

**MINUTES
WESTPORT CONSERVATION COMMISSION
JULY 31, 2017**

The July 31, 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
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

Guests:

Brian Curtis, PE, Nathan Jacobson & Associates, consultant to the Commission
Ed Pawlak, SS & CWS, CT Ecosystems, consultant to the Commission

This is to certify that these minutes and resolutions were filed with the Westport Town Clerk within 7 business days of the July 31, 2017 Special Meeting of the Westport Conservation Commission pursuant to Section 1-225 of the Freedom of Information Act.

Alicia Mozian
Conservation Department Director

Public Hearing: 7:00 p.m., Room 201/201A.

It was noted that all members visited both sites except Mr. Field, who did not visit 27 Darbrook Road.

- 1. 107 Old Road:** Application #IWW, WPL-10450-17 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. Mozian incorporated the contents of the previous applications:

- IWW,WPL-10322-16 – a 3-lot subdivision
- IWW,WPL-10362-17 – a 4-lot subdivision
- IWW,WPL-10397-17 – a 4-lot subdivision and
- IWW,WPL-10450-17 – a 4-lot subdivision.

Ms. Mozian also showed pictures of the property taken by staff, the Commission and the Interveners in various months. The photos taken by Ms. Rycenga on Friday, July 28, 2017 were not yet printed and entered into the record.

Rob Pryor of LandTech presented the application. He noted the documents submitted into the record received by LandTech July 26, 2017 including the Fire Marshal's review letter. He presented a blow up of the wetland crossing that showed the retaining walls and the existing stonewall. He also presented photos of the driveway with the proposed road limits superimposed.

Mr. Bancroft asked what the current roadway width is.

Mr. Pryor stated the current driveway is 9 to 10 feet wide.

Mr. Bancroft and Ms. Rycenga asked about the trees, which were marked in the field. Ms. Rycenga noted she counted 107 to the left and 65 to the right, a much larger number than had been flagged for removal.

Mr. Pryor confirmed that those smaller trees of less than 8-inch caliber would also be removed.

Mr. Pryor brought in an example of the paver being recommended for the new driveway.

Bonnie Croskie, Sales Representative with Pave Drain, noted the paver weighs about 50 pounds. The pavers would be manufactured in Gardner, MA. It is a concrete mix and is capable of withstanding heavy machinery. These do not fill up over time. The permeability is within the joints, which have a ¼-inch spacing. The material itself is not permeable. The track record is that this system needs maintenance about every 5 years. It has been used in Buffalo, Syracuse, Mamaroneck, Minnesota, and Iowa.

Ms. Rycenga asked what is the life cycle of the pavers.

Ms. Croskie stated approximately 30-50 years.

Ms. Rycenga asked how the pavers handle freezing and thawing.

Ms. Croskie stated that when it melts, it soaks through the joints. No salt is used. There is no black ice. Steel plows can do damage to the blocks but they can be replaced block by block. No potholes form. The first inch of rain is stored in the arch.

Mr. Lobdell asked what prevents lateral movement of the blocks.

Mr. Pryor stated the road would be lined with Belgium block.

Ms. Croskie recommended a two times a year visual inspection but vacuuming is on an as-needed basis.

Mr. Corroon asked what the recommendation is for gasoline spills.

Ms. Croskie stated it would be to replace the block.

Ms. Mozian asked if the pavers will be able to withstand the weight of lumber trucks and concrete trucks.

Mr. Pryor responded that the pavers have a rating which indicates that they can withstand vehicles as large as cement trucks, fire trucks, etc.

Ms. Croskie stated that "Pave-Drain" oversees the quality control of the paver.

Mr. Pryor add that the vehicular loads are based on the AASHTO H-25 loading distribution.

Ms. Mozian asked about the maintenance and protection of the paver during house construction. She noted the roadway has to be put in prior to construction of the house(s).

Mr. Pryor stated filter fabric would be put down on top of the pavers. Then after the construction, they will pull the filter fabric and vacuum the pavers. The lateral movement of the pavers is prevented by Belgium block behind the dirt.

Mr. Corroon asked if weed killers are used frequently to control growth in the spacing.

Mr. Pryor stated that if the inspections and vacuuming is done on a routine basis, weed control would not be an issue.

Ms. Krynicky asked how deep the footing would have to be for the retaining walls.

Mr. Pryor stated the test pits did not indicate a deep organic soil horizon. Therefore, the footing should be relatively shallow.

Ms. Rycenga asked how many pavers are needed for the proposed roadway.

Mr. Pryor stated there would be 20,000+ needed. They come in 1-s.f. blocks.

Ms. Rycenga asked how many truck load deliveries are required based on the 20,000 pavers are needed.

Mr. Pryor stated approximately 24 deliveries.

