

14 December 2023
To the Wilton Inland Wetlands Commission:
Regarding:
WET#2905(S) Old Driftway, LLC
0 Mountain Road (Map#25 Lot#2)

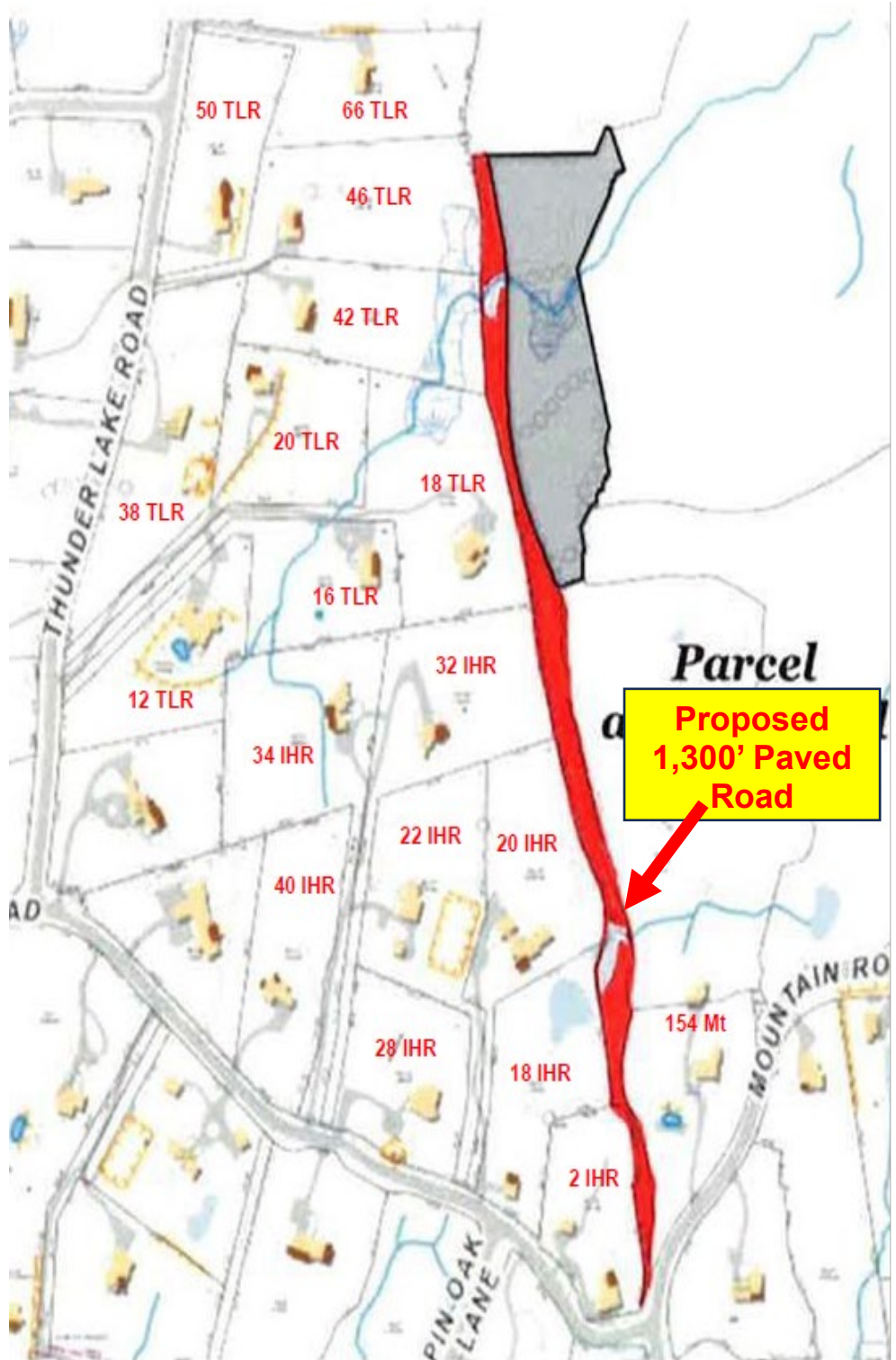
Who We Are

I am Bo Mitchell, 20 Indian Hill Road in Wilton.

