# MINUTES WESTPORT CONSERVATION SEPTEMBER 25, 2017

The September 25, 2017 Special Meeting of the Westport Conservation Commission was called to order at 7:00 p.m. in Room 201/201A of the Westport Town Hall.

# **ATTENDANCE**

# **Commission Members:**

Anna Rycenga, Acting Chair Donald Bancroft Robert Corroon Ralph Field, Alternate Paul Lobdell, Alternate Mark Perlman

## **Staff Members:**

Alicia Mozian, Conservation Department Director Lynne Krynicki, Conservation Analyst Peter Gelderman, Asst. Town Attorney

# Interveners:

Susan & John Tschirhart

This is to certify that these minutes and resolutions were filed with the Westport Town Clerk within 7 days of the September 13, 2017 Public Hearing of the Westport Conservation Commission pursuant to Section 1-225 of the Freedom of Information Act.

Alicia Mozian
Conservation Department Director

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

1. Approval of September 13, 2017 meeting minutes.

The approval of the September 13, 2017 meeting minutes was tabled to the next scheduled meeting.

Motion: Rycenga Second: Bancroft Ayes: Rycenga, Bancroft, Corroon, Field, Lobdell, Perlman

Nayes: None Abstentions: None Vote: 6:0:0

2. 107 Old Road: 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.

Mr. Perlman made the statement that he acquainted himself with the record and listened to the tapes of July 31, 2017 and September 13, 2017.

Mr. Lobdell stated he acquainted himself with the record and listened to the tape of September 13, 2017.

Ms. Rycenga noted the WPLO portion of the application was withdrawn and resubmitted. The new WPLO number is WPL-10488-17. The IWW hearing was closed on September 13, 2017.

Ms. Rycenga stated that the WLPO application was withdrawn solely for purposes of allowing more time for the Commisison to decide on the application. She thanked the applicant for that. She noted that these applications were heard together out of convenience. WPL Ordinance does not require a public hearing but past precedent has been set by always having one. She explained that under the Inland Wetlands and Watercourses Act that does require a public hearing.

Ms. Rycenga stated that we will not be taking any testimony and or evidence on that relating to Feasible and prudent alternatives. We are restricting all comments to WPLO that includes the public, applicant, staff and the commission.

Ms. Rycenga disclosed that she received 2 emails to her personal email address and forwarded them to staff and town counsel. However, she did not respond.

Ms. Rycenga noted that she wanted to make it clear that all comments, written, heard, or oral are all part of the record. A letter does not have to be read word for word to be included in the record.

Ms. Rycenga stated that at the September 13, 2017 hearing that she did not request the public to be brief on their comments but rather thanked everyone for being so patient as there was a mass amount on the agenda that evening.

Ms. Mozian incorporated all the previous applications into the new WPLO application. She noted the intervention pleading remains for the IWW and this WPLO application. She distributed the final Flood and Erosion Control Board minutes and findings for the Interventions. Also, she submitted emails from Bryan Thompson and Amrik Matharu of the Engineering Department to clarify two different questions raised at the last hearing.

Ms. Mozian reviewed Sections 30-93 and 30-94 of the Town Code regarding the WPLO as to what information the Commission may review.

Peter Gelderman, Asst. Town Attorney, noted the Commission looks at the proposal under the WPLO and whether the proposal has a negative impact. There is no provision for feasible and prudent alternatives. It is important to segregate the comments from the IWW portion of applications.