Mr. Field asked if there are different standards of block for different road types.

Mr. Pryor stated no. They are all the same.

Mr. Corroon asked if the spacing can be widened to encourage vegetation growth like moss to create like a green mat.

Mr. Pryor stated it cannot. It is a specified width.

Ms. Mozian asked if the Homeowner's Association would have an agreement with Pave-Drain or one of their surrogates.

Mr. Pryor stated during the first 3 years, maintenance would be provided by Pave Drain. After that, it would be more of a routine maintenance inspection by the owners. He indicated that if the system fails, it will be evident because ponding will occur.

Mr. Porter asked who pays for the maintenance.

Mr. Pryor stated the developer does.

Mr. Lobdell asked if water will still overtop the roadway.

Mr. Pryor stated the capacity of the culvert will be increased to eliminate this condition.

Mr. Bancroft asked about maintaining the existing conditions.

Mr. Pryor confirmed the bottom elevation of the box culvert is the same as the bottom of the existing pipe. Also, the plan to construct the road is during the dry season of the year.

Ms. Mozian showed the Town wetland map showing this wetland surrounds a tributary to Sasco Brook.

Ms. Krynicky noted Sasco Brook is an impaired waterway for which a management plan has been written, so water quality is very important.

Mr. Pryor noted that it would take approximately 25 truckloads to deliver all the pavers.

Ms. Mozian explained staff's idea of maintaining the natural stormwater drainage channel path in the north end of the property that connects the two wetland areas and a 25-foot conservation easement on either side of the natural stormwater conveyance swale. She showed a schematic prepared by staff where the two houses on lots 2 and 3 could be maintained along with their drainage system.

Mr. Pryor said that relocating the conveyance channel farther to the north as they have done is the most realistic approach to the residents living in the proposed houses. Otherwise, they will tend to want to fill the conveyance in.

Eric Bernheim, Atty. for the property owner, stated the conveyance channel is not a regulated area, so the Commission has no say.

Mike Bologna, Atty. for the Interveners, stated he wants to make sure that the Intervention Pleading from the previous record is incorporated into this record and the finding of significant impact is carried over into this application. He noted the July 5, 2017 letter from

the Fire Marshal. He questioned the Homeowner's Association formation. He asked who is responsible for putting in and maintaining the roadway even when only one lot is built at a time. The onus will be on staff to monitor and enforce. He asked for the video of the pavers to be part of the record. He stated that if the Commission feels that they want to deny because there is a feasible and prudent alternative, they should vote that way. He said do not fear the court overturning the decision. The applicant has said there is no feasible and prudent alternative because it is too costly to put in pavers for fewer house lots. The Commission needs proof of that from the applicant. The existing driveway was built in 1960. Things have changed since then including the adoption of the IWW act. The owners inherited a property with no inherent right to a 4-lot subdivision. In a June 9, 2017 e-mail from Peter Ratkiewicz, Town Engineer, he states that the driveway does not need to be improved if the application is just to connect one house to the sewer. Mr. Bologna maintains the lot is worth \$1.5 million as is. He added the Commission does have the right to look at the natural stormwater conveyance in the rear because work in the upland affects the wetland.

Ms. Mozian noted that she emailed Mr. Bologna.

Ms. Rycenga requested that the applicant or Ms. Croskie provide a DVD of the video for the record.

Ms. Rycenga stated that the Intervention Pleading from the previous application and record was included in the record and the Commission made the finding of significant impact. The Commission Members agreed.

Mr. Bologna submitted sample case law and other points. He referred to the July 26, 2017 letter from Rob Pryor, where rehab of the existing house is an alternative.

Brian Curtis, PE, of Nathan Jacobson & Associates and consultant to the Commission reviewed his comments. He wants to see a 2-year storm design for the by-pass culvert. He wants to see some contingencies for the coffer dam in case of failure. He noted there are the best-laid plans for maintenance. The responsibility will need to be imposed on the individual homeowners. If maintenance is not done, enforcement will be required. The maintenance plan will need to be linked to the approval for enforcement to have teeth. He noted the pavers have to be kept clean. The subgrade has to be kept from being compacted. Also, each of the lots has to have a substantial mud-tracking pad on it to keep mud and sediment out of the paver roadway during house construction. Mr. Curtis mentioned that a Geo Technical Report be submitted regarding the retaining wall as a condition of approval to ensure the structural integrity after completion.