Tonight, I speak for landowners who are nearby and abut Old Driftway, also known as 0 Mountain Road. Old Driftway is 1,300 feet long.

These landowners (families) include:

- The Lucas family at #2 Indian Hill Road.
- The Tupper family at #154 Mountain Road
- The Mor family at #18 Indian Hill Road
- The Mitchell family at #20 Indian Hill Road
- The O'Grady family at #22 Indian Hill Road
- And the Browne family at #28 Indian Hill Road



Our Goal

Having reviewed applicant's (the developer's) declaration regarding what he will do with this property and Old Driftway, we abutting landowners petition the Inland Wetlands Commission (IWC) to:

1. Deny the developer's application as currently submitted as defective.
2. Deny the developer's application overall in whole or in part.

We Submit That These Questions Must Be Addressed by IWC Re the Application

- 1) **"If it isn't in writing, it never happened."** This has been Town Council's admonition to commissions in Wilton for decades.
 - a) At its meeting on 12 October 2023, IWC required Staff secure from Town Council his examination and approval of property rights and authority for the developer plus adjacent property owners. We families do not see said examination or approval in writing. "If it isn't in writing, it never happened." How can this application be considered without a written examination and approval as demanded by IWC?

Thus, isn't the developer's application defective given this absence?

- b) If it's true that Town Council expressed his opinion regarding property rights on Old Driftway only verbally by phone call, doesn't a verbal alert make this application defective? "If it isn't in writing, it never happened."
- c) Is it true that the developer initiated to petition Town Council in person to secure Town Council's opinion? If so, was any party in opposition present during this petition? Isn't this form of petition unprecedented? Is it legal? Ethical? Professional? "If it isn't in writing, it never happened."
- d) The application dated 24 October 2023 leaves unchecked box G **"Names and addresses of adjoining property owners."** IWC regulations 7.4: **"All applicants shall provide the following information."** 7.4f: **"Names and addresses of adjacent property owners has shown in the records of the Tax Assessor, Town of Wilton."**

Thus, isn't the developer's application defective given these absences?

- e) Regarding IWC regulation 7.4f **"...these names (of adjoining property owners) shall also be shown on the site plan."** We families find no identification as required in any of the developer's paperwork.

Thus, isn't the developer's application defective given these absences?

- f) The application dated 24 October 2023 checks box M: **"Envelopes addressed to adjacent neighbors, the applicant, and/or agent with certified postage and no return address."** None of the families have been so notified.

Thus, isn't the developer's application defective given these absences?

2) **Ownership:** Underlying all of these objections is the determination of who owns Old Driftway—the town, the property owners, the developer or a combination of these.

a) IWC might say “We’re not in the real estate business.” Yet, don’t IWCs regulations, its application form, and the Commission’s demand at its 12 October 2023 meeting that property rights be confirmed by Town Council demonstrate conclusively that the IWC demands due diligence regarding property ownership? Thus, IWC has opened wide this door, as indeed it must.

b) Where is the title search for Old Driftway? For the property itself? IWC’s Staff Report of 12 September 2023: **“Failure to produce the written permission could result in the Commission denying a portion or all of the application.”**

Thus, isn’t the developer’s application defective given these absences?

c) The Town Engineer’s report of 12 September 2023:

- **“...the proposed construction of the driveway...is not feasible without obtaining temporary construction easements, as well as permanent grading easements for the neighboring properties.”**
- **“With adjacent owners permission, locate trees adjacent to right of way and have a tree professional review proposed activity and its potential effects on the trees.”**
- **“The stormwater runoff from the lower portion of the proposed driveway must be captured and attenuated. There shall be no increase in runoff to Mountain Road and/or other neighboring properties for the proposed condition.”**
- **“Discharge pipe shall not drain to the surface and potentially flow into the roadway or onto neighboring properties. Engineer to evaluate this additional discharge flow and design infiltration units accordingly.”**

Regarding permissions from the families who are near or abut Old Driftway, the developer has not contacted said families.

