

**MINUTES**  
**Conservation Commission**  
**Continued Show Cause Hearing**  
**October 8, 2019**  
**34 Burr School Road**

Attendance:

Anna Rycenga, Chairman  
Steve Cowherd  
Mark Perlman  
Paul Lobdell  
Tom Carey  
Paul David

Staff:

Alicia Mozian, Conservation Director  
Gillian Carroll, Conservation Compliance Officer

Also Present:

Michael Garaffa, Owner  
Joseph Porto, Attorney and representative of owner  
Patricia Strauss, Town Clerk

Anna Rycenga welcomed the Commission and associated parties. She began by opening the meeting with introductions of everyone present and purpose of this continued special meeting.

Patricia Strauss gave the oath to all present in the room and all present raised their right hands and pledged their oath to tell the truth.

Recess of meeting at 9:37 AM to await arrival of Attorney Joseph Porto.

Attorney J. Porto arrived at 9:54 AM. The meeting was called back to order. Patricia Strauss read the oath to Attorney Porto and the meeting resumed.

A. Rycenga read the Notice into the record:

In accordance with section 7.1 and 4.2.1 of the Regulations for the Protection and Preservation of Wetlands and Watercourses for Westport, Connecticut, a Continuance of the Show Cause Hearing of the Westport Conservation Commission will be held on Tuesday, October 8, 2019 at 9:30 am in room 309 of

the Westport Town Hall, 110 Myrtle Avenue to consider a Cease & Desist Order issued to the property owners 34 Burr School Road (Assessor's Map F11, Lot 072) for cutting, clearing, filling and excavating within 20' of the non-disturbance upland review area within a wetland and without obtaining a permit from the Conservation Department.

A. Rycenga addressed the staff and asked if there have been any updates or comment to offer.

G. Carroll stated the homeowner, Mr. Michael Garaffa and his representation, Attorney J. Porto have been very cooperative and thorough. The soil report was completed quickly after the September 6<sup>th</sup>, 2019 meeting and followed by the updated survey with newly delineated soil report by Steven Danzer, P.H. D, received on September 10, 2019.

A. Rycenga then asked if Mr. Porto or Mr. Garaffa had anything they wanted to state.

J. Porto stated his client paid the Citation Fine of \$2,000 and is willing to cooperate to get his property back into compliance under the direction and supervision of the Conservation Commission and staff and would like to take advantage of the remainder of the growing season.

G. Carroll stated questions the Commission wanted answered for this meeting. Including how many cubic yards of fill material had been brought in and the 2018 appraisal photos of the home.

Attorney J. Porto stated there is no way to determine the amount of fill brought in in regards to cubic feet as his client is no longer in contact with the contractor and there was no written contract at the start of work.

Tom Carey referred to photos from the website "realtor.com" to ask questions about the natural slope in the rear yard in comparison to its current state.

G. Carroll said she will print and add the photos from "realtor.com" to the file for reference.

Steve Cowherd asked a question about the soil report and delineation of the wetlands.

A. Mozian described the soil profiles and the determination of upland soils versus the wetland soils.

Paul Lobdell asked a question in reference to the flag numbers and soil profiles and how they correspond in the soil report.

A. Rycenga asked about the intent of the use of the fill brought in and estimated amount of fill.

J. Porto answered it cannot be estimated. They cannot answer the question and it was not intentional.

M. Perlman stated that they paid the \$2,000.00 fine and would like to know the impact to the wetlands if the fill stayed within the non-disturbance area.

A. Mozian described the area that has been filled and cleared which will now have newly exposed light and excess nutrient content, which can alter the physical characteristics of the wetland.

G. Carroll explained the impact of the wood chips deposited.

A. Rycenga further explained what the Commission is here to do, affirm, revise or remove the Cease and Desist Notice.

T. Carey stated the wood chips and the fill within the Commission's jurisdiction, which includes the wetlands and the 20 ft. non-disturbance area, will be removed.

S. Cowherd asked about the Commission's jurisdiction over this violation as it relates to the location of the fill.

A. Mozian referred to the Town of Westport's Inland Wetlands and Watercourse Regulations to clarify Commission's jurisdiction.

P. Davis stated plantings within the regulated area for remediation are a necessity.

P. Lobdell asked if the homeowner knows the origin of the fill, if the fill brought in has been tested for toxins and if it had not been tested; he would like to see that it is tested.

J. Porto stated they are willing to do whatever the Commission would like to see done to remediate the disturbed area and bring his clients property back into compliance.

T. Carey noted more than just seed and hay will be required for remediation.

T. Carey then asked about the origin of the pipes discharging into the wetland.

M. Garaffa said that the pipes are coming from the house roof leaders and into the catch basin.

A. Rycenga identified the pipe in question for the record. Pipe is located in NW corner of property near headwall.

G. Carroll noted a map amendment will need to be done as part of the conformance process to reflect the new wetland flagging.

A. Mozian clarified to the homeowner the purpose and process of the map amendment.

A. Rycenga listed items to be addressed in order for the property owner to get his property into compliance.

The Commission agreed that the Cease and Desist Order will be removed from the land records once the following conditions have been met:

1. The fill and woodchips placed within the wetland shall be removed by hand. The fill and woodchips placed within the 20-foot non-disturbance area shall be removed with the supervision and determination of process by a professional licensed soil scientist. The Conservation Department staff shall inspect the property upon fill removal.
2. A remediation-planting plan for the wetland and 20-foot non-disturbance area shall be submitted for review and approval to the Conservation Department staff. Said planting plan shall include native plantings consisting primarily of trees and shrubs and not just seed mix. Said plantings shall be installed and inspected by Conservation Department staff.
3. A licensed Professional Engineer shall be consulted to determine the nature and location of the existing pipes on the property. The portion of any pipe which extends into the 20 ft. non-disturbance area shall be eliminated with said pipe outfall to include a method for dissipating velocity.

4. A sediment and erosion control plan shall be submitted for review and approval by the Conservation Department prior to fill removal.
5. The newly deposited fill material shall be tested for toxins with said test results submitted to the Conservation Department prior to fill removal.
6. An electronic version of the survey map submitted dated September 17, 2019 prepared by Walter H. Skidd, L.S. CT Reg. # 14663 showing the newly flagged wetland boundary prepared and certified by Steven Danzer Ph.D., CPSS, #353463 shall be submitted for a future wetland boundary map amendment application by Conservation Department staff. A \$200 fee is required.

Motion to affirm issuance of Cease and Desist Order dated August 30, 2019 with said removal base on the conformance with the conditions as read.

Motion: Anna Rycenga

Second: Mark Perlman

Ayes: Rycenga; Perlman, Lobdell, Cowherd, Carey

Vote: 6:0:0

Motion to adjourn: Anna Rycenga

Second: Paul Davis

Ayes: Rycenga, Davis, Perlman, Lobdell, Cowherd, Carey

Vote: 6:0:0.

Hearing adjourned at 10:52 A.M.