

**RE-APPLICATION OF SUMMIT SAUGATUCK LLC  
FOR EXTENSION OF PRIVATE SEWER FROM  
DAVENPORT LANE TO HIAWATHA LANE AND  
HIAWATHA LANE EXTENSION; ALLOCATION OF  
SEWER CAPACITY; AND APPROVAL TO CONNECT  
RESIDENTIAL DEVELOPMENT**

**February 7, 2020**

Timothy S. Hollister  
[thollister@goodwin.com](mailto:thollister@goodwin.com)  
Shipman & Goodwin LLP  
One Constitution Plaza  
Hartford, CT 06103-1919  
PHONE: (860) 251-5000

David R. Ginter, P.E.  
[d.ginter@rednissmead.com](mailto:d.ginter@rednissmead.com)  
Redniss & Mead, Inc.  
22 First Street  
Stamford, CT 06905-5101  
PHONE: (203) 327-0500

Felix T. Charney  
[fcharney@summitdevelopment.net](mailto:fcharney@summitdevelopment.net)  
Summit Saugatuck LLC  
55 Station Street  
Southport, CT 06890  
PHONE: (203) 354-1500

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Timothy S. Hollister  
Phone: (860) 251-5601  
Fax: (860) 251-5318  
thollister@goodwin.com

February 7, 2020

VIA HAND DELIVERY

Mr. James Marpe  
First Selectman and Chair  
Water Pollution Control Authority  
Town of Westport  
110 Myrtle Avenue  
Room 310  
Westport CT, 06880

Re: Re-Application of Summit Saugatuck LLC for Extension of Private Sewer From Davenport Lane to Hiawatha Lane and Hiawatha Lane Extension; Allocation of Sewer Capacity; and Approval to Connect Residential Development

Dear First Selectman Marpe and WPCA Members:

On behalf of our client Summit Saugatuck LLC ("Summit"), we are re-submitting this application to the Westport Water Pollution Control Authority, requesting a private sewer extension from Davenport Lane to Hiawatha Lane and Hiawatha Lane Extension; a sewer capacity allocation; and approval to connect to the sewer system a proposed multi-family residential development. The extension will be installed along the frontage of eight additional existing homes fronting on Hiawatha Lane, which by town ordinance should also be connected.

This application is filed with the WPCA under General Statutes § 7-246a, and thus should be processed in accordance with the procedures and timeframes referred to in that statute.

The proposed sewer extension was reviewed by the Westport Planning & Zoning Commission on a § 8-24 referral in July 2016. The Planning & Zoning Commission issued an advisory report. Should the WPCA determine that another § 8-24 referral is warranted, it should make that referral, noting the statutory timeframes.

This application package consists of the following:

1. Transmittal letter from Shipman & Goodwin;

2. Overview letter from Shipman & Goodwin;
3. Illustrative maps, Summit lots, Hiawatha Lane, Davenport Avenue, "Blue Line" sewer district boundary;
4. Site Plan, "The Village at Saugatuck," prepared by Divney, Tung, Schwalbe, White Plains, N.Y., and architectural elevations, by The Monroe Partnership;
5. "Site Development Plan Depicting Hiawatha Lane Sanitary," Sheets SE-1 to SE-4, prepared by Redniss & Mead, 2018<sup>1</sup>;
6. Letter from Redniss & Mead, updated January 30, 2020, with construction cost estimate and consultant résumé;
7. Redniss & Mead video inspection documentation of Davenport Lane sewer line;
8. General Statutes §§ 7-245, 7-246, and 7-246a;
9. Excerpts, Westport Code of Ordinances;
10. Chart showing application's compliance with MLE Policy;
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15. Connecticut Appellate Court decision, 193 Conn. App. 823 (Oct. 29, 2019);
16. Connecticut Supreme Court order certifying appeal (Jan. 14, 2020);

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<sup>1</sup> Please note that full-size copies of the plan are on file with the Conservation Commission, the Flood and Erosion Control Board, the Town Engineer, the Public Works Department, and the Planning and Zoning Commission.

February 7, 2020

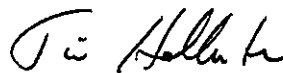
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21. *Dauti Construction LLC v. Water and Sewer Authority*, 125 Conn. App. 652 (2010).

Because this is a re-application, and due to the pendency, status, and progress of other aspects of Summit's overall development plan for multi-family residential use, Summit requests that the WPCA observe and comply with all applicable statutory deadlines for action. Summit will not be willing or able to consent to any extensions of statutory timeframes.

An original and 11 copies of this application, along with an electronic version are filed today. These 12 copies include those intended for the parties who are copied who are town staff. If you need any additional information, please contact me directly. We look forward to presenting this application to the Water Pollution Control Authority.

Very truly yours,



Timothy S. Hollister

TSH:ekf  
Attachments

- c: Peter Ratkiewich, Director, Department of Public Works (w/ att.)  
Bryan H. Thompson, WPCA Coordinator (w/ att.)  
Alicia Mozian, Conservation Director (w/ att.)  
Mark A. R. Cooper, MPH, RS, Director of Health, Westport Weston Health District (w/ att.)  
Summit Saugatuck LLC (w/ att.)  
Redniss & Mead, Inc. (w/ att.)





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Re: Re-Application of Summit Saugatuck LLC for Extension of Private Sewer From Davenport Lane to Hiawatha Lane and Hiawatha Lane Extension; Allocation of Sewer Capacity; and Approval to Connect Residential Development

Dear First Selectman Marpe and WPCA Members:

We represent Summit Saugatuck LLC ("Summit"), which is re-submitting this application, as further explained below, under General Statutes § 7-246a, for an extension on private property of the existing sewer line located within Davenport Avenue, for a distance of 1,600± feet, to Hiawatha Lane and Hiawatha Lane Extension; an allocation of sewer capacity; and approval to connect to the public sewer system.

In summary, since at least 2015, the Water Pollution Control Authority ("WPCA"), the Department of Public Works ("DPW"), and the Planning and Zoning Commission ("PZC") have stated that Summit's sewer extension application could not be granted until a new force main to be installed under the Saugatuck River, and an upgrade to Pump Station #2, located at the west end of the force main, were complete. At no time since 2015 has the WPCA, DPW, or the PZC given any reason for denying the sewer extension other than Summit's need to await completion of the force main installation and the pump station upgrade. During this time, it has been undisputed that Summit's application complies with the Town's Main Line Extension ("MLE") Policy. Moreover, on April 3, 2018, in Summit's Superior Court appeal from the WPCA's

November 2017 denial of the proposed extension, this Authority stipulated, on the record, that "[once] these steps [completion of the force main and Pump Station #2] are complete, the Westport sewer system will have sufficient capacity for Summit's proposed residential development."

The force main installation was completed in March 2018. On December 23, 2019, DPW confirmed to Summit that the upgrade of the pump station is also complete. *Because the Town's only objection to the extension has now been addressed, Summit is re-applying, and requests approval, without any condition proposed.*

As the WPCA is aware, Summit's court appeal from the WPCA's November 2017 denial of the extension was sustained by the Superior Court in May 2018, and then reversed by the Appellate Court in October 2019, but was accepted for further review by the state Supreme Court on January 14, 2020. Summit intends to pursue its now-certified appeal in the Supreme Court while it pursues this re-application, and reserves all rights in connection with that appeal. If this re-application is approved by the WPCA and that approval becomes final and unappealable, then that action would impact the pending court appeal, but unless and until that happens, Summit will proceed with both the court appeal and this re-application.

I. BACKGROUND: THE SUBJECT PROPERTIES, THE PROPOSED DEVELOPMENT, AND THE PROPOSED SEWER EXTENSION.<sup>2</sup>

A. Subject Properties And The Development Plan.

Summit owns 36, 38, 39, 41, 42, and 47 Hiawatha Lane / Hiawatha Lane Extension, and is the contract purchaser of lots known as 28, 43, 44 and 45 Hiawatha Lane. Summit also owns undeveloped parcels west and south of Hiawatha Lane known as Parcels A and B, as well as the roadbed of Hiawatha Lane / Hiawatha Lane Extension (a private road) from Davenport Lane to the Westport-Norwalk boundary. See illustrative maps at Tab 3. The lots that Summit owns, or has a contract to purchase, total 8.8 acres.

Hiawatha Lane and Hiawatha Lane Extension in Westport are located south of 1-95, north of the Metro North Railroad, abutting and east of the City of Norwalk municipal boundary, and west of Saugatuck Avenue. Other streets located in this area are Ferry Lane, Indian Hill Road, Davenport Avenue, Heritage Court, Dr. Gillette Circle, and West End Avenue. See Tab 3.

This area is zoned Residence B, except for an area directly adjacent to Ferry Lane, which is zoned General Business District. All parcels owned or controlled by Summit are zoned

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<sup>2</sup> The facts in this section are taken from and contained in the administrative records of the court cases regarding Summit's sewer extension.

Residence B. In the Residence B Zone, the primary use permitted as-of-right by zoning is single-family detached homes on lots of at least 6,000 square feet. However, this lot size requires sewer, and the Westport Zoning Regulations state: "The Residence B District provisions are intended to encourage higher density development for primarily residential and related purposes in areas served by centralized sewerage facilities."

B. Proposed Private Sewer Extension; Site Development Plan.

Summit proposes to construct, at its expense, a privately-owned force main, pump station, and sewer line, extending approximately 1,600 feet from the existing gravity sewer located within Davenport Avenue, in a westerly direction along Hiawatha Lane, then along Hiawatha Lane Extension to its end. This extension will serve a proposed multi-family apartment home development, consisting of five buildings, to be called "The Village at Saugatuck." *See* Tab 4. A copy of the proposed sewer extension site plan (four plan sheets) is at Tab 5. (Full size copies already on file with the Town, *see* Tab 1, n.1.)

Summit proposes 187 apartments in five buildings, which will require sewer capacity of 44,428 gallons per day, *see* Tab 6. If eight existing homes abutting Hiawatha Lane / Hiawatha Lane Extension are also connected, an additional 2,187 gallons per day will be required, *see* Tab 6. Thus, in this application, Summit seeks (1) approval of the extension; (2) allocation of 46,615 gallons per day of sewer capacity (44,428 + 2,187); and (3) approval to connect its proposed five multi-family buildings to the sewer system.

Within the area west of Saugatuck Avenue, to the Westport-Norwalk boundary, there are approximately 68 existing structures. Several, on Ferry Lane, are commercial uses (such as Gault, a building supply products company); approximately 24 are multi-family use (some of which are converted from single-family use); and the rest are single-family detached homes. Of these structures, only Summit's ten residential lots and eight other single-family homes are not connected to the Town sewer system.

II. EXISTING SEWER DISTRICT AND SEWER LINE.

The Town's 2002 Facilities Plan locates the subject properties within the Town's Sewer Service District, known as the "Blue Line." *See* Tab 3. The existing sewer line within Davenport Avenue extends westerly from Ferry Street to the location between Lots 17 and 22 on Davenport Avenue, *see* Tab 3.

### III. DAVENPORT AVENUE LINE AND TREATMENT PLANT.

#### A. Davenport Avenue Line.

Redniss & Mead has inspected the physical condition and capacity of the existing Davenport Avenue sewer line. *See* Tab 7. Their findings are summarized in the attached January 30, 2020 letter, Tab 6. Documentation of the physical inspection is at Tab 7. Redniss & Mead's analysis concludes that the existing Davenport Avenue line is physically intact and capable of receiving substantial additional flow. Tabs 6, 7.

#### B. Town Treatment Plant.

Redniss & Mead has reconfirmed that the Westport sewage treatment plant, which has capacity to handle approximately 3.3 million gallons per day, has ample capacity to handle an additional discharge of 46,615 gallons per day. *See* Tab 6, p. 3. The applicant is aware that in 2018-19, the Town re-engaged consultant Weston & Sampson to review the Town's total sewer capacity, making the assumption that all parcels within the Town's Sewer District ("Blue Line") would be developed to their maximum as allowed by current zoning. The study was suggested as a possible prelude to amendments to the Town's Plan of Conservation and Development and zoning regulations to limit or control density.<sup>3</sup> The study re-confirmed ample capacity at the Town's treatment plant. Tab 6, p. 3.

### IV. HISTORY OF SUMMIT'S SEWER EXTENSION APPLICATIONS, 2014 – PRESENT.

#### A. The Subject Property: Zoned And Designated For Development With Sewers.

Summit is a Connecticut limited liability corporation with an office in Southport. The WPCA, pursuant to General Statutes §§ 7-245 *et seq.*, oversees and administers the Town's public sewer system, including receiving, processing, and acting upon applications made under General Statutes § 7-246a for sewer system connections and extensions, and requests for allocations of sewer system discharge capacity. *See* Tab 8. In Westport, under § 30-174 of the Code of Ordinances, the Board of Selectmen acts as the WPCA. *See* Tab 9.

Under General Statutes § 7-246, Westport's Sewer Plan has been filed with and approved by the Connecticut Department of Energy and Environmental Protection. That Plan identifies Summit's properties as being within the Blue Line. At the WPCA's 2016 hearing in this matter,

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<sup>3</sup> In this regard, the expressed purpose of the study was contrary to the Connecticut Court decision in *Dauti Construction v. Water and Sewer Authority*, 125 Conn. App. 652 (2010), which holds that sewer authorities are not authorized to use sewer capacity to control land use.



DPW Director Steven Edwards stated that the 2002 Sewer Plan is "[our] bible" with regard to what properties should be connected to the sewer system, and "that bible says [that Summit's properties should] be sewerred."

The Town's Sewer Plan states that its identification of sewer service areas was based in part on review of existing sewer locations, soils information, and the existence of older septic systems that are subject to failure, due to age or inability to repair in compliance with the current Public Health Code:

[T]he boundary of the future sewer service area was set based on the evaluation of future sewer service areas described in Section 6.5 along with input from the Town Planning and Zoning Department, Conservation Commission, Public Works Department, and Sanitarian from the Westport Weston Health District. Inclusion within this area is based primarily on imminent needs due to health concerns such as septic system failures and/or surface water pollution due to septic systems.

The town, through its DPW, has adopted a "Policy Regarding Private Sanitary Sewer Main-Line Extensions" (the "MLE" policy), which allows private extensions if the property to which the sewer would be extended is within the Blue Line, and more than 150 feet from the end of an existing sewer line. Throughout Summit's sewer extension applications, with respect to physical and locational criteria, it has been undisputed that Summit's proposed extension meets the MLE policy criteria. A chart listing the MLE criteria and demonstrating Summit's undisputed compliance is at Tab 10.

Moreover, lots owned by or under contract to Summit are generally less than one acre, and some are less than 0.5 acres and contain wetlands soils. Under the Public Health Code, none of these small lots is appropriate for an on-site septic system, thus effectively mandating public sewer service if these parcels are to be developed. In addition, the WPCA's By-Laws, as revised in 1983, state in § 2.2 that any building lot of 0.5 acres or less, and any "conversion or expansion of residential property which results in an increased number of units," must be connected to the public sewer system.

**B. Summit's 2014 Sewer Extension Application.**

In October 2014, Summit applied to the WPCA for a private sewer extension of 1,600 feet, to serve a proposed 186 unit housing development with a 30 percent "set aside" for moderate income households, compliant with General Statutes § 8-30g. That application was referred to the PZC for a report pursuant to General Statutes § 8-24. At a PZC hearing on January 8, 2015, DPW Director Edwards, contrary to statements made in August 2014 to Summit's representatives, informed the PZC that a force main that runs under the Saugatuck River would require replacement before the sewer system could handle the sewage from an

additional 186 residential units, and that the timing of that replacement was uncertain. As a result, the PZC issued a negative § 8-24 report. Summit then withdrew its application to the WPCA.

C. Summit's 2016 Renewed Application.

In September 2015, the Town appropriated funds for the design and replacement of the force main. In December 2015, DPW staff met with the engineering firm of Tighe & Bond and other consultants; a summary of that meeting states:

Steve Edwards [Public Works Director] . . . stated that he thinks that a reasonable goal for this project will be to have the design completed and all permits obtained to allow construction of the force main to take place during the summer of 2017.

In March 2016, based on the growing DPW record predicting the 2017 completion of the force main replacement and pump station upgrade, and on discussions with several town officials about unmet housing needs, Summit and the Westport Housing Authority entered into a joint venture agreement, to develop on Summit's properties, side-by-side rental developments, totaling 155 units, one building with private, market-rate units managed by Summit, and one with subsidized units managed by the Housing Authority. The 155 apartments would have required sewer capacity of 36,773 gallons per day and, if existing homes abutting the extension were connected, an additional 2,187 gallons per day, for a total of 38,960 gallons.

Summit re-applied for the sewer extension in April 2016. In its submission, Summit stated that the approval to connect could be made conditional upon its receipt of coordinate permits, such as a wetlands permit and site plan approval. Summit included a proposed condition of approval:

The proposed sewer extension may not be installed until such time as the Pump Station #2 upgrade and the sewer pipe under the Saugatuck River . . . have been designed, funded, and construction begins; and Summit may not discharge sewage into the extension until Town staff certifies that [the] upgrade and repair [are] complete.

Summit's April 2016 application also included verification of the physical condition and capacity of the existing Davenport Avenue sewer line, from which the extension would proceed, and the Westport sewage treatment plant's ample capacity to handle an additional discharge of 38,960 gallons per day.

In discussions and correspondence with town staff, Summit agreed to pay the town a fee to cover fixing "infiltration" leaks elsewhere in the town system, in addition to paying the cost of its sewer extension.<sup>4</sup>

On May 25, 2016, DPW staff and consultants further discussed bids for the construction of the force main:

Steve Edwards asked when the contract should be placed out to bid given his preferred timeframe of constructing this work next July [2017]. Dennis Doherty [of the Haley & Aldrich consulting firm] stated that April should be sufficient. Bryan Thompson [town staff] stated that February [2017] would be preferable to allow adequate time for bidding, award, submittals, and mobilization.

D. WPCA's Referral To PZC.

Summit's 2016 application was referred to all Town departments and officials for review; none other than Public Works stated any objection or concern. On June 9, 2016, the WPCA referred Summit's application to the PZC for a General Statutes § 8-24 report. The PZC held a hearing on July 7, 2016. Summit's representative, the undersigned counsel, submitted 2015-16 DPW documents showing that DPW was repeatedly identifying Summer 2017 for completion of the pump station upgrade and force main replacement. However, the PZC proclaimed that "nothing had changed" since January 2015. On July 12, 2016, the PZC issued a negative report to the WPCA. Tab 12.

E. WPCA's July 2016 Hearing And Denial.

The WPCA held a hearing on July 21, 2016. At the outset, the WPCA's attorney suggested that the WPCA did not have jurisdiction in light of the negative § 8-24 report from the PZC (*see* § VII below), yet advised the WPCA to proceed with the hearing and decision.<sup>5</sup>

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<sup>4</sup> Summit's April 2016 application also further documented septic system failures in the project area: 30 homes in the Hiawatha neighborhood have an individual on-site septic system. *See* Tab 11. The Westport / Weston Health District has septic system records on only 17 of these 30 homes; for the systems on record, most were installed between 1956 and 1968, making these systems 50 to 60 years old. Summit itself has experienced septic system failures on its parcels, with lot 42 in particular requiring a septic pump-out two to three times per year. Under the town's Sewer Plan, septic failures are a criterion for extending sewers.

<sup>5</sup> In a January 6, 2015 memo to the PZC, Attorney Gelderman advised that PZC reports to the WPCA on § 8-24 infrastructure / utility referrals are "advisory" only. *See* Tab 13.

Summit's representatives presented the reasons the application should be approved:

- the WPCA's authority is limited to managing the sewer system, not controlling or deferring land development;
- Summit's properties are in the sewer district as delineated in the 2002 Sewer Plan;
- most properties in the area of Hiawatha Lane are already sewerred;
- the Zoning Regulations require sewers for the primary, as-of-right use of Summit's lots, which is homes on lots of 6,000 square feet or more;
- there is ample capacity in the existing Davenport Avenue line and at the town's treatment plant for Summit's proposed discharge;
- the purpose of the sewer extension application is to allow Summit to proceed with their land use planning and permit applications;  
and
- septic failures have occurred in the area of the proposed development.

Summit's consulting engineer David Ginter explained why constructing any structure on the 6,000 square foot minimum lot area in the Residence B Zone requires sewers, using Summit's Lots 42 and 47 as examples. *See* Tab 18. He also concurred in the Conservation Director's identification of the area's septic failures.

Public Works Director Edwards agreed that the existing Davenport Avenue sewer line had ample capacity for 155 units; his Department only had a "question of timing" as to Summit's proposed sewer extension; and the planning of pump station upgrade and force main replacement had started. He asserted, however, that his Department had never issued an approval of an extension conditioned on agreement to delay the start of actual construction. (He did not, however, say that the Town had ever received or denied such a request. There is no written policy regarding conditional approvals.) Thus, he considered Summit's application "premature." He called the pump station upgrade a "routine" matter. He verified that when the force main replacement and pump station upgrade were complete, the system would have capacity for 155 additional units.

Acknowledging that his Department's only concern was timing, not engineering or compliance with the MLE policy, Mr. Edwards stated that if Summit proposed 30 or fewer single-family homes, which is the approximate number of lots that could be subdivided as-of-right under Residence B zoning, his Department would support the application.<sup>6</sup>

On July 27, 2016, the WPCA, on a 2-1 vote, denied the sewer application stating that the existing pump station and force main have inadequate capacity until the upgrade is done; issuing a conditional approval would subject the Town to "unnecessary exposure, unreasonable uncertainty, and unacceptable risk"; the application was thus "premature"; and the Town requires a positive § 8-24 report from the PZC, or reversal of a negative report through an appeal to the Representative Town Meeting.

Summit appealed. In February and April 2017, Summit filed motions to supplement the record, providing the trial court with Public Works records from September 2016 to March 2017, showing the town applying for and receiving several permits for the force main replacement, and representing to federal, state, and town agencies that the replacement would occur in Summer 2017.

F. Trial Court's August 2017 Decision.

In an August 1, 2017 decision, the Superior Court held that the Westport PZC's July 2016 negative § 8-24 report was advisory only and did not need to be appealed to and overturned by Westport's RTM in order for the WPCA to have jurisdiction to act on Summit's sewer application. The Superior Court remanded to the WPCA to consider whether, in light of the Town's August 2016 – April 2017 progress toward the force main replacement and pump station upgrade, the WPCA should now grant the extension, outright or conditionally.

G. WPCA Remand, September-October 2017.

The WPCA conducted a hearing on the remand on September 27 and October 25, 2017. Summit provided the WPCA with public records showing that all permits and approvals had been issued for the force main replacement and that the RTM had appropriated the expected cost of the force main work.

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<sup>6</sup> In November 2016, to determine whether the WPCA would approve sewers for the as-of-right use in the Residence B Zone, Summit filed an application to the WPCA to extend the sewer line to serve 29 single-family homes. In February 2017, the WPCA denied that application. Summit appealed, but it later withdrew that appeal, in favor of this application.

Mr. Edwards explained that the force main replacement, though fully permitted, funded, and scheduled for Summer 2017, had not been completed because the initial round of construction cost bidding had resulted in costs above the projected budget. As of the WPCA remand hearing, the project had been rebid, the contract awarded, and the replacement was scheduled to start in December 2017 and be completed by March 2018. Mr. Edwards further explained that once the force main was complete, under a second contract, the new force main would be connected to the pump station, which would be upgraded, completing the work in Summer 2018. Mr. Edwards stated that the pump station upgrade – which does not require permits, but is a mechanical change to existing equipment – would take about 30 days. Mr. Edwards noted that the Town's cost would be recovered by an assessment on users who apply for discharges.

Summit further explained that as of mid 2017, in light of the WPCA's 2016 denial of its sewer application, Summit's joint venture with the Housing Authority to develop 155 units had terminated. Its development plan was now with Summit as the sole developer, pursuing a 187 unit plan, with a 30 percent set aside for moderate income households, in compliance with General Statutes § 8-30g.

Summit's consulting engineer explained that the increased unit count would change the needed sewage discharge from 39,000 gallons per day to 46,600 gallons per day, still well within the capacity of the existing sewer lines and treatment plant. Mr. Edwards confirmed that the sewer system, after the force main replacement and the pump station upgrade, would have ample capacity for the 187 units.

Summit proposed two proposed conditions of approval:

1. Construction of the sewer extension may not begin until such time as the force main replacement under the Saugatuck River and the upgrade of pump station #2 are complete and the town's public works director confirms that the public sewer system has the capacity to receive, transport, and discharge to the treatment plant the sewage to be discharged from the applicant's proposed multifamily residential development. Construction of the sewer extension includes cutting of trees and clearing of vegetation.
2. The applicant understands and accepts that it may be assessed a cost of an upgrade to the capacity of pump station #2.

H. WPCA Denial And Post-Denial Proceedings.

On October 25, 2017, the WPCA voted to deny, but the motion did not contain any statement of reasons. The WPCA met on November 15, 2017 and adopted a statement of reasons for its October 25 action:

1. Steven Edwards, Director of Public Works testified that the estimated date of completion of the replacement of the force main under the Saugatuck River and the upgrades to Pump Station #2 is likely to be summer of 2018.
2. Mr. Edwards noted that currently there is not sufficient capacity in the system to accommodate the proposed sewer line extension.
3. Mr. Edwards recommended against approving any project, whether conditioned or not, that required more capacity than is available.
4. The WPCA has never granted a conditional approval as a policy matter. Events could occur after a conditional approval that, if known at the time of approval, would have caused an application to be denied or modified. There is no reason to grant approvals to extend a sewer prior to the time when the extension can physically be implemented.
5. Allocation of capacity prior to the completion of necessary work by the Town is unfair to other developers and potential users who have been advised to wait until work is complete to file applications.
6. It is noted that although it is not the function of the WPCA to consider land use issues in making its decisions (other than to the extent capacity may be affected), the application submitted by the applicant pursuant to the remand order was substantially different from the application that is the subject of the appeal.
7. The applicant failed to provide a compelling reasons to grant a conditional approval. The applicant's only stated reason was that it would benefit its ability to plan its project. That reason does not outweigh the public policy reasons for not granting conditional approvals (as set forth in item #4, above).

I. Summit's Appeal; The Parties' April 3, 2018 Stipulation.

Summit appealed the remand denial. The parties appeared at trial on April 3, 2018, and on that date stipulated on the record to these updated facts:

1. As of the date of this Motion / Stipulation, the "force main" referred to in the record has been installed, by lateral drilling under the Saugatuck River.
2. The force main has not yet been connected to the Westport sewer system.
3. Before the force main can be connected to the sewer system, a new or amended contract must be executed and a performance bond posted covering completion of the work.
4. As of the date of this Motion / Stipulation, Westport Public Works Director Peter Ratkiewich (who has replaced Stephen Edwards, who has retired), projects that the new force main will be connected to the Westport sewer system within 45 to 60 days; the upgrade of Pump Station #2 is projected to occur in the early summer of 2018, and at the latest by August 2018; and once these steps are complete, the Westport sewer system will have sufficient capacity for Summit Saugatuck's proposed residential development.

J. Trial Court's May 2018 Decision.

In a May 2018 decision, the trial court first adopted Mr. Edwards' position, finding that "[The] number of units does not affect capacity and is therefore inconsequential." The court then held that the WPCA's November 2017 denial was an abuse of discretion, for several reasons. First, it was undisputed that Summit's application "complied with all of the defendant's engineering and administrative requirements as set forth in the sewer regulations [the MLE policy]." Second, the "mere fact that the [upgrade] project was not complete" was not a proper denial basis. Third, the court rejected the WPCA's claim that it had a "policy" of not issuing conditional approvals, because it had produced no evidence of the existence or implementation of that policy, and in fact its written [MLE] policy says nothing about conditional approvals. The court further noted that the conditional approval proposed by Summit "would protect against the risk of harm to the public interests." The court sustained Summit's appeal, with this order:

1. Construction of the sewer extension may not begin until such time as the force main replacement under the Saugatuck River and the



upgrade of pump station number two are complete and the town's public works director confirms that the public sewer system has the capacity to receive, transport, and discharge to the treatment plant the sewage to be discharged from the applicant's proposed multifamily residential development. Construction of the sewer extension includes cutting of trees and clearing of vegetation.

2. The applicant understands and accepts that it may be assessed a cost of an upgrade to the capacity of pump station number two.

The WPCA appealed.

K. WPCA's Trial Court And Appellate Court Briefs.

In its trial court and Appellate Court Briefs in 2017-18, the WPCA took the consistent position that its only objection to Summit's application was that it had been filed before the force main was installed and Pump Station #2 had been upgraded, and it did not want to issue an approval conditioned upon completion of this work. *See* Tab 14. At no time has the WPCA or Town staff stated any issue of compliance with the MLE policy, or any other policy, technical, or engineering requirement.

L. Appellate and Supreme Court.

On October 29, 2019, the Connecticut Appellate Court issued a decision that reversed the trial court's May 2018 order approving the sewer extension conditioned upon confirmation from the Public Works Director that the upgrade of Pump Station #2 had been completed. Tab 15. For procedural reasons (n.9), the Appellate Court ruled that, in reviewing the May 2018 trial court decision, it did not consider the WPCA's April 3, 2018 stipulation (*see* p. 12, above). Thus, the Court apparently evaluated the facts as they existed in November 2017, without the April 2018 updated, stipulated facts. On this basis, the Appellate Court ruled that the trial court had substituted its judgment for WPCA discretion to withhold approval of the sewer extension until the pump station upgrade was complete.

The Appellate Court declined to address the WPCA's claim that it was not authorized to approve Summit's application without a vote of Westport's Representative Town Meeting to overturn the Westport Planning and Zoning Commission's July 2016 § 8-24 "negative report" on Summit's sewer application extension application. The Appellate Court, apparently based on the expectation that Pump Station #2 had been completed as of the date of its opinion, or would be imminently, stated: "We conclude that this issue is not likely to recur on remand . . . ." 193 Conn. App. 823 n.1 (Tab 15).

On January 14, 2020, the Connecticut Supreme Court granted further review of Summit's appeal, to address the issue of whether the trial court's May 2018 order of conditional approval was valid. Tab 16. Under Connecticut Practice Book § 84-3, this order "stays" the Appellate Court's decision, leaving the trial court's ruling in place.

M. Summit's Land Use Permit Applications.

Meanwhile, Summit applied to the Westport Conservation Commission in May 2018 for a regulated activity permit for its site plan. That permit was granted in October 2018, with conditions that were accepted. Summit also received approval of its site plan from the Westport Flood and Erosion Control Board in July 2018 and September 2018. These permits were based in part on a "peer review" of the site plan conducted by an environmental engineering firm, as well as an approval of the site plan issued in September 2018 by the Westport Town Engineer. More importantly, each of these applications included review and approval of the sewer extension site plan sheets that are at Tab 5 of this application package.

Summit applied to the Westport PZC for zoning approval under General Statutes § 8-30g in November 2018. After hearings conducted from February through April 2019, the PZC denied Summit's application on June 20, 2019. Summit then utilized the so-called "resubmission" procedure of § 8-30g, to respond to the PZC's denial reasons. After one hearing on September 12, 2019, the PZC, on September 19, with several revised reasons, again denied the application. Summit has appealed that denial to Superior Court, where the case is now pending.

V. THIS APPLICATION: JUSTIFICATIONS FOR SEWER EXTENSION AND APPROVAL OF SEWER CAPACITY AND CONNECTION.

In early December 2019, after notice to the Westport Town Attorney, Summit's counsel inquired to Department of Public Works Department Director Peter Ratkiewich about whether the upgrade of Pump Station #2 was complete. Mr. Ratkiewich replied by email on December 23, 2019, "As of about a week ago pump station #2 is complete." Tab 17.

*This re-application, therefore, is being filed now because (1) the Public Works Department's confirmation of the completion of Pump Station #2 effectively satisfies, and renders moot, all prior objections and denial reasons stated by the WPCA; see Tab 20; and (2) it remains undisputed that Summit's application complies with all technical criteria in the Town's MLE policy, see Tab 10. As to the issue of whether a positive § 8-24 report is necessary for WPCA action, Summit would point out that (1) in both 2016 and 2017, after the Town Attorney raised this issue, the WPCA proceeded to process and act on the application, and it must do the same for this re-application; and (2) the Connecticut Appellate Court, while declining to address*

the issue in its October 2019 opinion, stated that it does not expect this issue to recur in later proceedings. *See* Tab 15. As a legal issue, the question is addressed in § VII, below.

Thus, this re-application should be approved for these reasons:

A. The WPCA's Prior Reasons For Denial Have Now Been Satisfied.

Simply put, the WPCA's one and only prior objection – that Summit's application could not be approved until the force main replacement and the pump station upgrades were complete – has now been satisfied; and it is otherwise undisputed that Summit's application complies with all MLE criteria.

It should be noted that the WPCA may not now create new reasons for denial. The application has not changed since 2017.<sup>7</sup>

B. Any Development Of Summit's Properties Requires Extension Of The Sewer Line.

Residence B in Westport is a residential zone with a 6,000 square foot minimum lot size. The Westport Zoning Regulations state: "The [Residence] B District provisions are intended to

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<sup>7</sup> An administrative agency may grant a successive application, after denying the initial application, "when the owner requesting a . . . permit . . . files a subsequent application altering the plan . . . in order to meet the reasons for which the board denied the prior one." *Grasso v. Zoning Bd. Of Appeals*, 69 Conn. App. 230, 246 (2002). In other words, "[a]n administrative agency . . . can grant a second application that has been substantially changed to meet the objections the agency had to the original application." *Grace Cmty. Church v. Planning & Zoning Comm'n*, 42 Conn. Supp. 256, 271 (1992). But, "[t]he considerations" on a successive application "do not refer to newly thought of grounds which could have been presented by the earlier application"; rather, they "must relate to something that was not and could not have been advanced as a reason . . . upon the prior application." *Sipperley v. Bd. Of Appeals*, 140 Conn. 164, 168 (1953) (later overruled on other grounds). In *Grasso*, the Appellate Court explained that this rule was necessary "because, if a reversal of that determination was allowed, "there would be no finality to the proceeding and the result would be subject to change at the whim of members or due to the effect of influence exerted upon them, or other undesirable elements tending to uncertainty and impermanence." 69 Conn. App. at 245 (quoting *Sipperley*, 140 Conn. at 168). Moreover, it "would be anomalous for a court . . . on review of a subsequent decision [on] a revised application to find that other, unstated reasons actuated the agency." *Laydon v. Town of Woodbridge*, 2006 WL 2348847, at \*6 (Conn. Super. Ct., July 18, 2006) (quoting *Harris v. Zoning Comm'n*, 259 Conn. 402, 420 (2002)).

encourage higher density development for primarily residential and related purposes in areas served by centralized sewerage facilities." In reviewing the Westport Zoning Map and the Sewer Service Area Map from the Westport Wastewater Facilities Plan, it appears that all of the existing areas zoned Residence B in Westport are served by public sewers except for the portion of Hiawatha Lane Extension that includes the project area. The stated purpose of the Residence B District and the fact that all houses in the Residence B District except for those located in Summit's proposed development are served by public sewers is one reason that warrants extension of the public sewer to the properties listed in this application.

The 6,000 square foot lot size permitted in the Residence B District is too small to permit a code complying subsurface sewage disposal system ("SSDS"), including reserve area, according to the Connecticut Public Health Code. *See* Tab 18.

Moreover, surface water quality may become impaired from housing lots half an acre or less in size. Five of the seven existing lots in the project area are less than half an acre; the remaining two, 42 and 41 Hiawatha Lane, are under one acre each, and have an acre of inland wetlands located on them. Under the above-referenced health code standard, none of these small lots are considered appropriate for a safe and effective SSDS, effectively mandating public sewer service in this area. *See* Tab 18.

B. MLE Policy.

The properties to be connected to the Town's sewer are more than 150 feet away from the nearest existing main-line sanitary sewer; the nearest public main-line sewer facility is 950 feet away in Davenport Avenue. Therefore, the proposed sewer extension satisfies the MLE Policy criteria. As has been undisputed since 2016, the proposed extension also complies with all other requirements of the MLE policy. A chart reviewing this compliance is at Tab 10.

C. Wastewater Facilities Plan.

The Town of Westport has already acknowledged in its Wastewater Facilities Plan of 2002 that the area of Summit's properties should, in fact, be connected to the public sewer system. This Plan has been approved by the Connecticut Department of Energy and Environmental Protection and, furthermore, the DEEP has supported this Plan through the funding of the new, expanded sewerage treatment plant that is designed for a future sewer population that is greater than twice what exists today. In the Plan, all of the Hiawatha Lane neighborhood lies within the sewer shed as depicted on the Future Sewer Service Area Map.

The Plan further notes that "extension of the sewer system should be considered where septic system failures and the likelihood of failures are significant, and where the ability to service the property by an engineered on-site septic system is limited."

The Summit properties meet all MLE criteria. First, the parcels are within 950 feet of an existing sewer line that extends approximately halfway down Davenport Lane, with over half of the Hiawatha Lane neighborhood already serviced by public sewer. Second, existing lots in the area are all under one acre and range in size from 18,805 square feet to 32,990 square feet. The only lots that are even over half an acre in size, 41 and 43 Hiawatha Lane, have wetland areas that take up a portion of the lot area. As noted above, if these lots were designed and built today according to current regulations, they would not have enough area for a code-complying SSDS and a reserve area.

Third, there are concerns about septic system failures and surface water in the project area. Thirty homes in the Hiawatha neighborhood have an individual SSDS. The Westport Weston Health District has septic system records on only 17 of these 30 homes. For the systems on record, they show installation between 1956 and 1968, making these systems 50 to 60 years old and nearing the anticipated life expectancy of such systems. It is also possible that more systems required repairs that were not reported to the Health District. Summit has experienced septic system failures on the site and lot 42 in particular requires a septic pump out two to three times per year. *See* Tab 11.

D. Compliance With The Town's POCD.

The POCD includes Chapter 10, entitled, "Address Infrastructure Needs." At p. 10-1, the POCD states, as an explicit Town goal, the need to "[c]onfigure utility infrastructure to support the growth patterns approved by the Planning and Zoning Commission." At p. 10-3, the POCD also recommends as a Town goal the need to address potential maintenance and repair or replacement issues associated with existing old septic systems.

VI. APPLICABLE LAW REGARDING SEWER EXTENSIONS AND CONNECTIONS.

A. Public Sewer Systems Are Public Utilities, To Which Property Owners Have Access Rights.

A municipal sewer system is a "public utility." *See Metropolitan District v. Housing Authority*, 12 Conn. App. 499, *cert. denied*, 205 Conn. 814 (1987) (municipal corporation rendering utility services in the form of sewer services is a "municipal utility" within meaning of utility receivership statute).

"Generally . . . a public utility may be defined as a business or service engaged in regularly supplying the public with some commodity or service that is of public consequence or useful to the public." 64 Am. Jur. 2d Public Utilities, § 1. "[T]he principal determinative characteristic of a public utility is that of service to, or readiness to serve, an indefinite public

who has a legal right to demand and receive its services . . . . A public utility holds itself out to the public generally and may not refuse any legitimate demand for service. . . ." *Id.* at § 2 (emphasis added).

Upon the dedication of a public utility to a public use and in return for the grant to it of a public franchise, the public utility is under a legal obligation to render adequate and reasonably efficient service impartially, without unjust discrimination, and at reasonable rates, to all members of the public to whom its public use and scope of operation extend who apply for such service and comply with the reasonable rules and regulations of the public utility.

*Id.* at § 33.

The right of an inhabitant or group of inhabitants of a community . . . to demand an extension of service for their benefit is not absolute and unqualified but is to be determined by the reasonableness of the demand therefor under the circumstances involved. The duty of a public service company to extend its service facilities, and the reasonableness of a demand for such extension, depends in general upon the need and cost of such extension and the return in revenue that may be expected as a result of the extension, the financial condition of the utility, the advantages to the public from such an extension, and the franchise or charter obligation to make such extension.

*Id.* at § 37, citing, *inter alia*, *Cedar Island Improvement Association v. Clinton Electric Light & Power Company*, 142 Conn. 359 (1955). At issue in *Cedar Island* was the extension of electric power lines to Cedar Island pursuant to a precursor statute (§ 5673) to current General Statutes § 16-261. The Court concluded:

If the commission is to refuse to order an extension [within the area determined to be within its scope of service] it must find facts from which it can reasonably and logically conclude that an order for an extension . . . would amount either to a use of the company's property without just compensation or the inevitable imposition of a discriminatory rate upon other subscribers to the company's service.

142 Conn. at 373. Thus, the property owners in a municipality have rights, subject to reasonable regulation by the WPCA, to connect to a town's sewer system, because it is a public utility.

B. Water Pollution Control Authorities Have Specific, Limited Powers.

The legislature has authorized municipalities to create sewer commissions and has specified their powers. *See* General Statutes §§ 7-245 *et seq.* "[W]ater pollution control authorities are quasi-municipal corporations created pursuant to statute that may exercise 'the power to acquire, construct, maintain, supervise, manage and operate a sewer system and perform any act pertinent to collection, transportation and disposal of sewage'" *Forest Walk, LLC v. Water Pollution Control Authority*, 291 Conn. 271, 281 (2009). Under General Statutes § 7-246(b), WPCAs are empowered to determine the location, size, capacity, and cost of sewer areas and collection and treatment systems, and the management, operation and use of existing or approved sewer lines, the latter being administrative functions governed by the rules and regulations that sewer commissions must adopt.

A sewer commission may not exercise powers within the jurisdiction of another agency, such as a municipality's zoning commission. If a sewer commission dictates uses of land through sewer decisions, its action unauthorized. *See Dauti Construction LLC v. Water and Sewer Authority*, 125 Conn. App. 652, 662-64 (2010), Tab 21.

C. Sewer Commissions Have Limited Discretion With Regard To Sewer Extensions.

Our courts, in specific circumstances, have recognized sewer commissions as having discretion to determine when and where to extend sewers. *See* General Statutes § 7-246b and § 7-247; *AvalonBay Communities, Inc. v. Sewer Commission*, 270 Conn. 409, 426-27 (2004) (discretion over system extensions); *River Bend Associates, Inc. v. Water Pollution Control Authority*, 262 Conn. 84, 95-97 (2002). *See also Vicksburg v. Vicksburg Waterworks Co.*, 202 U.S. 453, 471-72 (1906) (Circuit Court had no authority to issue a mandatory injunction requiring the city to construct a sewer because the exercise of this authority is vested in the municipality and is discretionary); *Wright v. Woodridge Lake Sewer District*, 218 Conn. 144 (1991); and *Archambault v. Water Pollution Control Authority*, 10 Conn. App. 440, 444 (1987). However, this discretion is limited, and can be overruled if abused. In *AvalonBay*, 270 Conn. at 423, the Court stated that, "Although this discretion is not absolute, the date of construction, the nature, capacity, location, number and cost of sewers . . . are matters within the municipal discretion with which the courts will not interfere, unless there appears fraud, oppression, or arbitrary action."

The *Forest Walk* and *AvalonBay* decisions illustrate the limits of WPCA discretion regarding extensions. In *Forest Walk*, the Court upheld municipal denial of a sewer extension. First and foremost, the property proposed to be sewerred not only was not in the Town's sewer service area (291 Conn. at 289-92), but also would have been contrary to an adopted "sewer avoidance" policy. *Id.* at 277, 289-90. Moreover, in several ways, the property owner's plan did not comply with the Town's sewer regulations. The Supreme Court affirmed the dismissal of *Forest Walk's* appeal, not because it proposed a sewer extension *per se*, but because the

"extension was not warranted because the property was not located in an area designated for sewer service," and the proposal was contrary to long-standing, well-documented "state and town sewer avoidance policies that had been in effect since 1991." *Id.* at 293.

In *AvalonBay*, the city identified AvalonBay's property as within its intended sewer service area; but, when the city commenced construction to extend an existing sewer line to the vicinity of AvalonBay's land, it encountered significant physical difficulties and additional cost, including the need to blast bedrock, which caused water main breaks; the city halted the extension work. 270 Conn. at 413-19. AvalonBay pursued two applications to extend the sewer at its own expense to its property, to serve a multi-family development. Thus, the Supreme Court affirmed the denial of a writ of mandamus because the city had, for valid reasons, halted the sewer extension; and the city had no regulations allowing a private extension. *Id.* at 430.

None of the objections, issues, or concerns stated in these cases exists in this matter at this time. The WPCA is now obligated to grant this re-application, as there is no further basis to deny the extension.

D. When Four Factors Exist, Sewer Commission Action On An Application To Access The Sewer System Is Ministerial.

Once a sewer commission has designated a parcel for sewer service and has spelled out criteria for connecting to the system, the commission cannot retain discretion to deny sewer service on a case-by-case basis. *See Dauti Construction*, 125 Conn. App. at 664; *Schuchmann v. City of Milford*, 44 Conn. App. 351, 356-58, *cert. denied*, 240 Conn. 924 (1997). More specifically, when (1) an applicant's land is in the sewer service area; (2) capacity can be allocated without infringing the rights of others; (3) the applicant does not seek to extend the sewer across land not in the sewer district; and (4) the application otherwise complies with the WPCA's regulations and specified technical and engineering criteria, the agency has no discretion to deny the connection. *Dauti Construction*, 125 Conn. App. at 662-64, *citing Harris*, 259 Conn. at 425 (2002); *Schuchmann*, 44 Conn. App. at 358-59. Section 7-247 (specifying sewer commission powers) does not vest the commission "with the discretion to deny an application that complies with its regulations because of considerations not set forth in the regulations, but requires that the statutory powers of a water pollution control authority be exercised through the regulations it is directed to adopt." *Schuchmann*, 44 Conn. App. at 356.

E. Federal And State Fair Housing Act Applicability.

Summit is applying to develop multi-family housing in compliance with General Statutes § 8-30g. While § 8-30g does not govern this application in the sense of shifting the burden of proof to uphold a denial onto the WPCA in any subsequent court appeal, a § 8-30g applicant is required by state law to market available affordable housing units under an



"affirmative fair housing marketing plan," which means outreach to population groups that are protected by the state and federal Fair Housing Acts. Title 42 U.S. Code § 3604 makes it unlawful to make services, such as utilities necessary for housing, "unavailable" to a protected class. In several cases, courts have held that a denial of infrastructure support such as sewer capacity on a pretextual basis can constitute a violation of a municipality's fair housing obligations. *See* Tab 19 as an example.

VII. SUMMIT CANNOT BE REQUIRED TO APPEAL A PLANNING AND ZONING COMMISSION NEGATIVE § 8-24 REPORT TO WESTPORT'S REPRESENTATIVE TOWN MEETING.

In summary, Summit cannot be required to appeal a Westport PZC negative § 8-24 report to the RTM because: (1) our Supreme Court, several times, has ruled that § 8-24 reports are *advisory only and not appealable*; (2) in Westport, the RTM, as legislative body, has delegated all jurisdiction and power to administer the sewer system to the Board of Selectmen, acting as the WPCA, and thus the argument that the RTM retains a veto is directly contradicted by the town's own ordinances; (3) to require a sewer extension applicant to appeal a negative § 8-24 PZC report to a town's legislative body would grant the PZC a power that our Supreme Court has held that planning and zoning commissions do not have – the power to control land use by vetoing WPCA decisions regarding sewers; (4) to the extent that Westport ordinances require sewer system applicants to obtain RTM reversal of a negative PZC report, this assertion directly conflicts with, and thus is preempted by, General Statutes § 7-246a, which allows an appeal to the Superior Court by a party aggrieved by a WPCA decision; and (5) RTM review would not be governed by any statutory criteria, regulations, or experience with sewer system management, which would be an absurd result.

