

**MINUTES
WESTPORT CONSERVATION COMMISSION
NOVEMBER 16, 2016**

The November 16, 2016 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
W. Fergus Porter

Staff Members:

Alicia Mozian, Conservation Department Director
Susan Voris, Recording Secretary

This is to certify that these minutes and resolutions were filed with the Westport Town Clerk within 7 days of the November 16, 2016 Public Hearing of the Westport Conservation Commission pursuant to Section 1-225 of the Freedom of Information Act.

Alicia Mozian
Conservation Department Director

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

Ms. Mozian stated there was nothing to report.

- 3. 10 Rustic Lane:** Request by Greenscape Design on behalf of Mr. and Mrs. David Perdue for authorization of staff to issue an administrative approval for installation of a playset with surrounding retaining wall within the 30 ft. upland review area.

Ms. Shea, Mr. Bancroft and Mr. Davis visited the site during the field trip.

Ms. Mozian reviewed the map and the proposal for the installation of a playset with a surrounding retaining wall within the upland review area. The area is currently lawn.

Ms. Rycenga asked about silt fence for the project since it is not on the site plan.

Motion to allow staff to issue an administrative approval for the installation of a playset with surrounding retaining wall with the condition that a silt fence be installed between the playset and the edge of lawn.

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

- 4. 1135 Post Rd East/1141 Post Rd East:** request by Redniss & Mead on behalf of 1135 PRE, LLC to modify Resolution #IWW, WPL-9761-14 to allow minor regrading along the property line to allow pedestrian access between commercial zones, including the addition of a sidewalk. In the residential portion of the property, the area along the eastern property line will be regraded to eliminate the wall previously required adjacent to the fire access drive which will allow more landscaping to be planted on 1141 Post Rd East and also allow residential access to the 1141 Post Rd East development.

Ms. Shea, Mr. Bancroft, Mr. Davis and Ms. Rycenga visited the site during field trip.

Ms. Mozian reviewed the proposed changes that would be occurring on the 1135 Post Road East and 1141 Post Road East property line. 1135 Post Road East is currently under construction. She noted that the proposal is at ZBA for a variance for grading within 5 feet of the property line and side setbacks for the commercial building. The changes would remove the previously proposed retaining wall, install a new retaining wall up to 6 feet in height, add stairs and sidewalk. The work is outside the wetland and the WPLO area. The goal is to make movement between the two properties easier and to provide landscaping.

Motion to amend Permit #IWW,WPL-9761-14 to allow the requested changes with the understanding that the approval is for the interface of the two properties only. The remaining site work at 1141 Post Road East is subject to review under a different permit application.

Motion:	Shea	Second:	Davis
Ayes:	Shea, Davis, Bancroft, Porter, Rycenga		
Nays:	None	Abstentions:	None
			Vote: 5:0:0

- 5. 1177 (a/k/a 1175) Post Rd East:** Request by 1177 PRE Associates, LLC to comply with Condition 21 of Resolution #IWW-10191-16 and WPL-10218-16 approved July 20, 2016 by adopting the architectural plans and site plan design approved by the Planning and Zoning Commission on September 1, 2016, as further modified by applicant pursuant to, and at the request of, conditions stated in the September 1, 2016 P&Z Commission site plan approval. Said plan being the "original "4 and 2-story design over covered parking with 94 residential units and 155 parking spaces. The final building design relocates the 5 ground-floor units to upper floors and provides for a revised façade, in accordance with the P&Z approval conditions. Site plan design remains that which was originally approved by the Conservation Commission except for adding minor lower grading and a storm drain under the western expansion building outside the regulated area.

Ms. Mozian reminded the Commission that Condition 21 of their resolution required if the plans changed, they would have to return to the Commission. The Planning & Zoning Commission chose to adopt the original 4-story/2-story combination design for the project with the 155 parking spaces. She reviewed the changes with the Commission. She noted that Engineering had no issues with the proposed changes.

Motion to revise Resolution IWW-10191-16 and WPL-10218-16 to reflect the plans approved by the Planning & Zoning Commission on September 1, 2016.

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

6. Pump Station #2 at 595 Riverside Avenue: Determination of WPLO review process for application by the Town of Westport to provide a new force-main line under the Saugatuck River from Pump Station #2 to the wastewater treatment plant using directional drilling.

Ms. Mozian stated she is asking for a determination of the permit review process and if the Commission would like to see the project or if they would allow staff to issue an administrative approval. The current sanitary sewer pipe was installed in the 1960's. The Town is being proactive in replacing the pipe. They will be using directional drilling to install the pipe going from the Riverside commuter parking lot to the dog pound on Elaine Road. They will be drilling 80 feet below the river into bedrock for the new line. There are contingency plans in place in case of a leak during drilling, which they will know if there is one by constant pressure testing. If a leak is detected, the work would stop immediately. The Shellfish Commission has reviewed this project. The RTM and the Board of Finance also have to review the project.

Mr. Porter stated the Saugatuck River is an important resource to the community and believed that the Commission should review the project.

The Commission agreed.

Motion to require a Public Hearing for this project.

Motion:	Porter	Second:	Rycenga
Ayes:	Porter, Rycenga, Bancroft, Davis, Shea		
Nays:	None	Abstentions:	None
			Vote: 5:0:0

7. Other Business

- a.** Approval of the November 14, 2016 field trip minutes.

Motion to approve the November 14, 2016 field trip minutes as submitted.

Motion:Shea

Second:

Rycenga

Ayes: Shea, Rycenga, Bancroft, Davis

Nayes: None

Abstentions: Porter

Vote: 4:0:1

- b. 4 Angora Road:** Request to allow staff to issue an administrative approval for a 1 story addition over an existing deck/patio.

Ms. Shea, Mr. Bancroft and Mr. Davis were at the site during the field trip.

Ms. Mozian reviewed a request to allow staff to issue an administrative approval for a 1 story addition over an existing deck/patio. The work is between the existing pool and the house.

The Commission found no issues of concern.

Motion to allow staff to issue an administrative approval for a 1 story addition over an existing deck/patio.

Motion:	Shea	Second:	Bancroft
Ayes:	Shea, Bancroft, Davis, Porter, Rycenga		
Nays:	None	Abstentions:	None
			Vote: 5:0:0

Public Hearing: 7:30 p.m., Room 201/201A.

- 1. 27 Darbrook Road:** Continuation of Application #IWW,WPL-10271-16 by Land-Tech Consultants on behalf of Robert & Jennifer Bowman to construct a 43' x 61' 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 of Deadman's Brook.

Ms. Mozian stated the Hearing was continued to allow the Commission to review the plan submitted by LandTech at the October 19, 2016 Public Hearing and to allow the Town Attorney to render an opinion as to whether impact to animals could be considered under the WPLO. They now have that decision of November 7, 2016, which confirmed they did.

Chris Allan, soil scientist and professional wetland scientist with LandTech, stated the Commission has received another letter from Ed Pawlak, the Commission's consultant dated November 11, 2016. He submitted and reviewed a letter responding to Mr. Pawlak's comments dated November 16, 2016. He highlighted his comments on the spotted salamander. He noted the owner is agreeable to a conservation easement being placed on the land records.

