MINUTES
WESTPORT CONSERVATION COMMISSION
OCTOBER 18, 2017

The October 18, 2017 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:

Pat Shea, Esq., Chair
Anna Rycenga, Vice-Chair
Paul Davis, Secretary
Donald Bancroft
Robert Corroon
Ralph Field, Alternate
Paul Lobdell, 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 October 18, 2017 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

Mr. Lobdell was not a sitting member of the Commission and did not participate in the discussions until Item 3 of the Public Hearing, when Ms. Shea left the meeting.

Changes or Additions to the Agenda.

Ms. Mozian noted there were two changes to the agenda including:

- **15 Hedley Farms Road:** Request for time extension for Permit IWW,WPL/E-8368-08 to build a detached garage.
- **54 Wilton Road:** This application has been postponed to November 15, 2017.

Motion to amend the agenda as noted.

Motion:	**Rycenga**		**Second:**		**Shea**
Ayes:	**Rycenga, Shea, Bancroft, Corroon, Davis, Field, Perlman**				
Nayes:	**None**	**Abstentions:**	**None**	**Vote:**	**7:0:0**

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

1. **Receipt of Applications**

   Ms. Mozian reported there were no IWW applications to receive.

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

   Ms. Mozian reported the lawsuits for 115 Harbor Road were dropped.

3. **282 Compo Road South:** Request by SIR 282 Compo South LLC to amend Application #WPL-10418-17 for a single family dwelling and related site improvements to include a half bath and outdoor shower also meeting the same FEMA requirements.

   Ms. Krynicki explained the request to extend the pervious patio around the house to join the proposed half bath and outdoor shower. The drainage will include a gravel trench drain. Engineering has approved the design.

   Motion to approve the amendment to Application #WPL-10418-17.

Motion:	**Shea**		**Second:**		**Rycenga**
Ayes:	**Shea, Rycenga, Bancroft, Corroon, Davis, Field, Perlman**				
Nayes:	**None**	**Abstentions:**	**None**	**Vote:**	**7:0:0**

4. **7 Compo Beach Road:** Request for release of bond being held for plantings as a condition of Permit #WPL-10058-15.

   Ms. Mozian reviewed a request for bond release being held for plantings as a conditions of Permit #WPL-10058-15. She stated staff has inspected and the plantings are thriving. She recommended bond release.

Motion:	**Rycenga**		**Second:**		**Shea**
Ayes:	**Rycenga, Shea, Bancroft, Corroon, Davis, Field, Perlman**				
Nayes:	**None**	**Abstentions:**	**None**	**Vote:**	**7:0:0**

5. **40 Burr Farms Rd:** Request by Oliver & Amy Cook for administrative approval to cut down threeTulip trees within the 20 ft. upland review area.

Ms. Krynicki reviewed a request to remove large trees in the 20-foot non-disturbance area and distributed photos of the trees.

Ms. Mozian reported that Bruce Lindsay, Tree Warden, did not have jurisdiction on privation property but advised that the trees could be replaced in a 2:1 or 3:1 ratio because of their size or the Commission could deny the request and force a Public Hearing, which would enable an outside expert to be hired.

Mr. Bancroft noted how large the trees were. 2 of the 3 Tulip trees appeared healthy. He is okay with a 2:1 replacement ratio.

Motion to approve removal of the three Tulip trees with condition that for each tree removed, two need to be replaced with oversight by the Conservation Department staff.

Motion: Shea Second: Rycenga
Ayes: Shea, Rycenga, Bancroft, Corroon, Davis, Field, Perlman
Nayes: None Abstentions: None Vote: 7:0:0

6. Approval of September 25, 2017 Special Meeting minutes.

The September 25, 2017 Special Meeting minutes were approved with corrections.

Motion: Rycenga Second: Bancroft
Ayes: Rycenga, Bancroft, Corroon, Field, Lobdell
Nayes: None Abstentions: Davis, Shea Vote: 5:0:2

7. Other Business

a. 15 Hedley Farms Road: Request for time extension for Permit IWW,WPL/E-8368-08 to build a detached garage and generator pad.

Ms. Mozian reviewed a request for time extension for Permit IWW,WPL/E-8368-08 to build a detached garage and generator pad.

Motion to grant the time extension.

Motion: Rycenga Second: Shea
Ayes: Rycenga, Shea, Bancroft, Corroon, Davis, Field, Perlman
Nayes: None Abstentions: None Vote: 7:0:0

b. Ms. Mozian noted that there was a Public Meeting on Thursday, October 26th from 6:30 - 8:30 pm regarding the CT State Water Plan Draft Report.

c. Ms. Mozian suggested that the Commission Members go to the CT League of Conservation Voters website as it is very informative and is dedicated to protecting CT's environment. She also suggested that we review the 2017 Environmental Scorecard on their website.

<u>Public Hearing:</u> 7:20 p.m., Room 201/201A.

1. 54 Wilton Road: Application #WPL-10438-17 by William J Fitzpatrick on behalf of STC Green, LLC for site improvements accompanying renovation of southerly portion of existing building, demolition of northerly portion of existing building and construction of residential housing. Work is within the WPLO area of the Saugatuck River.

This application was continued to the November 15, 2017 Public Hearing.

2. 793 Post Road East: Continuation of Application #IWW,WPL-10379-17 by Barr Associates on behalf of DMC Westport LLC for 14 townhouses plus 2 mixed use building for commercial and multi-family

units with parking, drainage, landscaping and related site improvements. Portions of the work are within the WPLO area and the upland review area of an unnamed watercourse.

Ms. Mozian noted the application was continued from the September 13, 2017 Public Hearing.

Both Mr. Davis and Mr. Lobdell were not present at the September 13, 2017 meeting, they each listened to the tape and visited the site to familiarize themselves with the application.

Beth Evans presented the application on behalf of the applicant. She reminded the Commission the hearing was continued to allow for exploration of feasible and prudent alternatives. She reviewed revised plans that minimized the grading by introducing a retaining wall. The landscaping plan was augmented in the areas where some of the grading had previously been proposed. She also reviewed the Alternative designs that had been explored prior to application submission but were rejected for various reasons, such as non-compliance with Zoning regulations. She also referenced the "Notice of Residual Soil Contamination" that was submitted since the last meeting. At the last meeting, they were asked if the stormwater coming out of the pipe was tested. It had not, but it has been tested since. The tests showed acetone but that could be a contamination issue from the lab. Other than that, nothing else was found of concern.

Mr. Corroon asked what the state limit is for acetone.

Carver Glezen, LEP of Triton Environmental stated he does not have confidence in the number. They found toluene at 18 mg/l, which is well below the limit. There were no hydrocarbons found. He stated acetone is found in cleaning solvent but also used in labs. They would need to retest.

Ms. Rycenga asked how the Commission addresses contaminants that are coming from off-site.

Ms. Mozian stated that the applicant still has to deal with it. They have the "Notice of Residual Soil Contamination" for the residences that would need to be recorded on the land records.

Mr. Corroon asked if the car wash discharges its wastewater after treatment.

Mr. Glezen stated the wastewater from the car wash is not allowed to be discharged to the stormwater system or to a waterbody, it must be discharged to the sanitary sewer system.

Mr. Davis asked if the south end of the pipe was on the applicant's property.

Ms. Evans stated yes. It is in the middle of the wetland.

Mr. Glezen clarified that what Mr. Davis is getting at is if the contamination will have an impact on human health. He stated Triton took samples at the outfall of the pipe and submitted a report of the compounds found in sediment sample. It said that contaminants found are not a risk to human health.

Ms. Krynicki asked how this impacts the wetlands.

Ms. Evans stated the outfall is scoured but does not appear to be impacting the wetland. It is a small confined area. Also, the plans show that they plan to plant that area.

Ms. Shea indicated she is concerned with the integrity of the pipe and the depth of cover over it.

Ms. Evans stated they will scope it to determine its functionality. It will be capped by 2 feet of fill.

Ms. Shea asked if the stormwater calculations have been done for the alternative.

Ms. Krynicki added the Regulations require the Town Engineer approve the alternative design and indicated they need to review the calculations for the alternate proposal.

Ms. Evans agreed to provide the calculations.

Ms. Krynicki asked what is the cover over the pipe.

Alan Belch, PE of Evans and Associates stated the pipe has been there a long time. It has been subject to cars driving over it for a long time. Right now they don't know the amount of cover.

Ms. Evans stated the preference is not to replace the pipe.

Mr. Corroon asked if the pipe supplies the wetland on-site.

Ms. Evans stated it contributes to the wetland but the main source is groundwater not the pipe.

Mr. Davis asked if removing the pipe had been explored.

Ms. Rycenga asked if there is a drainage easement for this pipe.

Ms. Evans stated there is not. The pipe provides hydraulic conductivity. Looking at aerial photos, it appears that the pipe is several decades old.

Mr. Davis asked if the pipe was necessary.

Ms. Evans stated yes. It carries water.

Mr. Corroon stated if it is necessary, then that is a reason to replace the pipe.

David Mann, owner stated they would use a steel plate over the pipe during construction to protect the pipe.

Mr. Bancroft asked about the proposed wall shown on the alternate design and noted that it intercepts the wetland.

Ms. Evans agreed. She believes the wetland is a fill area where the former pool was located. The original plan eliminated more of the wetland area.

Mr. Glezen stated the retaining wall averages about 4 feet in height and is mortared.

Mr. Perlman asked how many parking spaces are proposed.

Ms. Evans stated there are 93.

Ms. Shea clarified that the Wetlands Act does not distinguish between good and bad wetlands insofar as quality is concerned.

Ms. Evans agreed.

Mr. Davis asked about contamination testing in the wetland.

Ms. Evans explained that no testing was done in the wetland because the groundwater testing that was done confirmed that contamination was not moving in the groundwater toward the wetlands.

Mr. Glezen stated that groundwater is flowing from west to east into the wetland.

Ms. Mozian questioned the soil borings, the petroleum hydrocarbon findings 870 vs 500 mg/kg.

Mr. Glezen stated there is no cleanup criteria in Connecticut. He stated there is no risk for human health for residences due to the heavily vegetated nature of the wetland and deters persons from entering the wetland area.

Ms. Mozian asked if they use acetone for auto repairs.

Mr. Glezen stated that it is not typically used. He added that the source would be off-site and does not pose a problem to human health.

Ms. Krynicki asked about contaminants being absorbed by the obligate species.

Ms. Evans stated if there are contaminates, the replanting will help.

Ms. Krynicki noted this is the second regularly scheduled meeting, under the WPLO there are no extensions. The Commission must have a Special Meeting within 15 days or the application must be withdrawn and resubmitted. She cannot proceed without the Engineering Department giving their report on the drainage issues.

The Commission also wants new lab testing for acetone and the engineering analysis.

Mr. Barr agreed to withdraw and resubmit the application in order to get the two outstanding issues resolved. He will also renotice the abutting neighbors.

The application was withdrawn. It will be resubmitted and heard at the November 15, 2017 Public Hearing in order to allow for submission of additional information.

Motion: Shea Second: Rycenga
Ayes: Shea, Rycenga, Bancroft, Corroon, Davis, Field, Perlman
Nayes: None Abstentions: None Vote: 7:0:0

3. **535 Riverside Avenue:** Application #WPL-10475-17 by 535 Riverside LLC to legalize the reconstruction of an existing boat dock facility. The dock is within the WPL area of the Saugatuck River.

Rob Sonnichsen, PE, principle of Waldo Associates, spoke on behalf of the owner. He reviewed aerial photos showing a dock was existing since the 1980's. He explained the DEEP permit history.

Ms. Shea recused herself since her son works at the Parker House Mansion restaurant. She left the meeting at 8:40 p.m.

Mr. Lobdell took seat as a sitting member of the Commission.

Ms. Rycenga became the Acting Chair.

Mr. Sonnichsen reviewed what work had been approved by staff administratively including:

- Landscape work along the slope for stability;
- Repair/replace existing retaining wall – a few railroad ties (board by board replacement);
- Replace stairs and railing;
- Install guard rail at parking lot edge; and
- Legalize seawall patches of concrete.

He noted the rise and fall of the tide is an issue for the ramp as well as the strong river current.

Mr. Davis asked how the dock is supported.

Mr. Sonnichsen stated it is attached with chains and anchors to the wall. However, that means the dock migrates. They have had a discussion with DEEP about having pilings instead but ran out of time with them to pursue.

Mr. Davis asked if it is feasible to remove the dock in the winter.

Mr. Sonnichsen stated it is not feasible.

Ms. Mozian asked if they are concerned with icing in the winter.

Mr. Sonnichsen stated no.

Mr. Perlman asked if the dock has been wind tested.

Mr. Sonnichsen stated it has not. It is too tall for rowing.

Mr. Lobdell stated he is concerned with safety.

Mr. Sonnichsen agreed. Right now, the dock floats and shifts. The anchoring probably needs to be better. They did not anticipate the current of the river.

