal life related to the wetlands and watercourses if we don't have such report(s).

I feel the application is incomplete as submitted. I feel in my professional opinion and experience that the proposed activity may have a significant impact on the wetlands and watercourses based on the evidence in the record to date.

Therefore, I am suggesting that the Commission finds that the regulated activity applied for does involve a significant impact on the wetlands or watercourses based on the evidence in the record to date. This would be in accordance with Section 9.5 Plenary Ruling and as "Significant Impact" is defined in Section 3.22 of the regulations.

However, prior to making that finding, we shall determine that

1. That the evidence in the record of the proceedings has been produced or is likely to be produced which requires the hiring of such an expert and
2. The department staff will be unable to perform the technical review.

This application will require outside experts for technical assistance and if adequate time is not possible for the outside expert(s) to perform their analyses then the application has to be temporarily withdrawn and the applicant must refile but does not have to pay a new application fee.

This leads to my ultimate concern. I feel it is a wasted effort and funds by referring this application to the experts when the end result "may" possibly come back inconclusive due to needing additional



information or reports. Example may be such as a more detailed erosion and sedimentation plan, Biological Assessment report, etc. in order to provide us the information we need to ensure there will be no significant impact to the wetlands and watercourses or no feasible or prudent alternatives to the proposed regulated activity exists. Also, it is important to note that there is significant public interest here.

So I would like to defer to the applicant or her representatives at this time to see how they would like to proceed with this application as I feel it is incomplete. Then we can discuss with the Commission and staff as to the direction we shall take.

\*If application is NOT withdrawn:

MOTION that the Commission finds that the regulated activity applied for does involve a significant impact on the wetlands or watercourses based on the evidence in the record to date. This would be in accordance with Section 9.5 Plenary Ruling and as "Significant Impact" is defined in Section 3.22 of the regulations.

Reclassify the application from AA-WPL/E to IWW?

and

The Commission determines that based on the

1. Evidence in the record of the proceedings has been produced or is likely to be produced which requires the hiring of such an expert and
2. The department staff will be unable to perform the technical review.

This application will require outside experts for technical assistance and if adequate time is not possible for the outside expert(s) to perform their analyses then the application has to be temporarily withdrawn and the applicant must refile but does not have to pay a new application fee.

Mel Barr, representing the applicant, acknowledged that between this statement and the staff report more information is needed but he would like to proceed with his presentation. He continued that the plan presents a compliant 4 oversized lot subdivision. The building areas are on top of the hills accessed by two driveways serving 3 lots. The common driveway has a 4 foot retaining wall. 18% of the site is going into open space. Lot A has a house on it and there are no changes proposed to it. Lots C & D have no wetlands. The Open Space Parcel is untouched and private. The owners of the other lots would be responsible for its maintenance. There is no regulated activity in the WPLO. There is no activity in the 20-foot non-disturbance buffer, the 30-foot driveway upland review area or the 50-foot upland review area for houses. The nearest house is 70 feet away from the wetland. He feels the plan complies with the Subdivision regulations and the Wetland regulations and would be eligible for a staff level permit. He acknowledged that the sediment and erosion control plan is inadequate. The limit of disturbance line is on the plan but not very readable. They would use construction fencing to demarcate the limit of disturbance. They would consider that for Lot D as well as other. They did look at alternatives including: an 8-30g; a 5-lot layout; a common driveway; a single private road serving all three lots but this would not meet Town standards. They did look at softening the proposed grades and went to the Zoning Board of Appeals for a variance of the new excavation and fill regulations to get a slope variance. ZBA denied the request so that option is out. Based on the denial they are back to a 5:1 slope and taller retaining walls. Mr. Barr submitted the ZBA denial decision and a list of alternatives considered.

Rich Bennett, PE, reviewed the list of alternatives. He stated that a shared driveway was not desirable for sale value. A \$2 million homeowner does not want to share a driveway with his neighbor. Ultimately, they felt that a 4-lot subdivision was reasonable.

Ms. Rycenga asked that the 4-lots be staked.

Mr. Bennett presented cross-sections of the driveways. They, also, showed depth to ledge and retaining walls. He spoke to the effect of the development on the drainage patterns. The site is hilly with a lot of ledge. They are building at the top of the hill, which means little groundwater.