Ed Pawlak, soil scientist and certified wetland scientist with CT Ecosystems and consultant to the Commission referred to his June 22, 2017 letter. He noted he revisited the site on June 21, 2017 two days after a storm event. There was 11 inches of impounded water on the west side of the driveway. The culvert does not appear to have flow in it. He found green tree frog larvae and six species of invertebrates. There was about 6 inches of water on the east side of the driveway. He saw Grackles and Mallards. He also believes the wetlands were there at the time the driveway was installed in 1960. He stated he reviewed the site plan revisions made by LandTech that were done primarily at his request. He disagrees with the 174 s.f. of "restored" wetland 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. 603 s.f. of the most valuable wetland will be impacted. 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. If everything works, fine. If not, there is a lot that can go wrong.

Mr. Pawlak talked about feasible and prudent alternatives. He asked the applicant to show schematic designs for 1, 2, and 3 lots and the rehab of the existing house. With a house renovation, nothing would be required. He believes that re-routing the stormwater conveyance swale will not adversely impact the wetland so he does not think it is necessary to maintain the existing drainageway. It will be put in a conservation easement.

Mr. Davis and Ms. Krynicki both questioned whether the 20-foot non-disturbance buffer was sufficient to offset the intensity of development on the site. The clear-cutting, hydrologic changes and grade changes are intense. Will these impact the wetland?

Ms. Rycenga asked if inground pools were proposed on the 2 lots adjacent to the Stormwater Conveyance Swale, would that interrupt the surface flow to the wetland.

Mr. Pawlak stated no.

Mr. Curtis reviewed the runoff calculations. The plan does conform to the 25-year design standards. Therefore, there will be no increase in runoff and it will be filtered so it meets water quality standards.

Mr. Davis asked if moving the stormwater conveyance swale will increase runoff downstream.

Mr. Curtis stated it would not. It will also be in a stone-lined channel.

Mr. Corroon asked if the owners can substitute permeable asphalt for Pave Drain system.

Ms. Mozian stated no. She referred to an e-mail of July 13, 2017 from Amrik Matharu, PE of the Engineering Department, who said no to the substitution. Porous asphalt is not rated for heavy equipment vehicles.

Eric Armour of 8 Hunt Club Lane stated he has experienced water coming through the stonewalls. He has not heard any compelling reason to impact the wetland other than profit. He is concerned with tree loss, maintenance and risk during construction.

Susan Tschirhart, Intervener of 113 Old Road, read a letter into the record. She has lived at her property for over 30 years. They have been good stewards of the land. They do not dump. They have not removed fallen trees from the wetlands as instructed by the Conservation Department staff. She stated that this Commission can not consider a financial gain as the sole reason for approval.

Joann Heller of 6 Forest Drive expressed concern with policing of the maintenance and enforcing the organic treatment of the weeds and fertilizing. There must be on-going oversight by the Town. Approval will have unintended consequences.

Tim Lester of 8 Forest Drive noted Ms. Mozian referenced his letter dated May 7, 2017 into the record and his concerns with added water in his basement.

Atty. Bernheim addressed the road width to meet the Fire Marshal's requirement of 16 feet width to meet Fire Code for a new one-house scenario. He indicated this means there is no

way around an adverse impact to the wetland even if there is only one lot or even if they are only renovating the house. The Commission's charge is not to avoid impact but to minimize it. The presented plan does their best to avoid impact to the wetland. He referred to case law that the Commission cannot vote on the bad actions of others. He stated all the homeowners will need to contribute equitably to road maintenance. He discussed the social benefits of the project including:

- A conservation easement of 2.04 acres;
- Removal of invasive species and replanting with natives within the wetland;
- Improved stormwater management;
- Reduced impervious coverage by making the roadway pervious; and
- Makes a safe roadway that meets Fire Department code.

He stated these benefits outweigh the 603 s.f. of direct impact. He feels no other alternatives are feasible and prudent. He stated even keeping the existing house and renovating it would require a 16-foot wide driveway. The applicant's consultants are in agreement with the Commission's consultants. The owners have a constitutional right to use their property. Atty. Bernheim stated that his client showed good faith by coming in before the demolition and cutting the trees. He stated this can be done now.

Ms. Mozian asked how the Fire Department gets involved in reviewing house renovations. She noted this is outside her experience.

Mr. Lobdell asked Mr. Pryor to address the concerns expressed by Mr. Lester of 8 Forest Drive.

Mr. Pryor stated 107 Old Road is downhill from Forest Lane. Also, the proposed basements are at or above the groundwater elevations. He added a 16-foot wide driveway does justify the cost of a permeable driveway and the wet basin alternative would cause significant impact. The estimated cost for a 20-foot wide driveway is \$200,000.

Ms. Krynicky stated that she would have preferred to see Low Impact Development Standards incorporated in to the plans.

Mr. Pryor stated that in his professional opinion they have been incorporated by the pervious surface on the driveway.

Atty. Bologna surmised that a 16-foot wide driveway has to be cheaper than a 20-foot wide driveway. He referred to the May 18, 2017 letter from Halstead Real Estate.

