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**DRAFT
MINUTES
WESTPORT CONSERVATION COMMISSION
SPECIAL MEETING/SHOW CAUSE HEARING
SEPTEMBER 22, 2021**

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; Nathan Hartshorne, Conservation Compliance Officer; Susan Voris, Admin. Asst. II; Ted Gill, EIT, Engineering

Guests: Steve & Kristen Stalicky, owners of 5 Bayberry Lane
Matt Popp, soil and wetland scientist, Environmental Land Solutions for the property owner
Jay & Janis Forgotson, 7 Bayberry Lane

Show Cause Hearing: 10:00 A.M., On Zoom

- 1. 5 Bayberry Lane. (Lot: 5 Map: H11) :** In accordance with section 4.2.1, 7.1 and 7.3 of the “Regulations for the Protection and Preservation of Wetlands and Watercourses of the Town of Westport,” a **Show Cause Hearing of the Westport Conservation Commission will be held for a Cease & Correct Order** issued to the property owners for removing and depositing material, creation of a pond, placing drainage pipes, and altering the hydrology of a wetland without permits.

Ms. Rycenga read Section 15.4 of the IWW Regulation stating the Show Cause Regulations and the purpose of the hearing.

Mr. Hartshorne summarized what the Commission reviewed at the last hearing on May 26, 2021 and noted the items that the owner was to do including:

- Have the property seeded and hayed;
- Prepare a restoration plan;
- Prepare a plan showing the existing drainage; and
- Keep the Conservation Department up to date with progress.

Matt Popp, soil and wetland scientist with ELS, stated he was hired to devise a plan to restore the wetland. He visited the site and saw rushes and sedges that were about 3 feet tall and the drainage pipes were in place. He reviewed aerials of the property that show the entire backyard was lawn. He shared a streetscape view of an aerial confirming this. He shared a proposed restoration plan dated September 10, 2021, highlighting the wetland boundary and showing the shallow pond. The plan would allow half of the backyard to be lawn and the other half to be restored with a wet meadow. The owners want the excavated pond to remain and be enlarged. They propose the drainage pipes to remain even though they are filled with water and do not perform their intended function of draining the wetland. They would like the curtain drain behind the house to remain. They would like to keep the drainage and cover it over. The proposal would be to mow the wet meadow once a year to maintain it as a meadow.

Ms. Mozian asked when Mr. Popp visited the site.

Mr. Popp stated he first visited the site on July 27, 2021. At that time, the restoration seed mix had taken hold. He shared pictures from his visit. He also noted that potted plants had been purchased but have not yet been installed. He feels that this plan does provide new habitat.

Ted Gill, EIT, Engineering Department, noted that water can only leave the site through an old farmer's drain, which is now where the pond is. The drainage pipes that are still there will drain water that is closer to the house to the rear section of the yard. He highlighted Note 16 on the plan "Fine grade area for the lawn" and indicated that the grading cannot exceed 6 inches limit of grading, or they will need an Excavation and Fill permit from Planning & Zoning.

Mr. Popp noted this does mean cutting and fill will take place.

Ms. Mozian asked Mr. Gill to explain the difference between a closed pipe and a perforated pipe called for on the plan in Note 7.

Mr. Gill said that a closed pipe would direct the water flow in one direction whereas a perforated pipe would equalize water flow in all directions.

Mr. Hartshorne shared photos taken of the property on September 2, 2021 after the hurricane.

Ms. Mozian asked about the proposed circulators in each of the two ponds and how deep the ponds would need to be for them to actually work. Mr. Popp said at least 4 ft.

Mr. Gill noted with regard to the impact that the proposed and enlarged pond would have on stormwater, he said the pond will not have an impact either way to stormwater drainage.

Mr. Carey asked whether the cul-tec units could stay or should they be removed.

Mr. Gill stated they will not have an impact either way. The subsoils are very poorly drained soils and it is the last place they should have been installed. However, he questioned whether it would be more trouble than it is worth and would removing them do more harm to the wetlands by the use of heavy machinery.

