

TO: Wilton Water Pollution Control Authority

FROM: Baywing, LLC, applicant for 19 Cannon Road

DATE: January 18, 2023

RE: Final comments re: WPCA'S January 12, 2023 discussion and proposed resolution

Baywing, LLC appreciates the hearing record being kept open because: (1) the applicant went into the January 12, 2023 hearing with the understanding and expectation that the technical issues had been resolved, or could be through conditions of approval; (2) we were surprised by the concerns raised by Town Staff; and (3) in the discussion of those concerns, several misstatements and misunderstandings occurred that require correction.

In this final memo we will address these concerns, aiming to dissuade the WPCA from denial.

1. Town vs. applicant ownership of force main and pump stations. Every sewer system requires a written understanding regarding maintenance and responsibility. Town staff is correct that before Baywing begins to pump actual sewage into the Town system in Route 7, a written agreement acceptable to all parties and covering all reasonably anticipated situations should be executed and recorded so it “runs with the land,” meaning it will be binding if any part of the land or system is transferred. The Town of Wilton and the WPCA will be fully protected if it imposes, as a condition of approval of Baywing’s pending application, a requirement that the sewer extension capacity allocation and permission to connect will be subject to final engineering and construction drawings and a final written agreement regarding construction, post-construction, on-going maintenance and public safety matters. Attorney Gelderman agreed on January 12 that such a condition is routine and will protect the Town. If the agreement is not finalized, then Baywing cannot proceed with the sewer connection. The Town and WPCA remain in control.

It is also important to recognize, as Mr. Smeriglio’s January 10, 2023 comments state, that a final sewer agreement depends in part on approval of other land use agencies, most importantly the Wetlands Commission and Planning and Zoning Commission, such that a final agreement covering all issues cannot be drafted unless and until the final site plan is approved by all agencies. In addition, the Wright-Pierce January 6, 2023 letter expressly states (Comment 7) that ownership and maintenance responsibilities can be handled by condition of approval.

To try one more time to reach agreement, at this time the applicant proposes and agrees to the following condition of approval:

“Baywing, LLC, or its successor, will own and maintain the proposed pump station and force main, and will comply with an approved maintenance plan, with a performance bond or other financial guarantee of ongoing funding for maintenance. At any time, the town may request that ownership and/or maintenance responsibility be transferred to the Town or its designated entity, with appropriate financial or other guarantees. If, at any future time, a property owner, abutting east of the Cannondale railroad tracks seeks to tie into the sewer installed east of the tracks and connecting to Route 7, the Town may request transfer of ownership and maintenance to the Town, and Baywing (or successor) will transfer as requested.”

Baywing suggests the above condition, *but it will accept whatever ownership and maintenance program the WPCA may require as part of an approval.*

What the WPCA may not do legally is deny the pending application by declining to pick any option. That would be an illegal abdication of the WPCA’s responsibility to manage the sewer system. We note that in the Smeriglio’s February–March 2022 comments (Sept. 1, 2022 application, Tab 7), and in the 2011 extension approval (Tab 8), ownership and maintenance issues were not a problem.

2. Notification of and response to a system performance concern is a non-issue. Town staff on January 12 raised a concern about a restriction about maintenance or repair if any part of the system is privately owned. First, a new system, properly maintained, should rarely have a problem. This said, the statewide Call Before You Dig program, and a large group of private contractors, exist to ensure that privately-owned utilities statewide are monitored and responded to when needed. *See materials at Tab A. Baywing will accept an approval condition of enrollment in CBYD, and retention of a private sewer monitoring company acceptable to the Town.* Also, notification was not an issue in March 2022, or in 2011 when the WPCA approved an extension.

3. System Capacity. Town staff, Wright-Pierce, (Comment 6), the applicant’s professional engineers, and the City of Norwalk all agree that the Town’s existing system has ample capacity for the proposed sewer allocation. *The WPCA may not overrule the consensus of the engineers.*

4. “90% capacity” is misleading and not a basis for denial. Mr. Smeriglio states that the Route 7 sewer will be “at 90%” if the Baywing application is approved. This is misleading. It assumes that the assisted living facility will operate at its full *design* capacity, even though, as it exists today and based on current full occupancy, it only discharges about 64% of its allowed 180 gallons per minute. 90 percent is a theoretical calculation, not actual flow.