Absent said easements or permissions, isn’t developer’s application defective?

d) The families assert that Old Driftway doesn’t exist as a right of way for the developer. The families assert that the developer will have to pave his road across the families’ properties.

Absent a clear declaration of property ownership, isn’t developer’s application defective?

e) An egregious demonstration of how lack of due diligence can put the Town of Wilton at tremendous risk occurred this year in Fairfield, CT. An absent owner of a vacant lot in that town discovered that an applicant had built a \$1.5 million house on his property without the owner’s knowledge or permission. Town authorities had not contacted said owner or completed their due diligence. This case will cost the taxpayers of Fairfield considerable time and money.

Absent a clear declaration of property ownership, isn’t developer’s application defective?

3) **Wilton Conservation Commission** was established pursuant to Section 7-131a of the Connecticut General Statutes to organize, maintain, and direct conservation activities for the Town of Wilton. Regarding developer's application, **"The Conservation Commission strongly objects to any direct impacts to the vernal pool."** Thus, isn't the developer's application defective given this advice?

4) **State of Connecticut DEEP:** The State Department of Energy and Environmental Protection's analysis of 26 April 2023 on this road paving:

a) Identifies the Eastern Box Turtle and the Ground Beetle as **"State-listed species (RCSA Sec. 26-306) that are nearby that may be affected by project activities."** DEEP's 1,201-word, three-page analysis of this road paving: **"The greatest threat to this species is habitat loss, fragmentation, and degradation due to development. This species (Eastern Box Turtle) is very sensitive to adult mortality because of late maturity (10 years old) and long life span (50-100years)."** DEEP goes on to recommend seven strict practices, **"To prevent turtle access and entry into your work zone between April 1- November 1:"**



b) DEEP goes on to alert developer that this **"determination MAY NOT be utilized to fulfill the Endangered and Threatened Species requirements for state-issued permit applications, licenses, registration submissions, and authorizations. If, at a later date, it is determined that the project will require a state permit, license, registration, or authorization, or, your project now utilizes state funding or includes state agency action, you will need to re-submit a Request for Review and answer "Yes" to the appropriate question.**

c) DEEP Analysis: **This information is not necessarily the result of comprehensive or site-specific field investigations. Current research projects and new contributors continue to identify additional populations of species and locations of habitats of concern, as well as enhance existing data."** **"Please re-submit an updated Request for Review if the project's scope of work and/or timeframe changes."**

Absent changes to the developer's road paving plan to protect State-listed species (RCSA Sec. 26-306), shouldn't the current application be denied?

Given the deleterious impact on State-listed species, shouldn't this application overall be denied in whole and in part?

- 5) **Trees I:** The Town Engineer reports (12 September 2023) that all trees shall be identified on site plans. **“Depict which trees are proposed for removal, and obtain preliminary approval by the Town of Wilton Tree Warden.” “With adjacent owners permission, locate trees adjacent to right of way and have a tree professional review proposed activity and its potential effects on the trees.”** Is the tree clearcutting at developer’s property at 36 Signal Hill Rd., Wilton what we families can expect on Old Driftway and the site proper?

Thus, isn’t the developer’s application defective absent these tree depictions and permissions?

- 6) **Trees II:** The biologist used by developer is not a forester. We believe that many more trees will be impacted on Old Driftway and that most will die. The developer has also stated that he will clear-cut his three acres as he has already done at his Signal Hill Road property in Wilton. We do not believe this is in compliance with the spirit or the letter of the law with this Commission, the Tree Warden and Wilton’s Conservation Commission.