- Ms. Rycenga asked Rob Pryor, PE with LandTech, if he wanted to speak.
- Mr. Pryor indicated he would defer his time to after the public had an opportunity to speak.
- Mr. Lobdell asked Mr. Pryor what happens when the water flows toward the low point in the road. How is it handled?
- Mr. Pryor responded that there are dykes in the roadway to handle that issue.
- Mr. Perlman questioned the efficacy of the Pave Drain system since there is not a long history of use that supports its viability over time.
- Mr. Pryor stated they chose the Pave Drain system because it was one the Town of Westport Engineering Department endorsed. The company puts down about 1,000,000 s.f. per year. Maintenance studies often discuss maintenance of permeable asphalt and permeable concrete. Whereas the Pave Drain block has the curved void space as well as the spacing between the blocks. The blocks can be removed and replaced. This is not true with a permeable asphalt or concrete surface.
- Mr. Perlman asked about the maintenance of the roadway.
- Mr. Pryor stated the Homeowner's Association would be responsible for maintaining the roadway in perpetuity.
- Mr. Corroon asked why the Engineering Department required them to go with the Pave Drain system.
- Mr. Pryor indicated it was more of a structural component. The Engineering Department does not accept that permeable pavement remains as permeable. They would accept this only permeable paver product.
- Mr. Corroon asked for confirmation that the drainage system for the roadway would spread out the stormwater runoff over a larger area than a conventional catchbasin and raingarden design scenario, for example.
- Mr. Pryor agreed.
- Mr. Corroon asked whether the conventional catchbasin in this case would have an oil separator.
- Mr. Pryor indicated that it is not likely.
- Ms. Rycenga asked for confirmation that the paver's longevity is 30 years.
- Mr. Pryor agreed and indicated that this is the minimum.

John Tschirhart, Intervener and property owner of 113 Old Road, reminded the Commission of concerns with the maintenance of the roadway.

Eric Armour of 8 Hunt Club Lane stated there are 100's of s.f. of wetlands being impacted. The Pave Drain company has been in business for less than 10 years. We are not sure of the viability of the company and if they will be around in the future. He questioned whether this product is viable in a snow environment. He questioned whether this product is viable in a dirty environment (leaf debris, etc.). He stated the technical research questions this. He noted the technical research calls for a 2 to 4 foot reservoir. The applicant is only planning a 1-foot reservoir above the groundwater. There is no record of accomplishment. There have been none of these systems installed in Connecticut. The systems have only been used in commercial locations so far. He stated he reviewed the Conservation

Department applications. There were 422 administrative approvals issued by staff since January 1, 2015. There were 102 applications heard by the Commission. Out of those, three were denials. Of those, two said go back and resubmit, we need more information. He suggested the Commission review what the Town Attorney has written and the experts and the lack of social benefit.

Mr. Corroon asked how the Pave Drain system was chosen.

Mr. Pryor stated they came up with the system on their own in response to concerns raised by staff, peer reviewer and the Commission.

Rick Constantini, Atty. for the applicant, stated that concerns for maintenance of the road is not grounds for a denial. He indicated that is what conditions are for. The applications previously approved or denied by the Commission are not relevant.

Mr. Pryor called attention to Page 3, Item #7 of the Flood Board's Findings. He noted Mr. Armour raised the same concerns at the Flood Board meeting regarding separation. He address those concerns fully at the Flood Board. The CT DEEP recommends 2 to 4 feet of separation for all types of drainage structures to groundwater. The Town of Westport recommends 1-foot of separating distance.

Ms. Mozian asked about whether the groundwater monitoring was done in the roadway.

Mr. Pryor noted there will be at least 1-foot of separating distance based on the testing. The testing was done in April and May.

Mr. Lobdell asked Mr. Pryor to address concerns about the groundwater being able to enter the proposed basements. There has been testimony about groundwater in the basements of neighboring properties.

Mr. Pryor stated typically that homes are designed to be above the groundwater elevation. This could be a condition of approval.

Mr. Field asked if the new owners would be subject to the criteria established by the Commission.

Mr. Pryor stated the subdivision is a conceptual plan. It is subject to change when developers come in to actually build.

Atty. Constantini stated the Town would have the ability to review proposed applications.

Mr. Bancroft asked why the groundwater conditions in the neighborhood have gotten worse over time.

Mr. Pryor stated he did not know. He added it is not because of his clients. The neighbors are all upgradient of his client.

Mr. Perlman asked about Pave Drain's financials.

Mr. Pryor stated he has talked to the company about their viability. They said they produce 1,000,000 s.f. per year.

Mr. Perlman questioned how long Pave Drain has been in business.

Mr. Pryor indicated it has been 10 years.

