



**TOWN OF WESTPORT  
CONSERVATION COMMISSION**

TOWN HALL – 110 MYRTLE AVENUE  
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**MINUTES  
SHOW CAUSE HEARING  
NOVEMBER 20, 2020**

**Members Present:** Anna Rycenga, Chair; Paul Davis, Vice-Chair; Tom Carey, Secretary; Don Bancroft; Paul Lobdell

**Staff Present:** Alicia Mozian, Conservation Director; Colin Kelly, Conservation Analyst; Gillian Carroll, Conservation Compliance Officer; Susan Voris, Admin. Asst. II

**Guests:** Brian Steinhauer, Coastal Construction, for the property owner

In accordance with section 4.2.1, 7.1 and 7.3 of Westport's Regulations for the Protection and Preservation of Wetlands and Watercourses ("The Regulations") of the Town of Westport, a **Show Cause Hearing of the Westport Conservation Commission will be held on Friday, November 20, 2020 at 10:00 AM via Zoom Conference Meeting to consider a Cease & Correct Order** issued to the property owner of **58 Turkey Hill Road South** (Lot: 036 Map: G07) for filling, cutting, grading and clearing within a Conservation Restriction Area and without a permit.

Ms. Rycenga read the following opening remarks (insert)

This is the November 20, 2020 meeting of the Westport Conservation Commission and would like to call this meeting to order at 10 am.

Good morning. I am Anna Rycenga, Conservation Chairman and I would like to welcome everyone participating in this electronic meeting this morning. I hope everyone is feeling healthy.

This meeting is being held pursuant to the Governor's Executive Order No. 7B, and there is no physical location for this meeting as it is being provided electronically.

Due to the nature of this electronic meeting, we are taking public comments for the public hearings only by email. Comments to be read during the public comment period may be emailed to [Conservationcomments@westportct.gov](mailto:Conservationcomments@westportct.gov). Colin Kelly, Conservation Analyst will be assigned to read the public comments that arrive at that email address and that will be received by myself also.

We will use our best efforts to read public comments if they were received prior to this meeting or during the public comment period if they state your full name and address. The comments will be limited to 3 minutes and must be kept to the subject matter at hand with reference to our purview as a Conservation Commission based on the Inland Wetland and Watercourse Regulations, and/or the Waterway Protection Line Ordinance or the Aquifer Protection Area Regulations and the relevant Connecticut General State Statutes.

Meeting materials for this meeting are available at [www.westportct.gov/conservationdepartment](http://www.westportct.gov/conservationdepartment) along with the meeting agenda notice posted on the Meeting List and Calendar Page of the Town of Westport's website.

Before we begin, I will state the names of the other members of the Conservation Commission and the Department staff that are taking part in these hearings. Once I state your name, if members and staff can state here. They are as follows:

**Commission:**

Anna Rycenga, Chairman  
Paul Davis, Vice Chairman  
Thomas Carey, Secretary  
Donald Bancroft  
Paul Lobdell

**Staff:**

Collin Kelly, Conservation Analyst  
Alicia Mozian, Conservation Director  
Susan Voris, Administrative Assistant II  
Gillian Carroll, Conservation Compliance Officer

All of our public hearings are recorded but will not be televised or broadcasted live this morning.

For the record, the following commission members visited and observed the site in preparation for this hearing this morning.

By Roll Call, when I call upon your name please state Yes or No for the record:

Anna Rycenga -	Yes.
Paul Davis, Vice Chairman -	Yes
Thomas Carey, Secretary -	No
Donald Bancroft -	No
Paul Lobdell -	No

I want to remind everyone that you need to state your name and title every time you speak throughout this meeting. This includes myself, Meeting Members, Applicant(s), their Representatives and the Public. You will be recognized by myself to speak by the feature on ZOOM to raise hand and I will call upon you. However, those listening via phone must email public comments as this meeting is NOT being broadcasted live.

Also, if everyone can please make reference to report titles, dates, sheet numbers of the plans, etc. as that will help us all follow along.

**PART 2: OPENING REMARKS**

This is a Show Cause hearing in accordance with Sections 4.2.1, 7.1 and 7.3 of the Town of Westport's Regulations for the Protection and Preservation of Wetlands and Watercourses also referred to as "The Regulations" of the Town of Westport, a Show Cause Hearing of the Westport Conservation Commission that will be held on Friday, November 20, 2020 at 10:00 am via ZOOM Conference Meeting to consider a Cease & Correct Order issued to the property owner of 58 Turkey Hill Road South (Lot: 036 Map: G07) for filling, cutting, grading and clearing within a Conservation Restriction Area and without a permit.