Ed Pawlak asked Mr. Allan to show the remaining undisturbed upland habitat that would be available to the spotted salamander, which Mr. Allan did. Mr. Pawlak noted that the applicant has made revisions and clarifications to the plan. They are saving the large beech tree. They have added a fence around the basketball court. They have offered a conservation easement. They have shown that the walkway to the basketball court is outside the wetland. He noted the only disagreement is with the pond's function. Both Mr. Allan and he agree this is not a classic vernal pool habitat; however, Mr. Pawlak maintains that it functions as one. The spotted salamander is not on the threatened, endangered or species of special concern lists, but are a species that are declining in Connecticut. The sports court is in a small area of the property but it will affect the micro-climate of the area when the trees are removed. The upland knoll does provide the habitat and that will be disturbed by the court. In addition, the landscape is highly fragmented in that it provides barriers to the spotted salamanders. He indicated it is impossible to know if the population would be eliminated if this court were built not knowing the size of the population. The upland knoll where the basketball court is proposed is a non-breeding habitat.

Ms. Shea noted the Town Attorney indicated there needs to be undisputed evidence in the record that the upland habitat does provide non-breeding habitat.

Mr. Pawlak stated he believes he has given the Commission significant evidence with his report on the spotted salamander. The Commission needs to weigh whether the amount of land lost due to the court is significant.

Mr. Allan indicated he did not disagree with Mr. Pawlak. He stated it was for the Commission to balance the minor intrusion of the construction against the applicant's wish to provide his children and neighboring children with a basketball court for recreation. He noted the spotted salamander is not listed on the endangered, threatened, or species of special concern lists.

Ms. Rycenga noted that at the last meeting Mr. Allan stated that blasting would not be required. She stated she would want to see the application again if blasting would be required. She asked if lights were proposed with this application.

Mr. Pawlak noted that there is no testimony given to prove there will be a physical impact to the wetland. It is only under the WPLO that the Commission can consider the impact to the spotted salamander.

Ms. Mozian noted that shading of the wetland would be impacted by the construction of the basketball court because trees would be cut down to install and access it.

Mr. Pawlak clarified they are saving the large beech tree, which is shading the pond, so there will be no significant impact to the wetland. It is the removal of upland habitat that will impact the spotted salamander.

Ms. Rycenga stated she would like to see on a map where the conservation easement would be located.

Ms. Shea stated they need more information and that a vernal pool survey typically is done in the early spring.

Mr. Pawlak confirmed a vernal pool study would typically be done in March or April. He added the spotted salamander does not breed every year. However, the larger the population, the larger the impact to the wetland. He went on indicating the State Statutes have added impacts to animals to the Inland Wetland Regulations.

The Commission took a short recess to allow the applicant to attempt to reach his client about withdrawing the application.

Ms. Mozian reported to the Commission the applicant was unable to reach the owner. Therefore, the Commission was faced with "Denying the application without prejudice due to lack of information" or "Approve with conditions".

Motion to deny without prejudice due to lack of information in order to allow for a vernal pool study to be conducted in the spring of 2017. The Commission made the recommendation that the application may be resubmitted without having to pay a new application fee.

RESOLUTION
Conservation Commission
Application #IWW, WPL-10271-16
Street Address: 27 Darbrook Rd.
Date: November 16, 2016

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, 9.5, and 10.1 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 DENY WITHOUT PREJUDICE Application #IWW, WPL-10271-16 based on the following findings.

FINDINGS

Permits issued for this Property: IWW/M 8978-11 and IWW/M 8979-11 to amend the wetland boundary.

Plans and Reports reviewed:

1. "Map Showing Segment "V", Segment "W", Segment "X", Segment "Y" and Segment "Z" to be Consolidated with Property of Robert and Jennifer L. Bowman, 27 Darbrook Road, Michael W. and Maureen B. O'loughlin, 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
2. "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 October 19, 2016 prepared by LandTech.
3. "Wetlands and Watercourse Evaluation and Impact Assessment, Proposed Sports Court, 27 Darbrook Road, Westport, Connecticut", dated May 17, 2016 prepared by Christopher Allan, Professional Wetland Scientist, LandTech.
4. Letter dated July 26, 2016 from Christopher Allan, Soil and Wetland Scientist, LandTech to Alicia Mozian, Conservation Director, providing answers to initial questions from Town Consultant, Edward Pawlak.
5. Letter to Westport Conservation Commission from Edward Pawlak, Connecticut Ecosystems, LLC dated October 17, 2016.
6. Letter to Westport Conservation Commission dated October 19, 2016 from Chris Allan, LandTech written in response to Mr. Pawlak's letter.
7. Legal Opinion Memo from Gail Kelly, Assistant Town Attorney to Alicia Mozian, dated November 7, 2016 regarding the ability of the Commission to consider impact to wildlife when applying the Waterway Protection Line Ordinance.
8. Letter to Westport Conservation Commission from Edward Pawlak, Connecticut Ecosystems, LLC dated November 11, 2016 in response to LandTech's revised plan of October 19, 2016 and Ms. Kelly's legal opinion.
9. Letter dated November 16, 2016 from LandTech to the Conservation Commission in response to Connecticut Ecosystems' November 11, 2016 report.

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 umderlain 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 till plains, low ridges and hills, being typically located on lower slopes and in slight depressions.

Udorhents: 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.

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 by the Conservation Commission to assist in this application review. In an e mail dated June 29, 2016 he identified eight additional items as missing information and requested the applicant provide the items to both himself and the Conservation Commission. Those items included:

1. Detailed wetland description, including hydroperiod(s) (i.e., permanently flooded, seasonally saturated)
2. Inventory of observed and potential wildlife species utilizing wetland and upland habitats on the property.
3. Description of the upland habitat that will be disturbed, including a plant inventory.
4. Pre- and post- construction assessment of wetland functions using the Highway Methodology or similar assessment tools.
5. The relationship of the forested upland peninsula to the functioning of the adjacent wetland.
6. Natural Diversity Database Map of the subject property and adjacent properties.

7. Permeability testing of the soils where the detention/recharge structure is proposed, and an analysis of whether the underlying soils are capable of infiltrating the sports court runoff from all appropriate design storms.
8. A discussion of feasible and prudent alternative designs that were considered by the applicant.

Christopher Allan, Soil and Wetland Scientist for LandTech submitted a letter dated July 26, 2016 which addressed each requested item. Mr. Pawlak responded to the reply in a letter dated October 17, 2016 to the Commission. In turn, LandTech submitted revised plans and a new report both dated October 19, 2016 to address many of the issues raised including:

- relocating the accessway to avoid removal of the 24 Inch Beech tree,
- the placement of a fence around the sports court to limit disturbance into the wetland,
- conducting a perc test in the center of the proposed court to substantiate suitability of the soil to handle the proposed drainage,
- submission of a detailed construction sequence plan
- inclusion of a latex sealant to be applied to the surface of the court to preclude the potential for any pollutant in the runoff from the 2inch bituminous court.
- Trees within the accessway will be cut flush to grade, no stumping or grubbing of trees will take place.
- Geotextile fabric will be placed over the temporary wetland crossing area and covered with temporary wood mats. Nine native shrubs species will be planted in this area following construction.
- Twelve Black Spruce will be added within the 20 ft non-disturbance buffer on the southeast side of the court.
- The applicant has agreed to a construction window between July 1 and September 15 of any given year to further minimize impact to the wetland system.
- The applicant has agreed to a conservation easement on the remaining upland and wetland area north of the construction access way.

