



# WESTPORT, CONNECTICUT

## FLOOD & EROSION CONTROL BOARD

TOWN HALL, 110 MYRTLE AVENUE  
WESTPORT, CONNECTICUT 06880  
(203) 341 1120 www.westportct.gov

### MINUTES

Flood & Erosion Control Board Meeting of March 2, 2022

Present for the Board: William S. Mazo (Chair)  
Phillip Schemel  
Aimee Monroy-Smith  
Robert Aldrich

Present for Department of Public Works: Edward Gill, Engineer II  
Keith Wilberg, Town Engineer

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William S. Mazo, Chair, opened the meeting at 7:30 pm.

First Selectwoman Jennifer Tooker addressed the Board to voice her support for the proposal dated 12/09/2021. She noted her enthusiasm for the changes that the Board is discussing for their future, and thanked the Board Members for their efforts.

Art Schoeller, President of the Green's Farms Association also addressed both the Board and the First Selectwoman to note the Association's support and enthusiasm for the future of the Board.

The Chair thanked the First Selectwoman for her support and reiterated the interest and intent of the Board to become more involved in taking active steps to address flooding concerns in Westport.

The Chair then opened the public hearing.

1. **109 Morningside Drive South / Planning & Zoning Referral Subdivision Application PZ-21-00881**; *Application of Eric Bernheim on behalf of the owner, Kowalsky Family Company LLC, for a 6-lot subdivision. The application will be reviewed for drainage and grading recommendations to the Planning & Zoning Commission.*

This proposed subdivision was presented by Bryan Nesteriak of B&B Engineering and Attorney Eric Bernheim of FLB Law, on behalf of the owner, Kowalsky Family Company LLC.

Mr. Nesteriak noted that the plans show theoretical development, but the application is only for the subdivision itself, not the development of any individual lot. He noted that the plans have been revised to address several comments from the Town Engineering Department, but that the two outstanding comments regarding basements and the removal of an existing groundwater drain could not be addressed.

There were questions from the Board regarding the availability of sanitary sewers, and the concerns that the applicant had regarding addressing the outstanding comments from the Engineering Department.

Mr. Nesteriak noted that previous plans included footing drain systems that complied with the standard requirements of the Town of Westport, but that he revised the plans to note no footing drains would be installed on any of the six lots and any basements would only utilize waterproofing membranes. He also noted that the existing drains have been functioning for 40 years according to the owners, and that removing the drains would have unknown impacts on neighboring and downstream properties, and it is his and the applicant's beliefs that the removal of the groundwater drains would be reckless due to the possible downstream impacts.

The Chair asked about the longevity of foundation liners, and Mr. Nesteriak noted that similar applications of waterproof membranes could last 30 years, but that no legitimate study has been done to show how long such a membrane can last, and small perforations and leaks could be fixed.

There was a question from the Board regarding the depth of groundwater on the property, and Mr. Nesteriak noted that groundwater levels across the lot undulates, but the average would probably be between 2.5 to 3.5 feet in depth in the spring time, and lower through the rest of the year.

There was another question from the Board regarding whether this project would need to come back before the Flood & Erosion Control Board. Mr. Gill stated that the proposed activity is all outside of the Waterway Protection Lines, and as such, would not require further review from the Board unless another Planning & Zoning application was referred to them for comments.

There was a question from the Board about why basements would be necessary below the groundwater table. Mr. Nesteriak and Attorney Bernheim responded that basements effect marketability of the lots, and that the Town does not currently have any regulations specifically limiting the construction of basements in groundwater.

Per the Chair's request, Edward Gill summarized the Engineering Department's review of the proposed subdivision. He stated that the plans comply with storm drainage requirements, but that construction of basements with waterproof membranes and no footing drains is not a satisfactory solution for a residential basement, based on the prior experiences that the Town has had with waterproof membranes. He also noted that any failure in a waterproofing membrane relies on standard practice of the installation of footing drains and sump pumps. However, with no footing drains allowed, and no alternative methods of waterproofing the basements, a waterproof membrane alone is not a practical or acceptable solution for preventing flooding in a basement from the perspective of the Engineering Department.

There was a question from the Board about why the Board would approve the plans when the construction depicted is only theoretical, and Mr. Gill responded that the application is only to split the one lot into six lots, so theoretical development is required to be shown, but each lot would have to obtain permits for the specific developments proposed in the future, and that the Board is only making a recommendation to the Planning & Zoning Commission to approve or deny the subdivision. He also noted that while there is not a specific regulation prohibiting basements, the applicant has not supplied sufficient

information to show that the installation of basements would not have detrimental effects with respect to drainage.