Thus, isn’t the developer’s application defective given these shortfalls?

- 7) **Culverts & Bridges:** We do not see a way to transverse the vernal pool without destroying it. Some have discussed culverts in the vernal pool:

- a) Standard culverts will not bear the load of the Georgetown Fire Districts trucks. Will reinforced concrete culverts that might bear that weight ensure the complete desecration of the vernal pool? IWC’s Staff Report of 11 October 2023: **“The proposal to construct a driveway crossing through a vernal pool using the double box culverts as shown on the project plans will have a direct physical negative impact on the vernal pool. A portion of this critical ecological habitat will be permanently filled with the box culverts, associated fill and driveway material.”**



Developer’s Property at 36 Signal Hill Rd, Wilton



Reinforced Concrete Culvert

- b) IWC's Staff Report of 11 October 2023: **"The applicant should thoroughly explore feasible and prudent alternatives to the proposed activity including but not limited to; the construction of a bridge to span the vernal pool and, acquiring an easement on adjacent land to completely avoid the vernal pool."**
- c) IWC's Staff Report of 11 October 2023: **"Avoidance is the best measure to protect vernal pools."**



Thus, isn't the developer's application defective given these shortfalls?

- 8) **Fire:** The Georgetown Fire District's Fire Marshal reports that whatever structure transverses the vernal pond will have challenges to carry GFD's 31-ton fire truck. As demanded by the Town Engineer in his analysis of 12 September 2023, isn't it mandatory that the Wilton Fire Department's Fire Marshal also be consulted given that both Georgetown and Wilton's Fire departments are co-Authorities



Georgetown FD 31-ton Tanker Truck

Having Jurisdiction under law potentially serving this property? Given these weight specifications, won't any structure transversing the vernal pool have to be of such length, width and strength that it will simply destroy the vernal pool?

Thus, isn't the developer's application defective given these determinations?

- 9) **Sight Lines:** The Town Engineer in his analysis of 12 September 2023 reports that the sight lines for developer's paved road at it intersects Mountain Road **"...shall exceed the intersection sight distance for the posted 25 mph speed limit...starting point for sight line shall be 10 feet back from the edge of the road."** Where is the assessment of the Wilton Police Department? WPD is the sole, statutory Traffic Authority in Wilton.



Without an approval from the Wilton Police Commission, isn't the developer's application defective?

- 10) **Stormwater:** IWC's Staff Report of 11 October 2023: **"It is unclear how the stormwater runoff from the finished driveway will be managed. Catch basins are shown in certain areas but it is unclear how the stormwater from those areas could impact the wetlands/watercourses. The applicant may wish to clarify the details of the stormwater management on the proposed driveway. Who will be responsible for maintaining the drainage associated with the proposed driveway? Is there a stormwater drainage maintenance plan for the driveway improvements? How will that be codified so that maintenance occurs in the future?"**

Thus, isn't the developer's application defective given these determinations?

- 11) **Choke Point:** How wide is the choke point of Old Driftway at Mountain Road? The Town Engineer concludes it's 8-feet wide. The Environmental Director sees it as 10-feet wide. The families believe this choke point will not permit construction of the proposed roadway without the permission of the adjacent landowners. The families agree with IWC's Staff Report of 12 September 2023 that **"applicant should submit the written approval by the appropriate landowner(s)."** That **"Failure to produce the written permission could result in the Commission denying a portion of or all of the application."** "If it isn't in writing, it never happened." Be advised that the families have not been asked for their written approval.



Thus, isn't the developer's application defective absent these approvals?

