



CONSERVATION COMMISSION
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WESTPORT™

**DRAFT
MINUTES
WESTPORT CONSERVATION COMMISSION
JUNE 17, 2024**

The June 17, 2024 Show Cause Hearing of the Westport Conservation Commission was called to order at 2:06 p.m. via Zoom.

ATTENDANCE

Commission Members:

Josh Lewi, Chair
Patrick Ryll, Secretary
Diana McDowell, Sergeant at Arms
Paul Davis, Alternate

Staff Members:

Colin Kelly, Conservation Director
Nathan Hartshorne, Conservation Compliance Officer

Property Owners:

Anna and Damon Ustin

Guest:

Thane Grauel

This is to certify that these minutes and resolutions were filed with the Westport Town Clerk within 7 business days of the June 17, 2024 Show Cause Hearing of the Westport Conservation Commission pursuant to Section 1-225 of the Freedom of Information Act.

Colin Kelly
Conservation Director

Show Cause Hearing: 2:00 P.M.

3 Half Mile Common. (Lot: 35 Map: F14): In accordance with section 4.2.1 (a), (c), (d), and (f), 7.1, and 7.3 (h) 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 vegetation and placing a fence in a wetland without permits.

All introduced themselves for the record.

Mr. Hartshorne read the Cease and Correct Order into the record.

Mr. Kelly stated Mr. Hartshorne would review the Chronology and file documents relating to the Order. Then the property owners will get a chance to present their evidence.

Mr. Hartshorne reviewed the timeline including:

- The New Homeowner letter from 2020;
- A GIS map showing the Town’s wetland boundary;
- Certified letters with Notice of Violation from March 2023;
- Review of email communication with the property owner;
- Review of aerial photos on file;
- Review of photos of the property;
- Pointed out the updated wetland flagging; and
- Reviewed the current condition of the plantings and the difference between the expectation of what was to be planted and what was planted.

Mr. Lewi asked about the fence and whether it has changed.

Mr. Kelly suggested allowing the property owners to discuss the Cease & Correct Order and present to the Commission.

Anna Ustin, property owner, presented her request for removal of the Cease and Correct order as she believes there is nothing left to restore after there has been a substantial effort to plant the area. She asked to address several remarks made by Mr. Hartshorne during the Mary 2024 meeting including:

- They did not receive any attempts from Mr. Hartshorne before his March 2023 contact but when he reached out to her through her school email, she responded by the next day. She has responded to all e-mails sent by Mr. Hartshorne. The accusation is inappropriate. It does not hold psychological judgment and has been deceptive and should not be considered.
- Mr. Hartshorne made claims that the trees were too small and she presented photos of the trees with her husband.
- She discussed the “low value” comment made by Mr. Hartshorne and the choice of plantings.
- She noted that Mr. Hartshorne criticized the choice of Thuja’s that were 6 feet and when she changed to 3 feet based on cost. She made the decision since they are fast growing.
- She noted that Mr. Hartshorne is incorrect in stating that there are two rows on the neighbor’s property when instead there one row on her property and one row on the neighbor’s property.

- She stated that Mr. Hartshorne accused her of ignoring planting trees on the northern side when she planted 7 Thuja and 7 shrubs instead.
- She stated that Mr. Hartshorne claimed to be flexible when he threatened and pressed for planting with a May 18, 2024 deadline.
- She noted Mr. Hartshorne used the word “supposed” planting that was done before March 1.
- She discussed the fence. She indicated that when she asked staff, they asked for a 6-inch gap and therefore, she went ahead.
- She stated that Mr. Hartshorne used an unfair and negative tone when stating he was frustrated. He made inappropriate comments and socio-economic comments. She indicated she believes that Mr. Hartshorne has shown personal bias against her and other residents in Westport in comparison to how he discussed 2 Quarter Mile Road. It is a significant change. Perhaps this is due to her immigrant status, being a woman, or a Jew. She discussed emails and having meetings. She stated her trust has been undermined by the Conservation Department. She has made every effort to restore the 116 trees on the property.

Mrs. Ustin requested the order be removed. She stated that the Order no longer reflects the current conditions on the property and stated she would like to continue fair treatment and will provide weekly updates showing that the phragmites and mile a minute vine are under control. She showed photos of the property.

Mr. Kelly suggested Mr. Lewi open the hearing to the Commission for questions.

Mr. Lewi noted that Mr. Hartshorne requested that work on the fence stop and then it continued.