Conformance to Section 6 of the Inland Wetlands and Watercourses Regulations

a. 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 potential access way to the sports court for construction and permanent usage requires crossing an area 20 ft. in width of wetlands and includes temporary disturbance of 180 square feet of wetland. Inspection of the site reveals that this area will also need to be cleared and graded as numerous mature trees and large boulders are present throughout the length and with topography that is very uneven. The applicants' proposal is to use 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. A small excavator will be used for the regrading of the court which will involve generally less than one foot of fill and take place within the limits of the silt fence location as

shown on the plans. Nine native shrubs are proposed as part of the wetland restoration as well as 12 Black Spruce in the 20ft upland review area on the southeast side of the court. Work will be done in the dry season of the year to minimize impact to the wetland. A conservation easement is offered in the remaining wetland and upland area of the property north of the construction accessway.

Feasible and Prudent Alternatives to the proposed sports court considered include:

- Construction of a smaller court. A standard basketball court measures 50 ft x 94 ft. The proposed court measures 44 ft. x 62 ft. which is 1,972 sq.ft. less than the standard court. Reducing the court even further in size would be prudent but not feasible.
- Use of the existing tennis court to serve multiple uses including basketball. The may include the installation of a basketball half-court at the end of the existing tennis court. This is feasible but not prudent. The tennis court net would need to be removed and the tennis court is sloped from side to side as part of the stormwater drainage design.

b. 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 sports court surface design materials will be 2" of bituminous asphalt sealed with latex to preclude the potential for any pollutant in the runoff from the court. There are storm drains on the four corners of the proposed court that infiltrate storm water to a 16" stone bed below. Test hole data shows the soils are suitable to infiltrate runoff.

c. 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 silt fence is depicted at 7' from the proposed curb surrounding the perimeter of the proposed sports court and 30 ft-35ft to the surrounding wetland. The silt fence will serve as the limit of disturbance. The wetland crossing will be a geotextile covered wood mat 35 ft in length, 12 inches in width. The construction accessway will be limited to approximately 12 ft in width. After construction, the crossing material will be removed and the area replanted. The Construction Sequencing Plan outlined in the LandTech October 19, 2016 report should be

followed with the addition of staked haybales added to the erosion protection measures as there is a slope gradient in all directions from the proposed activity to the wetlands.

d. 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

Section 7.4 of the IWW Regulations for Westport states that an upland review area of 100 ft. from a vernal pool may be established for a proposed activity. The proposed sports court is located with 96 ft. of the vernal pool.

Section 9.5.3 of the IWW Regulations entitled "Biological Evaluations" states in part:

"If the affected property is believed to include any portion of a wetland, swamp, bog or marsh, the applicant may be required to submit an evaluation of the probable effect of his/her proposed activity upon those plant species and upon indigenous animal life. This evaluation may include, but shall not be limited to, the following:

- b. The terrestrial and aquatic animal life;
- c. The habitat value of the wetlands and or watercourses for indigenous and or migratory, terrestrial and or aquatic wildlife species
- e. date of field determination of this data."

The description of the upland habitat and the relationship of the forested peninsula to the functioning of the wetland is required to fully determine the impact of the project to the natural habitat.

The applicant responded to Mr. Pawlak's request for additional information for observed and potential wildlife species utilizing wetland and upland habitats on the property. LandTech submitted an inventory of observed and potential wildlife species utilizing wetland and upland habitats on the property. There are no known species listed as "Threatened, Endangered or of Special Concern" according to the Natural Diversity Database.

The LandTech report was dated July 26, 2016. The green frog was listed as "expected." The spotted salamander was not listed. Mr. Pawlak visited the site on July 14, 2016 and found spotted salamander larva from the vernal pool.

In his report of October 17, 2016 Mr. Pawlak found evidence of the presence of spotted salamanders and green frogs through the collection of larvae and has determined that the wetland area in the vicinity of the crossing contains a vernal pool and vernal pool habitat. However, Mr. Pawlak states, "Because I sampled the vernal pool in mid-summer, I was not able to estimate the number of spotted salamanders that breed in the vernal pool. This would require searching for and counting egg masses in April, when they are present in vernal pools and easily observed. I do not know whether the spotted salamander larvae are evidence of a breeding population, or remnants of a more robust population that has been diminished over time by landscape fragmentation. "

Mr. Pawlak concluded that: "At least a portion of the project construction envelope lies within the Vernal Pool Envelope associated with vernal pool habitat in the constructed pond. Given the relatively small amount of forested upland habitat on the fragmented landscape shared by the vernal pool, it is my professional opinion that it is likely that the upland knoll where the sports court is proposed serves as non-breeding habitat for spotted salamanders that breed in the pool."

In addition, Mr. Pawlak states in his October, 17th report that: "it is possible that the seasonally flooded red maple swamp northeast of the proposed sports court also contains vernal pool habitat. The dark, lightly vegetated soils and gray water-stained leaves are indicative of seasonal inundation. However, this area dried up some time before my site inspection, so it was not possible to determine whether any amphibians breed there."

Based on the fact that the wildlife inventory was not conducted during the time of year when vernal pools are visibly obvious and active and the full extent of the habitat has not been fully explored, the Commission finds that more information is needed to determine the full extent of vernal pool species and the extent of their habitat. This data needs to be collected in early spring when vernal pools are present and viable. With this information, the Commission will be able to determine, what if any impact the proposed sports court will have on the habitat of these species.

e. 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

A perc test was conducted on October 18, 2016 and revealed the soil beneath the proposed court was suitable to absorb the runoff from the area drains to be located at the corner of the court. The Engineering Department has reviewed and approved the drainage design as submitted by the applicant. The Flood and Erosion Control Board approved the application at its July 6, 2016.

f. 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.

In conclusion, pursuant to Section 6.4, "Natural Habitat Standards," of the Regulations for the Protection and Preservation of Wetlands and Watercourses for Westport, CT, the Commission finds that without definitive information as to the location, type and population of vernal pool

species present, the Commission cannot determine whether the proposed sports court will have an adverse impact on the habitat.

Waterway Protection Line Ordinance

Section 30-93 of the Waterway Protection Line Ordinance (WPLO) 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, **animal, 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 application on July 6, 2016. A legal opinion dated November 7, 2016 from Assistant Town Attorney Gail Kelly confirms that the Commission may consider impacts to wildlife pursuant to the WPLO as prescribed in Section 30-93. However, Ms. Kelly cautions that there must be substantial evidence in the record to support that finding.

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 **in their letter of July 26, 2016**. The description of the upland habitat and the relationship of the forested peninsula to the functioning of the wetland is required to fully determine the impact of the project to the natural habitat. There are no known species listed as "Threatened, Endangered or of Special Concern" according to the Natural Diversity Database.

The applicant, Soil and Wetland Scientist, Christopher Allan, states that:

"The majority of the proposed sports court is located outside of the 100 foot "Vernal Pool Envelope." Field measurements indicate that only the southwest corner of the proposed sports court is located 96 feet from the ponded area. The remainder of the court is more than 96 feet from the ponded area.

While the area of the proposed sports court may provide upland, non-breeding habitat for spotted salamanders, the footprint of the sports court is small and will not significantly reduce available upland habitat. The property on which the sports court is proposed was part of a 4.92 acre parcel that was purchased by and divided among the applicant and two neighbors to prevent the construction of one or more houses on the existing building lot. The undeveloped 4.92 acre parcel contains 2.22 acres of upland and 2.70 acres of wetlands. The proposed 2,728 sq. ft. sports court represents less than 3% of the overall undeveloped upland habitat of the 4.92 acre parcel."

The applicant has also agreed to a conservation easement area to be placed on the remaining upland and wetland area north of the construction access to limit future disturbance of this part of the lot.

