KELLY

LAW OFFICES

March 18, 2024

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

Sent via email to elizabeth.larkin@wiltonct.org and mike.conklin@wiltonct.org

Re: Old Driftway LLC, application for permit, Mountain Road

To the Commission,

This letter supports my comments made at the public hearing March 14th:

The right to cut tree roots. The common law of Connecticut has been unchanged since at least 1971, a case which is still cited today: "*Where trees are located on the property of one party and their roots or branches extend onto the property of a second party, the latter may lop off the branches or roots up to the line of his land.* Robinson v. Clapp, 65 Conn. 365, 377, 32 A. 939." McCrann v. Town Plan and Zoning Commission of Town of Bloomfield, 282 A.2d 900, 161 Conn. 65 (Conn. 1971)

No one, including the applicant, can guarantee a tree will survive. Look at what has happened to the American chestnut, fir and ash trees in Connecticut. Nonetheless, the applicant will exercise reasonable caution in the instances where it must remove roots of trees on neighboring properties.

Why Mr. Trinkaus is not to be believed. Here are just 3 of the most egregious things:
a.He claims he would not design a driveway due to the "significant negative impact" to the vernal pool. This claim is mere speculation, a perfect example of what does not meet the substantial evidence test. It also fails to assist the Commission who can not deny the applicant access without it being considered a "taking" of the applicant's land which would entitle him to damages. [1]

[1] A landowner who, as a result of governmental action, suffers a total and permanent loss of his right of access to the public way adjacent to his land and to the system of public roads is entitled to recover damages. Total deprivation of his right to access constitutes a taking of his property, an inverse condemnation of his property rights, in violation of article first, § 11 of the constitution of Connecticut and of the fifth amendment to the United States constitution. 4 Laurel, Inc. v. State, 169 Conn. 195, 201, 362 A.2d 1383 (1975); Cone v. Waterford, 158 Conn. 276, 279-80, 259 A.2d 615 (1969); Park City Yacht Club v. Bridgeport, supra, 373, 82 A. 1035; Cullen v. New York, N.H. & H.R. Co., supra, 224-26, 33 A. 910. Luf v. Town of Southbury, 449 A.2d 1001, 188 Conn. 336 (Conn. 1982)

-He continues to offer a legal opinion regarding rights to cut tree roots. In his letter today he bases this on his "degree in forestry management" (which he obtained in 1980 from a school in New Hampshire).

-In response to our cross-examination that his testimony (disputing the applicant's soil tests proving Class B soils) of the soil class as C and D are pure speculation, without testing ("you don't have to test the soils to know what they are.") his letter is silent.

-Other commissions have found Mr. Trinkaus not to be credible, and the Superior Court has upheld this finding. Garden Homes Management Corp. v. Westport Planning & Zoning Commission, LNDCV166067291S (Conn. Super. May 25, 2017). [Mr. Trinkaus proposed covering 18,000sf next to a tidal marsh wetland, or 92.4% of the upland area, with impervious surface, including buildings 45' and 65' away, all sloping 8-15% toward the marsh. All the surface water runoff was going into a 12,500 gallon container (4 underground infiltration galleries inaccessible for maintenance) within 70' of tidal wetlands. Representing the applicant, Mr. Trinkaus, stated that the project would have no effect on the wetlands. (ROR, Item Tr. 2, pp. 52-53.) The court noted the commission is not required to believe Mr. Trinkaus. See Kaufman v. Zoning Commission, 232 Conn. 122, 156, 653 A.2d 798 (1995) and held "the commission has sustained its burden to show evidence in the record to support its decision not to believe Trinkaus. See id., 157. Garden Homes Management Corp. v. Westport Planning & Zoning Commission, LNDCV166067291S (Conn. Super. May 25, 2017)

Respectfully submitted,

James G. Kelly

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