The dispositive cases regarding this issue are the Supreme Court's holdings in *Fort Trumbull Conservancy, LLC v. Planning and Zoning Commission*, 266 Conn. 338, 359-60; *East Side Civic Association v. Planning and Zoning Commission*, 161 Conn. 558, 561-62 (1971); and *Sheridan v. Planning Board*, 159 Conn. 1, 10 (1969), that § 8-24 reports are advisory only, because they are not final decisions, but interim evaluations of proposed public utility improvements in light of the criteria stated in the town's Plan of Conservation and Development ("POCD").<sup>8</sup> When reviewing a § 8-24 referral, a PZC acts in its planning capacity, under Chapter 126 of the General Statutes. The POCD is always advisory for planning capacity (and zoning) decisions, except when the PZC is considering a subdivision; *see, e.g., Purtil v. Town Plan and Zoning Commission*, 146 Conn. 570, 572 (1959). PZC actions on § 8-24 referrals are "reports," not votes, actions, or decisions. *See Fort Trumbull Conservancy*, 266 Conn. at 359.

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<sup>8</sup> The Supreme Court's 2003 reasoning in *Fort Trumbull* was first raised in an earlier case, *Civie v. Planning and Zoning Commission*, 30 Conn. L. Rptr. 568, 2001 WL 1429232 (Conn. Super. Ct. (2001)).

(The report, by the way, is made back to the referring agency, in this case the WPCA, not the RTM.) Thus, a PZC § 8-24 report is simply not appealable, to Superior Court or a town's legislative body.

The RTM appeal argument is also directly contrary to Westport ordinances, *see* Tab 9. Under General Statutes § 7-246, a municipality by ordinance may designate its legislative body as its WPCA, except where the legislative body is a town meeting. Thus, under Westport's Code of Ordinances § 30-174, the three-member Board of Selectmen serves as the WPCA. In Westport, the RTM *has delegated authority over sewers to the WPCA*, with no reservation of review or veto. Tab 9.

Westport's ordinances expressly curb the RTM's power to review agency actions, in two key respects. Section C5-1 states (emphasis added) that the RTM holds "All legislative power of the town, *except such powers as may be vested in the Selectmen by the General Statutes . . .*" Here, the town / RTM, acting pursuant to General Statutes § 7-246, has vested all General Statutes sewer system powers in its Board of Selectmen. In addition, § C5.1.F of the Town Code states that "The [RTM] shall have the power to review any action by the Planning and Zoning Commission . . . issuing a negative 8-24 report, as set forth in § C10-4." Section C10-4, however, states that *RTM review may not deny a statutory right of appeal*, which Summit has with respect to its sewer application under § 7-246a(b). Thus, § C10-4 eliminates RTM review of PZC proceedings if doing so would interfere with a statutory appeal right.

The next problem is that General Statutes Chapter 103, which governs WPCA powers and actions on sewer extension applications, contains no provision for a town's legislative body to review, much less veto, WPCA action. (Also, § 7-246 says that a "town meeting" may not act as a WPCA, presumably because the legislature recognized that sewer system decisions involve technical management of a public utility, requiring expertise, and should not be subject to a plebiscite, referendum, or decision by a political forum.) This limitation is consistent with holdings of this Court in *Dauti*, 125 Conn. App. at 661-63, that sewer authorities are not authorized to make land use decisions; and *Harris*, 259 Conn. at 425, which holds that only zoning commissions are authorized to control land use. Here, if the Westport PZC's § 8-24 negative report must be appealed to and reversed by the RTM, then Westport has essentially granted the PZC a veto power over sewer extensions. In this case, the trial court in August 2017 said it would "not countenance" such a contradictory interpretation.

Another systemic problem with the RTM appeal argument is that it denies a sewer applicant the right established in § 7-246a(b) to make an application to the WPCA; have that application processed as an administrative land use application; and then appeal to the Superior Court from a denial. (As the Westport Town Attorney has conceded, there would be no appeal *from* the RTM.) This circumstance presents a clear case of preemption, a town imposing a procedure in direct conflict with a state statute. The RTM appeal would also be an absurd result,

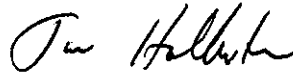
an appeal to the town's legislative and political body, whose members have no familiarity with sewer system governance and would act unbound by WPCA criteria, regulations, experience, or precedent.

#### VIII. CONCLUSION.

Summit's proposed sewer line extension, capacity allocation, and connection application consistent with the Town's MLE Policy, POCD, and Wastewater Facilities Plan, and is justified by the capacity of the sewer system and the physical attributes of the subject properties. The WPCA's prior objection has been satisfied.

For these reasons, Summit Saugatuck LLC requests approval of a private sewer extension as shown on the enclosed map to service the property, allocation of 46,615 gallons per day of sewer capacity, and approval to connect to the public sewer system.

Very truly yours,



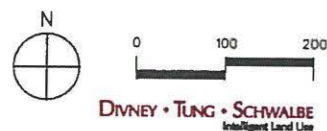
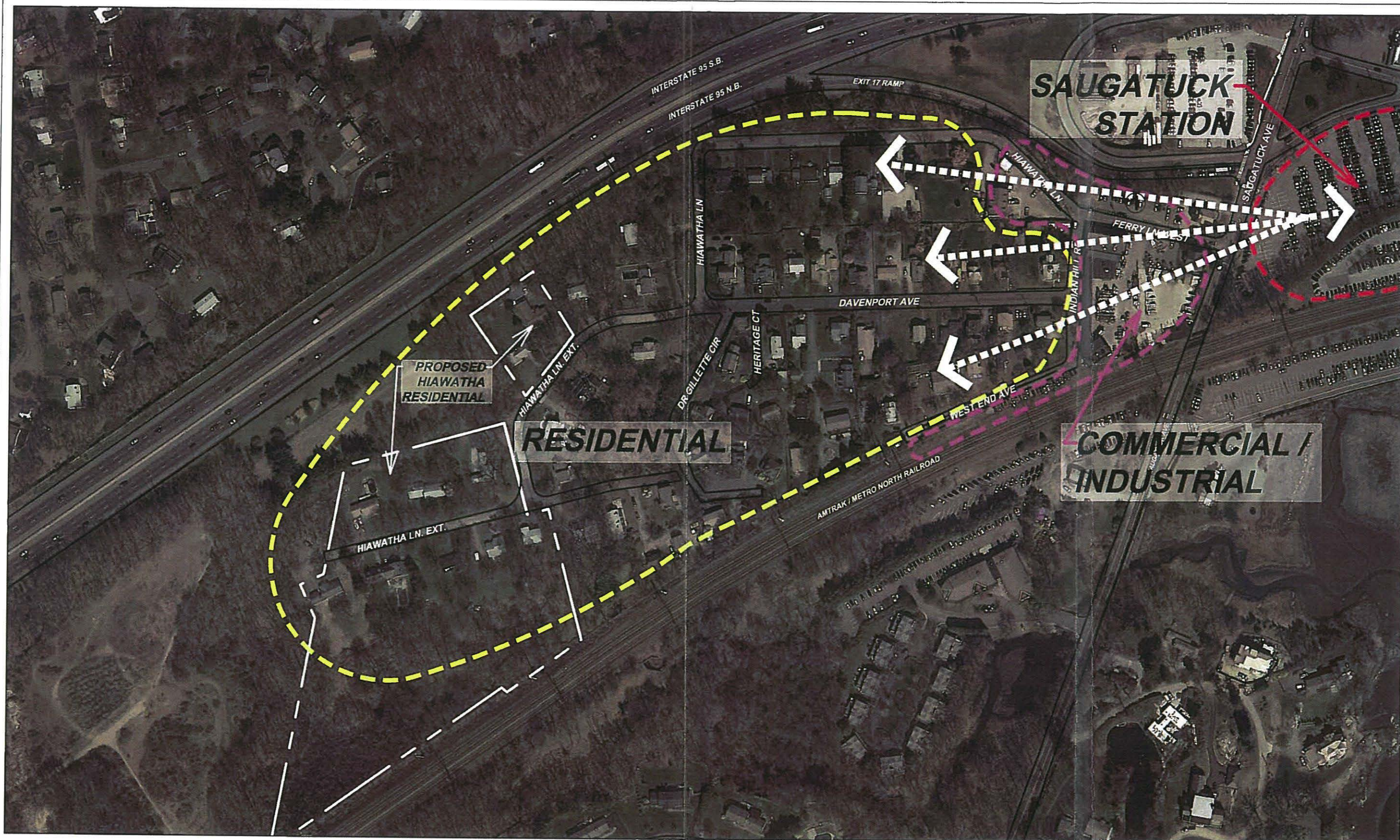
Timothy S. Hollister

TSH:ekf  
Attachments

- c: Peter Ratkiewich, Director, Department of Public Works (w/ att.)
- Bryan H. Thompson, WPCA Coordinator (w/ att.)
- Alicia Mozian, Conservation Director (w/ att.)
- Mark A. R. Cooper, MPH, RS, Director of Health, Westport Weston Health District (w/ att.)
- Summit Saugatuck LLC (w/ att.)
- Redniss & Mead, Inc. (w/ att.)



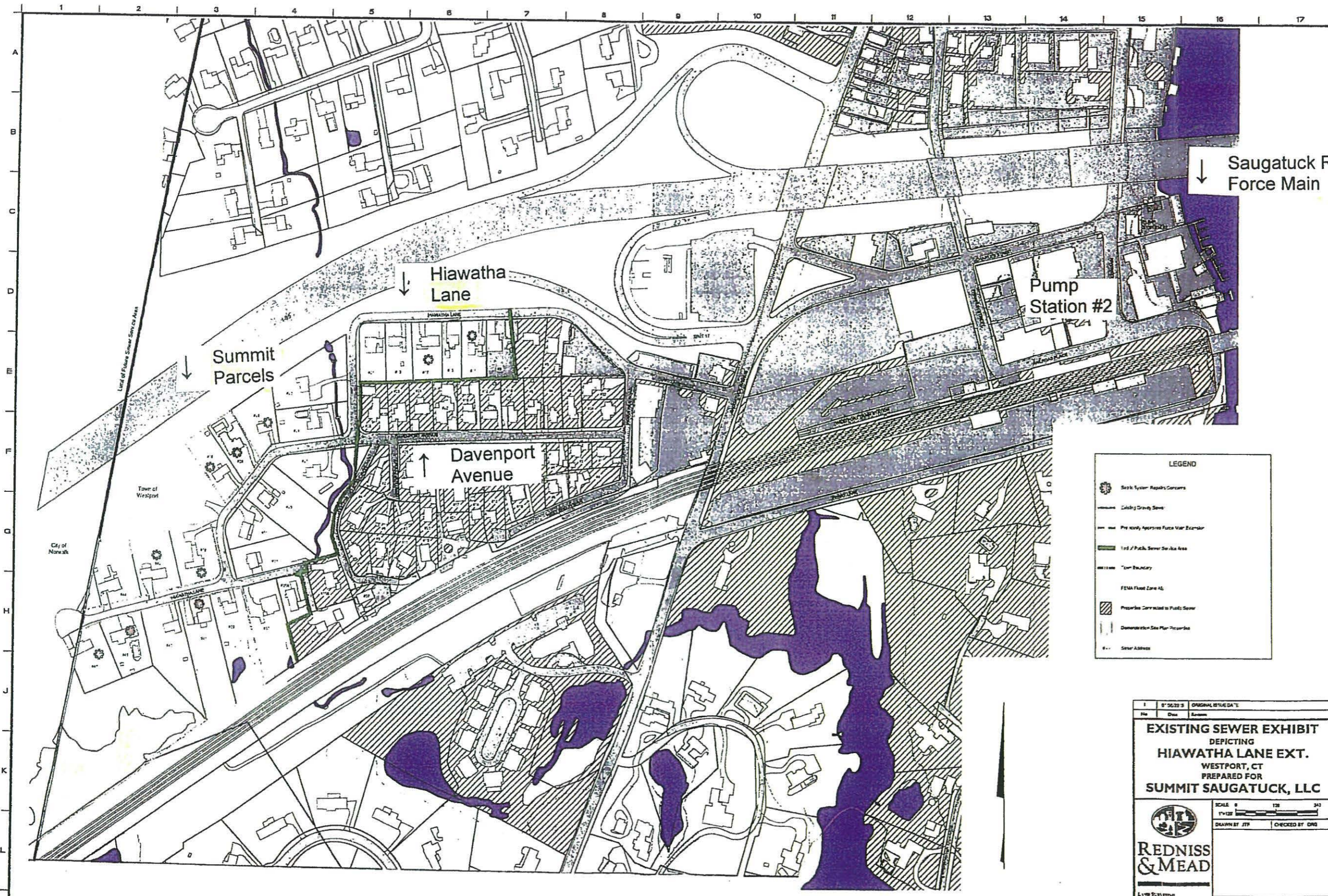




### Neighborhood Context

Hiawatha Residential  
Westport, Connecticut





↓ Saugatuck River / Force Main

↓ Hiawatha Lane

Pump Station #2

Summit Parcels

↑ Davenport Avenue

**LEGEND**

- Sewer System Repairs/Concerns
- Existing Gravity Sewer
- Proposed Gravity Sewer
- Proposed Gravity Sewer with Excessor
- 1st of Public Sewer Service Area
- Town Boundary
- FEMA Flood Zone AE
- Properties Connected to Public Sewer
- Demonstration Site Plan Records
- Sewer Address

1	0' = 50' 0" 3	ORIGINAL STUDY DATA
File	Date	System
<b>EXISTING SEWER EXHIBIT</b>		
DEPICTING		
<b>HIAWATHA LANE EXT.</b>		
WESTPORT, CT		
PREPARED FOR		
<b>SUMMIT SAUGATUCK, LLC</b>		
<p><b>REDNISS &amp; MEAD</b></p> <p>Licensed Professional Engineers Civil Engineering Planning &amp; Existing Civil Engineering Professional</p> <p>22 First Street   Westport, CT 06891 Tel: 203.272.0900   Fax: 203.271.1110 www.rednissandmead.com</p>	<p>SCALE: 0" = 120'</p> <p>DRAWN BY: JTP</p> <p>CHECKED BY: DMO</p>	<p>SHEET No:</p> <p style="font-size: 24pt; font-weight: bold;">SE-1</p> <p>Consult No: 7433</p>





**Legend**

- Septic System Failure/Repair (Health District)
- Reported Septic System Failure
- Soil Test Pit - 3/27/2007
- Existing Gravity Sewer
- End of Public Sewer Service Area
- Project Area
- FEMA Flood Zone AE
- Town Boundary
- Wetland Boundary
- Street Address
- Multi-Family Home
- Tidal Wetland Boundary

**VICINITY MAP**

**HIAWATHA LANE PROPERTIES**

**WESTPORT, CONNECTICUT**

TH DESIGNED	SJB DRAWN	TH CHECKED	DATE: Sept. 2007
SCALE: 1" = 80'			SHEET: FIGURE A
PROJECT NO.: 2990-01			MILONE & MACBROOM 99 Realty Drive Cheshire, Connecticut 06419 (203) 511-1775 Fax: (203) 271-0733 www.miloneandmacbroom.com















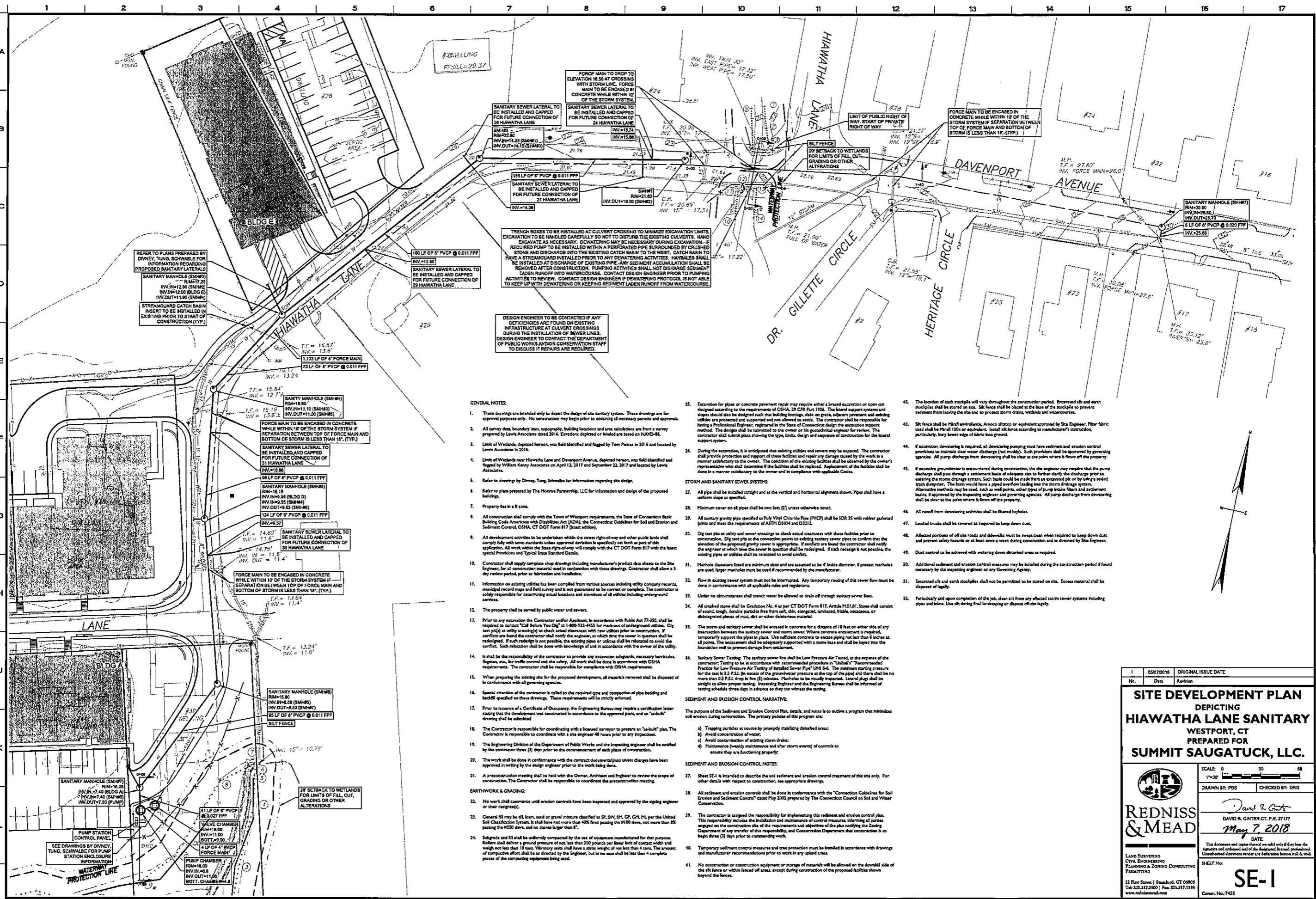












REFER TO PLANS PREPARED BY DIVNEY, TUNG, SCHWABE FOR INFORMATION REGARDING PROPOSED SANITARY LATERALS

SANITARY MANHOLE (SMH#1)  
RIM=12.00  
INV.IN=12.00 (BLDG E)  
INV.OUT=1.00 (SMH#1)

STREAMLINED CATCH BASIN  
KEY TO BE INSTALLED ON EXISTING PRIOR TO START OF CONSTRUCTION (TYP.)

FORCE MAIN TO BE ENCASED IN CONCRETE WHILE WITHIN 10' OF THE STORM SYSTEM IF SEPARATION BETWEEN TOP OF FORCE MAIN AND BOTTOM OF STORM IS LESS THAN 18" (TYP.)

SANITARY SEWER LATERAL TO BE INSTALLED AND CAPPED FOR FUTURE CONNECTION OF 21 HIAWATHA LANE

SANITARY MANHOLE (SMH#6)  
RIM=15.15  
INV.IN=9.85 (BLDG D)  
INV.IN=9.25 (SMH#4)  
INV.OUT=9.85 (SMH#6)

124 LF OF 8" PVC @ 0.011 FPF  
INV.=10.86

SANITARY SEWER LATERAL TO BE INSTALLED AND CAPPED FOR FUTURE CONNECTION OF 33 HIAWATHA LANE

SANITARY MANHOLE (SMH#4)  
RIM=15.50  
INV.IN=11.10 (SMH#3)  
INV.OUT=1.00 (SMH#3)

150 LF OF 8" PVC @ 0.011 FPF  
INV.=12.90

SANITARY SEWER LATERAL TO BE INSTALLED AND CAPPED FOR FUTURE CONNECTION OF 29 HIAWATHA LANE

SANITARY MANHOLE (SMH#2)  
RIM=15.74  
INV.IN=11.87  
INV.OUT=1.00 (SMH#2)

180 LF OF 8" PVC @ 0.011 FPF  
INV.=12.90

**GENERAL NOTES:**

- These drawings are intended only to depict the design of the sanitary sewer system. These drawings are for informational purposes only. No construction may begin prior to obtaining all necessary permits and approvals.
- All survey data, boundary lines, topography, building locations and site calculations are from a survey prepared by Lewis Associates dated 2016. Elevation depicted or labeled are based on NAVD-88.
- Links of Wetlands, depicted herein, was field identified and flagged by Tom Pietras in 2016 and located by Lewis Associates in 2016.
- Links of Wetlands near Hiawatha Lane and Davenport Avenue, depicted herein, was field identified and flagged by William Keary Associates on April 12, 2017 and September 22, 2017 and located by Lewis Associates.
- Refer to drawings by Divney, Tung, Schwabe for information regarding site design.
- Refer to plans prepared by The Monroe Partnership, LLC for information and design of the proposed buildings.
- Property lies in a B zone.
- All construction shall comply with the Town of Westport requirements, the State of Connecticut State Building Code, Americans with Disabilities Act (ADA), the Connecticut Guidelines for Soil and Erosion and Sediment Control, CSHA, CT DOT Form 817 (latest edition).
- All development activities to be undertaken within the street right-of-way and other public lands shall comply fully with town standards unless approved deviation is specifically set forth as part of this application. All work within the State right-of-way will comply with the CT DOT Form 817 with the latest Special Provisions and Typical Notes Standard Details.
- Contractor shall supply complete shop drawings including manufacturer's product data sheets to the Site Engineer, for all construction materials used in conjunction with these drawings. Contractor shall allow a 5 day review period, prior to fabrication and installation.
- Information on existing utilities has been compiled from various sources including utility company records, municipal record maps and field survey and is not guaranteed to be correct or complete. The contractor is solely responsible for determining actual locations and elevations of all utilities including underground services.
- The property shall be served by public water and sewers.
- Prior to any excavation the Contractor and/or Applicant, in accordance with Public Act 77-250, shall be required to contact "Call Before You Dig" at 1-800-922-4433 for mark-out of underground utilities. Dig safe (if) at utility crossing (s) to check actual clearances with new utilities prior to construction. If conflicts are found the contractor shall notify the engineer, at which time the sewer in question shall be redesigned. If such redesign is not possible, the existing pipes or utilities shall be relocated to avoid the conflict. Such relocation shall be done with knowledge of and in accordance with the owner of the utility.
- It shall be the responsibility of the contractor to provide any excavation safeguards, necessary barricades, flags, etc. for traffic control and site safety. All work shall be done in accordance with CSHA requirements. The contractor shall be responsible for compliance with CSHA requirements.
- When preparing the existing site for the proposed development, all materials removed shall be disposed of in conformance with all prevailing agencies.
- Special attention of the contractor is called to the required type and compaction of pipe bedding and backfill specified on these drawings. These requirements will be strictly enforced.
- Prior to issuance of a Certificate of Occupancy, the Engineering Bureau may require a certification letter stating that the construction was constructed in accordance to the approved plans, and an "as-built" drawing shall be submitted.
- The Contractor is responsible for coordinating with a licensed surveyor to prepare an "as-built" plan. The Contractor is responsible to coordinate with a site engineer 48 hours prior to any inspection.
- The Engineering Division of the Department of Public Works and the inspecting engineer shall be notified by the contractor three (3) days prior to the commencement of each phase of construction.
- The work shall be done in conformance with the contract documents unless changes have been approved in writing by the design engineer prior to the work being done.
- A preconstruction meeting shall be held with the Owner, Architect and Engineer to review the scope of construction. The Contractor shall be responsible to coordinate the preconstruction meeting.

**EARTHWORK & GRADING:**

- No work shall commence until erosion control has been inspected and approved by the signing engineer or their designee(s).
- General fill may be fill, sand or gravel mixture classified as SP, SW, SP, GP, GCL, PL per the Unified Soil Classification System. It shall have not more than 40% fines passing the #100 sieve, not more than 8% passing the #200 sieve, and no pieces larger than 3".
- Subgrade and fill shall be uniformly compacted by the use of equipment manufactured for that purpose. Rollers shall deliver a ground pressure of not less than 300 pounds per linear inch of contact width and weigh not less than 10 tons. Vibratory units shall have a static weight of not less than 4 tons. The amount of compactive effort shall be as directed by the Engineer, but no pass shall be less than 4 complete passes of the compacting equipment being used.

FORCE MAIN TO DROP TO ELEVATION 16.50 AT CROSSING WITH STORM LINE. FORCE MAIN TO BE ENCASED IN CONCRETE WHILE WITHIN 10' OF THE STORM SYSTEM.

SANITARY SEWER LATERAL TO BE INSTALLED AND CAPPED FOR FUTURE CONNECTION OF 28 HIAWATHA LANE

SANITARY MANHOLE (SMH#3)  
RIM=15.74  
INV.IN=11.87  
INV.OUT=1.00 (SMH#3)

155 LF OF 8" PVC @ 0.011 FPF  
INV.=14.08

SANITARY SEWER LATERAL TO BE INSTALLED AND CAPPED FOR FUTURE CONNECTION OF 27 HIAWATHA LANE

SANITARY MANHOLE (SMH#1)  
RIM=15.74  
INV.IN=11.87  
INV.OUT=1.00 (SMH#1)

155 LF OF 8" PVC @ 0.011 FPF  
INV.=14.08

TRENCH BOXES TO BE INSTALLED AT CULVERT CROSSING TO MINIMIZE EXCAVATION LIMITS. EXCAVATION TO BE HANDLED CAREFULLY SO NOT TO DISTURB THE EXISTING CULVERTS. HAND EXCAVATE AS NECESSARY. DEWATERING MAY BE NECESSARY DURING EXCAVATION. IF REQUIRED PUMP TO BE INSTALLED WITH A PERFORATED PIPE SURROUNDED BY CRUSHED STONE AND DISCHARGE INTO THE EXISTING CATCH BASIN TO THE WEST. CATCH BASIN TO HAVE A STREAMLINED INSTALLED PRIOR TO ANY DEWATERING ACTIVITIES. HAYBALES SHALL BE INSTALLED AT DISCHARGE OF EXISTING PIPE. ANY SEDIMENT ACCUMULATION SHALL BE REMOVED AFTER CONSTRUCTION. PUMPING ACTIVITIES SHALL NOT DISCHARGE SEDIMENT LADEN RUNOFF INTO WATERCOURSE. CONTACT DESIGN ENGINEER PRIOR TO PUMPING ACTIVITIES TO REVIEW. CONTACT DESIGN ENGINEER IF DEWATERING PROTOCOL IS NOT ABLE TO KEEP UP WITH DEWATERING OR KEEPING SEDIMENT LADEN RUNOFF FROM WATERCOURSE.

DESIGN ENGINEER TO BE CONTACTED IF ANY DEFICIENCIES ARE FOUND ON EXISTING INFRASTRUCTURE AT CULVERT CROSSINGS DURING THE INSTALLATION OF SEWER LINES. DESIGN ENGINEER TO CONTACT THE DEPARTMENT OF PUBLIC WORKS AND/OR CONSERVATION STAFF TO DISCUSS IF REPAIRS ARE REQUIRED.

- Excavation for pipes or concrete permanent repair may require either a lined excavation or open cut designed according to the requirements of CSHA, 29 CFR Part 1926. The lateral support systems and slopes shall also be designed such that building footings, slabs on grade, adjacent pavement and existing utilities are protected and supported and not allowed to settle. The contractor shall be responsible for having a Professional Engineer, registered in the State of Connecticut design the excavation support method. The design shall be submitted to the owner or his geotechnical engineer for review. The contractor shall submit plans showing the type, limits, geotech and sequence of construction for the lateral support system.
  - During the excavation, it is anticipated that existing utilities and sewers may be exposed. The contractor shall provide protection and support of these facilities and repair any damage caused by the work in a manner satisfactory to the owner. The condition of the existing facilities shall be observed by the owner's representative who shall determine if the facilities shall be replaced. Repairs to the facilities shall be done in a manner satisfactory to the owner and in compliance with applicable Codes.
- STORM AND SANITARY SEWER SYSTEMS:**
- All pipe shall be installed straight and at the vertical and horizontal alignment shown. Pipes shall have a uniform slope as specified.
  - Minimum cover on all pipes shall be two feet (2') unless otherwise noted.
  - All sanitary gravity pipe specified as Poly Vinyl Chloride Pipe (PVC) shall be SDR 35 with rubber gasketed joints and meet the requirements of ASTM D3034 and D3035.
  - Dig test pits at utility and sewer crossings to check actual clearances with these facilities prior to construction. Dig test pits at the connection points to existing sanitary sewer pipes to confirm the elevation of the proposed gravity sewer is appropriate. If conflicts are found the contractor shall notify the engineer at which time the sewer in question shall be redesigned. If such redesign is not possible, the existing pipes or utilities shall be relocated to avoid conflict.
  - Manhole diameters fixed are minimum sizes and are assumed to be 4" inside diameter. If precast manholes are used, larger manholes must be used if recommended by the manufacturer.
  - Flow in existing sewer system must not be interrupted. Any temporary routing of this sewer flow must be done in conformance with all applicable rules and regulations.
  - Under no circumstances shall trench water be allowed to drain off through sanitary sewer lines.
  - All uncrushed stone shall be Gradation No. 4 as per CT DOT Form 817, Article H.01.01. Stone shall consist of sound, tough, durable particles free from soft, thin, elongated, laminated, friable, calcareous, or disintegrated pieces of mud, dirt or other deleterious material.
  - The storm and sanitary sewer shall be encased in concrete for a distance of 10 feet on either side of any intersection between the sanitary sewer and storm sewer. Where concrete encasement is required, temporarily support the pipes in place. Use sufficient concrete to encase piping not less than 6 inches at all points. The concrete must be adequately supported with a stone base and shall be keyed into the foundation wall to prevent damage from settlement.
  - Sanitary Sewer Testing: The sanitary sewer line shall be Low Pressure Air Tested, at the expense of the contractor. Testing to be in accordance with recommended procedure in "Unibolt" Recommended Practice for Low Pressure Air Testing of Installed Sewer Pipe UNIBOLT. The minimum starting pressure for the test is 3.5 P.S.I. (in excess of the groundwater pressure at the top of the pipe) and there shall be no more than 0.2 P.S.I. drop in five (5) minutes. Manholes to be visually inspected. Lateral pipe shall be straight to allow proper testing. Inspecting Engineer and the Engineering Bureau shall be informed of testing schedule three days in advance so they can witness the testing.

**SEDIMENT AND EROSION CONTROL NARRATIVE:**

The purpose of the Sediment and Erosion Control Plan, details, and notes is to outline a program that minimizes soil erosion during construction. The primary policies of this program are:

- Trapling particles at source by promptly stabilizing disturbed areas;
- Avoid concentration of water;
- Avoid contamination of existing storm drains;
- Maintenance (weekly maintenance and after storm events) of controls to ensure they are functioning properly.

**SEDIMENT AND EROSION CONTROL NOTES:**

- Sheet SE-I is intended to describe the soil sediment and erosion control treatment of this site only. For other details with respect to construction, see appropriate drawings.
- All sediment and erosion controls shall be done in conformance with the "Connecticut Guidelines for Soil Erosion and Sediment Control" dated May 2002 prepared by The Connecticut Council on Soil and Water Conservation.
- The contractor is assigned the responsibility for implementing this sediment and erosion control plan. This responsibility includes the installation and maintenance of control measures, informing all parties engaged on the construction site of the requirements and objectives of the plan, notifying the Zoning Department of any transfer of this responsibility, and Conservation Department that construction is to begin three (3) days prior to commencing work.
- Temporary sediment control measures and tree protection must be installed in accordance with drawings and manufacturer recommendations prior to work in any upland areas.
- No construction or construction equipment or storage of materials will be allowed on the downhill side of the site fence or within fenced off areas, except during construction of the proposed facilities shown beyond the fence.

- The location of each stockpile will vary throughout the construction period. Excavated silt and earth stockpiles shall be stored on site. Silt fence shall be placed at the base of the stockpile to prevent sediment from leaving the site and to protect storm drains, wetlands and watercourses.
- Silt fence shall be 6' high, Amoco 4500 or equivalent approved by Site Engineer. Filter fabric used shall be MIRA1 100 or equivalent. Install silt fence according to manufacturer's instruction, particularly, bury lower edge of fabric into ground.
- If excessive dewatering is required, all dewatering pumping must have sediment and erosion control provisions to maintain clear water discharge (not muddy). Such provisions shall be approved by governing agencies. All pump discharge from dewatering shall be clear at the point where it flows off the property.
- If excessive groundwater is encountered during construction, the site engineer may require that the pump discharge pass through a settlement basin of adequate size to further clarify the discharge prior to entering the storm drainage system. Such basin could be made from an excavated pit or by using a reeled trash dumpster. The basin would have a piped overflow leading into the storm drainage system. Alternative methods may be used, such as well points, other types of pump intake filters and settlement basins, if approved by the inspecting engineer and governing agencies. All pump discharge from dewatering shall be clear at the point where it flows off the property.
- All runoff from dewatering activities shall be filtered haybales.
- Loaded trucks shall be covered as required to keep down dust.
- Affected portions of off site roads and sidewalks must be swept clean when required to keep down dust and prevent safety hazards or at least once a week during construction and as directed by Site Engineer.
- Dust control to be achieved with watering down disturbed areas as required.
- Excavated silt and earth stockpiles shall not be permitted to be stored on site. Excess material shall be disposed of legally.
- Periodically and upon completion of the job, clean silt from any affected storm sewer systems including pipes and inlets. Use silt during final landscaping or dispose off-site legally.

No.	Date	Revision
1	05/07/2018	ORIGINAL ISSUE DATE

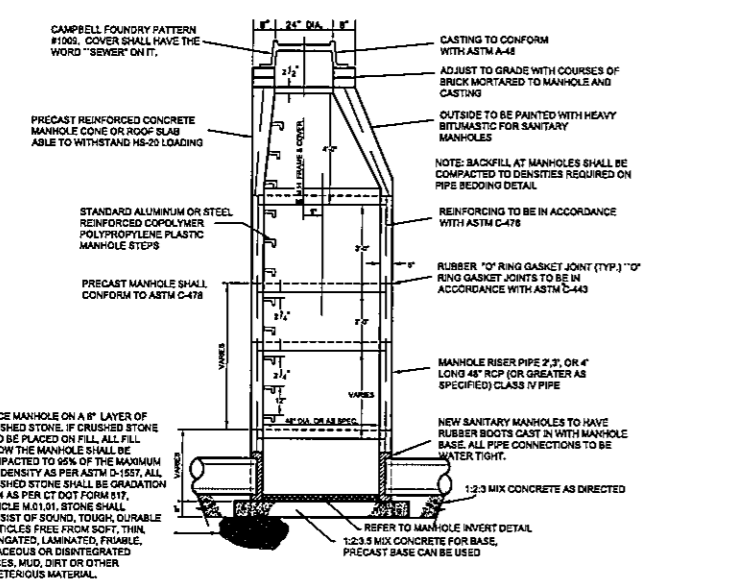
**SITE DEVELOPMENT PLAN**  
DEPICTING  
**HIAWATHA LANE SANITARY**  
WESTPORT, CT  
PREPARED FOR  
**SUMMIT SAUGATUCK, LLC.**

SCALE: 0 30 60  
1"=30'

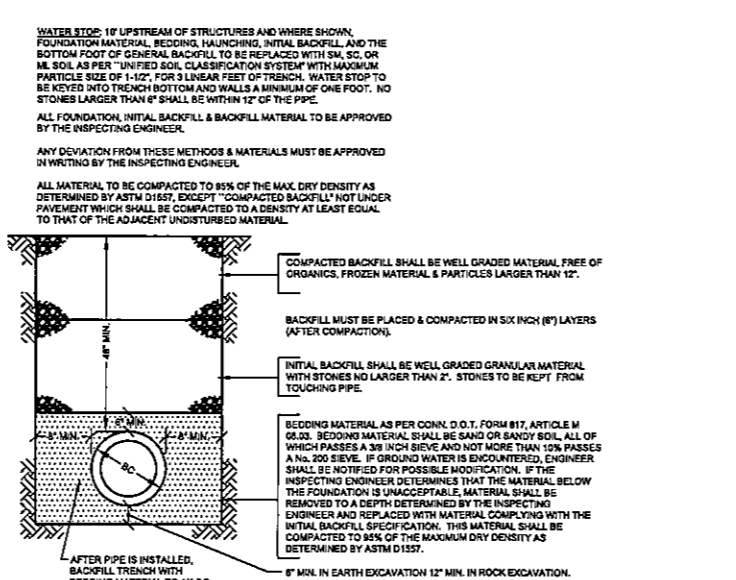
DRAWN BY: PSS CHECKED BY: DRG

**REDNISS & MEAD**  
 LAND SURVEYING  
 CIVIL ENGINEERING  
 PLANNING & ZONING CONSULTING  
 PERMITTING  
 23 Elm Street | Stamford, CT 06901  
 Tel: 203.332.2500 | Fax: 203.337.1118  
 www.rednissandmead.com  
 Comm. No: 7435

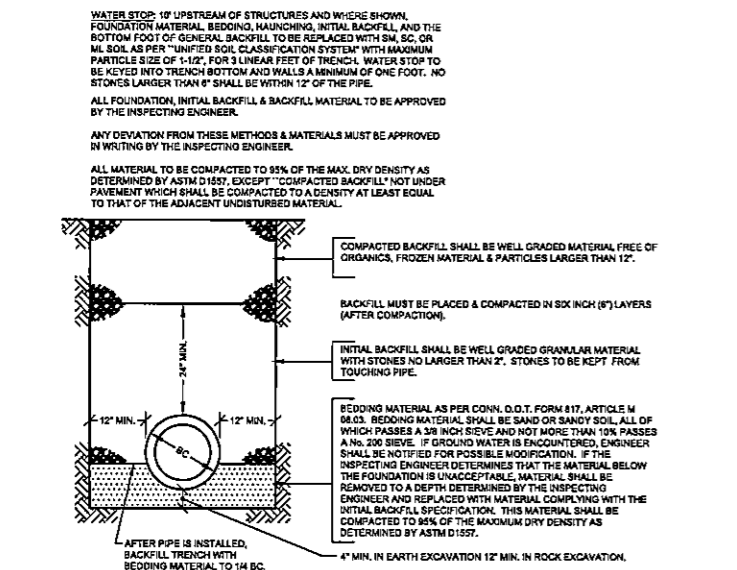
David R. Ginter, P.E.  
 DAVID R. GINTER, C.T. P.E. 27177  
 May 7, 2018  
 DATE  
 This document and copies thereof are valid only if they bear the signature and embossed seal of the designated licensed professional. Unauthorised alterations render any dedication, herein null & void.  
 SHEET NO:  
**SE-I**  
 Comm. No: 7435



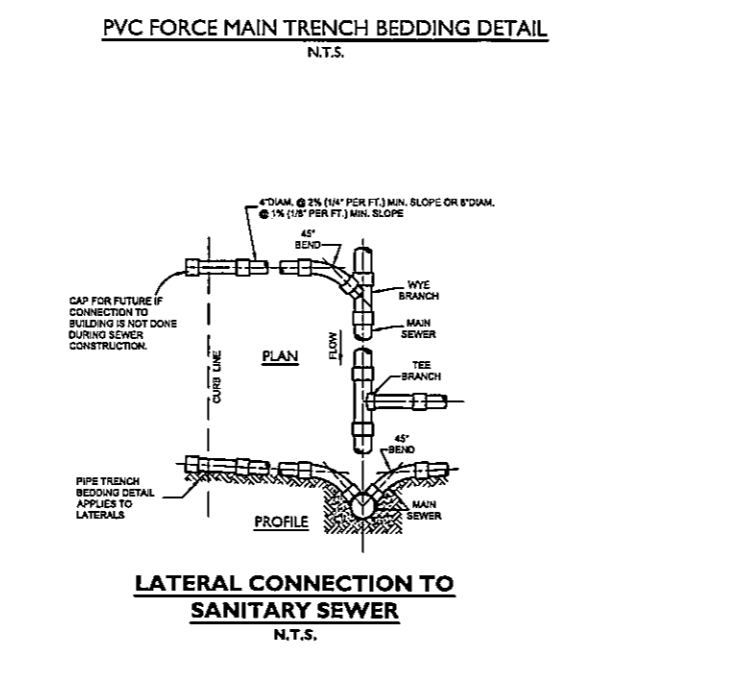
**SANITARY MANHOLE DETAIL**  
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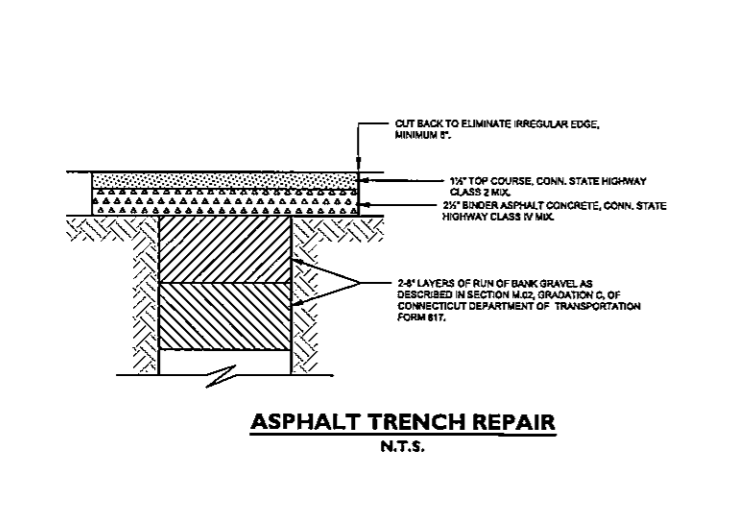
**PVC FORCE MAIN TRENCH BEDDING DETAIL**  
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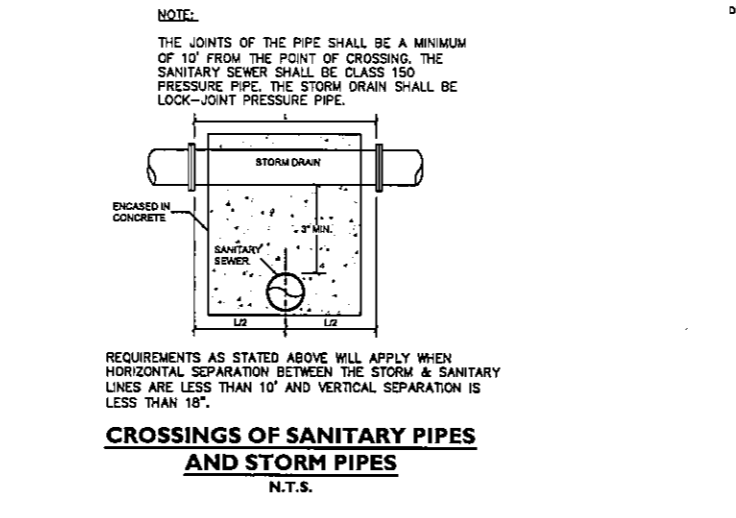
**PVC PIPE TRENCH BEDDING DETAIL**  
(48" DIA. & UNDER)  
N.T.S.



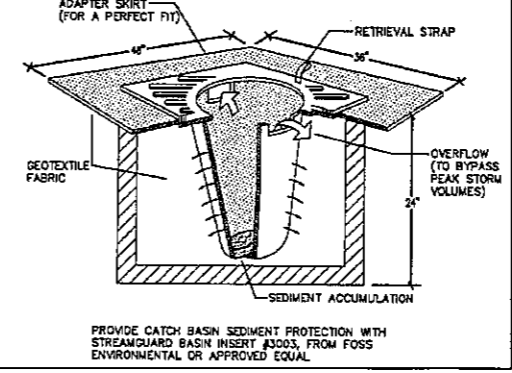
**LATERAL CONNECTION TO SANITARY SEWER**  
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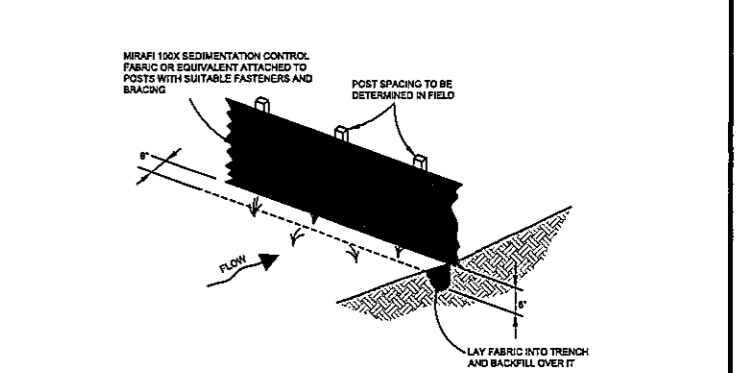
**ASPHALT TRENCH REPAIR**  
N.T.S.



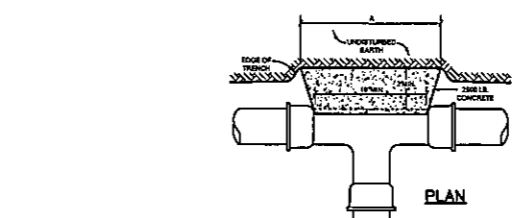
**CROSSINGS OF SANITARY PIPES AND STORM PIPES**  
N.T.S.



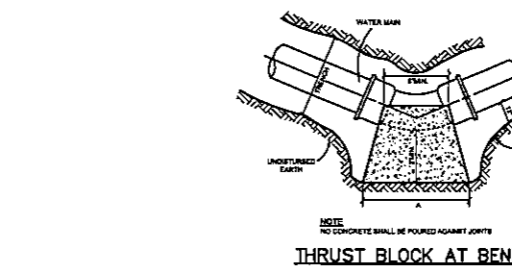
**STREAMGUARD CATCH BASIN INSERT**  
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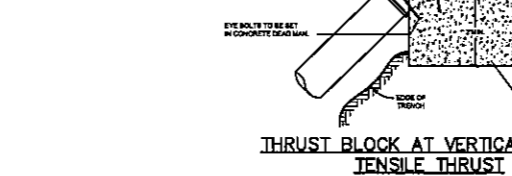
**FABRIC & POST SILTATION BARRIER (SILT FENCE)**  
N.T.S.