Ms. Rycenga clarified for the record that the two Soil Scientists, Chris Allan and Ed Pawlak, are in disagreement with which is the most valuable wetland. Chris Allan, in his professional opinion and testimony, stated the most valuable wetland is not over the driveway but rather to the east. Ed Pawlak, in his professional opinion and testimony, has presented that the most valuable wetland is over the driveway.

As the Flood and Erosion Control Board must still file a final decision on the application, the Commission could not vote on the application at this time.

With no further comment from the public, the hearing was continued to September 13, 2017.

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

Mr. Field and Mr. Lobdell left after the 107 Old Road hearing, as they had not participated in the 27 Darbrook Road hearing on July 19, 2017.

- 2. 27 Darbrook Road:** Application #IWW, WPL-10421-17 by LandTech on behalf of Robert & Jennifer Bowman for the construction of a 44 ft. x 62 ft. sports court with associated stormwater drainage system and fencing. Portion of the work are within the upland review area and the WPLO area of a tributary to Deadman's Brook.

Ms. Mozian noted this application was continued to get an opinion from the Town Attorney regarding whether the Commission can consider habitat diversity when the proposed activity is outside the WPLO. She noted the response was no.

Rob Pryor, PE with LandTech, noted the asphalt court base will have a latex sealant to guard against leaching of pollutants. The fence around the sports court will have a gap to allow for movement of smaller animals. There will be no outdoor lighting.

With no public at the hearing, the hearing was closed.

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

Findings
Application #IWW, WPL 10421-17
27 Darbrook Road

- 1. Application Request:** The construction of a 44' x 62' sports court with associated drainage system. Portions of the work are in the upland review area and the WPLO area of a tributary of Deadman's Brook.

This application is a resubmission for the sports court that was denied without prejudice by the Commission last November under Application # **IWW, WPL 10271-16**. The Commission requested more information be provided with a vernal pool study done in early spring in order to determine the presence and population of vernal pool related species.

2. Permits issued for this Property:

- a. IWW/M 8978-11 and IWW/M 8979-11 to amend the wetland boundary.
- b. AA, WPL/E 8860-11 New single family residence
- c. AA, WPL/E 8965-11 Inground pool, patio, fence and mechanicals
- d. AA, WPL/E 9063-12 Tennis court, drainage and associated grading
- e. IWW, WPL 10271-16 Sports Court (denied without prejudice)

Application #IWW, WPL 10271-16 was denied without prejudice on November 16, 2016 for lack of a vernal pool study to determine the presence and population of vernal pool related species and its relationship to and protection of the upland habitat area where the sports court is proposed. This resubmission includes the vernal pool study conducted by Chris Allan of LandTech in April of 2017. Also, the new plan adjusts the location of the court by shifting it two (2) ft. in order to achieve a 100 ft. distance from the edge of the surveyed pond.

3. Plans and Reports reviewed:

- a. "Showing Segment "V", Segment "W", Segment "X", Segment "Y" and Segment "Z" to be considered with Property of Robert and Jennifer L. Bowman, 27 Darbrook Road,

Michael W. and Maureen B. Oloughlin, 8 Fernwood Road, Craig Chodash and Karen Richards, 6 Fernwood Road, Westport, Connecticut, Scale 1"= 40', dated December 13, 2013, prepared by Leonard Surveyors LLC

- b. "Site Improvements for a Proposed Sports Court, Site Plan prepared for Robert and Jennifer Bowman, 27 Darbrook Road, Westport, CT", Scale: 1"= 40', dated May 3, 2016, revised to July 14, 2017 prepared by LandTech
- c. "Letter and report from Chris Allan of LandTech dated May 18, 2017 for evaluation of the presence of breeding amphibian species during the spring.
- d. Legal Opinion Memo from Gail Kelly, Assistant Town Attorney to Alicia Mozian, dated July 21, 2017 regarding utilization of the term "habitat diversity" as included in Section 30-93 of the Waterway Protection Line Ordinance ("WPLO").
- e. Letter to Westport Conservation Commission from Edward Pawlak, Connecticut Ecosystems, LLC dated July 11, 2017.
- f. Letter to Westport Conservation Commission dated July 14, 2017 from Chris Allan, LandTech written in response to Mr. Pawlak's letter.

4. Soils Description

Soil Report Summary- prepared by JMM Wetland Consulting Services, LLC, and dated October 13, 2011 states there are both undisturbed and disturbed soils present with the majority of the disturbed soils located scattered along the northwestern and southeastern portions of the property.

