NO. HHD LND CV 21 6148307 S	:	SUPERIOR COURT
	:	
SELMA MIRIAM, ET AL.	:	JUDICIAL DISTRICT
	:	OF HARTFORD
v.	:	LAND USE DOCKET
	:	
SUMMIT SAUGATUCK LLC	:	NOVEMBER 10, 2021

DEFENDANT SUMMIT SAUGATUCK LLC'S MEMORANDUM IN SUPPORT OF SUMMARY JUDGMENT

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Pursuant to Practice Book §§ 17-44 et seq., defendant Summit Saugatuck LLC ("Summit") hereby moves for summary judgment on plaintiffs' verified complaint dated September 13, 2021, and Summit's Second, Fourth, and Fifth Special Defenses dated November 10, 2021, and submits this memorandum of law in support. There is no genuine issue of material fact involved in the claims against Summit. As explained below, plaintiffs' claims are precluded as a matter of law, and judgment should enter for Summit.

I. INTRODUCTION AND SUMMARY.

As this Court is aware, Summit Saugatuck, LLC has been pursuing a multi-family residential development on Hiawatha Lane and Hiawatha Lane Extension in Westport, adjacent to the Westport-Norwalk town line, since the early 2000s. In 2003, Summit commenced the purchase, contract to purchase, or option to purchase lots, eventually totaling ten lots on 8.8 acres. Each of these lots contained a single-family home. Aware that deeds to some of the lots, and to some nearby lots, made reference to a "one-family-house" restriction, Summit in 2005 obtained a legal opinion that its lots were not subject to any such restriction because they were not part of, or subject to, a so-called "uniform common plan."

Discussions with the Town of Westport about a sewer extension to serve a multi-family development on Hiawatha Lane began in 2004, and continued in 2007, 2010, and 2014. Formal applications for and hearings on a plan for apartment homes with an affordable housing component began in 2016 and continued through September 2019. These applications resulted, as of early 2021, in five pending court appeals: an administrative appeal involving the sewer extension (in the State Supreme Court); an administrative appeal in this Court from the Westport Planning and Zoning Commission's 2019 denial of zoning approval for multi-family/affordable use; two wetlands appeals stemming from Westport's demand for an additional emergency access on land in Norwalk; and a declaratory judgment action in this Court against Westport and the State Department of Housing (DOH), challenging a § 8-30g moratorium that DOH had granted to Westport in 2019 .

In the Spring of 2021, Summit, the Town, and the Westport Planning and Zoning Commission entered into settlement discussions, and agreed on a reduced development plan, utilizing eight of the ten lots. After lengthy public hearings on proposed settlement terms conducted in May and June 2021 by the Planning and Zoning Commission, the Westport Representative Town Meeting, and the Westport Board of Selectmen acting as the town's Water Pollution Control Authority, this Court on July 19, 2021 approved motions for stipulated judgments settling the zoning and sewer appeals; approved withdrawals of the two Norwalk cases; and confirmed withdrawal of the declaratory judgment action as a condition of the zoning settlement. This Court's approval was issued after notice to the public about the settlement had been published in *Westport News* and *Norwalk Hour,* and a hearing had been held regarding the proposed entry of final judgment, all in compliance with General Statutes § 8-8(n) and Practice Book § 14-7B.

The owners of three lots in the vicinity of Summit's property have now filed a civil action claiming that their lots are part of a uniform common plan that prohibits Summit from constructing or maintaining anything on its properties other than a one-family-house, and that the plaintiffs are entitled to enforce this restriction. In effect, plaintiffs seek to nullify the July 2021 stipulated judgments and settlement approvals. Plaintiffs have requested injunctive relief. However, (1) this new action is an impermissible collateral attack on the final, stipulated judgment issued July 19, 2021; (2) the July 2021 stipulated judgments unequivocally resolved all land use aspects of Summit's proposed development, including claims of flooding and traffic impacts, rendering those claims *res judicata* and precluding the plaintiffs from asserting that the impacts of the approved settlement plan will cause irreparable harm, which they must prove to obtain any injunction; (3) the recorded deeds, subdivision maps, and conveyance history of the properties involved demonstrate that no enforceable common plan ever came into existence and even if one did in the 1950s it was dismantled by 1960, and has since been abandoned; and (4) nothing in the development plan approved in July 2021 restricts or impacts the plaintiffs' use of Hiawatha Lane or Extension for access. Thus, each claim is precluded as a matter of law.

II. UNDISPUTED MATERIAL FACTS.

All facts below are documented by public records in the attached Appendix; the attached Affidavit of professional title searcher Andrew Sherriff, of Sound Title, LLC; or subject to judicial notice. All counsel have agreed that copies of recorded deeds and maps may be used instead of certified copies. The Appendix to this memorandum is divided into four parts: (1) an illustrative color-coded and labeled map, intended only to show relative locations; (2) *Abel v. Johnson*, an August 2021 Connecticut Supreme Court decision on restrictive covenants; (3) an affidavit, report, and exhibits prepared by title searcher Andrew Sherriff, (labeled TR-1 through TR-59); and (4) other background documents, all public records subject to judicial notice, labeled A1 through A308.

A. History Of The One-Family-Home Restriction On Hiawatha Lane/Extension.

The facts stated in this section are verified by the attached Affidavit of Mr. Sherriff, and the Report, deeds and maps attached thereto.

In 1954, the executors of Estate of E. Louise Bradley recorded a subdivision map, Map 3082, showing 22 lots. (The illustrative map in the Appendix is an overlay of Map 3082.) TR-3. Lots 1 to 10 and 20-22 were in Westport, and Lots 11-19 were in Norwalk. *Id. The subdivision map was not recorded in Norwalk. Id. There were no notes on the recorded subdivision map imposing any use restriction on any of the lots* (TR-6)*, nor was any declaration of restrictions concerning the lots either recorded or referred to on the recorded map.* TR-3 to 6.

In 1955, Gershom Bradley and Jeanette Bradley Hughes, as the administrators of the Estate of E. Louise Bradley, sold Lots 6, 8, 9, 10, 20, 21 and 22, all in Westport, to separate individual purchasers. TR-3. The deeds to each of these seven lots referred to the subdivision map and contained a one-family-house restriction, which stated: "The said premises are conveyed subject to . . . (3) restriction that only a one-family-house shall be erected on said premises, the house or plans for which shall be approved by the Grantors." TR-3.

In 1956, the Westport Probate Court certified that an undivided 1/2 interest in Lots 1, 5, 6, and 7 in Westport, and all of the lots (11 through 19) in Norwalk, had descended to E. Louise

Bradley's two brothers, Gershom Bradley and William Bradley – not Jeanette Bradley Hughes – as her sole heirs-at-law. TR-3. *The one-family-house restriction was not imposed on any of these nine lots when title descended to Gershom Bradley and William Bradley*. TR-3. Thus, as of 1956, 16 lots had been conveyed, but only seven with a restriction.

In 1956, Gershom Bradley and the Estate of William Bradley sold Lots 1, 2, 5 and 7 in Westport (that is, four of the nine lots that they had inherited). The deeds to these four lots contained the one-family-house restriction, even though the Probate Court conveyance to them had not contained the restriction. TR-3-4.

In 1959, Lots 11 through 19 in Norwalk were sold by Julia S. Bradley, Jeanette H. B. Hughes, and Conrad Ulmer to United Aircraft in a single conveyance. TR-4. (The land records apparently do not show how or when these sellers acquired title to the lots in Westport from Gershom and William Bradley.) Because United Aircraft was plainly not a residential use, in this transaction, the one-family-house restriction was plainly not only not imposed, but the entire Norwalk part was removed from the original subdivision.

In 1959, the Estate of Gershom Bradley and the Estate of William Bradley sold Lot 3, and the conveyance was not made subject to the restriction. TR-4.

After Gershom Bradley died in 1960, his executors, and the trustees under the will of William Bradley, sold Lot 4, in Westport. Lot 4 was not made subject to the restriction.

Thus, as of 1960, the undisputed, relevant facts regarding the 1954 subdivision and the one-family-house restriction were:

- Gershom Bradley and Jeanette Bradley Hughes, as executors of the Estate of Louise Bradley were the only people that ever held title to all 22 lots shown on the original 1954 subdivision map;
- The 1954 map did not contain any reference to a one-family-house restriction;
- The executors of the Estate never recorded any declaration of restrictions in Westport or Norwalk stating an intent to establish a common plan across the 22 lots;

- No map was recorded in Norwalk, where nine of 22 lots were located;

- In 1956, E. Louise Bradley's brothers Gershom and Edmond, as her heirs inherited nine of the lots through the Probate Court that did not contain any one-family-house restriction;

- In 1956, Gershom Bradley and the Estate of William Bradley – different grantors than the Probate Court conveyance – imposed a one-family-house restriction on four lots, even though they were not the original subdivider/grantor;

- In 1959, three different grantors – Julia Bradley, Jeanette H.B. Hughes, and Conrad Ulmer, whose chain of title is unknown, conveyed the nine lots in Norwalk to United Aircraft for non-residential use;

- In 1959, the Estates of Gershom Bradley and William Bradley conveyed Lot 3, not subject to the restriction;

- In 1962, the executors and trustees of Gershom Bradley's estate conveyed lot 4 in Westport in a deed containing no restriction; and

- The restriction as imposed at times in 1956-60, provided only that the house or plan "shall be approved by the Grantors," without defining who the Grantors were or should be in the future, and of course those grantors, whoever they were, are most likely now deceased, and in any event have no continuing enforceable interest in any of the 22 lots.