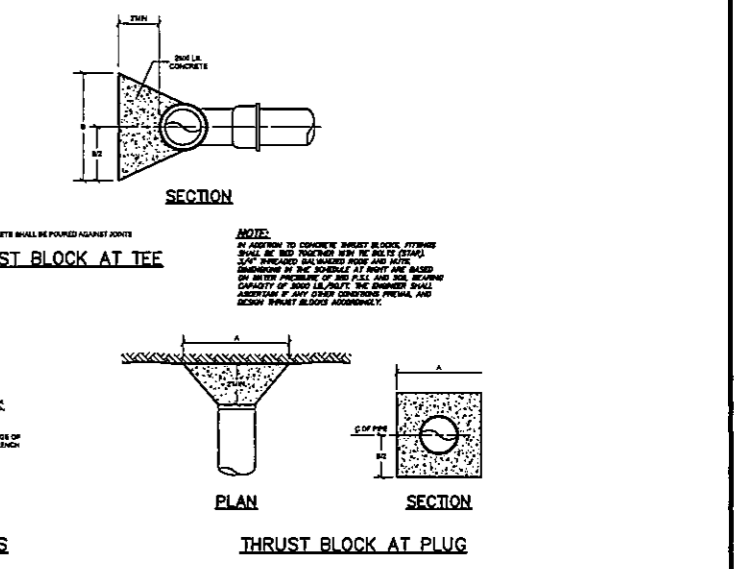
**THRUST BLOCK AT TEE**  
N.T.S.



**THRUST BLOCK AT BENDS**  
N.T.S.



**THRUST BLOCK AT VERTICAL BENDS TENSILE THRUST**  
N.T.S.



**THRUST BLOCK AT PLUG**  
N.T.S.

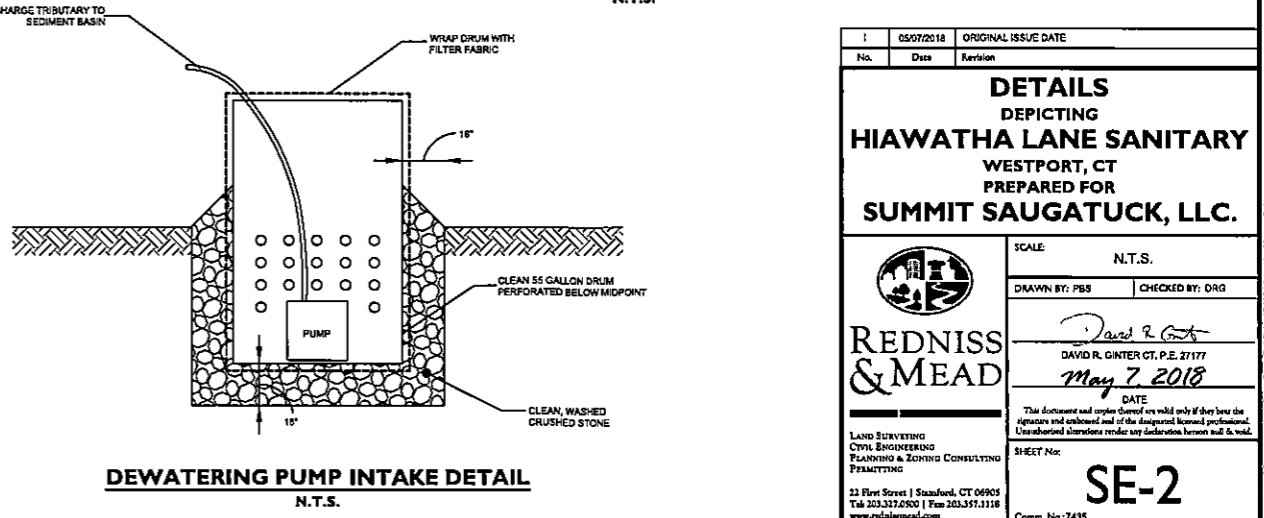
**THRUST BLOCK DIMENSIONS**

FOR 4" SANITARY

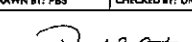
FITTING	SLK	A	B
45° BEND	1/3	2'-8"	2'-0"
22-1/2° BEND	1/5	2'-0"	1'-8"
11-1/4° BEND	1/7	2'-0"	1'-0"
TEE	4/5	3'-8"	3'-0"
PLUG	4/5	3'-8"	3'-0"

FOR 1" & 1 1/4" LATERALS, PROVIDE THRUST BLOCKS AS RECOMMENDED BY THE WATER COMPANY.

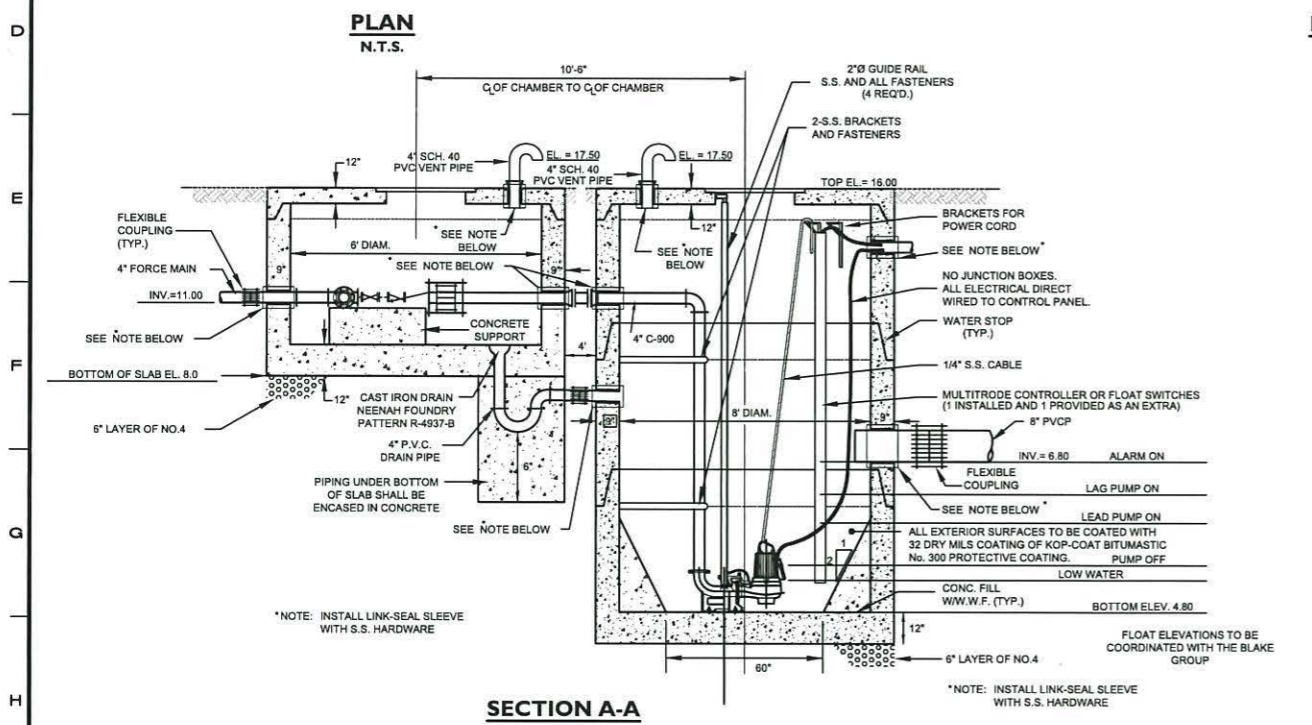
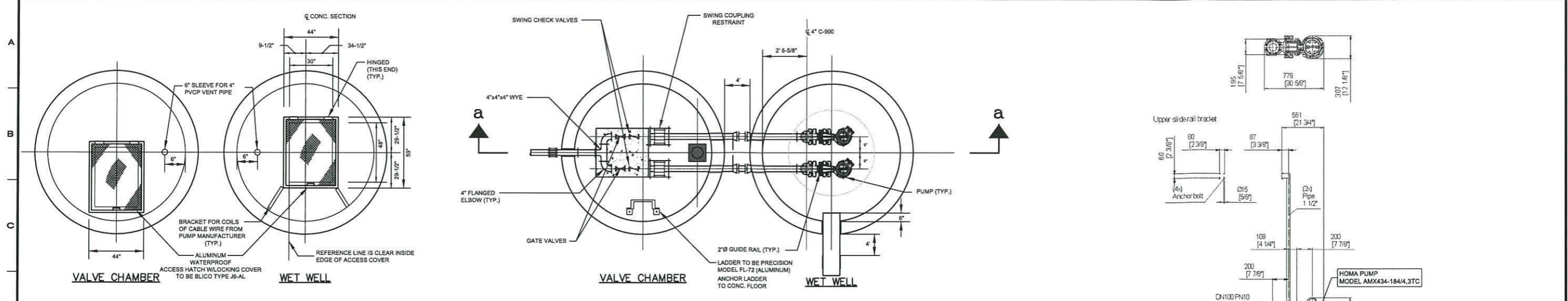
**THRUST BLOCK DIMENSIONS**  
FOR 4" SANITARY



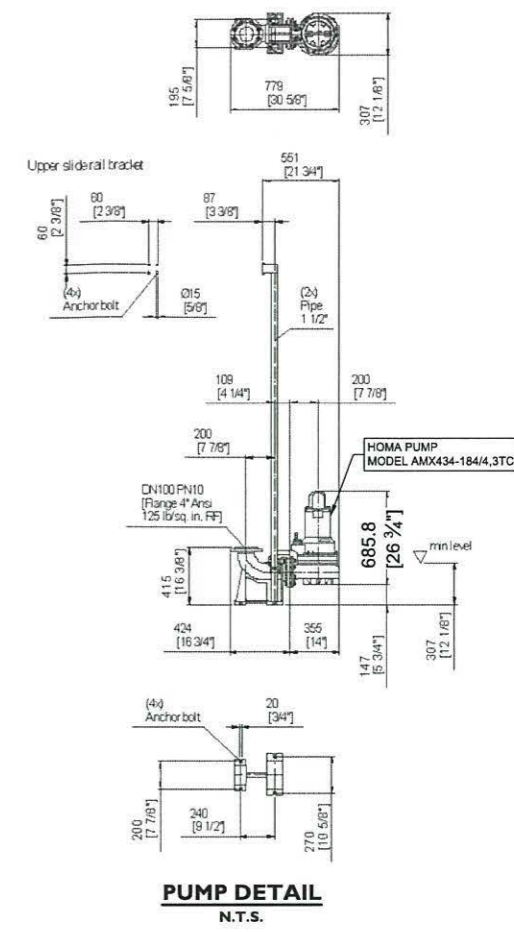
**DEWATERING PUMP INTAKE DETAIL**  
N.T.S.

1	05/07/2018	ORIGINAL ISSUE DATE
No.	Date	Revision
<b>DETAILS</b>		
DEPICTING		
<b>HIAWATHA LANE SANITARY</b>		
WESTPORT, CT		
PREPARED FOR		
<b>SUMMIT SAUGATUCK, LLC.</b>		
SCALE: N.T.S.		
DRAWN BY: P85   CHECKED BY: DRG		
 DAVID R. GINTER CT, P.E. 27177 May 7, 2018 DATE		
This document and copies thereof are valid only if they bear the signatures and embossed seal of the designated licensed professional. Unauthorized alterations render any declaration herein null & void.		
SHEET No:		
<b>SE-2</b>		
LAND SURVEYING CIVIL ENGINEERING PLANNING & ZONING CONSULTING PERMITS 23 First Street   Stamford, CT 06903 Tel: 203.333.0000   Fax: 203.333.0108 www.rednissandmead.com Conn. No: 7435		





ALL PUMP & PUMP STATION RELATED EQUIPMENT AND STRUCTURES TO BE COORDINATED WITH BLAKE EQUIPMENT GROUP



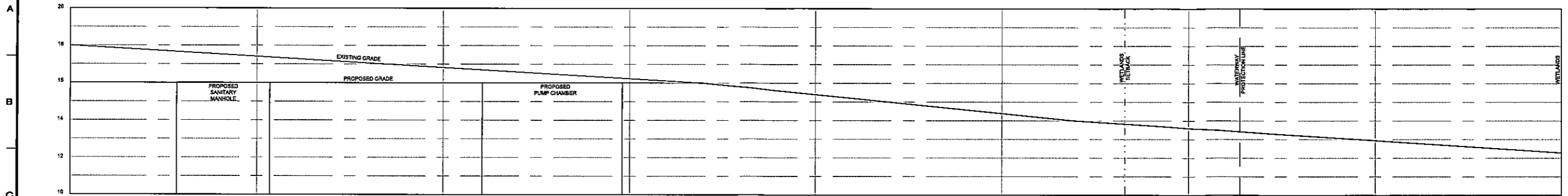
CONTROL PANEL N.T.S.

- GENERAL:
- All piping and plumbing work shall be performed by a plumber licensed in the State of Connecticut. All electrical work shall be performed by an electrician licensed in the State of Connecticut.
  - The Owner, the Sewer Division and the Building Division of the Town of Westport Department of Public Works and the Design Engineer shall be notified three days prior to the commencement of each phase of construction.
  - All work shall be done in accordance with OSHA requirements. The contractor shall be responsible for compliance with OSHA requirements.
  - The contractor shall submit shop drawings of all products and equipment to inspecting engineer for review and approval prior to fabrication, ordering, and installation.
  - Under no circumstances shall trench water be allowed to drain off through sewer lines.
  - Upon the completion of the work, certification will be required by a Registered Professional Engineer to the satisfaction of the Sewer Division, that construction is in accordance with the approved plans.
  - The Forced main shall be 4.0" PVC pipe SRD21 in accordance with ASTM D-2241 standards.
  - The Forced main shall be installed so that its top will be at least 48" below finished grade. It shall be connected to the existing forced main in accordance with the Connecticut Plumbing Code and the requirements of the Town of Danvers.
  - Install thrust blocks at all horizontal and vertical bends of the forced main in accordance with the detail.
  - The new forced main and gravity sewer shall be pressure and leakage tested in accordance with ASTM standards.
  - The Design Engineer and the Sewer Division shall be informed of the testing schedule three days in advance so that they can witness the testing. The contractor shall provide all equipment and materials needed to perform the test. Should the forced main or gravity sewer fail to pass the test, the contractor shall determine the cause of the failure, remedy the condition and reset the pipe in question in the presence of the Design Engineer and the Sewer Division.
  - The pumping system shall comply with all applicable codes and requirements and be installed in accordance with the manufacturers recommendations.
  - Shop drawings of the pumping system equipment including wet well, valve box, access covers, pump installation, float controls, control panel, piping and fittings shall be submitted to the design engineer for approval prior to fabrication and installation.
  - The equipment described on these plans has been selected because it meets the project requirements. Should the contractor wish to use substitute equipment, the substitution must be approved by the Owner or his representative prior to ordering the substitute equipment.
  - Alarm switch and pumps to be installed on separate circuits.
  - Station shall be started and adjusted in the field by the supplier with written report supplied to owner.
  - Prior to acceptance, the pumping station shall be tested by the Owner's representative. All mechanical and electrical systems must operate in accordance with the plans. Operation and maintenance manuals for all equipment must be provided to the owner.
  - The pumping system, including emergency power supply shall have a one year warranty.
  - A Representative of the pump manufacturer shall be present at the start up of the pump station.
  - Water lines must be 10 feet minimum away from sewer lines horizontally, or shelled 18" minimum above, and 18" minimum horizontally. If water line and sewer line intersect, sewer line to be encased in concrete 5 feet on either side of where lines intersect.
  - If storm and sewer lines intersect with less than 18" of separation from top of sanitary sewer to bottom of storm, sanitary line to be encased in concrete 5 feet on either side of where lines intersect.
  - 8" sewer pipe to be SDR-35 PVCF.
  - Bedding material to be sand or 3/4" stone.
  - 4 foot minimum cover for pressure lines at time of inspection.

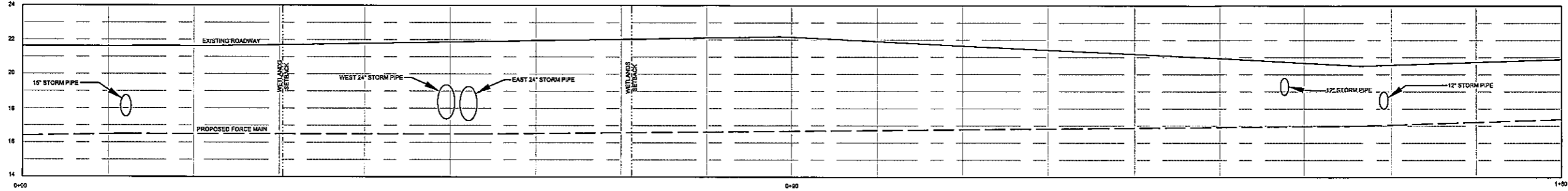
1	05/07/2018	ORIGINAL ISSUE DATE
No.	Date	Revision
<b>PUMP STATION DETAILS</b>		
DEPICTING <b>HIAWATHA LANE SANITARY</b>		
WESTPORT, CT PREPARED FOR <b>SUMMIT SAUGATUCK, LLC.</b>		
SCALE		N.T.S.
DRAWN BY: PBS	CHECKED BY: DRG	
<i>David R. Ginter</i>		
DAVID R. GINTER, C.T., P.E. 21177		
May 7, 2018		
DATE		
This document and copies thereof are valid only if they bear the signature and embossed seal of the designated licensed professional. Unauthorised alterations render any disclaimer, license null & void.		
SHEET No:		<b>SE-3</b>
LAND SURVEYING CIVIL ENGINEERING PLANNING & ZONING CONSULTING PERMITTING 22 First Street   Stamford, CT 06905 Tel: 203.327.0500   Fax: 203.357.1118 www.rednissandmead.com		
Comm. No.: 7435		

15:00:00/2018/05/07/16074305/06/23/18 Hiawatha Master L.dwg

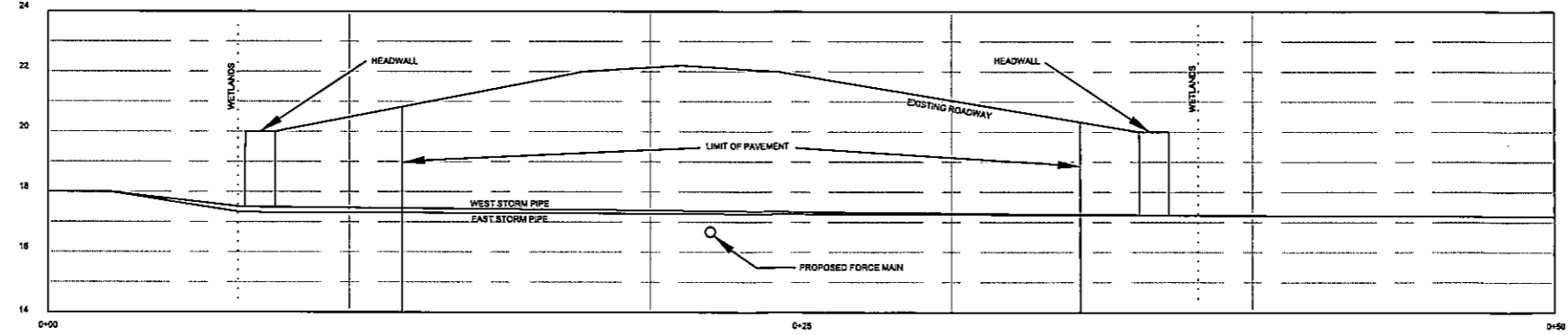




SECTION A-A'  
SCALE: 1"=2.5'



PROFILE B-B'  
HORIZONTAL SCALE: 1"=6'  
VERTICAL SCALE: 1"=2'



SECTION C-C'  
SCALE: 1"=2.5'

1 05/07/2018 ORIGINAL ISSUE DATE		
No.	Date	Revision
<b>CROSS SECTIONS</b>		
DEPICTING <b>HIAWATHA LANE SANITARY</b> WESTPORT, CT PREPARED FOR <b>SUMMIT SAUGATUCK, LLC.</b>		
 <b>REDNISS &amp; MEAD</b> <small>LAND SURVEYING CIVIL ENGINEERING PLANNING &amp; ZONING CONSULTING PERMITTING</small> <small>22 Flat Street   Stamford, CT 06905 Tel: 203.327.0900   Fax: 203.352.1115 www.rednissandmead.com</small>	SCALE: AS NOTED DRAWN BY: PBS   CHECKED BY: DRG DATE: <i>May 7, 2018</i> DAVID R. GINTER, P.E. 27177 <small>This document and copies thereof are valid only if they bear the signature and embossed seal of the designated licensed professional. Unauthorised alterations render any declaration herein null &amp; void.</small>	
	<b>SE-4</b> SHEET NO. Conn. No: 7435	

15/05/2018 10:40 PM R:\GIS\Projects\2017\050718\050718\DWG\7435\_Hiawatha\_Sanitary.dwg



January 30, 2020

Mr. Timothy S. Hollister  
Shipman & Goodwin, LLP  
One Constitution Plaza  
Hartford, CT 06103

Re: Hiawatha Lane, Westport, CT – Sanitary Sewer Extension

Dear Mr. Hollister,

At the request of Summit Saugatuck, LLC, this letter is written to support a re-application to the Westport Water Pollution Control Authority for a sewer main extension to serve a proposed development located at Hiawatha Lane and its Extension. The following is a summary of the impacts to the existing sanitary sewer infrastructure in the area of Davenport Avenue to Pump Station #2. Reference is made to a letter prepared by this office dated November 22, 2016 for existing conditions analysis.

The proposed development includes four (4) studio units, ninety (90) one bedroom and ninety-three (93) two-bedroom units in addition to eight (8) adjacent single-family properties. The total estimated flow tributary to the sewer main extension is 46,615 gallons per day (gpd) based on the Town of Westport discharge rate of 273.4 gpd/sewer unit. After applying a peaking factor of 4, the anticipated peak daily flow is 130± gpm (0.29 cfs). With this anticipated flow, the existing sanitary sewer conveyance system within Davenport Avenue (0.40± cfs) will operate at approximately 33% of the total maximum capacity of the system (1.21 cfs).

Combining the anticipated flows to the existing flows calculated in the Weston & Sampson analysis dated December 22, 2014 for Pump Station #2, we anticipate the contributing flow would be 1.25 cfs. The peak flow would be 2.45 cfs or 1,100 gpm (100% of the PS#2 pre-upgrade maximum). As described in the November 2016 letter, flow meters were installed to monitor actual flow conditions to Pump Station #2 which yielded a high instantaneous flow of 893 gpm during a monitoring period from February 7, 2015 to March 4, 2015. Combining the anticipated flows to the monitored flow, we anticipate the contributing flow to be 1,023 gpm (93% of the PS#2 pre-upgrade maximum).

The following chart is a summary of the peak flows and percent maximum tributary to the existing Davenport Avenue sanitary sewer main and Pump Station #2:

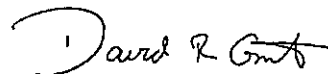
	Peak Flow	Peak Percent of Max
Existing Conditions – Davenport Avenue Pipe	0.11 cfs	8.9%
Proposed Conditions – Davenport Avenue Pipe	0.40 cfs	33%
Existing Conditions - Weston & Sampson	970	88%*
Existing Condition with Hiawatha Development	1,100	100%*
Existing Conditions – Flow Meter 2/7/15-3/4/15	893	82%*
Existing Conditions with Hiawatha Development	1,023	93%*

\*Note: The peak percent of max is based on the maximum pump rates in Pump Station #2 before the upgrades were made.

We have confirmed with the Department of Public Works, that the Town has completed upgrades to Pump Station #2 which included the replacement of the existing force main under the Saugatuck River connecting the pump station directly to the Wastewater Treatment Facility with a new, larger force main as well as upgrades to the pumps, wet well, controls and generator in an effort to address previous peak flow capacity concerns as well as provide capacity for future developments. It is also our understanding that when the design of the upgrades to Pump Station #2 was occurring, this proposed development was factored into the future flow for the system. As such, the conveyance network from Davenport Avenue to the Wastewater Treatment Facility has adequate capacity for the flow associated with the 187-unit development at the end of Hiawatha Lane Extension and the 8 existing single-family residences not currently connected to the sewer system. We have also reviewed the WPCA Flow Evaluation report prepared by Weston & Sampson dated February 2019 as it relates to the capacity at the wastewater treatment plant. Based on the existing average daily flow (1.97 MGD) and expected full build out average daily flow (3.07 MGD) flows within the Sewer Service Area as compared to the NPDES Permit Limit (3.30 MGD), the wastewater treatment plan has the capacity to treat the increase in flow from the proposed development (0.05± MGD).

Should you have any questions regarding the information provided above or require additional information, please do not hesitate to contact me.

Sincerely,



David R. Ginter, P.E.

Enclosures: File

## Wastewater Generation

<b>Project:</b> <i>Residences at Hiawatha</i>	<b>Project #:</b> 7435	<b>Date:</b> 9/26/2017
<b>Location:</b> <i>Hiawatha Lane, Westport, CT</i>	<b>By:</b> DRG	<b>Checked:</b> DRG

### Projected Daily Wastewater Flow

Use	Residential Units	Sewer Unit Flow Rate	Sewer Unit Flow	Anticipated Flow
Studio Apartment	4	0.50 units/ea	2	0,547 gpd
1 - Bedroom Apartment	90	0.75 units/ea	68	18,455 gpd
2 - Bedroom Apartment	93	1 units/ea	93	25426 gpd
Single Family Residences adjacent to development	8	1 units/ea	8	2,187 gpd
<b>Total</b>			<b>171</b>	<b>46,615 gpd</b>
<b>Design Flow</b>				<b>186,459 gpd</b>

**Notes:**

1. Unit Flow Rate from Westport Sewer Use Charge Regulations
2. 1 Unit = 273.4 gpd
3. gpd = gallons per day
4. Additional Single Family Residences included: 26 & 28 Davenport Lane and 24, 26, 27, 29, 31, and 33 Hiawatha Lane

# DAVID R. GINTER, P.E.

Senior Engineer

With Redniss & Mead Since 2004



Professional Engineer  
CT License # 27177



A resourceful civil engineer who is experienced in engineering design from the initial conceptual stage, through detailed design and approval process and to final construction. He is committed to providing a high quality service to every client and project he works on.

## EXPERTISE

- Storm Water Management Design
- Septic & Sanitary Sewer Systems
- Site Planning
- Permit Processing - Local, State and Federal Levels
- Hydraulic Flood Studies
- Sediment and Erosion Controls
- Regulatory Compliance
- Drainage

## CERTIFICATION

- OSHA 40-Hour - HAZWOPER

## PROFESSIONAL AFFILIATIONS

- American Society of Civil Engineers
- Connecticut Society of Civil Engineers

## EDUCATION

- B.S. Civil Engineering, University of Connecticut

## LOCAL KNOWLEDGE

- Stamford
- Westport
- Greenwich

EMAIL [d.ginter@rednissmead.com](mailto:d.ginter@rednissmead.com)

## PROJECTS



### RESIDENTIAL/MIXED USE

- Walnut Ridge Court (S)
- Winnipauk Village (N)
- 24 Harold Street (G)
- Rowayton Woods (N)
- Rotary Centennial House (W)
- 1135 Post Road East (W)
- 785, 793 Post Road (W)



### COMMUNITY

- Brunswick School, Maher Ave., King St. Campuses (G)
- Convent of the Sacred Heart (G)
- Greenwich Hospital, Perryridge Rd. & Williams St. Campuses
- Greenwich Water Club
- Belle Haven Club (G)
- Westport Library
- Bruce Park (G)
- Fairview Country Club (G)
- Beacon Point Marine (G)
- 1141 Post Road East (W)
- 75 and 55 Holly Hill Lane (G)



### COMMERCIAL

- The Campus at I-95 Exit 9, Stamford
  - NBC Sports
  - Chelsea Piers Connecticut
  - Hospital for Special Surgery
- Gateway/Charter Communications (S)
- 700, 850, 860, 880 Canal Street (S) (Harbor Square Campus)
- 715, 645 Post Road East (W)
- 55 Post Road West (W)

(S) Stamford, (G) Greenwich, (N) Norwalk, (W) Westport

# REDNISS & MEAD

LAND SURVEYING  
CIVIL ENGINEERING  
PLANNING & ZONING CONSULTING  
PERMITTING

22 First Street  
Stamford, CT 06905  
203.327.0500  
[www.rednissmead.com](http://www.rednissmead.com)



## Opinion of Probably Cost

<b>Project:</b> <i>The Village at Saugatuck</i>	<b>Project #:</b> 7435	
<b>Location:</b> <i>Westport, CT</i>	<b>By:</b> <i>PBS</i>	<b>Date:</b> <i>2/10/2020</i>
<b>Description:</b> <i>Sewer Main</i>	<b>Checked:</b> <i>DRG</i>	<b>Date:</b> <i>2/10/2020</i>

Item	Unit	Quantity	Unit Cost	Total Cost
<b>Demolition</b>				
Remove Pavement	SF	9650	\$2.16	\$20,844
Sawcut	LF	2180	\$0.50	\$1,090
<b>Subtotal:</b>				<b>\$21,934</b>
<b>Sanitary Line</b>				
PVCP, 4" DIA./Installed	LF	1137	\$40.00	\$45,480
PVCP, 8" DIA./Installed	LF	915	\$45.00	\$41,175
Lateral Connections	LS	8	\$1,500.00	\$12,000
Sanitary Manhole	LS	9	\$5,530	\$49,770
Pump	LS	2	\$10,000	\$20,000
Pump/Valve Chamber	LS	2	\$20,000	\$40,000
Pump Controls	LS	1	\$30,000	\$30,000
<b>Subtotal:</b>				<b>\$238,425</b>
<b>Roadway Repair</b>				
Asphalt	SF	9650	\$5.00	\$48,250
<b>Subtotal:</b>				<b>\$48,250</b>
<b>Site Work Sub-Total</b>				<b>\$308,609</b>
Contingency	%		15%	\$46,291
Engineering & Surveying				\$15,000
Pressure Testing				\$5,000
Permit Fee				\$125
<b>Total Budget</b>				<b>\$375,025</b>

**REDNISS  
& MEAD**







# Exploratory Inspection

A+C Connection Inspection

01/01/2002 12:10:24 AM

**Contact**  
A+C  
Connection  
Inspection  
203-389-7520

**Address**  
30 Overlook  
Drive  
Hamden, CT  
06514

**Operator**  
David Beedle

### Session Information

<b>Project Name</b>	Exploratory Inspection		
<b>Location</b>	Westport, CT	<b>Run Number</b>	#1
		<b>Pipe Name</b>	Existing Sanitary Sewer
<b>VCR Tape Number</b>	None	<b>Flow Direction</b>	With Flow
<b>Truck Number</b>	#1	<b>Distance Traveled</b>	83.7
<b>Comments</b>	Redniss & Mead		

### Pipe Information

<b>Pipe Name</b>	Existing Sanitary Sewer		
<b>Type Of Pipe</b>	Plastic		
<b>Size Of Pipe</b>	8"		

### Manhole Information

<b>Start Manhole Number</b>	# 5A	<b>End Manhole Number</b>	# 5
<b>SMH Depth</b>	3'	<b>EMH Depth</b>	3'
<b>SMH Location</b>	Saugatuck Ave	<b>EMH Location</b>	Saugatuck Ave
<b>Amount of Flow:</b>	Min	<b>Signs Of Surcharge:</b>	No
<b>Manhole Condition</b>	Existing		

# Session Name: Exploratory Inspection

Date: 1/1/2002 12:10:24 AM

Location: Westport, CT

Total Distance: 83.7

Run Number: #1

Start Manhole Number: # 5A

End Manhole Number: # 5

Flow Direction: With Flow

Footage	Fault Observation	Time	Picture
0.0	Start Inspection Severity: None	0	
83.7	Had to Retract Due to Debris. Severity: None	04:46	



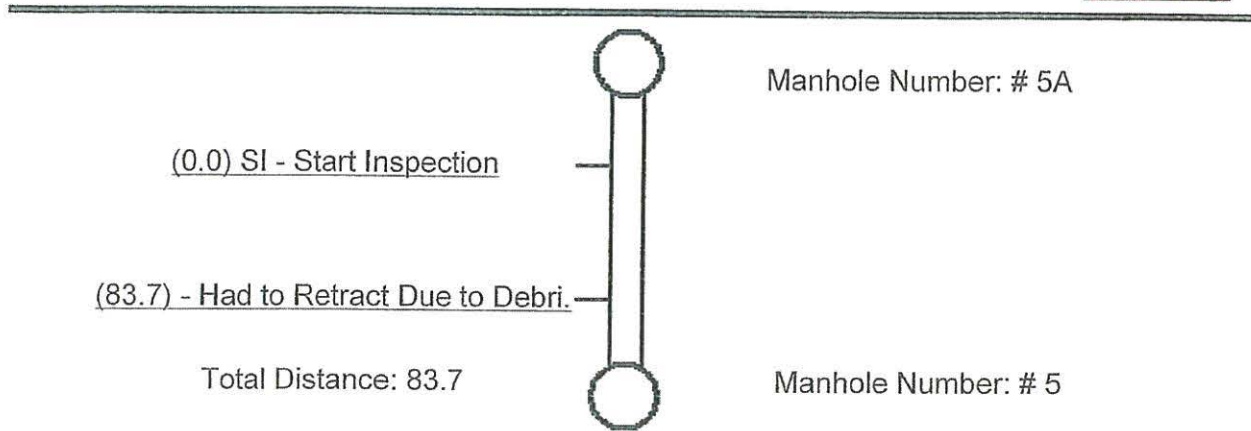



# Session Name: Exploratory Inspection

Date: 1/1/2002 12:10:24 AM  
Location: Westport, CT  
Total Distance: 83.7  
Run Number: #1

Start Manhole Number: # 5A  
End Manhole Number: # 5  
Flow Direction: With Flow

Severity
Light
Moderate
Average
Heavy
Severe



	<h1>Exploratory Inspection</h1>		<b>Contact</b> A+C Connection Inspection 203-389-7520
	<h2>A+C Connection Inspection</h2>		<b>Address</b> 30 Overlook Drive Hamden, CT 06514
09/26/2013 10:04:05 AM			<b>Operator</b> David Beedle
<b>Session Information</b>			
<b>Project Name</b>	Exploratory Inspection		
<b>Location</b>	Westport, CT	<b>Run Number</b>	#2
		<b>Pipe Name</b>	Existing Sanitary Sewer
<b>VCR Tape Number</b>	None	<b>Flow Direction</b>	With Flow
<b>Truck Number</b>	#1	<b>Distance Traveled</b>	175.2
<b>Comments</b>	Redniss & Mead		
<b>Pipe Information</b>			
<b>Pipe Name</b>	Existing Sanitary Sewer		
<b>Type Of Pipe</b>	Tile		
<b>Size Of Pipe</b>	12"		
<b>Manhole Information</b>			
<b>Start Manhole Number</b>	# 3	<b>End Manhole Number</b>	# 2
<b>SMH Depth</b>	18'	<b>EMH Depth</b>	12'
<b>SMH Location</b>	Charles Street/Saugatuck	<b>EMH Location</b>	Charles Street
<b>Amount of Flow:</b>	Min	<b>Signs Of Surcharge:</b>	No
<b>Manhole Condition</b>	Existing		



# Session Name: Exploratory Inspection

Date: 9/26/2013 10:04:05 AM

Location: Westport, CT

Total Distance: 175.2




Run Number: #2

Start Manhole Number: # 3

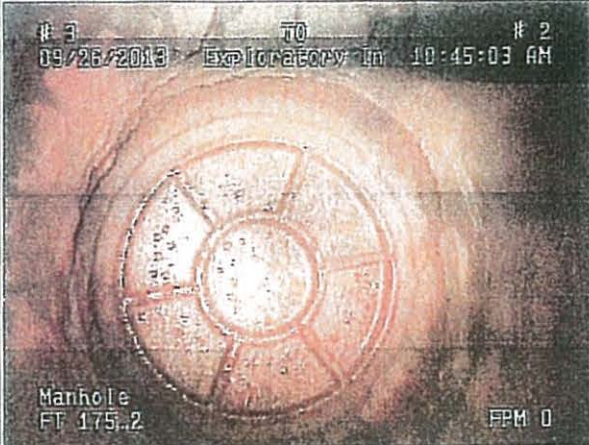

End Manhole Number: # 2

Flow Direction: With Flow

Footage	Fault Observation	Time	Picture
0.0	Start Inspection Severity: None	0	
73.1	Lateral Left Position: 10 Severity: None	03:37	

<p>94.8</p>	<p><b>Capped Connection Position: 2 Severity: None</b></p>	<p>05:19</p>	 <p># 3 TO # 2 09/26/2013 Exploratory In 10:39:22 AM</p> <p>Capped Connection FT 94.8 FPM 0</p>
<p>121.0</p>	<p><b>Protruding Service Connection!! Position: 10 Severity: None</b></p>	<p>07:17</p>	 <p># 3 TO # 2 09/26/2013 Exploratory In 10:41:26 AM</p> <p>Protruding Service Connection!! FT 121.0 FPM 0</p>
<p>124.9</p>	<p><b>Capped Connection Position: 10 Severity: None</b></p>	<p>08:28</p>	 <p>FT 124.9 FPM 0 09/26/2013 Exploratory In 10:42:31 AM</p> <p>Capped Connection FT 124.9 FPM 0</p>



175.2	<b>Manhole Severity: None</b>	11:00	 <p># 3 TO # 2 09/26/2013 Exploratory In 10:45:03 AM</p> <p>Manhole FT 175.2 FPM 0</p>
175.2	<b>End Inspection Severity: None</b>	11:25	 <p># 3 TO # 2 09/26/2013 Exploratory In 10:45:29 AM</p> <p>End Inspection FT 175.2 FPM 0</p>



# Session Name: Exploratory Inspection

Date: 9/26/2013 10:04:05 AM

Location: Westport, CT

Total Distance: 175.2

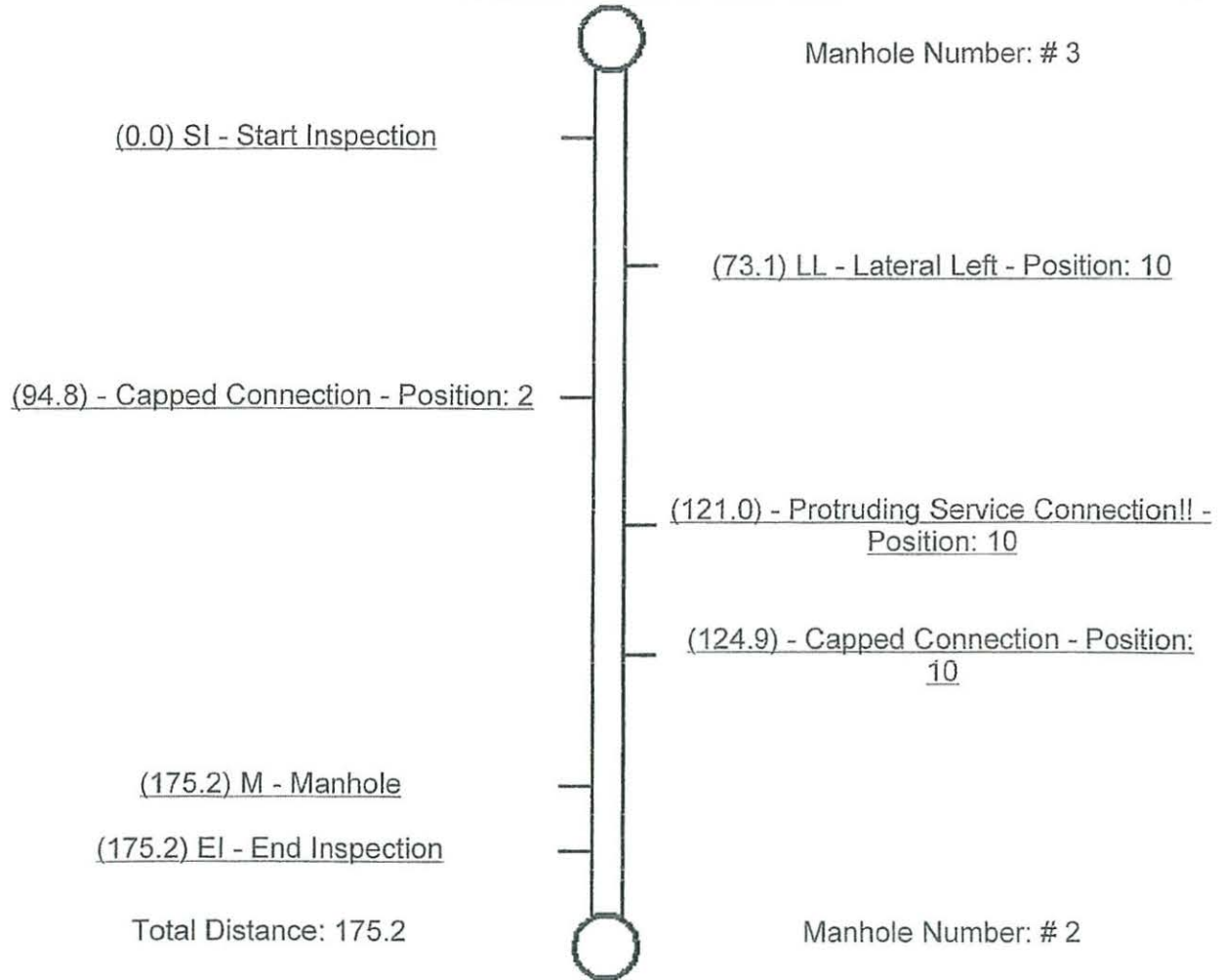
Run Number: #2

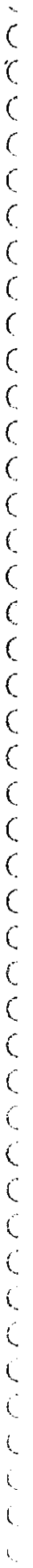
Start Manhole Number: # 3


End Manhole Number: # 2

Flow Direction: With Flow

Severity
Light
Moderate
Average
Heavy
Severe





		<h1>Exploratory Inspection</h1>		<b>Contact</b> A+C Connection Inspection 203-389-7520
		<h2>A+C Connection Inspection</h2>		<b>Address</b> 30 Overlook Drive Hamden, CT 06514
09/26/2013 10:46:09 AM				<b>Operator</b> David Beedle
Session Information				
<b>Project Name</b>	Exploratory Inspection			
<b>Location</b>	Westport, CT	<b>Run Number</b>	#3	
		<b>Pipe Name</b>	Existing Sanitary Sewer	
<b>VCR Tape Number</b>	None	<b>Flow Direction</b>	With Flow	
<b>Truck Number</b>	#1	<b>Distance Traveled</b>	81.3	
<b>Comments</b>	Redniss & Mead			
Pipe Information				
<b>Pipe Name</b>	Existing Sanitary Sewer			
<b>Type Of Pipe</b>	D.I.P.			
<b>Size Of Pipe</b>	12"			
Manhole Information				
<b>Start Manhole Number</b>	# 2	<b>End Manhole Number</b>	# 1	
<b>SMH Depth</b>	5'	<b>EMH Depth</b>	8'	
<b>SMH Location</b>	Charles Street	<b>EMH Location</b>	Charles Street/Park	
<b>Amount of Flow:</b>	Min	<b>Signs Of Surcharge:</b>	No	
<b>Manhole Condition</b>	Existing			

## Session Name: Exploratory Inspection

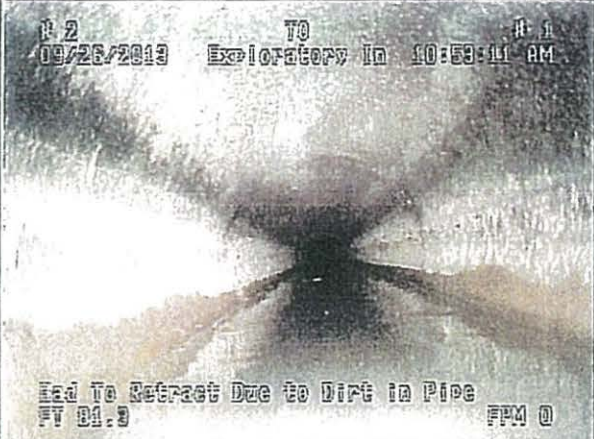

Date: 9/26/2013 10:46:09 AM

Location: Westport, CT  
 Total Distance: 81.3  
 Run Number: #3

Start Manhole Number: # 2  
 End Manhole Number: # 1  
 Flow Direction: With Flow

Footage	Fault Observation	Time	Picture
0.0	Start Inspection Severity: None	0	
37.2	Lateral Left Position: 10 Severity: None	02:30	



<p>81.3</p>	<p>Had To Retract Due to Dirt in Pipe Severity: None</p>	<p>05:45</p>	 <p># 2 TO # 1 09/23/2013 Exploratory In 10:59:11 AM</p> <p>Had To Retract Due to Dirt in Pipe FT 01.3 FPM 0</p>
<p>81.3</p>	<p>End Inspection Severity: None</p>	<p>06:00</p>	 <p># 2 TO # 1 09/23/2013 Exploratory In 10:59:26 AM</p> <p>End Inspection FT 01.3 FPM 0</p>

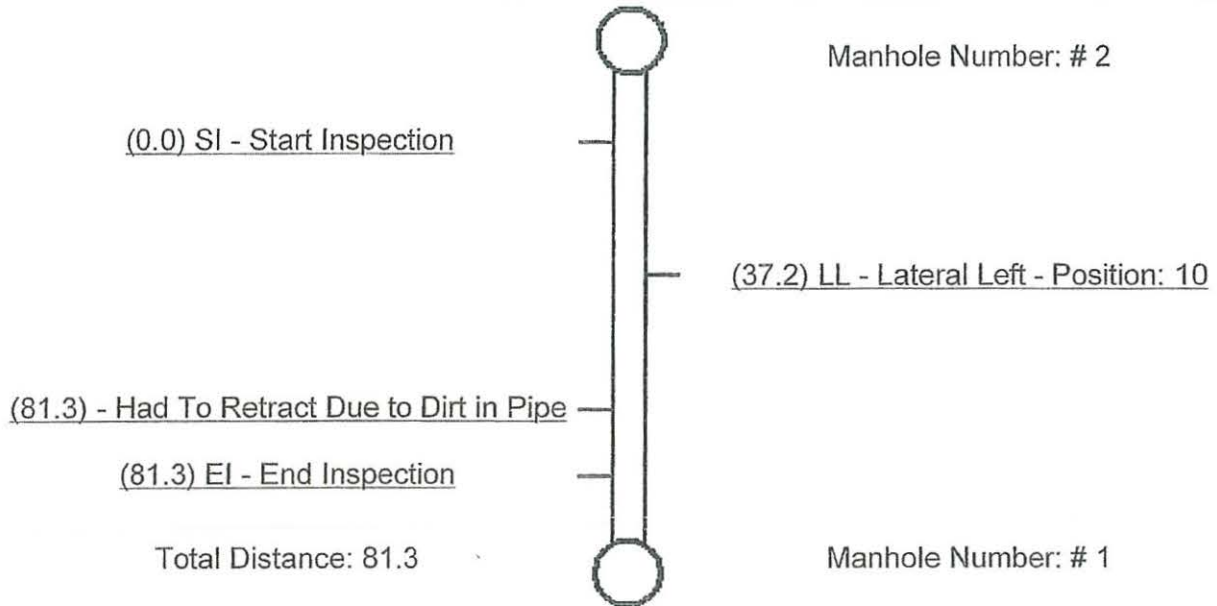



# Session Name: Exploratory Inspection

Date: 9/26/2013 10:46:09 AM  
Location: Westport, CT  
Total Distance: 81.3  
Run Number: #3