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

Motion: Rycenga Second: Bancroft
Ayes: Rycenga, Bancroft, Corroon, Davis, Field, Lobdell, Perlman
Nayes: None Abstentions: None Vote: 7:0:0

Findings
535 Riverside Avenue
Application # WPL 10475-17

1. **Application Request:** Applicant is requesting to legalize the removal of a 2'9" x 19' wooden ramp, a 6' x 87' main float, a 5' x 21' float, three 2'x12' finger floats, one 4'x20' finger float and anchors and replace with a 3' x 20' aluminum ramp, a 6'x 105' main float, a 3'x12' finger float, two 3'x16' finger floats and one 3'x 20' finger float secured by four chains with anchors. The work exists wholly within the WPLO area of the Saugatuck River.
2. **Plans reviewed for this application:**
   - **a.** "Purpose: Recreational Small-Boat Transient Docking Facility, Proposed: Retention of and/or modifications to Seawall and Docks in the Saugatuck River off Long Island Sound at 535 Riverside Avenue, Westport, Fairfield County Connecticut. Application by Charles J. Costa, Trustee dated 6/21/10 revised to 4/22/11 prepared by John Hilts and Scott Davies, P.E.
   - **b.** Sheet 3 of 6 Existing General Plan View
   - **c.** Sheet 4 of 6 Exiting Plan View
   - **d.** Sheet 5 of 6 Proposed Plan View
   - **e.** Sheet 6 of 6 Existing and Proposed Sections"
   - **f.** "As-Built Wall Repair & Dock Installation 535-541 Riverside Avenue Fairfield County, Westport, Connecticut dated November 23, 2016 prepared by Robert Sonnichsen, P. E.
   - **g.** Sheet 4 of 8 Pre-Existing Conditions
   - **h.** Sheet 5 of 8 As-built Wall & Dock Conditions
   - **i.** Sheet 6 of 8 Section A-A
   - **j.** Sheet 7 of 8 Section B-B
   - **k.** Sheet 8 of 8 Section C-C"
3. **Past Permit Activity:**

1. State of Connecticut DEEP issued Permit #201101259-TS on January 26, 2012 for the dock removal and replacement activity. Special Conditions of note include:
   a. "The Permittee shall ensure that at no time shall overnight berthing of vessels be allowed at this docking facility.
   b. The Permittee shall ensure that at least 4 of the 9 slips shall be designated as unlimited transient use. Such usage shall be indicated on a permanent signage posted on the dock. The signage is to remain visible to the public and be maintained in good condition for the life of the docking structure."

   The application was submitted and approved in response to a Notice of Enforcement Action issued by the CT DEEP on December 10, 2009 to the former owner for conducting the dock work without proper permits.

2. The Shellfish Commission reviewed the proposal as part of the CT DEEP application for the legalization of the dock work. It found there would be no adverse impact to the shellfish resource in this part of the Saugatuck River.
3. The Conservation Department issued Permit WPL/E-10043-15 on June 26, 2015 to the current owner for the change of use from residential to restaurant on the 2nd floor, exterior alteration to reconfigure and existing 2nd floor deck for use as an outdoor eating area and interior renovations.
4. CT DEEP Certificate of Permission 201602035-KB was issued on May 13, 2016 to the current owner for: removal of fallen stones in front of the stone masonry bulkhead; replace fallen stones in the stone masonry bulkhead and grout as necessary; repair an approximately 35 ft. section of stone masonry bulkhead along with concrete cap located along the northerly portion of the site; and, pour concrete immediately landward of the stone masonry bulkhead to form an approximately 5 ft. x30 ft. long concrete area behind the 35 ft. section of repaired stone masonry bulkhead.
5. A Notice of Violation was issued on February 3, 2017 by the Conservation Department to the owner for dock replacement without issuance of a WPLO permit. WPL/E-10476-17 for landscaping along slope embankment, repair to f existing wooden retaining wall, replace stairs, install wooden guiderail, legalize seawall work.

4. Facts Relative to this application:

- WPLO: All proposed activity is located below elevation 9.0 NGVD and therefore is within the WPLO.
- Inland Wetlands and Watercourses: No inland wetlands or watercourses are located at the site.
- Tidal Wetlands: Property does not contain tidal wetlands.
- 100-Year Floodplain: The entire property is located within Zone AE 10' NGVD.
- Aquifer Protection Overlay Zone: The property is not located within the APOZ.
- Coastal Area Management Zone: The project is located within the Coastal Area Management Zone. The coastal resources are "Coastal Flood Hazard Area", "Near Shore Waters" per the Coastal Resources Map of the Connecticut Department of Environmental Protection.
- There is no Spartina growth in the area of the proposed activity.
- Mean low water elevation: - 3.8 Mean high water elevation: +5.3
- For purposes of shellfish harvest, the water classification assigned by the Bureau of Aquaculture is "Prohibited" in this area of the Saugatuck River.

5. Waterway Protection Line Ordinance

Section 30-93 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 Commission finds the existing dock facility will not affect tidal wetland vegetation or nearby shellfish beds.

The Flood and Erosion Control Board approved the application at its October 4, 2017 hearing. Provided the conditions as stated by the DEEP and the Flood and Erosion Control Board are employed, it is the finding of the Commission, that this application does not significantly impact natural resources as they are protected by the Waterway Protection Line Ordinance.

Conservation Commission
TOWN OF WESTPORT
Conditions of Approval
Application # WPL 10475-17
Street Address: 535 Riverside Avenue
Assessor's Map: C 06 Lot: 57
Date of Resolution: October 18, 2017

Project Description: To legalize the reconstruction of an existing boat dock facility. The dock is within the WPL area of the Saugatuck River.

Owner of Record: 535 Riverside, LLC
Applicant: 535 Riverside, 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 10475-17** with the following conditions:

STANDARD 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. 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.
9. 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.
10. A final inspection and submittal of an "as built" survey is required prior to the issuance of a Certificate of Compliance.

11. When a Contractor Compliance Agreement is enclosed with a permit, the agreement must be appropriately executed and returned to the Conservation Department staff prior to the issuance of a zoning permit.

SPECIAL CONDITIONS OF APPROVAL

12. Conformance to plans entitled:
- **a.** "Purpose: Recreational Small-Boat Transient Docking Facility, Proposed: Retention of and/or modifications to Seawall and Docks in the Saugatuck River off Long Island Sound at 535 Riverside Avenue, Westport, Fairfield County Connecticut. Application by Charles J. Costa, Trustee dated 6/21/10 revised to 4/22/11 prepared by John Hilts and Scott Davies, P.E.
  - **1.** Sheet 3 of 6 Existing General Plan View
  - **2.** Sheet 4 of 6 Exiting Plan View
  - **3.** Sheet 5 of 6 Proposed Plan View
  - **4.** Sheet 6 of 6 Existing and Proposed Sections"

- **b.** "As-Built Wall Repair & Dock Installation 535-541 Riverside Avenue Fairfield County, Westport, Connecticut dated November 23, 2016 prepared by Robert Sonnichsen, P. E.
  - **1.** Sheet 4 of 8 Pre-Existing Conditions
  - **2.** Sheet 5 of 8 As-built Wall & Dock Conditions
  - **3.** Sheet 6 of 8 Section A-A
  - **4.** Sheet 7 of 8 Section B-B
  - **5.** Sheet 8 of 8 Section C-C"

13. Conformance to the Connecticut DEEP approval of January 26, 2012: Permit #201101259-TS and its stated conditions.

14. Conformance to the conditions of the Flood and Erosion Control Board Approval of October 4, 2017.

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: Davis **Second:** Field
Ayes: Corroon, Bancroft, Field, Rycenga, Lobdell, Perlman, Davis
Nayes: 0 **Abstentions:** 0 **Vote:** 7:0:0

4. 241 Bayberry Lane: Application #IWW, WPL/E-10478-17 by Achilles Architects on behalf of Frank and Michael Giacobbe for additions and renovation to a single family residence including a new front entry and dining room addition, an expanded kitchen addition and new and renovated second floor addition and rear patios.

Bill Achilles, AIA, presented the application on behalf of the property owners. Mr. Giacobbe was also present. He stated some of the work was already approved by staff, which was outside the regulated area. He described the work within the 50-foot upland review area. This includes additions to the front and rear and a patio to the rear. However the existing encroachments on the southside of the building will be removed. An existing septic tank in the 50-foot upland review area will be abandoned. A new septic system will be installed outside the regulated area. Additional plantings will be added to the wetland buffer on the southside of the house. The Engineering Department reviewed and approved the proposal. The fuel source is propane. There are no existing undergroung fuel tanks. The existing gravel driveway will be reconfigured and there will be asphalt in the circular portion of the drive. The wetlands are not connected to a watercourse. It is a pocket wetland.

Ms. Rycenga expressed concern about wetland protection during construction and suggested the silt fence be erected prior to any construction to act as a limit of disturbance.

Mr. Achilles noted that the silt fence denoted on the plan is intended to be the limit of disturbance with the exception of the new plantings on the southside of the house.

Ms. Mozian added that the staff should be notified 48 hours in advance to ensure that the silt fence is in proper location.

Ms. Krynicki commented that the property is on a backslope, which makes it subject to erosion when soils are disturbed. She feels that haybales should be added to the silt fence in the area of the plantings.

Ms. Rycenga expressed concern about wetland protection during construction and suggested the silt fence be erected prior to any construction to act as a limit of disturbance.

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

Motion: Rycenga Second: Perlman
Ayes: Rycenga, Perlman, Bancroft, Corroon, Davis, Field, Lobdell
Nayes: None Abstentions: None Vote: 7:0:0

Findings
Application # IWW/WPL/E-10478-17
241 Bayberry Lane

1. **Date Received: September 13, 2017**
2. **Application Classification: Summary**
3. **Application Request:** The applicant proposes additions and renovations to an existing one family residence including a new front entry and dining room addition, an expanded kitchen addition, new and renovated second floor additions and rear patios. The existing drive will be expanded and altered to accommodate a proposed garage addition and slightly realigned at the entrance off Bayberry Lane. Property is serviced by public water and a septic system. Portions of the work are within the 50 foot upland review area setback and the 30 foot upland review area for driveways. The proposed activity is outside the WPLO boundary as the wetland closest to the driveway activity is an isolated wetland pocket. The proposed site improvements will create an additional onsite impervious area of approximately 6,720 s.f.
4. **Plans Reviewed:**
   a. "Site Improvements Plan for the Proposed Additions to an Existing Single Family Dwelling, Site Plan Details & Notes, prepared for Frank & Michelle Giacobbe, 241 Bayberry Lane, Westport, CT," Scale: 1"= 20', dated September 7, 2017, prepared by Chappa Site Consulting, LLC
   b. Architectural Plans entitled: "Additions & Alterations for Giacobbe Residence, 241 Bayberry Lane, Westport, CT", (5 sheets), Scale: 1"= 10' dated September 11, 2017, prepared by Achilles Architects
5. **Permits Issued for this Property:**
   a. AA, WPL/E 10493-17: Additions and renovations to a residence which includes an expanded 3-car garage addition with second story, driveway additions, new walkway, generator, a/c units, new septic system and site drainage. This permit was issued for activities outside the upland review areas.
6. **WPLO -** Waterway Protection Line is located 15' from the flagged wetland boundary

Soils
Soil Report Summary- prepared by Aleksandra Moch on April 23, 2017 describes the following wetland soils occurring on the property:

3- Ridgebury, Leicester and Witman extremely stony fine sandy loam: This mapping unit consists of poorly drained soils. These soils are very stony to extremely stony on the surface and throughout the soils profile. The stones and boulders may cover from 3 to 15 percent or more of the soil surface. These soils have either a perched water table or a groundwater table at or near the surface from fall to spring and after heavy rains or long periods of rainfall in summer. The predominant soil in this mapping unit is the Ridgebury, which has a dark gray to black surface soil and a gray mottled subsoil. The topsoil ranges from silt loam to fine sandy loam and the subsoil texture is a fine sandy loam and is moderately permeable. The underlying substratum is a gray to grayish brown dense compact till consisting of fine sandy loam. It has a slow to very slow permeability. The dense compact substratum ranges from 20 to 30 inches below the surface. These soils normally occur in till deposits and drumlins. The Leicester soils are more common in areas of bedrock and near outwash deposits. The Leicester soils have a dark gray to black fine sandy loam surface soil and mottled gray fine sandy loam ranging to sandy loam and is also moderately permeable to depths of 40 inches and more. Any compact substratum is below 40 inches. These soils may also be underlain by sand and gravel deposits in places. All of these soils may have a coarse silt loam surface in places due to sedimentation.

Ms. Moch describes the non-wetland soils as described by the National Resources Conservation Service by the following:

50B- Sutton fine sandy loam 3 to 8 percent slope: The Sutton series consists of very deep, moderately well drained loamy soils formed in till. They are nearly level to strongly sloping soils on plains, low ridges and hills typically on lower slopes and in slight depressions.

