

James Lucas
2 Indian Hill Road
Wilton CT, 06897

March 18, 2024

Inland Wetlands Commission
Wilton Town Hall
238 Danbury Road
Wilton, CT 06897

Re: The Honorable Mr. Kelly's letter to the commission dated March 18, 2024

To the Commission:

Since we have already established that Mr. Kelly is not a registered engineer his comments and or opinions on engineers in general and engineering details concerning the Old Driftway LLC application and any other IWC applications either in Wilton or other towns, need to be taken in that context.

Mr. Kelly claims that Mr. Trinkaus's opinion that one should not build a driveway through the vernal pool and wetlands covered in this application due to the "significant negative impacts" it will cause does not meet the "substantial evidence test" is preposterous! Common sense tells you that Cutting down and removing the root balls of five mature trees in and around the immediate vicinity of the vernal pool and another 10 mature trees in the immediate area will by this action alone have a significant negative impact. Removing these trees will raise the temperature of the pool, increase evaporation and reduce nutrient inputs causing long term damage to a very fragile ecosystem. Running heavy machinery right in the vicinity of the vernal pool will have negative impacts, possibly long lasting. The digging and fill of material for the permeable paving and culverts all have the potential of causing severe and permanent damage. The permeable paving will also not remove the pollutants as discussed, many, many times. Whose opinion has the experience and knowledge to back it up? Certainly not Mr. Kelly's.

The Garden Homes Management Corp. v. Westport Planning and Zoning Commission was about an affordable housing project that the town of Westport did not want. What Mr. Kelly is trying to insinuate about this case is not true. The underground infiltration galleries were outside of the "Waterway Protection Line" defined by the Westport Waterway Protection Line Ordinance which is included in this letter. Double ring test infiltration tests (vertical) were completed where the underground galleries were to be located and they do have access for maintenance. The project ultimately was approved and built.

Lastly, the commission can absolutely deny this application without it being considered a “taking”. Mr. Kelly is wrong here as well and all the court cases he cites concern the discontinuance or abandonment of actual roads that had already existed. His own title search proves that the old drift way was never a public highway or town road. The applicant purchased a land locked piece of property at a land locked price. Also, according to our legal counsel Mr. Kelly has not presented a very strong case for any right of way to Mountain Road either which we are prepared to pursue further when the time comes.

Sincerely,

Jim Lucas
2 Indian Hill Road
Wilton CT



TOWN OF WESTPORT WATERWAY PROTECTION LINE ORDINANCE (WPLO)

WESTPORT CODE OF ORDINANCES, ARTICLE IV.

SEC. 30-80. **DEFINITIONS**

WATERWAY MEANS ANY RIVER, STREAM, BROOK, WATERCOURSE OR TRIBUTARY, BOTH FLUVIAL AND TIDAL, INCLUDING ANY CONTIGUOUS BACKWATER, POND OR OTHER BODY OF WATER OR ANY FLOODPLAIN, SWAMP, MARSH, BOG, OR OTHER WETLANDS.

WATERWAY PROTECTION LINES MEANS THOSE LINES DEFINING THE LIMITS OF A WATERWAY BETWEEN WHICH NO PERSON SHALL CARRY ON, OR PERMIT TO BE CARRIED ON, AN ACTIVITY EXCEPT AS MAY BE PERMITTED BY THIS ARTICLE.

WESTPORT CODE OF ORDINANCES, ARTICLE IV.

SEC. 30-87. **ESTABLISHMENT AND DETERMINATION**

WATERWAY PROTECTION LINES ARE HEREBY ESTABLISHED ON BOTH SIDES OF ALL WATERWAYS IN THE TOWN OF WESTPORT AND ARE SET AT THE TWENTY-FIVE-YEAR-STORM FLOOD ELEVATION (MEAN SEA LEVEL DATUM) ALONG EACH EDGE OF THE WATERWAY, EXCEPT THAT THE CLEAR HORIZONTAL DISTANCE FROM THE TWENTY-FIVE-YEAR-STORM FLOOD ELEVATION OF ANY SUCH WATERWAY SHALL BE FIFTEEN (15) ADDITIONAL FEET ON EACH SIDE OF THE FOLLOWING WATERWAYS:

- | | | | |
|-----|---------------------------------------|------|---------------------|
| (1) | SAUGATUCK RIVER | (7) | SASCO BROOK |
| (2) | WEST BRANCH OF THE
SAUGATUCK RIVER | (8) | INDIAN RIVER |
| (3) | ASPETUCK RIVER | (9) | POPLAR PLAINS BROOK |
| (4) | STONY BROOK | (10) | PUSSY WILLOW BROOK |
| (5) | MUDDY BROOK | (11) | SILVER BROOK |
| (6) | DEADMAN'S BROOK | (12) | WILLOW BROOK |
| | | (13) | NEW CREEK |

FLUVIAL (NON-TIDAL) PORTION OF WATERWAY

THE WPLO BOUNDARY ON A NON-TIDAL, NAMED WATERWAY IS LOCATED 15' FROM THE 25 YEAR FLOOD ELEVATION OR, 15' FROM THE WETLAND BOUNDARY, WHICHEVER OF THE TWO IS GREATER.
FOR UNNAMED WATERWAYS, THE WPLO BOUNDARY IS 15' MEASURED HORIZONTALLY FROM THE TOP OF THE BANK, OR 15' FROM THE SURROUNDING INLAND WETLAND BOUNDARY, IF PRESENT.

TIDAL PORTION OF WATERWAY

THE WPLO BOUNDARY ON A TIDAL, NAMED WATERWAY IS LOCATED 15' FROM THE 25 YEAR FLOOD ELEVATION WHICH IS ELEVATION 9' MEAN SEA LEVEL (NGVD 1988) OR, 15' FROM THE TIDAL WETLAND BOUNDARY, WHICHEVER OF THE TWO IS GREATER.
FOR UNNAMED WATERWAYS, THE WPLO IS LOCATED 15' MEASURED HORIZONTALLY, FROM THE TOP OF THE BANK, OR 15' FROM THE SURROUNDING TIDAL WETLAND BOUNDARY, IF PRESENT.

PLEASE NOTE: INLAND WETLANDS ARE DEFINED BY SOIL TYPE: POORLY DRAINED, VERY POORLY DRAINED OR FLOODPLAIN.

TIDAL WETLANDS ARE DEFINED BY TIDAL WETLAND VEGETATION.

THE WPLO HOLDS JURISDICTION OVER THE WATERWAYS OF WESTPORT ONLY;

THE CT DEEP HOLDS JURISDICTION OVER LONG ISLAND SOUND.