Start Manhole Number: # 2  
End Manhole Number: # 1  
Flow Direction: With Flow

Severity
Light
Moderate
Average
Heavy
Severe



	<h1>Exploratory Inspection</h1>		<b>Contact</b> A+C Connection Inspection 203-389-7520
	<h2>A+C Connection Inspection</h2>		<b>Address</b> 30 Overlook Drive Hamden, CT 06514
	09/26/2013 10:54:11 AM		<b>Operator</b> David Beedle
<b>Session Information</b>			
<b>Project Name</b>	Exploratory Inspection		
<b>Location</b>	Westport, CT	<b>Run Number</b>	#4
		<b>Pipe Name</b>	Existing Sanitary Sewer
<b>VCR Tape Number</b>	None	<b>Flow Direction</b>	
<b>Truck Number</b>	#1	<b>Distance Traveled</b>	232.1
<b>Comments</b>	Redniss & Mead		
<b>Pipe Information</b>			
<b>Pipe Name</b>	Existing Sanitary Sewer		
<b>Type Of Pipe</b>	Tile		
<b>Size Of Pipe</b>	12"		
<b>Manhole Information</b>			
<b>Start Manhole Number</b>	#23	<b>End Manhole Number</b>	#4
<b>SMH Depth</b>	18'	<b>EMH Depth</b>	17'
<b>SMH Location</b>	Charles Street/Saugatuck	<b>EMH Location</b>	Saugatuck ave
<b>Amount of Flow:</b>	Min	<b>Signs Of Surcharge:</b>	No
<b>Manhole Condition</b>	Existing		

# Session Name: Exploratory Inspection

Date: 9/26/2013 10:54:11 AM

Location: Westport, CT

Total Distance: 232.1

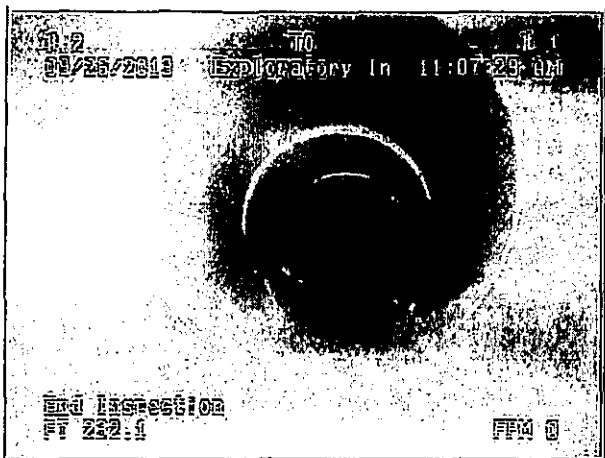
Run Number: #4

Start Manhole Number: # 2 <sup>3</sup>

End Manhole Number: # 1 <sup>4</sup>

Flow Direction:

Footage	Fault Observation	Time	Picture
8.0	Start Inspection Severity: None	0	
232.0	Manhole Severity: None	07:26	

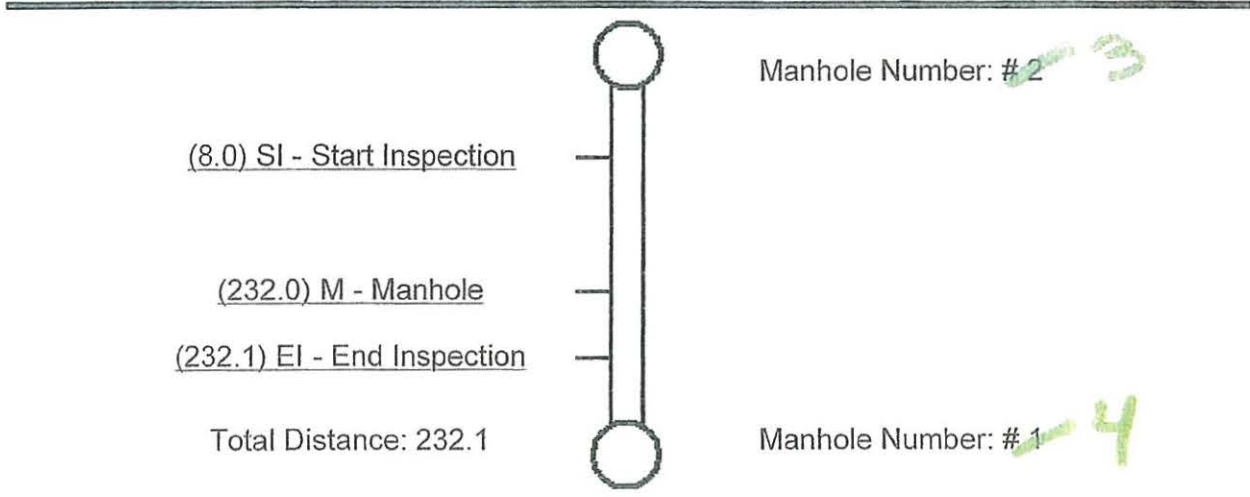
232.1	End Inspection Severity: None	07:47	
-------	----------------------------------	-------	--

# Session Name: Exploratory Inspection


Date: 9/26/2013 10:54:11 AM  
Location: Westport, CT  
Total Distance: 232.1  
Run Number: #4

Start Manhole Number: # 2-3  
End Manhole Number: # 1-4  
Flow Direction:

Severity
Light
Moderate
Average
Heavy
Severe





		<h1>Exploratory Inspection</h1>		<b>Contact</b> A+C Connection Inspection 203-389-7520
		<h2>A+C Connection Inspection</h2>		<b>Address</b> 30 Overlook Drive Hamden, CT 06514
09/26/2013 11:08:08 AM				<b>Operator</b> David Beedle
Session Information				
<b>Project Name</b>	Exploratory Inspection			
<b>Location</b>	Westport, CT	<b>Run Number</b>	#5	
		<b>Pipe Name</b>	Existing Sanitary Sewer	
<b>VCR Tape Number</b>	None	<b>Flow Direction</b>		
<b>Truck Number</b>	#1	<b>Distance Traveled</b>	248.1	
<b>Comments</b>	Redniss & Mead			
Pipe Information				
<b>Pipe Name</b>	Existing Sanitary Sewer			
<b>Type Of Pipe</b>	Tile			
<b>Size Of Pipe</b>	12"			
Manhole Information				
<b>Start Manhole Number</b>	# 4	<b>End Manhole Number</b>	# 5	
<b>SMH Depth</b>	18'	<b>EMH Depth</b>	17'	
<b>SMH Location</b>	Saugatuck Ave	<b>EMH Location</b>	Saugatuck ave	
<b>Amount of Flow:</b>	Min	<b>Signs Of Surcharge:</b>	No	
<b>Manhole Condition</b>	Existing			

# Session Name: Exploratory Inspection

Date: 9/26/2013 11:08:08 AM

Location: Westport, CT

Start Manhole Number: # 4

Total Distance: 248.1

End Manhole Number: # 5

Run Number: #5

Flow Direction:

Footage	Fault Observation	Time	Picture
0.0	Start Inspection Severity: None	0	
248.1	Manhole Severity: None	09:03	

248.1	Manhole Severity: None	09:41	
248.1	End Inspection Severity: None	10:03	



# Session Name: Exploratory Inspection

Date: 9/26/2013 11:08:08 AM

Location: Westport, CT

Total Distance: 248.1

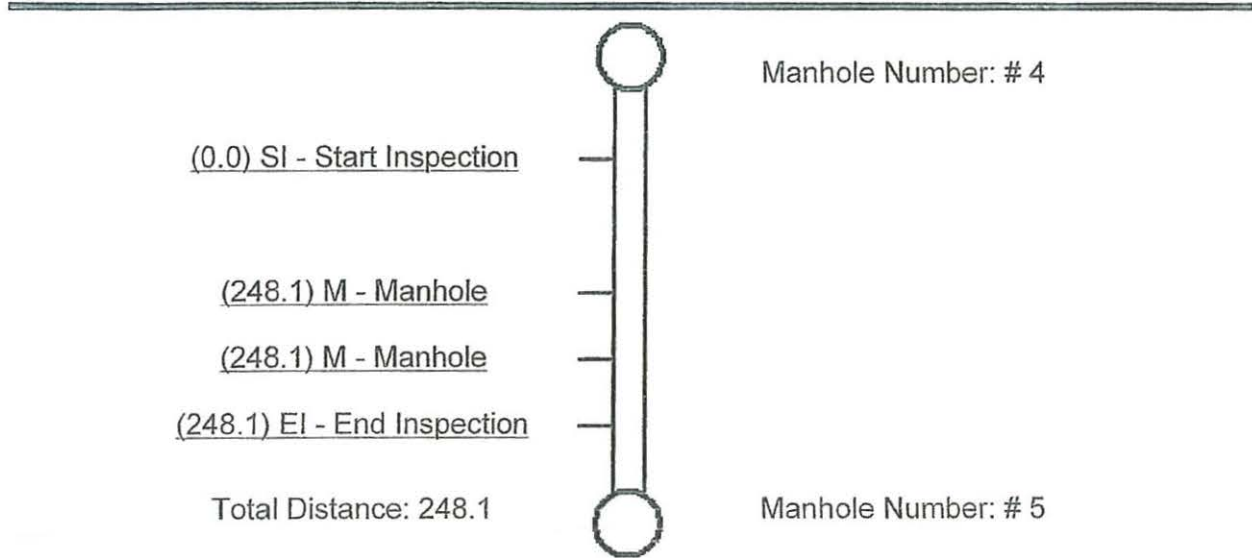
Run Number: #5


Start Manhole Number: # 4

End Manhole Number: # 5

Flow Direction:

Severity
Light
Moderate
Average
Heavy
Severe



		<h1>Exploratory Inspection</h1>		<b>Contact</b> A+C Connection Inspection 203-389-7520
		<h2>A+C Connection Inspection</h2>		<b>Address</b> 30 Overlook Drive Hamden , CT 06514
09/26/2013 11:20:57 AM				<b>Operator</b> David Beedle
Session Information				
<b>Project Name</b>	Exploratory Inspection			
<b>Location</b>	Westport, CT	<b>Run Number</b>	#6	
		<b>Pipe Name</b>	Existing Sanitary Sewer	
<b>VCR Tape Number</b>	None	<b>Flow Direction</b>		
<b>Truck Number</b>	#1	<b>Distance Traveled</b>	18.8	
<b>Comments</b>	Redniss & Mead			
Pipe Information				
<b>Pipe Name</b>	Existing Sanitary Sewer			
<b>Type Of Pipe</b>	Tile			
<b>Size Of Pipe</b>	12"			
Manhole Information				
<b>Start Manhole Number</b>	# 1	<b>End Manhole Number</b>	# 2	
<b>SMH Depth</b>	8'	<b>EMH Depth</b>	5'	
<b>SMH Location</b>	Charles / Park	<b>EMH Location</b>	Charles Street	
<b>Amount of Flow:</b>	Min	<b>Signs Of Surcharge:</b>	No	
<b>Manhole Condition</b>	Existing			



# Session Name: Exploratory Inspection

Date: 9/26/2013 11:20:57 AM

Location: Westport, CT  
 Total Distance: 18.8  
 Run Number: #6

Start Manhole Number: # 1  
 End Manhole Number: # 2  
 Flow Direction:

Footage	Fault Observation	Time	Picture
3.9	Start Inspection Severity: None	0	<p># 1 09/26/2013 Exploratory In 11:34:18 AM # 2</p> <p>FT 3.9 FPM 0</p>
18.8	Bad Sag (Had to Retract out of Pipe) Severity: None	04:21	<p># 1 09/26/2013 Exploratory In 11:38:44 AM # 2</p> <p>Bad Sag (Had to Retract out of Pipe) FT 18.8 FPM 0</p>

	<h1>Exploratory Inspection</h1>	<b>Contact</b> A+C Connection Inspection 203-389-7520
	<h2>A+C Connection Inspection</h2>	<b>Address</b> 30 Overlook Drive Hamden, CT 06514
	09/26/2013 11:20:57 AM	<b>Operator</b> David Beedle

**Session Information**

<b>Project Name</b>	Exploratory Inspection		
<b>Location</b>	Westport, CT	<b>Run Number</b>	#7
<b>VCR Tape Number</b>	None	<b>Pipe Name</b>	Existing Sanitary Sewer
<b>Truck Number</b>	#1	<b>Flow Direction</b>	Against Flow
<b>Comments</b>	Redniss & Mead	<b>Distance Traveled</b>	67.8

**Pipe Information**

<b>Pipe Name</b>	Existing Sanitary Sewer
<b>Type Of Pipe</b>	Tile
<b>Size Of Pipe</b>	8"

**Manhole Information**

<b>Start Manhole Number</b>	# 9	<b>End Manhole Number</b>	# 10
<b>SMH Depth</b>	8'	<b>EMH Depth</b>	5'
<b>SMH Location</b>	Davenport Ave	<b>EMH Location</b>	Davenport Ave
<b>Amount of Flow:</b>	Min	<b>Signs Of Surcharge:</b>	No
<b>Manhole Condition</b>	Existing		



# Session Name: Exploratory Inspection

Date: 9/26/2013 11:20:57 AM

Location: Westport, CT

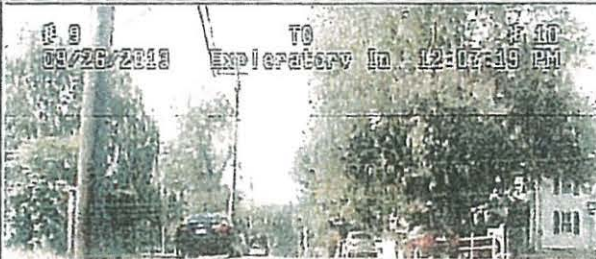
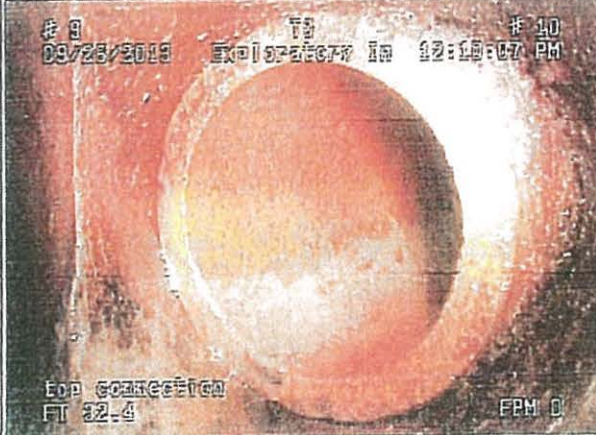
Total Distance: 67.8



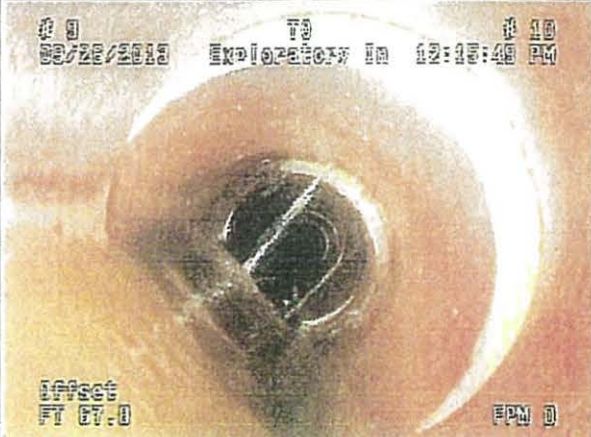
Run Number: #7

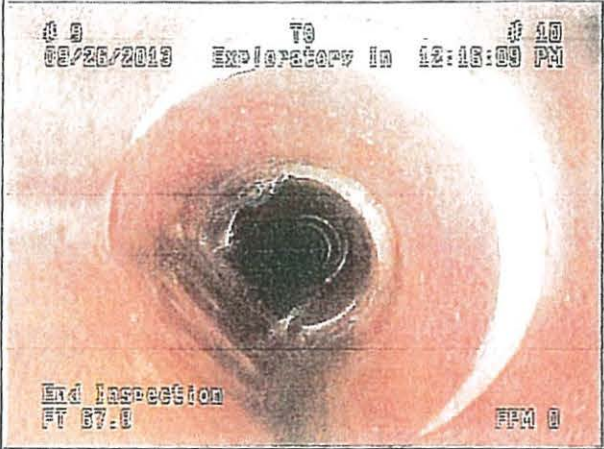
Start Manhole Number: # 9

End Manhole Number: # 10

Flow Direction: Against Flow

Footage	Fault Observation	Time	Picture
0.8	Start Inspection Severity: None	0	 <p># 9 TO # 10 09/26/2013 Exploratory In 12:07:49 PM</p> <p>FT 0.8 FPM 0</p>
32.4	top connection Position: 12 Severity: None	02:43	 <p># 9 TO # 10 09/26/2013 Exploratory In 12:16:07 PM</p> <p>TOP CONNECTION FT 32.4 FPM 0</p>

<p>52.7</p>	<p>top connection Position: 12 Severity: None</p>	<p>03:54</p>	
<p>65.9</p>	<p>Cracked/ Open Joint Severity: None</p>	<p>05:05</p>	
<p>67.8</p>	<p>Offset Severity: None</p>	<p>08:25</p>	

67.8	End Inspection Severity: None	08:45	 <p># 9 TO # 10 09/26/2013 Exploratory In 12:18:09 PM</p> <p>End Inspection FT 87.8 FFM 0</p>
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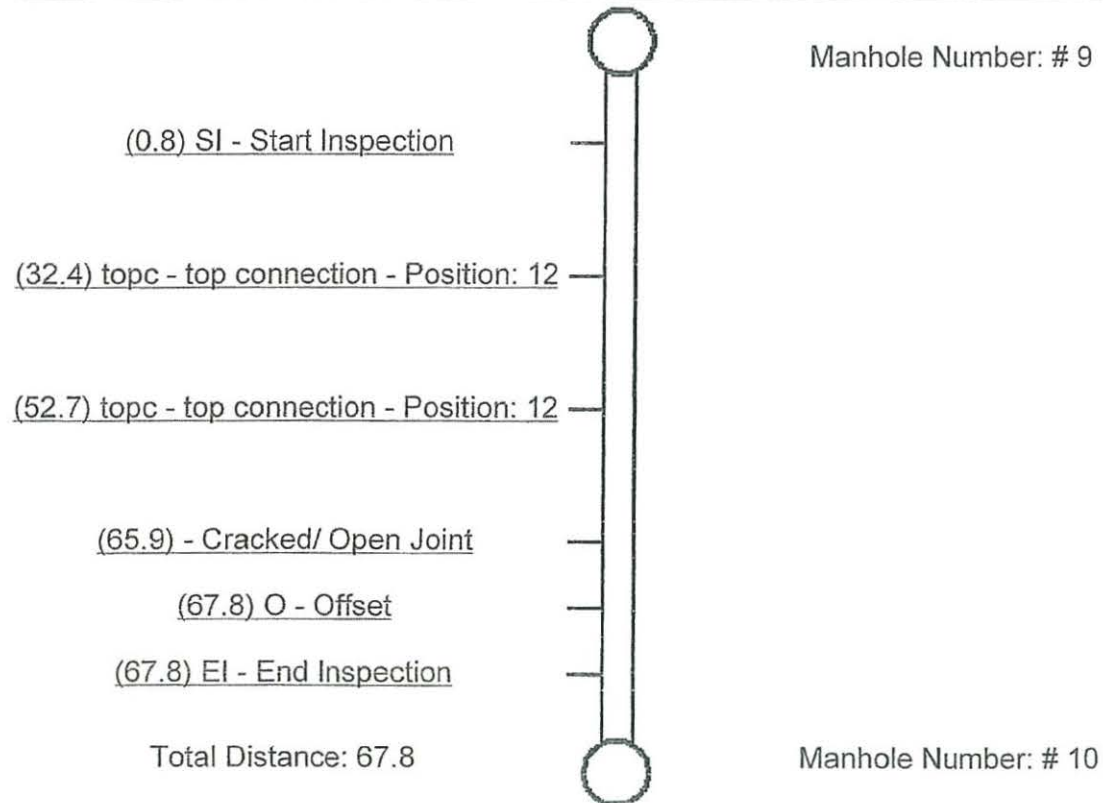


# Session Name: Exploratory Inspection

Date: 9/26/2013 11:20:57 AM  
Location: Westport, CT  
Total Distance: 67.8  
Run Number: #7

Start Manhole Number: # 9  
End Manhole Number: # 10  
Flow Direction: Against Flow

Severity
Light
Moderate
Average
Heavy
Severe





Cracked / Open Joint

	<h1>Exploratory Inspection</h1>	<b>Contact</b> A+C Connection Inspection 203-389-7520
	<h2>A+C Connection Inspection</h2>	<b>Address</b> 30 Overlook Drive Hamden, CT 06514
	09/26/2013 12:22:12 PM	<b>Operator</b> David Beedle

### Session Information

<b>Project Name</b>	Exploratory Inspection		
<b>Location</b>	Westport, CT	<b>Run Number</b>	#8
		<b>Pipe Name</b>	Existing Sanitary Sewer
<b>VCR Tape Number</b>	None	<b>Flow Direction</b>	With Flow
<b>Truck Number</b>	#1	<b>Distance Traveled</b>	181.1
<b>Comments</b>	Redniss & Mead		

### Pipe Information

<b>Pipe Name</b>	Existing Sanitary Sewer		
<b>Type Of Pipe</b>	Tile		
<b>Size Of Pipe</b>	8"		

### Manhole Information

<b>Start Manhole Number</b>	# 9	<b>End Manhole Number</b>	# 8
<b>SMH Depth</b>	8'	<b>EMH Depth</b>	8'
<b>SMH Location</b>	Davenport Ave	<b>EMH Location</b>	Davenport Ave/ Indian Hill Rd
<b>Amount of Flow:</b>	Min	<b>Signs Of Surcharge:</b>	No
<b>Manhole Condition</b>	Existing		



## Session Name: Exploratory Inspection

Date: 9/26/2013 12:22:12 PM



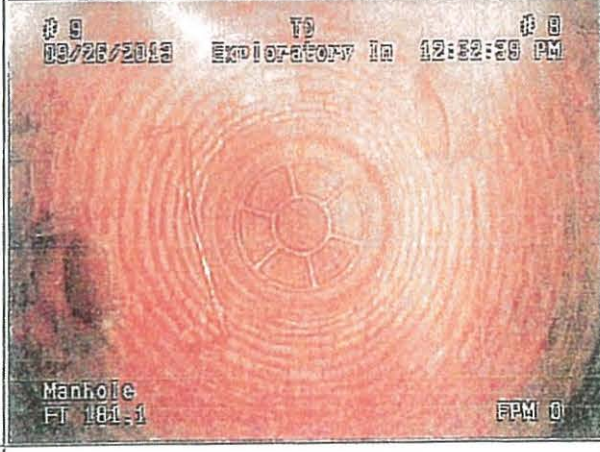
Location: Westport, CT  
 Total Distance: 181.1  
 Run Number: #8

Start Manhole Number: # 9  
 End Manhole Number: # 8  
 Flow Direction: With Flow


Footage	Fault Observation	Time	Picture
7.5	Start Inspection Severity: None	0	
8.2	Lateral Left Position: 10 Severity: None	01:00	

<p>39.0</p>	<p>top connection Position: 12 To 10 Severity: None</p>	<p>02:32</p>	
<p>72.0</p>	<p>top connection Position: 12 Severity: None</p>	<p>03:55</p>	
<p>96.5</p>	<p>top connection Position: 12 Severity: None</p>	<p>05:13</p>	



<p>118.4</p>	<p>Protruding Lateral 12 O'clock Severity: None</p>	<p>06:37</p>	
<p>147.7</p>	<p>top connection Position: 12 Severity: None</p>	<p>08:11</p>	
<p>181.1</p>	<p>Manhole Severity: None</p>	<p>09:43</p>	



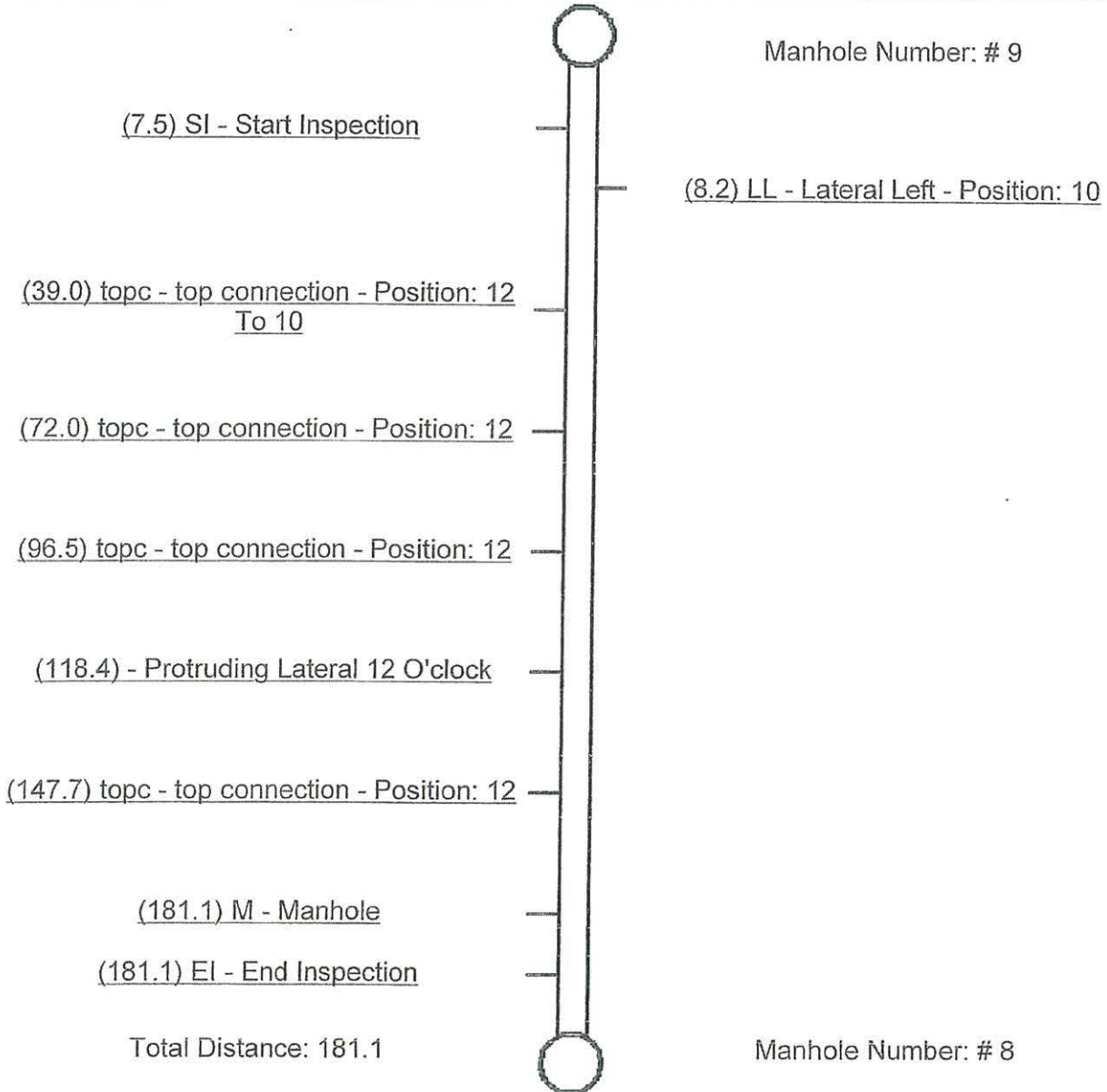
181.1	End Inspection Severity: None	10:05	
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# Session Name: Exploratory Inspection

Date: 9/26/2013 12:22:12 PM  
Location: Westport, CT  
Total Distance: 181.1  
Run Number: #8

Start Manhole Number: # 9  
End Manhole Number: # 8  
Flow Direction: With Flow

Severity
Light
Moderate
Average
Heavy
Severe



	<h1>Exploratory Inspection</h1>	<b>Contact</b> A+C Connection Inspection 203-389-7520
	<h2>A+C Connection Inspection</h2>	<b>Address</b> 30 Overlook Drive Hamden, CT 06514
	09/26/2013 12:39:42 PM	<b>Operator</b> David Beedle

**Session Information**

<b>Project Name</b>	Exploratory Inspection		
<b>Location</b>	Westport, CT	<b>Run Number</b>	#9
		<b>Pipe Name</b>	Existing Sanitary Sewer
<b>VCR Tape Number</b>	None	<b>Flow Direction</b>	With Flow
<b>Truck Number</b>	#1	<b>Distance Traveled</b>	132.6
<b>Comments</b>	Redniss & Mead		

**Pipe Information**

<b>Pipe Name</b>	Existing Sanitary Sewer		
<b>Type Of Pipe</b>	Tile		
<b>Size Of Pipe</b>	8"		

**Manhole Information**

<b>Start Manhole Number</b>	# 10	<b>End Manhole Number</b>	# 9
<b>SMH Depth</b>	8'	<b>EMH Depth</b>	8'
<b>SMH Location</b>	Davenport Ave	<b>EMH Location</b>	Davenport Ave/ Indian Hill Rd
<b>Amount of Flow:</b>	Min	<b>Signs Of Surcharge:</b>	No
<b>Manhole Condition</b>	Existing		






# Session Name: Exploratory Inspection

Date: 9/26/2013 12:39:42 PM

Location: Westport, CT  
 Total Distance: 132.6  
 Run Number: #9

Start Manhole Number: # 10  
 End Manhole Number: # 9  
 Flow Direction: With Flow

Footage	Fault Observation	Time	Picture
0.0	Start Inspection Severity: None	0	
20.2	top connection Position: 12 Severity: None	01:30	

<p>51.2</p>	<p>top connection Position: 12 Severity: None</p>	<p>02:47</p>	 <p># 10 TO # 9 09/26/2013 Exploratory In 12:43:34 PM</p> <p>top connection FT 51.2</p> <p>FFM 0</p>
<p>71.1</p>	<p>Broken pipe at joint Severity: None</p>	<p>04:06</p>	 <p># 10 TO # 9 09/26/2013 Exploratory In 12:44:52 PM</p> <p>Broken pipe at joint FT 71.1</p> <p>FFM 0</p>
<p>71.4</p>	<p>top connection Position: 1 Severity: None</p>	<p>04:34</p>	 <p># 10 TO # 9 09/26/2013 Exploratory In 12:45:22 PM</p> <p>top connection FT 71.4</p> <p>FFM 0</p>



<p>114.2</p>	<p>top connection Position: 11 Severity: None</p>	<p>06:06</p>	
<p>115.6</p>	<p>top connection Position: 1 Severity: None</p>	<p>06:31</p>	
<p>131.3</p>	<p>Bad Offset Severity: None</p>	<p>07:34</p>	



<p>131.9</p>	<p>top connection Position: 12 Severity: None</p>	<p>08:09</p>	
<p>132.6</p>	<p>Had to retract due offset Severity: None</p>	<p>09:16</p>	
<p>132.6</p>	<p>End Inspection Severity: None</p>	<p>09:41</p>	

# Session Name: Exploratory Inspection

Date: 9/26/2013 12:39:42 PM

Location: Westport, CT

Total Distance: 132.6

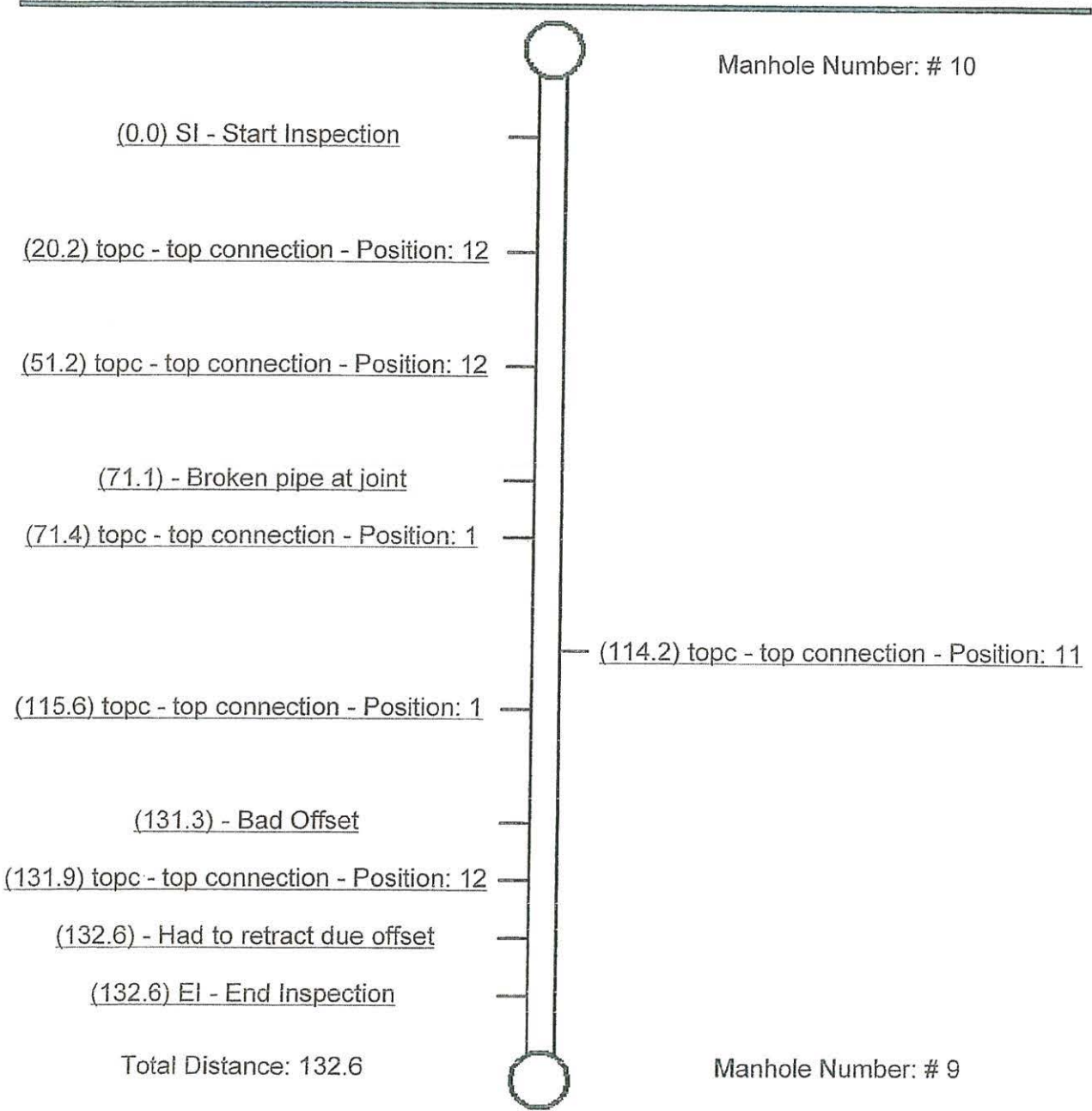
Run Number: #9

Start Manhole Number: # 10

End Manhole Number: # 9

Flow Direction: With Flow

Severity
Light
Moderate
Average
Heavy
Severe









	<h1>Exploratory Inspection</h1>	<b>Contact</b> A+C Connection Inspection 203-389-7520
	<h2>A+C Connection Inspection</h2>	Address 30 Overlook Drive Hamden , CT 06514
	09/26/2013 12:51:28 PM	<b>Operator</b> David Beedle

**Session Information**

<b>Project Name</b>	Exploratory Inspection		
<b>Location</b>	Westport, CT	<b>Run Number</b>	#10
		<b>Pipe Name</b>	Existing Sanitary Sewer
<b>VCR Tape Number</b>	None	<b>Flow Direction</b>	Against Flow
<b>Truck Number</b>	#1	<b>Distance Traveled</b>	121
<b>Comments</b>	Redniss & Mead		

**Pipe Information**

<b>Pipe Name</b>	Existing Sanitary Sewer		
<b>Type Of Pipe</b>	Tile		
<b>Size Of Pipe</b>	8"		

**Manhole Information**

<b>Start Manhole Number</b>	# 7	<b>End Manhole Number</b>	# 8
<b>SMH Depth</b>	11'	<b>EMH Depth</b>	10'
<b>SMH Location</b>	Indian Hill Road/F.L.W.	<b>EMH Location</b>	Indian Hill Rd. /Davenport Ave
<b>Amount of Flow:</b>	Min	<b>Signs Of Surcharge:</b>	No
<b>Manhole Condition</b>	Existing		

# Session Name: Exploratory Inspection

Date: 9/26/2013 12:51:28 PM

Location: Westport, CT

Total Distance: 121

Run Number: #10

Start Manhole Number: # 7


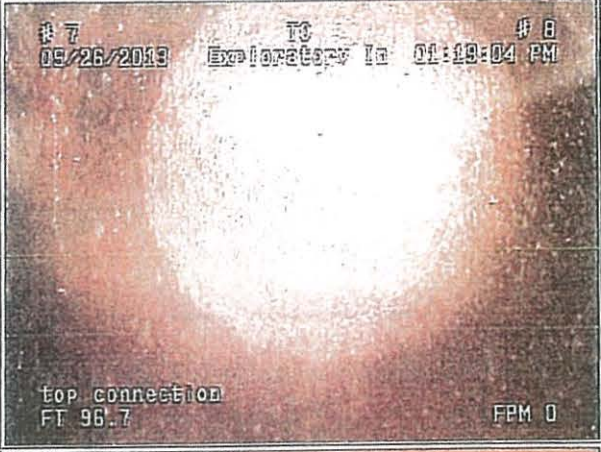
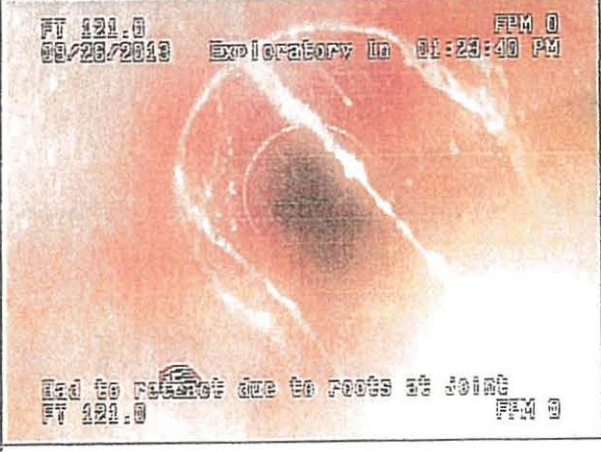
End Manhole Number: # 8


Flow Direction: Against Flow

Footage	Fault Observation	Time	Picture
0.0	Start Inspection Severity: None Value Percent: 0	0	
29.6	top connection Position: 12 Severity: None Value Percent: 0	12:39	



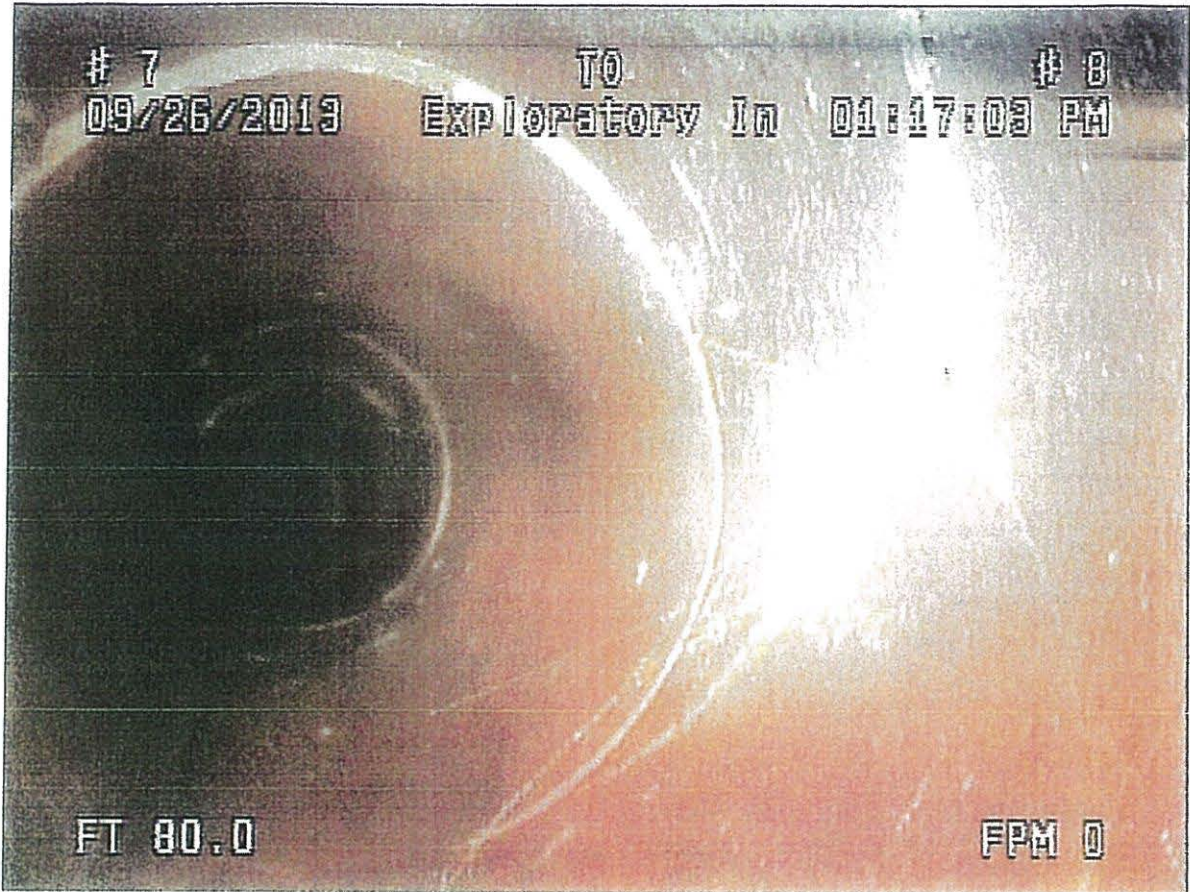
<p>46.1</p>	<p>top connection Position: 11 Severity: None Value Percent: 0</p>	<p>13:38</p>	
<p>80.0</p>	<p>Crack on top of pipe Severity: None Value Percent: 0</p>	<p>15:18</p>	
<p>83.2</p>	<p>Lateral Left Position: 10 Severity: None Value Percent: 0</p>	<p>16:23</p>	

<p>94.3</p>	<p>top connection Position: 12 Severity: None Value Percent: 0</p>	<p>17:25</p>	 <p># 7 TO # 8 09/26/2013 Exploratory In 01:10:39 PM</p> <p>top connection FT 94.3 FPM 0</p>
<p>96.7</p>	<p>top connection Position: 12 Severity: None Value Percent: 0</p>	<p>17:50</p>	 <p># 7 TO # 8 09/26/2013 Exploratory In 01:19:04 PM</p> <p>top connection FT 96.7 FPM 0</p>
<p>121.0</p>	<p>Had to retract due to roots at joint Severity: None Value Percent: 0</p>	<p>22:26</p>	 <p>FT 121.0 FPM 0 09/26/2013 Exploratory In 01:29:40 PM</p> <p>Had to retract due to roots at joint FT 121.0 FPM 0</p>

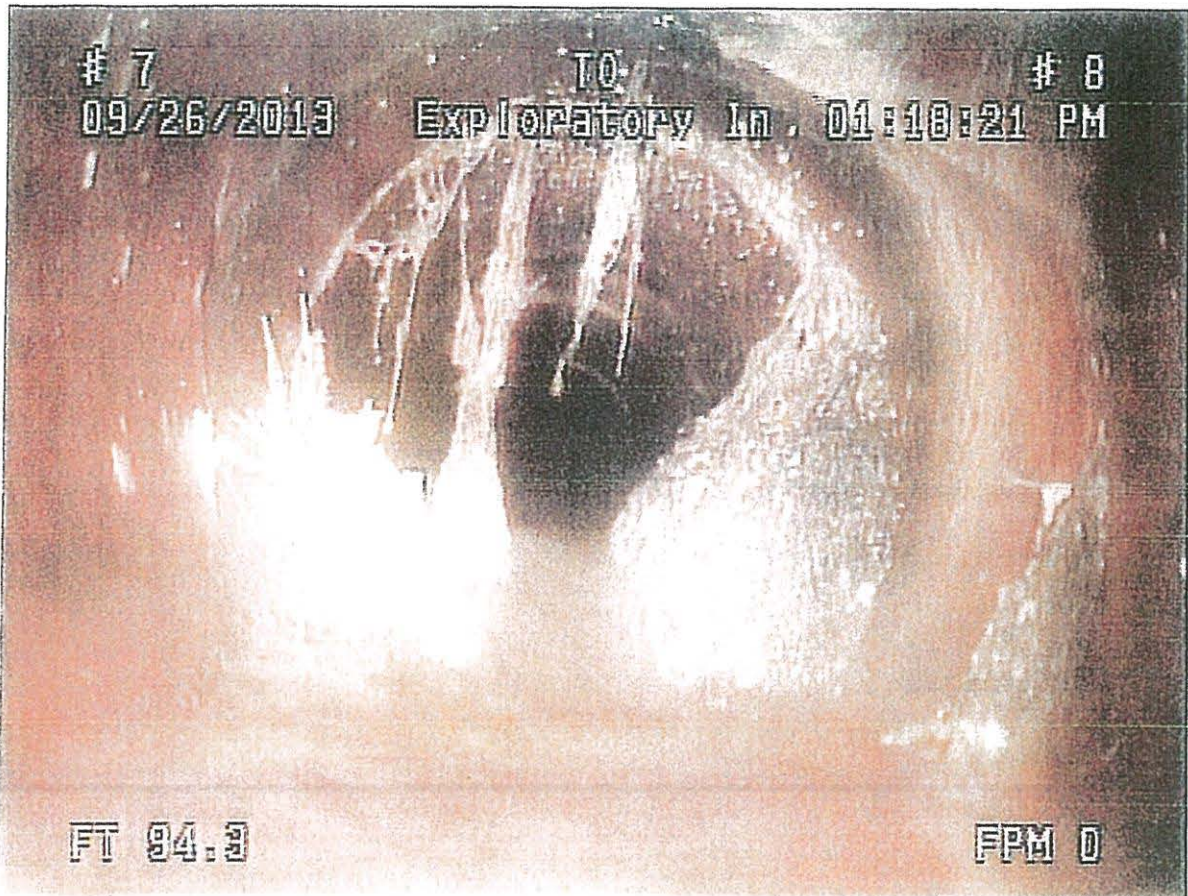
<p>121.0</p>	<p>End Inspection Severity: None Value Percent: 0</p>	<p>22:42</p>	 <p>FT 121.0 FFM 0 09/28/2018 Exploratory In 01:23:58 PM</p> <p>End Inspection FT 121.0 FFM 0</p>
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		<h1>Exploratory Inspection</h1>		<b>Contact</b> A+C Connection Inspection 203-389-7520
		<h2>A+C Connection Inspection</h2>		<b>Address</b> 30 Overlook Drive Hamden , CT 06514
09/26/2013 01:38:04 PM				<b>Operator</b> David Beedle
Session Information				
<b>Project Name</b>	Exploratory Inspection			
<b>Location</b>	Westport, CT	<b>Run Number</b>	#11	
		<b>Pipe Name</b>	Existing Sanitary Sewer	
<b>VCR Tape Number</b>	None	<b>Flow Direction</b>	With Flow	
<b>Truck Number</b>	#1	<b>Distance Traveled</b>	174.5	
<b>Comments</b>	Redniss & Mead			
Pipe Information				
<b>Pipe Name</b>	Existing Sanitary Sewer			
<b>Type Of Pipe</b>	Tile			
<b>Size Of Pipe</b>	10"			
Manhole Information				
<b>Start Manhole Number</b>	# 7	<b>End Manhole Number</b>	# 6	
<b>SMH Depth</b>	11'	<b>EMH Depth</b>	10'	
<b>SMH Location</b>	Ferry Lane	<b>EMH Location</b>	Ferry Lane	
<b>Amount of Flow:</b>	Min	<b>Signs Of Surcharge:</b>	No	
<b>Manhole Condition</b>	Existing			