B. Chronology Of Summit's Development Efforts And Plaintiffs' Efforts To Enforce The One-Family-House Restriction.

Summit purchased, or obtained contracts or options to purchase, Lots 6-10 and 20-22 of the 1954 subdivision (now 39, 41, 43, 45, and 47 Hiawatha, and 44, 42, and 38 Hiawatha, respectively), and two other lots on Hiawatha Lane (Nos. 28 and 36) that were not part of the 1954 subdivision, beginning in 2003. As recited above, Lots 6-10 and 20-22 had the restriction imposed in the 1950's, but not by the original grantor, not at the same time, not subject to a written or recorded declaration of restrictions, and not in a manner that was uniform across 22 lots. Starting in 2004, Summit began public approaches to Westport's land use agencies for approvals for redeveloping the ten lots for multi-family residential use. A3. As noted above, from 2007 to 2015, Summit pursued approvals for multi-family residential development. A1-A17.

Carolanne Curry, who lives with plaintiff Selma Miriam at 29 Hiawatha (1954 subdivision Lot 2), has opposed Summit's redevelopment efforts for many years. One of Curry's claims has been that Summit's lots were part of a uniform common plan that restricts to their existing to a one-family-house. In 2015, Curry testified at a Connecticut General Assembly hearing about housing policy, complaining that Summit in Westport was ignoring the one-family-house restriction. A18.

In 2016, Summit proposed a 155 unit multi-family development on its ten lots, as a joint venture with the Westport Housing Authority. A22-A44. During 2016 to 2018, Curry regularly spoke in opposition to Summit's multi-family residential plan at Westport Water Pollution Control Authority hearings, Flood and Erosion Control Board hearings, and Conservation/Wetlands Commission hearings.

In their October 2021 objection to Summit's application to transfer this matter from Bridgeport Superior Court to the Hartford Land Use Docket, the plaintiffs asserted that their claim of right to enforce a "one-family-house" restriction "[does] not involve zoning, affordable housing, or other matters for which the Land Use Litigation Docket was established." Objection at 1. Plaintiffs also asserted that they had no duty to intervene in Summit's zoning proceeding "because their claims involve issues of private property rights which could not have been adjudicated in those proceedings." Objection at 3.

The fact that this action does not involve issues of title or ownership, but a claim that an alleged private use restriction supersedes and takes precedent over the Westport Zoning Regulations and the July 2021 settlement of the zoning appeal, is discussed below in §§ IV and V. In this Facts section, however, Summit recounts that *in 2019, during Westport Planning and Zoning Commission hearings on Summit's application, plaintiffs Selma Miriam and Christopher Gazzelli, and Miriam's long-time housemate Carolanne Curry, expressly put the one-family-house language in their deeds into the administrative hearing record, and asserted that the Planning and Zoning Commission should deny Summit's application based on the one-family-house restriction.*

In March and April 2019, plaintiffs Selma Miriam, Leslie Oglivy, and Christopher Gazzelli spoke at Westport PZC hearings in opposition to Summit's November 2018 zoning application. Both Miriam and Gazzelli told the Westport PZC that Summit's application violated the one-family-house deed restriction. A46-51; A52-62. Miriam, Gazzelli (A85-88, 94, 98, 101-102), and Oglivy (A81-84) complained about impacts on flooding, traffic, and parking. A46-51, 52-62. Moreover, Curry (A63-78, 103-107) and others specifically asked that Town Attorney Peter Gelderman advise the PZC that Summit's plan violated the one-family-house restriction. A89-93. Attorney Gelderman did not give the Commission an opinion.

More specifically, at the March 7, 2019 hearing,[1] Curry, Transcript/A73-74, explained (emphasis added):

> A long time ago . . . Louise Bradley owns a lot of property along I-95 by the Hiawatha. They designed a program, a survey, that showed 10 houses on Hiawatha Lane, another five or six over on the Norwalk side, and there was a stipulation that these houses and these sites be limited to the single family houses *because the rest of the properties, the rest of the homes, the rest of the streets in Old Saugatuck had been built up with rooming houses from the railroad builders. . . .*
>
> Those [restrictions] are there so that the community continues to exist of single-family homes.
>
> To that end, on many of the deeds, if not all of them, the restriction says that only one family house shall be erected on the premises. The house or plans for which shall be approved by the grantors.

Curry then placed six deeds to Hiawatha Lane Extension homes into the record (which were part of the Record Items on the Certified List prepared by the Commission). Curry then summarized: "Anyway, the intent was to continue this as a small community of one-family-houses. This is what Bradley wanted, and this should continue." A74.

[1] This Court may take judicial notice of the hearing transcripts, excerpted in the Appendix to this motion, as they were part of the filed Record in *Summit v. Westport Planning and Zoning Commission*, No. HHD-CV-19-6120090-S, the appeal in which this Court entered the Stipulated Judgment in July 2021.

As noted, at the Commission's March 21, 2019 continued hearing, PZC member Chip Stephens, PZC Chair Danielle Dobin, and Town Attorney Gelderman engaged in a discussion about the one-family-house restriction, A89-93. Ultimately, it was suggested that Summit be asked to provide its view of the restriction, which it did in materials filed April 5, 2019. A118-119. Based on a title search and legal analysis it had procured in 2005, Summit reported that no enforceable common plan had ever come into existence, and even if one had, it had long since lapsed. *Id.*

At the April 11, 2019 continud public hearing, plaintiff Gazzelli read aloud the portion of the original deed to his lot that contained the one-family-house restriction. A101-102. He stated, "Some of his [Summit's] properties have that same stipulation and I intend to enforce that. I can't build a large apartment complex on my property and neither should the developer be allowed to either." A102.

Later at that same hearing session, Matthew Mandell, a member of Westport's Representative Town Meeting, also brought up the one-family-house issue, as a basis for PZC denial, asking, "[How] are there going to be five multi-family buildings on properties that specifically say there can be only one house there?" A107-108.

> Now this doesn't have to be something that the community needs to go and sue the developer over in civil court. You guys can take it on the mantle and say, you know what, it's absolutely right. The deed says we can't do it, so we're not going to do that.

Id.

As noted earlier, in September 2019, the Westport PZC denied Summit's § 8-30g zoning application (A177-198), and Summit appealed. Although plaintiffs in this action Miriam, Gazzelli, and Ogilvy could have intervened as-of-right in that appeal, *see* General Statutes § 52-102, they did not do so at any time from 2019 through the 2021 stipulated judgment.

In the Spring of 2021, Summit, the Town, and Westport's land use agencies devised a global settlement with a reduced site plan that eliminated proposed development on 28 and 36 Hiawatha Lane and confined the development to 1954 Lots 6-10 and 20-22. The agencies

followed the procedure of General Statutes § 8-8(n) and Connecticut Practice Book § 14-7B as to publishing the settlement terms on a PZC agenda; and discussing the terms in a public meeting. A198-199. In fact, on May 12, 2021, the PZC conducted a four-hour public hearing on the settlement proposal. Curry spoke. Miriam, Gazzelli, and Oglivy did not.

The Westport Representative Town Meeting reviewed a petition, signed by Curry and others, to renew the PZC's approval of the settlement. A201-252. At an RTM hearing on June 8, 2021, *none of the plaintiffs raised the one-family restriction*, even though the Town Attorney advised the RTM that its inquiry was broader than zoning compliance. A204-209.

Finally, the Board of Selectmen, acting as the Water Pollution Control Authority, held a public meeting on June 18, 2021 and voted to approve the settlement. A252-253. *None of the plaintiffs spoke at that meeting.*

After the WPCA and PZC had endorsed the settlement and the parties had filed a motion with this Court for approval of a settlement, A255, the parties, at this Court's direction, published this notice in the *Westport News*, a newspaper of general circulation in the town as well as the *Norwalk Hour*:

NOTICE OF HEARING

> Notice is hereby given that the Superior Court of the State of Connecticut will hold a remote hearing on the settlement of *Summit Saugatuck LLC v. Westport Planning and Zoning Commission*, HHD-CV-19-6120090-S pursuant to General Statutes § 8-8(n) on July 19, 2021, at 10:30 a.m. The settlement will permit the construction of a 157-unit affordable housing development at the westerly terminus of Hiawatha Lane Extension. Persons interested in listening to or participating in the hearing should contact the court by emailing Abby Bowker at abby.bowker@jud.ct.gov or by calling her at (860) 548-2851 for instruction on how to participate.

On July 19, Curry spoke, but did not raise the single-family restriction as a concern. None of the plaintiffs addressed the Court. *See* Transcript, July 19, 2021, A279. The other speakers was Gloria Gouveia. A280.

This court granted the Stipulated Judgments. A300-304. No appeal was filed from that approval.

C. Relationship Of Plaintiff Selma Miriam To Carolanne Curry.

Plaintiff Selma Miriam has resided at 29 Hiawatha Lane Extension since approximately 1962 (Complaint ¶ 11), and has resided there with Carolanne Curry since 1988. A63.