There was a question from the Board regarding the existing groundwater drains. Mr. Gill noted that the measured groundwater levels across all six properties are likely impacted by the existence of the network of groundwater drains across the properties. He stated that the drains discharge into Town owned storm drains in Turkey Hill Road South, and the applicant has not provided any information to show there was ever permission granted for the installation of this connection.

There was a question from the Board about whether there was a proposed solution to allow the connection of the private drainage into the Town's system, to which Mr. Gill responded that the only allowable solution would be the disconnection of the drainage from Town storm drains.

Attorney Bernheim stated that he disagreed that the applicant had removed footing drains from the plans not because it was required, but in a hope to offer a concession, noting that from previous comments, Mr. Gill had not wanted footing drains, so they removed them, but they believed they could install footing drain pump systems that could comply with Town standards. He noted that the applicant would much prefer to keep footing drains, and that the Board may not make a decision based on an assumption that a foundation liner will fail, and that Mr. Nesteriak had provided evidence that foundation liners would not fail.

Attorney Bernheim also noted that the groundwater drains had existed for 40 years, and that he would like to see a regulation from 40 years ago that prohibited connections into Town storm drainage systems, and that because he assumes there was not one, this would be classified in the Planning & Zoning world as a pre-existing non-conforming connection. He also disagreed that adding six new homes on six new lots would impact the groundwater. He did however state that he believes the removal of the drains would materially impact the groundwater table on neighboring properties, and such a removal of the drains would be reckless without understanding fully what would happen.

Mr. Gill noted that removal of the existing drains has nothing to do with Zoning definitions of existing non-conformities. The removal of the pipe is required in accordance with the standard requirements that the Town has for any illicit discharge into Town storm drains, which are on Town property, as happens with any such illicit discharge that is found either when the Town conducts work on the storm drains in question, or when a connection is associated with a property that is undergoing development. He also stated that the applicant is now asserting an age of the existing drains at 40 years, but they have also used ages of 60 years and 100 years, but have never provided any evidence of the age of the system, or that the system was connected into Town drainage legally.

There was a comment from the Board that they are inclined to agree that they do not know the possible impact of disconnecting the pipes, and would like to know if the Town drainage could be improved downstream to allow for the pipe to remain. Mr. Gill noted that the pipe in Turkey Hill Road South is not the only downstream drainage that is impacted by the drainage coming from the pipe in question, and that the Town drains discharge into private ditches along Arrow Head Road, then through an unnamed tributary, discharge into New Creek, where there are significant flooding concerns. He noted that according to the model in the latest drainage study commissioned by the Town, New Creek Road downstream of this area is overtopped by roughly 4.5 feet of water in a 100-year storm. Mr. Gill also stated that the applicant has not provided any information

about the flow rates that come out of the drain in question, nor has the applicant provided an analysis of the impact of the proposed development on the pipe network.

Mr. Wilberg stated that the Town's position is clear that the Town does not allow connections like this into Town owned storm drains, and that while the Town has repeatedly looked for and requested from the applicant any and all evidence of possible permission, they had to make this connection, none has been provided. He also reiterated that there is no flow analysis that has been done to determine what flow rates come from this pipe, and that allowing this connection to remain would be holding this property to a different standard from the rest of the Town, which is not fair and is not acceptable to the Public Works Department. Mr. Wilberg also commented on foundation liners, noting that he had responded to Mr. Nesteriak's assertion that foundation liners are sufficient, but that while he wished that they worked, the experience he has had with them in the past has led him to the conclusion that foundation liners alone are not sufficient for waterproofing basements, and as these liners would leave the proposed lots with no other options when a foundation liner alone is not adequate.

Mr. Nesteriak noted that there is room on the sites to install footing drain pump systems, but that they do not want to install them if the Engineering Department has concerns about them. He stated that leaks in a liner can be repaired if they are in the sides of the foundation by patching the liner, and that there are ways to repair the bottom of a liner if necessary. He also stated that the groundwater drains mapped on the plans have no surface drain connections at all, and that the pipes are not running full, and that while they run throughout the year, they do not run full, so he believes that whatever impact they have to downstream storm drainage is very minor if there is any impact at all.

There was a question from the Board as to why, if there was only a minor flow of water coming out of the pipe, the applicant could not just remove the pipes. Attorney Bernheim stated that while they believe a minor trickle of water discharged into a neighbor's house is a major issue, but a minor trickle into the Town's storm drain is not a major issue. Mr. Aldrich noted that it would be an issue in a major rainstorm when the drains are not able to convey their design flows. Mr. Nesteriak noted that the flow of groundwater would not increase significantly during a rainstorm, but the Chair noted that there were already flooding concerns downstream that are increased by the current discharge from this pipe.