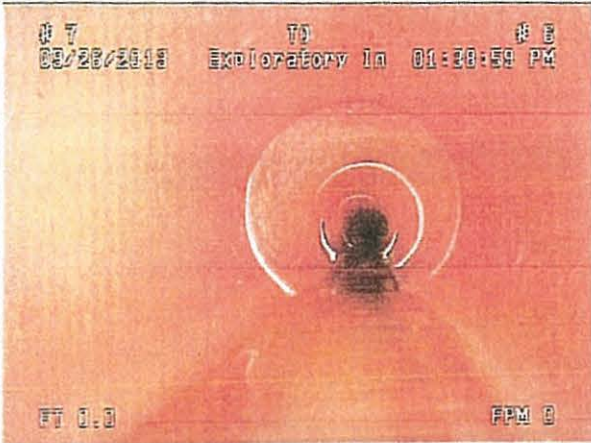
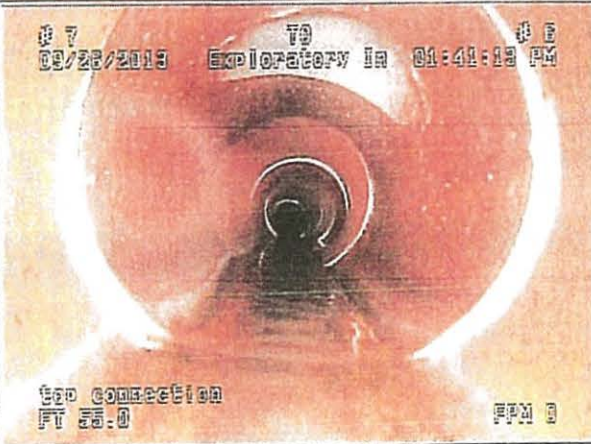





## Session Name: Exploratory Inspection

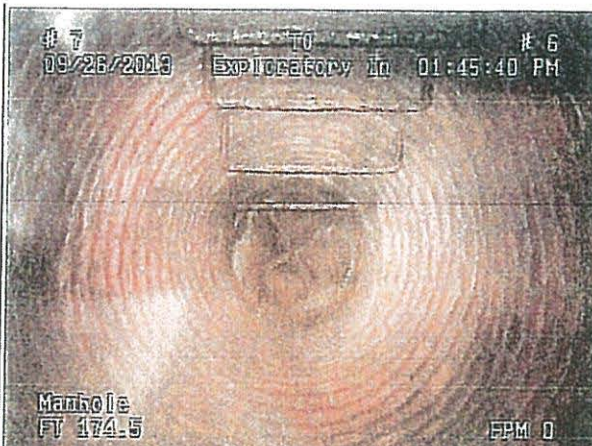
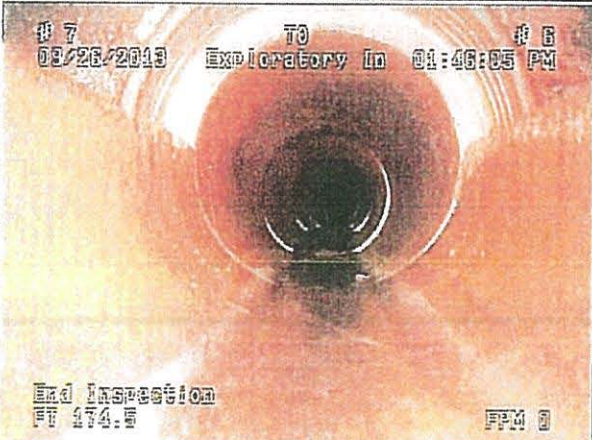
Date: 9/26/2013 1:38:04 PM

Location: Westport, CT  
 Total Distance: 174.5  
 Run Number: #11

Start Manhole Number: # 7  
 End Manhole Number: # 6  
 Flow Direction: With Flow

Footage	Fault Observation	Time	Picture
0.0	Start Inspection Severity: None	0	 <p># 7 TO # 6 09/26/2013 Exploratory In 01:38:59 PM</p> <p>FT 0.0 FPM 0</p>
55.0	top connection Position: 12 Severity: None	02:08	 <p># 7 TO # 6 09/26/2013 Exploratory In 01:41:19 PM</p> <p>top connection FT 55.0 FPM 0</p>

<p>92.6</p>	<p>top connection Position: 12 Severity: None</p>	<p>03:25</p>	<p># 7 TO # 6 08/26/2013 Exploratory In 01:42:29 PM</p>  <p>top connection FT 92.6 FPM 0</p>
<p>121.6</p>	<p>top connection Position: 12 Severity: None</p>	<p>04:28</p>	<p># 7 TO # 6 08/27/2013 Exploratory In 01:48:39 PM</p>  <p>top connection FT 121.6 FPM 0</p>
<p>150.7</p>	<p>top connection Position: 12 Severity: None</p>	<p>05:35</p>	<p># 7 TO # 6 08/26/2013 Exploratory In 01:44:48 PM</p>  <p>top connection FT 150.7 FPM 0</p>

<p>174.5</p>	<p>Manhole Severity: None</p>	<p>06:35</p>	
<p>174.5</p>	<p>End Inspection Severity: None</p>	<p>07:00</p>	

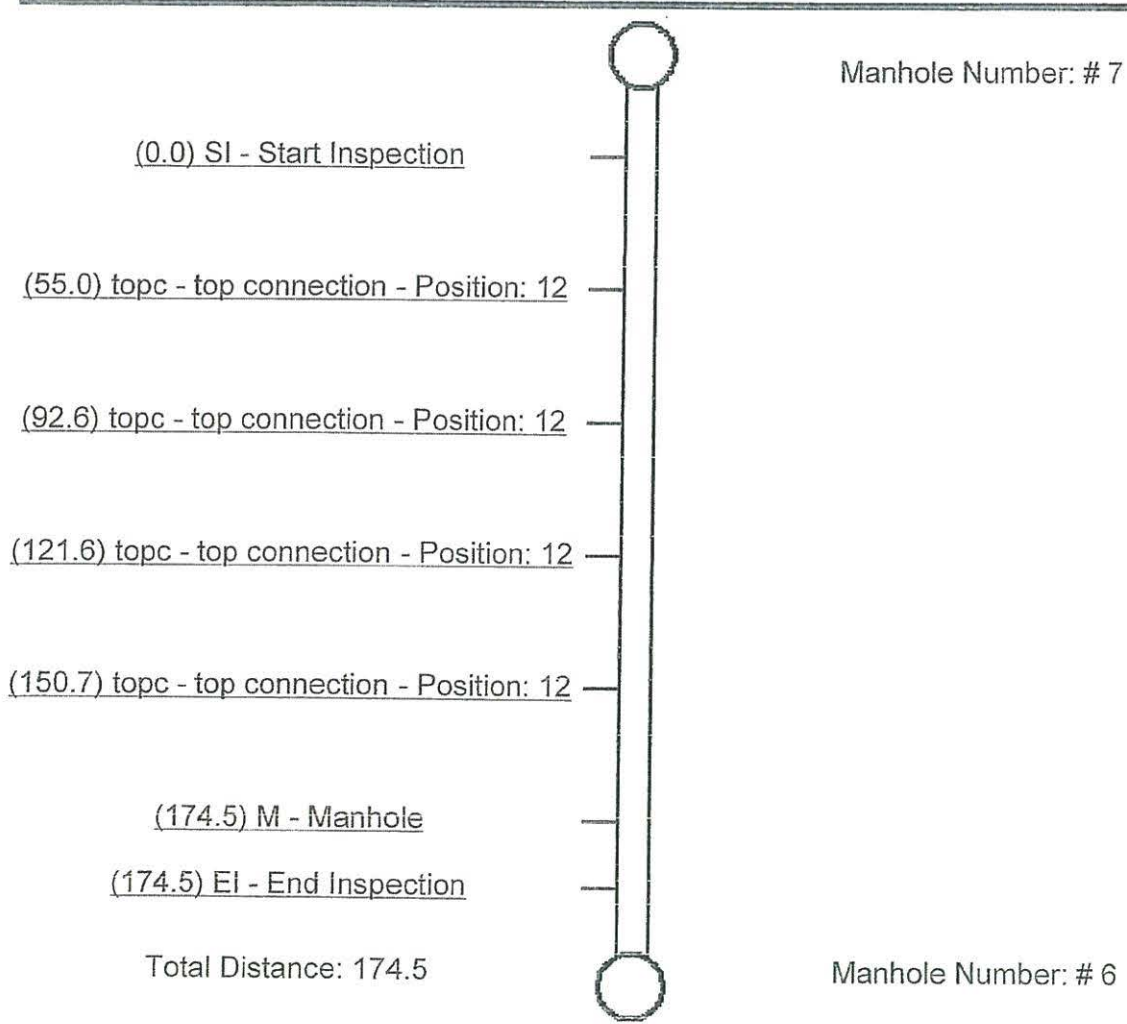


# Session Name: Exploratory Inspection

Date: 9/26/2013 1:38:04 PM  
Location: Westport, CT  
Total Distance: 174.5  
Run Number: #11

Start Manhole Number: # 7  
End Manhole Number: # 6  
Flow Direction: With Flow

Severity
Light
Moderate
Average
Heavy
Severe





	<h1>Exploratory Inspection</h1>	<b>Contact</b> A+C Connection Inspection 203-389-7520
	<h2>A+C Connection Inspection</h2>	<b>Address</b> 30 Overlook Drive Hamden, CT 06514
	09/26/2013 01:46:33 PM	<b>Operator</b> David Beedle

**Session Information**

<b>Project Name</b>	Exploratory Inspection		
<b>Location</b>	Westport, CT	<b>Run Number</b>	#12
		<b>Pipe Name</b>	Existing Sanitary Sewer
<b>VCR Tape Number</b>	None	<b>Flow Direction</b>	With Flow
<b>Truck Number</b>	#1	<b>Distance Traveled</b>	100.7
<b>Comments</b>	Redniss & Mead		

**Pipe Information**

<b>Pipe Name</b>	Existing Sanitary Sewer
<b>Type Of Pipe</b>	Tile
<b>Size Of Pipe</b>	10"

**Manhole Information**

<b>Start Manhole Number</b>	# 6	<b>End Manhole Number</b>	# 5
<b>SMH Depth</b>	10'	<b>EMH Depth</b>	10'
<b>SMH Location</b>	Ferry Lane	<b>EMH Location</b>	Ferry Lane/ RT 136
<b>Amount of Flow:</b>	Min	<b>Signs Of Surcharge:</b>	No
<b>Manhole Condition</b>	Existing		



## Session Name: Exploratory Inspection

Date: 9/26/2013 1:46:33 PM

Location: Westport, CT

Total Distance: 100.7

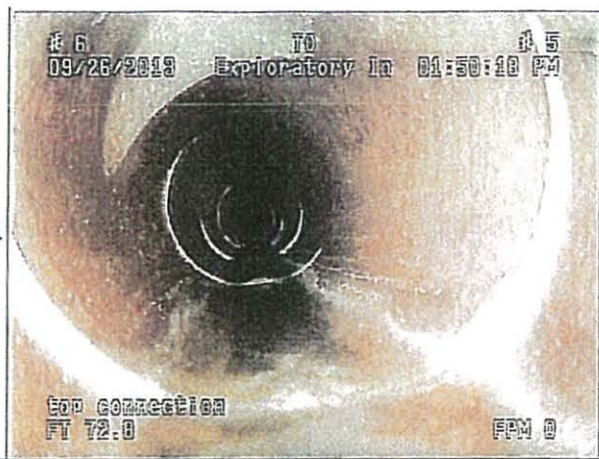
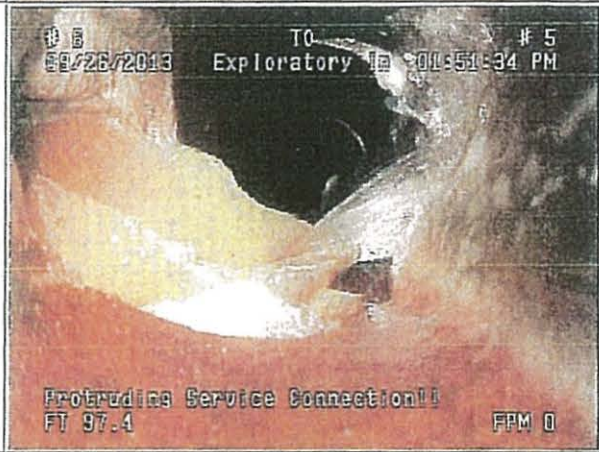
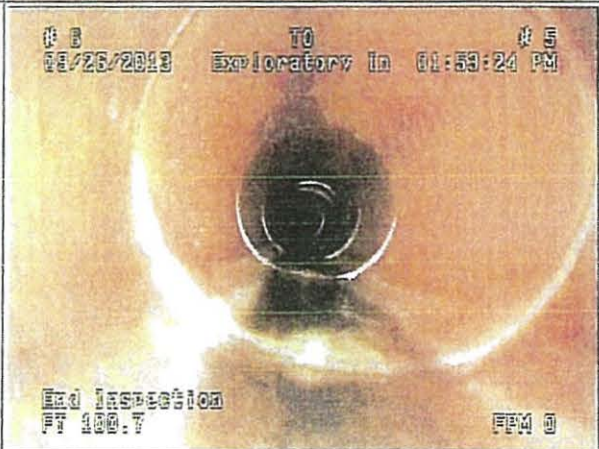
Run Number: #12

Start Manhole Number: # 6

End Manhole Number: # 5

Flow Direction: With Flow

Footage	Fault Observation	Time	Picture
0.0	Start Inspection Severity: None	0	
18.1	top connection Position: 12 Severity: None	01:03	

<p>72.8</p>	<p>top connection Position: 11 Severity: None</p>	<p>02:54</p>	 <p># 6 TO # 5 09/26/2013 Exploratory In 01:50:18 PM</p> <p>top connection FT 72.8 FPM 0</p>
<p>97.4</p>	<p>Protruding Service Connection!! Severity: None</p>	<p>4:10</p>	 <p># 6 TO # 5 09/26/2013 Exploratory In 01:51:34 PM</p> <p>Protruding Service Connection!! FT 97.4 FPM 0</p>
<p>100.7</p>	<p>End Inspection Severity: None</p>	<p>06:00</p>	 <p># 6 TO # 5 09/26/2013 Exploratory In 01:53:24 PM</p> <p>End Inspection FT 100.7 FPM 0</p>





# Session Name: Exploratory Inspection

Date: 9/26/2013 1:46:33 PM

Location: Westport, CT

Total Distance: 100.7

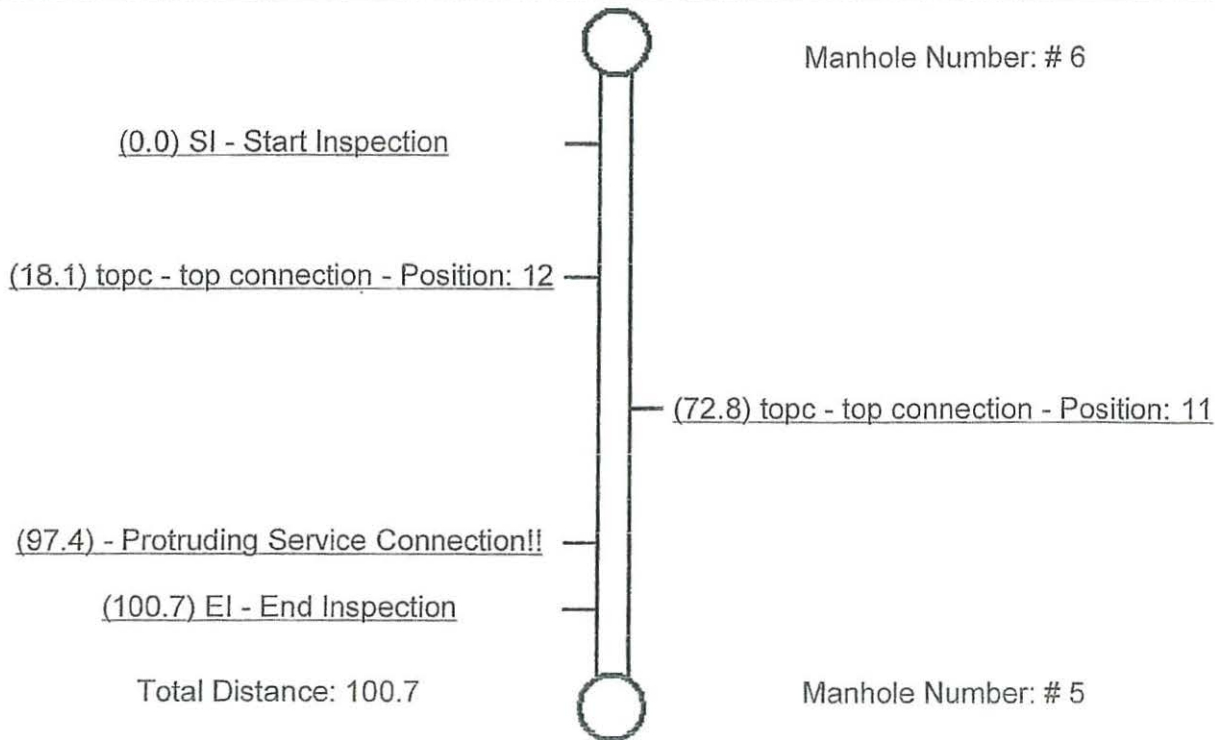
Run Number: #12

Start Manhole Number: # 6


End Manhole Number: # 5

Flow Direction: With Flow

Severity
Light
Moderate
Average
Heavy
Severe





		<h1>Exploratory Inspection</h1>		<b>Contact</b> A+C Connection Inspection 203-389-7520
		<h2>A+C Connection Inspection</h2>		<b>Address</b> 30 Overlook Drive Hamden, CT 06514
09/26/2013 02:23:34 PM				<b>Operator</b> David Beedle
Session Information				
<b>Project Name</b>	Exploratory Inspection			
<b>Location</b>	Westport, CT	<b>Run Number</b>	#13	
		<b>Pipe Name</b>	Existing Sanitary Sewer	
<b>VCR Tape Number</b>	None	<b>Flow Direction</b>	With Flow	
<b>Truck Number</b>	#1	<b>Distance Traveled</b>	100	
<b>Comments</b>	Redniss & Mead			
Pipe Information				
<b>Pipe Name</b>	Existing Sanitary Sewer			
<b>Type Of Pipe</b>	Tile			
<b>Size Of Pipe</b>	8"			
Manhole Information				
<b>Start Manhole Number</b>	# 8	<b>End Manhole Number</b>	# 7	
<b>SMH Depth</b>	8'	<b>EMH Depth</b>	10'	
<b>SMH Location</b>	Davenport/ Ferry Ln	<b>EMH Location</b>	Ferry Lane	
<b>Amount of Flow:</b>	Min	<b>Signs Of Surcharge:</b>	No	
<b>Manhole Condition</b>	Existing			



# Session Name: Exploratory Inspection

Date: 9/26/2013 2:23:34 PM

Location: Westport, CT

Total Distance: 100

Run Number: #13

Start Manhole Number: # 8

End Manhole Number: # 7

Flow Direction: With Flow

Footage	Fault Observation	Time	Picture
1.4	Start Inspection Severity: None	0	
100.0	End Inspection Severity: None	08:28	

# Session Name: Exploratory Inspection

Date: 9/26/2013 2:23:34 PM

Location: Westport, CT

Total Distance: 100

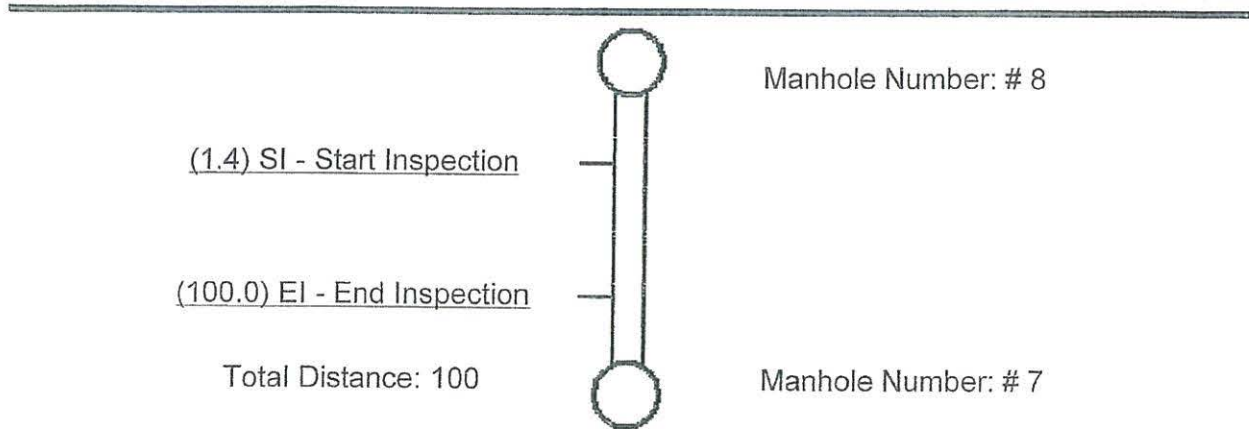
Run Number: #13

Start Manhole Number: # 8

End Manhole Number: # 7

Flow Direction: With Flow

Severity
Light
Moderate
Average
Heavy
Severe







	<h1>Exploratory Inspection</h1> <p>A+C Connection Inspection</p> <p>09/26/2013 02:48:27 PM</p>	<b>Contact</b> A+C Connection Inspection 203-389-7520
		<b>Address</b> 30 Overlook Drive Hamden, CT 06514
		<b>Operator</b> David Beedle

**Session Information**

<b>Project Name</b>	Exploratory Inspection		
<b>Location</b>	Westport, CT	<b>Run Number</b>	#14
		<b>Pipe Name</b>	Existing Sanitary Sewer
<b>VCR Tape Number</b>	None	<b>Flow Direction</b>	With Flow
<b>Truck Number</b>	#1	<b>Distance Traveled</b>	191.2
<b>Comments</b>	Redniss & Mead		

**Pipe Information**

<b>Pipe Name</b>	Existing Sanitary Sewer		
<b>Type Of Pipe</b>	Tile		
<b>Size Of Pipe</b>	8"		

**Manhole Information**

<b>Start Manhole Number</b>	# 8	<b>End Manhole Number</b>	# 7
<b>SMH Depth</b>	8'	<b>EMH Depth</b>	10'
<b>SMH Location</b>	Davenport/ Ferry Ln	<b>EMH Location</b>	Ferry Lane
<b>Amount of Flow:</b>	Min	<b>Signs Of Surcharge:</b>	No
<b>Manhole Condition</b>	Existing		

# Session Name: Exploratory Inspection

Date: 9/26/2013 2:48:27 PM

Location: Westport, CT

Total Distance: 191.2

Run Number: #14

Start Manhole Number: # 8

End Manhole Number: # 7

Flow Direction: With Flow

Footage	Fault Observation	Time	Picture
8.0	Start Inspection Severity: None	0	
191.2	End Inspection Severity: None	10:48	

# Session Name: Exploratory Inspection

Date: 9/26/2013 2:48:27 PM

Location: Westport, CT

Total Distance: 191.2

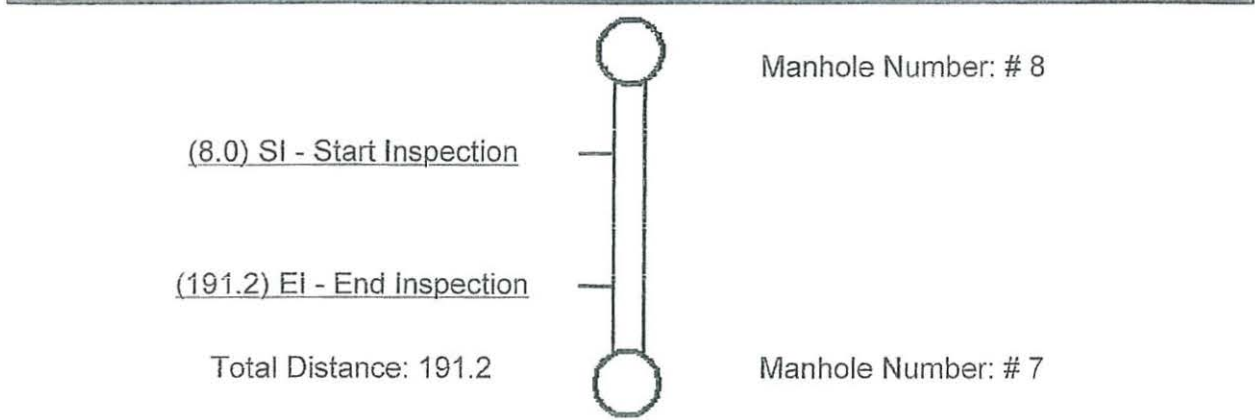
Run Number: #14

Start Manhole Number: # 8

End Manhole Number: # 7

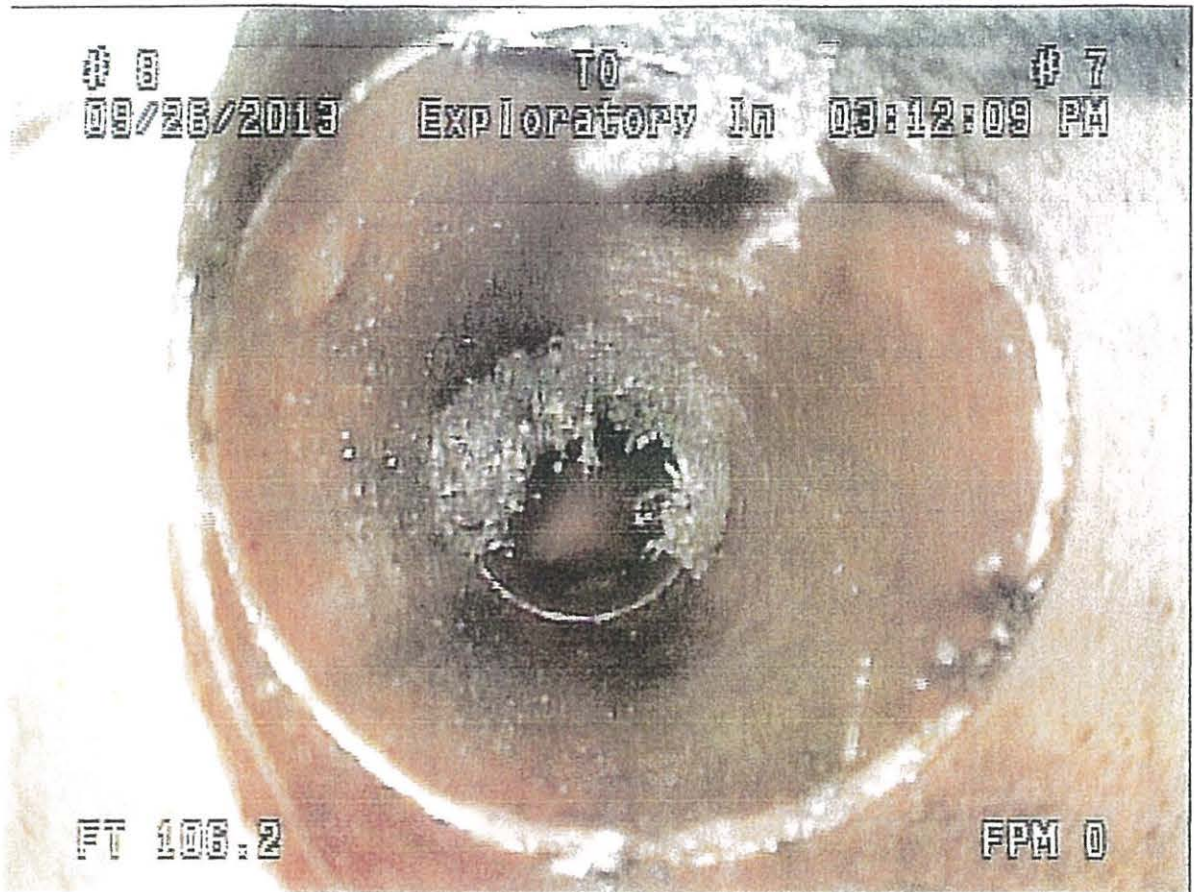
Flow Direction: With Flow

Severity
Light
Moderate
Average
Heavy
Severe



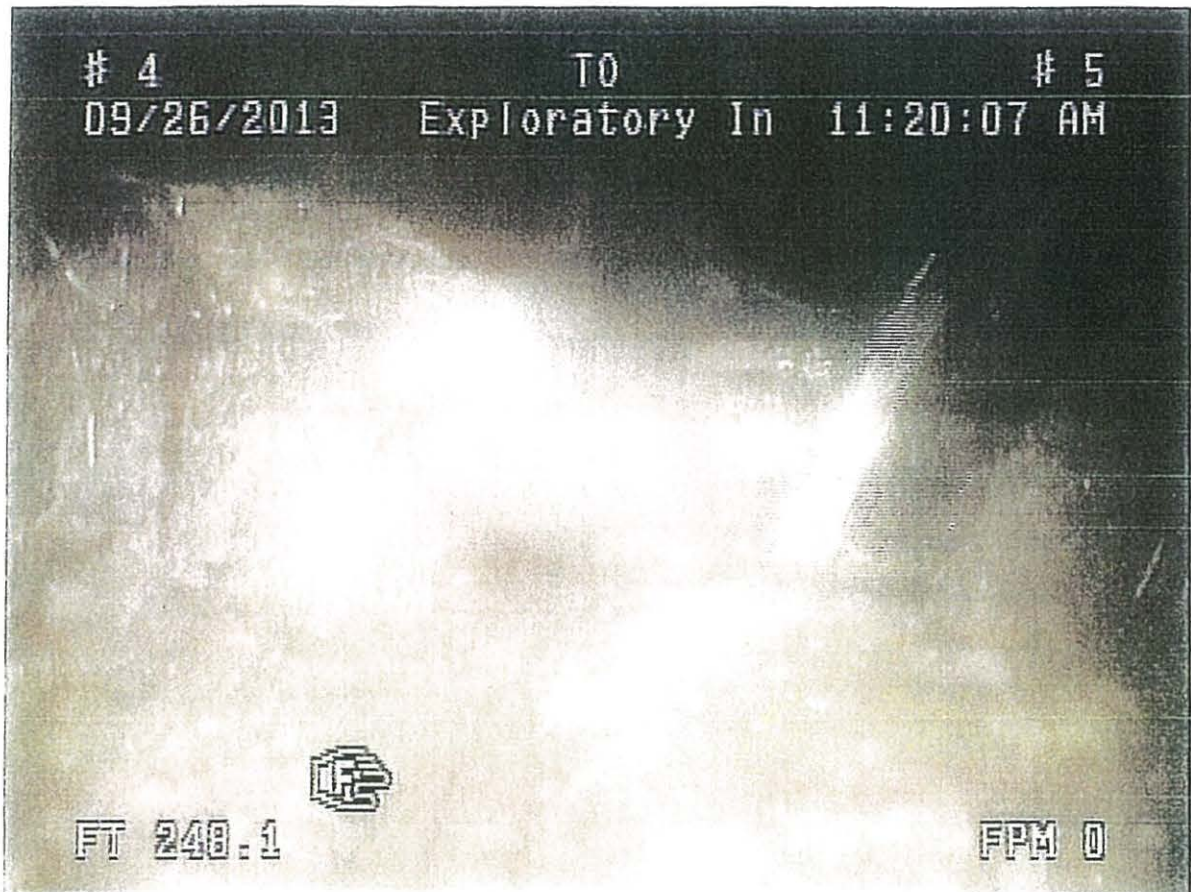












# Session Name: Exploratory Inspection

Date: 9/26/2013 11:20:57 AM

Location: Westport, CT

Total Distance: 18.8

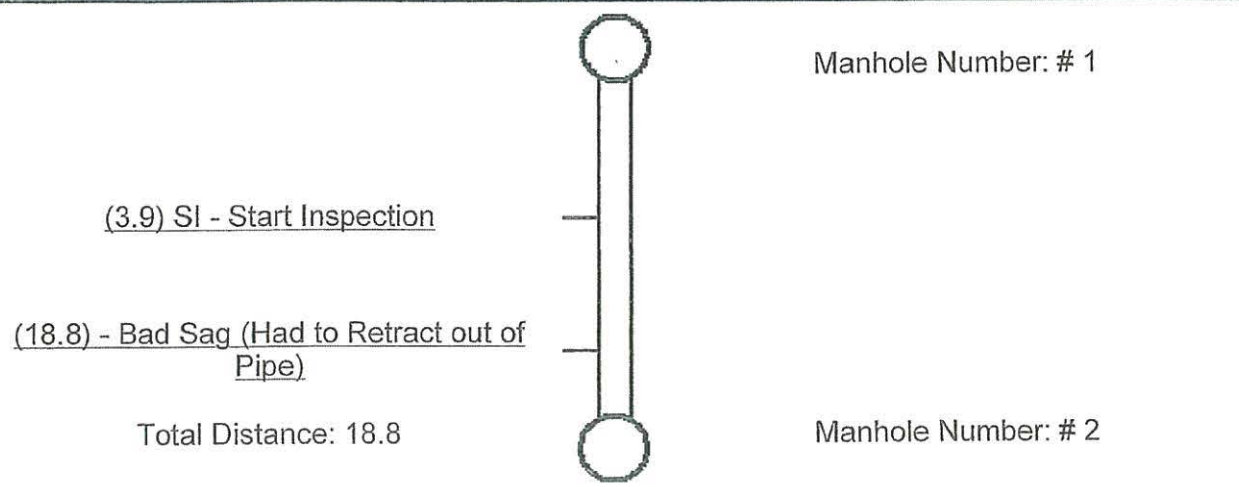
Run Number: #6

Start Manhole Number: # 1

End Manhole Number: # 2

Flow Direction:

Severity
Light
Moderate
Average
Heavy
Severe







Connecticut General Statutes Annotated

Title 7. Municipalities

Chapter 103. Municipal Sewerage Systems (Refs & Annos)

C.G.S.A. § 7-245

§ 7-245. Definitions

Effective: July 1, 2011

Currentness

For the purposes of this chapter: (1) "Acquire a sewerage system" means obtain title to all or any part of a sewerage system or any interest therein by purchase, condemnation, grant, gift, lease, rental or otherwise; (2) "alternative sewage treatment system" means a sewage treatment system serving one or more buildings that utilizes a method of treatment other than a subsurface sewage disposal system and that involves a discharge to the groundwaters of the state; (3) "community sewerage system" means any sewerage system serving two or more residences in separate structures which is not connected to a municipal sewerage system or which is connected to a municipal sewerage system as a distinct and separately managed district or segment of such system; (4) "construct a sewerage system" means to acquire land, easements, rights-of-way or any other real or personal property or any interest therein, plan, construct, reconstruct, equip, extend and enlarge all or any part of a sewerage system; (5) "decentralized system" means managed subsurface sewage disposal systems, managed alternative sewage treatment systems or community sewerage systems that discharge sewage flows of less than five thousand gallons per day, are used to collect and treat domestic sewage, and involve a discharge to the groundwaters of the state from areas of a municipality; (6) "decentralized wastewater management district" means areas of a municipality designated by the municipality through a municipal ordinance when an engineering report has determined that the existing subsurface sewage disposal systems may be detrimental to public health or the environment and that decentralized systems are required and such report is approved by the Commissioner of Energy and Environmental Protection with concurring approval by the Commissioner of Public Health, after consultation with the local director of health; (7) "municipality" means any metropolitan district, town, consolidated town and city, consolidated town and borough, city, borough, village, fire and sewer district, sewer district and each municipal organization having authority to levy and collect taxes; (8) "operate a sewerage system" means own, use, equip, reequip, repair, maintain, supervise, manage, operate and perform any act pertinent to the collection, transportation and disposal of sewage; (9) "person" means any person, partnership, corporation, limited liability company, association or public agency; (10) "remediation standards" means pollutant limits, performance requirements, design parameters or technical standards for application to existing sewage discharges in a decentralized wastewater management district for the improvement of wastewater treatment to protect public health and the environment; (11) "sewage" means any substance, liquid or solid, which may contaminate or pollute or affect the cleanliness or purity of any water; and (12) "sewerage system" means any device, equipment, appurtenance, facility and method for collecting, transporting, receiving, treating, disposing of or discharging sewage, including, but not limited to, decentralized systems within a decentralized wastewater management district when such district is established by municipal ordinance pursuant to section 7-247.

#### Credits

(1949 Rev., § 731; 1949, Supp. § 58a; 1955, Supp. § 312d; 1978, P.A. 78-154, § 1; 1995, P.A. 95-79, § 11, eff. May 31, 1995; 2003, June 30 Sp.Sess., P.A. 03-6, § 140; 2011, P.A. 11-80, § 1, eff. July 1, 2011.)

Notes of Decisions (4)

C. G. S. A. § 7-245, CT ST § 7-245

The statutes and Constitution are current with enactments of the 2016 February Regular Session, the 2016 May Special Session, and the 2016 September Special Session.

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Connecticut General Statutes Annotated  
Title 7. Municipalities  
Chapter 103. Municipal Sewerage Systems (Refs & Anns)

C.G.S.A. § 7-246

§ 7-246. Water pollution control authority; designation. Preparation of  
municipal plan. Successor to sewer authority; validation of sewer authority acts

Effective: July 1, 2011  
Currentness

(a) Any municipality may, by ordinance, designate its legislative body, except where the legislative body is the town meeting; or any existing board or commission, or create a new board or commission to be designated, as the water pollution control authority for such municipality. Any municipality located within the district of a regional water authority or regional sewer district established under an act of the General Assembly may designate such water authority or sewer district as the water pollution control authority for such municipality, with all of the powers set forth in this chapter for water pollution control authorities, provided such water authority or sewer district agrees to such designation. If a new board or commission is created, the municipality shall, by ordinance, determine the number of members thereof, their compensation, if any, whether such members shall be elected or appointed, the method of their appointment, if appointed, and removal and their terms of office, which shall be so arranged that not more than one-half of such terms shall expire within any one year. The water pollution control authority of the town within which there is a city or borough shall not exercise any power within such city or borough without the express consent of such city or borough, except that such consent shall not be required for any action taken to comply with a pollution abatement order issued by the Commissioner of Energy and Environmental Protection.

(b) Each municipal water pollution control authority designated in accordance with this section may prepare and periodically update a water pollution control plan for the municipality. Such plan shall designate and delineate the boundary of: (1) Areas served by any municipal sewerage system; (2) areas where municipal sewerage facilities are planned and the schedule of design and construction anticipated or proposed; (3) areas where sewers are to be avoided; (4) areas served by any community sewerage system not owned by a municipality; (5) areas to be served by any proposed community sewerage system not owned by a municipality; and (6) areas to be designated as decentralized wastewater management districts. Such plan shall also describe the means by which municipal programs are being carried out to avoid community pollution problems and describe any programs wherein the local director of health manages subsurface sewage disposal systems. The authority shall file a copy of the plan and any periodic updates of such plan with the Commissioner of Energy and Environmental Protection and shall manage or ensure the effective supervision, management, control, operation and maintenance of any community sewerage system or decentralized wastewater management district not owned by a municipality.

(c) Any municipal sewer authority in existence prior to October 1, 1978, shall be deemed to be the water pollution control authority of such municipality unless the legislative body of the municipality, by ordinance, determines otherwise, and such water pollution control authority shall be deemed the successor to such sewer authority for all of the purposes of this chapter. All acts of any such sewer authorities from October 1, 1978, to June 1, 1979, are validated. The provisions of this subsection shall not apply to any action pending in any court or any right of appeal under this chapter existing on June 1, 1979.



**Credits**

(1949 Rev., § 733; 1949, Supp. § 59a; 1955, Supp. § 313d; 1967, P.A. 60; 1971, P.A. 694, § 1; 1973, P.A. 73-294, § 1, eff. May 17, 1973; 1978, P.A. 78-154, § 2; 1979, P.A. 79-391, § 1, eff. June 1, 1979; 1986, P.A. 86-239, § 1, eff. June 3, 1986; 1987, P.A. 87-292; 2003, June 30 Sp.Sess., P.A. 03-6, § 141; 2011, P.A. 11-80, § 1, eff. July 1, 2011.)

**Notes of Decisions (4)**

**C. G. S. A. § 7-246, CT ST § 7-246**

The statutes and Constitution are current with enactments of the 2016 February Regular Session, the 2016 May Special Session, and the 2016 September Special Session.

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Connecticut General Statutes Annotated  
Title 7. Municipalities  
Chapter 103. Municipal Sewerage Systems (Refs & Annos)

C.G.S.A. § 7-246a

§ 7-246a. Applications. Time for decision. Appeal

Currentness

(a) Whenever an application or request is made to a water pollution control authority or sewer district for (1) a determination of the adequacy of sewer capacity related to a proposed use of land, (2) approval to hook up to a sewer system at the expense of the applicant, or (3) approval of any other proposal for wastewater treatment or disposal at the expense of the applicant, the water pollution control authority or sewer district shall make a decision on such application or request within sixty-five days from the date of receipt, as defined in subsection (c) of section 8-7d, of such application or request. The applicant may consent to one or more extensions of such period, provided the total of such extensions shall not exceed sixty-five days.

(b) Notwithstanding any other provision of the general statutes, an appeal may be taken from an action of a water pollution control agency or sewer district pursuant to subsection (a) of this section in accordance with section 8-8.

Credits

(2003, P.A. 03-177, § 13.)

C. G. S. A. § 7-246a, CT ST § 7-246a

The statutes and Constitution are current with enactments of the 2016 February Regular Session, the 2016 May Special Session, and the 2016 September Special Session.

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ARTICLE VI. - SEWAGE DISPOSAL SYSTEMS

DIVISION 1. - GENERALLY

Sec. 30-171. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Board* means the Westport Board of Selectmen.

*Director* means the Director of Public Works.

*Plant* means the Westport Water Pollution Control Facility (WPCF).

*Septic tank cleanings* means any waste obtained from a septic tank, cesspool or their appurtenances.

*WPCA* means the Water Pollution Control Authority.

(Code 1981, § 118-5)

Sec. 30-172. - Purpose.

The purpose of this article is to regulate the collection, transportation and disposal of septic tank cleanings in accordance with generally accepted standards of sanitation, to prevent and control unsanitary and unhygienic practices concerning septic tank cleanings that might constitute a menace to the safety and health of the Town and to protect the sewage treatment facility of the Town.

(Code 1981, § 118-4)

Sec. 30-173. - Violations and penalties.

The penalty for a violation of this article shall be a fine not exceeding \$99.00.

(Code 1981, § 118-3)

State Law reference— Penalties for ordinance violations, C.G.S. § 7-148(c)(10)(A).

Sec. 30-174. - Approval of sewage disposal facilities required.

No dwellings, apartments, boardinghouses, commercial buildings, camps or camping facilities shall be constructed in the Town or altered in any manner which would affect their sewage disposal requirements, unless the sewage disposal facilities have been approved by an agent of the Health District in accordance with the State Health Code, the Health District Sanitary Code and any applicable regulations made by the Board of Selectmen, in their capacity as the Town Water Pollution Control Authority. The Board of Selectmen is designated as the Water Pollution Control Authority for the Town.

(Code 1981, § 118-1)

Editor's note— The 1981 Code stated that this section was adopted on October 16, 1979 (with an effective date of October 31, 1979). The last sentence was added in Supplement No. 3 to correct a scrivener's error in the 2008 recodification.

Sec. 30-175. - Adopted regulations included in water pollution control regulations.

Any regulations adopted by the Water Pollution Control Authority regarding requirements for sewage disposal systems shall be embodied in the Water Pollution Control Authority regulations.

(Code 1981, § 118-2)

Secs. 30-176—30-203. - Reserved.

## § C5-1. - Legislative Body.

- A. *Legislative power.* All legislative power of the Town, including the power to enact ordinances, except such powers as may be vested in the Selectmen by the General Statutes, shall be vested in the Representative Town Meeting, subject to the referendum hereinafter provided by this Charter. The Representative Town Meeting may delegate the power to implement or carry into effect any of its powers set forth in this Charter to any officer or board of the Town. The Representative Town Meeting shall have general investigatory power and authority to establish committees and boards of the Town for special projects and studies and for general administrative purposes respecting new projects or improvements of public works, unless such power has been explicitly granted to another body by an express provision of the Town Charter, and to prescribe the mode of designation of the members of such committees and boards, their terms of office, the organization and officers thereof and the powers and duties thereof and to modify or terminate any committees or boards established hereunder.
- B. *Voting rights limited to members.* The right to vote at Representative Town Meetings shall be limited to Representative Town Meeting members elected as hereinafter provided.
- C. *Appropriations.* The Representative Town Meeting shall have such powers over appropriations as are provided for Representative Town Meetings by the General Statutes and shall have the power to request recommendations of appropriations of Town funds by the Board of Finance for administrative needs of the Representative Town Meeting and its committees.
- D. *Review of Board of Finance Action.* If within 65 days of the receipt of any request for the appropriation of Town funds or for the issuance, reissuance, refinancing, repurchase or the call of bonds or other instrument of indebtedness, or for any lease, acquisition or disposition of real property, the Board of Finance fails to recommend such appropriation or issuance, reissuance, refinancing, repurchase or call, in whole or in part, the request may be placed on the agenda of the Representative Town Meeting. The Representative Town Meeting may appropriate such funds or authorize the issuance, reissuance, refinancing, repurchase or the call of bonds or other instruments of indebtedness, or such lease, acquisition or disposition of real property upon the affirmative vote of 70% of the members of the Representative Town Meeting, present and voting, when the number of affirmative votes is not less than the majority of the total membership. In the case of an appropriation to be included in the annual budget, such action shall be taken only at the annual budget meeting. In any other case, such action shall be taken not later than 30 days after notification to the Moderator by the Board of Finance of its action on the appropriation request.



- E. *Veto.* The First Selectman shall have power to veto legislative acts of the Representative Town Meeting, except appropriations, by written notice delivered or mailed to the Moderator within 3 days of passage of any such act. In the event of such veto, the Representative Town Meeting shall reconsider such act at its next regular or special meeting and may pass it over the veto by the affirmative vote of 70% of the members of the Representative Town Meeting, present and voting, when the number of affirmative votes is not less than the majority of the total membership.
- F. *Review of Certain Zoning Actions.* The Representative Town Meeting shall have the power to review any action by the Planning and Zoning Commission adopting, amending or repealing any zoning regulation or fixing or changing the boundary of any zoning district, or issuing a negative 8-24 report, as set forth in § C10-4.
- G. *Review of Regulations of Public Facilities.* The Representative Town Meeting shall have the power to review the regulations concerning the use of recreation facilities as set forth in § C4-6.