Ms. Krynicky clarified her concern about how the removal of ledge will disrupt the surface flow of water. She wants to make sure the wetland will still be fed the way they are now.

Mr. Bennett presented a watershed map highlighting the site. A ½ acre on lot D will be disturbed. The total watershed is greater than 80 acres. The total cubic yards of removal is 4470 cubic yards. The total cubic yards of fill is 630 cubic yards. Lot C is perpendicular to the slope and would have a walk out basement to minimize the fill.

Ms. Krynicky noted the Commission's regulations allow for a 100-foot upland review area when steep slopes are present.

Mr. Bennett stated this would put all three building sites within the purview of the Commission.

Bill Weekes of 11 Fresenius Road asked how the Commission could make a decision without giving consideration to the wildlife and the tree removal.

Ms. Mozian added that she wanted to know if there were any swimming pools proposed. The limit of disturbance that is proposed by the applicant now could change when the owners want a pool, for example and more site disturbance is required.

Eric Troelstra of 23 Long Lots Road stated his property backs up to Lot C. He warned about the runoff from the driveways especially the velocity. He is concerned with discharge to the pond. Salt and sand is going into the pond. There are no catchbasins on Fresenius Road now. All is going into the pond including fertilizer runoff. He asked how many tree will be removed. He stated that even an estimate will be low because nearby trees are damaged and will die. Drainage galleries are supposed to be maintained by the homeowner. He asked what happens if they are not maintained and water goes onto his property. The culvert is undersized.

Thomas Schmidt of 19 Long Lots Road stated the objective is to build three houses and sell them. The impact to the land is significant. The alternatives of an 8-30g or a 5-lot subdivision are mentioned to make us think that this is a good plan. All wildlife will be gone.

Mr. Weekes stated that the Town recently upgraded the cul-de-sac for adequate fire truck turnaround.

Mr. Troelstra noted there is no evidence as to what effect the ledge removal has on the wetlands.

Mr. Barr stated they are not proposing any changes to the cul-de-sac even though it does not meet Town Code. The area of disturbance is 1.75 acres on a 7 acre site. Almost 75% of the site would be left untouched. CT Natural Diversity Database shows no threatened or endangered species. Mr. Barr asked if the Commission still wanted the applicant to make a CT DEEP inquiry.

Ms. Mozian stated she is looking at whether a hydrogeologist is needed to address whether ledge removal will affect the wetland.

Ms. Rycenga stated it is her opinion that this application may have a significant impact.

Mr. Porter agreed.

Mr. Bancroft stated he was disturbed by the amount of disturbance that is being categorized as minimal. He is also concerned with the velocity of the runoff from the driveways. He would like to see alternative driveway layouts.

Mr. Field stated he needs more expert testimony.

Motion that a hydrogeologist and wildlife biologist is needed to help in the review of the application by the staff.

**Motion:** Rycenga **Second:** Porter  
**Ayes:** Rycenga, Porter, Bancroft, Corroon, Field  
**Nayes:** None **Abstentions:** None **Vote:** 5:0:0

Motion to determine that the application may have a significant impact.

**Motion:** Rycenga **Second:** Porter  
**Ayes:** Rycenga, Porter, Bancroft, Corroon, Field  
**Nayes:** None **Abstentions:** None **Vote:** 5:0:0

Mr. Troelstra stated that in an 80 acre watershed, 1 acre has the potential to impact the whole watershed.

Mr. Weekes noted there are deer, raccoon, possum, ducks, heron, skunk and egret as well as 47 different song birds on this parcel.

The hearing was continued to January 20, 2015.

**Motion:** Rycenga **Second:** Bancroft  
**Ayes:** Rycenga, Bancroft, Corroon, Field, Porter  
**Nayes:** None **Abstentions:** None **Vote:** 5:0:0

**Work Session II:**

1. Other business. - None

The December 16, 2015 Public Hearing of the Westport Conservation Commission adjourned at 11:16 p.m.

**Motion:** Rycenga **Second:** Bancroft  
**Ayes:** Rycenga, Bancroft, Corroon, Field, Porter  
**Nayes:** None **Abstentions:** None **Vote:** 5:0:0