The wetland soils on site are described as:

Ridgebury fine sandy loam: This soil series consists of deep, poorly and somewhat poorly drained soils formed in a coarse-loamy mantle underlain by firm, compact glacial till on uplands. They are nearly level to moderately steep soils on till planes, low ridges and drumloidal landforms. The soils formed in acid glacial till derived mainly from schist, gneiss or granite.

Leicester fine sandy loam: The series, which is some Connecticut counties is found only in complex with the Ridgebury and Whitman series, consist of deep, poorly drained loamy soils in drainage ways and low-lying positions on till covered uplands.

Whitman fine sandy loam: This series consists of deeply, very poorly drained soils formed in a coarse-loamy mantle underlain by firm, compact glacial till on uplands. They are nearly level and gently sloping soils on till plains, low ridges and drumloidal landforms.

Aquents: This soil map unit consists of poorly drained and very poorly drained disturbed land areas. They are most often found on landscapes which have been subject to prior filling and/or excavation activities. This soil map occurs where two or more feet of the original soil surface has been filled over, graded or excavated. The Aquents are characterized by a seasonal to prolonged high ground water table and either support or are capable of supporting wetland vegetation.

The upland soils on site are described as:

Charlton very stony fine sandy loam: This series consists of very deep, well drained coarse-loamy soils formed in friable, glacial till on uplands. They are nearly level to very steep soils on till plains and hills. The soils formed in acid glacial till derived mainly from schist, gneiss or granite.

Chatfield fine sandy loam: This 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.

Sutton stony fine sandy loam: This series consists of deep, moderately well drained loamy soils formed in friable, glacial till on uplands. They are nearly level to steeply sloping soils on fill plains, low ridges and hills, being typically located on lower slopes and in slight depressions.

Udorthents: This soil mapping unit consists of well drained to moderately well drained soils that have been altered by cutting, filling or grading. The areas either have had two feet or more of the upper part of the original soil removed or have more than two feet of fill material on top of the original soil.

5. Property Description and Facts Relative to the Map Amendment Application:

- The FEMA maps indicate that the property is located within Zone C, areas of minimal flooding.
- Property does not exist within the Aquifer Protection Overlay Zone nor a groundwater recharge area.
- Property does not exist within the Coastal Areas Management Zone.
- There is Waterway Protection Line boundary for this parcel which is located 15' from the wetland boundary.
- The Flaherty Giavara Associates, P.C. Wetlands Inventory report describes the wetland system on this parcel as a streamside floodplain with an intermittent watercourse and a wooded swamp.

Edward Pawlak of Connecticut Ecosystems LLC was retained once again by the Conservation Commission to assist in this second application submission.

Christopher Allan, Soil and Wetland Scientist for LandTech submitted a letter dated May 18, 2017 which attempts to address the issues in the November 16, 2016 Resolution of the Conservation Commission.

The conclusion of the letter from Mr. Allan dated May 18, 2017 states "while no evidence of amphibian breeding was found in the former pond, it cannot be conclusively ruled out due to sampling limitations." There was a concurrence with Mr. Pawlak who testified that the softness of the bottom of the "manmade pond" made it difficult to sample and search for egg masses.

The Commission finds the evidence of amphibian breeding was found in the large forested wetland north of the proposed sports court and in the area of the proposed court. This finding is supported by the report of Ed Pawlak of Connecticut Ecosystems LLC dated July 11, 2017 who found a spotted salamander under a log in the upland in the location of the proposed sports court.

6. 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 Commission finds the potential accessway to the sports court for construction and permanent usage requires crossing an area approximately 30' in width of wetlands and includes disturbance of 180 square feet of wetland as was the situation in the previous application. The Commission finds this activity is not a significant impact as the crossing is temporary and the area will be restored following the construction. A 24" Beech tree will be saved and tree protection fencing provided. The applicants' proposal is to use the placement of engineered fabric and wood mats for use in the crossing area for less than one week (per schedule D). After construction, the court would be accessed by a 3 ft wide mulched footpath just outside the wetland boundary. The court itself is located just outside the 35 ft upland review area as established for tennis courts in the IWW Regulations. The Commission finds the current submitted plan has been revised to show the sports court relocated to maintain a 100' distance from the edge of the former pond and 130 feet from the seasonally flooded forested wetland or the "Vernal Pool Envelope" as recommended by Calhoun and Klemens (2002) for conserving pool-breeding amphibians in residential developments.

The Commission finds the temporary crossing will be in place for less than one month and will be restored to its original condition upon completion. The placement of engineering fabric within the accessway and the placement of temporary wood mats over the engineered fabric will provide a stable access for construction equipment.

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 Commission finds the storm drains on the four corners of the proposed court will adequately infiltrate storm water to a 16" stone bed below. The nearest test hole to the court indicates ledge at 44" below existing grade, however, the percolation test performed in this area indicates the soil is very permeable. Storm water will be adequately captured in the stone reservoir below the court. There will be sufficient infiltration into the soil solum below the stone. Should the surface runoff contain pollutants there is the opportunity for nutrient removal or pollution renovation.