The Legal Notice was posted and filed with the Westport Town Clerk on Monday, November 16, 2020.

Just some housekeeping items. Under our Regulations Section 15.0, Subsection 15.4 this Commission is holding this hearing to provide the person an opportunity to speak and to show cause why the order would not remain in effect. After we hear testimony, this Commission will consider facts presented and determine whether the order remains in effect until the Commission affirms, revises or withdraws the order. The issuance of an order pursuant to this Section shall not delay or bar a legal action brought by the Commission, the Town or any person to restrain a continuing violation of the Act or these Regulations.

*15.4 If the Commission or Conservation Department finds that any person is conducting or maintaining any activity, facility or condition which is in violation of the Inland Wetlands and Watercourses Act, as amended, or of the Regulations set forth here, the Commission may issue a written order sent by certified mail to the property owner or to each person conducting such activity or maintaining such facility or condition, ordering him to immediately cease such activity or to correct such facility or condition. Within ten (10) days of the issuance of such order, the Commission shall hold a hearing to provide the person an opportunity to speak and to show cause why the order would not remain in effect.*

*The Commission shall consider the facts presented at the hearing, and within ten (10) days of the completion of the hearing notify the person by certified mail that the original order remains in effect until the Commission **affirms, revises or withdraws the order**. The issuance of an order pursuant to this Section shall not delay or bar a legal action brought by the Commission, the Town or any person to restrain a continuing violation of the Act or these Regulations.*

Now we will begin the meeting with Ms. Carroll, Compliance Officer as the burden of proof is on the agency to establish the violation and include any evidence so I will start with her testimony.

Ms. Carroll read Conservation Compliance Order and Cease and Correct Order into the record. There was filling, cutting and grading within the regulated area without a permit. This is in violations of Sections 4.2.1, 7.1 and 7.3 of the Regulations. The Cease and Correct Order is recorded on the land records. She noted this violation came from an anonymous complaint. She read into the record Colin Kelly's inspection notes of November 10, 2020 when he visited the site with Chris Driscoll, Sediment and Erosion Control Inspector. Joe Feinlieb and Brian Steinhauer of Coastal Construction were present during their visit. There were two stockpiles, trees being removed and woodchipped. The work was stopped. Ms. Carroll read the follow-up note from Mr. Driscoll dated November 12, 2020. She noted the demolition form dated September 29, 2020, which noted that no other work than demo could be done until a new permit is issued or the existing permit is transferred.

Mr. Kelly presented on-screen the approved site plan and permit issued to the former property owner, Richard Gordon. He highlighted the wetland boundary and the 50 foot setback. He noted this was an Administrative Approval as it met or exceeded the 50 foot setbacks. He reviewed the conditions of the permit to Mr. Gordon issued on December 16, 2019. He reviewed the demolition form issued to Coastal Construction. Mr. Kelly noted that an Engineering review and Zoning Permit were issued only recently on November 6, 2020. He reviewed the photos.

Ms. Mozian reviewed the chronology. Conservation Permit issued November 2019 in former owner's name. The new owner, Jessica and Phillip Polito, purchased the property in September 2020. The demo permit from Conservation was issued October 2020. A Zoning permit was issued on November 6, 2020 to Coastal Construction listing Mr. Gordon as the owner.

Mr. Steinhauer apologized to the Commission that they are in the position of having to meet in this way. Under the new permitting process, he submitted a flash drive with a letter from Mr. Gordon allowing the transfer of the previous permits to Zoning. It was his belief that this would be distributed to other departments. He accepted fault for not submitting directly to Mr. Kelly. The silt fence was not properly installed. They have since corrected the installation the silt fence. As part of the demo process, the septic tank was crushed, which was within the 20-foot upland review area. It is their intention to have the wetland flags restored by having Leonard Surveyors define the wetland line and have Bill Kenny come out and confirm it in the field. The flags will remain in place for the duration of the work.

Ms. Rycenga asked how many trees were removed within the regulated area.

Mr. Kelly stated there were several areas where the wetland area was encroached with activity. However, he does not have a complete count of the number of trees removed since a number of benchmarks are no longer there.

Ms. Rycenga noted based on her observation, there were at least 6 trees removed. She asked about the grade change.

Mr. Steinhauer stated no fill was brought in. The top soil from around the house was stockpiled within two to three feet of the 20 foot setback. It has been moved since the initial inspection.

Ms. Rycenga noted there was no silt fence around the stockpile, as there should be per the DEEP Sediment and Erosion Manual. She asked about the date of the plans and whether the Zoning Permit and Conservation Permit approved the same plans.