73C- Charlton-Chatfield complex, 3 to 15 percent slopes, very rocky: The Chatfield series consists of moderately deep, well drained, and somewhat excessively drained soils formed in till. They are nearly level to very steep soils on glaciated plains, hills and ridges.

Ms. Mochs' states: "the areas flagged in the field consists of a wetland/watercourse corridor crossing the southern portion of the property and a small wetland area situated at the driveway entrance. This area was fragmented in the past and reduced to three small depressions which are located within the wooded area. The wetland/watercourse corridor is mostly wooded with some native shrubs that were planted along the northern border".

Property Description and Facts Relative to the Map Amendment Application:

- The existing 5 bedroom residence originally built in 1967 is to be substantially renovated. An addition is proposed partially within the 50' upland review area, a pervious patio and driveway improvements are partially within the 30' upland review area. All other improvements to the residence are outside the regulated areas.
- The site presently contains a single family dwelling and a private drive that provides access from Bayberry Lane. The area to be developed is comprised of moderate to steep sloping lawn areas.
- The Westport Wetlands Inventory, prepared by Flaherty Giavara Associates, P.C., dated June 1983 describes this wetland as "streamside floodplain with a wooded swamp. Water ponds in some places"
- The Westport Weston Health District approved an application for a 6 bedroom residence. The existing septic system is to be abandoned prior to a final construction inspection by the Health Department.
- The Waterway Protection Line occurs 15' from the wetland boundary.
- The proposed septic system is eliminating an existing septic system that currently is approximately 22' from the flagged wetland boundary.
- Property does not exist within the Aquifer Protection Overlay Zone or within a groundwater recharge area.
- Property does not exist within the Coastal Areas Management Zone.

7. Conformance to Section 6 of the Inland Wetlands and Watercourses Regulations

6.1 GENERAL STANDARDS

a) Disturbance and pollution are minimized;
b) minimize height, width, length of structures are limited to the minimum; dimension to accomplish the intended function;
c) loss of fish, other beneficial organisms, wildlife and vegetation are prevented;
d) potable fresh water supplies are protected from dangers of drought, overdraft, pollution, misuse and mismanagement;
e) maintain conservation, economic, recreational and aesthetic qualities;
f) consider historical sites

The proposed activities within the regulated area include a portion of an addition on the front of the residence. This is over an existing walkway and within an area of the landscape that is being maintained currently. Additional activities within the regulated area includes a patio, the removal of a small section of a retaining wall, the air conditioning units and a propane tank along the southerly end of the residence. A 12' x 12' pervious patio will be built in an area of an existing walkway to a walkout basement at elevation 223.1'. It will be retained by a wall as the existing surrounding grade is at approximate elevation 226'.

An existing septic system and the associated components will be abandoned and a new code compliant septic system for a six bedroom residence will be built in the northeasterly corner of the parcel outside of any regulated area.
The Commission finds that an existing planting area of native shrubs along and within the wetland boundary will be supplemented with an additional area of buffer plantings south of the pervious patio and the stormwater drainage for the patio.

A small existing man made pond centrally located in the rear of the residence is to be removed. There is little to no grading or clearing associated with the proposed regulated activities.

The remaining proposed site alterations and additions to the residence were approved administratively under Application **# AA, WPL/E 10493-17.**

6.2 WATER QUALITY

a) flushing rates, freshwater sources, existing basin characteristics and channel contours will not be adversely altered;
b) water stagnation will neither be contributed nor caused;
c) water pollution will not affect fauna, flora, physical or chemical nature of a regulated area, or the propagation and habitats of fish and wildlife, will not result;
d) pollution of groundwater or a significant aquifer will not result (*groundwater recharge area or Aquifer Protection Overlay Zone*);
e) all applicable state and local health codes shall be met;
f) water quality will be maintained or improved in accordance with the standards set by federal, state, and local authority including section 25-54(e) of the Connecticut General Statutes;
g) prevents pollution of surface water

The applicant proposes a native planting buffer at the edge of the wetland and installation of the proposed drainage system for the patio. The Commission finds this will also act as a visual and physical barrier to delineate the limit of disturbance for the property. Habitat will be enhanced with this buffer planting.

Rivers Alliance of Connecticut states a vegetated buffer is an easy low-cost efficient solution to keep pollutants from reaching wetlands and watercourses. These bands of vegetation help prevent flooding, stop erosion, absorb pollution and increase recreational enjoyment.

Providing a vegetative buffer of native plants will help restore the natural functions adjacent to a wetland and will help to safeguard natural resources as they are protected by the Waterway Protection Line Ordinance: 1) provides additional stormwater runoff filtration area that will improve water quality prior to discharge to a wetland 2) reduces construction impacts on wetlands by reducing erosion and sedimentation impacts 3) reduces water velocities from stormwater runoff prior to discharge into wetlands which allows vegetation to absorb some non-point pollutants such as fertilizers or herbicides that may otherwise discharge into wetlands/waterbodies 5) provides slower water velocities which allow more water to infiltrate into the soil, improving groundwater recharge functions and water quality improvement functions 6) provides and improves upland habitat needed for wildlife dependent on wetlands/watercourses.

The Connecticut Association of Wetland Scientists White Paper states buffers, particularly dense grassy or herbaceous buffers on gradual slopes, intercept overland runoff, trap sediments, remove pollutants and promote groundwater recharge. The applicant should consider this type of planting for inclusion in the planting buffer as well.

Subsurface storm water retention structures are proposed for the increase in impervious area. These structures have been reviewed and approved by the Engineering Department.

6.3 EROSION AND SEDIMENT

a) temporary erosion control measures shall be utilized during construction and for the stabilization period following construction;
b) permanent erosion control measures shall be utilized using nonstructural alternatives whenever possible and structural alternatives when avoidable;
c) existing circulation patterns, water velocity, or exposure to storm and flood conditions shall not be adversely altered;
d) formation of deposits harmful to aquatic life and or wetlands habitat will not occur;
e) applicable state, federal and local guidelines shall be met.

Silt fence is proposed at the limit of proposed activity. The Commission finds the silt fence will be relocated to the southerly edge of the proposed plantings. The Commission finds staked haybales will be added to the row of silt fence along the southerly edge of the proposed project. The Web Soil Survey classifies excavation activities as very limited. The slope of the parcel, unstable excavation walls along with the landscape position being a sideslope increases the likelihood of erosion problems when the landscape is disturbed.

The Commission finds the erosion and sedimentation during construction activities should not be problematic due to the limited excavation proposed but could be problematic to the extent that the contractor should take care to keep all sediment and erosion controls in good condition (installed and maintained) throughout the project.

The Commission finds a construction entrance anti-tracking pad will be necessary as the existing drive is being slightly realigned at the entrance off Bayberry Lane. This will be installed prior to the initiation of any activity. The pervious decorative paver should be installed at the completion of the project.

The Commission finds due to the landscape position of a moderate backslope, the silt fence shall be backed with haybales on the downgradient side of the project and shall be relocated from the site site plan design to include the proposed planting area.

6.4 NATURAL HABITAT STANDARDS

a) critical habitats areas,
b) the existing biological productivity of any Wetland and Watercourse shall be maintained or improved;
c) breeding, nesting and or feeding habitats of wildlife will not be significantly altered;

d) movements and lifestyles of fish and wildlife (plant and aquatic life)will not be significantly affected;
e) periods of seasonal fish runs and bird migrations shall not be impeded;
f) conservation or open space easements will be deeded whenever appropriate to protect these natural habitats

The Commission finds the existing site conditions provide the opportunity for a vast array of habitat potential on this parcel most especially the wetland complex that flanks the watercourse. The planting buffer will serve as an effort to limit intrusion into the wetland and to encourage and promote additional natural habitat area.

The Commission finds a detailed landscape design plan will be submitted to the Conservation Department for review and approval to assure native plants are utilized.

6.5 DISCHARGE AND RUNOFF

a) the potential for flood damage on adjacent or adjoining properties will not be increased;
b) the velocity or volume of flood waters both into and out of Wetlands and Watercourses will not be adversely altered;
c) the capacity of any wetland or watercourse to transmit or absorb flood waters will not be significantly reduced;
d) flooding upstream or downstream of the location site will not be significantly increased;
e) the activity is acceptable to the Flood & Erosion Control Board and or the Town Engineer of the municipality of Westport

The Engineering Department has reviewed and approved the drainage calculations and design for this project.

The proposed stormwater system has been designed to accommodate the additional runoff produced during a 25 year storm. Furthermore in order to remove stormwater pollutants and provide water quality treatment, the drainage system has been sized to handle the first 1.0” of rainfall from all impervious areas as recommended in the Connecticut Stormwater Quality Manual.

Nine precast concrete galleries will be more than sufficient to handle the first 1” of runoff from the proposed site development, however in order to accommodate the additional runoff produced during a 25 year storm event, fifteen precast concrete galleries have been proposed.

6.6 RECREATIONAL AND PUBLIC USES

a) access to and use of public recreational and open space facilities, both existing and planned, will not be prevented;
b) navigable channels and or small craft navigation will not be obstructed;
c) open space, recreational or other easements will be deeded whenever appropriate to protect these existing or potential recreational or public uses;
d) wetlands and watercourses held in public trust will not be adversely affected.

The Commission finds the current application will have no significant impact on recreational and public uses.

Conservation Commission
TOWN OF WESTPORT
Conditions of Approval
Application # IWW, WPL/E 10478-17
Street Address: 241 Bayberry Lane
Assessor’s: Map F 16 Lot 013
Date of Resolution: October 18, 2017

Project Description: For additions and renovations to a single family residence including a new front entry and dining room addition, an expanded kitchen addition and new and renovated second floor addition and rear patios. Portion of the proposed work is within the IWW upland review area setbacks.

Owner of Record: Frank and Michael Giacobbe
Applicant: Achilles Architects

In accordance with Section 6 of the *Regulations for the Protection and Preservation of Wetlands and Watercourses of Westport* and 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 **#IWW,WPL/E 10478-17** with the following conditions:

1. Completion of the regulated activity shall be within FIVE (5) years following the date of approval. Any application to renew a permit shall be granted upon request of the permit holder unless the Commission finds there has been a substantial change in circumstances which requires a new permit application or an enforcement action has been undertaken with regard to the regulated activity for which the permit was issued provided no permit may be valid for more than TEN (10) years.
2. Permits are not transferable without the prior written consent of the Conservation Commission.
3. 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.
4. 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.
5. 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.
6. 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.
7. 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.
8. 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.
9. Organic Landscaping practices are recommended as described by the Northeast Organic Farming Association.
10. All plants proposed in regulated areas must be non-invasive and native to North America.
11. Trees to remain are to be protected with tree protection fencing prior to construction commencement.
12. The bottom of all storm water retention structures shall be placed no less than 1 foot above seasonal high groundwater elevation.
13. 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.
14. 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.

SPECIAL CONDITIONS OF APPROVAL

15. Conformance to the plans entitled:
    a. "Site Improvements Plan for the Proposed Additions to an Existing Single Family Dwelling, Site Plan Details & Notes, prepared for Frank & Michelle Giacobbe, 241 Bayberry Lane, Westport, CT," Scale: 1"= 20', dated September 7, 2017, prepared by Chappa Site Consulting, LLC

b. Architectural Plans entitled: "Additions & Alterations for Giacobbe Residence, 241 Bayberry Lane, Westport, CT", (5 sheets), Scale: 1"= 10' dated September 11, 2017, prepared by Achilles Architects

16. Silt fence backed with haybales shall be installed downgradient of the proposed activity. The silt fence/haybale line shall be revised to include the southerly edge of the proposed plantings. This requirement will be inspected for compliance at the pre-construction erosion and sediment inspection conducted by the Conservation Department staff.

17. A detailed landscape plan and schedule for the additional 12' by 75' buffer planting shall be submitted to the Conservation Department for review and approval prior to the issuance of a Zoning permit.

18. An anti-tracking pad shall be installed at the driveway entrance along Bayberry Lane prior to the initiation of any construction activity.

19. A septic system "as built" and Permit to Discharge from the Westport Weston Health District shall be submitted prior to the issuance of a Conservation Certificate of Compliance. The existing septic system shall be abandoned in place. A copy of the Abandonment permit from the Westport Weston Health District shall be submitted to the Conservation Department prior to the issuance of a Zoning Permit.

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: Perlman **Second:** Corroon
Ayes: Perlman, Corroon, Field, Lobdell, Bancroft, Davis, Rycenga
Nayes: 0 **Abstentions:** 0 **Vote:** 7:0:0

Mr. Davis left the meeting after the 241 Bayberry Lane hearing at 9:16 p.m. as he had not participated in the 107 Old Road discussions.

Work Session II:

1. 107 Old Road: Deliberation of Application #IWW-10450-17 and #WPL-10488-17 by LANDTECH on behalf of the Estate of Catherine D. Fleming for a proposed 4-lot open space residential subdivision served by a private road, public sewer and public water. The site contains an unnamed tributary to Sasco Brook and associated wetlands.