However, in his report of October 17, 2016 Edward Pawlak of Connecticut Ecosystems indicates that he found evidence of the presence of spotted salamanders and green frogs through the collection of larvae and has determined that the wetland area in the vicinity of the crossing contains a vernal pool and vernal pool habitat. However, Mr. Pawlak states, "Because I sampled the vernal pool in mid-summer, I was not able to estimate the number of spotted salamanders that breed in the vernal pool. This would require searching for and counting egg masses in April, when they are present in vernal pools and easily observed. I do not know whether the spotted

salamander larvae are evidence of a breeding population, or remnants of a more robust population that has been diminished over time by landscape fragmentation. “

In addition, Mr. Pawlak states in his October. 17th report that “it is possible that the seasonally flooded red maple swamp northeast of the proposed sports court also contains vernal pool habitat. The dark, lightly vegetated soils and gray water-stained leaves are indicative of seasonal inundation. However, this area dried up some time before my site inspection, so it was not possible to determine whether any amphibians breed there.

Mr. Pawlak concluded that: “At least a portion of the project construction envelope lies within the Vernal Pool Envelope associated with vernal pool habitat in the constructed pond. Given the relatively small amount of forested upland habitat on the fragmented landscape shared by the vernal pool, it is my professional opinion that it is likely that the upland knoll where the sports court is proposed serves as non-breeding habitat for spotted salamanders that breed in the pool.”

Based on the fact that the wildlife inventory was not conducted during the time of year when vernal pools are visibly obvious and active, the Commission finds that more information is needed to determine the full extent of vernal pool species and their population. This data needs to be collected in early spring when vernal pools are present and viable. With this information, the Commission will be able to determine, what if any impact the proposed sports court will have on the habitat of these species.

Therefore, the Commission finds that without this definitive information, the Commission cannot determine whether the proposed sports court will have an adverse impact on the ecosystem of the waterway including impact on animals and habitat diversity as provided in Section 30-93 of the WPLO. The application should be resubmitted for review.

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

2. **115 Harbor Road:** Application #WPL-10311-16 by Land-Tech Consultants on behalf of L. Adele Weitzman to construct a private dock, reorientation of stairs to access the beach, and install a four-inch cap on the top of the existing stonewall. Work is within the WPLO area of the Saugatuck River.

Tom Ryder of LandTech presented the application on behalf of the property owners. He asked that all the information and the testimony from the previous application, #WPL-10288-16, be incorporated into this application. He noted that this project removes the perpendicular stairs and installs stairs parallel to the seawall, a pier, dock and float. The dock and float would be removed between November 15 and April 15 per their DEEP permit. The construction of the dock would be allowed between November 1 and April 30 per the DEEP permit. The application also calls for a 4-inch cap on the seawall. The project has received sign-offs from the Westport Shellfish Commission, the CT Bureau of Aquaculture, National Marine Fisheries, the Flood and Erosion Control Board, the Army Corps of Engineers (ACOE) and the DEEP.

Mike Ludwig, marine ecologist with COWI North America, was hired to do a third party review of the project. He worked for the Marine Fisheries Division for 33 years. He has reviewed over 30,000 coastal projects during his career. All issues he normally sees are present in this application. Impact to docks and floats is possible due to icing which is why DEEP asks that they be removed during the winter. He stated this project does meet all regulatory objectives. It will not have a significant impact on the resources.

Ms. Mozier asked if the dock will have an impact on the spartina growth.

Mr. Ludwig stated there would be no adverse impact as it is designed to CT DEEP and ACOE specifications. There was a study done that indicated that if a dock was 4 feet above the spartina and 4 feet wide, it should not affect the spartina growth. It is not the spacing of the decking boards, but the north/south alignment of the dock that affects the spartina.

Mr. Davis asked Mr. Ryder to confirm that the plan has not been modified since the last meeting.

Mr. Ryder agreed.

William Cohen, 117 Harbor Road, stated he was appearing on behalf of Michael Buchman owner of 125 Harbor Road. He cited Section 30-93 of the WPLO regulations, which he stated have not been satisfied. He referred to inefficiencies of the OLISP application. Mr. Buchman hired Sigrun Gadwa to review the proposed dock application.

Sigrun Gadwa, MS, PWS, of REMA Ecological submitted her resume and a report regarding her findings.

Ms. Shea noted the report was for a property in Fairfield and the date of the site visit was November 17, 2016.

Ms. Gadwa stated she this was a mistake, that she used a template from a previous letter and her site visit was November 16, 2016. Her submissions included reports entitled "Cumulative impacts of dock shading on *Spartina Alterniflora* in South Carolina Estuaries" and "New Haven Oysters". Ms. Gadwa highlighted her report. She stated it has been a practice to avoid marshes when building docks. This marsh is healthy. The gravel is clean. There is a healthy growth of spartina in the harbor. There is less litter in the harbor than she usually sees.

She spoke to the impacts and research of shading on spartina. She inspected the site earlier in the day. There was a shadow cast by the buildings. The spartina were blocked by the buildings and railings of the adjacent dock to the east at mid-morning sun.

Ms. Shea asked if Ms. Gadwa was against all docks.

Ms. Gadwa stated Westport is unique in that spartina is growing along our shoreline. She believes an alternative would be to reorient the dock to a true north/south direction. The proposed dock is off 30 degrees. Another alternative is to have a shared dock. Permits issued to build small recreational docks over spartina may seem incremental but they do have an impact on the shoreline.

Mr. Bancroft asked about reorienting the dock location.

Ms. Gadwa showed that moving the dock further north and orienting it to a north/south orientation would be more beneficial.

Ms. Mozian handed out photos of the spartina growth at 115 Harbor Road.

Mr. Davis asked Ms. Gadwa if she would expect to see spartina at 117 Harbor Road if there were no dock on the property.

Mr. Cohen stated there was no spartina on the property when he purchased it. He has been nurturing what has been growing.

Mr. Cohen stated that most docks are offset from the property line. He submitted photos taken on November 13, 2016 at mean low tide.

Mr. Ryder stated they have located the dock over what was the path through the spartina to minimize the impact to the spartina. He noted that photos taken in 1990 show that there was spartina in front of 111 Harbor Road and 117 Harbor Road. Now it is diminuous. What happened to it? He noted that it took over a year to get through the DEEP review of this dock application. They looked at reorienting the dock but did not for various reasons.

Mr. Ludwig noted that spartina grows between mean sea level and the high tide line. The gravel is clean because of the current. Shellfish have a hard time establishing themselves in moving waters. The dock's orientation is a reflection of the property configuration. He added that moving the dock would infringe on the neighboring properties' riparian rights. He addressed the impact from shading from the dock by saying that the shading does promote fish habitat. He indicated the proposed dock location is the best fit for the area. There are no reasonable alternatives. The proposed dock meets state and federal requirements.

Ms. Mozian asked Mr. Ludwig if he would make any alterations to the design as submitted.

Mr. Ludwig stated he would not.

Eric Bernheim, Atty. for the property owners, stated it is the Commission's duty to determine which consultant makes a better case. They did bring in Mr. Ludwig to conduct a third party review after the last hearing to see if there were any alternatives and Mr. Ludwig did not find any. He again asked that the contents of the previous application be incorporated into the record.

Bureau of Aquaculture(BOA.) The BOA found the proposed dock would not significantly impact any shellfish areas.