III. LEGAL STANDARDS FOR SUMMARY JUDGMENT.

The standard of review for motions for summary judgment is well settled. Summary judgment "shall be rendered forthwith if the pleadings, affidavits and other proof submitted show that there is no genuine issue as to any material facts and that the moving party is entitled to judgment as a matter of law." Practice Book §17-49. Summary judgment eliminates the delay and expense of litigating an issue when there is no real issue to be tried. *Roe No. 1 v. Boy Scouts of America Corp.*, 147 Conn. App. 622 (2014). "[A]ny party may move for summary judgment as to any claim or defense as a matter of right at any time if no scheduling order exists and the case has not been assigned for trial." Practice Book §17-44. "[S]ummary judgment is appropriate only if a fair and reasonable person could conclude only one way ... [A] summary disposition ... should be on the evidence which a jury would not be at liberty to disbelieve and which would require a directed verdict for the moving party." *Dugan v. Mobile Medical Testing Services, Inc.*, 265 Conn. 791, 851 (2003). The movant "is required to support its motion with supporting documentation, including affidavits." *Heyman Associates, No. 1 v. Insurance Co. of Pennsylvania*, 231 Conn. 756, 796 (1995).

A motion for summary judgment is properly granted when the defendant raises at least one legally sufficient defense that would bar plaintiff's claim and does not implicate any triable issues of fact. *Gohel v. All State Ins. Co.*, 61 Conn. App. 806 (2001). It is also the case that "[s]ummary judgment is the appropriate method of resolving a claim of *res judicata*." *In Re Probate Appeal of the Cadle Company*, 152 Conn. App. 427, 434 (2014).

Once the moving party has submitted evidence in support of summary judgment, the opposing party must demonstrate the existence of a disputed fact. *Hammer v. Lumberman's Cas. Co.*, Supra., 214 Conn. 573. "It is not enough ... for the opposing party merely to assert the existence of such a disputed issue." *Id.* at 578-79. "[A]lthough the party seeking summary

judgment has the burden of showing the nonexistence of any material fact … a party opposing summary judgment must substantiate its adverse claim by showing that there is a genuine issue of material fact together with the evidence disclosing the existence of such an issue." *Buell Indus., Inc. v. Greater N.Y. Mut. Ins. Co.*, 259 Conn. 527, 550 (2002) (quoting *Home Ins. Co. v. Aetna Life & Cas. Co.*, 235 Conn. 185, 202 (1995)). A material fact is one that will make a difference in the outcome of the case. *Hammer v. Lumberman's Mut. Cas. Co.*, 214 Conn. 573, 578 (1990).

IV. THIS ACTION IS AN IMPERMISSIBLE COLLATERAL ATTACK ON THE STIPULATED JUDGMENT APPROVED BY THIS COURT ON JULY 19, 2021.[2]

Although an aggrieved individual may timely appeal the decision of a zoning authority under General Statutes § 8-8 (b), as a general rule, "one may not institute a collateral action challenging the decision of a zoning authority." *Torrington v. Zoning Commission*, 261 Conn. 759, 767 (2002). "A collateral attack is an attack upon a judgment, decree or order offered in an action or proceeding other than that in which it was obtained, in support of the contentions of an adversary in the action or proceeding ...." *Warner v. Brochendorff*, 136 Conn. App. 24, 32 n.7, cert. denied, 306 Conn. 902 (2012). A party asserting a collateral attack "attempt[s] to avoid, defeat, or evade [a judgment], or deny its force and effect, in some incidental proceeding not provided by law for the express purpose of attacking it." *Lewis v. Planning & Zoning Commission*, 49 Conn. App. 684, 688–89 n.5 (1998). "A collateral attack on a judgment is a procedurally impermissible substitute for an appeal." *Federal National Mortgage Assn. v. Farina*, 182 Conn. App. 844, 853 (2018); *see also Upjohn Co. v. Zoning Board of Appeals*, 224 Conn. 96, 103 (1992) ("[i]t would be fundamentally unfair ... to permit" a collateral attack).

In *Upjohn Co.*, 224 Conn. at 102, the Supreme Court determined that a plaintiff may not collaterally attack a condition to an approved zoning application because the plaintiff had failed

[2] This section is based on Summit's Fourth Special Defense, filed November 10, 2021. If summary judgment is not granted and this matter proceeds to trial, Summit will prove laches and statute of limitations (52-575a) as special defenses. *See* Summit's Answer and Special Defenses, filed November 10, 2021.

to appeal the condition at the time it was imposed. The plaintiff in *Upjohn Co.* had applied to the planning and zoning commission to build structures on its property, and the commission approved the application, subject to several conditions. *Id.* at 98. The plaintiff "did not appeal or otherwise challenge the validity or imposition of" one condition with which it later failed to comply. *Id.* at 98–99. When a zoning enforcement officer served the plaintiff with a cease and desist order for failure to comply with the condition, the plaintiff appealed to the zoning board of appeals and, subsequently, to the trial court, contesting the validity of the underlying condition. *Id.* at 99. The trial court sustained the appeal. *Id.* at 100.

On review, the Supreme Court agreed with the zoning board of appeals that "the trial court incorrectly concluded that [the plaintiff] could collaterally attack the validity of [the] condition ... in the enforcement proceedings more than three years after its imposition by the commission and acceptance by [the plaintiff]." *Id.* "We conclude that [the plaintiff], having secured the permits ... subject to [the] condition ... and not having challenged the condition by appeal at that time, was precluded from doing so in the [later] enforcement proceedings .... [W]hen a party has a statutory right of appeal from the decision of an administrative agency, he may not, instead of appealing, bring an independent action to test the very issue which the appeal was designed to test. ... It would be inconsistent with th[e] needs [of stability in land use planning and justified reliance by interested parties] to permit, in this case, a challenge to a condition imposed on a zoning permit when the town seeks to enforce it more than three years later." *Id.* at 102

Torrington v. Zoning Commission, 261 Conn. at 759, is binding authority, directly on point here. In that case, 261 Conn. at 761, 767-68, the Court applied the rule set forth in *Upjohn Co.* to an action in which a plaintiff attacked a stipulated judgment it had previously failed to appeal. *Because the plaintiff had ample notice and opportunity to challenge the judgment at the time it was entered*, it could "not [later] collaterally attack the stipulated judgment." *Id.* at 767, 770.

In *Torrington,* the City of Torrington filed an administrative appeal from the Harwinton Zoning Commission's grant of a special permit and site plan for a residential development pursuant to a stipulated judgment, approved by a Superior Court judge, that settled a zoning appeal brought by the property owner. 261 Conn. at 763. After concluding that the Commission had acted within the bounds of its authority as a land use agency in entering into the stipulated judgment, the Supreme Court noted that the stipulation involved "the powerful interest in the promotion of settlement of litigation by agreement of the parties," citing *Sendak v. Planning & Zoning Commission*, 7 Conn. App. 238, 242 (1986).

[T]he rule requiring interested parties to challenge zoning decisions in a timely manner rest[s] in large part ... on the need for stability in land use planning and the need for justified reliance by all interested parties—the interested property owner, any interested neighbors and the town—on the decisions of the zoning authorities." *Reardon v. Zoning Board of Appeals*, 311 Conn. 356, 366 (2014); *see also Lallier v. Zoning Board of Appeals*, 119 Conn. App. 71, 78–79).

Our Supreme Court has stated in *Torrington*, *Upjohn*, and other cases that there are two types of "exceptional cases" wherein a collateral attack may be permissible. "[W]e recognize ... that there may be exceptional cases in which a previously unchallenged condition was so far outside what could have been regarded as a valid exercise of zoning power that there could not have been any justified reliance on it, or in which the continued maintenance of a previously unchallenged condition would violate some strong public policy." In *Gangemi v. Zoning Board of Appeals*, 255 Conn. 143, 150–51 (2001), the Court allowed a challenge to an approval condition that was an illegal restraint on alienation because it violated the strong public policy against such restraints. The Court called this exception "a very high standard." 261 Conn. at 768. However, in *Torrington*, the Court emphasized that zoning commissions have discretion to accept settlement terms that are within the bounds of their statutory authority, and such a settlement, if done in an arms-length, procedurally compliant manner and not appealed, is not subject to a later collateral attack ever if the grounds, timely raised in a timely appeal, might have been sustained. 261 Conn. at 769-776.

A further illustration is *Santarsiero v. Planning & Zoning Commission*, 165 Conn. App. 761, 779 (2016), the Appellate Court upheld a trial court's determination that a collateral attack by the plaintiffs, nearby property owners, was impermissible. The zoning board had granted an application for a variance to construct a restaurant with a drive-up window in a zone that specifically prohibited such windows. *Id.* at 764–65. The plaintiffs received notice of the hearing but did not appeal the decision of the board. *Id.* at 765, 777. Relying on the variance, the landowner applied for a special exception, and the commission granted the exception. *Id.* at 765–66. Following three years of related disputes, the plaintiffs appealed to the trial court and attacked the validity of the variance. *Id.* at 770. The trial court dismissed the appeal. *Id.* On appeal to the Supreme Court, the plaintiffs reiterated their argument that the local action "was not a valid exercise of zoning power and there could not have been any justified reliance on it." *Id.* at 778. The Court noted, however, that the "variance formed the basis of the commission's authority to grant the ... special exception to the defendant," and the plaintiffs had failed to appeal from that variance. *Id.* at 776–77. Accordingly, the plaintiff's action constituted an impermissible collateral attack. *Id.* at 779. *See also Boyajian v. Plan. & Zoning Comm'n of Town of Vernon*, 206 Conn. App. 118, 130 (2021) (objector precluded from collaterally attacking variance used to support competitor's special use permit to operate an alcoholic liquor store within 3,000 feet of objector's alcoholic liquor store).