At the hearing in November of 2016, Mr. Allan stated that blasting would not be needed and that any ledge removal should be able to be removed with a small jack hammer or machine.

The Flood and Erosion Control Board reviewed and approved this application on July 6, 2016 and revisited and reapproved the revised plan at a work session in June 2017.

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.

The Commission finds that staked haybales will be added to the erosion protection measures in the area of the wetland crossing as there is a slope gradient in all directions from the proposed activity to the wetlands.

A fence design been included with this application. The Commission finds a detail of the fencing shall be submitted to the Conservation Department prior to the issuance of a Zoning permit.

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 applicant responded to the Consultant's request for additional information for observed and potential wildlife species utilizing wetland and upland habitats on the property during the November 2016 public hearing. The description of the upland habitat and the relationship of the forested peninsula to the functioning of the wetland was determined to be required to fully determine the impact of the project to the natural habitat and thus a vernal pool and obligate species observation was conducted by Chris Allan of Land Tech in April of 2017. The Commission finds this report adequately addresses the request for the additional information and the existing habitat and breeding population of the vernal pool species.

It was reported that conditions within the "man made" pond made it difficult to adequately assess the presence of amphibian egg masses. The former pond had a significant accumulation of organic debris including deep muck, submerged and floating leaves and algae throughout the water column. Because of the deep muck, it was not possible to safely access deeper portions of the pond. Algae and floating and submerged leaves limited water visibility. Water depths were difficult to determine due to the very soft muck bottom.

The report from Land Tech found that while no evidence of amphibian breeding was found in the former pond, it cannot be conclusively ruled out due to sampling limitations. The existing physical conditions of the man made pond is supported by Ed Pawlak of Connecticut Ecosystems, LLC.

It was the opinion of Ed Pawlak of Connecticut Ecosystems LLC that the "manmade" pond does provide an amphibian breeding habitat and does function as a vernal pool.

LandTech reported that evidence of amphibian breeding was found in the large forested wetland north of the proposed sports court.

The Commission concurs with LandTech that due to the location of the proposed sports court of 100' from the edge of the surveyed man-made pond and 130' from the seasonally flooded forested wetland, the proposed sports court will not have an impact on vernal pool breeding amphibians. Its small footprint minimizes the loss of a small area of upland habitat. There will be no vegetation removed outside the limits of disturbance associated with the sports court and no significant reduction in shaded woodland habitat will occur.

Ed Pawlak of Connecticut Ecosystems LLC was retained to review the site for a second time in conjunction with the 2017 application submission and to comment on the 2017 report of LandTech.

In a report dated July 11, 2017, Ed Pawlak reports that surveys by LandTech and himself in 2016 and 2017 have confirmed that spotted salamanders breed in the former pond and seasonally flooded deciduous wooded swamp, and that individuals that emerge from these resources utilize the forested habitat where the sports court is proposed.

The man-made pond should be considered a vernal pool resource because of its hydroperiod and the fact that it supports the breeding of at least one "obligate" vernal pool species (i.e., spotted salamander).

The potential pool and habitat area lie within a fragmented landscape surrounded by houses, lawns and roads. There is approximately 3.3 acres of forested upland habitat available to the spotted salamanders that breed in these resources. Spotted salamanders find the upland peninsula where the sports court is proposed also suitable as a result of the canopy shade, leaf litter and numerous cover objects.

The impact to this habitat from the construction of the sports court will extend beyond the limits of the construction envelope. The loss of canopy shade within the development envelope will alter the surface microhabitat (i.e. raise the surface temperature) of the adjacent forest, making it less suitable for adult spotted salamanders. The Commission finds an inspection of the upland area should take place before the initiation of any activity for the sports court and any salamanders found shall be relocated on the site where suitable habitat is found.

In consideration of all factors, it is the opinion of Ed Pawlak that the construction of the sports court will impact but not eliminate the population of spotted salamanders that breed in the former pond and nearby seasonally flooded wooded swamp. The amount of suitable upland habitat will be slightly diminished but not eliminated.

Mr. Pawlak added in an e-mail dated July 11, 2017 that none of the species observed are on the list of endangered, threatened or of "special concern" as declared by the Connecticut DEEP. However, the Spotted Salamander is considered an "obligate" vernal pool species because it only breeds successfully in seasonally flooded habitats.

The Commission finds that the proposed project will only minimally impact the physical characteristics of the on-site wetland as a result of the disturbance associated with the

temporary crossing of the wetland in order to install a construction accessway and will not be a significant impact. The area to be temporarily disturbed will be permanently restored.