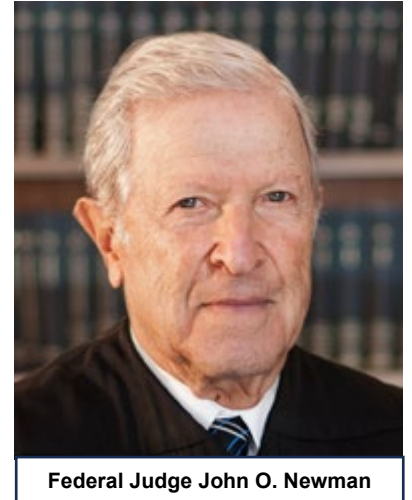
- 12) **Alternatives:** IWC regulations 10.4: **"... a permit shall not be issued unless the Commission finds on the basis of the record that the proposed alteration or destruction of wetlands or watercourses is unavoidable and that a feasible and prudent alternative to the alteration and destruction of wetlands or watercourses does not exist...This finding and the reasons therefore shall be stated in the record of the decision by the Commission in writing. A conclusion that a feasible and prudent alternatives does not exist does not create a presumption that a permit should be issued. The applicant has the burden of demonstrating that his/her application is consistent with the purposes and policies of these regulations and sections 22a-36 to 22a-45, inclusive, of the Connecticut General Statutes."** The families see no alternatives proposed by the developer to paving Old Driftway. Has the developer offered to negotiate an easement from nearby or abutting property owners away from Old Driftway? Has the developer petitioned the State of Connecticut for an easement to build a driveway across the State's land thereby completely avoiding the paving of Old Driftway as discussed in IWC's Staff Report of 11 October 2023. "If it isn't in writing, it never happened."

Without the required exploration of alternatives, isn't the developer's application defective?

- 13) **Environmental Impact Statement (EIS):** The National Environmental Policy Act (NEPA) of 1970 requires an Environmental Impact Statement.

- a) While NEPA is aimed at federally-funded projects, the statute's mission is universal: **"...encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation..."**
- b) NEPA was the first-ever national environmental law in American history. Mandating an EIS was Congress's method of forcing developers to fully explore any road building's impact on the local environment.

- c) Ironically, the property on and adjacent to Old Driftway is a Connecticut State taking for a four-leaf interchange for Super 7, the U.S. superhighway as contemplated in the 1950s-1970s by the state and federal governments.
- d) The reason this 175-acre taking is undeveloped: Wilton citizens in 1972 went to federal court in Hartford to petition a federal judge to force the state and federal governments to prepare and produce an EIS compliant with the NEPA law. Until such EIS was produced, the court stopped all construction of Super 7 from Norwalk through Wilton to Danbury.
- e) Federal Judge John O. Newman declared that **“the plaintiffs have demonstrated, and the defendants have conceded, that in fact the proposed new expressway will have a major impact on the environment. It could hardly be otherwise when it is proposed to run a four-lane expressway through miles of virgin woods and wetlands.”**
- f) We families that are near and abut Old Driftway petition IWC to require preparation of a comprehensive and competent EIS written to current standards. We believe this is required because this road paving “will have a major impact on the environment. It could hardly be otherwise when it is proposed to run...” a paved road through 1,300 feet of virgin woods, wetlands and a vernal pool.



Federal Judge John O. Newman

Without an Environmental Impact Statement, isn't the developer's application defective?

- 14) **Third-Party Consultant:** The families formally request that these questions we submit today plus the expert environmental analysis by Trinkaus Engineering, LLC dated 13 December 2023 be reviewed by IWC's third-party consultant.
- 15) **Avoidance:** IWC's Staff Analysis of 11 October 2023: **“Avoidance is the best measure to protect the vernal pools.”**

Thus, isn't the developer's application defective in whole and in part?

- 16) **IWC's Mission:** IWC regulations 1.1 **“The inland wetlands and watercourses of the Town of Wilton are an indispensable, irreplaceable, and fragile natural resource with which the citizens of the Town have been endowed.”**

Given Inland Wetland Commission's crystal-clear mission statement, we abutting landowners petition the Inland Wetlands Commission to deny the developer's application in part and in whole.

Thanks for your attention.