Ms. Rycenga recapped that at the last meeting there was a draft findings and resolution for discussion to both approve and deny and the consensus was a denial. The Commission made several changes to the draft denial and tonight's meeting is to review those changes and continue discussion.

Mr. Perlman noted on Page 7 that a 2 or 3 lot subdivision was added.

Mr. Field believes eliminating reference to maintenance of the Pave Drain system from the draft denial is a mistake. It should be kept in. The maintenance implications are a real concern and the feasibility of the staff to take on this burden.

Ms. Krynicki stated that her concern is, staff will not have the expertise to evaluate whether the maintenance was done sufficiently or not.

Mr. Bancroft suggested taking out draft findings #7.

Mr. Corroon stated that eliminating draft findings 7, neutralizes the situation and does not put the Commission in a box.

The Commission discussed and the consensus was to remove the language.

Ms. Rycenga reviewed other changes to the draft denial.

Motion to deny without prejudice.

FINDINGS and RESOLUTION
LandTech on behalf of the Estate of Catherine Fleming
107 Old Road
#IWW 10450-17 and WPL 10488-17
Date of Resolution: October 18, 2017

Applicant: LandTech
Owner: Estate of Catherine D. Fleming
Proposal: Open Space subdivision served by a private road, public sewer and water. The site contains an unnamed tributary is Sasco Brook and associated wetlands.

Whereas, LandTech initially submitted an application on November 10, 2016 (IWW,WPL 10322-16) on behalf of the owners of the estate of Catherine D. Fleming to subdivide an existing 6.11 acre lot into three residential lots served by a common driveway, public sewer and public water with a stormwater detention basin for roadway drainage. The existing 10' wide driveway would be expanded to 20 feet and the existing 12" culvert pipe would be replaced with a 12' wide box culvert; and

Whereas, in order to allow public comment to be heard from supporters, opponents and interveners as well as all expert testimony, the Commission opened a public hearing on Application #IWW,WPL 10322-16 on November 16, 2017. Said application was withdrawn at the end of the Conservation Commission hearing on January 18, 2017 because of time constraints associated with the Waterway Protection Line Ordinance. A new application was submitted on February 8, 2017 and a public hearing opened by the Conservation Commission on March 15, 2017 (IWW,WPL 10362-17) for a four lot open space subdivision to be served by a private 20' wide road constructed with a PAVE DRAIN permeable roadway in place of the detention basin. All the testimony and file material from the previous application was incorporated into the record. Application IWW,WPL 10362-17 was withdrawn on April 5, 2017 because of time constraints associated with the Waterway Protection Line Ordinance and to wait for the Commissions experts' reports and testimony. A public hearing on a resubmission of the application (IWW,WPL 10397-17) was opened by the Conservation Commission on May 8, 2017 for a four lot open space subdivision to be served by a private road constructed with a PAVE DRAIN permeable roadway. All the testimony from the previous two applications and the map amendment Application IWW/M 10268-16 were incorporated into the record. Said hearing was continued to June 12, 2017 and subsequently withdrawn on July 6, 2017 due to time constraints associated with the Waterway Protection Line Ordinance. A public hearing on a fourth application resubmission was opened on July 31, 2017 (IWW,WPL 10450-17) and continued to September 13, 2017. All the testimony from the three previous applications was incorporated into the record. The public hearing was closed at the conclusion of testimony on September 13, 2107 for Application #IWW 10450-17. The WPLO application portion was withdrawn and resubmitted to allow additional time for deliberation. The WPLO application was resubmitted on September 22, 2017 and assigned Application #WPL 10488-17. A public hearing for the WPLO portion of the application was held on September 25, 2017. All the testimony from five previous applications was incorporated into the record. The public hearing was closed that evening at the conclusion of testimony; and

Whereas, the owners of the Estate of Catherine D. Fleming, authorized LandTech to make application on their behalf in a document dated August 1, 2016 ; and

Whereas, pursuant to Connecticut General Statutes §22a-19, Michael T. Bologna on behalf of John and Susan Tschirhart, residing at 113 Old Road, Westport, Connecticut filed a Notice of Intervention on January 17, 2017; and

Whereas, the Intervenors retained their own independent consultants, Aleksandra Moch, wetland scientist, hydrologist and hydrogeologist and Brian Nesteriak, P.E. civil engineer of B& B Engineering who submitted written reports and provided testimony at the hearings on January 18, 2017 and May 8, 2017 for both the three lot and four lot subdivision proposals; and

Whereas, the Commission made a finding on January 18, 2017 that as presented, Application #IWW,WPL 10322-16 for the three lot subdivision with a detention basin may have a Significant Impact on the Wetlands and Watercourses and that the hiring of an outside expert to help the Commission =in the review of this project was necessary; and

Whereas, the Conservation Commission retained its own independent consultants Brian C. Curtis, P.E. of Nathan L. Jacobsen & Associates and Edward M. Pawlak, Registered Soil Scientist and Certified Professional Wetland Scientist of Connecticut Ecosystems LLC to review the stormwater management system, the sediment and erosion controls and the impacts to the wetlands and watercourse systems. Mr. Curtis and Mr. Pawlak submitted written testimony into the record in the form of reports, emails and technical documentation.
In addition, Mr. Curtis and Mr. Pawlak attended the hearings on May 8, 2017, June 12, 2017 and July 31, 2017, testified, and responded to rendering questions and made a number of suggestions to eliminate or reduce significant adverse impacts to the wetlands and watercourses; and

Whereas, the Westport Flood and Erosion Control Board approved Application # IWW ,WPL-10322-16 for a three lot subdivision on December 7, 2016; and received and opened a public hearings on the subsequent application resubmissions. Application IWW,WPL 10362-17 for a four lot open space subdivision was withdrawn on April 5, 2017 due to time constraints associated with the Waterway Protection Line Ordinance; and Application IWW,WPL 10397-17 for a four lot open space subdivision was withdrawn on July 6, 2017 due to time constraints associated with the Waterway Protection Line Ordinance; Application IWW,WPL 10450-17 for a four lot open space subdivision was approved on September 6, 2017; and

Whereas, Section 1.4 of the Regulations for the Preservation of Wetlands and Watercourses of Westport, Connecticut states “The preservation and protection of wetland and watercourses from random unnecessary, undesirable and unregulated uses, disturbance or destruction is in the public interest and is essential to the health, welfare and safety of the citizens of Westport and the State. It is therefore the purpose of these Regulations to protect the citizens of Westport by making provisions for the care, preservation, maintenance, and use of local wetlands and watercourses of Westport. This purpose can be met by:

a) Minimizing the disturbance and pollution of wetlands and watercourses;
b) Maintaining or improving water quality in accordance with the standards set by Federal, State or Local authority;
c) Preventing damage from erosion, turbidity or siltation;
d) Preventing loss of fish and other beneficial organisms, wildlife and vegetation;
e) Preventing the destruction of natural habitats;
f) Controlling discharges and runoff to deter and inhibit pollution and flooding;
g) Protecting the conservation, economic, recreational and aesthetic quality of wetlands and watercourses to maintain their public and private uses and values; and
h) Protecting potable fresh water supplies from the dangers of drought, overdraft, pollution, misuse and mismanagement.

Whereas, Section 3.18 (2) of the Regulations for the Preservation of Wetlands and Watercourses of Westport, states the Commission may rule that any discharge conveyed to a regulated area or review area activity that alters the existing rate, or quality of any stormwater discharge conveyed to a regulated

area or review area setback as set forth in Section 7.3 is likely to impact or affect wetlands and watercourses and is a regulated activity; and

Whereas, Section 5.1 of the Regulations for the Preservation of Wetlands and Watercourses of Westport, under the heading of "Criteria Considered by Commission" states, "In carrying out the purposes and policies of these Regulations and Sections 22a-36 to 22a-45, inclusive, of the Connecticut General Statutes, including matters relating to regulating, licensing and enforcing of the provision thereof, the Commission shall take into consideration all relevant facts and circumstances, including, but not limited to:

- **a.** The environmental impact of the proposed regulated activity on wetland or watercourses;
- **b.** The applicant's purpose for, and any feasible and prudent alternative to, the proposed regulated activity which alternative would cause less or no environmental impact to wetland or watercourses;
- **c.** The relationship between the short-term and long-term impacts of the proposed regulated activity on wetlands or watercourses and the maintenance and enhancement of long-term productivity of such wetlands or watercourses;
- **d.** Irreversible and irretrievable loss of wetlands or watercourses resources which could be caused by the proposed regulated activity, including the extent to which such activity would foreclose a future ability to protect, enhance or restore such resource, and any mitigation measures which may be considered as a condition of issuing a permit for such activity including, but not limited to, measures to:
  1) Prevent or minimize pollution or other environmental damage;
  2) Maintain or enhance existing environmental quality; or
  3) In the following order of priority: restore, enhance, and create productive wetland or watercourses resources.
- **e.** The character and degree of injury to, or interference with, safety, health or reasonable use of property which is caused or threatened by the proposed regulated activity;
- **f.** Impacts of the proposed regulated activity on wetlands or watercourse outside the area for which the activity is proposed and future activities associated with, or reasonably related to, the proposed regulated activity and which may have an impact on wetlands or watercourses; and
- **g.** The degree to which the proposed activity is consistent with all applicable goals and policies set forth in Section 1.3 of these Regulations and Section 22a-36 of the Connecticut General Statutes, as amended."

Whereas, Section 3.22 of the Regulations for the Preservation of Wetlands and Watercourses of Westport states "Significant Impact or Major Effect" means:

- (a) Any activity involving a deposition of material which will or may have a substantial adverse effect on the regulated area or on another part of the wetland and watercourse system; or
- (b) Any activity involving a removal of material which will or may have a substantial adverse effect on the regulated area or on another part of the wetland and watercourse system; or
- (c) Any activity which substantially changes the natural channel or may inhibit the natural dynamics of a watercourse system; and

Whereas, Chapter 30-93 of the Waterway Protection Line Ordinance requires an applicant 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 ecosystems 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; and

Whereas, § 51 General Requirements of the Planning and Zoning Commission Section 51-3 Waiver states: The Commission, upon written request from the applicant, may waive specific requirements of these regulations by a ¾ vote of all Commission members, with respect to a subdivision where, owing to physical site conditions, especially affecting such subdivision, a literal application of these regulations would result in undesirable development, adverse impacts, practical difficulty or unusual hardship so that

substantial justice will be done. No waiver shall be granted that would conflict with the Zoning Regulations, the Town Road Acceptance Ordinance in cases of subdivision of four (4) or more lots, or any other Town, State or Federal regulation, or that would have a significant adverse effect on adjacent property or on public health and safety. In granting a waiver of specific requirement of these regulations, the Commission shall state a reason for its action and may attach such conditions that it deems necessary to preserve the purpose and intent of these regulations; and

Whereas, the Conservation Commission initiated work session discussion on October 11, 2017 to consider the plans, the testimony and other pertinent application information relating to this application for a 4-lot open space residential subdivision served by a private road, 900 ft. ± long utilizing a PAVE DRAIN system for the stormwater runoff from the roadway, public sewer and public water with related site improvements, Applications (#IWW,WPL 10450-17 and #WPL 10488-17); and

Whereas, the Conservation Commission discussed and agreed upon the following alternative site development proposals which would cause less or no environmental impact to the wetlands and watercourses which include:

1. **Rehab of the existing single family residence on the site utilizing the existing driveway with no improvements needed.**

   The Commission considered expert testimony that included information from Peter Ratkiewich, Town Engineer. In a letter dated August 30, 2017 to Lynne Krynicki, Conservation Analyst, he states that for a rehab of an existing house with no change in footprint and only renovation of the existing structure, they would not be required to install drainage. They would also not be required to upgrade, modify or install drainage for the existing drive unless they were proposing to change it.