In this injunction action, plaintiffs Miriam, Gazzelli, and Ogilvy do not challenge any procedural aspect of the July 2021 approval of the stipulated judgment. They do not allege that the requirements of General Statutes § 8-8(n) and Practice Book § 14-7B were not followed with respect to the settlement. Moreover, they do not allege that the settlement was anything other than arms length, in good faith, publicly vetted, and substantively fair. Plantiffs do not allege that the settlement was outside the power of the Westport Planning and Zoning Commission, a *de facto* variance, *ultra vires*, or otherwise improper. The plaintiffs offer no reason as to why they did not intervene in the appeals, or address the Court on July 19, 2021. These undisputed facts are dispositive of this case.

As noted earlier, in their objection to transfer of this case to the Land Use Docket, plaintiffs assert that this case raises an issue of title or ownership, not cognizable by the Westport PZC or adjudicable in Summit's zoning appeal. But this claim is wrong in several ways. First, there is no issue to who owns each of the lots involved, or the terms of the respective deeds. Second, to obtain an injunction,the plaintiffs need to allege not only an enforceable property right, but also irreparable harm in the form of physical impacts on their respective properties resulting from the development they seek to enjoin. Those impacts are alleged in Paragraph 18 of the complaint, but it is precisely those land use impacts that plaintiffs could have and should have raised by intervening in the zoning appeal and addressing the Court on July 19, 2021. In other words, land use impacts on plaintiffs' properties had to be timely raised, but were not, have now been settled, and are not subject to collateral attack. *See also* § IV, infra.

Third, the plaintiffs in 2019 actually put their deeds into the administrative record and argued that the development should be denied on that basis. The PZC listened to and considered their claims and consulted with the Town Attorney. The plaintiffs cannot now have it both ways by asserting that the PZC had no authority to consider their deeds. The PZC, at plaintiffs' urging, considered their deeds and declined to make them a denial reason in September 2019.

In addition, while zoning commissions cannot resolve title and ownership issues, they plainly consider, adjust, and resolve property rights. "Zoning regulations are in derogation of private property rights and as such must be strictly construed." E.g., *Fisher v. Zoning Board*, 142 Conn. 275 (1955). The plaintiffs' claim here is not one of title or ownership, but whether a private restriction supersedes General Statutes Chapter 124, the Practice Book rules and cases about land use appeal settlements, and the Westport Zoning Regulations. Put another way, the plaintiffs claim that they are entitled to assert their deed restriction claim after sitting back while the Westport PZC, the Westport Representative Town Meeting, and the Westport Board of Selectmen acting as the WPCA, fashioned, considered, and approved a settlement on behalf of both the PZC and the Town, submitted it to this Court for approval, and obtained approval.

Torrington and *Upjohn* are directly on point, and dispositive. This case is an impermissible collateral attack on a final, stipulated judgment that was entered by this Court after complete procedural compliance and ample opportunities for the plaintiffs to assert their claims. They failed to do so, and the powerful interest in settlement must prevail.

V. PLAINTIFFS CANNOT PROVE IRREPARABLE HARM TO SUPPORT AN INJUNCTION AS ALLEGED IN PARAGRAPH 18 OF THEIR COMPLAINT, BECAUSE CLAIMS OF ADVERSE LAND USE IMPACTS ON THEIR PROPERTIES WERE ADJUDICATED BY THE JULY 2021 STIPULATED JUDGMENT AND ARE BARRED BY *RES JUDICATA*.

This section asserts Summit's Second and Fifth Special Defenses. Plaintiffs are barred from seeking to litigate in the present action the claims of irreparable harm set forth in Paragraph 18 of their Complaint due to the Stipulated Judgment entered on July 19, 2021.

"A party seeking injunctive relief has the burden of alleging and proving irreparable harm and lack of an adequate remedy at law." *Commissioner of Correction v. Coleman*, 303 Conn. 800, 810 (2012) cert. denied sub nom. *Coleman v. Arnone*, 568 U.S. 1235 (2013); *see also Herbert v. Smyth*, 155 Conn. 78, 85 (1967) (an injunction may not issue unless to prevent "substantial and irreparable injury to the complainant.")

The Plaintiffs have alleged that they will suffer irreparable harm due to:

18a. Runoff and flooding conditions;

18b. Increased traffic flow allegedly causing noise, light and air pollution, vehicle and pedestrian hazards, exacerbate existing traffic congestion and circulation problems;

18c. Greater demands for parking in the neighborhood allegedly impeding traffic flow and creating health and safety risks;

18d. The inability of the existing streets to support the increased usage and damage to said streets arising from such usage;

18e. Reduced property values; and

18f. Said development shall allegedly destroy one of the few existing working class neighborhoods in the area.

The July 2021 Stipulated Judgement settled all of these concerns. Each and every claim that plaintiffs raise in paragraph 18 was plainly within the jurisdiction of the Westport Planning and Zoning Commission, and was raised before the P&Z, and was settled by the Stipulated Judgment. The plaintiffs plainly could have intervened as-of-right under General Statutes § 52-102 in Summit's zoning appeal, and asserted land use impacts. Having failed to do so, their claims are barred by *res judicata*. Plaintiffs may not re-litigate a matter that they have already had an opportunity to litigate. *In re Juvenile Appeal (83-DE)*, 190 Conn. 310, 318 (1983). The doctrine of *res judicata* provides that a former judgment serves as an absolute bar to a subsequent action involving any claims relating to the same cause of action which were actually made or which might have been made. *Gagne v. Norton*, 189 Conn. 29, 32 (1983). For *res judicata* to apply, "(1) the judgment must have been rendered on the merits by a court of competent jurisdiction; (2) the parties to the prior and subsequent actions must be the same or in privity; (3) there must have been an adequate opportunity to litigate the matter fully; and (4) the same underlying claim must be at issue." *Girolametti v. Michael Horton Associates*, Inc., 332 Conn. 67, 75 (2019). These criteria are satisfied.

A valid and final adjudicative determination by an administrative tribunal has the same effects as a judgment of the court for purposes of *res judicata*. *New England Rehab. Hosp. of Hartford, Inc. v. Comm'n on Hosps. & Health Care*, 226 Conn. 105, 129 (1993). Further, a claim "terminated by settlement" bars derivative suits arising out of the same cause of action. *Hopson v. St. Mary's Hospital*, 176 Conn. 485, 494 (1979). In this case, the parties are the same – plaintiffs suing now could have intervened earlier but chose not to – so there is no question of privity. Specifically, plaintiffs here had the opportunity to intervene in the zoning appeal. See *Dietzel v. Planning Comm'n of Town of Redding*, 60 Conn. App. 153, 160 (2000). Further, plaintiffs could have intervened in the § 8-8(n) hearing held to approve the settlement; they chose not to. Both proceedings dealt with defendant's approvals to construct multi-family housing on the property and both could have provided plaintiffs the relief they now seek. See *Caltabiano v. L & L Real Est. Holdings II, LLC*, 122 Conn. App. 751, 762-63 (2010) (suit by

plaintiffs who failed to raise issues at administrative hearings and properly appeal from dismissal in administrative hearings dismissed for lack of subject matter jurisdiction). That plaintiffs failed to raise the concerns below "is of no consequence;" they had the right to do so. *Branch v. Lewerenz*, 75 Conn. 319, 53 A. 658, 660 (1902); *Laurel, Inc. v. Caldwell*, 187 Conn. 171, 177 (1982) ("[i]ssues which could have been raised in a condemnation proceeding are *res judicata* as to later, collateral hearings which attempt to alter the outcome of the earlier litigation.")

Further, plaintiffs have failed to exhaust their administrative remedies, depriving this court of subject matter jurisdiction over their claims. Under this doctrine, a trial court lacks subject matter jurisdiction over an action that seeks a remedy which could have been provided through an administrative proceeding. *Levine v. Sterling*, 300 Conn. 521, 528 (2011). "If the available administrative procedure ... provide[s] the plaintiff with a mechanism for attaining the remedy that they seek ... they must exhaust that remedy." *Cannata v. Dept. of Environmental Protection*, 215 Conn. 616, 629-30 n. 9 (1990). Thus, plaintiffs simply cannot allege or prove irreparable harm, and therefore cannot prove the required elements for an injunction.

VI. A TITLE SEARCH OF PUBLIC RECORDS REGARDING THE SUBJECT PROPERTIES DEMONSTRATES THAT NO ENFORCEABLE "UNIFORM COMMON PLAN" OF A ONE-FAMILY-HOUSE RESTRICTION EVER CAME INTO EXISTENCE, AND NONE EXISTS TODAY.