§ C5-2. - Voting Districts; Basis of Representation; Qualifications.

- A. *Establishment of voting districts.* The voting districts of the Town for the election of Representative Town Meeting members shall be as hereinafter provided or as established by ordinance.
- B. *Basis of representation.* The number of members of the Representative Town Meeting from each voting district shall be determined by the following formula: Population in each voting district, based on U.S. Census Bureau population data, divided by population of the Town, multiplied by 35, rounded to the nearest whole number. After completion of the Census of the United States and after any reapportionment of the State General Assembly Districts, State Senatorial Districts and Congressional Districts affecting the Town, voting districts of the Town shall be established such that the population deviation from the largest to the smallest voting district shall not exceed ten percent. To the extent practicable, the redistricting ordinance adopted by the Representative Town Meeting shall provide for equitable representation for each voting unit within the constraints of this Charter and State General Assembly redistricting, shall provide for districts that are located in only one State General Assembly District, one State Senatorial District and one Congressional District.
- C. *Qualifications for election.* Each Representative Town Meeting member shall be an elector of the Town and a resident of the voting district from which elected. No elected official of the Town, no member of any elected or appointed board or commission of the Town and no

official of the Probate or any state court shall be eligible to serve as a member of the Representative Town Meeting. Subject to the provisions of this section, the Representative Town Meeting shall be the judge of the election and qualification of its members.

§ C5-3. - Designation of Voting Districts.

For the purpose of electing Town Meeting Representatives, the current voting districts as set forth in the ordinance, code of the Town of Westport, shall remain in effect until new districts are established by ordinance and successors shall have taken office.

§ C5-4. - Nomination and Election.

- A. *Time and place of election.* The members of the Representative Town Meeting shall be elected biennially by the electors of the voting district in which they reside at regular Town elections as herein provided.
- B. *Certification of number of members in each voting district.* The Town Clerk, not later than the 16th Tuesday before a regular Town election, shall certify the number of Representative Town Meeting members to be elected at such election from each voting district based on U.S. Census Bureau population data.
- C. *Nomination of Candidates.* Nomination of a candidate for Representative Town Meeting member to be elected under this Charter shall be made by petitions signed in ink on forms approved and provided by the Town Clerk beginning with the 15th Tuesday before such election.
- (1) The form, which shall bear no political designation, shall be signed by no less than 25 electors of the voting district in which the candidate resides and shall be filed with the Town Clerk no later than the 2nd Tuesday in September before said election.
  - (2) Any Representative Town Meeting member may become a candidate for reelection in the same voting district by giving written notice thereof to the Town Clerk no later than the 14th Tuesday before said election.
  - (3) No petition shall be valid in respect to any candidate whose written acceptance is not thereon or attached thereto when filed.
  - (4) A petition may contain more than one name, but not more than the number of Representative Town Meeting members which a voting district is entitled to elect at the election for which the nomination is made.

D.

*Certification of Nominations; Preparation of Ballots.* The Town Clerk shall, at least 28 days before such election, certify the names of candidates nominated in accordance with this Charter to the Secretary of the State.

- (1) The Town Clerk shall prepare sample and official ballots for each voting district for the election of Representative Town Meeting members. Such ballots shall bear no party name, symbol or designation. The order of the names of candidates shall be by lottery, consistent with General Statutes, on separate ballots for each voting district, with a number of blank lines after the last name on each ballot equal to the number of Representative Town Meeting members the particular voting district is entitled to elect. The ballot shall be printed in such manner as to indicate to the voters the number of candidates for whom they are entitled to vote.
- (2) No party lever, name, symbol or designation shall be used in such voting.
- (3) If the name of the desired candidate or candidates is not printed on the ballot, voters may write in the name or names of the eligible write-in candidate or candidates they wish to vote for in the blank lines provided on the ballot for such purpose.

E. *Tie Votes.* In case of a tie vote under any section of this Charter affecting the election of Representative Town Meeting members, the other newly elected members from the voting district in which the tie vote may occur shall determine which of the tied candidates shall serve as Representative Town Meeting member or members.

- (1) The Moderator of the election shall immediately after an election notify the Town Clerk of all such tie votes, giving the names and addresses of the candidates affected.
- (2) The Town Clerk shall, within 2 days of such notification by the Moderator, call a meeting of the other members from the voting district or districts in which a tie vote occurs by causing a notice specifying the object, time and place thereof to be mailed to each such member of the particular voting district not less than 3 days nor more than 5 days before the time set for the meeting.
- (3) At such meeting, a majority of such other members from the particular voting district shall constitute a quorum, and they shall elect from among their number a Chairman and a Clerk whose right to vote at such meeting shall not be affected by their election to their respective offices.
- (4) The election to resolve the tie vote shall be by ballot, and a majority of the votes cast shall be required for a choice. The Chairman and the Clerk shall count the ballots, and the person or persons receiving the highest number of votes shall be declared elected.
- (5)



The Chairman and the Clerk shall forthwith make a certificate of the choice and file the same with the Town Clerk. The member or members so chosen shall thereupon be deemed elected as a Representative Town Meeting member or members.

- F. *Notification of Election.* The Moderator of the election shall forthwith, after the regular biennial Town election, file in the Town Clerk's office a list of members elected by voting districts together with their respective addresses. The Town Clerk shall upon receipt of such list forthwith notify all members by mail of their election.

§ C5-5. - Annual Meetings; Organization.

- A. *Annual meetings.* An organization meeting of Representative Town Meeting members shall be held on the first Tuesday in December in each year. The annual budget meeting shall be held on the first Monday of May in each year, and the estimates and recommendations of the Board of Finance shall be submitted to such meeting.
- B. *Moderator.* At its organization meeting, each Representative Town Meeting shall elect from among its members a Moderator, who shall preside at all Representative Town Meetings and shall hold office for a term of 1 year and until a successor is elected and has qualified. The Moderator of the Representative Town Meeting shall have all the powers and duties of a Moderator of an open Town Meeting.
- C. *Deputy Moderator.* At its organization meeting, each Representative Town Meeting shall elect from among its members a Deputy Moderator, who shall hold office for a term of 1 year and until a successor is elected and has qualified. In the event of inability of the Moderator to act, the Deputy Moderator shall have all the powers and duties of the Moderator. In the event that the Moderator cannot fulfill the term, and the Deputy Moderator does, then a new Deputy Moderator will be elected by the body.
- D. *Clerk.* The Town Clerk or, in the event of inability to act, the Assistant Town Clerk shall act as Clerk of all Representative Town Meetings.
- E. *Moderator Pro Tempore and Clerk Pro Tempore.* In the absence of the Moderator and Deputy Moderator, a Moderator Pro Tempore may be elected by the Meeting. In the absence of the Town Clerk and the Assistant Town Clerk, a Clerk Pro Tempore of the Meeting may be elected by the Meeting.
- F. *Standing rules and committees.* The Representative Town Meeting shall constitute a continuing body. It shall have the power to adopt standing rules for the conduct of Representative Town Meetings and the power to appoint such committees as it shall determine.

## § C5-6. - Regular and Special Meetings; Agenda; Notice.

- A. *Regular meetings.* The Representative Town Meeting shall provide for the holding of regular monthly Town meetings.
- B. *Special meetings.* The Moderator may call a special Representative Town Meeting and shall, upon written application of the First Selectman, call a Special Representative Town Meeting to be held not more than 14 days after receipt of the application.
- C. *Agenda.* The Moderator or, in the event of inability to act, the Deputy Moderator or, in the event of the inability of both, the Town Clerk shall place on the agenda of the Representative Town Meeting such matters as the First Selectman, 2 Representative Town Meeting members or 20 electors of the Town may request by written notice delivered to the Moderator or the Town Clerk not less than 14 days prior to a Representative Town Meeting. In determining the 14 days, neither the first day of the notice nor the day of the meeting shall be counted. The Moderator may place any item on the agenda for any Representative Town meeting.
- D. *Notice of Representative Town Meetings.* The Town Clerk shall notify all Representative Town Meeting members of the time and place at which Representative Town Meetings are to be held. Notices shall be sent by mail at least 5 days before the meeting, and a copy of such notice shall be published at least 5 days before such meeting in a newspaper having a substantial circulation in the Town. In determining the 5 days, neither the day of the notice nor the day of the meeting shall be counted. Such notice shall set forth the agenda of the meeting.

## § C5-7. - Conduct of Meetings.

- A. *Quorum.* One-half of the Representative Town Meeting members shall constitute a quorum for doing business, provided that a smaller number may organize temporarily and may adjourn from time to time.
- B. *Public participation.* All Representative Town Meetings shall be public. Any elector of the Town may speak at any Representative Town Meeting, but shall not vote, unless the elector is a member of the Representative Town Meeting.

## § C5-8. - Vacancies.

- A. *Resignations.* A Representative Town Meeting member may resign by filing a written resignation with the Town Clerk, and such resignation shall take effect on the date of such filing.
- B.

*Change of Residence.* A Representative Town Meeting member who shall cease to be a resident of the Town shall thereupon cease to be a Representative Town Meeting member, but a Representative Town Meeting member who shall move from the voting district from which the member was elected to another voting district may serve until the next regular Town election.

- C. *Filling vacancies.* Any vacancy in the membership of the Representative Town Meeting members from any voting district, whether arising from a failure of the electors thereof to elect or from any other cause, shall be filled by the remaining members of said voting district from among the electors thereof.
- (1) The Town Clerk shall immediately call a special meeting of such members for the purpose of filling any vacancy, which meeting shall be called and held in the manner set forth in § C5-4E of this Chapter.
  - (2) Where possible, such remaining members shall fill the vacancy with that defeated candidate from their voting district who received the highest number of votes in the preceding election of Representative Town Meeting members and who is eligible and willing to serve, provided that such person obtained at least 45% of the number of votes received by the person elected by the highest number of votes from that voting district.
  - (3) If no defeated candidate is eligible to fill the vacancy the remaining members from the voting districts shall have discretion to fill the vacancy for the unexpired portion of the term, with any eligible elector residing in the voting district.
  - (4) If the vacancy is not filled within forty-five (45) days, the Moderator shall appoint a replacement.

§ C5-9. - Referendum.

- A. *Notice of action on ordinances.* The Town Clerk shall cause any action by the Representative Town Meeting adopting, amending or repealing an ordinance to be published within 10 days after the adjournment of such meeting in a newspaper having a substantial circulation in the Town. No such action or ordinance shall be effective until fourteen days after such publication. If within that time a petition for referendum has been filed as hereinafter provided, such action or ordinance shall not be effective until approved by such referendum.
- B. *Appropriations of \$500,000 and bond issues.* Any vote passed at a Representative Town Meeting authorizing the expenditure, for any specific single purpose, of \$500,000 or more or the issue of any bonds by the Town shall not be effective until the expiration of fourteen days

after the adjournment of such meetings. If within that time a petition for referendum has been filed as hereinafter provided, such vote shall not be effective until approved by such referendum.

C. *Petition Procedure.*

- (1) Any ordinance or amendment thereof or of any other action or vote described in Subsections A or B of this section may be referred to a vote of the electors of the Town if a petition signed by not less than 10% of the electors of the Town, as of the most recent state or local election is filed with the Board of Selectmen prior to the effective date of such action. The petition must contain the signatures, the dates of signature, the names and addresses of persons who are electors of the Town on the dates they sign the petition. The Registrars of Voters shall verify the petition and certify to the Board of Selectmen that those signing the petition were registered voters at the time they signed. The Board of Selectmen shall notify the Town Clerk and shall forthwith call a special election, to be held as soon thereafter as practicable, for the sole purpose of voting approval or disapproval of such ordinance or amendment or of changing the amount of an appropriation or an item thereof in the manner hereafter provided.
- (2) *Petition Forms.* The Town Clerk shall prepare petition forms which shall contain spaces for the date, signature, printed name and address of each person signing the petition. The wording of the petition shall be substantially in the form that will appear on the ballot as provided in Subsections (4) and (5). Such petition forms shall be available to any elector at the office of the Town Clerk.
- (3) *Voting hours.* At any such special election, the polls shall be opened at 6:00 a.m. and shall be closed at 8:00 p.m. Voting at such elections shall be by voting machine or printed ballot, at the discretion of the Board of Selectmen.
- (4) *Referendums on Ordinances.* Except as herein provided with respect to referendums affecting Town appropriations, the ballot labels or ballots used in such special elections shall state separately each matter to be voted on in substantially the following form: "Shall the following action of a Representative Town Meeting held on (date of meeting) be approved?" followed by a statement of the action referred to in substantially the same language and form in which the same is set forth in the records of such Representative Town Meeting. The voting machine or printed ballot shall provide means of voting "yes" or "no" on each question so presented.
- (5)



Referendums on Appropriations and Bond Issues. All petitions for a referendum on any action by the Representative Town Meeting with respect to any appropriation in the amount required for a referendum under Subsection B of this section shall set forth each item to be voted on. The dollar amount of the items approved by the Representative Town Meeting and the dollar amount which the petitioners request shall be set forth. No increase shall be proposed in excess of the amount approved for the item in question by the Board of Finance or the Representative Town Meeting. Ballot labels or ballots used for such referendum shall present separately each appropriation so referred in substantially the following forms:

- (a) "Shall an appropriation approved by the Representative Town Meeting in the sum of \$\_\_\_\_\_ for (here the purpose of the appropriation shall be stated) be approved?"
- (b) "Shall an appropriation of \$\_\_\_\_\_ for (here the purpose of the appropriation shall be stated) be increased (or decreased) to the sum of \$\_\_\_\_\_?"
- (6) The annual appropriation fixed by the Representative Town Meeting shall be appropriations for the ensuing year, except that any item therein referred to a special meeting of the electors as aforesaid and disapproved by vote of such special meeting shall be amended to accord with such vote, subject to the provisions of this section. In the event of a referendum affecting any annual appropriation, the time within which the Board of Finance shall lay the Town tax for the year following such appropriation shall be extended to 5 days after the referendum vote.
- (7) Vote. All questions submitted to referendum vote of the electors as hereinabove provided shall be decided by majority vote of the electors voting thereon, provided that the total number of votes cast in such referendum shall be at least 20% of the registered electors of the Town.

§ C10-4. - Review of Certain Zoning Actions by the Representative Town Meeting.

Any action by the Planning and Zoning Commission adopting, amending or repealing any zoning regulation or fixing or changing the boundary of any zoning district, or a negative 8-24 report by the Commission shall be subject to review by the Representative Town Meeting as follows:

- A. Within 7 days after the publication of notice of such action, any person or group of persons authorized by §C5-6C of Chapter 5 of this Charter to request the placing of matters on the agenda of the Representative Town Meeting may request, as provided in such § C5-6C, a review by the Representative Town Meeting of such action by the Planning and Zoning Commission. Such Representative Town Meeting shall be held within 30 days after the delivery of such request to the Moderator or the Town Clerk.
- B. If the Representative Town Meeting, by the affirmative vote of 2/3 of the total number of Representative Town Meeting members, shall adopt a resolution reversing the action of the Planning and Zoning Commission, such action shall be void. The power conferred upon the Representative Town Meeting by this section shall be limited to the adoption or rejection of such resolution and shall not include any power to modify or amend the action of the Planning and Zoning Commission, nor any power to postpone final action on such resolution to a later date, whether by laying on the table, by motion to reconsider or otherwise. Action taken by the Representative Town Meeting under this section shall not be subject to veto by the First Selectman.
- C. If at such Representative Town Meeting no such resolution is adopted or if no proceedings for review by the Representative Town Meeting have been initiated within the 7 day period herein specified, such action of the Planning and Zoning Commission shall be effective as of the date provided in the published notice.
- D. Nothing contained in this section shall impair or limit any right or appeal to a court conferred by the General Statutes. Where review by the Representative Town Meeting has been requested, the period within which any such appeal may be taken shall commence at the close of the Representative Town Meeting at which such resolution was voted.



**COMPLIANCE WITH WESTPORT'S POLICY REGARDING  
PRIVATE SANITARY MAIN-LINE EXTENSIONS (MLE)  
(adopted July 2005)**

POLICY	COMPLIANCE
The criteria that should define the necessity for an MLE should be as follows:	
1. The property or properties shall be greater than 150 feet from any portion of an existing mainline sanitary sewer. (If the property is within 150 feet of an existing main-line sewer that property could apply for the approval of a single lateral, provided that when and if the sewer is ever extended past the property the property will relocate their connection to a point within their road frontage.)	Application complies
2. The proposed MLE area to be serviced is identified within the future sewer shed as defined in the "Westport Wastewater Facility Plan" dated March, 2002, (within the "Blue-Lined" area).	Application complies
If the above two items have been confirmed by the Engineering office, the procedure is as follows:	
1. The applicant shall submit, to the First Selectman, a letter requesting a reporting of an 8-24 application of the Planning and Zoning Commission, for the proposed "Private Sanitary Sewer Main-Line Extensions" (this procedure is in accordance with the Section 8-24, Municipal Improvements, of the Connecticut General State Statutes). This request shall be copied to the Town Engineer, Conservation Director and the Director of the Westport / Weston Health District.	Proposed development reviewed as to extension by Westport PZC in July 2016
2. Following a positive reporting for the 8-24 application the applicant shall submit a letter to the WPCA requesting the approval to install an MLE. This shall also be submitted to the Town Engineer, Director of the Westport/Weston Health District and the Director of Conservation for their review.	Section 8-24 referral reports and advisory only, <i>see</i> Tab 13



POLICY	COMPLIANCE
3. The Director of Conservation will review the request with regards to any potential wetland conflicts. Upon completion of their findings a letter will be issued to the WPCA outlining their concerns and recommendations.	The Conservation Commission and Flood Erosion and Control Board have approved Summit's site plan, including the sewer extension
4. The Town Engineer will issue a letter recommending the board's approval or denial. The recommendation for approval will have a list of standard requirements, and the procedure is as follows:	Town Engineer Matharu approved Summit's site plan in October 2018
a. The MLE must be designed by a licensed, Professional Engineer and in conformance with the town's current WPCA regulations. This proposed MLE shall be designed so that it shall not limit the Town's ability to service the overall potential sanitary sewer shed. In addition, it must not adversely affect any existing downstream facilities. The applicant is responsible to provide a service lateral for any and all properties that have frontage on this MLE.	Application complies
b. An estimate representing the total construction cost must be submitted to the Town Engineer's office for approval.	Estimate to be submitted
c. Upon receipt of items a & b, the Engineer's office will review them for conformance with current town standards and current construction costs.	Applicant will comply
d. Upon completion of c, a bond of an approved format, shall be posted. The bond will be in the amount of the approved construction estimate plus a 10% contingency and a 10% inflation cost.	Applicant will comply
e. Upon receipt of the bond and the final approved plan, a "Permit Agreement" shall be executed and approved by the Town Attorney.	Applicant will comply

POLICY	COMPLIANCE
f. <i>MLE Application Fee \$250.00 plus \$2.00 per linear foot of main line sewer as shown on the approved design. These fees must be paid for at the time of execution of the "Permit Agreement".</i>	Applicant will comply
g. After completion of "F", a "Sanitary Sewer Building Connection Permit" must be obtained from the Department of Public Works for the sole purpose of the installation of the MLE to cover all work as outlined on the approved design.	Applicant will comply
h. The total cost of construction shall be incurred by the applicant. (The applicant will also be subject to a "Benefit Assessment" as may be assigned by the WPCA. All subsequent applicants requesting approvals to connect to the MLE after its approval and acceptance will also be subject to an equivalent assessment.)	Agreed
i. A charge of \$250.00 shall be levied against the applicant should they subsequently wish to rescind the approval granted by the WPCA.	Accepted
5. The WPCA shall schedule a public hearing to hear the request.	Agreed
6. At the time of construction, the Town Engineer's office will conduct periodic inspections to ensure the proper installation in conformance with the approved plan.	Accepted
7. Upon completion of construction, the applicant is responsible to conduct all necessary testing.	Accepted
a. An internal video inspection of the line in its entirety.	Accepted
b. A pressure test equivalent to no less than 5 PSI, must be maintained for a period of time not less than ten minutes.	Accepted

POLICY	COMPLIANCE
c. A copy of these test results must be submitted to the Town Engineer's office upon their approval.	Accepted
8. The applicant is responsible to provide the Town of Westport with a "tie-card" illustrating the location of all service connections provided.	Accepted
9. No individual "Sanitary Sewer Building Connection Permits" shall be issued until all applicable testing has been approved and all lateral "tie-cards" have been received.	Accepted
10. The applicant must submit an As-Built plan and profile of the completed MLE to the Town Engineer's office for their review.	Accepted
11. Upon approval of items 4, 6 & 7 the applicant <b>MUST</b> convey the MLE to the Town of Westport for its acceptance as a part of the WPCF.	Accepted
12. The maximum allowable time from the issuance of a permit to construct a MLE to the time of acceptance shall not exceed one year.	Accepted, noting that collateral permits must be obtained
If the above two items have not been confirmed by the Engineering office, the procedure is as follows:	
The applicant shall apply to the Water Pollution Control Authority (WPCA), pursuant to Public Act 03-177, and the WPCA shall render a decision on the application as it deems proper under the law. If the WPCA approves the matter, it shall thereafter be referred to the Planning and Zoning Commission for a review under §8-24 of the General Statutes.	Noted







## WESTPORT, CONNECTICUT CONSERVATION DEPARTMENT

TOWN HALL - 110 MYRTLE AVENUE  
WESTPORT, CONNECTICUT 06880  
(203) 341-1170 • (203) 341-1088

TO: Planning and Zoning Commission

FROM: Alicia Mozian, Conservation Director

DATE: July 7, 2016

RE: 8-24 Request for Sanitary Sewer Line Extension from Davenport Avenue to Hiawatha Lane

**Project Description:** An extension of the existing sewer line located within Davenport Avenue for a distance of 1,600 ft +/- to Hiawatha Lane and Hiawatha Lane Extension; an allocation of sewer capacity of 38,960 gallons/day in connection with a proposed residential development of 155 apartments; and, conditional approval to hook-up this development to the public sewer system. According to the material provided, the sewer extension would serve properties at 28, 36, 38, 39, 41, 42, 43, 44, 45 and 47 Hiawatha Lane Extension for which 155 residential units would be built. An additional eight existing single family properties on Hiawatha Lane/Hiawatha Lane Extension could also be connected.

### Material Reviewed:

1. April 11, 2016 letter from Timothy Hollister, Esq. of Shipman & Goodwin, LLP to James Marpe;
2. Letter dated March 16, 2016 from David Ginter, P.E., Redniss & Mead
3. Soil Description from Web Soil Survey on USDA's Natural Resources Conservation Service web-site;
4. Town's GIS maps showing FEMA flood zone and wetland and watercourse boundaries;
5. "Town of Westport Wastewater Facilities Plan Report, March 2002" prepared by Stearns & Wheeler" and,
6. Material in our files from 2014 8-24 request.

**Comments:** The Conservation Department has reviewed the material listed above as well as information in our files from the previous request of 2014/2015 and offers the following for your consideration:

In reviewing the Town's GIS maps which show wetlands and flood zones, it appears that two out of the seven lots (#41 and 43) in the proposed sewer extension area contain a FEMA designated flood zone and wetlands and watercourses in the southern portions of the property. Another two lots, #45 and #47 abut these resources.

The U.S. Department of Agriculture's Natural Resources Conservation Service web-soil survey indicate the soils in this area are "very limited" for septic systems primarily due to high groundwater and slow permeability.

In reviewing the material in our files from the 2014 request it appears that there is evidence that many homes in the Hiawatha Lane Extension neighborhood have had serious septic problems which lead to the systems being repaired or replaced due to poor or inadequate drainage.

The March 2002 Stearns and Wheeler, "Facilities Plan Report" indicates that properties are within the Blue Line and are within an area designated as "low to moderate" in terms of need for sewer extension and that the area surrounding this neighborhood are all sewered.

It should be noted however, that the Facilities Report states that:

"In order to best evaluate the sewer need for the individual areas, three characteristics were studied:

- Septic system repair rate
- Availability of septic system reserve area, and
- Suitability of the soil for septic systems.

These characteristics, when considered together, were determined to be the best judge of the ability of each area to sustain sewage disposal through on-site septic systems on a long term basis."

In reviewing my memo of January 5, 2015 for sewer expansion to serve a slightly larger development plan, I noted that the Health District had also mentioned the presence of good soils in the area. I had concluded that further soil testing needed to be conducted to determine soil type, depth to groundwater and depth to ledge in order to truly evaluate whether these soils are overall, suitable for septic, or not. To date, I have not seen evidence that this soil investigation has been done.

At face value, it appears that the area in question should be connected to the sewer because the lots are small, there have been several failing septic systems or those in need of repair and poor drainage conditions. The neighborhood is within the "Blue Line" of the Wastewater Facilities Plan and the surrounding neighborhood is connected. It would be best however, if there were conclusive test hole data in the area of the proposed development to substantiate this recommendation.

Thank you for the opportunity to comment.

Alicia/8-24/Hiawatha lane sewer ext 2016





## TOWN of WESTPORT

### Planning & Zoning Commission

Town Hall, 110 Myrtle Avenue, Room 203

Westport, Connecticut 06880

Tel: (203) 341-1030 Fax: (203) 454-6145

RECEIVED

JUL 15 2016

TOWN OF WESTPORT  
SELECTMAN'S OFFICE

July 12, 2016

James Marpe  
First Selectman  
Town of Westport  
110 Myrtle Avenue  
Westport, CT 06880

**RE: §8-24 Request by the First Selectman for a report from the Planning & Zoning Commission, pursuant to an application to the Water Pollution Control Authority by Summit Saugatuck, LLC, for a 1600± ft. private sanitary sewer main line extension to eighteen (18) existing lots from Davenport Avenue to Hiawatha Lane Extension, to serve a proposed 155-unit multi-family development, Assessor's Map B05, Residence B zone**

Dear Mr. Marpe:

In response to your request for a §8-24 report on the extension of the public sewer to 19 properties from Davenport Avenue to Hiawatha Lane Extension, the Planning and Zoning Commission (hereafter "Commission") offers the following for your consideration:

This is to certify that at a meeting of the Westport Planning and Zoning Commission held on July 7, 2016 it is moved by Chip Stephens and seconded by Cathy Walsh to adopt the following **NEGATIVE 8-24 Report to the First Selectman regarding a private sanitary sewer extension to eighteen (18) existing parcels, from Davenport Avenue to Hiawatha Lane Extension, to serve a proposed 155-unit multi-family development contained on (10) parcels, Assessor's Map B05, Residence B zone.**

#### I. REASONS FOR A NEGATIVE REPORT

A. The Commission finds that the reasons stated in the Commission's January 22, 2015, **NEGATIVE Report**, dated January 26, 2015, are also applicable to this request and are hereby incorporated (attached). Specially, after reviewing all of the material submitted by the applicant, the Commission finds that there is no material difference in this new request and finds that a proposed increase in sewer flow from the proposed will put Pump Station #2 over its allowed capacity as well as the pipe under the Saugatuck River as determined in the January 2015, 8-24 Report.

B. The Commission finds, after reviewing all material submitted by the applicant, that the passage of time alone or a change in the future proposed development scheme are



not at issue in this request and neither factors have changed the present condition of the sewer system which has been determined to be inadequate to serve additional flows from the proposed sewer extension.

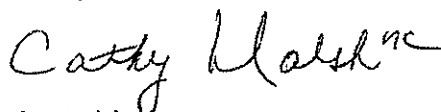
C. The Commission also finds that this request for a positive report is premature for the following reasons:

1. The Commission finds that the necessary upgrades, while identified, are only in the design stage;
2. that no funding has been approved by Town Bodies;
3. that the final design plans have not been reviewed and approved by CT DEEP or any other local, state or federal agencies as may be required;
4. and that to date, there is only a general goal for scheduling actual work to commence the necessary upgrades, and that work will not likely begin in less than 2 to 4 years.
5. The current sewer infrastructure cannot accommodate the increase in flow including but not limited to sewer flow through the pipe under the Saugatuck River.

VOTE: 5-0 in Favor

Ayes	5	Stephens, Walsh, Lessing, Lebowitz, Vebell
Nays	0	
Abstentions	0	


Sincerely,



Cathy Walsh  
Chairman  
Planning & Zoning Commission

cc: Board of Selectman  
RTM Moderator  
Chairman, P&Z Study Committee  
Director of Public Works  
Director, Westport Weston Health District  
Town Attorney





**BERCHEM, MOSES & DEVLIN, P.C.**

ATTORNEYS & COUNSELORS AT LAW

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MEMO

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DATE: JANUARY 6, 2015  
TO: WESTPORT PLANNING AND ZONING COMMISSION  
FROM: PETER V. GELDERMAN, TOWN ATTORNEY'S OFFICE  
RE: C.G.S. SECTION 8-24 - SEWER EXTENSION REQUEST, HIAWATHA LANE

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An entity known as Summit Saugatuck, LLC ("Summit") has submitted a letter to First Selectman Jim Marpe asking him to request a report from the Planning and Zoning Commission (the "Commission") under §8-24 of the Connecticut General Statutes ("8-24") to permit an extension of a sanitary sewer line to serve property currently comprised of 19 single-family lots. The First Selectman has now asked you to review this pursuant to §8-24 (although Mr. Marpe takes no position on this issue at this time.) Summit has indicated that the ultimate purpose of the proposed sewer extension will be to serve a multi-family development containing 186 units.

When reviewing a request under 8-24, the Commission acts in an advisory capacity. In this case, the Commission will be advising the Water Pollution Control Authority (the "Authority"), the municipal agency that ultimately makes the determination whether or not to extend the sewer. The Authority should consider the Commission's 8-24 report when making its decision.

The Commission's report should be based primarily on planning considerations, as opposed to simply relying on existing zoning limitations. In other words, the Commission should not issue a negative report simply because the property is not currently zoned for multi-family use. Instead, the report should consider the impact that the requested sewer extension would have on other specific properties and projects and the ability of such properties and projects to move forward in light of the proposed development. This is important because a recent case, Dauti Construction, LLC v. Water and Sewer Authority of the Town of Newtown, 125 Conn. App. 652 (2010), held that it was inappropriate for the Newtown Water and Sewer Authority to deny a request for a permit to hook-up to an existing sewer based solely on an allocation of sewer capacity that was based on zoning of the plaintiff's property that existed in 1994. It is interesting to note that Dauti involved a request to hook-up to an existing sewer and not a request to extend the sewer, so there was no need for an 8-24 report. In addition, the Court made it clear in Dauti that there is a distinction between a mere permit to hook-up to an existing sewer and a request for an extension of the sewer.

While the Dauti court made it clear that sewer authorities lack the authority to exercise zoning powers, such a limitation does not restrict the Commission, as it is in fact the municipal agency charged with adopting and enforcing zoning regulations. Nevertheless, the Commission should make every effort to review the proposal with an eye toward the future. Again, the Commission

should consider what, if any, impacts the proposed sewer extension will have on the Town and, more specifically, the west side of the Saugatuck River and Pump Station #2; the capacity and condition of which figures prominently in the Weston & Sampson report. A representative from Weston & Sampson will be attending the meeting, along with Public Works Director Steve Edwards.

It is appropriate for the Commission to consider any evidence that is submitted to it, including, but not limited to the Plan of Conservation and Development, the report of the Planning and Zoning Director, Laurence Bradley, and the Weston & Sampson report. There will also presumably be information provided by Summit.

Finally, assuming that Summit intends to file an application under §8-30g of the Connecticut General Statutes, it should be noted that the burden shifting language contained in the statute does not apply to applications and decisions of the WPCA, so there is no need for the Commission to reference §8-30g in its report.

Ira Bloom and I will be present at the January 8, 2015 Commission meeting to answer any questions that members of the Commission may have.





DOCKET NO.: HHD-CV-16-6071538-S	:	SUPERIOR COURT
	:	
SUMMIT SAUGATUCK, LLC	:	JUDICIAL DISTRICT OF
	:	HARTFORD
	:	
V.	:	AT HARTFORD
	:	
TOWN OF WESTPORT WATER	:	
POLLUTION CONTROL AUTHORITY	:	MARCH 7, 2017

TRIAL BRIEF OF DEFENDANT TOWN OF WESTPORT  
WATER POLLUTION CONTROL AUTHORITY

**I: BACKGROUND:**

The plaintiff, Summit Saugatuck, LLC (“Summit”) has appealed from a decision of the Westport Water Pollution Control Authority (“WPCA”) that denied its application to extend the Westport sewage disposal system. Summit’s request was to permit the construction of a 1,600 foot extension of the existing sewer to permit Summit to construct 155 residential apartments, 70 of which would be “owned and managed” by the Westport Housing Authority and 85 of which would be owned and managed by Summit. Although the sewer extension was proposed to be built and financed by Summit, the extension, if constructed, would become part of the Westport wastewater disposal system.

Since the proposed sewer extension would become part of the Town’s sewage disposal system, the proposal first required a referral by the WPCA to the Westport Planning and Zoning Commission for a report, in accordance with CGS §8-24. Essentially, §8-24 requires any project that would extend a sewer line to be referred to the Planning and Zoning Commission (“P

& Z") for a report.<sup>1</sup> In the instant matter, the P & Z issued a negative report; that is the P & Z disapproved the proposed extension. Summit did not request the Westport RTM to review the P & Z's decision. Notwithstanding its own policies and procedures and notwithstanding the fact that "8-24 projects" disapproved by the P & Z<sup>2</sup> cannot go forward, the WPCA heard Summit's sewer extension application.

Summit applied for a "conditional approval." The application sought an approval conditioned upon the subsequent replacement of a force main under the Saugatuck River and repair of Pump Station No.2 (together the "Repairs") because the current force main and pump station did not (and do not) have the ability or capacity to handle the additional effluent caused by the proposed project. That fact is undisputed. As of the date of the meeting, the cost of the Repairs was unknown; the full extent of the work to be completed was unknown; the contractor was unknown; no funds had been appropriated by the Town to complete the repairs; necessary permits from local, state and federal agencies had not been obtained; and the date of commencement and completion of the Repairs was unknown. In short, the Repairs were not ready to be completed (or even commenced) and there was no guaranty that the necessary approvals and funding would be in place to permit the Repairs to go forward. Nevertheless, Summit sought an approval of a sewer extension for a project that everyone, including Summit, agreed cannot go forward without completion of the Repairs – the same Repairs that had (and have) so many unknowns yet to be determined.

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<sup>1</sup> Westport has a combined planning and zoning commission.

<sup>2</sup> And not subsequently approved by the RTM.

zoned Residence B in Westport are presently served by public sewers except for the portion of Hiawatha Lane/Extension that includes Summit's parcels." That statement is absolutely untrue.<sup>4</sup> Perhaps Summit should not be so glib about accusing representatives of the Town of offering "alternate facts." In addition, contrary to the statements and inferences in Summit's brief, at no time has a definitive schedule been determined or set for either the commencement or completion of the Repairs. The scheduling estimates from the Public Works Department have varied, but to characterize the variations as "duplicitous," as Summit did, is both unwarranted and unfair. As circumstances change, so do projections. The fluidity of the situation is one of the reasons that the WPCA elected to deny Summit's request for a conditional approval. There were simply too many unknowns. Summit's brief focuses an inordinate amount of its argument on the alleged discrepancies in the Public Works Director's projected schedule for the Repairs. Ultimately, however, the projections were and are irrelevant to the WPCA's decision. What was relevant was the fact that when Summit made its application, the Repairs had not been completed (or even started) and the WPCA made the reasoned decision that it was not an appropriate policy to approve an extension that could not be built under existing conditions.<sup>5</sup>

Summit's reference to the content of the § 8-24 report in subsection II.F. of its brief is at best inappropriate. There is no right of appeal from § 8-24 reports (as Summit acknowledges), yet Summit has stated that the report was "materially and substantially inaccurate," effectively using this appeal from the decision of the WPCA as a way to challenge the report of the P & Z.

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<sup>4</sup> There is a B zone at Wassell Lane that is not sewered.

<sup>5</sup> One "undisputed fact" that Summit did not admit in its brief is that its proposed project would exceed the capacity of the force main under the Saugatuck River and that until the force main is replaced, there is very little capacity remaining.



Consequently, it is respectfully submitted that this appeal is moot. Mootness results from relationship between the parties that essentially eliminates the ability of the court to render any practical relief. *Taylor v. Zoning Board of Appeals*, 71 Conn. App. 43, 46 (2002). Mootness implicates subject matter jurisdiction and can be raised at any stage of the proceedings. *Wyatt Energy, Inc. v. Motiva Enterprises, LLC*, 81 Conn. App. 659, 661 (2004). If no practical relief can be afforded to the plaintiff, the appeal should be dismissed. If § 8-24 permits the proposal to go forward only upon an approval from the P & Z or the RTM, and neither body has rendered an approval, then the project cannot go forward and there is no practical relief that can be obtained by the pursuit of this appeal. The matter is moot, the court lacks subject matter jurisdiction and the appeal should be dismissed.

**B. The WPCA Did Not Abuse Its Discretion When It Denied Summit's Application**

It has been previously argued that a decision on an application to extend the sewer is not ministerial. The argument by Summit that the WPCA had no discretion in deciding the application is contrary to the *AvalonBay* and *Forest Walk* decisions. To repeat, there is a significant difference between a request for a sewer connection and a request for a sewer extension. A sewer extension involves creating infrastructure where none exists while a sewer connection involves hooking-up to an existing sewer. The WPCA is charged with determining whether new infrastructure is appropriate and the WPCA has discretion in making that decision.

In the instant action, the WPCA was asked to approve a sewer extension that, until certain other substantial improvements are made to the system, cannot be built. It is possible, in

fact likely, that at some point in the future the system will be repaired. At that point in time, the application could be made without conditions and without so many unknowns. Of course the WPCA would still have the right and in fact the obligation to review the proposal, but at least the physical condition of the system would be known and presumably adequate to handle the proposed extension. The WPCA would not be in a position of wondering if anything might happen to render a conditional approval problematic. The difficulty with a conditional approval is that the conditions imposed at the time of the approval may be inadequate or even inappropriate to protect unforeseen circumstances. For example, currently there is ample capacity at the Westport Sewer Treatment Facility. It is likely that when the Repairs are completed there will still be adequate capacity. But some kind of event could occur that might, for example, dramatically reduce capacity or affect the operation of the Sewer Treatment Facility. If that event occurred it might change the WPCA's review of Summit's application. However, Summit has asked the WPCA to ignore those possibilities and simply condition its approval on completion of the Repairs. It is certainly possible that the Repairs could be completed and some other condition could exist (that does not now exist) that would make it inappropriate to grant the extension application. The WPCA, having already granted a conditional approval, could be without the ability to reverse that decision, even in the face of changed circumstances. Why should the WPCA take that risk by granting a conditional approval? When the Repairs are completed, all conditions and circumstances then existing will be known and the WPCA can make a *fully* informed decision.

Summit claims that the WPCA's decision was "...based only on the wholly inaccurate claim that the timing of the pump station and force main work are (sic) speculative and unknown." In fact, the decision of the WPCA is not based on the "unknown timing" of the Repairs, but is based on the fact that the Repairs had not been completed. Even if the exact date and hour of the Repairs were known, the decision of the WPCA would not have changed. It is clear from a reading of the Resolution (ROR #26) that it was the risks associated with a conditional approval that was the concern of the WPCA, not the timing of the Repairs. Reason #2 of the Resolution states, "Mr. Edwards (the Public Works Director) has strongly recommended against such a conditional approval because of clear uncertainties and risks that remain with such repairs. The WPCA notes that it has never granted (underscore supplied) such a conditional approval . There is no precedent for such a conditional approval, which would subject the Town to unnecessary exposure, unreasonable uncertainty, and unacceptable risk." The WPCA went on to state, in Reason #3 that "[a] more reasonable approach for the Applicant is to wait until these risks and uncertainties are eliminated and reapply." Clearly the exact timing of the Repairs was not even an important factor in the WPCA's decision; it was merely the fact that the Repairs had not been completed that caused the WPCA to deny the application.

**C. Summit Does Not Have a "Right" to the Sewer Extension.**

As previously stated, the power to decide when, where and how to provide sewers is vested in the WPCA. See *AvalonBay*, at 423. That power is subject to the discretion of the Authority. Summit claims that when it comes to sewer extensions, the discretion is *limited*. However, only in the sense that discretion must be exercised free of fraud, oppression and

**D. The WPCA Policy of Not Granting Conditional Approvals for Sewer Extensions is Reasonable**

Summit takes the position that a conditional approval should have been granted. Most of the cases cited by Summit affirm the *authority* of a local agency to grant conditional approvals under certain situations. Generally, the cases cited by Summit deal with situations where a land use agency conditioned an approval on the subsequent approval of another agency. None of the cases *required* a conditional approval. It certainly could be argued that the WPCA had the authority to issue a conditional approval. However, there was no certainty as to when, how or even whether the conditions would be satisfied. The WPCA was entitled to weigh the risks associated with a conditional approval against a denial, the only effect of which would be to require the applicant to come back once the work was completed. In fact, even if a conditional approval were granted, the applicant would not have been entitled to do any work until the conditions were satisfied (i.e. the Repairs were completed). The applicant was and is not prejudiced by being made to re-apply when the work is complete or near enough to completion to eliminate the possibility of an occurrence of unforeseen events.

Additionally, as was stated in the public hearing, and set forth as one of the reasons of denial, the WPCA had never issued a conditional approval (ROR Transcript, page 51, lines 7 - 11). Also, the Public Works Director stated that he "...had told at least three other applicants in the area that we are not accepting any additional flow until the pipe is connected" (ROR Transcript, page 43, lines 22-24). So this applicant was being treated the same way and in accordance with the same policies and procedures as every other applicant who sought an





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**APPELLATE COURT  
OF THE  
STATE OF CONNECTICUT**

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**A.C. 41949**

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**SUMMIT SAUGATUCK, L.L.C.**

**V.**

**TOWN OF WESTPORT WATER POLLUTION CONTROL AUTHORITY**

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**BRIEF OF THE DEFENDANT-APPELLANT**

**TOWN OF WESTPORT WATER POLLUTION CONTROL AUTHORITY**

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Peter V. Gelderman, Esq.  
Berchem Moses, P.C.  
1221 Post Road East  
Westport, CT 06880  
Tel: (203) 227-9545  
Fax: (203) 226-1641  
Email: [pgelderman@berchemmoses.com](mailto:pgelderman@berchemmoses.com)

To Be Argued By:  
Peter V. Gelderman

was done to avoid any argument that the application could be automatically approved.<sup>4</sup> After a public hearing, held in July, 2016, the WPCA denied the application because the proposed sewer extension would have eventually directed flow to pump station #2 and then under the Saugatuck River through a force main pipe (Appendix Part II, A100 – A103). It is undisputed that in the summer of 2016, neither pump station #2 nor the force main beneath the river was capable of handling the effluent that would have been generated by the proposed development. It is also undisputed that pump station #2 was scheduled to be upgraded and the force main under the river needed to be replaced. Finally, there is no dispute that, at the time of the application, both the upgrade to pump station #2 and the force main replacement were in the early stages of the design and construction process. Required permits had not yet been obtained and contractors for the work had not yet been selected. The timing of the completion of the work was unknown. The Plaintiff proposed to “solve” this timing problem by suggesting that it would agree to a conditional approval under which it could not begin work on the sewer extension until pump station #2 was upgraded and the pipe (force main) under the river was installed and operational.

The WPCA denied the Plaintiff’s application for several reasons, including the fact that the WPCA had never granted a conditional approval and the fact that there were too many unknowns that could create problems if the approval were granted. Evidence of these potential problems was presented to the WPCA. In addition, at the time of the application, *there was not sufficient capacity in the system to handle the flow*

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<sup>4</sup> CGS § 7-246a requires any application to the WPCA to be decided within 65 days (subject to the right of the applicant to consent to an additional 65 day period). While there is no *express* automatic approval for failing to meet the deadline, it is at least arguable.

of effluent that would result from the proposed development. The WPCA chose to deny the application and essentially invited the Plaintiff to reapply *after* the pump station was upgraded and the pipe was replaced (Appendix Part I, A72 – A77). The Plaintiff appealed from that denial (Appendix Part I, A8 – A22).

The matter was referred to the Land Use Litigation Docket and was further assigned to the Honorable Kenneth L. Shluger (Appendix Part I, A3). Prior to oral argument, the Plaintiff filed a motion to supplement the record with information that suggested that the work on the pump station and the pipe would be completed in the summer of 2017. Eventually, on August 1, 2017, the court granted the motion to supplement the record and remanded the matter back to the WPCA to determine whether the WPCA's decision would change given the apparent imminent completion date of the work (Appendix Part I, A33 – A41). In addition, the court determined that it was "nonsensical" to prevent the WPCA from considering the Plaintiff's application merely because of a negative § 8-24 report from the PZC.

The WPCA re-heard the matter on September 27, 2017 and October 25, 2017. At these remand hearings, the Plaintiff presented a new plan. Rather than asking the WPCA to rehear the pending application for a 155-unit development NOT filed under C.G.S. § 8-30g, the Plaintiffs presented the WPCA with an affordable housing development containing 187 units, purportedly in compliance with the affordability requirements of § 8-30g. At the conclusion of the public hearing on October 25, 2017, the WPCA confirmed its denial, noting once again that the pump station upgrades and the replacement of the force main remained incomplete (Appendix Part I, A78 – A79).



On November 15, 2017, the WPCA adopted a more formal statement of reasons for its denial (Appendix Part I, A80).

Even though the trial court retained jurisdiction over the matter by virtue of the remand, the Plaintiff filed a new appeal from the October 25<sup>th</sup> and November 15<sup>th</sup> WPCA decision (Appendix Part I, A42 – A53). The new appeal was consolidated with the original appeal and the two matters were briefed and argued together. By decision dated May 7, 2018, the trial court (Schluger, J.) sustained the Plaintiff's appeal and ordered the WPCA to approve the application, subject to the condition that the sewer extension construction could not begin until the upgrade to pump station #2 was complete and the force main under the river was replaced and certified as complete by the Town's public works director (Appendix Part I, A57 – A71). Upon this Court granting the Defendant's Petition for Certification for Review, this appeal followed.

#### ARGUMENT

- I. THE TRIAL COURT ERRED WHEN IT SUBSTITUTED ITS JUDGMENT FOR THE REASONED AND LAWFUL DISCRETION EXERCISED BY THE DEFENDANT WPCA.