   The Commission considered further expert testimony that included a letter dated September 6, 2017 from Peter Gelderman, Esq., Office of the Town Attorney to Alicia Mozian, Conservation Director. He states "in fact, the property exists now as a single lot with a pre-existing driveway. By definition, that could be considered a feasible and prudent alternative. In the matter before the Commission, a single lot may be a feasible and prudent alternative that would mandate denial of the application *if the impact to the wetlands is less than with the proposed 4-lot open space subdivision".*

   Further expert testimony was considered by the Commission. In a letter dated June 22, 2107 to the Westport Conservation Commission from Ed Pawlak of Connecticut Ecosystems LLC he includes a table entitled: Table 1 Comparison of Alternatives which shows 0 square feet of Net Additional Permanent Wetland Fill for the 1-Lot Alternative That Retains Existing House. He further states that there is one additional alternative that should be considered- the restoration (as opposed to demolition and rebuild) of the existing house on the subject property. It is my understanding that this alternative would not require a reconstruction of the existing driveway, the construction of a stormwater basin, or replacement of the existing 12 inch culvert with a larger bottom culvert. This alternative is the only one that would avoid any additional wetland impact beyond the historic fill that was placed in the 1960's during construction of the driveway. This is the only alternative that would eliminate the risk of indirect wetland/watercourse impacts due to the release of sediments from the wetland road crossing construction area, since it would not require a reconstruction of the existing driveway

2. **Consideration of a proposal for the demolition of the existing house and the construction of one new residential dwelling**
   The Commission considered expert testimony which included a letter dated September 6, 2017 from Peter Gelderman, Esq. of Berchem Moses, P. .C. Mr. Gelderman states: "In *Mute v. Litchfield Conservation Com'n et al,* 1998 Westlaw 440833, the Court determined that a reduction from a 14-lot subdivision to a 6-lot subdivision was a feasible and prudent *where it reduced impact on the wetlands".*

Further expert testimony was considered from Peter Ratkiewich, Town Engineer. In a letter dated August 30, 2017 to Lynne Krynicki, Conservation Analyst he states that with a demolition and rebuild of the existing house with no change in footprint or a new and larger single family residence, the Engineering Department would require some form of drainage proposed along with it. Drainage could consist of a subsurface drywell system, a rain garden, a retention basin or a pervious driveway system. The drainage design for the residence, the drive and any other impervious surface would be based on the difference in runoff between an undeveloped condition and the developed condition. If the developer insisted on retaining the existing drive in its existing condition, drainage would still be required to be installed under the assumption that at some point in the future it would be paved and we would still require it to be brought to the minimum width necessary to meet P&Z regulations.

Section § 31 of the Planning and Zoning Regulations states the driveway width shall be at least 10 feet in width.

Further testimony was considered by the Commission from Ed Pawlak of Connecticut Ecosystems LLC dated June 22, 2017 for a one lot subdivision proposal. For a one lot alternative that requires demolition of the existing house 268 square feet of wetlands would be permanently filled and a 3 ft. wide open bottom culvert would be needed.

3. **Consideration of a proposal for a two or three lot subdivision with associated alternative drainage system explored**

The Commission considered expert testimony from Aleksandra Moch, Soil & Wetland Scientist who submitted a report to the Commission dated April 30, 2017 entitled “Environmental Impact Analysis of the Proposed Four-Lot Subdivision Located at 107 Old Road in Westport, CT.”. In her report she states the applicant should consider a two lot subdivision which would have lesser impact on the wetlands/watercourses and would preserve the integrity of the existing wildlife migratory corridor. In addition, less clearing would give a better rate of survival to mature trees. The alternative should consider a two-lot subdivision that utilizes the existing driveway and avoids disturbances to the buffer areas. Based on the impact analysis it is clear that this 6.12 acre site is not capable to support a four-lot subdivision without significant impacts on the wetlands/watercourse areas located at and off-site.

The Commission considered testimony from Brian Nesteriak, P.E., L.S. of B&B Engineering. In a report dated June 6, 2017 to the Town of Westport he states: “The applicant has submitted several alternative plans of a one, two and three lot subdivision layout. While the plans may show what is technically legal, I believe they have taken liberties in exaggerating the extent of the lot development if a smaller subdivision were implemented. In addition, the alternatives maintain the design of an above ground detention system, when underground systems including permeable pavement, could be used to reduce the extent of the impact”.

In an email from Alicia Mozian to Amrik Matharu, Engineer II, Town of Westport, dated September 21, 2017 she requested a written response to an inquiry as to whether a wet basin design is the only way to handle the stormwater from a single house or a two lot alternative design. He responded in an email dated September 25, 2017. He stated: “there are multiple ways of handling stormwater from single or two lot design. As Peter Ratkiewich mentioned in a previous response to different driveway scenarios, a one-lot or two-lot subdivision can be accessed off of a common drive. Assuming that the wet basin manages solely the runoff from the driveways in the alternative designs, the size required and the associated impact could decrease if the driveway sizes decrease whether it is a wet basin or other stormwater system. There are many alternative systems that can be used to address drainage and that no one method is better than the other. Its just a matter of which method is a best fit for the particular design scenario”.

4. **Consideration of a waiver of road access and travelway width from the State Fire Marshal**

The Commission considered expert testimony which included a letter from Nathaniel Gibbons dated August 22, 2017 to Alicia Mozian, Conservation Director. In his letter he states the states the Fire Code does permit modifications to the code under certain circumstances requiring a review by the local and state Fire Marshal. Typically, this office supports a modification when the applicant provides other life safety protections that exceed the code, and act to "balance out" the diminishment of protection the modification requests. As an example only, if a residential subdivision were to provide full 13R fire sprinkler systems in all its dwellings, that "above the code" protection would balance the reduction of a separate but required code section.

Included in the information supplied to the Conservation Director was a copy of Chapter 18 Fire Department Access and Water Supply.
Section 18.2.3.1.4 When the fire department access roads cannot be installed due to location on property, topography, waterways, non-negotiable grades, or other similar conditions, the Authority Having Jurisdiction shall be authorized to require additional fire protection features.

In an email to Alicia Mozian, Conservation Director from Nathaniel Gibbons, Fire Marshal dated August 25, 2017, Mr. Gibbons states that the existing conditions at 107 Old Road as they relate to waterways qualifies as a justification for a modification request.

He further expounds in this email correspondence that the driveway obstruction policy applies to the first 20 feet of the driveway. The purpose of which is to permit an adequate turning radius for fire apparatus entering the property. The remaining portion needs to be free of obstructions (not pavement width) for a 16' width to allow emergency vehicle access.

5. **Consideration of a Waiver of Subdivision Regulations for Driveway Width from the Planning and Zoning Commission**
The Commission considered information contained in **Section 51-3 Waiver** of the Planning and Zoning Regulations. This section of the regulations provides an avenue for the applicant to request to reduce the paved travelpath of any roadway where a literal application of these regulations would result in undesirable development, adverse impacts, practical difficulty or unusual hardship, so that substantial justice will be done.

The Commission considered testimony from Ed Pawlak of Connecticut Ecosystems LLC dated June 22, 2107 in which he states: the road crossing would be a complex construction project immediately adjacent to a very valuable wetland and would require:
a. Installation of utilities
b. Replacement of culvert
c. Construction of permeable pavement
d. Construction of retaining walls
e. Construction of coffer dam
f. Pumping of water from construction area into temporary sediment basin

He further states that expansion of the existing driveway would necessarily involve a permanent loss of wetland area. This impact would occur within the most valuable, seasonally flooded portion of the wetland.

The Commission considered testimony from Brian Nesteriak P.E. of B&B Engineering. In a report dated June 6, 2017 he states: "it is my opinion that the plans do not satisfactorily address the constructability of the proposed driveway and culvert installation elements without the potential of severe erosion".

6. **Consideration of retention of the existing stormwater conveyance channel in the North section of the property**
The Commission considered expert testimony of Alicia Mozian, Conservation Director and Lynne Krynicki, Conservation Analyst.

Site investigation as evidenced by photos taken at the site on April 4, 2017 verifies that water flows from the wetland adjacent to the property to the west through the property to the pocket wetland on the easterly side of the parcel and into the off site wetland system which is a tributary to Sasco Creek.

They presented to the Commission a demonstration map entitled: "Possible Site Plan Layout Depicting Retention of Stormwater Conveyance Channel" prepared by the Conservation Department staff, dated July 31, 2017. This plan showed the centerline of the existing conveyance channel with no disturbance on 25' of either side of the channel. Proposed dwellings and subsurface infiltration units for stormwater runoff associated with the houses was achievable without disturbing within 25' of the centerline of the channel.

They also presented a map which was a compilation of Town wetland maps H-9, H-10, I-9 and I-10 at a scale of 1"= 200'. This map showed the wetland and watercourse systems in the vicinity of 107 Old Road. Of most importance in their presentation was the connection of an off-site wetland connecting to the existing stormwater conveyance channel on the subject property which leads to a pocket wetland on the northeast corner of the parcel which then connects off site to a larger wetland system and tributary to Sasco Creek watershed and stream which is on the Connecticut DEEP list of impaired waterways.

In a report dated April 28, 2017 from Ed Pawlak of Connecticut Ecosystems LLC, he states a small isolated wetland at the northeast corner of the property is hydrologically connected to a small off-site seasonal pond to the west by a broad swale, which periodically conveys runoff that overflows the off-site seasonal pond during very large storm events.

Testimony was placed on the record by Aleksandra Moch supporting protection of the on site pocket wetland in her report dated April 30, 2017 in which she states: The interaction between the waterlogged lowland and wooded upland at the site is very important to the diversity of a wetland habitat. Even the small pocket wetland found within the northeastern property corner, currently dominated by invasive species, plays an important part in this ecosystem. Juvenile amphibians, for instance, find shelter in moist areas which are isolated from larger waterways. Lack of competition and fewer predators make it easier for them to survive at their early stage of life, in time when their ability to migrate long distances is limited.

Per Section 3.18 (2) of the Regulations for the Preservation of Wetlands and Watercourses of Westport, states the Commission may rule that any discharge conveyed to a regulated area or review area activity that alters the existing rate, or quality of any stormwater discharge conveyed to a regulated area or review area setback as set forth in Section 7.3 is likely to impact or affect wetlands and watercourses and is a regulated activity.

The Commission considered expert testimony by Lynne Krynicki, Conservation Analyst. In an Addendum to a Staff Report submitted into the July 31, 2017 public hearing record she states: "I wanted to come back to basics and help bring the focus on issues associated with low impact site preparation. This is a practice that seeks to preserve the site's natural hydrological and biological characteristics and vegetation and in turn helps to attain the goals of protection and preservation of the sites' resources.

There is little to no area on any of the proposed four parcels that is not cleared, graded or has structures proposed. Only conventional engineering practices are offered for your consideration. Wetlands and watercourses are proposed to be filled, natural drainage paths connecting wetland systems are proposed to be altered and all stormwater is directed to the subsurface soils where renovation of nutrients within the stormwater becomes difficult. Removal of nearly all of the upland existing vegetation is proposed.

If there was a less aggressive proposal before you the above mentioned practices and design elements could be easily implemented".

Twenty trees will need to be removed for the installation of the proposed stormwater conveyance channel. In a report from Rob Pryor of LandTech dated September 6, 2017 answered the Conservation Commission questions. The questions focused on the count of the trees to be removed in the rear of the property for installation of the relocated stormwater conveyance swale. Mr. Pryor responded that for there are 11 trees greater than 8" caliper and 9 trees that are smaller than 8"caliper (mostly 5"-6" caliper).

7. **Consideration of the applicants' proposed "social benefits" to determine if the alternative to the proposed activity is "prudent"**

   a. **Removal of invasive plants and the installation of native plantings**
   The Commission finds without a comprehensive removal plan and schedule and a long term (in perpetuity) maintenance plan with secured funding, the benefits of the invasive plant removal will be short-lived.
   b. **A proposed Conservation Easement over the 2.04 acre wetland as well as over the relocated stormwater conveyance swale in the rear of the property**
   The Commission finds said benefit described by the applicant must be weighed by the social benefits provided by a less intense development which would cause less or no impact to the wetlands whose benefits are described in Section 1.4 of the Regulations and which would have a diminimus likelihood of being built upon given the high functioning value of this wetland and watercourse system.
   c. **Reduction of impervious cover since the existing driveway would be replaced with a permeable roadway material**
   The Commission finds said benefit is void if the PAVE DRAIN system fails to function.

   d. **Improved stormwater management**
   The Commission finds said benefit is void if the PAVE DRAIN systems fails to function.
   e. **Making the roadway safer by bringing it up to the Fire Code**
   The Commission finds said benefit is only applicable and is only necessitated by the proposal for four lots.

After deliberation and consideration of the above activities and alternatives, the Conservation Commission finds that the criteria as defined in Sections 1.4, 3.18(2), 3.22, 5.1, 6.0, 10.0 and 11.0 of the Regulations for the Preservation of Wetlands and Watercourses of Westport and Chapter 30-93 of the Waterway Protection Line Ordinance have not been satisfied and Section 51-3 of the Town of Westport Planning and Zoning Regulations and Chapter 18 Fire Department Access and Water Supply of the State Fire Code have not been satisfactorily explored.

Whereas, the Conservation Commission makes the following findings of fact and decision regarding this application:

Permits/Applications filed:
1. #IWW/M-10268-16 was approved by the Conservation Commission for an amendment of wetland map #H-10.
2. #IWW, WPL 10322-16 3 lot subdivision and wetland crossing- WITHDRAWN
3. #IWW/WPL-10362-17 for a 4 lot subdivision – WITHDRAWN
4. #IWW,WPL 10397-17 for a four lot subdivision – WITHDRAWN
5. #IWW,WPL 10450-17 for a four lot subdivision – WPLO portion of application WITHDRAWN
6. WPL 10488-17 for a four lot subdivision resubmitted on September 22, 2017

Wetlands Description
Soil Report Summary- prepared by Otto Theall of Soil & Wetland Science, LLC dated June 26, 2013 describes the following wetland soil occurring on the property.