Uniform deed restrictions that apply to lots within a subdivision or other specified area are generally called a "common scheme" or "uniform plan of development." In *Abel v. Johnson*, ____ Conn. _____, 2021 WL 3713868 (Aug. 20, 2011) (copy in Appendix), the Supreme Court stated that interpreting restrictive covenants presents an issue of law, and then stated:

> Restrictive covenants generally fall into one of three categories: (1) mutual covenants in deeds exchanged by adjoining landowners; (2) uniform covenants contained in deeds executed by the owner of property who is dividing his property into building lots under a general development scheme; and (3) covenants exacted by a grantor from his grantee presumptively or actually for the benefit and protection of his adjoining land [that] he retains." *DaSilva v. Barone*, . . . supra, 83 Conn. App. at 371-72, 849 A.2d 902.

The restrictions here fall into the second category. The Court continued:

> With respect to the second category, under which the plaintiffs claim standing, "[r]estrictive covenants should be enforced when they are reflective of a common plan of development . . . The factors that help to establish the existence of an intent by a grantor to develop a common plan are: (1) a common grantor sells or expresses an intent to put an entire tract on the market subject to the plan; (2) a map of the entire tract exists at the time of the sale of one of the parcels; (3) actual development according to the plan has occurred; (4) substantial uniformity exists in the restrictions imposed in the deeds executed by the grantor. . . .
>
> "The factors that help to negate the presence of a development scheme are: (1) the grantor retains unrestricted adjoining land; (2) there is no plot of the entire tract with notice on it of the restrictions; and (3) the common grantor did not impose similar restrictions on other lots. . . .

The same factors are recited in *DaSilva v. Barone*, 83 Conn.App. 365, 372-73 (2004).

The common plan doctrine is equitable in origin, as stated in *Dasilva*: "We are aware that 'the doctrine of the enforceability of uniform restrictive covenants is of equitable origin. The equity springs from the presumption that each purchaser has paid a premium for the property in reliance upon the uniform development plan being carried out,'" citing *Contegni v. Payne*, 18 Conn.App. 47, 53 (1989).

In *DaSilva*, Scot-Alan Corporation ("Scot-Alan") obtained approval of a 22 lot subdivision in Fairfield. There were no notes on the subdivision map restricting the future use of the lots, nor was a declaration of restrictions ever recorded. All of the subsequent conveyances made reference to the approved subdivision map.

Of the 22 lots, 15 were conveyed at various times to Treasure Homes, Inc. ("Treasure Homes") without any restrictions being included in the conveyance. Scot-Alan conveyed five of the remaining lots to two separate grantees, and lost two through foreclosure. Only one of the conveyances by Scot-Alan contained a restrictive covenant. When Treasure House thereafter reconveyed its 15 lots, only ten were made subject to any restrictions. Treasure House never possessed all of the lots at any one time. The Court held that the deed restriction applied to two thirds of the lots involved, but not to the other third, and thus fell short of evidencing a common plan. "Enforceable restrictive covenants usually involve the presence of the same or similar

restrictions in all or substantially all of the deeds conveyed by the common grantor." 83 Conn. App. at 376. In addition, to the lack of uniformity, there was no common grantor.

The cases about restrictive covenants also examine the wording and structure of enforcement. In *Pulver v. Mascolo*, 155 Conn. 644, 646 (1967), a restriction was imposed on subdivided lots, limiting them "solely and wholly for residential purposes," but stating that "all construction plans and specifications . . . shall be first submitted to and approved by the Berner Lohne Co., Inc., its successors and assigns. . . ." *Id.* at 646. The Court held that the intent was a restriction to residential use, but since restrictive covenants are "in derogation of the common-law right to use land for all lawful purposes which go with title and possession, are not to be extended by implication," citing *Katsoff v. Lucertini*, 141 Conn. 74, 77 (1954)." The Court in *Pulver* held that the restriction was written so that "the right of approval was intended to be exercised only by the grantor, his heirs, or assigns," and thus it was not a right appurtenant to the plaintiffs, who were not related to or affiliated with the grantor or his heirs or assigns. The Court discussed *Patrone v. Falcone*, 345 Mass. 659, 189 N.E.2d 228 (1963), and *Julian v. Lawton*, 240 N.C. 440, 82 S.E.2d 210 (1954) as very similar and reaching the same result.

In applying the factors set forth in *Abel*, *Dasilva*, and *Pulver*, to the present case, it is first important to note that, other than the Estate of Louise Bradley, no single person or entity owned all of the lots in the 1954 subdivision at one time. In addition, the Estate did not express an intent to restrict the use of all of the lots in the subdivision, because there were no restrictive notes placed on the subdivision map, there was no declaration of restrictions recorded on the land records, *and the restriction was then actually imposed by the Estate's deeds on only seven of the 22 lots shown on the Map. See Whitton v. Clark*, 112 Conn. 28 (1930) (imposing restrictions on only 23 of 54 lots (43 percent) was not sufficient to establish a common scheme or plan of development).

Other factors that defeat any claim of an enforceable common plan even coming into existence in the 1950's are: no map was ever recorded in Norwalk, where Lots 11-19 were located; the 1956 Probate Court devise of nine lots did not contain any restriction; by 1956,

conveyances were being executed by entities, individuals, or trustees other than the Estate of Louise Bradley; the Bradley heirs, in their 1956 conveyances of several Westport lots obtained from the Probate Court, had no authority to impose a common plan because at that point because they were not the subdivider or grantor of the 22 lots, and had obtained title with no restriction; in 1959, different grantors sold all of the Norwalk lots for non-residential use; and Lots 3 and 4 were then conveyed without the restriction. Finally, *Pulver* governs here because the restrictions, to the extent they were imposed, provided for approval of the house or plan "by the Grantors," without words of succession or assignment, making identification of a person or entity with approval rights today, 66 years later, an impossibility. The approval right was personal to the 1955 grantors and did not run with the land and has been long abandoned.

This is not a close case. No common plan ever came into existence, and even if one did briefly in 1955, it was dismantled by the Probate Court transaction in 1956, the sale of the Norwalk lots in 1959-60, and the omission of restrictions on Lots 3 and 4 in 1960-62

VII. THE APPROVED DEVELOPMENT PLAN MAKES NO CHANGE TO PLAINTIFFS' USE OF HIAWATHA LANE OR ITS EXTENSION FOR ACCESS TO THEIR PROPERTIES.

Plaintiffs appear to allege that Summit's development will somehow interfere with access to their properties. The development plan approved by the July 2021 stipulated judgment will involve repaving the road and improving occasional surface flooding in the area, but will not in any way impede or restrict an access route that plaintiffs never have. Indeed, plaintiffs' lots are east of the proposed Summit buildings (see illustrative map in Appendix), and Summit's residents will use the same access as plaintiffs.

VIII. CONCLUSION: SUMMIT IS ENTITLED TO JUDGMENT.

For the reasons set forth herein, Defendant respectfully requests the Court grant its motion for summary judgment as there is no genuine issue of material fact that the Plaintiffs' claims fail as a matter of law.

DEFENDANT,
SUMMIT SAUGATUCK LLC

By *_/s/ Timothy S. Hollister*

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CERTIFICATION OF SERVICE

I hereby certify that the foregoing Memorandum In Support Of Motion For Summary Judgment, with Appendix, was electronically delivered this 10th day of November, 2021, to all parties listed below and written consent for electronic delivery has been received from all parties.

Joel Z. Green, Esq.
JoelZGreen@gglaw.net
The Law Offices of Green and Gross, P.C.
1087 Broad Street
Bridgeport, CT 06604

/s/ Timothy S. Hollister
Timothy S. Hollister
Commissioner of the Superior Court

NO. HHD LND CV 21 6148307 S	:	SUPERIOR COURT
	:	
SELMA MIRIAM, ET AL.	:	JUDICIAL DISTRICT
	:	OF HARTFORD
v.	:	LAND USE DOCKET
	:	
SUMMIT SAUGATUCK LLC	:	NOVEMBER 10, 2021