Mr. Nesteriak also noted that in the past, he had been allowed to connect pipes to Town catch basins, and that based on the memories of the owners, the pipes have been on the property for 40 years and that while nobody knows if the pipes are legal or illegal, and while it is possible they were installed illegally, he has no evidence that they were legal or illegal.

The Chair opened the floor for public comment.

Art Schoeller, President of the Green's Farms Association, spoke on behalf of the Association. He noted that the position of the Association is that the property in question is owned by the Kowalsky family, and they should be able, within the scope of applicable regulations, to do with the property as they wish. He went on to state that their concern is the impact that development has on a neighborhood wide scale, meaning they were not concerned as much with foundation liners, but that they are concerned about the existing flooding conditions downstream of this property, and that whatever happens on this property, any impacts that increase flooding downstream and on neighboring properties would be absolutely unacceptable.

There was another question from the Board about whether or not the Board can ask for the applicant to come back with additional information, and stated that they do not believe they have enough information in terms of actual numbers and analysis to show impacts of the existing drains. Mr. Gill noted that he has requested revision of the plans to remove the pipes from the plans was not something that would be impacted by additional information to be brought forward, because the requirement to remove the pipe is a requirement directly from Public Works. As such, it is not a requirement that Flood Board could waive, but rather the recommendation he made that Flood Board recommend denial of the subdivision is because the pipe is required to be removed regardless of their approval, and when it is removed, that removal may materially impact the rest of the proposed design. He also noted that theoretically a connection to storm drainage could only be permitted if the applicant provided an analysis downstream to show that there is excess capacity in downstream systems, as well as an analysis of what they wish to discharge into those systems. However, based on the information already available to the Engineering Department, they have determined that there is no additional information that would be considered acceptable in this case to allow this type of connection, and if there was, they would request that information.

Attorney Bernheim asked what is to say the applicant had not been allowed to connect the drain 40 years ago, and reiterated that it would be reckless to just disconnect the pipe, and if the Town wanted the pipe removed, they would need to order it because he would not advise his clients to remove the pipes because he assumes neighboring properties would be negatively impacted and he did not want his client to be responsible for any sort of impact on neighboring properties.

Mr. Gill reiterated that the Board is only making a recommendation to the Planning & Zoning Commission, and that if the Commission sent another referral, the Board could also review the project again at that time with any revised plans.

Attorney Bernheim requested that the Board point out a specific Zoning regulation that they would quote as a reason to deny the application, and Mr. Wilberg noted that the recommendation from the Flood & Erosion Control Board did not need to quote a specific Planning & Zoning regulation.

DECISION: The Board recommends to the Planning & Zoning Commission Denial of the Subdivision, o(Y)-4(N).

2. **8 Saxon Lane / WPL-11475-22;** Application of Mr. John Hilts on behalf of the owner, Mr. Robert Evans, to replace an existing dock, and to repair and replace portions of an existing seawall. The proposed activity is within the WPL area of the Saugatuck River.

This application was presented by John Hilts on behalf of the owner, Robert Evans.

Per the Chair's request, Edward Gill summarized the Engineering Department's review of the application, noting that the project has obtained approval from the CT DEEP and the Army Corps of Engineers, and as such, he recommends approval.

The Board went into Work Session. It was agreed that the following Standard Conditions of Approval were deemed necessary: 1, 8, 9, 10, 11, and 12. (Refer to appended sheet).

DECISION: Proposed Project Approved, 4(Y)-o(N).

3. **1 Carriage Lane / Application WPL-11478-22;** Application of David Ginter, P.E./Redniss & Mead, Inc., on behalf of the owners, Mark & Stephanie Conte, to construct a new garage addition to an existing single-family residence. The work is partially within the WPL area of Willow Brook.

This application was presented by David Ginter of Redniss & Mead on behalf of the owners, Mark & Stephanie Conte.

Per the Chair's request, Edward Gill summarized the Engineering Department's review of the application. He stated that the proposed plans met all of the Town's drainage requirements, and as such, he would recommend approval.

There was a question from the Board regarding the proposed porous paver driveway.

The Board went into Work Session. It was agreed that the following Standard Conditions of Approval were deemed necessary: 1, 2, 3, 8, 9, 10, 11, and 12. (Refer to appended sheet).

## **DISCUSSION**

Upon the completion of the Public Hearing, the Chair opened a discussion about next steps to follow up on the recent approval of the Board's proposal dated 12/09/2021 by the First Selectwoman.