The Commission finds the following mitigation efforts are to be considered:

- a. protection of the 14" diameter tulip tree at the edge of the construction accessway
- b. remove large pile of yard waste and metal pipe near the pond
- c. remove pile of debris discarded in the seasonally flooded swamp
- d. remove invasives and replace with native plants near pond
- e. relocate stacked rotting logs to the upland forest beyond the construction envelope of the sports court

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 Commission finds a perc test was completed within the boundary of the proposed sport court which indicates the underlying soils have a percolation rate of 1" in 6.67 minutes. This concludes that a permeable subsoil exists.

The Engineering Department has reviewed and approved the drainage design as submitted by the applicant with the initial application and found the project to be acceptable once again at its work session in June of 2017.

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 public recreational and public uses.

7. Waterway Protection Line Ordinance (WPLO)

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

Discussion: The Flood and Erosion Control Board approved the original application on July 6, 2016 and re-approved the revised plan in a work session on June 7, 2017.

In a letter dated November 7, 2016, Gail Kelly, Assistant Town Attorney to Alicia Mozia, Conservation Director a finding was made that the Conservation Commission has the authority under the WPLO to deny an application or, in the alternative, to impose conditions of approval based upon the impact of a regulated activity on wildlife. The decision must be based upon substantial evidence in the record and the Commission's resolution should also differentiate between conditions imposed under the IWW Regulations and those imposed under the WPLO.

In a letter dated July 21, 2107, Gail Kelly, Assistant Town Attorney to Alicia Mozia, Conservation Director a finding was made that the WPLO does not authorize the Commission to consider the impact of an activity that is not within the waterway protection lines. Because the sports court is not within the protected area it is not a regulated activity and consequently, not subject to the provisions of the WPLO.

At the conclusion of the initial public hearing in November 2016, the Conservation Commission denied the application without prejudice as they believed that additional information was needed to be submitted by the applicant to be able to fully assess the impact to surface water, plant and aquatic life, habitat diversity, viability and productivity as the resource is protected under the Waterway Protection Line Ordinance.

At the time of submission of the revised and second application, the Conservation Department retained the services of Ed Pawlak of Connecticut Ecosystems LLC to once again help us to review the latest application submission material and provide us with his scientific and technical expertise regarding vernal pools, surrounding habitat and dependent species.

The Commission finds that In Mr. Pawlaks' professional opinion that the construction of the sports court will impact but not eliminate the spotted salamanders that breed in the former pond and nearby seasonally flooded wooded swamp. The amount of suitable upland non-breeding habitat available to adult spotted salamander, already in short supply, will be diminished but not eliminated by the construction of the sports court. Also, the forested upland peninsula where the sports court is proposed is proximate to these two aquatic resources.

2. The loss of canopy shade within the development envelope will alter the surface microhabitat of the adjacent forest, making it less suitable for adult spotted salamanders.

3. The upland peninsula where the sports court is proposed lies between the former pond and seasonally flooded swamp and spotted salamander juveniles that emerge from these resources would find this non-breeding habitat very suitable as a result of the canopy shade, leaf litter and numerous cover objects (logs, rocks).

The Commission finds the following mitigation measures will assure protection of the salamanders and the wetlands as protected by the Waterway Protection Line Ordinance (outside the ordinance boundary) adjacent to the sports court location with but not limited to the following conditions:

- a) Protection of the 14" diameter tulip tree and 24" American Beech at the edge of the construction accessway

- b) Remove large pile of yard waste and metal pipe near the pond
- c) Remove pile of debris discarded in the seasonally flooded swamp
- d) Remove invasive plant species and replace with native plants near pond
- e) Relocate stacked rotting logs to the upland forest beyond the construction envelope of the sports court
- f) Provide a construction detail of proposed sports court fencing
- g) No removal of leaves or fallen tree limbs within the regulated area
- h) No herbicide or pesticides to be used within regulated areas.
- i) Conformance to F&ECB conditions of July 6, 2016 and June 7, 2017 approval.
- j) A bond posted for sediment and erosion controls and plantings.
- k) Retain Christopher Allan, PSS, PWS, of LandTech to oversee installation of the wetland crossing and restoration work.
- l) Confine work to the dry season only between July 1st and October 1st of any given year.
- m) Establishment of a conservation easement area in the upland and wetland portion of the property in the area north of the proposed wetland crossing.

TOWN OF WESTPORT
CONSERVATION COMMISSION
DRAFT RESOLUTION
APPLICATION #IWW, WPL-10421-17
STREET ADDRESS: 27 Darbrook Rd.
DATE: July 31, 2017

Project Description: Construct a 44 ft. x 62 ft. sports court and temporary wetland crossing with associated stormwater drainage system. Portions of the work are in the upland review area and the WPLO area of a tributary to Deadman's Brook.