Ms. Rycenga questioned whether another company's equivalent product would be acceptable.

- Ms. Mozian indicated that Engineering has specifically stated that they only approved Pave Drain for its ability to support Fire Trucks.
- Ms. Rycenga stated that she is surprised that the Town of Westport would endorse a company.
- Mr. Pryor noted that any substitutions would need approval by the Engineering Department and the Fire Marshal.
- Ms. Rycenga stated that should include the Conservation Commission.
- Mr. Lobdell made a comment regarding manufacturing of the pavers that it is typically outsource and not produced by Pave Drain.
- Mr. Pryor stated this is a standard practice. The company licenses production of its product to manufacturers to be produced and distributed throughout the country. He noted with regard to Mr. Armour's comments about the use of pavers in the snow. This likely comes from the CT DEEP Stormwater Manual recommendations. The comments pertain to grass pavers and are not applicable to this kind of proposed paver system.
- Mr. Lobdell asked how the paver system stands up to salt.
- Mr. Pryor stated by their nature, it does not require as much salt. However, it will only be used in icing conditions. Sand will not be used. He added that the Commission is not a pushover as Mr. Armour suggested. This Commission is legendary in Fairfield County for its attention to detail.
- Mr. Corroon noted the process leads to a better product.
- Ms. Rycenga referenced the enforcement sections of the regulations under the WPLO and Wetlands.
- Ms. Mozian explained the enforcement procedure under WPLO regulations. There is a fine but you must primarily go straight to court. Under the IWW and the WPLO, Notices of Violations are issued. We try to work with the property owners to rectify the violation. If a satisfactory solution cannot be arrived at or if the violation is egregious, a Cease and Correct Order will be issued. Under the IWW Regulations, the Commission will be called together for a Show Cause Hearing to rule on the Order and make recommendations on how to correct, remedy or remove the violation. Fines may be issued under the IWW. Violations are typically issued to the property owner.
- Mr. Field asked if she had experience in issuing a violation to a homeowner's association.
- Ms. Mozian stated her experience is with violations with property owners.
- Atty. Gelderman stated that a common interest community, a property owner owns interest in the property. It is not the homeowner's association that has ownership.
- Ms. Mozian stated the Cease and Correct Order is put on the Land Records where it remains until the violation is remedied.
- Ms. Rycenga noted the Cease and Correct Order is similar to a lien on the Land Records. She asked Ms. Mozian to clarify its purpose.
- Ms. Mozian stated that when selling the house, refinancing, etc., there is typically a title search. A good title search will come up with the Cease and Correct Order.
- Ms. Rycenga added that the Cease and Correct Order is one mechanism to bringing the property into compliance.

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The Commission discussed the conformance to maintenance of the Pave Drain system through submission of reports.

Ms. Krynicki indicated staff did not have the expertise to ensure compliance to maintenance standards. They could set up a maintenance reporting schedule but the staff is not equipped to know if the maintenance is being done correctly and/or to specifications.

Ms. Mozian noted the Pave Drain system is acting as the drainage system for the roadway. She clarified that if the Pave Drain system is not maintained, it impacts the wetlands and the waterway and recording of the Cease and Correct Order on the Land Records is not enough to initiate a quick response.

Mr. Field asked for an explanation of the Open Space subdivision.

Ms. Mozian, Atty. Gelderman and Mr. Pryor tried to give an explanation of the Open Space subdivision, which are part of the Planning & Zoning Commission's regulations.

Mr. Field asked if there will be ground water monitoring.

Mr. Pryor stated yes and it was done in April - May of 2017.

Mr. Field asked if the location of the homes on the proposal are subject to change.

Mr. Pryor stated yes as the proposal is a conceptual plan.

Atty. Gelderman noted that if the Commissioner have technical questions for clarification from staff or the Town Attorney, they can ask staff. Otherwise, no other comment is allowed.

With no further comment from the public, the hearing was closed for the WPLO portion of the application.

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

The Commission chose October 11, 2017 to be deliberation on the applications.

The September 25, 2017 Special Meeting adjourned at 8:47 p.m.

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