Ms. Carroll stated they are essentially the same. There is a date change on the plans approved by Conservation that includes provisions for dewatering that was not approved by Zoning.

Ms. Rycenga noted there is concrete block and rock on site that should be removed.

Mr. Steinhauer agreed. He stated they have stopped all work. They did not want to have any misunderstandings with the Conservation Department, the Commission or the neighbors.

Ms. Rycenga asked if there was a requirement for a permanent demarcation of the wetland.

Mr. Kelly stated no.

Ms. Mozian stated this is an instance where a foundation plan as-built is needed. The project meets the 50 foot upland review area but it is close.

Mr. Kelly noted that the permit did include a condition requiring a foundation as-built. He also noted the original permit required a site monitor, which was never secured.

Mr. Steinhauer stated he has no problem with providing a foundation as-built. It is for his protection as well. He added when they have the surveyor out, they will flag the 50 foot setback and the foundation as well. He said he would have to speak with the owner about what kind of permanent demarcation they would be amenable to installing.

Mr. Carey noted the Commission is assuming 6 trees were removed . He asked about the diameter of the trees.

Mr. Kelly estimated 12 inches but this is uncertain without doing more research. He would need to compare to past photos.

Mr. Carey indicated there should be a way to allow this project to move forward with remediation.

Mr. Davis noted Commission applications have a note that if the application exceeds the conditions of the approval, then the application is null and void. The applicant may refile another application. He asked whether the same holds true for Administrative Approvals.

Mr. Kelly stated that in signing the application they attest that the material are true to best of their knowledge.

Mr. Bancroft asked about the temporary stockpile to the north of the property.

Mr. Kelly showed onscreen the site plan. There are two stockpile locations being used. Originally, one was 18 feet away from the wetland and one safely away from the wetland

Mr. Bancroft noted that stockpiling in area of the well should be kept to a minimum.

Mr. Steinhauer stated they will be abandoning that well and connecting to public water as part of the Health Department approval.

Ms. Mozian addressed Mr. Davis's question and noted the fine ordinance in Section 16 of the Regulations gives the staff or Commission the right to issue a fine in cases of violations.

Ms. Rycenga indicated she did not believe issuing a fine was necessary in this case and her opinion that there was a disconnect between the Conservation Department and the Zoning Department. She asked if the well is required to be abandoned as a condition of approval by the Health Department.

Mr. Steinhauer stated that it is a requirement for Health's Certificate of Compliance.

Ms. Rycenga gave a summary of what has been discussed and reviewed her understanding of the proposed conditions for a revision to the Cease and Correct Order including:

- Resurvey and reflag the wetland boundary
- Survey 20 foot setback, 50 setback and corners of house
- Conformance to all conditions of previously approved conditions.
- Foundation as-built prior to framing
- Remediation plan defer to staff (including tree removal and fill removal) including the permanent demarcation.
- Transfer of the permit into the property owners name

Mr. Carey suggest adding the remediation plan be robust.

Ms. Carroll agreed. She has done periodic inspections since the permit was issued. This is a rear lot. During the fall with a full canopy, you could not see other properties.

Ms. Rycenga gave two minutes for public comments.

There were no public comments.

Mr. Steinhauer indicated he understands what needs to be done to get this project going and completed.

Motion to revise Cease and Order with conditions, which include:

1. The immediate transfer of the permit into the new property owner's name;
2. Conformance to all conditions of the previously approved permit;
3. A foundation as-built submitted prior to framing commencement;
4. Resurveying and reflagging of the wetland boundary with confirmation by a soil scientist;
5. Survey 20 foot setback, 50 foot setback and all corners of the proposed new single family residence; and
6. Submission of a robust remediation plan including the permanent demarcation of the wetland. This remediation plan is to include any tree removal already done plus the identification of those dead trees they would like to remove and replacement of those trees and removal of fill within the wetland and upland review area.

**Motion:**            **Davis**                                 **Second:**       **Carey**  
**Ayes:**             **Davis, Carey, Bancroft, Lobdell, Rycenga**  
**Nays:**             **None**               **Abstentions: None**               **Vote: 5:0:0**

The November 20, 2020 Show Cause Hearing adjourned at 11:24 p.m.

**Motion:**            **Rycenga**                                 **Second:**       **Lobdell**  
**Ayes:**             **Rycenga, Lobdell, Bancroft, Carey, Davis**  
**Nays:**             **None**               **Abstentions: None**               **Vote: 5:0:0**