The WPCA has not adopted a standard that “90% full” (even if that were to occur) creates an engineering risk. The WPCA’s Rules and Regulations contain no standard, and the

WPCA cannot create a new one now, at the end of the hearing. Norwalk identifies 90% as a point to trigger system review, not denial of applications. Also, Baywing has been discussing the sewer connection with Town Staff since late 2021, and at no time before January 12, 2023 was 90% raised as a concern. In fact, in February-March 2022, Mr. Smeriglio issued written comments on this proposal and a 90% cap was not stated as a concern.

The WPCA cannot move the goalposts by now imposing a 90% design cap.

5. All proposed conditions are accepted. Baywing has accepted/agreed to:

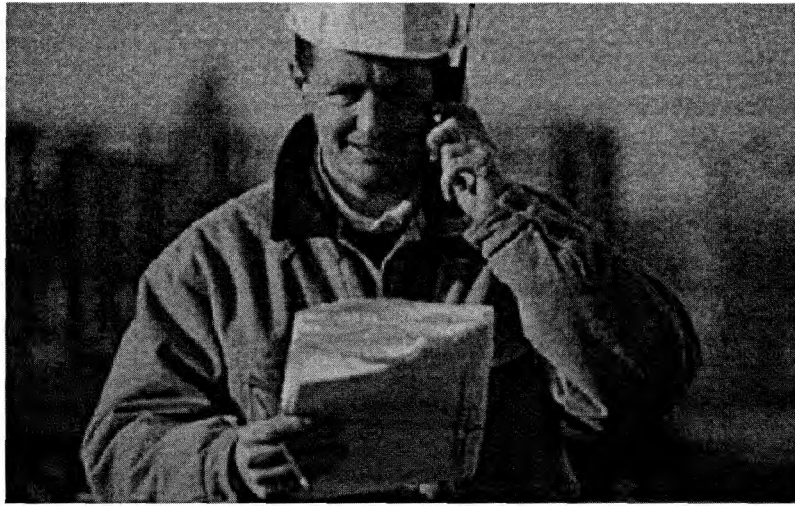
- All General Sanitary Sewer comments;
- Smeriglio comments 1a, 1c, and 2a through 2h; and
- Wright-Pierce comments 1-5 and 7.

Smeriglio comment 1.b regarding ownership is addressed above, and Smeriglio 3/Wright-Pierce 6 are addressed above. Thus, all comments and conditions have been accepted.

6. Equity. Chair Vanderslice raised a concern about “equity” for other, potential future users if Baywing’s application is approved. However, it would be inequitable, and illegal, for the WPCA to essentially impose a moratorium on any new connection with the existing Route 7 sewer line running at 53%, and hold back until the WPCA finds a future land use and/or property owner that it likes better. To hold back capacity now would be based on speculation, and would appear to be the WPCA controlling land use through the sewer system. Sewers are public utilities, and Baywing is an applicant with a proposal for which capacity exists.

7. Climate change is irrelevant. The effects of climate change and variable rainfall amounts are speculative, and no basis for denying this application.

8. Conclusion. Because capacity exists, and Baywing has offered conditions of approval regarding ownership and maintenance, Baywing’s application will not have any adverse impact on the sewer system.



Before You Dig, Inc. (CBYD) is a state regulated, non-profit organization comprised of all public utilities and municipalities in Connecticut. Public Act No. 87-71 and Section 16-345-3 of the Regulations of Connecticut State Agencies requires all owners and operators of underground utility facilities to register with the Call Before You Dig central clearinghouse.

The purpose of CBYD is to function as a statewide, one-call notification system that provides excavators and the general public with the ability to inform multiple owners and operators of underground facilities of proposed excavation, demolition or blasting. This Call Before You Dig Membership Package includes:

Please contact inquiries@cbyd.com (<mailto:inquiries@cbyd.com>) or Member Services Manager Teresa Teneyck: Teresa.Teneyck@pelicancorp.com (<mailto:Teresa.Teneyck@pelicancorp.com>) for new membership or updates to existing membership.

