

NOTICE and AGENDA
SPECIAL MEETING
WATER POLLUTION CONTROL AUTHORITY

Notice is hereby given that the Westport Board of Selectmen, acting in its capacity as the Water Pollution Control Authority, will hold a special meeting on Friday, May 14, 2021 at 11:00 AM. Pursuant to the Governor's Executive Order No. 7B, there is no physical location for this meeting. It will be held electronically, live streamed on www.westportct.gov, and broadcast on Westport's Optimum Government Access Channel 79 and Frontier Channel 6020. Emails to the Board of Selectmen/WPCA *prior to the meeting* may be sent to selectman@westportct.gov. Comments to be read *during the public comment* portion of the meeting may be emailed to BOScomments@westportct.gov. Best efforts will be made to read public comments if they are received during the public comment period, include your name and are brief; no longer than 3 minutes. Agenda to include the following only:

1. To discuss and take possible action on a proposed settlement and stipulation to settle the case of *Summit Saugatuck, LLC v. Westport Water Pollution Control Authority, Doc. No. FST-CV-6047869-S* to permit the allocation of capacity and extension of the sanitary sewer from Davenport Avenue to the Summit Saugatuck property at the terminus of Hiawatha Lane Extension.

James S. Marpe
Chair
May 13, 2021

DOCKET NO.: FST-CV-20-6047869-S	:	SUPERIOR COURT
	:	
SUMMIT SAUGATUCK, LLC	:	JUDICIAL DISTRICT OF
	:	STAMFORD/NORWALK
V.	:	
	:	AT STAMFORD
TOWN OF WESTPORT WATER POLLUTION	:	
CONTROL AUTHORITY	:	MAY 14, 2021

MOTION FOR JUDGMENT IN ACCORDANCE WITH STIPULATION
PURSUANT TO C.G.S. § 8-8(n) AND PB 14-7B

The Plaintiff, **SUMMIT SAUGATUCK, LLC** (“Summit”) and the Defendant, the **TOWN OF WESTPORT WATER POLLUTION CONTROL AUTHORITY** (“Authority”), move that the Court approve and enter judgment pursuant to the following agreed upon terms and conditions of this Stipulation (“Stipulation”) as settlement of the above-referenced matter.

WHEREAS, Summit is the owner, or holder of a contract or option to purchase, parcels totaling 8.8 acres located on Hiawatha Lane or Hiawatha Lane Extension in southwest Westport, Connecticut (hereinafter, the “Properties”); and

WHEREAS, in April 2016, Summit began seeking various permits from the Town of Westport for a multi-family development at the Properties (the “Development”); and

WHEREAS, in this action, in a re-application for such permits in February 2021, the WPCA denied the re-application based solely on the lack of a positive 8-24 report; and

WHEREAS, on May 12, 2021, the Westport Planning and Zoning Commission issued a positive 8-24 report.

WHEREAS, the parties now wish to resolve the above-referenced administrative appeal by defining terms upon which the Town will approve the requested sewer extension permit.

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth herein and other good and valuable consideration, the parties agree as follows, subject to approval by the Court pursuant to Section 8-8n of the General Statutes:

1. The Town shall issue the sewer extension permit conditioned upon the following. If any of the following are not fulfilled within forty-five (45) days of the Court's approval of this Stipulation pursuant to C.G.S. § 8-8(n), subject to one (1) thirty day (30) extension agreed upon in writing by the parties, then the obligations of the parties to this settlement agreement are null and void.

- a. Satisfaction of all terms and conditions as set forth in the Motion for Judgment in Accordance with Stipulation and accompanying Stipulation filed in *Summit Saugatuck, LLC v. Westport Planning and Zoning Authority*, Docket No. HHD-CV-19-6120090-S as approved by the Planning and Zoning Commission on May 12, 2021 which terms and conditions are incorporated by reference into this Stipulation.
- b. Approval of this Stipulated Judgment by the Superior Court pursuant to C.G.S. § 8-8(n).

2. **Non-Admission of Liability.** The entry by the parties into this Stipulation shall not be construed as an admission of liability of any party hereto.

3. **No Representation.** Each party hereto acknowledges that no other party or any agent or attorney of any other party, or any other person, firm, corporation, or any other entity has made any promise, representation or warranty whatsoever, express or implied, not contained herein concerning the subject matter of this Stipulation to induce the execution of this instrument, and

each signatory hereby acknowledges that he, she or it has not executed this instrument in reliance on any promise, representation or warranty not contained in this Stipulation.