(Standard of Review is Plenary)

It is well settled in Connecticut that the decisions of local administrative agencies, acting in an administrative capacity, are afforded great deference, and they are to be overruled only when it is found that the authority had not acted fairly, with proper motive and upon valid reason. *McMahon v. Board of Zoning Appeals*, 140 Conn. 433, 438 (1953); *Mallory v. West Hartford*, 138 Conn. 497, 505 (1952). "Where it appears that an honest judgment has been reasonably and fairly exercised after a full hearing, courts should be cautious about disturbing the decision of the local authority." *McMahon*,

statute or regulation, but instead *applied* (i.e. followed) a policy that had been in use for at least three decades. In fact, an argument could be made that the WPCA might have abused its discretion if it did not apply the policy. Such a reversal would have been unfair to all those who were denied conditional approvals in the past (including several other developers who were waiting for the new force main to be constructed and the pump station to be upgraded).<sup>5</sup>

Contrary to the findings of the WPCA, the trial court made a *factual* determination that a "conditional approval in the present case would protect against the risk of harm to the public interests." This determination is a classic example of a trial court substituting its judgment for the judgment of the agency, in this case the WPCA. The WPCA made a specific finding that unknown and unforeseen problems *could* arise between the approval and the completion of the improvements that *could* adversely impact the town. The WPCA did not identify such unforeseen problems, since by their very nature unforeseen problems cannot be described, but the WPCA made a determination that the risk of such problems outweighed the Plaintiff's desire to obtain immediate approval of the sewer extension. In the trial court's judgment, the risk did not outweigh the Plaintiff's request for a conditional approval. However, that determination is precisely the type of determination that is within the agency's decision making authority and discretion and one which this Court and the Supreme Court have consistently found to be beyond the authority of the trial court to overturn. See *R and R Pool and Patio, Inc. et al. v Zoning Board of Appeals of the Town of Ridgefield*, 257 Conn. 456, 470 (2001).

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<sup>5</sup> There is testimony from the Public Works Director that he had advised several developers that they could not apply for sewer extensions or even sewer hook-ups until the improvements were completed (Appendix Part II, A104 – A106).

**NOTICE OF DECISION**  
**(attachment)**

On October 25, 2017, the Water Pollution Control Authority unanimously voted not to approve the remanded application of Summit Saugatuck, LLC. The application was remanded by Judge Schluger to permit the WPCA to consider supplemental information not available or presented at the hearing dated July 27, 2016. The supplemental information was presented and considered by the WPCA on September 27, 2017 and October 25, 2017. The reasons for the WPCA's decision to not approve the application, as supplemented, are as follows:

1. Steven Edwards, Director of Public Works testified that the estimated date of completion of the replacement of the force main under the Saugatuck River and the upgrades to Pump Station #2 is likely to be summer of 2018.
2. Mr. Edwards noted that currently there is not sufficient capacity in the system to accommodate the proposed sewer line extension.
3. Mr. Edwards recommended against approving any project, whether conditional or not, that required more capacity than is available.
4. The WPCA has never granted a conditional approval as a policy matter. Events could occur after a conditional approval that, if known at the time of approval, would have caused an application to be denied or modified. There is no reason to grant approvals to extend a sewer prior to the time when the extension can physically be implemented.
5. Allocation of capacity prior to the completion of necessary work by the Town is unfair to other developers and potential users who have been advised to wait until the work is complete to file applications.
6. It is noted that although it is not the function of the WPCA to consider land use issues in making its decisions (other than to the extent capacity may be affected), the application submitted by the applicant pursuant to the remand order was substantially different from the application that is the subject of the appeal.
7. The applicant failed to provide a compelling reason to grant a conditional approval. The applicant's only stated reason was that it would benefit its ability to plan its project. That reason does not outweigh the public policy reasons for not granting conditional approvals (as set forth in item #4, above).

James S. Marpe  
Chair





193 Conn.App. 823  
Appellate Court of Connecticut.

SUMMIT SAUGATUCK, LLC  
v.  
WATER POLLUTION CONTROL  
AUTHORITY OF the TOWN OF WESTPORT

(AC 41949)

Argued April 22, 2019

Officially released October 29, 2019

### Synopsis

**Background:** Property owner sought review of determination by town's water pollution control authority denying owner's application for sewer extension to service proposed affordable housing development. The Superior Court, Judicial District of Hartford, Kenneth L. Shluger, J., 2018 WL 2749631, sustained owner's appeal and ordered conditional approval of application. Authority appealed.

The Appellate Court, Prescott, J., held that trial court impermissibly substituted its own discretion and judgment for that of authority by ordering conditional grant of application.

Reversed.

### Attorneys and Law Firms

\*\*184 Peter V. Gelderman, Westport, for the appellant (defendant).

Timothy S. Hollister, Hartford, for the appellee (plaintiff).

Prescott, Bright and Bear, Js.

### Opinion

PRESCOTT, J.

\*\*185 \*824 The defendant, the Water Pollution Control Authority for the Town of Westport, appeals from the judgment of the trial court sustaining the appeal of the plaintiff, Summit Saugatuck, LLC, from the defendant's decision to deny the plaintiff's application for a sewer

extension to service a proposed affordable housing development. The court remanded \*825 the matter back to the defendant with direction to approve conditionally the sewer extension application subject to the completion of ongoing improvements and upgrades of capacity to the sanitary sewer system in the town of Westport (town). On appeal, the defendant claims that the trial court, by sustaining the appeal and ordering a conditional approval of the application, improperly substituted its own judgment for the reasoned and lawful discretion exercised by the defendant. We agree and, accordingly, reverse the judgment of the trial court.<sup>1</sup>

The record reveals the following facts and procedural history. The plaintiff owns property or options to purchase property in an area of town that is zoned for high \*826 density development to be served by the town's sewer system. The plaintiff seeks to develop its property for multifamily residential use. A sewer extension from the town's system is needed to service the planned development.

In October, 2014, the plaintiff, pursuant to General Statutes § 7-246a,<sup>2</sup> applied to the defendant for approval of a private \*\*186 sewer extension for a proposed 186 unit affordable housing development.<sup>3</sup> Because a proposed sewer extension is deemed a municipal improvement, the defendant referred the application to the town's planning and zoning commission (zoning commission) for a report pursuant to General Statutes § 8-24. See footnote 1 of this opinion.

On January 8, 2015, the zoning commission held a hearing on the plaintiff's application. Steven Edwards, the town's public works director at the time, testified at the hearing that the town's existing sewer system required repairs and upgrades before it could handle the additional sewage from the proposed development. Specifically, Edwards explained that replacement of a force main running under the Saugatuck River and one of the pump stations could take up to five years. \*827 Edwards thought a reasonable goal for the completion of the upgrade/repairs would be the summer of 2017.

The zoning commission issued a negative report on January 26, 2015. The plaintiff elected to withdraw its application with the defendant at that time.

The plaintiff subsequently entered into an agreement with an affiliate of the Westport Housing Authority (affiliate) pursuant to which the plaintiff would develop eighty-five market rate units and the affiliate would develop seventy

adjacent affordable housing units. On April 11, 2016, the plaintiff reapplied to the defendant to construct a private sewer extension to service this new planned development.

In June, 2016, the defendant referred the plaintiff's latest application to the zoning commission for a § 8-24 report. Following a hearing on July 7, 2016, the zoning commission again issued a negative report due to the as yet incomplete upgrades to the sewer system, which it concluded were not likely to be accomplished for another two to four years.<sup>4</sup> Despite the negative report, the plaintiff chose not to withdraw its application from consideration by the defendant. The defendant then held a public hearing on the plaintiff's sewer extension application on July 21, 2016. At that hearing, the plaintiff offered evidence about the projected timeline for the completion of the sewer upgrades and proposed that the defendant approve its application conditioned upon the final completion of all necessary upgrades to the sewer as well as the receipt of necessary wetlands and site plan approvals.

The defendant denied the plaintiff's application on July 27, 2016. The defendant concluded, in relevant part, that (1) the application violated a town policy that \*828 purportedly required a positive § 8-24 report from the zoning commission as a prerequisite to proceeding with a sewer extension application; (2) regardless of that policy, § 8-24 itself required a positive \*\*187 report from the zoning commission before the defendant could approve an application unless approval was obtained from the representative town meeting,<sup>5</sup> which had not occurred here; and (3) given remaining uncertainties and risks associated with the planned force main replacement and pump station upgrade, it would be unwise for the defendant to issue an approval conditioned upon the plaintiff's agreement to defer construction of the sewer extension until repairs were completed rather than simply requiring the plaintiff to wait and reapply after all necessary repairs and improvements were finished and sufficient capacity existed.

The plaintiff filed an appeal from that ruling with the Superior Court on August 31, 2016. In addition to its supporting brief, the plaintiff filed a motion for permission to supplement the record. The defendant objected to the motion to supplement and later filed its brief opposing the plaintiff's appeal. The plaintiff filed a reply brief and a second motion for permission to supplement the record. The matter was heard on April 26, 2017.

In a decision filed on August 1, 2017, the trial court sustained the plaintiff's appeal. The court determined that the

negative report issued by the zoning commission pursuant to § 8-24 was only advisory in nature and in no way was binding on the defendant, and, thus, it \*829 had been improper for the defendant to rely primarily on the negative report of the zoning commission as the basis for denying the plaintiff's sewer application, rather than considering the merits of the application.<sup>6</sup> Accordingly, the court remanded the application to the defendant "for a new hearing on the matter, at which [the plaintiff] may produce new evidence germane to the equitable disposition of its application."<sup>7</sup>

On September 27, 2017, the defendant held a hearing in accordance with the court's remand order, which was continued to October 25, 2017. Because the plaintiff's joint venture agreement with the affiliate had terminated, the plaintiff informed the \*\*188 defendant on remand that it was pursuing the application with respect to a new affordable housing plan that consisted of 187 units for which the plaintiff would be the sole developer.<sup>8</sup> The plaintiff presented evidence that the construction of the force main replacement and the upgrade \*830 to the pump station were scheduled to begin in December, 2017, and were to be completed in March, 2018. The plaintiff also submitted evidence demonstrating that all municipal, state, and federal permits for the sewer construction had issued and that the project was funded fully.

On October 25, 2017, the defendant nevertheless again denied the plaintiff's supplemented sewer extension application. It provided the following reasons for its decision: (1) "[T]he estimated date of completion of the replacement of the force main under the Saugatuck River and the upgrades to Pump Station # 2 is likely to be summer of 2018"; (2) "currently there is not sufficient capacity in the system to accommodate the proposed sewer line extension"; (3) the defendant agreed with Edwards' recommendation "against approving any project, whether conditional or not, that required more capacity than is available"; (4) the defendant, as a matter of policy, had never granted a conditional approval because "[e]vents could occur after a conditional approval that, if known at the time of approval, would have caused an application to be denied or modified," and "[t]here is no reason to grant approvals to extend a sewer prior to the time when the extension can physically be implemented"; (5) "[a]llocation of capacity prior to the completion of necessary work by the town is unfair to other developers and potential users who have been advised to wait until the work is complete to file applications"; (6) "although it is not the function of the [defendant] to consider land use issues in making its decisions (other than to the extent capacity may be

affected), the application submitted by the [plaintiff] pursuant to the remand order was substantially different from the application that is the \*831 subject of the appeal"; and (7) "[the plaintiff] failed to provide a compelling reason to grant a conditional approval. The [plaintiff's] only stated reason was that it would benefit its ability to plan its project. That reason does not outweigh the public policy reasons for not granting conditional approvals (as set forth in item #4 ...)."

The plaintiff again appealed the denial of its application to the Superior Court, arguing that its property was located in the town's sewer district and, thus, could not be developed without sewer access. The plaintiff further claimed that the record was clear that ample sewer capacity exists or soon would exist for the proposed use; there had been no showing of any engineering impediments to tying into the sewer system, and the sewer extension would be privately funded. According to the plaintiff, on those facts, the defendant had a nondiscretionary duty to grant the sewer extension application or, in the alternative, abused its discretion by failing to do so.

Following briefing, the appeal was heard on April 3, 2018.<sup>9</sup> The court again sustained \*\*189 the plaintiff's appeal and reversed the decision of the defendant. In a memorandum of decision filed on May 7, 2018, the court \*832 rejected the plaintiff's argument that the defendant had a ministerial duty to grant its extension because the plaintiff did not seek merely to connect to an existing sewer system but to construct an extension to that system, which required the defendant to exercise judgment and discretion. See *Dauti Construction, LLC v. Water & Sewer Authority*, 125 Conn. App. 652, 664, 10 A.3d 84 (2010) (noting that, in determining whether water pollution control authority's action was ministerial or discretionary in nature, courts distinguish between requests to connect to an existing sewer system and those seeking to construct an extension to sewer system), cert. denied, 300 Conn. 924, 15 A.3d 629 (2011). The court nevertheless agreed with the plaintiff that the defendant's denial of the sewer extension application was arbitrary and an abuse of its discretion. The court concluded that the defendant had based its decision primarily on the fact that the sewer upgrades and repairs necessary to provide the capacity for the plaintiff's proposed development had not been completed, rather than on any potential topographical or engineering considerations. Rather than render a decision on the basis of the merits of the application, the court determined that the defendant arbitrarily had decided that the application was premature and

that issuing a conditional approval was against an established policy.

The court remanded the application to the defendant for a second time, now with direction that it conditionally approve the application for the project as amended, subject to the following conditions: "(1) Construction of the sewer extension may not begin until such time as the force main replacement under the Saugatuck River and the upgrade of the pump station number two are complete and the town's public works director confirms that the public sewer system has the capacity to receive, transport, and discharge to the treatment plant the sewage to be discharged from the applicant's \*833 proposed multifamily residential development. Construction of the sewer extension includes cutting of trees and clearing of vegetation.

"(2) The applicant understands and accepts that it may be assessed a cost of an upgrade to the capacity of pump station number two." This court subsequently granted the defendant's petition for certification to appeal, and the defendant timely filed the present appeal.<sup>10</sup>

\*\*190 The defendant claims that, by sustaining the plaintiff's appeal and remanding the matter back to the defendant with direction to grant the sewer extension application, the trial court improperly substituted its own \*834 judgment for the reasoned and lawful discretion exercised by the defendant. The defendant advances several arguments related to its claim. First, it argues that the court failed to identify any specific statute or regulation that the defendant violated by denying the sewer extension application, which had included a request to grant conditional approval. Next, it argues that, although the court concluded that the defendant did not have a ministerial duty to grant the application but, rather, was entitled to exercise its discretion in determining whether to approve the application, the court effectively rendered the decision ministerial by concluding that because the plaintiff's application complied with all of the defendant's engineering and administrative requirements, the failure to grant approval was arbitrary. The defendant further argues that, contrary to the court's decision, there was evidence in the record demonstrating that the defendant had not granted a conditional approval in the past thirty years, which effectively constituted a policy to which the defendant was entitled to adhere. Finally, the defendant contends that the court used language that appeared to imply, without any supporting evidence, that the defendant's denial

of the application was motivated by a bias against affordable housing.

The plaintiff counters that, on the basis of the record presented, the court properly determined that the defendant acted arbitrarily and abused its discretion in failing to grant a conditional approval. In addition to reasserting its argument that the defendant had a ministerial obligation to approve the sewer extension application, the plaintiff contends that, even if the defendant's action was discretionary, it abused that discretion because it used its limited authority over the sewer system to make a land use decision and to improperly thwart an unwanted multifamily residential development. We agree with defendant that, under the circumstances, whether to grant a conditional approval of a sewer extension application was a decision properly \*835 left to the discretion of the defendant, and the court impermissibly substituted its own discretion and judgment for that of the defendant by overriding its decision and \*\*191 ordering a conditional approval of the application.

We begin by setting forth applicable principles of law, including our standard of review. “[W]ater pollution control authorities are quasi-municipal corporations created pursuant to statute that may exercise the power to acquire, construct, maintain, supervise, manage and operate a sewer system and perform any act pertinent to the collection, transportation and disposal of sewage.... In defining the powers and duties of such authorities, [General Statutes] § 7-247 (a) provides, inter alia, that they may establish and revise rules and regulations for the supervision, management, control, operation and use of a sewerage system, including rules and regulations prohibiting or regulating the discharge into a sewerage system of any sewage or any stormwater runoff which in the opinion of the water pollution control authority will adversely affect any part or any process of the sewerage system ....” (Citation omitted; internal quotation marks omitted.) *Dauti Construction, LLC v. Water & Sewer Authority*, supra, 125 Conn. App. at 661, 10 A.3d 84.

Accordingly, “[i]n considering an application for sewer service, a water pollution control authority performs an administrative function related to the exercise of its powers.... When a water pollution control authority performs its administrative functions, a reviewing court's standard of review of the [authority's] action is limited to whether it was illegal, arbitrary or in abuse of [its] discretion .... Moreover, there is a strong presumption of regularity in the proceedings of a public agency, and we give such agencies broad discretion

in the performance of their administrative duties, provided that no statute or regulation is violated....

\*836 “With respect to factual findings, a reviewing court is bound by the substantial evidence rule, according to which, [c]onclusions reached by [the authority] must be upheld by the trial court if they are reasonably supported by the record.... The question is not whether the trial court would have reached the same conclusion, but whether the record before the [authority] supports the decision reached.... If a trial court finds that there is substantial evidence to support a [water pollution control authority's] findings, it cannot substitute its judgment as to the weight of the evidence for that of the [authority].... If there is conflicting evidence in support of the [authority's] stated rationale, the reviewing court ... cannot substitute its judgment for that of the [authority].... The [authority's] decision must be sustained if an examination of the record discloses evidence that supports *any one of the reasons given*.... Accordingly, we review the record to ascertain whether it contains such substantial evidence and whether the decision of the defendant was rendered in an arbitrary or discriminatory fashion.... We review the court's decision to determine if, when reviewing the decision of the administrative agency, it acted unreasonably, illegally, or in abuse of its discretion.” (Citation omitted; emphasis added; internal quotation marks omitted.) *Landmark Development Group, LLC v. Water & Sewer Commission*, 184 Conn. App. 303, 316–17, 194 A.3d 1241, cert. denied, 330 Conn. 937, 195 A.3d 385, cert. denied, 330 Conn. 937, 195 A.3d 386 (2018).

As our Supreme Court has emphasized, “water pollution control authorities are afforded broad discretion in deciding whether to provide sewer service to property owners, but cannot exercise that discretion in an arbitrary or discriminatory manner ....” \*\*192 *Forest Walk, LLC v. Water Pollution Control Authority*, 291 Conn. 271, 279, 968 A.2d 345 (2009). Only if it appears that a \*837 public agency reasonably could have reached only one conclusion is it proper for a court to “direct that agency to do that which the conclusion requires.” *Dauti Construction, LLC v. Water & Sewer Authority*, supra, 125 Conn. App. at 664, 10 A.3d 84.

Turning to the present case, one of the reasons stated by the defendant for denying the supplemented application was that there currently was insufficient capacity in the sewer system to service the proposed development. Although it was anticipated that the system would have the necessary capacity once the ongoing repairs and upgrades to it were completed, the defendant also concluded that granting an



approval conditioned on the future completion of such work was unwarranted. In accordance with applicable standards of review, unless that rationale was illegal, arbitrary, or constituted an abuse of discretion, it was entitled to deference from the court. See *Landmark Development Group, LLC v. Water & Sewer Commission*, supra, 184 Conn. App. at 316, 194 A.3d 1241.

A municipal land use or related administrative agency generally may conditionally approve an application submitted for its consideration provided that the conditions imposed “are within the scope of the agency’s statutory authority and are an attempt to implement its existing regulations for a specific project on which the agency acts in an administrative capacity.” R. Fuller, 9 Connecticut Practice Series: Land Use Law and Practice (4th Ed. 2015) § 22:16, p. 721. Our appellate courts have upheld the use of conditional approvals with respect to land use related applications noting that, even in cases in which the application is conditioned on events outside the control of the granting authority, such as obtaining approval from another agency, a conditional approval can “achieve greater flexibility in zoning administration by avoiding stalemates between a zoning authority and other municipal agencies over which it \*838 has no control.” *Blaker v. Planning & Zoning Commission*, 212 Conn. 471, 482, 562 A.2d 1093 (1989). The mere fact, however, that a conditional approval of an application would be a viable option available to an agency in considering an application does not mean that the agency must exercise that option whenever possible and in all situations.

In *CMB Capital Appreciation, LLC v. Planning & Zoning Commission*, 124 Conn. App. 379, 4 A.3d 1256 (2010), cert. granted, 299 Conn. 925, 11 A.3d 150 (2011) (appeal withdrawn September 15, 2011), this court was asked to decide whether it was proper for the trial court to order the planning and zoning commission to approve conditionally an affordable housing site plan application that was filed pursuant to General Statutes § 8-30g and which the commission had denied on the ground that a necessary sewer connection application, most likely, would be denied. This court affirmed the decision of the trial court, concluding that, rather than denying the application, the commission was required to grant the affordable housing application on the condition that the plaintiff obtain approval from the sewer authority. *Id.*, at 394, 399, 4 A.3d 1256. In reaching this conclusion, this court provided an overview of our case law regarding conditional approvals. See *id.*, at 386–90, 4 A.3d 1256.

Of particular relevance to the present appeal, is this court’s discussion in *CMB Capital Appreciation, LLC, of Kaufman v. Zoning Commission*, 232 Conn. 122, 653 A.2d 798 (1995), in which our Supreme Court held that, unless a zoning commission could demonstrate that its refusal to \*\*193 grant the conditional approval of an affordable housing application was necessary to protect substantial public interests, “the conditional granting of [the application] was not only authorized *but required*.” (Emphasis added.) *Id.*, at 164, 653 A.2d 798. In discussing conditional approvals in general, our Supreme Court in *Kaufman* noted, however, that even though a commission is *empowered* to grant conditional approval of \*839 an application, the mere existence of such authority does not “demonstrate that the commission was ... required to do so. In our past cases approving conditional zoning, we have described conditional zoning *not as an obligation*, but as a means of achieving greater flexibility in zoning administration ....” (Emphasis added; internal quotation marks omitted.) *Id.*, at 165, 653 A.2d 798. Although the court in *Kaufman* proceeded to hold that conditional zoning *was an obligation in the context of an affordable housing application* because imposing such a requirement would help to advance an expressed legislative goal of encouraging the construction of affordable housing; *id.*, at 164, 653 A.2d 798; the court’s language strongly suggests that, outside of that specific context, whether to grant conditional approval of an application remains a matter of agency discretion. Moreover, in *AvalonBay Communities, Inc. v. Sewer Commission*, 270 Conn. 409, 431–433, 853 A.2d 497 (2004), our Supreme Court made clear that the rules governing zoning approval of affordable housing applications did not extend to the decisions of a water pollution control authority, and “the legislature has not required water pollution control authorities to treat applications related to developments with affordable housing components differently from applications for other types of developments, as it has with other municipal bodies.” *Id.*, at 432–33, 853 A.2d 497.

Unlike in *Kaufman* and *CMB Capital Appreciation, LLC*, the application at issue in the present appeal was not for zoning approval of an affordable housing application filed pursuant to § 8-30g, but an application for a sewer extension filed pursuant to § 7-246a.<sup>11</sup> Nevertheless, the court concluded that granting conditional approval of the sewer extension application was required to afford the plaintiff the opportunity to continue \*840 to make progress on its affordable housing project while at the same time protecting against any risk

of harm to the public's interest in proper waste water management. By stating that a "conditional approval in the present case would protect against the risk of harm to the public [interest]," the court substituted its own decision-making calculus for that of the municipal agency entrusted with discretionary authority over such matters. The court also mistakenly cited to *CMB Capital Appreciation, LLC v. Planning & Zoning Commission*, supra, 124 Conn. App. at 391, 4 A.3d 1256, for the proposition that a conditional approval of the application would advance "the legislative purpose of encouraging the construction of affordable housing" (internal quotation marks omitted); even though such consideration should be limited to affordable housing zoning applications and not to applications before a water pollution control authority. See *AvalonBay Communities, Inc. v. Sewer Commission*, supra, 270 Conn. at 431-33, 853 A.2d 497.

In exercising its discretion, the defendant chose to reject the rationale relied on by the trial court in favor of a more \*\*194 cautious approach that required the plaintiff to file a new application once it could demonstrate that sufficient sewer capacity existed for the planned development. Although the defendant's decision is contrary to the approach the trial court favored, the record does not support a conclusion that the defendant's decision was illegal, arbitrary, or an abuse of discretion. Accordingly, the defendant was entitled to a presumption of regularity in its decision-making process. See *Landmark Development Group, LLC v. Water & Sewer Commission*, supra, 184 Conn. App. at 316, 194 A.3d 1241 ("question is not whether the trial court would have reached the same conclusion, but whether the record before the [authority] supports the decision reached" [internal quotation marks omitted] ). In exercising its discretion not to grant a conditional approval in this case, the \*841 defendant explained that unknown and unforeseen problems potentially

could arise between the time of approval and the completion of the sewer upgrades that could adversely impact the town. Although the plaintiff attempts to make much of the fact that the defendant did not provide specific examples of the types of problems it foresaw, we are unconvinced that the lack of detailed explication so undermined the defendant's reasoning as to permit the trial court to disregard it and substitute what the court clearly believed was a more equitable outcome.

Finally, the defendant provided the additional rationale that it was a settled policy of the defendant not to grant conditional approval of applications. The court found that there was no evidence that any such policy existed. The existence of an officially promulgated policy, however, was not essential in order to justify the position taken by the defendant. There was un rebutted testimony by Edwards that the defendant had not granted a conditional approval in more than thirty years. That testimony was evidence upon which the defendant was entitled to rely, and it was sufficient to demonstrate that the defendant had a practice to refrain from granting conditional approvals and, by choosing not to do so in the present case, it was not acting arbitrarily but, rather, in accordance with its usual practices and procedures. Having reviewed the record and the arguments of the parties, we conclude that the court improperly substituted its own discretion and judgment for that of the defendant.

The judgment is reversed and the case is remanded with direction to render judgment denying the plaintiff's appeal.

In this opinion the other judges concurred.

#### All Citations

193 Conn.App. 823, 220 A.3d 183

#### Footnotes

- 1 The defendant also claims that the trial court improperly determined that the defendant had the authority to grant the application despite a negative report from the town's planning and zoning commission that was issued pursuant to General Statutes § 8-24. That provision provides in relevant part that "[n]o municipal agency or legislative body shall ... extend public utilities ... until the proposal to take such action has been referred to the [municipal planning and zoning] commission for a report...." Because we reverse the judgment of the trial court on the basis of the defendant's claim that the court improperly substituted its judgment for that of the defendant, it is unnecessary to decide whether the court correctly determined that a negative § 8-24 report by the town's zoning commission did not preclude, as a matter of law, the granting of the sewer extension application by the defendant. We conclude that this issue is not likely to recur on remand because our disposition requires no further action on the present application and, thus, we do not exercise our discretion to review it. See, e.g., *Sullivan v. Metro-North Commuter Railroad Co.*, 292 Conn. 150, 164, 971 A.2d 676 (2009) (addressing claim likely to arise during proceeding on remand); *Barlow v. Commissioner of Correction*, 166 Conn. App. 408, 427, 142 A.3d

290 (2016) (same), appeal dismissed, 328 Conn. 610, 182 A.3d 78 (2018). Furthermore, it is entirely speculative on the present record whether this precise issue, which raises complicated questions of statutory construction, is likely to arise again in the present case even if the plaintiff renews or files a revised sewer extension application and that application is referred for a new § 8-24 report. The primary reason for the prior negative report was the unfinished sewer repairs and upgrades, which may no longer be an issue. Given our reversal of the judgment on other grounds, any further discussion of the issue would be tantamount to an advisory opinion, which we cannot render. See *Tyler E. Lyman, Inc. v. Lodrini*, 78 Conn. App. 582, 589–90 n.5, 828 A.2d 676 (2003).

2 General Statutes § 7-246a provides: "(a) Whenever an application or request is made to a water pollution control authority or sewer district for (1) a determination of the adequacy of sewer capacity related to a proposed use of land, (2) approval to hook up to a sewer system at the expense of the applicant, or (3) approval of any other proposal for wastewater treatment or disposal at the expense of the applicant, the water pollution control authority or sewer district shall make a decision on such application or request within sixty-five days from the date of receipt, as defined in subsection (c) of section 8-7d, of such application or request. The applicant may consent to one or more extensions of such period, provided the total of such extensions shall not exceed sixty-five days.

"(b) Notwithstanding any other provision of the general statutes, an appeal may be taken from an action of a water pollution control agency or sewer district pursuant to subsection (a) of this section in accordance with section 8-8."

3 In addition to the sewer extension, the application also sought a sewer capacity allocation and conditional approval to connect to the sewer system.

4 The town had appropriated money needed to upgrade the sewer system in 2015 and had contracted out the design work.  
5 The representative town meeting is the legislative body of the town. General Statutes § 8-24 provides in relevant part that "[a] proposal disapproved by the commission shall be adopted by the municipality ... only after the subsequent approval of the proposal by (A) a two-thirds vote of the town council where one exists, or a majority vote of those present and voting in an annual or special town meeting, or (B) a two-thirds vote of the representative town meeting or city council or the warden and burgesses, as the case may be...."

6 The trial court found that the zoning commission's negative report was not based on any identified concern regarding the plan of development or existing zoning regulations but solely on the basis of sewer capacity, which was an issue for the defendant and outside the authority of the zoning commission to consider. This observation caused the court to question the motive behind the zoning commission's decision to issue a negative report. The court made no express finding, however, that the defendant's decision was similarly the result of an improper motive or bias.

7 The plaintiff's motions to supplement the record sought to offer evidence demonstrating that the sewer upgrades and repairs were on track to be completed by the summer of 2017, which contradicted the testimony of the public works director that the repairs could take as long as four years to complete. The defendant argued that the evidence the plaintiff sought to admit postdated its decision to deny the sewer extension application and, thus, was not relevant to the issues raised in the appeal. The court determined that the additional evidence was "necessary for the equitable disposition of the appeal" and granted the motions to supplement the record. The defendant has not challenged the court's decision to grant those motions as part of its appeal to this court. Furthermore, the supplemental information at issue was presented to and considered by the defendant on remand.

8 Although the defendant later argued to the trial court that this change in development plans exceeded the scope of the court's remand order, the court rejected that argument indicating that, although the plaintiff revised the number of units from 155 to 187, that change had no meaningful effect on the issue of available capacity and, therefore, was inconsequential in nature. In the present appeal, the defendant has not challenged this aspect of the court's decision.

9 In its brief to this court, the plaintiff claims that, at the April 3, 2018 hearing, the parties stipulated that the new force main had been installed under the Saugatuck River but was not yet connected to the town's sewer system, although this would be accomplished within forty-five to sixty days. The parties also allegedly stipulated that the upgrade to the pump station would occur no later than August, 2018 and that, once these steps were completed, the town's sewer system would have sufficient capacity for the plaintiff's proposed residential development. If such a written stipulation or motion was filed, it does not appear in the record. Furthermore, neither of the parties included a copy of any written stipulation in its appendix, and, if oral, neither party ordered a transcript of the hearing before the trial court. Accordingly, we have no way of verifying what facts, if any, were stipulated to before the trial court. This lacuna in the record hampers our consideration of whether and to what degree the alleged stipulated facts may have influenced the court's decision to sustain the appeal and to order the conditional approval of the plaintiff's application.

10 The trial court's judgment remanding the case to the defendant raises the issue of whether the trial court's ruling constitutes an appealable final judgment. Appeals from the decisions of water pollution control authorities are not

governed by the Uniform Administrative Procedure Act, General Statutes § 4-183 (j), which expressly provides that "a remand is a final judgment." Rather, such appeals are governed by § 7-246a (b), which provides in relevant part that "an appeal may be taken from an action of a water pollution control agency ... in accordance with [General Statutes §] 8-8," the statute governing appeals from zoning boards and commissions. Thus, as with a zoning appeal, "it is the scope of the remand order in [a] particular case that determines the finality of [a] trial court's judgment." (Internal quotation marks omitted.) *Barry v. Historic District Commission*, 108 Conn. App. 682, 688, 950 A.2d 1, cert. denied, 289 Conn. 942, 959 A.2d 1008, cert. denied, 289 Conn. 942, 959 A.2d 1008 (2008). "A judgment of remand is final if it so concludes the rights of the parties that further proceedings cannot affect them.... A judgment of remand is not final, however, if it requires [the agency to make] further evidentiary determinations that are not merely ministerial." (Citations omitted; internal quotation marks omitted.) *Kaufman v. Zoning Commission*, 232 Conn. 122, 130, 653 A.2d 798 (1995). In the present case, the trial court's remand order directed the agency to approve the plaintiff's sewer extension application and did not require it to make further evidentiary determinations before doing so. Consequently, the trial court's decision so concluded the rights of the parties that further proceedings could not affect them, and, thus, the trial court's remand order constitutes an appealable final judgment. See *id.*, at 131, 653 A.2d 798; see also *Children's School, Inc. v. Zoning Board of Appeals*, 66 Conn. App. 615, 617-19, 785 A.2d 607 (final judgment because remand ordered approval of special exception application subject to conditions and zoning board not required to make further evidentiary determinations), cert. denied, 259 Conn. 903, 789 A.2d 990 (2001).

- 11 The court indicated in its memorandum of decision that the parties conceded at argument that § 8-30g does not apply to this case.





**SUPREME COURT**  
**STATE OF CONNECTICUT**

PSC-190304

SUMMIT SAUGATUCK, LLC

v.

TOWN OF WESTPORT WATER POLLUTION CONTROL AUTHORITY

**ORDER ON PETITION FOR CERTIFICATION TO APPEAL**

The plaintiff's petition for certification to appeal from the Appellate Court, 193 Conn. App. 823 (AC 41949), is granted, limited to the following issue:

"Did the Appellate Court correctly determine that the trial court had improperly substituted its own judgment for the discretion of the defendant water pollution control authority by ordering the defendant to conditionally approve the plaintiff's application for a sewer extension to service the plaintiff's proposed affordable housing development subject to Westport's completion of ongoing improvements and upgrades of capacity to the sewer system?"

D'AURIA, J., did not participate in the consideration of or the decision on this petition.

*Timothy S. Hollister*, in support of the petition.  
*Peter V. Gelderman*, in opposition.

Decided January 14, 2020

By the Court,

\_\_\_\_\_  
*/s/*  
Carl D. Cicchetti  
Assistant Clerk - Appellate

Notice Sent: January 15, 2020



## Hollister, Timothy

---

**From:** Ratkiewich, Peter <Pratkiewich@westportct.gov>  
**Sent:** Monday, December 23, 2019 1:11 PM  
**To:** Hollister, Timothy  
**Cc:** Peter Gelderman  
**Subject:** RE: Pump Station No. 2

\*EXTERNAL EMAIL\*

Tim,

As of about a week ago pump station #2 is complete.

Peter Ratkiewich, P.E.  
Director of Public Works  
110 Myrtle Avenue  
Westport, CT 06880  
203 341 1125 o  
203 258 9241 c  
pratkiewich@westportct.gov

**From:** Town of Westport <webmaster@westportct.gov>  
**Sent:** Thursday, December 12, 2019 2:21 PM  
**To:** Ratkiewich, Peter <Pratkiewich@westportct.gov>  
**Subject:** Pump Station No. 2

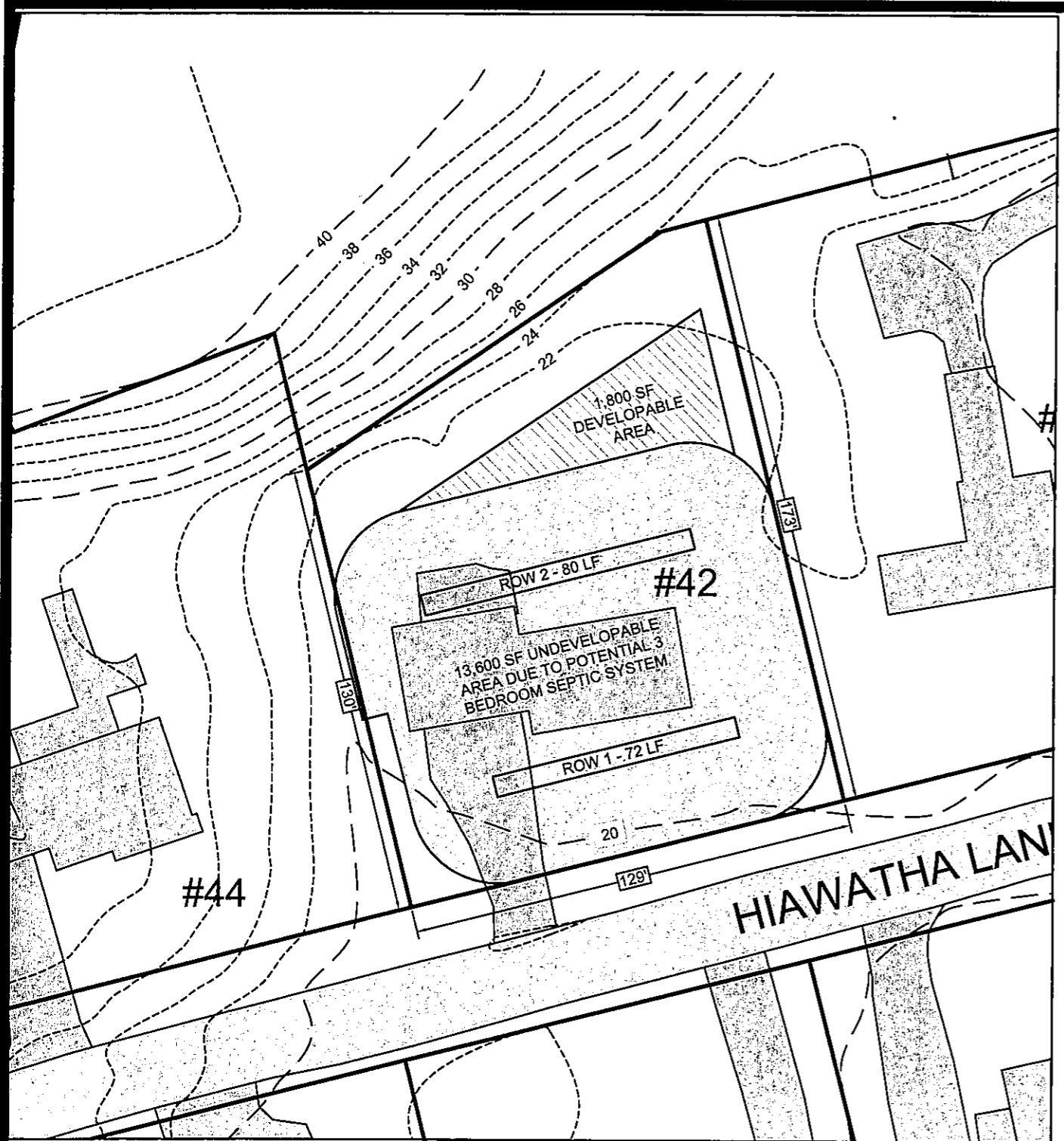
Message submitted from the <Westport, CT> website.

**Site Visitor Name:** Tim Hollister  
**Site Visitor Email:** [thollister@goodwin.com](mailto:thollister@goodwin.com)

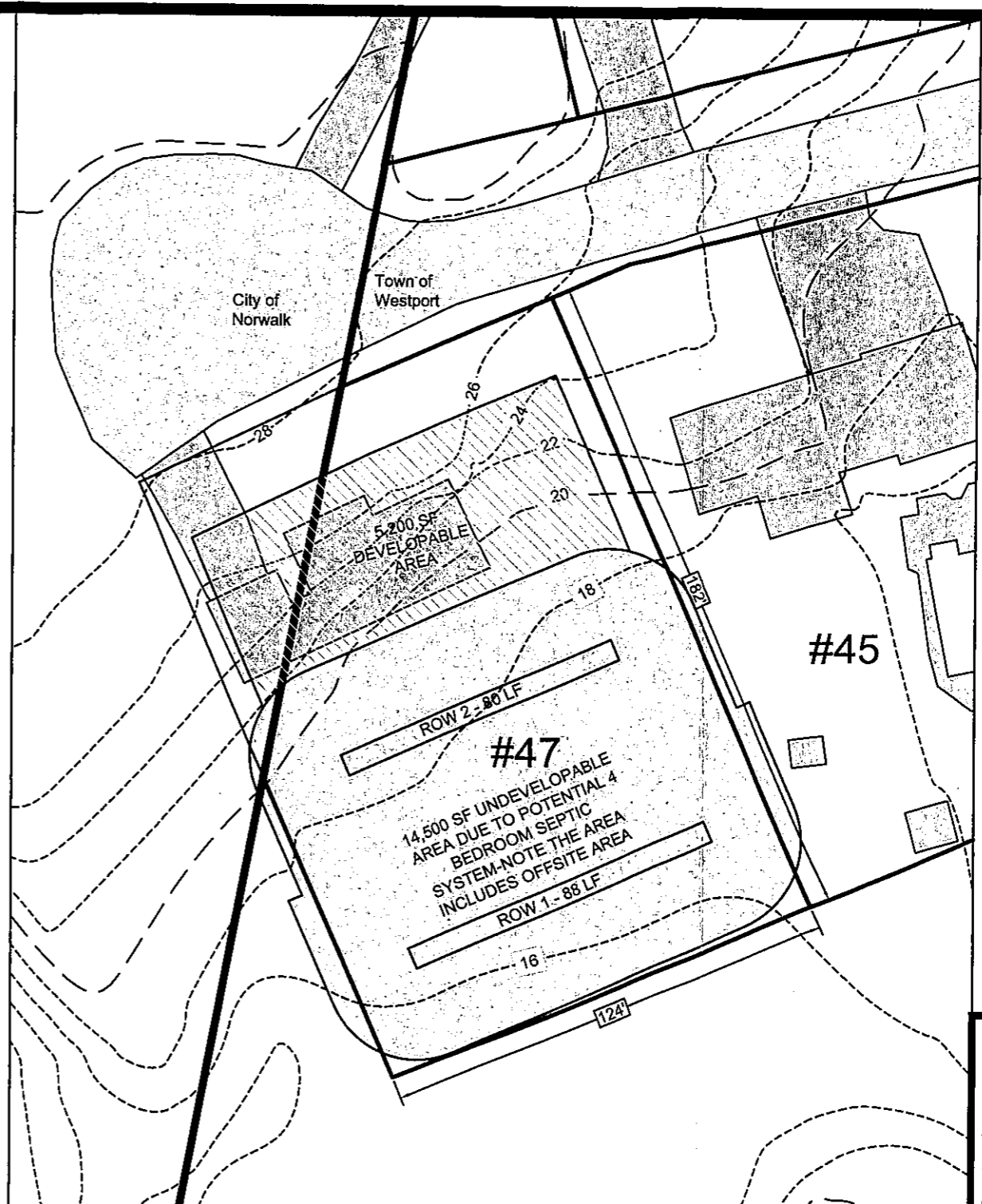
To Peter Ratkiewich: As you may remember, I represent Summit Saugatuck, LLC, in its proposed development on Hiawatha Lane. I am writing to ask for confirmation that the upgrades to the sewer system, including Pump Station No. 2, have recently been completed. I am sending a copy of this message to Attorney Gelderman for his information. A reply by next Wednesday Dec. 18 would be appreciated. Thank you. Attorney Tim Hollister







SEPTIC DESIGN DATA - 3 BEDROOM RESIDENCE  
 RESTRICTIVE @ -29"; SLOPE - 2%;  
 PERCOLATION RATE - 1" IN 20-30 MIN.  
 MLSS = HF x FF x PF = 49 x 1.5 x 2.0 = 147 FT MIN.



SEPTIC DESIGN DATA - 3 BEDROOM RESIDENCE  
 RESTRICTIVE @ -30"; SLOPE - 2.8%;  
 PERCOLATION RATE - 1" IN 20-30 MIN.  
 MLSS = HF x FF x PF = 42 x 2.0 x 2.0 = 168 FT MIN.

**#42/#47 HIAWATHA LANE POTENTIAL SEPTIC LAYOUT EXHIBIT**  
**HIAWATHA LANE**  
**WESTPORT, CT**



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	SCALE:
	1"=40'



341 F.Supp.2d 950  
United States District Court,  
W.D. Tennessee,  
Western Division.

James E. MIDDLEBROOK and  
Mae Middlebrook, Plaintiffs,  
v.  
CITY OF BARTLETT, et al., Defendants.

No. 01-2706 M1/Bre.

March 7, 2003.

**Synopsis**

**Background:** African-American landowners sued city and officials for allegedly refusing to provide water and sewer service to their property on racial grounds. Defendants moved for summary judgment.

**Holdings:** The District Court, McCalla, J., held that:

§ 1982 and § 1983 claims were time-barred;

Fair Housing Act (FHA) claims alleging lack of authorization for water service were not time-barred;

Tennessee Human Rights Act claims were time-barred;

landowners established prima facie discrimination case under FHA; and

official was not entitled to qualified immunity.

Motion granted in part, and denied in part.

**Attorneys and Law Firms**

\*952 Joedae L. Jenkins, Tyrone Jamal Paylor, Law Office of Joedae Jenkins, Memphis, TN, for Plaintiffs.

Edward J. McKenney, Jr., Hanover Walsh Jalenak & Blair, Memphis, TN, for Defendants.

**ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

MCCALLA, District Judge.

Before the Court is Defendants' Motion for Summary Judgment, filed September 9, 2002. Plaintiff responded in opposition on November 8, 2002. Defendants filed a reply brief on November 15, 2002. For the following reasons, the Court GRANTS in part and DENIES in part Defendants' motion.

**I. Background**

This case concerns Plaintiffs' attempts to obtain a building permit from the City of Bartlett ("Bartlett"). Plaintiff James Middlebrook purchased a 1.42 acre tract of land in Bartlett at the corner of Billy Maher Road and Fiske Road in 1993. Plaintiff's property is located in the extreme northwest corner of Bartlett. Plaintiff's property has never been connected to either Bartlett's water or sewer system.

**A. Plaintiffs' Initial Request for a Building Permit**

Plaintiff desired to build a home on this piece of land. He hired someone to draw blueprints for the house and, beginning in late 1995, he attempted to obtain a building permit from Bartlett.

In order to obtain a building permit in Bartlett, a property owner must have either sewer service or a septic tank. In order for a property owner to obtain permission to install a septic tank, the property must be at least two acres with access to public water, or at least four acres if public water is not available.

Plaintiff's property was not connected to either Bartlett's sewer or water system in 1995. Therefore, Plaintiff would have been required to include plans for a septic tank in the plans for his house. Defendant William McClanahan, who was the Bartlett City Engineer in 1995, met with Plaintiff and initially informed him that he could not build a house on his property because he did not own two acres of land.<sup>1</sup> Mr. McClanahan believed that all landowners were required to own at least two acres of land before they would be allowed to install a septic tank. Given that Plaintiff owned only 1.42 acres of land, Mr. McClanahan \*953 informed him that he could not build on the land because he was not allowed to install

a septic tank. Mr. McClanahan also apparently informed Plaintiff that it would cost \$7,000 to run the water line to his property and \$20,000–\$40,000 to provide sewer service to his property. Mr. McClanahan then referred Plaintiff to Defendant Charles Goforth, who served as Bartlett's Director of Planning and Development in 1995. Mr. Goforth confirmed that Plaintiff could not build a house on the property given the acreage.

Plaintiff has stated that although he went to City Hall in 1995 to obtain a building permit, he never filled out an application for a building permit for the property or supplied Bartlett with all of the required documentation. However, he also states that he was never informed of all of the requirements for receiving a building permit (i.e. the requirements listed in paragraph 6 of the Affidavit of Ancil P. Austin).

In February of 1997, Mr. Goforth again met with Plaintiff and informed<sup>2</sup> him that the Shelby County Health Department had made an exception for his parcel of land in 1975<sup>3</sup> that allowed a septic tank to be used notwithstanding the two acre minimum requirement. Mr. Goforth informed Plaintiff that, in accordance with this exception, he could build a house on the property if he installed a septic tank. Plaintiff has stated that he was willing to install a septic tank at that time.