Ridgebury, Leicester and Whitman soils, extremely stony (3): This mapping unit consists of poorly drained soils. These soils are very stony to extremely stony on the surface and throughout the soils profile. The stones and boulders may cover from 3 to 15 percent or more of the soil surface. These soils have either a perched water table or a groundwater table at or near the surface from fall to spring and after heavy rains or long periods of rainfall in summer. The predominant soil in this mapping unit is the Ridgebury, which has a dark gray to black surface soil and a gray mottled subsoil. The topsoil ranges from silt loam to fine sandy loam and the subsoil texture is a fine sandy loam and is moderately permeable. The underlying substratum is a gray to grayish brown dense compact till consisting of fine sandy loam. It has a slow to very slow permeability. The dense compact substratum ranges from 20 to 30 inches below the surface. These soils normally occur in till deposits and drumlins. The Leicester soils are more common in areas of bedrock and near outwash deposits. The Leicester soils have a dark gray to black fine sandy loam surface soil and mottled gray fine sandy loam ranging to sandy loam and is also moderately permeable to depths of 40 inches and more. Any compact substratum is below 40 inches. This soils may also be underlain by sand and gravel deposits in places. All of these soils may have a coarse silt loam surface in places due to sedimentation.

Ridgebury, Leicester, and Whitman extremely stony fine sandy loams (Rn): This unit consists of poorly drained and very poorly drained soils found in depressions and drainageways on uplands and in valleys. Stones and boulders cover 5 percent to 35 percent of the surface. This unit consists of three soil types mapped together because they have no major differences in use and management. The soils have a seasonal high watertable at or near the surface from fall to spring. The permeability of Ridgebury and Whitman soils is moderate or moderately rapid in the surface layer and subsoil and slow or very slow in the substratum. The permeability of the Leicester soils is moderate or moderately rapid throughout. Available water capacity is moderate in all three soils. Runoff is slow on all three, and water is ponded on the surface of some areas of the Whitman soils. The high water table, ponding, and the stones and boulders on the surface limit these soils for community development. Excavations are commonly filled with water. Quickly establishing plant cover and using siltation basins help to control erosion and sedimentation during construction.

Rippowam fine sandy loam (Ro): This soil unit consists of nearly level, poorly drained soil found on flood plains of major streams and their tributaries. About 15 percent of this map unit includes small areas of moderately well drained Pootatuck soils, very poorly drained Saco and Scarboro soils, and a few areas with a surface layer and subsoil of silt loam. This Rippowam soil is subject to frequent flooding. It has a seasonal high water table of a depth of about 6 inches from fall until late spring. The permeability of the soil is moderate or moderately rapid in the surface layer and subsoil and rapid or very rapid in the substratum. Runoff is slow or very slow, and available water capacity is moderate. The soil dries out and warms up slowly in spring. Most areas of this soil are wooded. A few areas are used for hay, pasture, and corn, and a few small scattered areas have been filled and are used for community development. The frequent flooding and the seasonal high water table are the main limitations of this soil for community development. Extensive filling is needed for on-site septic systems. Excavations are commonly inundated by water, and slopes of excavations are unstable when wet. The soil is poorly suited to trees. Wetness limits the use of equipment, and the seasonal high water table restricts rooting depth and causes the uprooting of many trees during the windy period.

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 surface layer and subsoil and rapid or very rapid in the substratum. Runoff is very slow and water is ponded on the surface of some areas. Available water capacity is high. The frequent flooding and high water table limit this soils for community development, especially for on-site septic systems, and make the soil generally unsuitable for cultivated crops or commercial tree production.

Scarboro mucky sandy loam (Sc): This nearly level very poorly drained soil is in depressions on plains and terraces. The areas are generally oval and mostly range from 3 to 50 acres. Slopes are

less than 1 percent. Included with this soil mapping are small areas of poorly drained Leicester, Raypol, Rippowam, and Walpole soils and very poorly drained Adrian and Carlisle soils. This Scarboro soil has a high water table at or near the surface most of the year. Permeability is rapid in the surface layer and rapid or very rapid in the substratum. Available water capacity is low. Runoff is very slow, and water is ponded on the surface of some areas.Available water capacity is low. Runoff is very slow, and water is ponded on the surface of some areas. Most areas of this soil are wooded or covered by marshgrasses and sedges. A few small areas are used for pasture or have been filled and are used for community development.

The high water table makes this soil unsuitable for cultivated crops and poorly suited for trees. The water table restricts rooting depth, and many trees are uprooted during windy periods.

Mr. Theall describes non-wetland soils as:

Sutton fine sandy loam (50): This soil unit consists of gently sloping, moderately well drained soil found in slight depressions and on the sides of hills and ridges. This Sutton soil has seasonal high water table at a depth of about 20 inches from late fall until mid-spring. The permeability of the soil is moderate or moderately rapid. Runoff is medium, and available water capacity is moderate. Many areas of this soil type are used for community development, with limitations caused by the high water table. Included with this soil in mapping are small areas of well drained Charlton and Paxton soils, moderately well drained Woodbridge soils and poorly drained Leicester and Ridgebury soils. Quickly establishing plant cover, mulching, and using siltation basins and diversions help to control erosion and sedimentation during construction. The seasonal high water table limits community development and makes special design and installation of onsite septic systems necessary.

Ninigret and Tisbury soils (21): This nearly level to gently sloping, moderately well drained soil is found on plains and terraces in stream valleys. This soil has a seasonal high water table at a depth of about 20 inches from late fall until mid-spring. Permeability is moderately rapid in the surface layer and subsoil, and rapid in the substratum. Runoff is slow and available water capacity is moderate. The soil dries out and warms up slowly in spring. Many areas of this soil are used for hay, corn, vegetable and nursery crops. Some scattered areas are used for community development and a few small areas are wooded. The seasonal high water table is the main limitation of this soil for community development. The water table makes special design and installation of on-site septic systems necessary. Slopes of excavations are commonly unstable. Where outlets are available, footing drains help prevent wet basements. Quickly establishing plant cover, mulching, and using siltation basins help to control erosion and sedimentation during construction. This soil is well suited for cultivated crops and trees, but drainage is needed in some of the farmed areas. Minimum tillage and the use of cover crops help to control a moderate hazard of erosion in cultivated areas. Machine planting is practical in areas used for woodland.

A supplemental report dated July 20, 2016 was submitted by Chris Allan of LandTech. The report indicates a joint meeting between himself and Otto Theall took place on April 26 and May 2 of 2016. It was concluded at that time that the previously flagged wetland boundary in the northern section of the property does not possess wetland soil types except for an area in the northeast corner of the property. The revised wetland area was delineated with wetland flags labeled #201- #205.

Property Description and Relative Facts:

- **a.** The Westport Wetlands Inventory, prepared by Flaherty Giavara Associates, P.C., dated June 1983 describes this wetland as “a permanent streamside, floodplain, with a marsh and wooded swamp.” This wetland is a tributary to Sasco Creek.
- **b.** Property is not located within a 100 year Flood Boundary Line.
- **c.** Property does not exist within the Aquifer Protection Overlay Zone or within a groundwater recharge area.
- **d.** Property does not exist within the Coastal Areas Management Zone.

Proposed site improvements are shown on the submitted site plan to depict viable areas of future development on these parcels.

1. ***Background Information:***
   a. IWW/M 10268-16 was adopted by the Conservation Commission on September 21, 2016.
2. A Wetland Assessment and Impact Report submitted by LandTech dated November 10, 2016 and last revised to February 9, 2017 states the parcel is approximately 6.11 acres.

   The larger wetland on the southern portion of the property contains a central, seasonally flooded depression flanked by seasonally saturated woodland.This wetland receives off-site flows from the west via an existing 12" corrugated metal pipe under the existing driveway. The wetland drains off-site to the east. It is 1.32± acres in size.

   A .008 acre isolated marginal wetland is located in the northeast corner of the property. This wetland lies within a broad swale with poorly drained soils.
3. The project site development area is approximately 4.07±acres. A Conservation Easement area of 2.04 acres is being offered by the applicant.
4. The project proposes approximately 603 square feet of permanent wetlands filling and approximately 480' of linear disturbance within the wetlands, the 20' and the 30' upland review area setback for the proposed roadway crossing, grading, retaining wall installation and proposed plantings.
5. The proposed subdivision will be serviced by municipal water and sewer which underground utilities are proposed to be installed within the proposed roadway and through the delineated wetlands and watercourses system and the upland review areas.
6. A proposed permeable private road utilizing the "PAVE DRAIN" product is to be installed and will also serve as the stormwater retention structure for the roadway.
7. The Inland Wetlands and Watercourses Regulations upland review area as determined for this property include: the 50' upland review area for the house location, the 30' upland review area setback for elements such as roads, driveways and retaining walls, and the 20' upland review area also designated as the non-disturbance area is for the grading, cutting and filling. The Waterway Protection Line Ordinance boundary for this project is determined as 15' from the delineated wetland boundary.
8. The State of Connecticut Department of Environmental Protection prepared a document entitled "Guidelines, Upland Review Area Regulations, Connecticut's Inland Wetlands & Watercourses Act, June 1997, Wetlands Management Section, Bureau of Water Management." The document states, "The relationship between a wetland or watercourse and its surrounding upland is complex. Upland land clearing, excavating, filling and other construction activities, if not properly planned and executed can have significant impacts on adjacent wetlands and watercourses. Under the Inland Wetlands and Watercourses Act, the municipal wetlands agency has broad authority to issue permits not only for activities located elsewhere when such activities are likely to impact or affect wetlands and watercourses themselves, but for activities located elsewhere when such activities are likely to impact of affect wetlands or watercourses. *It is the Department's policy to encourage municipal wetland agencies to review proposed activities located in upland areas surrounding wetlands and watercourses wherever such activities are likely to impact or affect wetlands or watercourses."*

   "While requiring a permit for specified activities within defined *upland review boundaries*, these wetland agencies still maintain their authority to regulate proposed activities located **in more distant upland areas if they find activities are likely to impact or affect a wetland or watercourse."**
9. The following summarizes the **regulated activities** pursuant to the Inland Wetlands and Watercourses Regulations in this application as shown on the plans entitled "Site Improvements for a Proposed 4-Lot Subdivision, Overall Site Plan Prepared for Amy Day", Sheet C-1, dated February 1, 2017 and last revised to June 28, 2017, prepared by LandTech

   1. Sections of the proposed retaining wall are proposed within a delineated wetland boundary and within the 30' IWW upland review area.

2. A portion of the proposed 20' wide private road and associated clearing, grading and filling are within the delineated wetland boundary, the 20' non-disturbance area, the 30' IWW review area setback, and the WPLO boundary.
3. Mitigation plantings are proposed on the east side of the proposed private road. These occur within flagged wetland limits, the 20' non-disturbance area, and the WPLO boundary.
4. The installation of the proposed utilities to service the subdivision are to be installed up to 6' beneath the proposed private road. Excavation associated with installation for these lines will occur within the flagged wetland limit, the 20' non-disturbance area, and the WPLO boundary.
5. The silt fence and the limit of disturbance for the proposed private road are proposed within the flagged wetland limit, the WPLO boundary and the 20' non-disturbance area on the eastern edge of the proposed private road.

10. 6.0 STANDARDS OF REVIEW

Pursuant to Section 6.0 of the Regulations for the Protection and Preservations of Wetlands and Watercourses the Commission shall apply relevant standards including, but not limited to, the following:

6.1 General Standards

In order to determine that an activity will not have significant impact or major effect on the general character of wetlands and watercourses, the Commission shall, as applicable, find that:

a) disturbance and pollution are minimized;
b) minimize height, width, length of structures are limited to the minimum dimension to accomplish the intended function;
c) loss of fish, other beneficial organisms, wildlife and vegetation are prevented;
d) potable fresh water supplies will be protected from dangers of drought, overdraft, pollution, misuse and mismanagement;
e) the conservation, economic, recreational and aesthetic qualities of wetlands and watercourses will be maintained.

The Commission finds that substantial evidence has been submitted into the record as follows:

The Commission finds evidence in the record that supports the need for undisturbed, vegetative buffers to protect wetland/water resources by filtering pollutants, reducing effects of erosion and sedimentation during construction and providing adequate upland habitat for wetland dependent wildlife.

In a report from Aleksandra Moch dated January 17, 2017 she states that the main concern during the proposed site development is associated with site clearing and grading. Site clearing would remove the protective cover created by the existing tree canopy. Lack of this protective shield would result in decreased storm water concentration time and increased erosional forces of the flow.
The current driveway is narrow and has a dense canopy cover which maintains the forest integrity and provides physical and hydrological connections between both sides of the crossing.
The proposed wetland/wetland buffer filling and alterations would permanently eliminate a large section of the protected natural areas. Native soil horizons buried under the roadway and storm water detention areas would no longer be environmentally available.

The Commission finds that disturbance and pollution are not minimized. In an email dated June 15, 2017 from Peter Ratkiewich, Town Engineer to Edward Pawlak and Brian Curtis he states: "that for a knock down/rebuild they would be required to treat the lot as vacant and comply with the Engineering Requirements as amended. For a rehab of the existing house with no change in footprint and only renovation of the existing structure they would not be required to install drainage. Any new construction such as an addition would be subject to drainage requirements".