4. **Counterparts.** This Stipulation may be executed in separate counterparts, each of which shall be deemed to be a fully executed original as to all parties that have executed any one or more of those separate counterparts. The execution of this Stipulation and the transmission thereof by facsimile or electronic (e-mail) shall be binding on the party signing and transmitting same by facsimile or electronic (e-mail) fully and to the same extent as if a counterpart of this Stipulation bearing such party's original signature had been delivered. Notwithstanding the foregoing, the parties shall exchange original counterparts of the Stipulation promptly following execution hereof.

5. **Binding Effect.** This Stipulation shall be binding upon and inure to the benefit of the parties hereto, and each and all of their heirs, personal representatives, successors and assigns.

6. **Governing Law.** This Stipulation shall in all respects be interpreted, enforced and governed by and under the laws of the State of Connecticut, and the state Courts of Connecticut shall have exclusive jurisdiction.

7. **Construction.** This Stipulation shall be construed without regard to the party or parties responsible for its preparation and shall be deemed as having been prepared jointly by the parties hereto. Any ambiguity or uncertainty existing herein shall not be interpreted or construed against any party hereto. This Stipulation shall be construed as a whole according to its plain meaning.

8. **No Waiver.** No delay or failure by any party to exercise any right under this Stipulation, and no partial or single exercise of that right, shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.

9. **Entire Agreement.** This Stipulation, together with Exhibits and attachments hereto constitutes the entire agreement of the parties and supersedes all prior or contemporaneous agreements, discussions or representations, oral or written, with respect to the subject matter hereof, and each of the parties hereto states that he/she/it has read each of the paragraphs hereof and that he/she/it understands the same and understands the legal obligations created thereby.

10. **Notices.** Any notices given or required to be given under this Stipulation shall be in writing and delivered either personally or via certified mail, or via commercial overnight courier and by electronic (e-mail) mail as follows:

- (a) Any notice given to the Plaintiffs shall be sent simultaneously to the following addresses:

Timothy Hollister, Esq.
Hinckley Allen
20 Church Street
Hartford, CT 06103-1221
thollister@hinckleyallen.com

- (b) Any notice to the Town or its agencies shall be sent to the following address:

Ira Bloom, Esq.
Berchem Moses, PC
1221 Post Road East
Westport, CT 06880
ibloom@berchemmoses.com

- (c) Board of Selectmen, as Water Pollution Control Authority
Westport Town Hall
110 Myrtle Ave.
Westport, CT 06880

Notices delivered personally or by overnight mail, shall be deemed given when received, as well as electronic (e-mail) messages. Notices delivered by mail shall be deemed given three business days after mailing. Parties may change their address for notices in a notice given pursuant to this paragraph.

11. **Necessary Documents.** The parties agree to enter into and execute such further documents or instruments as may be necessary and appropriate to effectuate this Stipulation, including but not limited to conveyance forms or other documents incident to the closing.

12. **Power and Authority to Execute.** Each party hereto represents and warrants that it has the full power and authority to execute, deliver and perform this Stipulation, that each individual signing on behalf of a party has been duly authorized by that party to execute this Stipulation on its behalf, and that no claims being released under the terms of this Stipulation have been assigned, sold, or otherwise transferred to any other entity.

13. **Advice of Counsel.** Each of the parties has had the benefit of the advice of counsel of its own choice in the negotiating, drafting and execution of this Stipulation, and the language in all parts of this Stipulation is a product of the efforts of all parties and their respective counsel.

14. **Headings.** The paragraph headings in this Stipulation are for convenience only and shall not be used to construe or interpret the meaning of any provision herein.

15. **No Oral Modifications.** This Stipulation constitutes the entire understanding of all of the parties hereto with respect to the subject matter hereof. This Stipulation cannot be modified, amended, supplemented, or otherwise changed except by a writing signed by the party to be charged. The parties expressly intend and agree that there shall be no exceptions to this “no oral modification” clause, including, but not limited to, any present or future claims of partial performance, or equitable estoppel.

16. **No Duress.** The parties acknowledge that they have entered into this Stipulation freely and voluntarily, with the advice of counsel, and without duress.

17. **Severability.** In the event that any one or more terms or provisions of this Stipulation are determined to be unenforceable, the remaining terms and provisions shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have set their hand and seal to this 10 page Stipulation this ____ day of May 2021.

SUMMIT SAUGATUCK, LLC

BY: _____

Its Member/Manager
Duly Authorized

**TOWN OF WESTPORT WATER
POLLUTION CONTROL AUTHORITY**

BY: _____

Its
Duly Authorized

LIST OF EXHIBITS

Exhibit A

DRAFT