Ms. Rycenga noted that since the cul-tecs are not functioning and they were not designed by an Engineer, why would they be left in place.

Mr. Carey stated he wanted to make sure leaving them in place would not harm the wetland.

Mr. Davis noted the elevation change from behind the deck to the rear of the property is less than a foot. He asked about the ability of the pipes' ability to drain.

Mr. Popp agreed there is less than one foot drop in elevation. He noted there would be about a 1% pitch on the drainage pipes. The pipes will most likely be filled with water. During heavy rain events, the flow could be in both directions, even back toward the house.

Mr. Lobdell stated he has been driving up and down Bayberry Lane for over 25 years and has witnessed more and more water collecting in this area, next door and on the property in the rear. He asked if the restoration plan will take this increased water situation into consideration.

Mr. Popp stated no, it does not take this into consideration. The plan will not hurt or help the flooding situation.

Mr. Lobdell asked if there will still be flooding in the backyard.

Mr. Popp stated yes.

Mr. Lobdell asked if there is a way to improve the situation.

Mr. Popp stated not without impacting neighboring properties.

Mr. Lobdell asked Mr. Gill if this plan was acceptable to the Town Engineering Department.

Mr. Gill stated yes. He noted the Engineering Department was contacted in July 2020 by an engineering firm about the same issue of how to improve the drainage. They looked at their old maps and found old pipes. Mr. Gill told the Engineer at that time that they would need to map those pipes. The proposal was dropped because they could not find the pipes or the discharge location. Since then, the flooding has gotten worse. Also, they could not maintain what they cannot find. He added the owners are not increasing the pipe size, the Engineering Department is not concerned with their pipes impacting others. Mr. Gill referenced WLR Map 7291, dated August 12, 1975, by Leonard Surveyors, which showed the location of the old stone drain in the neighborhood. The house at 7 Bayberry Lane was built on top of that drain so the drain was most likely moved when the house was built. He indicated he is uncertain when the old stone drain became a pipe. Anecdotal evidence indicates the flooding got worse over time. The Engineering Dept. is only involved if the owners are going to increase the flow through the property. This is the same flow but with lack of maintenance of the existing pipes.

Mr. Bancroft noted that he wants to make sure that the 6 inch pitch on the drainage pipes does not increase. He added he does not feel that the cul-tecs have an impact one way or the other but believes they should be marked in some way so that future owners know they are there.

Ms. Rycenga asked Mr. Gill if excavation within 5 feet of the property line would be a violation of the Zoning Regulations and therefore require a variance from Zoning.

Mr. Gill noted the pond is approximately 16 feet from the property line.

Ms. Rycenga asked about the size of the pipe.

Mr. Gill stated he did not know because he did not inspect.

Ms. Rycenga stated she wanted to make sure that the neighbors down-gradient are not impacted negatively but she feels the Commission needs to review proof such as drainage calculations.

Mr. Gill stated the unknown makes that calculation difficult. He noted the property is a bowl with an underdrain. There is no baseline calculation for reference. There are deeds on several properties that refer to this pipe and say that all the properties would need to maintain it.

Mr. Davis asked if leaving the cul-tecs in place would re-route the groundwater.

Mr. Gill stated normally the Engineering Dept. would do test pits and you would see the groundwater flow. When he first inspected the site, groundwater was at the surface already. He indicated that unless a new underdrain is installed, there will be very little impact to groundwater.

Ms. Rycenga noted the pond depth is approximately 3 feet. She asked about the proposed depth.

Mr. Popp indicated it would be only a foot deeper at 4 feet.

Jay Forgotson, 7 Bayberry Lane, stated he would like to see approval of the plan but indicated that he does have concerns. The pond is very close to their driveway. They are concerned due to having a 2 year old grandchild. He also noted they are not addressing the old farmer's drain and what damage that they would be doing to that.