APPENDIX TO SUMMIT SAUGATUCK LLC'S
MEMORANDUM IN SUPPORT OF SUMMARY JUDGMENT

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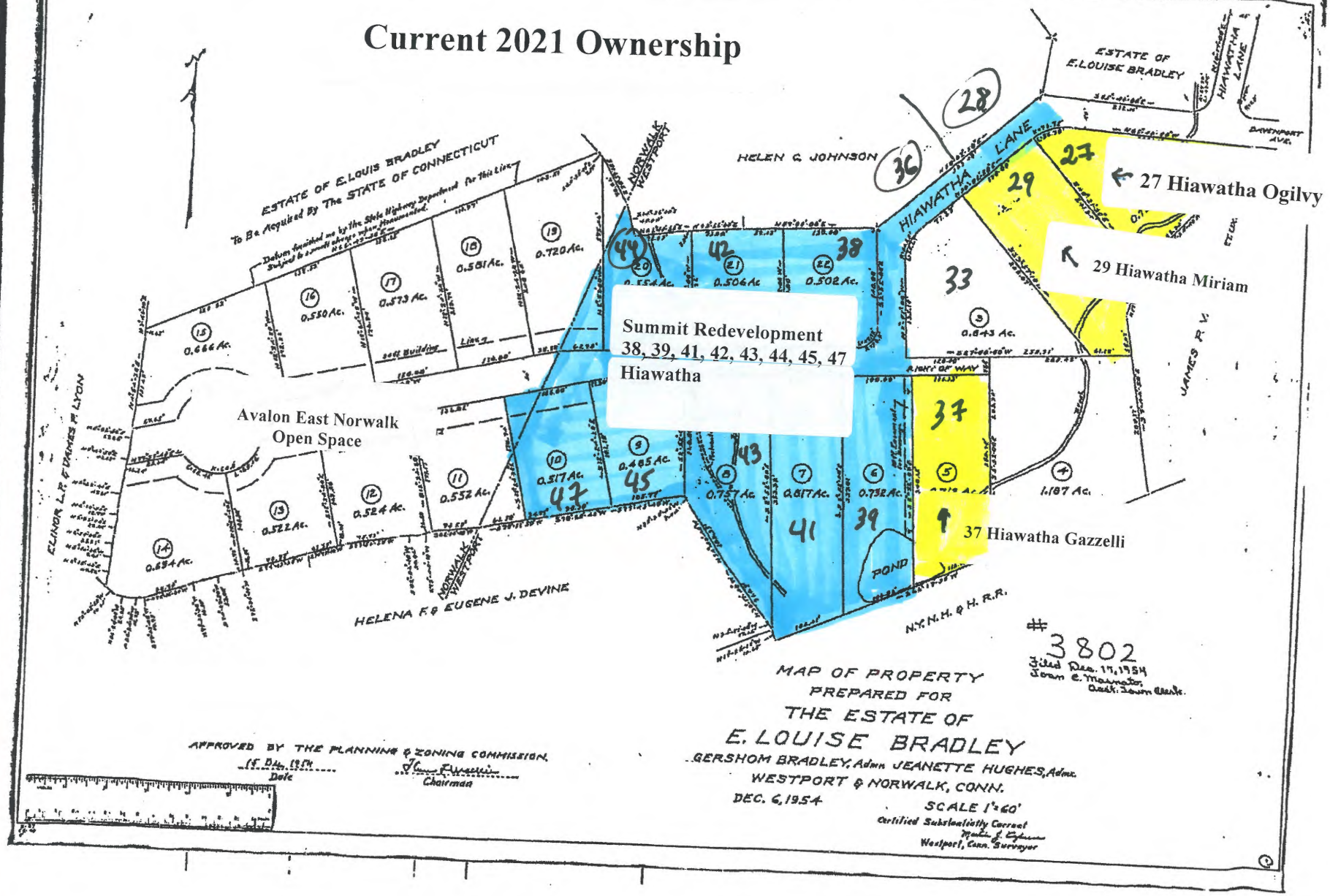
Current 2021 Ownership



NO. HHD LND CV 21 6148307-S	:	SUPERIOR COURT
MIRIAM, SELMA, ET AL.	:	JUDICIAL DISTRICT OF HARTFORD
v.	:	LAND USE DOCKET
SUMMIT SAUGATUCK LLC	:	NOVEMBER 9, 2021

AFFIDAVIT OF ANDREW R. SHERRIFF, JR.

I, ANDREW R. SHERRIFF, JR. being duly sworn, depose and state as follows:

1. I am over the age of eighteen and believe in the obligation of an oath.

2. I make this Affidavit based on my personal, actual knowledge.

3. I am a resident of Southport, Connecticut, an attorney admitted in the State of Connecticut and the owner and counsel to Sound Title, LLC, with a business address of 239 Main Street, 2d floor, Westport, Connecticut 06880, a real estate title search company.

4. At the request of Summit Saugatuck, LLC of Southport, Connecticut, in October 2021 I commenced an investigation and drafted a report regarding the history of 22 subdivided lots located on Hiawatha Lane and Hiawatha Lane Extension in Westport, and an adjacent land in Norwalk.

5. These 22 lots were originally subdivided by the executors of the Estate of E. Louise Bradley, and were depicted on a map recorded in the Office of the Westport Town Clerk on December 17, 1954, and designated as Map No. 3802.

6. In accordance with the Connecticut Standards of Title and the protocols and standards for a real estate title search, in October and November 2021, I reviewed the Westport and Norwalk land records to determine the history of the above-referenced 22 lots.

7. My report, dated November 8, 2021, with copies of referenced public record deeds and maps attached as Exhibits A to G, is attached. Exhibits A through G are true and accurate copies of the deeds and maps on file in the Land Records of the Town of Westport.

61417443 v1

8. Further deponent sayeth not.

ANDREW R. SHERRIFF, JR.

Subscribed and sworn to before me
this 9th day of November, 2021.

Commissioner of the Superior Court
~~Notary Public~~ / My Commission Expires:
Andrew R. Sherriff, Esq.

61417443 v1

SOUND TITLE, LLC

239 MAIN STREET, SECOND FLOOR
WESTPORT, CONNECTICUT 06880
TELEPHONE: (203) 557-3625
FACSIMILE: (203) 413-4363
EMAIL: ORDERS@SOUND-TITLE.COM

REPORT

OUR FILE NO.: ST42512

ISSUED TO: Hinckley Allen
Pullman & Comley, PLLC

DATE: November 8, 2021 at 5:00 PM

1. On December 17, 1954, **Map No. 3802**, attached hereto as **Exhibit A**, was filed on the Westport Land Records purporting to reflect the subdivision of certain real property originally owned by E. Louise Bradley. The parcels thereon are shown as Lot Nos. 1-22, and certain roadways and/or highways labelled thereon as Hiawatha Lane and a Right of Way. Of such said lots, Lot Nos. 1 -1 0 and 20-22 are shown as being situated in the Town of Westport, with Lot Nos. 12-18 being situated entirely in the City of Norwalk, and Lot Nos. 11, 10 and 29 and 20 being situated partially in the City of Norwalk and the Town of Westport– 12-18 Such map was not found of record on the Norwalk Land Records.

2. Various conveyances on the Westport Land Records of a portion of aforesaid lots, contain restrictions that future development was subject to "...restriction that only a one-family house shall be erected on said premises.."

3. In 1955, The Estate of E. Louise Bradley conveyed title to Lots 6, 7, 9, 10, 20, 21 and 22, each of which conveyances were subject to the Restrictions, as follows (all being attached hereto as **Exhibit B**):

   a. **Lot 6**: by Deed dated July 7, 1955 and recorded in Volume 129 at Page 390 of the Westport Land Records, granted to Howard W. Hare;
   b. **Lot 8**: by Deed dated July 7, 1955 and recorded in Volume 129 at Page 387 of the Westport Land Records, granted to John Cretella;
   c. **Lot 9**: By Deed dated July 7, 1955 and recorded in Volume 131 at Page 226 of the Westport Land Records, granted by Peter Milazzo and Theresa Milazzo;
   d. **Lot 10**: by Deed dated July 12, 1955 and recorded in Volume 128 at Page 384 of the Westport Land Records and in Volume 455 at Page 269 of the Norwalk Land Records, granted to John Febbraio and Alice Febbraio;
   e. **Lot 20**: by Deed dated October 20, 1955 and recorded in VOlume 132 at Page 120 of the Westport Land Records, granted to Mary T. Bottone and Fiore Bottone;
   f. **Lot 21**: by Deed dated August 12, 1955 and recorded in Volume 129 at Page 568 of the Westport Land Records, granted by Louis Nistico; and
   g. **Lot 22**: by Deed dated August 11, 1955 and recorded in Volume 131 at Page 315 of the Westport Land Records, granted by William Francis Cribari and Olga Elizabeth Cribari.

4. In 1956, by Certificate of Devise from the Estate of E. Louise Bradley aka Emma Louise Bradley dated April 9, 1956 and recorded in Volume 137 at Page 396 of the Westport Land Records (attached hereto as **Exhibit C**), title to Lot Nos. 1-5, Lot No. 7 and Lot Nos. 11-19, as shown on Map No. 3802, on file in the Office of the Westport Town Clerk, an one-half interest in and to said lots was transferred to Gershom B. Bradley and also an undivided one-half interest was transferred to William. B. Bradley. The Restrictions were not imposed on aforesaid lots

5. Thereafter, Lot Nos. 1, 2, 5 and 7, were conveyed by the Estate of William B. Bradley and Gerhom B. Bradley as follows (all being attached hereto as **Exhibit D**), which conveyances included the Restriction:

   a. **Lot 1**: by Warranty Deed dated August 7, 1956 and recorded in Volume 144 at Page 360 of the Westport Land Records, granted by Joseph Nazzaro and Sadie Nazzaro;
   b. **Lot 2**: by Deed dated November 9, 1956 and recorded in Volume 144 at Page 290 of the Westport Land Records, granted to Vincent Pascarelli and Catherine B. Pascarelli;
   c. **Lot 5**: By Deed dated May 7, 1956 and recorded in Volume 137 at Page 477 of the Westport Land Records, granted by Mariano Cairo and Carmela Cairo; and
   d. **Lot 7**: by Deed dated May 21, 1956 and recorded in Volume 138 at Page 382 of the Westport Land Records, granted by Mary Cribari.

6. In 1959, Lot Nos. 11 – 19 were conveyed by Julia S. Bradley, Jeanette H. B. Hughes and Conrad Ulmer to United Aircraft Corporation by Warranty Deed dated September 30, 1959 and recorded in Volume 170 at Page 464 of the Westport Land Records and in Volume 523 at Page 31 of the Norwalk Land Records. Such lots were not made subject to the Restriction (being attached hereto as **Exhibit E**).