Alicia Mozian, Conservation Director adds on June 15, 2017 that she spoke with the Town Engineer, Peter Ratkiewich. He said that whether it is a new, single-family residence or a rehab of the existing house, the driveway does not have to be brought up to code just to install utilities, including connection to the sewer. They can merely put a new top-code of paving material over it.

The Commission finds that the minimum height, width, length of structures are not limited to the minimum dimension to accomplish the intended function.

The Commission finds that loss of fish, other beneficial organisms, wildlife and vegetation are not prevented.

In a report from Aleksandra Moch dated April 30, 2017 she states: “tree crowns over shade the pavement retaining the moisture and moderating the temperature. Opening this area to a new, three times wider crossing would disrupt this setting. Full sun exposure would increase water temperature and evaporation rate and negatively affect the shade loving plants.

Some of the species residing in soil and water would be eliminated during the wetland dewatering and filling. Due to the roadway installation and tree removal, almost 480 feet of the wetland/watercourse edge will be permanently exposed to the sun penetration which would change the existing microclimate”.

She adds that a section of the wetland/watercourse would be permanently lost by fill installation and road pavement. Currently, the active surface of the existing driveway is only ten feet wide with very narrow shoulders. The proposed twenty feet wide crossing would more than double the area. A review of the roadway design revealed that the entire crossing with associated shoulders and retaining walls would be forty feet wide. This does not include proper space and access to install erosion controls, dewatering devices as well as sewer and utility lines.

Ed Pawlak of Connecticut Ecosystems, LLC states in a report dated June 22, 2017 that in his professional opinion, “there are no upland areas on the property that are suitable for wetland creation because all potential areas would require the removal of valuable large overstory trees that shade the adjacent wetland. As a result, an expansion of the existing driveway to accommodate a wider roadway would necessarily involve a permanent net loss of wetland area. This impact would occur within the most valuable, seasonally flooded portion of the wetland”.
He further states:” he disagrees with the 174 s.f. of “restored” wetland alleged by the applicant because it will not return to a fully functional wetland. There is no other place to create a wetland without impacting the valuable upland forest that acts to shade the wetland. That is why he is advocating for restoration over creation of wetlands. If you count the pre-IWW Act fill, the total is 5,500 s.f. The crossing is 200 feet long, 5 to 6 feet deep. It will need a coffer dam. It will take about 9 weeks to build the road. The road crossing would be a complex construction project immediately adjacent to a very valuable wetland”.

In an addendum to the original Staff report from Lynne Krynicki she states: “Conventional development processes often drastically alter natural landscapes and their capacity to treat and infiltrate stormwater. Removing trees or replacing large ones with smaller ones, leveling and grading topography, disturbing soil profiles and compacting soils all are common land development activities that significantly affect the functioning of important hydrological services in the landscape. Thought should be taken to minimize clearing, minimize grading, preserve high infiltration soils and limit lot development.

If you review the subdivision proposal as currently before you, there is little to no area on any of the proposed four parcels that is not cleared, graded or has structures proposed. Only conventional engineering practices are offered for your consideration. Wetlands and watercourses are proposed to be filled, natural drainage paths connecting wetland systems are proposed to be altered and all stormwater is directed to the subsurface soils where renovation of nutrients within the stormwater becomes difficult. Removal of nearly all of the upland existing vegetation is proposed.

It is not clear as to the number of mature trees that will need to be removed in order to build this project. The proposed roadway has been considered a significant impact, however, the overall

method of site development also has the potential to have an impact to the wetlands and watercourses as well".

The Commission finds the avenues available for waivers from regulations to minimize height, width, length of structures are limited to the minimum dimension to accomplish the intended function have not been fully explored.

In a letter from Nathaniel Gibbons dated August 22, 2017 to Alicia Mozian, Conservation Director he states: " the Fire Code does permit modifications to the code under certain circumstances requiring a review by the local and state Fire Marshal. Typically, this office supports a modification when the applicant provides other life safety protections that exceed the code, and act to "balance out" the diminishment of protection the modification requests. As an example only, if a residential subdivision were to provide full 13R fire sprinkler system in all its dwellings, that "above the code" protection would balance the reduction of a separate but required code section".

In addition, Chapter 18 Fire Department Access and Water Supply:
Section 18.2.3.1.4 When the fire department access roads cannot be installed due to location on property, topography, waterways, non-negotiable grades, or other similar conditions, the Authority Having Jurisdiction shall be authorized to require additional fire protection features.

6.2 Water Quality
In order to determine that an activity will not have significant impact or major effect on water quality in wetlands and watercourses, the Commission shall, as applicable, find that:
a) flushing rates, freshwater sources, existing basin characteristics and channel contours will not be adversely altered;
b) water stagnation will neither be contributed to nor caused;
c) water pollution which will unduly affect the fauna, flora, physical or chemical nature of a regulated area, or the propagation and habitats of fish and wildlife, will not result;
d) pollution of groundwater or a significant aquifer will not result (*groundwater recharge area or Aquifer Protection Overlay Zone*);
e) all applicable state and local health codes shall be met;
f) water quality will be maintained or improved in accordance with the standards set by federal, state, and local authority including section 22a-426 of the Connecticut General Statutes.

The Commission finds that substantial evidence has been submitted into the record as follows:

The Commission finds that water pollution which will unduly affect the fauna, flora, physical or chemical nature of a regulated area, or the propagation and habitats of fish and wildlife will result.

A report from Aleksandra Moch dated April 30,2017 states the **physical characteristic of the wetland/watercourse** was evaluated in terms of:
1. Cleared areas would provide less absorption allowing faster storm water movement over the land resulting in higher flow velocities
2. Site clearing would expose the edges of the regulated areas to more intense evaporation
3. Fill installed within the swamp area would decrease its flood storage capacity
4. Small pocket wetland may experience changes in wetness due to the decreased evapotranspiration, changes in topography upslope, manipulation of groundwater and surficial flow as well as more sun exposure.

The **chemical variables** would be affected in terms of:
1. Sun exposure caused by the edge clearing would raise the water temperature and lower the oxygen levels in water
2. Native soil would be replaced/covered with nutrient and organically poor fill material. This change would impact the cation exchange capacity, ability to retain nutrients and pollution and neutralize soil pH.

In a report from Lynne Krynicki, Conservation Analyst that was submitted into the public hearing record on July 31, 2017 she states that water protection benefits can be implemented through the retention of existing vegetation and soil characteristics. Retention of existing trees leads to higher moisture levels throughout the landscape and less need for irrigation.

Preserving and promoting interception, infiltration, depressional storage and on-site treatment are essentials to reducing the runoof quantity and preserving the quality of stormwater.

The subdivision proposal has little to no area on any of the proposed four parcels that is not cleared, graded or has structures proposed. Only conventional engineering practices are offered for your consideration. Wetlands and watercourses are proposed to be filled, natural drainage paths connecting wetland systems are proposed to be altered and all stormwater is directed to the subsurface soils where renovation of nutrients within the stormwater becomes difficult.

At the public hearing on July 31, 2017, Alicia Mozian, Conservation Director and Lynne Krynicki, Conservation Analyst presented the Town wetland map showing the wetland on this property is associated with the Sasco Brook watershed. Ms. Krynicki noted that Sasco Brook is an impaired waterway for which a management plan has been written. Water quality is very important.

In a letter from Robert Pryor of LandTech dated September 6, 2017 he reports that the PAVE DRAIN systems filter and clean stormwater in two primary ways. The system eliminates sheet flow with its rapid infiltration rate, capturing all the water that lands on it or flows to it, directing that flow into the stone and soil layers below. Then the sub-base of stone, geotextile and soil function as a very effective pollution removal system.

The PAVE DRAIN articulating concrete block itself is a long life, very low absorption, manufactured concrete material. Some very small amount of stormwater pollutants may adhere to the block itself, but that is not a significant function of the block."

An excerpt from the University of Maryland 2016- Fact sheet on Permeable pavement states: "Permeable pavements function similarly to sand filters, in that they filter water by forcing it to pass through aggregate and typically some sort of filter fabric. Therefore most of the treatment is through physical (or mechanical) processes. As precipitation falls on the pavement it infiltrates down into the storage basin where it is slowly released into the surrounding soil. In the void spaces, naturally occurring micro-organisms break down hydrocarbons and metals adhere. Stormwater pollutants are broken down in the soil instead of being carried to surface waters."

The Commission finds ongoing routine maintenance is essential to providing water quality treatment of road runoff.

6.3 Erosion and Sediment
In order to determine that an activity will not have significant impact or major effect on water quality in wetlands and watercourses, the Commission shall, as applicable, find that:

a) temporary erosion control measures shall be utilized during construction and for the stabilization period following construction;
b) permanent erosion control measures shall be utilized using nonstructural alternatives whenever possible and structural alternatives when avoidable;
c) spillover of material into and siltation of wetlands and watercourses shall be prevented;
d) existing circulation patterns, water velocity, or exposure to storm and flood conditions shall not be adversely altered;
e) formation of deposits harmful to aquatic life and or wetlands habitat will not occur;
f) applicable state, federal and local guidelines shall be met.

The Commission finds that substantial evidence has been submitted into the record as follows:
Otto Theall of Soil and Wetland Science LLC describes the sites' upland soil properties as follows:

Sutton fine sandy loam (50): This soil unit consists of gently sloping, moderately well drained soil found in slight depressions and on the sides of hills and ridges. This Sutton soil has seasonal high water table at a depth of about 20 inches from late fall until mid-spring. The permeability of the soil is moderate or moderately rapid. Runoff is medium, and available water capacity is moderate. Many areas of this soil type are used for community development, with **limitations caused by the high water table**. Included with this soil in mapping are small areas of well drained Charlton and Paxton soils, moderately well drained Woodbridge soils and poorly drained Leicester and Ridgebury soils. **Quickly establishing plant cover, mulching, and using siltation basins and diversions help to control erosion and sedimentation during construction**. The **seasonal high water table limits community development** and makes special design and installation of onsite septic systems necessary.

Ninigret and Tisbury soils (21): This nearly level to gently sloping, moderately well drained soil is found on plains and terraces in stream valleys. **This soil has a seasonal high water table at a depth of about 20 inches from late fall until mid-spring**. Permeability is moderately rapid in the surface layer and subsoil, and rapid in the substratum. Runoff is slow and available water capacity is moderate. The soil dries out and warms up slowly in spring. Many areas of this soil are used for hay, corn, vegetable and nursery crops. Some scattered areas are used for community development and a few small areas are wooded. **The seasonal high water table is the main limitation of this soil for community development.** The water table makes special design and installation of on-site septic systems necessary. Slopes of excavations are commonly unstable. Where outlets are available, footing drains help prevent wet basements. Quickly establishing plant cover, mulching, and using siltation basins help to control erosion and sedimentation during construction. This soil is well suited for cultivated crops and trees, but drainage is needed in some of the farmed areas. Minimum tillage and the use of cover crops help to control a **moderate hazard of erosion in cultivated areas**. Machine planting is practical in areas used for woodland.

The Commission finds that temporary erosion control measures shall be utilized during construction and for the stabilization period following construction are not satisfactory. Brian Nesteriak P.E. of B&B Engineering in a report dated June 6, 2017 states: it is my opinion that the plans do not satisfactorily address the constructability of the proposed driveway and culvert installation elements without the potential of severe erosion.

He adds that the applicants' engineer has stated that the installation of the utilities is independent of the type of development that is undertaken. However, the depth of the installed utilities is directly related to the depth of the installed culvert. The utilities obviously need to be installed beneath the bos culvert which is currently proposed to be several feet below the observed groundwater. I recommend that alternatives to the box culvert be considered so that the extent of construction that is needed in that area be reduced.

The Commission finds that spillover of material into and siltation of wetlands and watercourses will not be prevented. In a report from Ed Pawlak dated June 22, 2017 he states the road crossing would be a complex construction project immediately adjacent to a very valuable wetland and would require the installation of utilities, replacement of a culvert, construction of permeable interlocking concrete pavement, construction of retaining walls, construction of a coffer dam to isolate the construction area from the adjacent wetlands, and pumping of water from the construction area into a temporary sediment basin for treatment. According to the project engineer the excavation would span 156-215 feet of the large wetland, would extend to a depth of approximately 5-6 feet and would take approximately 35-45 working days to complete. During this time there will be a risk that sediments will escape from the construction area into the adjacent valuable wetland, impacting its physical characteristics.

The Commission finds that local guidelines will not be met. The Stormwater Maintenance Operations and Maintenance Plan dated September 6, 2017 for the PAVE DRAIN describes the inspection procedures and states that an engineer must be retained to determine how to restore the porous surface to its original condition. At the hearing on September 25,017, Lynne Krynicki, Conservation

Analyst stated that the Conservation Department staff does not have the technical engineering expertise to review and analyze the maintenance reports to assure the PAVE DRAIN system has been properly serviced and maintains optimum performance.