Mr. Gill stated that the Board has been given formal support to start moving forward with the items in the proposal. He summarized a meeting held with the First Selectwoman and Assistant Town Attorney to discuss the proposal, in which they suggested that the Board start by formally adopting new by-laws, including the new duties that were included in the proposal. He said he could draft those by-laws and start the framework using the 1975 by-laws of the Flood & Erosion Control Board, just updating them to reflect the changes sought. The Board agreed that this would be a good place to start, and that as he updated the draft of the by-laws, he should send it to them for comments and revisions, to prepare a final draft for them to vote on at the next regularly scheduled meeting.

The Board also requested for Mr. Gill to bring them a list of projects that the Town would be able to prioritize and direct the Department of Public Works to pursue. Mr. Gill agreed, and asked for two Board members to volunteer to join a committee with other stake-holding parties to discuss the specifics of revising the WPLO. William Mazo and Aimee Monroy-Smith volunteered.

The meeting was adjourned at 9:50 pm.

Respectfully submitted,

**William S. Mazo, Chair**  
Flood & Erosion Control Board

WSM/eamg

Cc: First Selectwoman, Town Attorney, Public Works Director, Planning & Zoning Director, Conservation Director, Chair of RTM Environmental Committee, Chair of RTM Public Works Committee, Applicants, [minutes@westportct.gov](mailto:minutes@westportct.gov)

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**STANDARD CONDITIONS OF APPROVAL:**

1. Applicant shall provide adequate sedimentation and erosion control devices for the proposed activity from the time that construction begins until such time that established ground cover has grown in. More specifically, the toe of filled slopes shall be protected by silt fencing and hay bales or other approved measures, and the face of all exposed slopes shall be protected with hay matting or other approved measures until such time that the slopes have stabilized. Tree protection and/or dewatering measures for the site shall be employed as specified on the approved plans OR as needed by specific field conditions.
2. Proposed site grading, as well as development in general, shall not alter drainage patterns to the detriment of adjoining or downstream properties.
3. All drainage facilities shall be designed to comply with the Town of Westport Engineering Department Storm Water Drainage Design Standards as amended to date (current revision date, 11/01/2015).
4. Applicants shall excavate test pits and conduct percolation tests at the proposed location of any storm water leaching facilities such as drywells, galleries, and stone pits. The test pits shall be witnessed and approved by the Engineering Department prior to installation of the proposed detention system.
5. The area under the proposed deck shall be excavated to a minimum depth of 6" and filled with ¾" crushed stone, or use an alternative drainage methodology as approved by the Town Engineer.
6. All construction shall conform to the requirements of the Federal Emergency Management Agency (FEMA) and the National Flood Insurance Program (NFIP), as outlined in publication ASCE/SEI 24-14, "Flood Resistant Design and Construction," as amended to date.
7. All enclosed spaces below the Base Flood Elevation shall be constructed in conformance with FEMA Technical Bulletin 1-08, "Openings in Foundation Walls and Walls of Enclosures."
8. All final plans, details, and calculations shall be reviewed and approved by the Town Engineer.
9. All proposed work within the regulated area shall be subject to final approval by both the Town Engineer and the Conservation Director.
10. All plantings within the regulated area shall be as approved by the Westport Conservation Commission. No significant fill shall be placed within the WPLO setback other than that incidental to the plantings.
11. If the scope of this project increases or changes in any significant way, all additional or modified proposed work shall be approved by the Flood & Erosion Control Board and the Conservation Commission **prior to its commencement**, not after its completion.
12. It shall be the responsibility of the applicant to obtain and secure any additional necessary assent, permit, or license as required by law or regulation, including but not strictly limited to other Town of Westport, State of Connecticut, or United States Federal agencies.



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## LEGAL NOTICE OF DECISION

Notice is hereby given that the Westport Flood & Erosion Control Board took the following actions at an electronic meeting held on March 2, 2022:

### I. PUBLIC HEARING

1. **109 Morningside Drive South / Planning & Zoning Referral Subdivision Application PZ-21-00881; RECOMMENDATION OF DENIAL.** Application of Eric Bernheim on behalf of the owner, Kowalsky Family Company LLC, for a 6-lot subdivision. The application will be reviewed for drainage and grading recommendations to the Planning & Zoning Commission.
2. **8 Saxon Lane / WPL-11475-22; APPROVED.** Application of Mr. John Hilts on behalf of the owner, Mr. Robert Evans, to replace an existing dock, and to repair and replace portions of an existing seawall. The proposed activity is within the WPL area of the Saugatuck River.
3. **1 Carriage Lane / Application WPL-11478-22; APPROVED.** Application of David Ginter, P.E./Redniss & Mead, Inc., on behalf of the owners, Mark & Stephanie Conte, to construct a new garage addition to an existing single-family residence. The work is partially within the WPL area of Willow Brook.