#### **B. Requests for Water and Sewer Service**

However, Plaintiff still needed a water connection in order to install a septic tank. On February 24, 1997, Mr. McClanahan requested that the Public Works Director schedule an extension of the water line to Plaintiff's property as soon as possible. Before Bartlett was able to run a water line to Plaintiff's property, Memphis Light, Gas & Water ("MLGW") ran a water line down Billy Maher Road to within forty feet of Plaintiff's property in 1997. This water line is apparently located across the street from Plaintiff's property.

Plaintiff would be required to pay MLGW a fee to connect to its water line. According to Mr. Goforth, the fee to connect to the MLGW line is less than the cost to connect to the line that Bartlett had planned to extend to Plaintiff's property.

Mr. Goforth states that he informed Plaintiff in late 1997 or early 1998 about the MLGW line. Plaintiff claims to have had monthly contact with Mr. Goforth between mid-1997 until October of 1998 in an attempt to obtain information regarding \*954 sewer and water service. However, Plaintiff's affidavit states that he was never informed prior to April 29, 1999 that

MLGW had run a water line near his property to which he could connect. This is contradicted by Plaintiff's deposition testimony, in which he states that he was told the price to connect to the MLGW water line would be \$500–\$750. He apparently discussed this with Mr. McClanahan some time prior to November 9, 1998, at which time Plaintiff informed Mr. McClanahan that he thought this was a good price and he wanted to be hooked up to the MLGW water line. In his deposition, Plaintiff stated that he believed Mr. McClanahan refused to hook him up to MLGW because of his race.

In his deposition, Plaintiff also testified that he spoke with Mr. Goforth in October of 1998. According to Plaintiff, Mr. Goforth told him that he would not be getting either water or sewer from Bartlett. Plaintiff states he viewed this as race discrimination.

On December 8, 1998, Mr. Goforth confirmed at a public meeting of the Board of Mayor and Aldermen that Plaintiff could install a septic tank on his property. At the meeting, Plaintiff stated that he did not want to install a septic tank because he preferred a Bartlett sewer connection.

In January of 1999, Bartlett adopted the Sewer Extension Plan to provide sewer service to the twenty-one areas in Bartlett that did not have them. According to Mr. McClanahan, these areas include residents of all races. The area where Plaintiff's property is located is scheduled for sewer installation in 2005.

Plaintiff met with Jay Rainey, Bartlett's Chief Administrative Officer, and Kenneth Fulmar, Bartlett's Mayor, in February of 1999, and advised them that he had received conflicting information in the past as to whether he could build on his property with a septic tank. In March of 1999, Mr. Rainey sent Plaintiff a letter confirming that he could install a septic tank on his property if he wanted to build on the property before Bartlett made sewer service available. Mr. Rainey also confirmed that Mr. McClanahan had originally given Plaintiff incorrect information regarding the two acre requirement because Mr. McClanahan did not have access to Plaintiff's plat and the exception allowing a septic tank at the initial meeting.

In response to a request from Plaintiff, Mr. McClanahan sent Plaintiff a letter in April of 1999 telling him to speak with Kevin Poe at MLGW about connecting to MLGW's water line. Mr. McClanahan informed Plaintiff that he could apply for a building permit upon installing a septic tank. When Plaintiff spoke with Mr. Poe in May of 1999, Plaintiff was told that he could not hook up to MLGW's water line until



Mr. Poe received permission from Bartlett. Plaintiff claims that he spoke with Mr. McClanahan in May of 1999, at which time Mr. McClanahan said he would take care of it. Plaintiff asserts he then spoke with Mr. Poe in May and June of 1999 and was told that Mr. Poe had not received approval from Mr. McClanahan.

Mr. McClanahan responded to another letter from Plaintiff in January of 2000. Plaintiff requested information about extending sewer service from the nearby Daybreak Subdivision to his property. Mr. McClanahan informed Plaintiff that the topography of the land prohibited extension of the gravity sewer system from the subdivision to Plaintiff's property.

Mr. Rainey also responded to questions from Plaintiff in January of 2000. Mr. Rainey informed Plaintiff that Code Enforcement reviews the lot, site plans, and a drawing of where the building is to be located on a lot in response to a request for a building permit. Mr. Rainey again informed Plaintiff that he could install a \*955 septic tank, but would be required to connect to MLGW's water supply to do so.

In addition to requesting information regarding sewer service and building permit requirements, Plaintiff claims that he called Mr. McClanahan almost weekly from June of 1999 until August of 2000 to check on the approval to MLGW. Plaintiff met with Mr. Poe at MLGW in August of 2000, after which Mr. Poe sent Mr. McClanahan a letter on August 25 requesting approval to provide water service to Plaintiff's property. Mr. McClanahan received the letter and authorized the water connection on September 6, 2000. Mr. McClanahan stated in his affidavit that he never received another request to authorize service for Plaintiff other than the one he signed and returned to MLGW.

Plaintiff has stated that, notwithstanding the fact that MLGW has already provided a water line in Plaintiff's area, Plaintiff still wants Bartlett to run a city water line to his property because he pays Bartlett city taxes. Bartlett maintains that it has never run a water line to an area that already has access to a water line.

Plaintiff's neighbors are Caucasian individuals and both have septic tanks. According to Mr. McClanahan and Mr. Fulmar, the Daybreak Subdivision, which is built around the Quail Ridge Golf Course, is the only property in the area which has a sewer system. The developer installed the sewer system in this subdivision. The subdivision is composed of families of

all races. According to Mr. Fulmar, it is not feasible to run a gravity sewer line from the golf course located near Plaintiff's property given the topography of the land. Bartlett claims that it will have to bring the sewer system to Plaintiff's property from another location approximately 2400 feet away. As part of the Sewer Extension Schedule, this should occur by the year 2005.

In support of his claims of discrimination based on race, Plaintiff claims that Miss Carolyn Swindell<sup>4</sup>, a Caucasian individual, received a building permit to build a house with a septic tank on a plot of land that is less than two acres. Ms. Swindell does not actually live in Bartlett; she lives in Shelby County and received her building permit from Shelby County. However, she received water service from Bartlett that enabled her to build a home with a septic tank. Plaintiff's Complaint indicates he became aware in January of 1997 that Ms. Swindell received her water connection from Bartlett. Plaintiff also claims that he has been denied access to the Bartlett sewer system based on race.

The Tennessee Department of Transportation previously investigated Plaintiff's claim of discrimination in violation of Title VI. The investigator determined that he could not substantiate Plaintiff's complaint. The Department of Housing and Urban Development ("HUD") previously investigated Plaintiff's claim of discrimination in violation of Title VIII of the Civil Rights Act of 1968 and the Fair Housing Act of 1988. HUD determined that there was no reasonable cause to believe a discriminatory housing practice had occurred.

Pursuant to the advice of counsel, Plaintiff has not attempted to obtain access to MLGW's water line or to obtain permission to construct a house on his property pending the outcome of this litigation.

Plaintiffs have sued Defendants alleging violations of 42 U.S.C. §§ 1982, 1983, and 3601, the common law of Tennessee, and the Tennessee Human Rights Act, Tenn. Code Ann. § 4-21-101, in connection with \*956 Bartlett's failure to issue a building permit or provide sewer or water service to Plaintiffs' property.

## II. Summary Judgment Standard

Under Federal Rule of Civil Procedure 56(c), summary judgment is proper "if ... there is no genuine issue as to any material fact and ... the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c); *see also Celotex Corp.*

v. *Catrett*, 477 U.S. 317, 322, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). The Supreme Court has explained that the standard for determining whether summary judgment is appropriate is “whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251–252, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1989).

So long as the movant has met its initial burden of “demonstrat[ing] the absence of a genuine issue of material fact,” *Celotex*, 477 U.S. at 323, 106 S.Ct. 2548, and the nonmoving party is unable to make such a showing, summary judgment is appropriate. *Emmons v. McLaughlin*, 874 F.2d 351, 353 (6th Cir.1989). In considering a motion for summary judgment, “the evidence as well as all inferences drawn therefrom must be read in a light most favorable to the party opposing the motion.” *Kochins v. Linden-Alimak, Inc.*, 799 F.2d 1128, 1133 (6th Cir.1986); see also *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986).

### III. Analysis

Defendants assert that Plaintiffs' claims are barred by the applicable statutes of limitations. Defendants also assert that Plaintiffs' claims fail as a matter of law because water service has been available to Plaintiffs' lot since 1997 and Plaintiffs have been able to build a house on their lot using a septic tank as their Caucasian neighbors have been required to do.

#### A. Statute of Limitations

Defendants challenge Plaintiffs' claims under the federal civil rights statutes, the Fair Housing Act, and the Tennessee Human Rights Act as barred by the applicable statutes of limitations.

##### 1. 42 U.S.C. §§ 1982, 1983

In all actions brought under § 1983 alleging a violation of civil rights or personal injuries, the state statute of limitations governing actions for personal injuries applies. *Wilson v. Garcia*, 471 U.S. 261, 105 S.Ct. 1938, 85 L.Ed.2d 254 (1985). The Tennessee statute of limitations for civil rights violations under § 1982 or § 1983 is one year. Tenn.Code Ann. § 28–3–104(a)(3); *Berndt v. Tennessee*, 796 F.2d 879, 883 (6th Cir.1986). A federal civil rights claim accrues when a plaintiff knows or has reason to know of the injury that is the basis of the plaintiff's action. *Sevier v. Turner*, 742 F.2d 262, 273

(6th Cir.1984). In addition to applying the state statute of limitations in a § 1983 action, a federal court is also obligated to apply the state rule for tolling the statute of limitations if it is consistent with the purposes of § 1983. *Board of Regents of the Univ. of the State of New York v. Tomiano*, 446 U.S. 478, 486, 100 S.Ct. 1790, 64 L.Ed.2d 440 (1980).

Plaintiff filed this action on September 6, 2001. Accordingly, any claims that accrued before September 6, 2000 are barred by the statute of limitations.

According to Mr. Middlebrook's deposition, Mr. Goforth informed him in October of 1998 that Bartlett would not provide city water or sewer services to Plaintiffs. Therefore, Plaintiffs' civil rights claims regarding Bartlett's failure to provide city \*957 sewer and water services are plainly barred by the statute limitations.<sup>5</sup> Plaintiffs' allegation regarding the incorrect advice Mr. McClanahan provided in 1995 about the acreage requirement for septic tanks is likewise barred by the statute of limitations.

Plaintiffs' claim that Bartlett failed to authorize MLGW to provide water service in violation of their civil rights requires additional analysis. Mr. McClanahan signed an August 25, 2000 letter provided by MLGW, authorizing MLGW's provision of water to Plaintiff's property, during the day on September 6, 2000. This was approximately 15 months after Plaintiff's asserted initial oral requests to Mr. McClanahan. This document removed Bartlett's last obstacle to Plaintiff's submission of a completed building permit. Since “the law will not recognize ... fractions of a day”, 86 C.J.S. Time § 11 (1997), the Court will not recognize the portion of the day on September 6 during which Mr. McClanahan had not signed the authorization form. Accordingly, the last day on which an allegedly discriminatory act occurred is September 5, 2000. As Plaintiffs' Complaint was not filed until September 6, 2001, Plaintiffs' civil rights claims regarding the failure to approve water service from MLGW are barred by the statute of limitations.<sup>6</sup> The Court DISMISSES Plaintiffs' civil rights claims under 42 U.S.C. §§ 1982 and 1983.

##### 2. 42 U.S.C. § 3601

Plaintiff's Fair Housing Act claims under 42 U.S.C. § 3601, *et seq.*, are governed by the statute of limitations provided in 42 U.S.C. § 3613. Section 3613(a)(1)(A) provides a plaintiff with two years after the alleged discriminatory housing practice occurs in which to file suit. This limitations period is tolled during the time an administrative proceeding based on the

discriminatory housing practice is pending. 42 U.S.C. § 3613(a)(1)(B).

Plaintiffs filed their Complaint on September 6, 2001. Plaintiffs filed an Amended Complaint on October 5, 2001, which for the first time included reference to the Fair Housing Act. These claims relate back to the original filing date of the Complaint because they arose from the same conduct, transaction or occurrence. Fed.R.Civ.P. 15(c). Therefore, any claims that accrued before September 6, 1999 are barred by the statute of limitations. Additionally, Plaintiff's filed a complaint with HUD regarding Bartlett's failure to provide sewer service on March 8, 2000. HUD dismissed Plaintiff's complaint on January 29, 2001. With respect to the sewer service claim, the statute of limitations was tolled during the HUD proceedings. Therefore, any claim regarding Bartlett's failure to provide sewer service that accrued before November 15, 1998 is barred by the statute of limitations.

As discussed above, any claim that Bartlett failed to provide city water or sewer \*958 service accrued at the latest in October of 1998. Accordingly, these claims are barred by the statute of limitations. Similarly, allegations regarding the incorrect advice Mr. McClanahan provided in 1995 about the acreage requirement for septic tanks are barred by the statute of limitations.

However, viewing all of the evidence in the light most favorable to Plaintiffs, the Court finds that Plaintiffs' Fair Housing Act claims regarding the authorization for water service from MLGW and the effective denial of a building permit<sup>7</sup> due to Defendants' failure to authorize water service are not barred by the statute of limitations. The Court accepts Plaintiff's uncontradicted statement in paragraphs 41-42 of his Affidavit that he made weekly phone calls to Mr. McClanahan from June of 1999 through August of 2000 in an attempt to ascertain when Mr. McClanahan would provide MLGW with the approval necessary to allow Plaintiff to connect to MLGW's water line. It was not until Mr. Poe at MLGW sent a letter to Mr. McClanahan requesting his signature that Mr. McClanahan gave the required approval on September 6, 2000. These actions occurred within the two year limitations period and are not barred by the statute of limitations.

### 3. Tennessee Human Rights Act

The statute of limitations for a claim brought under the Tennessee Human Rights Act, Tenn.Code Ann. § 4-21-

101, is one year. Tenn.Code Ann. § 29-20-305(b). Plaintiffs' claims under the Tennessee Human Rights Act are barred by the statute of limitations for the same reasons as Plaintiffs' civil rights claims, discussed above. Accordingly, the Court DISMISSES these claims.

### B. Fair Housing Act

As the Court has determined that some of Plaintiffs' claims under the Fair Housing Act, 42 U.S.C. § 3601, *et seq.*, are not barred by the statute of limitations, the Court must discuss the substance of those claims. Plaintiffs state that they are proceeding with claims under §§ 3604(a), (b), (c) and 3617. Section 3604 states that it shall be unlawful:

(a) To ... make unavailable or deny, a dwelling to any person because of race ....

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race ....

(c) To make, print, or publish ... any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race ....

(Emphasis added.)

Section 3617 provides:

It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, \*959 or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 3603, 3604, 3605, or 3606 of this title.

Defendants correctly note that when analyzing a claim of discrimination under the Fair Housing Act the Court must apply the three-part burden shifting analysis set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973). *Selden Apartments v. United*

*States Dep't of Hous. and Urban Dev.*, 785 F.2d 152, 159 (1986). In order to establish a *prima facie* case of housing discrimination in this case, Plaintiffs must show: (1) that they are members of a protected class; (2) they applied for and were qualified for water service from MLGW and a building permit; (3) water service from MLGW and the application for a building permit were denied; and (4) Defendant provided similarly situated individuals outside the protected class with water service enabling them to receive a building permit. *Id.*

The parties do not dispute that Plaintiffs satisfy the first element. As to the second element, Mr. Middlebrook states he contacted Mr. McClanahan weekly from June of 1999 until August of 2000 to check on Bartlett's approval of his water connection with MLGW. Plaintiffs needed access to a water line in order to install a sewer, which is a prerequisite to receiving the building permit that Defendants long knew Plaintiffs sought. The Court finds that this satisfies the requirement that Plaintiffs applied for and were qualified for water access and a building permit. Under the third element, Mr. McClanahan's unexplained failure to act on Plaintiffs' requests for 15 months constitutes a denial of access to water and, by extension, a building permit. The Court recognizes that Bartlett, as of September 6, 2000, authorized MLGW to provide water to Plaintiffs' property. Therefore, the impediment to submission of a proper building permit application has been removed.<sup>8</sup> Despite this fact, the 15 month period during which Defendants failed to act on Plaintiffs' request for water access satisfies the third element of the *prima facie* case.

In order to satisfy the fourth element, Plaintiffs have attempted to compare themselves to Carolyn Swindell, a Caucasian individual who received a water connection from Bartlett that enabled her to receive a building permit from Shelby County. Ms. Swindell is not a sufficiently comparable individual because she lives outside of Bartlett, Shelby County, not Bartlett, issued her building permit. However, as noted in Mr. Fulmar's Affidavit, a number of Caucasian individuals live near Plaintiffs' property, either on neighboring lots or in the nearby Willoughby Woods subdivision. These Caucasian individuals receive water service from Bartlett and have been able to install septic tanks and build homes on their property. These individuals provide an appropriate comparison to Plaintiffs. Plaintiff has, therefore, established a *prima facie* case of discrimination.

The second part of the *McDonnell Douglas* analysis requires Defendants to offer a legitimate non-discriminatory reason

for failing to approve Plaintiffs for water access from MLGW. Defendants have not offered a justification for the failure to approve Plaintiffs' request to connect to MLGW's water line for 15 months, until September 6, 2001, and the \*960 effective denial of a building permit until that date. Accordingly, the Court denies the motion for summary judgment as to these particular claims under the Fair Housing Act.

### C. Official Capacity Claims

For the reasons cited in part IV.D. of Defendants' motion, Plaintiffs' claims against Mr. Goforth, Mr. McClanahan, Mr. Fulmar, and Mr. Rainey in their official capacities are DISMISSED because Bartlett is already a party to this action.

### D. Qualified Immunity

Mr. Goforth, Mr. McClanahan, Mr. Rainey, and Mr. Fulmar argue that they are entitled to the defense of qualified immunity with respect to the claims asserted against them individually.

The Court notes preliminarily that none of Plaintiffs' papers contains any allegations against Mr. Fulmar or Mr. Rainey individually. Therefore, the Court DISMISSES the claims against Mr. Fulmar and Mr. Rainey in their individual capacities. Furthermore, Plaintiffs make no allegations against Mr. Goforth that fall within the applicable limitations period. Therefore, the Court DISMISSES the claims against Mr. Goforth in his individual capacity.

Given that the Court has already dismissed Plaintiffs' claims under §§ 1982 and 1983, the Court will only discuss the defense of qualified immunity with respect to the Fair Housing Act. The Court has not located a Sixth Circuit case discussing whether the defense of qualified immunity is available to an official who has been sued individually for a violation of the Fair Housing Act. However, at least three other courts have determined that the qualified immunity defense is available in such cases. *Gonzalez v. Lee County Hous. Auth.*, 161 F.3d 1290, 1299–1300 (11th Cir.1998) (discussing qualified immunity in action under § 3617); *Samaritan Inns, Inc. v. District of Columbia*, 114 F.3d 1227, 1238–39 (D.C.Cir.1997) (allowing officials to plead defense of qualified immunity to a claim under § 3617); *Baggett v. Baird*, 1997 WL 151544, 1997 U.S. Dist. Lexis 5825 (N.D.Ga. Feb. 18, 1997) (discussing qualified immunity in action under § 3617). The Court adopts this view.

"Government officials performing discretionary functions are afforded qualified immunity, shielding them from civil damages, as long as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Poe v. Haydon*, 853 F.2d 418, 423 (6th Cir.1988). *See also Vaughn v. United States Small Bus. Admin.*, 65 F.3d 1322, 1326 (6th Cir.1995) (citing *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982)). Therefore, in order to defeat Defendants' claims of qualified immunity, Plaintiffs must show: (1) that a clearly established right has been violated; and (2) the official would have known that their conduct violates that right.

The Court is required to accept Plaintiffs' version of events when reviewing the motion for summary judgment. Plaintiffs assert that Mr. Middlebrook repeatedly contacted Mr. McClanahan over a period of 15 months in an attempt to obtain permission to receive water service from MLGW. Plaintiffs needed water service so they could include plans for a septic tank on their property in their application for a building permit. Plaintiffs asserts that Mr. McClanahan failed to take any action prior to September 6, 2000 because of Plaintiffs' race.

Given the clear language of § 3604(b) and § 3617 of the Fair Housing Act, a reasonable official would know that the denial of water service and, by extension, a building permit

based on the race of the applicant violates a clearly established \*961 right. No explanation has been offered for the failure to provide approval for Plaintiffs' water service with MLGW in response to Mr. Middlebrook's repeated requests. Accordingly, if Plaintiffs can prove that Mr. McClanahan failed to act on the requests in the manner described above, based on Plaintiffs' race, they will have shown that he violated a clearly established right. The Court, therefore, must DENY summary judgment as to Mr. McClanahan's claim of qualified immunity.

#### IV. Conclusion

For the foregoing reasons, the Court GRANTS in part and DENIES in part Defendants' motion. The Court dismisses Plaintiffs' claims against Bartlett, with the exception of claims under the Fair Housing Act arising from Bartlett's failure to approve Plaintiffs for access to MLGW's water line and the effective denial of a building permit due to lack of access to water. The Court dismisses the claims against the individual Defendants, with the exception of the same claim under the Fair Housing Act against Mr. McClanahan, in his individual capacity.

#### All Citations

341 F.Supp.2d 950

#### Footnotes

- 1 Mr. McClanahan did not have the opportunity to look at the plat for Plaintiff's property during this meeting.
- 2 Plaintiff and Mr. Goforth have disagreed as to which of them initially located the plat for Plaintiff's property and the exception allowing Plaintiff to install a septic tank with less than two acres of land.
- 3 Bartlett annexed Plaintiff's land from Shelby County in 1985 in anticipation of developing a subdivision in the annexed area, which later became known as the Daybreak Subdivision. The exception allowing a septic tank on Plaintiff's land apparently survived the annexation.  
At the time Bartlett annexed the land, it adopted a Plan of Service, Resolution 13-79, which stated that existing homes would receive water and sewer service within five years of the date of annexation. There is some dispute as to whether the dilapidated shack that existed on Plaintiff's property at the time of annexation was inhabited. In any event, according to Mr. Fulmar, Bartlett was unable to provide sewer service to the five existing homes within five years in accordance with the Plan of Services. Mr. Fulmar has stated that these five homes and the six homes in the Willoughby Woods rural subdivision, all of which are owned by caucasians, still do not have sewer service and are scheduled to receive sewer service in 2005, at the same time as Plaintiffs, pursuant to the Sewer Extension Schedule.
- 4 Defendants challenge the allegations contained in Plaintiff's Affidavit that pertain to Ms. Swindell on the grounds that Plaintiff has not attested that he has personal knowledge of any of the facts contained in his Affidavit.
- 5 Neither of these claims supports the finding of a continuing violation under the three-pronged test recently reiterated in *Tolbert v. Ohio Dep't of Transp.*, 172 F.3d 934, 941-941 (6th Cir.1999) ("Passive inaction ... does not support a continuing violation theory."). *See also LRL Properties v. Portage Metro Hous. Auth.*, 55 F.3d 1097, 1106 n. 3 (6th Cir.1995) ("Courts have been extremely reluctant to apply [the continuing violations] doctrine outside of the context of Title VII.").



- 6 Even assuming Plaintiffs' theory of a continuing violation were correct, the civil rights claims are barred by the statute of limitations because the alleged continuing violation ended on September 5, 2000. At least one of the allegedly discriminatory acts must occur within the limitations period. *Caldwell v. Rowland*, 932 F.Supp. 1018, 1021 (E.D.Tenn.1996).
- 7 The Court finds that Plaintiffs' failure to submit a completed application for a building permit prior to September 6, 2000 is not germane to the statute of limitations question. First, Plaintiff claims Defendants never told him all of the prerequisites to receiving a building permit, making it impossible for him to have completed his application. Second, Plaintiffs were told a permit would not be granted without the inclusion of plans for a septic tank. A septic tank could not be installed until Plaintiffs obtained access to MLGW's water line. This access could only be approved by Defendants. It is clear that Defendants did not approve Plaintiffs' request for water service from MLGW until September 6, 2000, thus making it impossible for Plaintiffs to have submitted a proper application prior to that date. Therefore, the failure to approve water service effectively denied Plaintiffs a building permit.
- 8 In this regard, the Court notes that the injunctive relief requested in Plaintiffs' Amended Complaint is not available. Plaintiffs have access to water. Additionally, they have been capable of submitting a completed building permit application since September 6, 2000.

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**COMPLIANCE WITH WPCA NOVEMBER 2017  
DENIAL REASONS; CURRENT STATUS**

DENIAL REASON	COMPLIANCE
<p>On October 25, 2017, the Water Pollution Control Authority unanimously voted not to approve the remanded application of Summit Saugatuck, LLC. The application was remanded by Judge Shluger to permit the WPCA to consider supplemental information not available or presented at the hearing dated July 27, 2016. The supplemental information was presented and considered by the WPCA on September 27, 2017 and October 25, 2017. The reasons for the WPCA's decision to not approve the application, as supplemented, are as follows:</p>	
<p>1. Steven Edwards, Director of Public Works testified that the estimated date of completion of the replacement of the force main under the Saugatuck River and the upgrades to Pump Station #2 is likely to be summer of 2018.</p>	<p>Force main completed March 2018; Pump Station #2 completed December 2019</p>
<p>2. Mr. Edwards noted that currently there is not sufficient capacity in the system to accommodate the proposed sewer line extension.</p>	<p>Public Works / WPCA have stipulated to adequate capacity when force main / pump station complete</p>
<p>3. Mr. Edwards recommended against approving any project, whether conditional or not, that required more capacity than is available.</p>	<p>Capacity now available; approval sought not conditional</p>
<p>4. The WPCA has never granted a conditional approval as a policy matter. Events could occur after a conditional approval that, if known at the time of approval, would have caused an application to be denied or modified. There is no reason to grant approvals to extend a sewer prior to the time when the extension can physically be implemented.</p>	<p>Conditional approval not requested</p>

DENIAL REASON	COMPLIANCE
<p>5. Allocation of capacity prior to the completion of necessary work by the Town is unfair to other developers and potential users who have been advised to wait until the work is complete to file applications.</p>	<p>Work is complete</p>
<p>6. It is noted that although it is not the function of the WPCA to consider land use issues in making its decisions (other than to the extent capacity may be affected), the application submitted by the applicant pursuant to the remand order was substantially different from the application that is the subject of the appeal.</p>	<p>Overruled by trial court and not appealed</p>
<p>7. The applicant failed to provide a compelling reason to grant a conditional approval. The applicant's only stated reason was that it would benefit its ability to plan its project. That reason does not outweigh the public policy reasons for not granting conditional approvals (as set forth in item #4, above).</p>	<p>Conditional approval not requested</p>





KeyCite Yellow Flag - Negative Treatment  
Distinguished by Summit Saugatuck, LLC v. Water Pollution Control Authority, Conn.Super., May 7, 2018

125 Conn.App. 652  
Appellate Court of Connecticut.

DAUTI CONSTRUCTION, LLC  
v.  
WATER AND SEWER AUTHORITY  
OF THE TOWN OF NEWTOWN.

No. 31496.

Argued Sept. 1, 2010.

Decided Dec. 28, 2010.

**Synopsis**

**Background:** Residential developer appealed from decision of town water and sewer authority denying developer's application to connect a proposed 26-unit residential development to town's existing public sewer system. The Superior Court, Judicial District of New Britain, Tanzer, J., 2009 WL 1754624, sustained the appeal. Authority appealed.

The Appellate Court, Alvord, J., held that regulation promulgated by town water and sewer authority acting as a water pollution control authority, allocating sewer capacity pursuant to a priority matrix that was based on the zoning classification of property on date of adoption of priority matrix, was invalid as applied to the residential developer's sewer connection application.

Superior Court judgment affirmed; remanded with directions.

See also 125 Conn.App. 665, 10 A.3d 92, 2010 WL 5158643.

**Attorneys and Law Firms**

\*\*86 David L. Grogins, Danbury, with whom was Barbara M. Schellenberg, Bridgeport, for the appellant (defendant).

Timothy S. Hollister, with whom was Ryan K. McKain, Hartford, for the appellee (plaintiff).

DiPENTIMA, C.J., and ALVORD and PELLEGRINO, Js.

**Opinion**

ALVORD, J.

\*653 The defendant, the water and sewer authority of the town of Newtown, appeals from the judgment of the trial court sustaining the appeal of the plaintiff, Dauti Construction, LLC, from the defendant's decision denying the plaintiff's application for a permit to connect to the town's public sewer system. On appeal, the defendant claims that the court improperly determined that its regulation that allocated sewer capacity pursuant to a priority matrix was facially invalid because it was not rationally related to public health, safety and welfare concerns. Because we conclude that the priority matrix as applied to the plaintiff's application was invalid, we affirm the judgment of the trial court.

The record reveals the following facts and procedural history. The plaintiff, a limited liability company, owns a parcel of land located at 95 Church Hill Road in Newtown and is the contract purchaser of an adjacent parcel of land located at 99 Church Hill Road. The combined area of the two parcels (property) is approximately four and one-half acres. In February, 2006, the plaintiff \*654 submitted an application to the planning and zoning commission of the town of Newtown (commission) for a zone change to construct twenty-three residential units on the portion of the property located at 95 Church Hill Road.

The defendant is the agency designated by the town to carry out the duties of a municipal water pollution control authority as set forth in chapter 103 of the General Statutes. Pursuant to General Statutes § 7-246,<sup>1</sup> the town maintains a public sewer system controlled by the defendant that services a portion of the town. The plaintiff's \*\*87 property is located entirely within the town's central sewer district. In July, 2006, after having received a preliminary request for sewer service for the plaintiff's proposed development, the defendant sent a letter to the plaintiff and all town boards and departments recommending the denial of the plaintiff's application for a zone change. In that letter, the defendant indicated that it had not allocated any sewer capacity for potential development that did not meet current zoning classifications and that the proposed zone change would allow sewer discharge at an amount greater than the amount permitted in its priority matrix. In August, 2006, the commission denied the plaintiff's application.

\*655 Following the commission's denial, the plaintiff then signed a contract to purchase the adjacent land at 99 Church Hill Road.<sup>2</sup> With the combined area of its property now totaling approximately four and one-half acres, the plaintiff submitted a three part affordable housing application to the commission in October, 2006, for a zoning amendment, map change and site plan approval in connection with a proposed development of twenty-six residential units. The commission again requested review and comment from the defendant with respect to the plaintiff's proposal. By memorandum dated January 16, 2007, the defendant responded: "It is ... clear that the proposed development does not meet current zoning as defined in the [water pollution control] [p]lan. The [p]lan makes clear that the term 'current' for zoning refers 'to the adoption date of this [priority] matrix, April 28, 1994.' [The plaintiff] has filed applications with [the commission] seeking amendments to the zoning regulations and a zone change for the subject property that would increase the number of units allowed per acre for the subject property. As such, there can be no disagreement that the [plaintiff's] proposal does not meet zoning requirements as they existed on April 28, 1994." The letter concluded with the statement that "there is insufficient sewer capacity for the development of the subject property as proposed by the [plaintiff]." On April 5, 2007, the commission denied the plaintiff's application for the primary reason that the plaintiff had failed to provide an adequate sewage disposal plan to meet the need of the future residents of the development. The plaintiff appealed from the commission's decision.<sup>3</sup>

\*656 On August 7, 2007, pursuant to General Statutes § 7-246a (a)(2),<sup>4</sup> the plaintiff \*\*88 submitted a formal application to the defendant, requesting a permit to connect to the public sewer system for a twenty-six unit residential development on the property. A public hearing on the plaintiff's application was held on August 16 and September 20, 2007. At the conclusion of the public hearing, the defendant denied the plaintiff's application for the following reason: "[I]t fails to meet [the defendant's] regulations in that it does not qualify for any category of the priority matrix for allocation of remaining sewer capacity." The plaintiff filed an appeal from the defendant's decision in the trial court pursuant to § 7-246a (b).<sup>5</sup>

The plaintiff's appeal from the commission's decision denying its affordable housing application was scheduled for oral argument on the same date and before the same judge, *Tanzer, J.*, as the present action. On June 1, 2009, the court

issued its memorandum of decision in this case and sustained the plaintiff's appeal. It concluded that the defendant's regulation, allocating sewer capacity on the basis of the zoning classification of the plaintiff's property in 1994, was invalid. The court found \*657 that the evidence in the record indicated that the denial was based on a mathematical or mechanical application of the priority matrix and that there had been no evidence demonstrating that the priority matrix was rationally related to public health, safety or welfare. The defendant filed the present appeal after this court granted its petition for certification.

The defendant claims that the court improperly determined that the defendant's sewer use regulation, which allocated sewer capacity on the basis of a priority matrix, was facially invalid because it was not rationally related to public health, safety and welfare concerns. The following additional facts and procedural history are relevant to the resolution of this claim. The defendant adopted a water pollution control plan (plan) on March 9, 1995, which was amended on June 24, 1999. The stated purpose of the plan was "to designate and delineate the boundaries of areas to be served by [t]own sewers and areas where sewers are to be avoided and to describe the policies and programs to be carried out to control surface and groundwater pollution problems." The plan further provides that the town did not intend to extend sewers to areas outside of the sewer service area, and it incorporates a priority matrix<sup>6</sup> for the central sewer service area to "ensure that the limited treatment plant capacity of 332,000 [gallons per day \*658 would] be allocated in a logical manner." The plan clarifies that the terms "current" and "existing" in the priority matrix refer to the adoption date of the matrix, April 28, 1994. Pursuant to its authority under General Statutes § 7-247(a), the defendant \*\*89 also adopted sewer use regulations, which initially were issued on August 13, 1997, and were revised on September 27, 2001. Those regulations reference the plan and the 1994 priority matrix.

Accordingly, as of April 28, 1994, all developed and undeveloped properties in the town were allocated a specific gallonage per day of the wastewater treatment plant's capacity based on the zoning classifications of the properties on April 28, 1994. The plaintiff's property, which was located in a one acre zone and was more than four acres but less than five acres in size, was assigned 850 gallons per day and 212.5 gallons of capacity per equivalent dwelling unit. The plaintiff's August 7, 2007 application sought a sewer connection permit for twenty-six dwelling units to discharge domestic sewage at a

rate of 5525 gallons per day based on the defendant's stated discharge rate of 212.5 gallons per day per dwelling unit. The defendant concluded that the proposed amount of discharge exceeded the amount allowed by the 1994 priority matrix and denied the application. The court concluded that the defendant's stated reason for its denial was invalid.

Although the defendant claims that the court improperly determined that its regulation incorporating the 1994 priority matrix was *facially invalid*, we conclude that the issue to be determined by this court is whether the plaintiff's appeal was properly sustained because the 1994 priority matrix was invalid *as applied* to the plaintiff's proposal. We reach this conclusion for two reasons. First, in the plaintiff's prayer for relief, it specifically requests, inter alia, that the court render judgment declaring "invalid the portions of the ... [r]egulations \*659 that regulate individual connections to the sewer system based on zoning categories or land use designations adopted by the [commission], *as applied to the application* of [the plaintiff] for approval to hook up to the Newtown sewer system...." (Emphasis added.) Second, at the hearing before the trial court, counsel for the plaintiff stated: "We have no problem with the regulations, we're not trying to overturn the regulations, we're not—we're not asking the court to declare ... null and void any of the [defendant's] plans or ordinances or enabling regulations. What we're asking the court to look at is the way the [defendant] interprets its own regulations, *how they apply them to the [plaintiff's] case*, and to determine that they did in fact make a ... zoning based decision on that application." (Emphasis added.)

Because the plaintiff's complaint and representations to the trial court clearly indicate that it was seeking a determination that the 1994 priority matrix as applied to its application was invalid, we review the claim on appeal as the claim was presented to the trial court. "Pleadings have an essential purpose in the judicial process.... The purpose of pleading is to apprise the court and opposing counsel of the issues to be tried.... For that reason, [i]t is imperative that the court and opposing counsel be able to rely on the statement of issues as set forth in the pleadings." (Citations omitted; internal quotation marks omitted.) *Somers v. Chan*, 110 Conn.App. 511, 528, 955 A.2d 667 (2008). It is fundamental in our law that "the right of a plaintiff to recover is limited by the allegations of the complaint ... and *any judgment should conform to the pleadings, the issues and the prayers for relief*." (Emphasis added; internal quotation marks omitted.) *Journal Publishing Co. v. Hartford Courant Co.*, 261 Conn. 673, 686, 804 A.2d 823 (2002). "The [trial] court is not

permitted to decide issues outside of those raised in the pleadings." \*660 Internal quotation marks omitted.) \*\*90 *Gaffey v. Gaffey*, 91 Conn.App. 801, 804 n. 1, 882 A.2d 715, cert. denied, 276 Conn. 932, 890 A.2d 572 (2005).

Having concluded that we will review the defendant's claim in the context of whether the court improperly determined that the 1994 priority matrix was invalid as applied to the plaintiff's proposed development, we next consider the merits of that claim. The plaintiff had argued, and the trial court agreed, that a sewer agency has only those powers granted to it by the legislature, and those powers do not include the authority to regulate the use of land on the basis of zoning considerations. The court stated: "[A]lthough the allocation of sewer capacity was consistent with the zoning of the plaintiff's property at the time the priority matrix was adopted, the water pollution control plan and the priority matrix therein do not allow for changes in zoning to affect the allocation of sewer capacity, essentially restricting the density of development to that for which it was zoned in 1994...." Accordingly, the court concluded that the defendant's denial of the plaintiff's application for the reason that it failed to meet the limits set forth in the 1994 priority matrix was improper.

We begin our analysis by setting forth the standard of review. "In considering an application for sewer service, a water pollution control authority performs an administrative function related to the exercise of its powers.... When a water pollution control authority performs its administrative functions, a reviewing court's standard of review of the [authority's] action is limited to whether it was illegal, arbitrary or in abuse of [its] discretion.... Moreover, there is a strong presumption of regularity in the proceedings of a public agency, and we give such agencies broad discretion in the performance of their administrative duties, provided that no statute or regulation is violated." (Citations omitted; internal quotation marks omitted.) \*661 *Forest Walk, LLC v. Water Pollution Control Authority*, 291 Conn. 271, 285–86, 968 A.2d 345 (2009).

Our Supreme Court has recognized that water pollution control authorities are quasi-municipal corporations created pursuant to statute that may exercise "the power to acquire, construct, maintain, supervise, manage and operate a sewer system and perform any act pertinent to the collection, transportation and disposal of sewage." (Internal quotation marks omitted.) *AvalonBay Communities, Inc. v. Sewer Commission*, 270 Conn. 409, 425, 853 A.2d 497 (2004). In defining the powers and duties of such authorities, §

7-247(a) provides, inter alia, that they “may establish and revise rules and regulations for the supervision, management, control, operation and use of a sewerage system, including rules and regulations prohibiting or regulating the discharge into a sewerage system of any sewage or any stormwater runoff which in the opinion of the water pollution control authority will adversely affect any part or any process of the sewerage system....” General Statutes § 7-247(a). Nevertheless, “[a]n administrative agency, in making rules and regulations, must act within its statutory authority, within constitutional limitations, and in a lawful and reasonable manner.” (Internal quotation marks omitted.) *Queach Corp. v. Inland Wetlands Commission*, 258 Conn. 178, 193 n. 22, 779 A.2d 134 (2001).

The 1994 priority matrix at issue in the present case clearly is zoning based in its language and as applied to the plaintiff's application. Because the property is located in a sewer service area and the application proposes new development, the defendant determined that the proposal failed to fall within any of the five categories affording priority for a requested \*\*91 hookup to the sewer system. The second category of priority in the matrix is the only category that addresses “potential” as opposed to “existing” development. In order to fall \*662 within the second category, the plaintiff's proposal would be entitled to priority only if its “potential development [meets] current zoning within the sewer service area.” As previously noted, current zoning refers to the zoning classification of the plaintiff's property in April, 1994. At that point in time, the plaintiff would have been permitted the equivalent of one residential unit per acre, for a total of four units. Even if, sometime after 1994, the town's zoning authority had decided to change the plaintiff's property to a zoning classification that permitted greater density, the plaintiff still would not have been able to meet the parameters of the defendant's priority matrix. As conceded by the defendant, the priority matrix was tied to zoning classifications as they existed in 1994, and any subsequent zoning changes by the commission after the adoption of that matrix would be of no consequence and totally ignored by the defendant when considering sewer connection permit applications for new developments.

The 1994 priority matrix, as applied to the plaintiff's property, foreclosed any possibility of development that exceeded the equivalent of four dwelling units. As did the zoning regulations in 1994, the priority matrix regulated the density of population and the use of the plaintiff's property. “[T]he power to determine what are the needs

of a town with reference to the use of the real property located in it and to legislate in such a manner that those needs will be satisfied is, by statute, vested exclusively in the zoning commission.” (Internal quotation marks omitted.) *Harris v. Zoning Commission*, 259 Conn. 402, 425, 788 A.2d 1239 (2002). General Statutes § 8-2(a) authorizes a zoning commission to “regulate, within the limits of such municipality, the height, number of stories and size of buildings and other structures; the percentage of the area of the lot that may be occupied; the size of yards, courts and other open spaces; the density of population and the location and \*663 use of buildings, structures and land for trade, industry, residence or other purposes ....” (Emphasis added.) The legislature has not authorized water pollution control authorities to exercise those zoning powers. The defendant, in its application of the 1994 priority matrix to the plaintiff's proposal, usurped the authority of the commission and restricted the density and use of the plaintiff's property.<sup>7</sup>

In determining the plaintiff's remedy for the defendant's improper denial of its application, the court found that “adequate capacity for twenty-six units must exist. More importantly, the defendant has not referred to any evidence in the record in support of a finding that the town's sewer system lacks sufficient capacity for the plaintiff's proposed development or that other property owners would be deprived of sewer connections to which they are entitled.” Because the only reason given by the defendant for its denial of the sewer connection permit was the failure to comply with the regulation allocating sewer capacity based on the 1994 zoning of the plaintiff's property, the court sustained the plaintiff's appeal.<sup>8</sup>

\*\*92 For the reasons previously discussed, we agree that the defendant's stated reason for its denial is invalid. \*664 Further, the defendant concedes in its brief on appeal before this court that “there currently is enough capacity for [the] plaintiff's proposed development and there was no evidence of current, identified property owners who absolutely will be deprived of sewer connections if the application is granted.” Additionally, it is not disputed that the plaintiff is seeking a permit to connect to an existing sewer system; it is not requesting an extension of that system. Our case law has made a distinction between the mere connection to an existing system as opposed to construction of an extension to a sewer system. See *AvalonBay Communities, Inc. v. Sewer Commission*, supra, 270 Conn. at 421-29, 853 A.2d 497. Moreover, the plaintiff has asserted—and there is nothing in the record that contradicts or challenges that assertion—that

the proposal complied with all of the defendant's engineering and administrative requirements as set forth in the sewer use regulations. See *Schuchmann v. Milford*, 44 Conn.App. 351, 358, 689 A.2d 513, cert. denied, 240 Conn. 924, 692 A.2d 818 (1997). Thus, this is one of those relatively rare situations in which it is appropriate to order the defendant to issue the permit. When it appears that a public agency reasonably could reach only one conclusion, the court may direct that agency to do that which the conclusion requires. *Jersey v. Zoning Board of Appeals*, 101 Conn.App. 350, 361, 921 A.2d 683 (2007).

Although the trial court indicated, in its concurrent decision in the planning and zoning appeal, that it remanded this matter to the defendant to approve the plaintiff's application; see footnote 8 of this opinion; its memorandum of decision in this case simply indicated that the appeal was sustained. There

was but one conclusion, however, that the defendant could reach, and we conclude that the trial court did order the approval of the sewer permit.

\*665 The judgment is affirmed and the case is remanded to the trial court with direction to render judgment directing the defendant to approve the plaintiff's application under terms and conditions as the defendant might reasonably prescribe in accordance with its regulations.

In this opinion the other judges concurred.

#### All Citations

125 Conn.App. 652, 10 A.3d 84

#### Footnotes

1 General Statutes § 7-246 provides in relevant part: "(a) Any municipality may, by ordinance, designate its legislative body ... or any existing board or commission, or create a new board or commission to be designated, as the water pollution control authority for such municipality...."

"(b) Each municipal water pollution control authority designated in accordance with this section may prepare and periodically update a water pollution control plan for the municipality. Such plan shall designate and delineate the boundary of: (1) Areas served by any municipal sewerage system; (2) areas where municipal sewerage facilities are planned and the schedule of design and construction anticipated or proposed; (3) areas where sewers are to be avoided; (4) areas served by any community sewerage system not owned by a municipality; (5) areas to be served by any proposed community sewerage system not owned by a municipality; and (6) areas to be designated as decentralized wastewater management districts...."

2 The 99 Church Hill Road property included an existing multifamily dwelling with an existing sewer connection.

3 The plaintiff filed an administrative appeal from the commission's decision in the trial court. The court sustained the appeal and remanded the matter to the commission with direction to effect certain modifications to the proposed regulations and plans. This court granted the commission's petition for certification to appeal, and our decision in that appeal was released on the same date as this opinion. See *Dauti Construction, LLC v. Planning & Zoning Commission*, 125 Conn.App. 665, 10 A.3d 92 (2010).

4 General Statutes § 7-246a (a) provides: "Whenever an application or request is made to a water pollution control authority or sewer district for (1) a determination of the adequacy of sewer capacity related to a proposed use of land, (2) approval to hook up to a sewer system at the expense of the applicant, or (3) approval of any other proposal for wastewater treatment or disposal at the expense of the applicant, the water pollution control authority or sewer district shall make a decision on such application or request within sixty-five days from the date of receipt, as defined in subsection (c) of section 8-7d, of such application or request. The applicant may consent to one or more extensions of such period, provided the total of such extensions shall not exceed sixty-five days."

5 General Statutes § 7-246a (b) provides: "Notwithstanding any other provision of the general statutes, an appeal may be taken from an action of a water pollution control agency or sewer district pursuant to subsection (a) of this section in accordance with section 8-8."

6 The following is the priority matrix as it appears in the town's water pollution control plan: "1st priority: 260,000 [gallons per day]—Existing development within the sewer service area.



"2nd priority: 30,000 [gallons per day]—Potential development meeting current zoning within the sewer service area.

"3rd priority: 4,000 [gallons per day]—Existing development along sewer transmission routes[.]

"4th priority: 21,000 [gallons per day]—Existing development outside the sewer service area identified as areas of concern in the Facilities Plan and reasonably close to the sewer service area.

"5th priority: 17,000 [gallons per day]—Other existing development outside the sewer service area but in close proximity."

7 The court further noted in its memorandum of decision that "[t]he defendant's allocation of sewer capacity in accordance with its priority matrix is not supported by any engineering or health data, nor has it offered any other evidence demonstrating that it is rationally related to the public health, safety and welfare."

8 We note that in the court's memorandum of decision in *Dauti Construction, LLC v. Planning & Zoning Commission*, Superior Court, judicial district of New Britain, Docket No. HHBCV-07-4014556S, 2009 WL 1814500 (June 1, 2009), which was issued the same date as the court's decision in the present case, the court stated: "[T]he lack of adequate sewerage no longer serves as an adequate basis for the [commission's] denial in light of this court's concurrent decision in the related appeal, *Dauti Construction, LLC v. Water & Sewer Authority*, Superior Court, judicial district of New Britain, Docket No. CV-07-4015968S [HHBCV-07-4015968S, 2009 WL 1754624], *sustaining that appeal and remanding to the [water and sewer authority] for its approval of the plaintiff's sewer application.*" (Emphasis added.)