3. In a letter dated June 3, 2015 to the CT DEEP Office of Long Island Sound, the Westport Shellfish Commission stated:
 - a. "There is a very healthy stand of Spartina growing in and around the area of the proposed dock. Two to four pilings are proposed directly in this stand. We recommend the spacing of the pilings be reconfigured to provide a wider span to reduce the number of pilings directly within the Spartina growth.
 - b. This area of the Saugatuck is known to ice over in the winter. The ramp should be removed and the float elevated during the winter to avoid scour and eliminate the possibility of them dislodging.
 - c. Restrict installation of the boat dock facility to between October and May to avoid impact to Spartina growth.
 - d. Recommend the OLISP consider the impact of raising the seawall by 18" which could increase scour in front of the wall resulting in impact to Spartina growth and shellfish habitat."
 - e. An e-mail dated July 12, 2016 was sent by Alicia Mozian, Conservation Department Director to Kristen Bellantuono, Environmental Analyst with the DEEP Office of Long Island Sound Programs. The content of the e mail included concern with the proposal to raise the existing seawall by one foot and the possible impact it would have to abutting property owners and possible increase in scouring. She also relayed the concern expressed by the neighbor at 111 Harbor Road about the short distance between the proposed dock and the existing dock at 117 Harbor Road which is only 15.7 ft. Subsequent to Ms. Mozian's e-mail, the raising of the seawall was eliminated from the project proposal. Instead, only a 4 inch cap on the existing seawall is planned.

Property Description:

1. Location of WPLO boundary:15 ft from the 9 ft contour. The dock lies wholly within the WPLO.
2. Property is outside the Aquifer Protection Overlay Zone but does lie within a groundwater recharge area identified as fine-grained stratified drift.
3. Coastal Area Management: Property located within CAM zone. The coastal resources are identified as: Near Shore Waters, Shellfish Area and Coastal Flood Hazard Area. According to the DEP CAM Manual dated 2000 these resources are described as follows:

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

Shellfish Concentration Area areas support an important source of food, provide recreational shellfishing opportunities, provide economic opportunities for the shellfish industry, and provide employment through the shellfish industry.

Nearshore Waters are those waters and their substrates lying between mean high water and a depth approximately by the ten meter contour.

Discussion: Section 30-93 of the WPL Ordinance requires that the Conservation Commission consider the following when reviewing an application:

" 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 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 latest revised plans of August 17, 2016 removes the proposal to elevate the existing seawall and to only provide a 4" cap as a method of repair. Originally, scuppers were provided to allow flood waters to pass and repass through an elevated seawall. This proposal has also been eliminated.

The Flood and Erosion Control Board approved the application at its July 6, 2016 hearing.

Permit conditions imposed by the CT DEEP/OLISP in its approval include the following Special Conditions:

1. Work is authorized to take place between November 1st and April 30th of any given year to minimize possible destruction of terrapin hatchlings and eggs on shore.
2. The permittee shall seasonally remove the ramp and floating dock authorized herein no later than November 15th of any calendar year and shall not install such ramp and float before April 15th of any calendar year.
3. All work conducted by barge or work boat shall only be conducted during high water and said barge or work boat shall move to deeper waters during low water conditions.
4. The Permittee shall establish a minimum of a 10 ft setback from the tidal wetland area in and adjacent to the area where work is to be conducted or areas which are to be used for access to the work area.
5. Except as authorized within, no equipment or material including but not limited to fill, construction materials, excavated material or debris shall be deposited, placed or stored in any wetland or watercourse on or off-site, or within any delineated setback area or shall any wetland, watercourse or delineated setback area be used as a staging area or accessway other than as provided herein.
6. At no time shall any barge be stored over the intertidal flats, submerged aquatic vegetation or tidal wetland vegetation or in an area that interferes with navigation.

These conditions are consistent with the comments received from the ACOE dated 7/8/15 in which they said that the proposed dock construction should not result in the grounding of vessels during construction and no staging of materials or equipment take place within tidal wetlands.

Testimony received from Michael Ludwig included reference to his 33 years of experience with National Marine Fisheries designing habitat mitigation and was involved in reviewing over 30,000 dock permit applications. When asked about the impact to Spartina growth by the proposed dock, Mr. Ludwig stated the U.S. Army Corps and CT. DEEP adopted General Permit Conditions for docks to guard against impacts to shading,

which require that a dock have no more than a 4 ft. wide pier and be a minimum of 4 ft. above the salt marsh to qualify for a General Permit. The proposed dock at 115 Harbor Rd. is 5 ft. above the Spartina and the pier is 4 ft. wide thus meeting General Permit requirements. He added that docks should be placed in a north-south direction to allow maximum exposure to sunlight and that that orientation is more important than the spacing of the planking on the boat dock components. In addition, Mr. Ludwig testified that there is an impact to float pilings from icing conditions and that is why the CTDEEP often requires them to be removed in the winter as is the case with this particular application.

Ms. Gadwa of REMA Ecological Services testified that this dock is oriented 30 degrees off the north-south orientation and should be re-oriented.

Applicant, Thomas Ryder of LandTech testified that he had explored reorienting the dock location but the constraints of Zoning's side-yard setbacks, water depth, and the configuration of the lot and its extended riparian area which is narrower than the front of the lot, restricts the size and location of the dock.

Therefore, based on the evidence of record, including the fact that the raising of the seawall has been eliminated from the proposal, the F&ECB approved the application, and safeguards to protect the Spartina and Terrapin habitat have been imposed by the CT DEEP's permit conditions, the Conservation Commission finds the application will not cause impact to the waterway as it relates to Section 30-93 of the Waterway Protection Line Ordinance.

Conservation Commission
TOWN OF WESTPORT
Conditions of Approval
Application # WPL 10311-16
Street Address: 115 Harbor Road
Assessor's Map: B 02 Lot: 143
Date of Resolution: November 16, 2016

Project Description: Construction of a private dock, reorientation of stairs to accommodate the new dock, and placement of a four-inch cap on top of existing seawall. The entire site is within the 25-year floodplain of the Saugatuck River.

Owner of Record: Life on the Water, LLC c/o L. Adele Weitzman

Applicant: LandTech Consultants

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 10311-16** 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. "Existing Conditions Plot Plan Prepared for L. Adele Weitzman, 115 Harbor Road, Westport, Connecticut", Scale: 1" = 20', dated April 10, 2015, prepared by Leonard Surveyors LLC
 - b. "Site Improvements for a Proposed Dock, Site Plan Prepared for Lisa Weitzman, 115 Harbor Road, Westport, CT", dated June 14, 2016, revised to August 17, 2016 prepared by LandTech
13. Conformance to the Connecticut DEEP approval of Permit #201506504-KB and its stated conditions.
14. Conformance to the Army Corps of Engineers General Permit conditions and specific condition of July 8, 2015 stating: No grounding of vessels during construction and no staging of materials or equipment within tidal wetlands."
15. Conformance to the conditions of the Flood and Erosion Control Board of July 6, 2016.
16. An "as built" plan with dock details and finish wall height shall be submitted to the Conservation Department prior to the issuance of a Conservation Certificate of Compliance.
17. Work is authorized to take place between November 1st and April 30th of any given year. The ramp and float shall be seasonally removed no later than November 15th of any calendar year and not be reinstalled before April 15th of any calendar year.

This is a conditional approval. Each and every condition is an integral part of the Commission decision. Should any of the conditions, on appeal from this decision, be found to be void or of no

legal effect, then this conditional approval is likewise void. The applicant may refile another application for review.

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

**Motion: Rycenga Second: Shea
Ayes: Rycenga, Shea, Davis, Bancroft, Porter
Nays: None Abstentions: None Vote: 5:0:0**

3. Kings Highway South, Map B7, Lot 46 and 61 Kings Highway South, Map B7, Lot 45:

Application #IWW,WPL-10293-16 by Richard Bennett on behalf of Joseph Mark Valeski to construct a new house and driveway with required drainage detention proposed on Lot 46. Approximately 38% of the land will be developed by placement of 2 feet +/- of pervious fill. A small boulder wall will delineate the filled portion of the property. Regrading and filling will also occur on 61 Kings Hwy South. Portions of the work is within the upland review area and the WPLO area of an unnamed tributary to the Saugatuck River.