6.4 Natural Habitat Standards
In order to determine that an activity will not have significant impact or major effect on water quality in wetlands and watercourses, the Commission shall, as applicable, find that:

a) critical habitat areas such as habitat of rare and endangered floral and faunal species, shall be preserved;
b) the existing biological productivity of any wetland and watercourse shall be maintained or improved;
c) breeding, nesting and or feeding habitats of wildlife will not be significantly altered;
d) movements and lifestyles of fish and wildlife will not be significantly affected;
e) periods of seasonal fish runs and bird migrations shall not be impeded.

The Commission finds that substantial evidence has been submitted into the record as follows:

(1) On June 21, 2017 Ed Pawlak of Connecticut Ecosystems LLC reinspected the large on-site wetland in order to view it during summer conditions. He noted that 2 days prior heavy rain fell across the state during evening thunderstorms.

There was no discharge of water through the 12 inch culvert below the driveway. He stated: “this culvert is plugged or elevated because despite the lack of discharge, there was extensive ponding of shallow water (11 inches deep near the stone wall that runs parallel to the driveway) west of the driveway. I sampled these shallow waters and found an abundant and diverse community (gray tree frog larvae, dragonfly larvae, several different species of snails, Isopods, predaceous diving beetle larvae, fingernail clams and leeches; water purslane plants are also abundant in this flooded area.

The construction of the driveway, which I understand occurred in the 1960’s unintentionally resulted in the creation of a shallow water habitat in the wetland, which apparently persists for an extended period of time during the growing season. A diverse and abundant community of aquatic macrovertebrates now explores this unique habitat.

The wetland east of the driveway also contained an extensive amount of inundation (approximately 6” near the driveway. I also sampled these shallow waters with an aquatic net, and found far fewer aquatic macroinvertebrates there. However, I observed numerous common grackles in this area along with a mallard duck”.

The Commission finds that movements and lifestyles of fish and wildlife will be significantly affected. In a report from Aleksandra Moch dated January 17, 2017 she states the proposed culvert which would replace the existing metal pipe causes a concern related to the wildlife crossing. Currently this wildlife migratory corridor is interrupted by a driveway which slightly raises above the standing water and is supported by gently sloping shoulders on both sides. This type of crossing is narrow and friendly to terrestrial and wetland dependent, but not aquatic species. The proposed roadway not only would be three times wider, but also the proposed vertical stone walls on both sides would impede the movement of smaller species such as amphibians, turtles, etc. Migratory species when approaching the barrier may become confused and vulnerable to predators.

She adds in her report dated April 17, 2017 that the diversity of vegetative cover together with the varying wetness of the soil attracts a variety of wildlife. From the flowing water, standing water, saturated soils and dry land, the area provides suitable environment for almost every organism to thrive. The array of species utilizing the site starts with aquatic organisms using the ponds’ stream and seasonally flooded swamp all the way to the upland species which visit the corridor seeking water and food. A variety of birds and/or mammals can be observed at any given time.

The Conservation Commission Field Minutes of July 28, 2017 states that while there the Commission observed a fox, a mother deer with two fawns and a hawk who had just caught a mouse.

6.5 Discharge and Runoff
In order to determine that an activity will not have significant impact or major effect on water quality in wetlands and watercourses, the Commission shall, as applicable, find that:

a) the potential for flood damage on adjacent or adjoining properties will not be increased;
b) the velocity or volume of flood waters both into and out of wetlands and watercourses will not be adversely altered;
c) the capacity of any wetland or watercourse to transmit or absorb flood waters will not be significantly reduced;
d) flooding upstream or downstream of the location site will not be significantly increased;
e) the activity is acceptable to the Flood & Erosion Control Board and or the Town Engineer of the municipality of Westport;
f) Concentrated discharge flow will be filtered and dissipated, or spread before entering wetlands ad watercourses;
g) Runoff increases will be retained or detained on-site whenever possible.

The Commission finds that substantial evidence has been submitted into the record as follows:

The Flood and Erosion Control Board approved this application with conditions on September 6, 2017.

The applicant is proposing regrading to create a swale as a replacement for the existing stormwater conveyance channel along the northern property line which will allow stormwater runoff to flow from the west to the east to the small wetland pocket on the proposed northeasterly lot. On site investigation as evidenced in the record by photographs and a review of the existing topographic data shows that the existing swale has demonstrated that it acts as an area subject to storm flow during rain events.

The Commission finds that the swale is an important existing topographical feature that should be retained in perpetuity.

Section 5.1 (f) of the IWW Regulations allows the Commission to consider activities in the upland that could impact the wetland.

The Commission finds that the stormwater conveyance channel, though not defined as a watercourse, still acts to connect three wetland areas to each other and the greater Sasco creek wetland system. Furthermore, that applicant has stated that approximately 20 trees will need to be removed to relocate this channel.

6.6 Recreational and Public Uses
In order to determine that an activity will not have significant impact or major effect on water quality in wetlands and watercourses, the Commission shall, as applicable, find that:

a) access to and use of public recreational and open space facilities, both existing and planned, will not be prevented;
b) navigable channels and or small craft navigation will not be obstructed;
c) wetlands and watercourses held in public trust will not be adversely affected.

The Commission finds the proposed use will not significantly impact or have a major effect on existing or potential recreational or public uses in wetlands and watercourses.

11. WATERWAY PROTECTION LINE ORDINANCE

The purpose of the Waterway Protection Line Ordinance (WPLO) as set forth in Section 30-93 of the Code of the Town of Westport is to “protect all waterways of the Town of Westport from activities that

would cause hazards to life and property and/or activities having adverse impact upon the flood carrying and water storage capacity of the waterways and floodplains, the flood heights and the natural resources and ecosystem of the Town of Westport, including but not limited to ground and surface water, animal, plant and aquatic life, nutrient exchange and energy flow, with due consideration given to the results of similar encroachments constructed along the reach of the waterway.

Section 30-93 of the WPLO defines information to be submitted to the Conservation Commission and states:

"An 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 ecosystems of the waterway, including but no 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 following activities are proposed within the WPLO boundary:

1. The proposed 20' wide private road construction with culvert installation and widening for storm drain improvements;
2. The proposed 603± s.f. of fill within the wetlands and watercourses system;
3. Construction of retaining walls on either side of the proposed private roadway;
4. Trenching for the underground utilities and the excavation associated with the installation for these lines;
5. The limit of disturbance as indicated by the silt fence on either side of the proposed private roadway the western edge of the proposed parking lot;
6. The limit of disturbance as indicated by the proposed grading and silt fence installation

In accordance with Section 30-93 of the Waterway Protection Line Ordinance and the findings from Section 6.0- 6.6 of the Regulations for the Protection and Preservation of Wetlands and Watercourses of Westport as enumerated above along with the evidence cited herein, the Commission finds that the applicant LandTech has not submitted information, plans, and reports with sufficient detail to show the proposed 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 ecosystems of the waterway, including but not limited to impact on ground and surface waters, 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.

In conclusion, the Commission finds that due to the extensive nature of the proposal, the land disturbed and the proximity of the project to wetlands and watercourses, evidence has not been submitted into the record to ensure long term protection of the wetlands and watercourses in perpetuity.

Now Therefore, Be It Resolved, that pursuant to Sections 1.4, 3.18(2), 5.1, 6.0, 10.0 and 11.0 of the **Regulations for the Protection and Preservation of Wetlands and Watercourses of Westport** and Section 30-93 of the **Waterway Protection Line Ordinance** and on the basis of the evidence of record, the Conservation Commission resolves to **DENY** without prejudice Applications **#IWW 10450-17 and WPL 10488-17 for the following reasons:**

1. Whereas; The proposed 603 square feet of fill within the wetlands in order to construct a 20' wide private road is a significant impact to the wetlands; and

2. Whereas; The rehab of the existing single family residence on the site utilizing the existing driveway with no improvements needed is a feasible and prudent alternative that would cause no further impact to the wetlands and watercourses; and

3. Whereas; A waiver of road access and travelway width from the State Fire Marshal is a feasible and prudent alternative that has not been pursued; and

4. Whereas; A waiver of Subdivision Regulations for Driveway Width from the Planning and Zoning Commission is a feasible and prudent alternative that has not been pursued; and

5. Whereas; Consideration of a proposal for the demolition of the existing house and the construction of one new residential dwelling is a feasible and prudent alternative that would require a lesser driveway width and alternative drainage provisions; and

6. Whereas; Consideration of a proposal for a two or three lot subdivision is a feasible and prudent alternative with appropriate alternative drainage provisions explored: and

7. Whereas; Consideration of retention of the existing stormwater conveyance channel is a feasible and prudent alternative that would allow development on the proposed subdivision lots and still retain the natural hydraulic conditions and drainage patterns on the property; and

8. Whereas; The installation activities for the proposed width of the PAVE DRAIN roadway for a four lot subdivision is a significant impact; and

9. Whereas; The applicants' proposed "social benefits" as prudent alternatives and as stated do not sufficiently offset the proposed significant impacts to the wetlands and watercourses.

Motion: Perlman **Second:** Bancroft
Ayes: Perlman, Bancroft, Lobdell, Field
Nayes: Corroon, Rycenga **Abstention:** 0 **Vote:** 4:2:0

The Commission voted to support the Intervention claims.

Motion: Corroon Second: Perlman
Ayes: Perlman, Field
Nayes: Bancroft, Corroon, Rycenga Abstentions: Lobdell Vote: 2:3:1

Motion to withdraw the vote.

Motion: Corroon Second: Field
Ayes: Corroon, Field, Bancroft, Davis, Lobdell, Rycenga
Nayes: None Abstentions: None Vote: 6:0:0

The Commission discussed the Intervention Pleading and Findings further. They changed their wording from "claims" to "general position".

Motion to support the general position of the Intervention Pleading.

Findings Pertaining to Intervention Pleading

1. Notice of Intervention filed by Michael T. Bologna, on behalf of John and Susan Tschirhart

With regard to this petition:
A. The Westport Conservation Commission finds that the Intervenors are appropriate parties to intervene.
B. The Intervenors have filed a verified pleading.
C. The pleading alleges claims consistent with Sections 22a-19 of the Connecticut General Statutes; and

D. Based upon the record, the Commission finds the proposed conduct will cause unreasonable pollution, impairs or destroys the public trust in the air, water or other natural resources of the State of Connecticut

The Intervenors assert the "the application and supporting documents demonstrate that significant construction, clearing, filling of wetlands, paving, disturbance of soils, removal of vegetation and other activities are proposed within wetlands and within the wetland buffer. The application and supporting documents demonstrate that it is reasonably likely that these activities will have the effect of unreasonably polluting, impairing or destroying the public trust in this wetland resource and other natural resources of the State".

Specifically:

a. Wetland soils, vegetation and associated fauna will be lost as a result of the filling, grading and paving within the wetland/watercourse area. It appears that the area of wetland to be lost/disturbed will be substantially larger than presented.
b. The proposed driveway will change the existing drainage patterns and flow dynamics resulting in flooding to the adjacent properties. In addition the fill would decrease the existing flood storage capacity of the wetland/watercourse area.
c. The activities will cause intensive site clearing and expose the edge of the wetland/watercourse to direct sunlight. Loss of natural buffer and tree cover will negatively affect the wetland/watercourse hydro-period and microclimate.
d. There will be significant long and short-term impacts on the wetland/watercourse area. Long-term impacts include, but they may not be limited to: permanent loss of wetlands/watercourse area, loss of vegetative cover, loss of protective buffer, decline of water quality within the flooded swamp, stress/elimination of plant and animal species which rely on the shaded, moist and wooded area and do not tolerate the increase of temperature due to the direct sunlight exposure or the disturbance associated with night illumination coming from the moving vehicles and noise, the new retaining walls wouild obstruct wildlife movement trapping the speicies and making them prone to predation. The short-term impacts include, but may not be limited to: site clearing, storm water runoff, suspended sediment coming from the wetland filling and stock piling areas, dewatering of the wetland/watercourse corridor, soil disturbance, noise and runoff from the construction equipment, installation of erosion controls which will act as a barrier to wildlife movement.

The Westport Conservation Commission finds evidence in the record to support the general position of the Intervenor and finds that the activity as proposed will likely have the effect of unreasonably polluting, impairing or destroying the public trust in this wetland resource and other natural resources of the State."

Motion: Corroon **Second:** Field
Ayes: Field, Perlman, Bancroft
Nayes: Corroon, Rycenga **Abstentions:** Lobdell **Vote**: 3:2:1

2. Other business.- **NONE**

The October 18, 2017 Public Hearing of the Westport Conservation Commission adjourned at 10:35 p.m.

Motion:	**Rycenga**		**Second:**		**Bancroft**
Ayes:	**Rycenga, Bancroft, Corroon, Field, Lobdell, Perlman**				
Nayes:	**None**	**Abstentions:**	**None**	**Vote:**	**6:0:0**