OWNER OF RECORD: Robert and Jennifer Bowman APPLICANT: LandTech

In accordance with Section 6 of the "Inland Wetland and Watercourse Regulations for the Town 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-10421-17 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.
15. A final inspection and submittal of an "as built" survey is required prior to the issuance of a Certificate of Compliance.
16. Conformance to the conditions of the Flood and Erosion Control Board of July 6, 2016 and July 5, 2017.

Special Conditions of Approval

17. Conformance to the plan entitled: " Site Improvements for a Proposed Sports Court Site Plan," Sheet C-1 by LANDTECH dated May 3, 2016 revised to July 14, 2017.
18. Work shall take place between July 1st and September 15th of any given year.
19. Christopher Allan of LANDTECH shall be retained by the applicant to oversee the installation of the wetland crossing and monitor the sports court installation. A site inspection to check for the presence of any salamanders shall be conducted by Mr. Allan prior to the start of construction. Any salamanders found shall be relocated to a location on site where he finds suitable habitat outside the sports court construction area.
20. Construction shall follow the Construction Sequence Plan as defined in the letter to the Conservation Commission from Robert Pryor, P.E. and Christopher Allan, PWS, PSS of LandTech dated October 19, 2016.
21. Staked haybales shall be added to the silt fence in the vicinity of the wetland crossing.
22. A Conservation Easement area has been offered by the applicant and accepted by the Conservation Commission in the upland and wetland portion of the property in the area north of the proposed wetland crossing. Said easement area shall be shown on a mylar and recorded, along with an accompanying easement document, on the land records prior to issuance of a Conservation Certificate of Compliance. Within said easement no cutting,

clearing, filling or the construction of any buildings or structures shall take place without the permission of the Conservation Commission.

23. Tree protection shall be installed at the drip line of the 14" Tulip tree and the 24" American Beech at the edge of the construction accessway prior to the initiation of any activity.
24. Removal of the large pile of yard waste and metal pipe near the pond and the pile of debris discarded in the seasonally flooded swamp shall be verified by site inspection prior to the issuance of a Conservation Certificate of Compliance.
25. Submission of a detailed landscape plan to show the removal of invasive plants on the southerly side of the "manmade pond" and the replacement planting of native plants and shrubs shall be submitted to the Conservation Department prior to the issuance of a Zoning permit.
26. The relocation of stacked rotting logs from the proposed sports court area to the upland forested area shall be confirmed by site inspection prior to the issuance of a Conservation Certificate of Compliance.
27. A construction detail of the proposed sports court fencing shall be submitted to the Conservation Department for review and approval prior to the issuance of a Zoning permit.
28. There shall be no removal of leaves or fallen tree limbs nor the application of any herbicide or pesticides within regulated areas authorized by this permit.
29. A completed bond estimate form to cover the sediment and erosion controls, the invasive plant removal and the replanting of native plants near the pond shall be submitted to the Conservation Department prior to the issuance of a Zoning permit. The bond for the plantings shall be held for one full growing season following installation and verification by staff.
30. The sports court shall not be lit for night time use.

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 limitation of this approval, or has secured this application through inaccurate information.

Motion: Corroon Second: Bancroft

Ayes: Corroon, Bancroft, Rycenga, Davis, Porter

Nays: 0 Abstentions: 0 Vote: 5:0:0

Work Session

1. **3 Quentin Road.** To amend special condition of approval #16 as set forth in Resolution #WPL - 10435-17 dated July 19, 2017, (approving a lap pool) in order to add the reference to map entitled "Proposed Plot Plan" prepared for Bruce R. Becker, 3 Quentin Road, Westport, Connecticut, Scale: 1"=20', dated June 14, 2017, prepared by Leonard Surveyors, LLC.

Ms. Mozian noted the resolution did not include the reference to the "Proposed Plot Plan", which includes the swimming pool location discussed at the July 19, 2017 meeting.

Motion to amend Resolution#WPL-10435-17 to include reference to the "Proposed Plot Plan".

Motion: Rycenga Second: Porter

Ayes: Rycenga, Porter, Corroon, Davis
Nayes: None Abstentions: Bancroft Vote: 4:0:1

2. Approval of July 19, 2017 meeting minutes.

The July 19, 2017 meeting minutes were approved with corrections including the adoption of the correction to the 3 Quentin Road resolution.

Motion: Rycenga Second: Davis
Ayes Rycenga, Davis, Corroon, Porter
Nayes: None Abstentions: Bancroft Vote: 4:0:1

The July 31, 2017 Special Meeting of the Westport Conservation Commission adjourned at 10:23 p.m.

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