Rich Bennett presented the application on behalf of the property owners. The property was subdivided in 1971. The total lot is within the 50-foot upland review area. The owner is trying to sell the lot and this is being used to give prospective buyers an idea of what can be done with the lot. There will be some loss of wetlands in order to access the property. They have proposed a 2 to 2.5-foot retaining wall outside the wetland that is at least 5 feet away from the wetland. This will serve as the limit of disturbance. There is a planting buffer between the wetland and the retaining wall. The property is serviced by sewer. The patio and driveway will be permeable. It is noted that there will be no basement. This is so as to not disrupt groundwater flow. The detention system is located under the driveway. The overflow is directed to the buffer planting area. Test pit show 3.5 to 4 feet of fill over original soils. The fill was done in the 1970's before the wetland regulations. Mr. Bennett noted that 1,300 s.f. of wetland will be filled in order to access the property out of 18,650 s.f. of wetlands. He discussed the pipe locations that were discussed at the Flood and Erosion Control Board meeting.

Aleksandra Moch, soil scientist, professional wetland scientist and hydrogeologist, described the existing conditions. She noted this is a highly degraded wetland. Before the wetland was filled, it was a red maple swamp. It is disturbed by a sewer easement, 2 pipes, a retaining wall along the southern property line and the filling that took place prior to the adoption of the wetland regulations. Groundwater recharge is the primary function of this wetland with some flood storage. There is good filtration. There is existing soil stabilization by woody vegetation along the stream embankment. The wetland is part of a larger wetland corridor. The retaining wall will be installed first and the silt fence would be installed as protection for the wetland during construction. There will be a mud-tracking pad. The retaining wall would be the limit of disturbance. There will be no major excavation since there is no basement. No basement means no interruption of groundwater flow. They will be dewatering for the sewer hook-up and a dirt bag would be used during this time. She discussed the mitigation plans. There is no vegetation removal as it is all lawn now. There is a planting plan in place for the top of the wall that would be a minimum width of 3 feet wide. The planting buffer at the bottom of the retaining wall will include 71 native shrubs. She described the restoration of the wet meadow, which includes aerating the lawn, then applying compost, then overseeding with meadow mix. She suggested monitoring the meadow for three years for invasives. Mowing would take place in November to prevent the growth of woody vegetation. She stated in reference to the WPLO, the waterway would be improved by the introduction of the meadow with the higher density of plants and inviting pollinators.

Ms. Rycenga asked why there are two stockpile areas.

Mr. Bennett indicated that he believes the stockpile area at the front of the property would be the one most likely used.

Ms. Rycenga asked how the wall location was chosen.

Mr. Bennett stated the 5 feet from the northern property line was chosen to comply with Planning & Zoning regulations. The 5 feet from the wetland was chosen because he felt that giving something of a yard was necessary.

Ms. Rycenga asked about a future pool location.

Mr. Bennett stated the setback is 35 feet from the wetland.

Ms. Mozian noted that she is concerned with a possible future pool as it is the same concerns for disruption of groundwater flow as having a basement in this location.

Mr. Bennett submitted examples of proposed pools for the Commission's review. The pools were 4 feet in depth.

Ms. Mozian noted that a pool is not a part of the proposed application and she indicated she would want to see a future pool and its location come back to the Commission.

Mr. Bennett stated a pool is something that most people are looking for and asked the Commission to consider adding it to their approval.

Ms. Mozian stated it would have to be renoticed to be included and the plans changed to include the pool location. She asked the Commission whether a conservation easement was necessary to protect the meadow.

Ms. Moch stated the wetland is already a protected area. A conservation easement is not going to do anything more.

Ms. Mozian noted that monitoring of the meadow area for the three years will be beneficial and once the owners see it growing they may be more willing to maintain it.

Mr. Bennett reviewed staff comments from the summary in the staff report.

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

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

Findings

**Application #IWW, WPL 10293-16
Kings Highway South, Map B7, Lot 46 (currently vacant)
61 Kings Highway South, Map B7, Lot 45
Public Hearing Date: November 16, 2016**

- 1. Application Request:** To construct a new house, driveway, 2 ½ ft. boulder retaining wall and accompanying drainage appurtenances and 2 ft. +/- of fill on vacant Lot 46 (lot 2) and, regrading and fill on proposed temporary easement area on 61 Kings Highway South. Portions of the work are within the wetland, the 50 ft., 30 ft. and 20 ft. upland review area and the WPLO area of an unnamed tributary to the Saugatuck River.
- 2. Permits issued for this Property:**
 - IWW/M-9940-14- Approved January 21, 2015

3. Plans and Reports reviewed:

10. "Site Preparation Plans for a Proposed Residence on Lot 2, Site Plan, Details & Notes" prepared for Joseph Mark Valeski, 61 Kings Highway South, Westport, CT (Map B07, Lot 045), Prepared by Richard Bennett & Associates, LLC, dated September 14, 2016, revised to October 17, 2016, scale as shown.
11. Architectural Plans, Sheets 1-5 entitled: "Kings Highway So. "View from Driveway," "First Floor Plan," "Second Floor Plan," "Half Story," "Foundation Perimeter," prepared by Robert Storm Architect dated September 15, 2016, scale 1/8" = 1' 0".
12. "Drainage Report" 61 Kings Highway South, Lot 2, Westport, CT prepared by Richard Bennett & Associates, LLC, dated September 14, 2016, revised to October 14, 2016.
13. Soils Report Summary- prepared by Soil Scientist, Otto Theall, dated October 28, 2014.

4. Soils Description

Mr. Theall described the soils on the vacant property, "Lot 2) a/k/a Lot 45, as:

The wetland soils on site are described as:

Ridgebury, Leicester and Whitman soils (3): 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 water table 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.

Mr. Theall describes the non-wetland soils as the following:

Udorthents, smoothed (308): This unit consists of areas that have been altered by cutting or filling. The areas are commonly rectangular and mostly range from 5 to 100 acres. Slopes are mainly 0 to 25 percent. The materials in these areas are mostly loamy, and in the filled areas it is more than 20 inches thick. Some of the filled areas are on floodplains, in tidal marshes, and on areas of poorly drained and very poorly drained soils. Included in this unit in mapping are small areas of soils that have not been cut or filled. Also included are a few larger urbanized areas and a few small areas containing material such as logs, tree stumps, concrete, and industrial waste. A few areas have exposed bedrock. Included areas make up about 30 percent of this map unit. The properties and characteristic of this unit are variable, and the unit requires on-site soil investigation and evaluation for most uses.

5. Property Description

- a. The site plan labels the lot area as .722 acres. The drainage report and Assessor's card list it as .79 acres. This discrepancy needs to be addressed as it has an impact on overall proposed site coverage.
- b. The property is in a Residential A Zoning District which requires a minimum of a ½ acre.
- c. The property is serviced by public water and sewer. A town sewer easement aligns the southern property line and crosses the back, or eastern property line.
- d. A 250 ft. long retaining wall aligns the southern half of the property. The Birchwood Country Club abuts the property to the north. Lot 2 is approximately 1 ft. higher.
- e. The property is outside the Aquifer Protection Overlay Zone and is not within the primary groundwater recharge area.