7. In 1959, the Estate of Gershom Bradley and the Estate of William Bradley sold Lot No. 3, by a Deed dated September 30, 1959 and recorded in Volume 175 at Page 415 of the Westport Land Records, granted to Frederick Pascariello and Erika Pascariello. Such conveyance was not made subject to the Restriction (being attached as **Exhibit F**).

8. In 1962, the Lot 4 was conveyed by the Estate of Gershom B. Bradley and the Trustees under the William of William B. Bradley by Deed dated June 25, 1962 and recorded in Volume 193 at Page 493 of the Westport Land Records. Such conveyance was not made subject to the Restriction (being attached hereto as **Exhibit G**).

9. The Estate of E. Louise Bradley aka Emma Bradley was the only entity that held title to all of the lots as shown on Map No. 3082. Of the original 22 lots, such Estate conveyed 7 lots subject to the Restriction, while the Restriction was not imposed by the Estate of the remaining 15 lots. The Estate and 4 subsequently owners of the lots owned by the Estate, imposed the Restriction on a total of 12 of the 22 lots, while 10 of the lots shown on Map No. 3082 were not made subject to the Restriction.

SOUND TITLE LLC

By:_____

Andrew R. Sherriff, Jr.
Owner & Counsel

EXHIBIT A

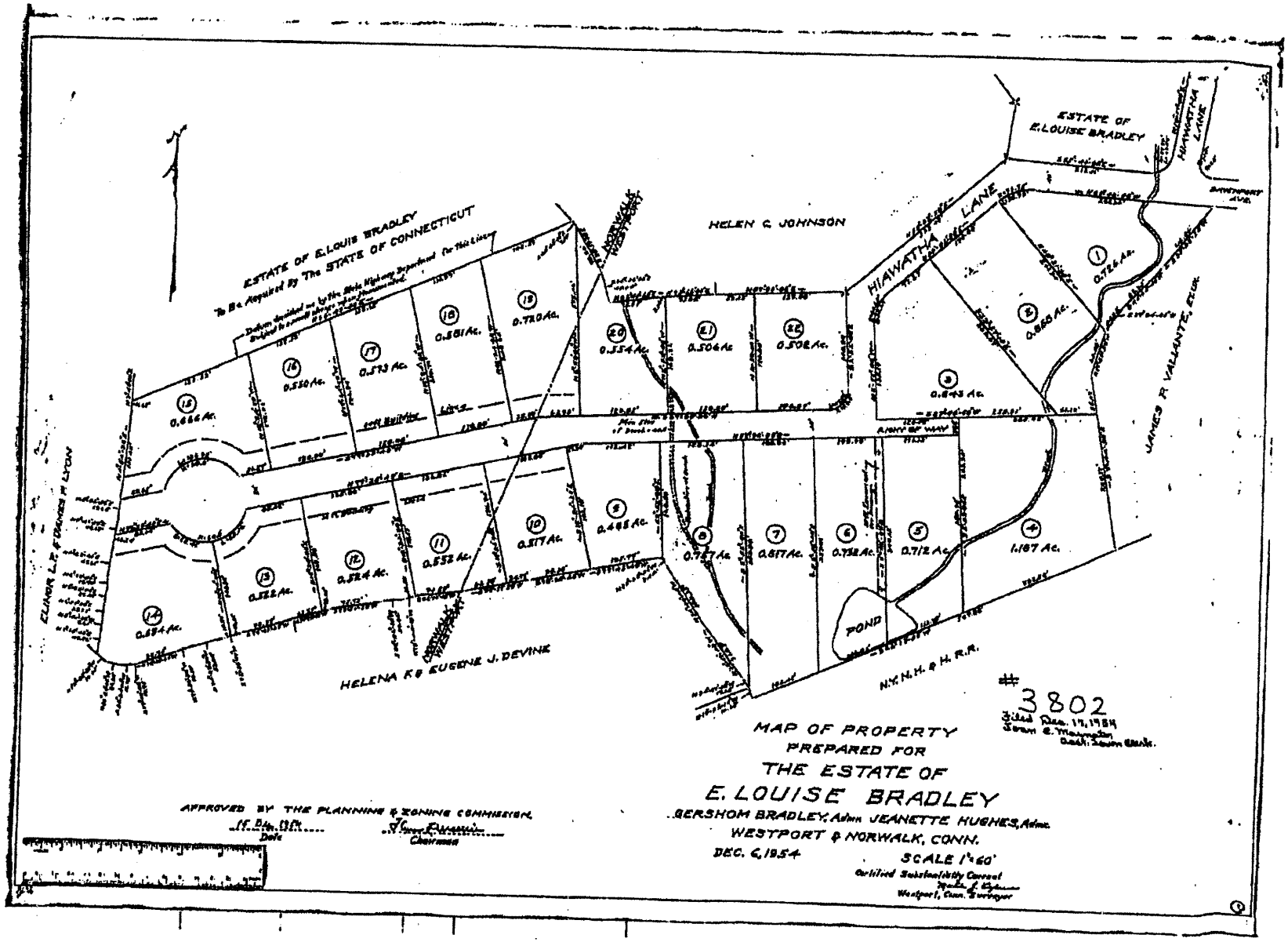

ESTATE OF E. LOUIS BRADLEY
To Be Acquired By The STATE OF CONNECTICUT
HELEN C. JOHNSON
ESTATE OF E. LOUISE BRADLEY
HIAWATHA LANE
HIAWATHA LANE
JAMES R. VALLANTE, ETUX.
ELINOR L. & FRANCIS H. LYON
HELENA K. & EUGENE J. DEVINE
N.Y.N.H. & H. R.R.
POND
RIGHT OF WAY
0.664 Ac.
0.550 Ac.
0.573 Ac.
0.581 Ac.
0.720 Ac.
0.554 Ac.
0.506 Ac.
0.508 Ac.
0.843 Ac.
0.860 Ac.
0.726 Ac.
0.694 Ac.
0.522 Ac.
0.524 Ac.
0.532 Ac.
0.517 Ac.
0.465 Ac.
0.727 Ac.
0.617 Ac.
0.752 Ac.
0.712 Ac.
1.187 Ac.
#3802
Filed Dec. 17, 1954
Brown E. Wormuth
Asst. Town Clerk.
MAP OF PROPERTY
PREPARED FOR
THE ESTATE OF
E. LOUISE BRADLEY
GERSHOM BRADLEY, Admr. JEANETTE HUGHES, Admx.
WESTPORT & NORWALK, CONN.
DEC. 6, 1954
SCALE 1" = 60'
Certified Substantially Correct
Westport, Conn. Surveyor
APPROVED BY THE PLANNING & ZONING COMMISSION
Date
Chairman

EXHIBIT B

LOT 6

TO ALL PEOPLE TO WHOM THESE PRESENTS SHALL COME, G R E E T I N G:-

WHEREAS, at a Court of Probate holden at Westport, within and for the District of Westport on the 6th day of July 1955, upon written application of GERSHOM B. BRADLEY and JEANETTE BRADLEY HUGHES, Administrators of the Estate of EMMA LOUISE BRADLEY, late of Westport, in said District, deceased, praying that the Court order the sale of certain real estate owned by the decedent, and empowering them as such Administrators to sell and convey the same, the said Administrators were ordered, authorized and empowered to sell any or all of the said real property described in the inventory of said estate, at private sale, and give a deed of conveyance thereof; and pursuant thereto, the said Administrators have sold at private sale the real estate, hereinafter described, to HOWARD W. HARE, of the said Town of Westport;

NOW, THEREFORE, Know Ye, that We, GERSHOM B. BRADLEY and JEANETTE BRADLEY HUGHES, Administrators of the Estate of EMMA LOUISE BRADLEY, late of the Town of Westport, County of Fairfield and State of Connecticut, deceased, in pursuance of the power and authority and direction aforesaid, and in consideration of the sum of One ($1.00) Dollar and other valuable considerations, received to our full satisfaction of HOWARD W. HARE, the receipt whereof is hereby acknowledged, do give, grant, bargain, sell, confirm and convey unto the said HOWARD W. HARE, all the right, title and interest which the said EMMA LOUISE BRADLEY had at the time of her decease, or which we, as Administrators aforesaid, have or ought to have in and to

All that certain tract or parcel of land, situate in the Town of Westport, County of Fairfield and State of Connecticut, designated as Lot #6 on a map entitled "Map of Property Prepared for The Estate of E. Louise Bradley, Gershom Bradley, Admr., Jeanette Hughes, Admx., Westport & Norwalk, Conn., Dec. 6, 1954, Scale 1"= 60', Certified 'Substantially Correct', Martin J. Capasse, Westport, Conn., Surveyor", on file in the Office of the Town Clerk of the said Town of Westport bearing File Number in quantity .732 Acre, being more particularly bounded and described as follows:

2.20 Northerly, 100 feet by Hiawatha Lane, so-called;
Easterly, 300.15 feet by Lot #5 as shown on the aforesaid map;
Southeasterly, 106.86 feet by land now or formerly of the New York, New Haven and Hartford Railroad Company; and
Westerly, 337.81 feet by Lot #7 as shown on the aforesaid map.