Mr. Gill stated we don't know where the discharge is of the old farmer's drain.

Mr. Kelly stated that as far as safety concerns, there is nothing set in stone that the pond has to be approved. He asked if it can be moved. Alternatively, he suggested that a safety feature such as a split rail fence could be added.

Mr. Popp stated that increasing the pond size is to create a gentler slope around the pond edges, thereby reducing an unsafe condition.

Ms. Rycenga noted that safety is not a concern that the Commission regulates but if fencing is installed it should allow wetlands wildlife habitat passage to and from the pond.

Ms. Mozian agreed but she noted the owners excavated the pond and created an attractive nuisance. They should put in a fence and perhaps it could have chicken wire fence attached to add safety but have a 6 inch gap to allow passage of small mammals and amphibians.

Mr. Lobdell asked what can be done to help the neighbors.

Ms. Mozian stated they need a detail of the plantings. More plantings are better to soak up water. This is noted in Note 7 of the Construction Sequencing.

Mr. Popp stated the idea is to keep the wet meadow and install trees along the property line.

Ms. Mozian noted that this is one of the most egregious violations she has seen in the 20+ years she has been in the Conservation Department but the area was an unmapped wetland. She stated it was hard to call it egregious if the owners did not know the area was a wetland when they recently purchased the property. These homes may not have been allowed to be built today. It is best for the owners to now embrace the wetlands. She reminded the Commission that the wetlands map must be updated with a submittal of a wetlands boundary amendment application.

With no other comments, the hearing was closed and the Commission moved into Work Session.

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

Mr. Davis stated there needs to be more specifics on the planting plan. He would like to see more robust plantings especially near the property line in addition to a fence. He accepts that the cul-tecs are not having an impact and that removal activity may cause harm, so it is okay for them to remain.

Mr. Carey agreed.

Mr. Bancroft agreed. He noted that all piping and ground elevations are at least level or pitched toward the pond.

Mr. Lobdell agreed.

Ms. Rycenga agreed. She highlighted proposed conditions including:

- Maintain communication with staff;
- Submit detail of fencing showing it will allow for animal movement;
- Submit planting plan detail including number and species;
- Submit detail of the amount of fill being placed;
- Submit Maintenance plan for the drainage system, pond, aerator and wet meadow mowing;
- Submit detail of proposed berm; and
- Submit As-Built Survey and record As-built survey on the Land Records showing the pond and demarcation of the cul-tec units.

Mr. Hartshorne noted that the cul-tecs do supplant or displace the wetland area. He noted that the cul-tecs could still be removed.

Mr. Gill noted that leaving the cul-tecs in place do not impact drainage one way or the other. He stated an excavator would be needed to remove the gravel. The plastic cul-tec units could be removed by hand.

Mr. Hartshorne noted the excess geo-textile fabric could be cut off with a boxcutter and removed.

Ms. Rycenga noted there is a short-term impact from removing the cul-tec units but there would be a long-term benefit.

Mr. Carey stated we could require the plastic cul-tecs to be removed but leave the gravel already in place.

Mr. Gill noted that if the cul-tecs had been buried, a machine would be needed. In this case, the cul-tecs could be removed with hand digging and to cut the geotextile fencing currently by hand where the cul-tec units are.

Ms. Rycenga noted there is a need to investigate.

Motion to revise the Cease and Correct Order with conditions:

- Maintain communication with staff;
- Submit detail of fencing showing it will allow for animal movement;
- Submit planting plan detail including species;
- Submit detail of the amount of fill being placed;
- Submit Maintenance plan for the drainage system, pond, aerator and wet meadow mowing;
- Submit detail of proposed berm;
- Remove plastic cul-tec units and excess geo-textile fabric by hand. No use of heavy machinery is allowed; and,
- Submit As-Built Survey and record As-built survey on the Land Records showing the pond and demarcation of the cul-tec units should, upon investigation, it is deemed acceptable for them to remain.

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

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