- f. The property is not located within the Coastal Area Management Area.
 - g. The property is not located within a FEMA-designated Special Flood Hazard Area.
 - h. A brook is located in the rear of Lot 2 which is part of a larger wetland and watercourse system that drains from the north to the Saugatuck River.
 - i. The Town of Westport Wetlands Inventory prepared by Flaherty, Giavara Associates, describes this wetland system as a streamside floodplain with an intermittent watercourse and wooded swamp (not including cleared area. The dominant vegetation is Red Maple and Tussock Sedge. The perimeter of this wetland system is forested with 50% developed residentially and 50% by a golf course. The wetland system is hydraulically connected to an unnamed brook on the easterly property line and is a tributary to the Saugatuck River.
 - j. The WPLO boundary is located 15' from the flagged wetland boundary.
 - k. Landscape position of this parcel is a backslope. Land surface shape is linear/linear.
- 6. Lot History:** As noted above in the soil description, "Lot 2" contains a large area of wetland and filled wetland. Because both the developed lot and the vacant lot are in the same ownership, the two lots would have ordinarily merged since the lot in front did not meet the required lot shape requirement. However, because of a variance issued in 1971 for lot shape, the lots did not merge and Lot 2 is considered a legal building lot.* This is confirmed in a letter dated May 1, 2014 written to the current owners of the property from the former P&Z Department Director, Larry Bradley.

In addition to the variance, a Special Permit for filling on Lot 2 was issued on January 18, 1973 with conditions by the Planning and Zoning Commission. It is evident from the wetland boundary map amendment that was approved pursuant to Application #IWW/M-9940-14 that the area that was filled had been wetlands. However, the Westport wetland and watercourse regulations were not adopted until April of 1973 and therefore, the filling occurred before the regulations were adopted.

(N.B. * since there were no wetland regulations in 1971, no lot area variance would have been needed. At the time, the entire Lot 2 contained wetlands according to our maps.)

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

a. 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 entire house is located within the 50 ft upland review area.
- The driveway encroaches into the wetland by 1,200 sq.ft. and within the 30 ft. upland review area.
- The proposed 2 ft. +/- boulder retaining wall is located within the 30 ft. upland review area.
- A portion of the fill for the driveway and house grading is within the 20 ft upland review area.
- Approximately 38% of the land will be developed by placement of 2 feet +/- of fill.
- The 2 ft. +/- boulder retaining wall will delineate the filled portion of the property

- The driveway will be permeable but no detail has been submitted to support how it will be constructed.
- The house will have no basement and will be built on either a slab or crawlspace.
- The retaining wall is meant to limit the developed area from the "natural" area.
- Test pit data shows 0" to 8" of topsoil over up to 4 ft of fill comprised of soil, stones, rocks and debris. Beneath the 4ft. of fill is silt and organic matter. In order to install a functioning drainage system, new select fill will be brought in to accommodate the 96 ft of 18 " high concrete galleries.
- The existing lawn area in the rear, which was the wetland area not subject to past filling, will be overseeded with a flowering meadow mix. A 3 ft wide planting bed is proposed above the wall in the rear and northern side yard. A minimum of a 5 ft. planting buffer below the wall would extend from the wall to the wetland and would surround the entire perimeter of the area of lot development.

Given the fact that this is now a legal building lot and the only access to the lot is to encroach over a portion of the wetland, the Commission would be hard-pressed to deny that access. Minimizing the impact should be the focus of the Commission.

b. 6.2 WATER QUALITY

- h) flushing rates, freshwater sources, existing basin characteristics and channel contours will not be adversely altered;
- i) water stagnation will neither be contributed nor caused;
- j) 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;
- k) pollution of groundwater or a significant aquifer will not result (*groundwater recharge area or Aquifer Protection Overlay Zone*);
- l) all applicable state and local health codes shall be met;
- m) 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;
- n) prevents pollution of surface water

The distance between the brook and the wetland boundary is 70 ft at its closest point. The majority of that wetland area is now lawn. The applicant proposes to convert the lawn area to a meadow. This is supported but staff has concerns over its long-term maintenance as a meadow. Water quality should not be an issue as long as that area adjacent to the brook does not become heavily fertilized. The property is served by sewer and the oil tank would be in the house.

c. 6.3 EROSION AND SEDIMENT

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

Lot 2 is a "flag" lot. A mud-tracking pad is proposed where the end of the existing gravel driveway ends that serves the house at #61. Stockpile areas are proposed in the front and back of the house and outside the wetlands. The stockpile in the rear of #61 Kings Highway

South is quite large. It is surmised that it is larger because in order to install the new drainage system, the existing fill material will have to be excavated out as it is unsuitable. New fill material will then need to be brought into the site. Furthermore, evidence of gray silt and organic material is found at 42 inches with water evident at 60 inches. Provisions for dewatering should be contemplated and submitted. Dewatering may also be needed for the 6 ft. deep sewer lateral installation.

A temporary "right-to-grade" easement is proposed on 61 Kings Highway North to accommodate the grading for the fill for the drainage, driveway and house design. This temporary easement will be recorded on the land records to alert future property owners.

Finally, the Commission finds that the proposed 2ft. +/- boulder retaining wall should be constructed first as a means of limiting site disturbance, and preventing wetland encroachment, during construction.

d. 6.4 NATURAL HABITAT

- g) critical habitats areas,
- h) the existing biological productivity of any Wetland and Watercourse shall be maintained or improved;
- i) breeding, nesting and or feeding habitats of wildlife will not be significantly altered;
- j) movements and lifestyles of fish and wildlife (plant and aquatic life) will not be significantly affected;
- k) periods of seasonal fish runs and bird migrations shall not be impeded;
- l) conservation or open space easements will be deeded whenever appropriate to protect these natural habitats

The wetland area primarily now exists as lawn though there is woody vegetation directly adjacent to the brook. The applicant proposes the lawned wetland area become a meadow established through it being seeded with a flowering meadow mix. This is supported by the Commission especially for its ability to promote use by pollinators. The concern is the long term management of the meadow to control the infestation of invasive plants that would outcompete the meadow. This could take several years. In addition, if the desire is to keep it as a meadow, it would also need to either be mowed seasonally or weeded to remove tree saplings. The Commission therefore finds it necessary to impose a three year monitoring program overseen by a qualified wetland scientist to ensure the meadow work is done and maintained properly

A 3 ft wide planting buffer is also proposed above the 2 ft +/- high boulder retaining wall in the rear yard and northern side-yard. A minimum 5 ft wide planted buffer is proposed below the wall would extend from the wall to the wetland and surround the area of development. The plant list identifies 71 native tree and shrub species to be installed but Schedule C lists 230 plantings. The applicant needs to clarify that in future planting plan submissions. In measuring the perimeter area of approximately 360 linear ft., the 230 plantings seems more beneficial but it depends on the species selected.

Finally, the Commission finds that the 2 ft. +/- boulder retaining wall should not be constructed with mortar. Mortar precludes the habitat potential of the wall for a variety of species such as snakes and chipmunks.

e. 6.5 DISCHARGE AND RUNOFF

- f) the potential for flood damage on adjacent or adjoining properties will not be increased;

- g) the velocity or volume of flood waters both into and out of Wetlands and Watercourses will not be adversely altered;
- h) the capacity of any wetland or watercourse to transmit or absorb flood waters will not be significantly reduced;
- i) flooding upstream or downstream of the location site will not be significantly increased;
- j) the activity is acceptable to the Flood & Erosion Control Board and or the Town Engineer of the municipality of Westport

The Flood and Erosion Control Board reviewed the application at its October 5th and November 2nd, 2016 meetings. Because of the past fill activity on the lot, special attention must be given as to the type of drainage system that can operate in a fill situation with a high water table. The applicant is proposing 96 ft of 18" high concrete galleries set in fill. It is anticipated that the existing soil will be removed to make way for the select fill that is needed to install the gallery system as the existing soil is composed of soil, stones, rocks and debris from past filling activity.