Registration Form

Provides us with your company's contact information, method of receiving notifications from CBYD and the number of miles of underground facilities that you are

Underground – Locating” for other private locators in your area.



underground solutions
(/all-contact-categories/private

A C S Underground Solutions ...

203-544-7190

www.acsunderground.com (http://w...



A E I Subsurface Investigatio...

401 289 2400

www.aeisubsurface.com (http://ww...



Accumark Subsurface Utility ...

www.accumark.us (http://www.accumark.us)

(/all contact



AcuMark Utility Locating, LLC...

860-872-4638

www.acumarkllc.com (http://www.acumarkllc.com)

(/all contact



Bullseye Underground Utility ...

800-337-1399

www.bullseyelocating.com (http://w...

(/all contact

*Examples
of private
Contractors
to handle
notifications*



FREQUENTLY ASKED QUESTIONS

Frequently Asked Questions

Welcome to our Frequently Asked Questions.

If you don't find what you're looking for, [please contact us \(/contact\)](#).

GENERAL SERVICE INFORMATION

Who must notify Call Before You Dig?

If I am hand digging, am I required to notify CBYD?

If I hire someone to excavate, do I have to notify CBYD?

Frequently Asked Questions

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GENERAL SERVICE INFORMATION

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If I hire someone to excavate, do I have to notify CBYD?

How many days is my location request good for?

Thirty (30) days from the day notice is provided, not the start date of the excavation. The ticket expiration date can also be found on the confirmation sheet emailed to you. Remember to allow two full working days for renewed tickets. Renew the ticket before the expiration to not lose any work days.

What is Call Before You Dig?

When do you need a private utility locator?

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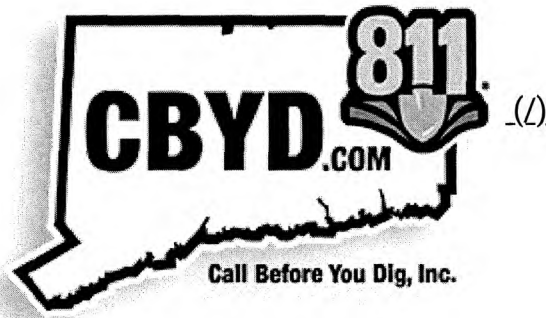
When do you need a private utility locator?

**What holiday closings does the CBYD call
center observe?**

**How much notice is required for a Routine
request?**

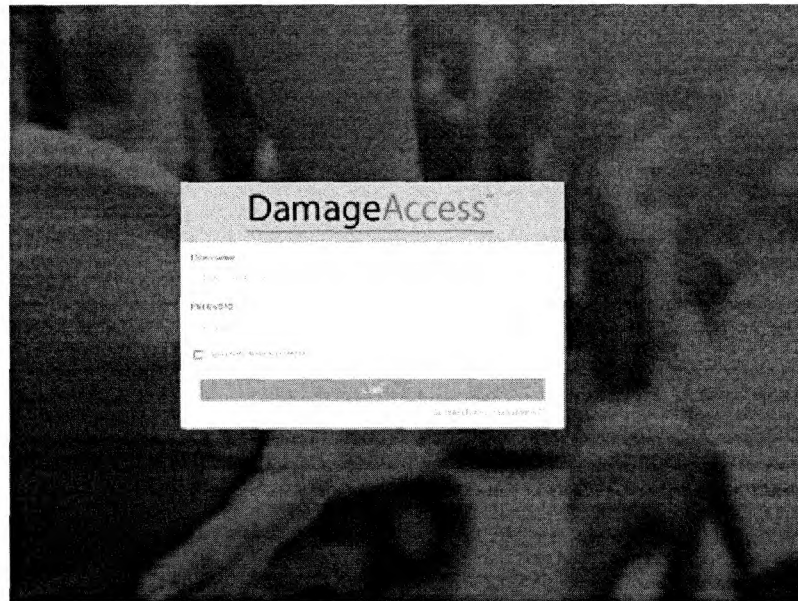
A minimum of two full working days advanced notice is required. Excluding day of call, weekends and observed holidays.

What is an Emergency ticket?



DAMAGE REPORTING TOOL

Damage and Violation Reporting Tool



DamageAccess is the web based tool that allows anyone to report both damages to underground utility facilities and violations of safe excavating practices that did not result in asset damage. Each report must be approved by a