Mrs. Ustin stated that she had an email for the fence and approval will be submitted. The person provided an email to her last week.

Mr. Lewi noted the email asked for the fence construction to stop.

Mrs. Ustin stated she was not aware she needed any other approvals.

Mr. Hartshorne clarified that she spoke with the Engineering Department but still needed a permit for the fence.

Ms. Ustin stated she emailed on June 14, 2024 asking for a discussion from June 5, 2024. On July 5, 2024, she was responded to after the possible Cease & Correct Order.

Mr. Davis noted that between communications, Mr. Hartshorne asked for an invite to witness the work. He asked if this happened.

Mrs. Ustin stated she forgot to contact Mr. Hartshorne since she was dealing with personal issues.

Mr. Davis noted the Commission saw tire tracks in the wetland area during their site visit. He asked if this was done by the contractor.

Mrs. Ustin stated she is not sure. She told the contractor to avoid the septic area. She assumed it was when he was removing a big tree.

Mr. Davis asked about the original planting plan. He discussed the changes and flexibility when she came up with a different plan. He asked if there was any communication before the plants were installed with Conservation staff.

Mrs. Ustin stated no. She had looked at several nurseries and spent time trying to find a more affordable cost. She ordered online. She did not discuss with staff and was trying to meet the deadline and install the plants herself onsite.

Mr. Lewi asked Mr. Hartshorne if he was familiar with the fence approval.

Mr. Hartshorne stated there was no discussion of the fence.

Mr. Davis asked for the planting plan to be displayed.

Mr. Lewi asked Mr. Hartshorne for a percentage estimate that he would give for the success of the installed plantings.

Mr. Hartshorne indicated that he would guess approximately 40% for the species installed and 5% based on the height. He discussed specifics but were of smaller size. He stated the success potential of a restoration plan is based on plant size and density.

Mrs. Ustin stated 5% is too low. All trees they planted were from the list that was given and natives. She asked about the value of replanting.

Mr. Kelly discussed the regulation, the protected area and the restoration value.

Mr. Lewi instructed Mrs. Ustin to work with staff to have an agreement to meet the intent of the restoration.

Mr. Davis questioned whether the homeowner would follow through with the approved work. He agreed but suggested the Commission might want to Revise the Order.

Mr. Kelly discussed the Commission's role is to Affirm, Revise or Withdraw the Order. The Commission can wait until the plants reach the approved size and/or ask for a bond to release the Order.

Mr. Davis asked Mr. Hartshorne for his thoughts about allowing the plants to last 1 or 2 seasons.

Mr. Hartshorne stated that he somewhat agrees but that he would like the erosion issues to be addressed on the property.

Damon Ustin stated there are no streams at the moment.

Mrs. Ustin stated those were created by her when planting the trees in April. She wanted to make sure the plants did not drown, so they created the ditch.

Mr. Hartshorne wants to see a plan to address the ditch because the work causes the erosion.

Mr. Lewi asked the Commission if they should Affirm the Order until the plantings meet the scope, size and location prior to the release of the Order.

Mr. Davis agreed. He stated the Ustin's have made a good start and suggested they keep the lines of communication open. He indicated that appreciates the invasive control.

Ms. McDowell agreed with the plan. She noted concern with the mile a minute, phragmites and other invasives.

Mrs. Ustin stated they will use Rodeo as agreed to with Mr. Hartshorne. She discussed removal of the plantings .

Mr. Hartshorne stated that Rodeo is a wetland approved herbicide. He talked about the invasive list and restoration of the trenches.

Mr. Kelly stated that to address the erosion, the Commission would have to Revise the Order.

Mr. Lewi and Mr. Davis suggested that the erosion should be dealt with by staff.

Motion to Affirm the Cease & Correct Order until the plantings meet the size, scope and location of the approved plan.

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| Motion: | Lewi | Second: | Ryll |
| Ayes: | Lewi, Ryll, Davis, McDowell | | |
| Nayes: | None | Abstentions: | None |
| | | | Vote: 4:0:0 |

The June 17, 2024 Show Cause Hearing of the Westport Conservation Commission adjourned at 3:40 p.m.

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| Motion: | Ryll | Second: | Lewi |
| Ayes: | Ryll, Lewi, Davis, McDowell | | |
| Nayes: | None | Abstentions: | None |
| | | | Vote: 4:0:0 |