The applicant's proposal to build the house on slab or a crawlspace is commendable and essential to avoid displacement of groundwater onto adjacent properties to the north and south. This should not prove to be a hardship to selling the property as the applicant has submitted an architectural rendering of a 6 bedroom house on the lot with storage area available in the half-story.

Similarly, the application does not include an in-ground pool. For the same reasons why no basement is recommended, the lot is limited for pool installation as well. The Commission finds that any future pool design, whether it is in the 35 ft. upland review area or not, be reviewed by the full Commission for its possible impact.

Furthermore, the applicant proposes a permeable driveway. The patio should also be permeable. The Commission finds that a detail of both be submitted to ensure they are installed as such.

f. 6.6 RECREATIONAL AND PUBLIC USES

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

The project will not adversely impact recreational or public use of the property.

8. Waterway Protection Line Ordinance

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

Discussion:

The brook in the rear of Lot 2 along the eastern property line is an unnamed tributary to the Saugatuck River. There is no FEMA-designated 100 year floodplain nor a 25 year floodplain associated with the brook. Therefore, the WPLO boundary is established 15 ft from the wetland boundary. Encroachment into the WPLO includes: a small portion of the proposed garage, the majority of the driveway and the majority of the drainage galleries and high level overflow spreader in the rear of the house.

The Flood and Erosion Control Board approved the application at its November 2, 2016 meeting with the following special conditions:

"a. *The Proposed Retaining Wall:* The wall to the rear of the dwelling shall be installed prior to the development of the remainder of the site so as to act as a sedimentation and erosion control structure for the construction phase of development. This wall is to remain onsite as part of the site, and be maintained in perpetuity.

b. *Dwelling Construction: Slab on Grade, No Basement.* Due to the nature of the underlying soil and the existing groundwater table on the site, the proposed dwelling shall not be designed with a basement. It shall be a of a "slab on grade" style of construction.

c. *Drainage Pipe Coming off the Site:* Should any existing drainage structures or piping be discovered on the site that are not currently depicted on the submitted plans, it shall be the responsibility of the contractor investigate the nature and extent of such entities, and if required, modify the proposed design so as to create no adverse drainage impacts to the or the surrounding properties Any such modifications shall be reviewed by the Town Engineering Department to verify compliance with all Town requirements."

9. Conclusion:

The Commission finds that with the following design elements and conditions of approval employed the project will not cause an impact to the wetlands and waterways on the property:

1. Construction of the 2 ft +/- boulder retaining wall first to limit site and wetland disturbance during construction. Said wall should not be constructed with use of mortar.
2. Installation of the sediment and erosion controls provided by the applicant with the additional submission of a dewatering plan, should it become necessary. No stockpiling of material will be permitted in the rear yard adjacent to the wetland.
3. Installation of a permeable driveway and patio.
4. Any future house design may not include a basement and should be built on a slab or crawlspace.
5. Similarly, the application does not include an inground pool. For the same reasons why no basement is recommended, the lot is limited for pool installation as well. Any future pool design, whether it is in the upland review area or WPLO area or not, be reviewed by the full Commission for its possible impact.
6. Submission of a management plan for establishment of the wetland meadow to promote pollination.
7. Submission of a detailed planting plan for the wetland buffer planting area. Said plan should include native species in a quantity and variety that will establish a protective buffer. The wooded area adjacent to the brook should remain undisturbed.

**TOWN OF WESTPORT
CONSERVATION COMMISSION
CONDITIONS OF APPROVAL
RESOLUTION: APPLICATION #IWW,WPL-10293-16
KINGS HIGHWAY SOUTH, MAP B7, LOT 46 AND 61 KINGS HIGHWAY SOUTH, MAP B7, LOT 45
PUBLIC HEARING DATE: NOVEMBER 16, 2016**

Project Description: To construct a new house, driveway, 2 ½ ft. boulder retaining wall and accompanying drainage appurtenances and 2 ft. +/- of fill on vacant Lot 46 (lot 2) and, regrading and fill on proposed temporary easement area on 61 Kings Highway South. Portions of the work are within the wetland, the 50 ft., 30 ft. and 20 ft. upland review area and the WPLO area of an unnamed tributary to the Saugatuck River.

Owner of Record: Joseph Mark Valeski

Applicant: Richard Bennett, P.E. Bennett & Associates

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-10293-16 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 November 2, 2016.

SPECIAL CONDITIONS OF APPROVAL

17. Conformance to the plans entitled:
 - a. "Site Preparation Plans for a Proposed Residence on Lot 2, Site Plan, Details & Notes" prepared for Joseph Mark Valeski, 61 Kings Highway South, Westport, CT (Map B07, Lot 045), Prepared by Richard Bennett & Associates, LLC, dated September 14, 2016, revised to October 17, 2016, scale as shown.
 - b. Architectural Plans, Sheets 1-5 entitled: "Kings Highway So. "View from Driveway," "First Floor Plan," "Second Floor Plan," "Half Story," "Foundation Perimeter," prepared by Robert Storm Architect dated September 15, 2016, scale 1/8" = 1' 0".
18. This house or any future house design shall be constructed on a slab.
19. The "Temporary Right to Grade Easement" as shown on the plan shall be recorded on the land records with a copy submitted to the Conservation Department prior to issuance of a zoning permit.
20. Upon the start of construction, the retaining wall shall be built first and serve as the limit of disturbance for site development. Said retaining wall shall not be mortared.
21. The location of the retaining wall around the house as shown on the plans shall not be expanded closer to the wetland.
22. Any future pool will need to return to the Commission for approval. The Commission may at that time direct staff to approve the pool pending pool design and substantiating evidence that it will not adversely impact groundwater flow or exacerbate flooding conditions.
23. The driveway and patios shall be constructed as permeable with a detail of each submitted to the Conservation Department prior to issuance of a zoning permit. The driveway and patio shall remain permeable in perpetuity with said restriction placed on the land records prior to issuance of a Conservation Certificate of Compliance.
24. A management plan for establishment of the wetland meadow to promote pollinator habitat shall be submitted prior to issuance of a Conservation Certificate of Compliance. Said plan should include a method for removing invasive plant species as needed.
25. A detailed planting plan shall be submitted for the wetland buffer planting area. Said plan should include native species in a quantity and variety that will establish a protective buffer. The wooded area adjacent to the brook should remain undisturbed.
26. A bond to cover the cost of sediment and erosion controls, wetland buffer plantings, the flowering meadow mix and three (3) years of monitoring of establishment of the wet meadow by a qualified wetland scientist shall be submitted prior to issuance of a zoning permit.
27. The stockpile area identified on the site plan in the rear portion of the property is not permitted; no stockpiling of material in the rear yard adjacent to the wetland is authorized.

28. A dewatering plan shall be submitted to the Conservation Department prior to issuance of a zoning permit should dewatering become necessary for installation of the sewer lateral for the house.
29. The existing pipe located in the rear yard and which discharges into the stream shall be removed to the point where the outlet is 20 ft from the top of the stream embankment.

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: Porter Second: Shea
Ayes: Porter, Shea, Davis, Bancroft
Nays: None Abstentions: Rycenga Vote: 4:0:1