Decisions, applications, and plans may be inquired into by contacting the Public Works Office at (203) 341-1120, Monday through Friday, from 8:30 am to 4:30 pm.

Respectfully submitted,  
**William S. Mazo, Chair**  
Flood & Erosion Control Board  
WSM/eamg

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## WESTPORT, CONNECTICUT

### DEPARTMENT OF PUBLIC WORKS

TOWN HALL, 110 MYRTLE AVENUE  
WESTPORT, CONNECTICUT 06880  
(203) 341 1120

### MEMORANDUM

**Date:** 03/03/2022

**To:** Mary Young, Director of Planning & Zoning

**From:** William S. Mazo, Chair, Flood & Erosion Control Board

**Re:** 109 Morningside Drive South, PZ-21-00881

Dear Ms. Young,

At the March 2, 2022 meeting of the Flood & Erosion Control Board, the following application was reviewed pursuant to a referral from your Department:

**109 Morningside Drive South / Planning & Zoning Referral Subdivision Application PZ-21-00881;** Application of Eric Bernheim on behalf of the owner, Kowalsky Family Company LLC, for a 6-lot subdivision. The application will be reviewed for drainage and grading recommendations to the Planning & Zoning Commission.

The review prepared by the Engineering Department stated the following:

1. The Potential adverse impacts of the shallow groundwater table are not adequately addressed by foundation liners. To prevent such adverse impacts, we strongly recommend against the construction of basements on all six proposed lots.
2. The system [of underground pipes located throughout the property is required to] be disconnected from Town owned storm drains in Turkey Hill Road South.

The applicant stated an unwillingness to address these concerns. As such, the Board resolved to recommend that the Planning & Zoning Commission deny the proposed subdivision.

Please contact me should you have any questions regarding the above items.

Respectfully submitted,

**William S. Mazo, Chair**

Flood & Erosion Control Board

WSM/eamg



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### **FLOOD & EROSION CONTROL BOARD**

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March 3, 2022

Mr. Robert Evans  
8 Saxon Lane  
Westport, CT 06880

**8 Saxon Lane / WPL-11475-22;** Application of Mr. John Hilts on behalf of the owner, Mr. Robert Evans, to replace an existing dock, and to repair and replace portions of an existing seawall. The proposed activity is within the WPL area of the Saugatuck River.

Please be advised that at its March 2, 2022 meeting, the Westport Flood & Erosion Control Board resolved to APPROVE the above referenced application.

Details of the meeting are recorded in the attached meeting minutes.

Respectfully submitted,

**William S. Mazo, Chair**  
Flood & Erosion Control Board

WSM/eamg

Cc: First Selectwoman, Town Attorney, Public Works Director, Planning & Zoning Director, Conservation Director, Chair of RTM Environmental Committee, Chair of RTM Public Works Committee, Applicants

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### **FLOOD & EROSION CONTROL BOARD**

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March 3, 2022

Mr. John Hilts  
P.O. Box 47  
Rowayton, CT 06853

**8 Saxon Lane / WPL-11475-22;** Application of Mr. John Hilts on behalf of the owner, Mr. Robert Evans, to replace an existing dock, and to repair and replace portions of an existing seawall. The proposed activity is within the WPL area of the Saugatuck River.

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Flood & Erosion Control Board

WSM/eamg

Cc: First Selectwoman, Town Attorney, Public Works Director, Planning & Zoning Director, Conservation Director, Chair of RTM Environmental Committee, Chair of RTM Public Works Committee, Applicants

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March 3, 2022

Mark & Stephanie Conte  
1 Carriage Lane  
Westport, CT 06880

**1 Carriage Lane / Application WPL-11478-22;** Application of David Ginter, P.E./Redniss & Mead, Inc., on behalf of the owners, Mark & Stephanie Conte, to construct a new garage addition to an existing single-family residence. The work is partially within the WPL area of Willow Brook.

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Flood & Erosion Control Board

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March 3, 2022

David Ginter  
22 1<sup>st</sup> Street  
Stamford, CT 06905

**1 Carriage Lane / Application WPL-11478-22;** Application of David Ginter, P.E./Redniss & Mead, Inc., on behalf of the owners, Mark & Stephanie Conte, to construct a new garage addition to an existing single-family residence. The work is partially within the WPL area of Willow Brook.

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Flood & Erosion Control Board

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