1.10 Together with a right of way over Hiawatha Lane in common with others to whom said right has been or may hereafter be granted for all purposes whatsoever for which a public highway might be used.

5.04 The said premises are subject to a ten (10') foot easement for drainage from Hiawatha Lane and Right of Way running in an easterly direction to the pond as shown on the above-entitled map.

64 TO HAVE AND TO HOLD the above granted and bargained premises, with the privileges and appurtenances thereof, unto him, the said Grantee, his heirs, successors and assigns forever, to him and their own proper use and benefit forever. And We, the said Administrators, do hereby covenant with him, the said Grantee, his heirs and assigns, that we have full power and authority, as Administrators aforesaid, to grant and convey the above described premises in manner aforesaid, and for ourselves and our heirs, executors, administrators and successors, do further covenant to WARRANT AND DEFEND the same to him, the said Grantee, his heirs and assigns, against the claims and demands of any person or persons whomsoever claiming by, from or under us as such Administrators aforesaid, and that the same is free from all encumbrances whatsoever except

1. Building and zoning regulations and restrictions of the Town of Westport;
2. Taxes of the Town of Westport on the List of October 1954, which the Grantee herein assumes and agrees to pay;
3. Restriction that only a one-family house shall be erected on said premises, the house or plans for which shall be approved by the Grantors;
4. Agreement with the Bridgeport Hydraulic Company to supply water to the said premises and the Grantee agrees to pay for the water consumed on the premises, or in any event, a minimum charge of Forty ($40.00) Dollars per year per house until such time as such minimum charge is reduced, which minimum charge shall commence as soon as water is available to the premises.

IN WITNESS WHEREOF, We, as such Administrators aforesaid, have hereunto set our hands and seals, this 7th day of July 1955.

Signed, Sealed and Delivered in the Presence of:

Gershom B. Bradley (LS)

Jeanette Bradley Hughes (LS)

Administrators.

STATE OF CONNECTICUT } ss. Westport, July 7th, 1955
COUNTY OF FAIRFIELD }

Personally appeared GERSHOM B. BRADLEY and JEANETTE BRADLEY HUGHES, Administrators of the Estate of EMMA LOUISE BRADLEY, signers and sealers of the foregoing instrument, and acknowledged that they executed the same in the capacity and for the purpose therein stated, and that the same is their free act and deed, as such Administrators, before me.

Commissioner of the Superior Court.
Notary Public.

Received for record Aug. 9, 1955 at 8:31 a.m. and recorded by Lois R. Clark
Westport Town Clerk

- #3 -

LOT 8

TO ALL PEOPLE TO WHOM THESE PRESENTS SHALL COME, G R E E T I N G:-

WHEREAS, at a Court of Probate holden at Westport, within and for the District of Westport on the 6th day of July 1955, upon written application of GERSHOM B. BRADLEY and JEANETTE BRADLEY HUGHES, Administrators of the Estate of EMMA LOUISE BRADLEY, late of Westport, in said District, deceased, praying that the Court order the sale of certain real estate owned by the decedent, and empowering them as such Administrators to sell and convey the same, the said Administrators were ordered, authorized and empowered to sell any or all of the said real property described in the inventory of said estate, at private sale, and give a deed of conveyance thereof; and pursuant thereto, the said Administrators have sold at private sale the real estate, hereinafter described, to JOHN CRETELLA, of the said Town of Westport;

NOW, THEREFORE, Know Ye, that We, GERSHOM B. BRADLEY and JEANETTE BRADLEY HUGHES, Administrators of the Estate of EMMA LOUISE BRADLEY, late of the Town of Westport, County of Fairfield and State of Connecticut, deceased, in pursuance of the power and authority and direction aforesaid, and in consideration of the sum of One ($1.00) Dollar and other valuable considerations, received to our full satisfaction of JOHN CRETELLA, the receipt whereof is hereby acknowledged, do give, grant, bargain, sell, confirm and convey unto the said JOHN CRETELLA, all the right, title and interest which the said EMMA LOUISE BRADLEY had at the time of her decease, or which we, as Administrators aforesaid, have or ought to have in and to

All that certain tract or parcel of land, situated in the Town of Westport, County of Fairfield and State of Connecticut, designated as Lot #8 on a map entitled "Map of Property Prepared for the Estate of E. Louise Bradley, Gershom Bradley, Admr., Jeanette Hughes, Admx., Westport & Norwalk, Conn., Dec. 6, 1954, Scale 1"= 60', Certified 'Substantially Correct', Martin J. Capasse, Westport, Conn., Surveyor", on file in the Office of the Town Clerk of the said Town of Westport, bearing File Number being more particularly bounded and described as follows:

Northerly, 123.14 feet by Hiawatha Lane, so-called;
Easterly, 359.92 feet by Lot #7 as shown on the aforesaid map;
Southwesterly, 227.54 feet by land now or formerly of Helena F. and Eugene J. Devine; and
Westerly, 168.80 feet by Lot #9 as shown on the aforesaid map.

Together with a right of way over Hiawatha Lane in common with others to whom said right has been or may hereafter be granted for all purposes whatsoever for which a public highway might be used.

TO HAVE AND TO HOLD the above granted and bargained premises, with the privileges and appurtenances thereof, unto him, the said Grantee, his heirs, successors and assigns forever, to him and their own proper use and benefit forever. And We, the said Administrators, do hereby covenant with him, the said Grantee, his heirs and assigns, that we have full power and authority, as Administrators aforesaid, to grant and convey the above described premises in manner aforesaid, and for ourselves and our heirs, executors, administrators and successors, do further covenant to WARRANT AND DEFEND the same to him, the said Grantee, his heirs and assigns, against the claims and demands of any person or persons whomsoever claiming by, from or under us as such Administrators aforesaid, and that the same is free from all encumbrances whatsoever except

1. Building and zoning regulations and restrictions of the Town of Westport;
2. Taxes of the Town of Westport on the List of October 1954, which the Grantee herein assumes and agrees to pay;

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ATTORNEYS AT LAW
WESTPORT - WESTPORT
CONNECTICUT

3. Restriction that only a one-family house shall be erected on said premises, the house or plans for which shall be approved by the Grantors;

4. Agreement with the Bridgeport Hydraulic Company to supply water to the said premises and the Grantee agrees to pay for the water consumed on the premises, or in any event, a minimum charge of Forty ($40.00) Dollars per year per house until such time as such minimum charge is reduced, which minimum charge shall commence as soon as water is available to the premises.

IN WITNESS WHEREOF, We, as such Administrators aforesaid, have hereunto set our hands and seals, this 7th day of July 1955.

Signed, Sealed and Delivered in the Presence of:

Gershom B. Bradley (LS)

Jeanette Bradley Hughes (LS)
Administrators

STATE OF CONNECTICUT
COUNTY OF FAIRFIELD } ss. Westport, July 7th, 1955.

Personally appeared GERSHOM B. BRADLEY and JEANETTE BRADLEY HUGHES, Administrators of the Estate of EMMA LOUISE BRADLEY, signers and sealers of the foregoing instrument, and acknowledged that they executed the same in the capacity and for the purpose therein stated, and that the same is their free act and deed, as such administrators, before me.

~~Commissioner of the Superior Court.~~
Notary Public.

Received for record Aug 9, 1955 at 8:30 a.m. and recorded by Lois R. Clark
Westport Town Clerk

- #3 -

LOT 9

TO ALL PEOPLE TO WHOM THESE PRESENTS SHALL COME, G R E E T I N G:-

WHEREAS, at a Court of Probate holden at Westport, within and for the District of Westport on the 6th day of July 1955, upon written application of GERSHOM B. BRADLEY and JEANETTE BRADLEY HUGHES, Administrators of the Estate of EMMA LOUISE BRADLEY, late of Westport, in said District, deceased, praying that the Court order the sale of certain real estate owned by the decedent, and empowering them as such Administrators to sell and convey the same, the said Administrators were ordered, authorized and empowered to sell any or all of the said real property described in the inventory of said estate, at private sale, and give a deed of conveyance thereof; and pursuant thereto, the said Administrators have sold at private sale the real estate, hereinafter described to PETER MILAZZO and THERESA MILAZZO, and unto the survivor of them, and unto such survivor's heirs and assigns forver;

NOW, THEREFORE, Know Ye, that We, GERSHOM B. BRADLEY and JEANETTE BRADLEY HUGHES, Administrators of the Estate of EMMA LOUISE BRADLEY, late of the Town of Westport, County of Fairfield and State of Connecticut, deceased, in pursuance of the power and authority and direction aforesaid, and in consideration of the sum of One ($1.00) Dollar and other valuable considerations, received to our full satisfaction of PETER MILAZZO and THERESA MILAZZO, husband and wife, of the said Town of Westport, the receipt whereof is hereby acknowledged, do give, grant, bargain, sell, confirm and convey unto the said PETER MILAZZO and THERESA MILAZZO and unto the survivor of them, and unto such survivor's heirs and assigns forever, all the right, title and interest which the said EMMA LOUISE BRADLEY had at the time of

SHEA, NEVIS AND SOMMER
ATTORNEYS AT LAW
WESTPORT, CONNECTICUT

her decease, or which we, as Administrators aforesaid, have or ought to have in and to

All that certain tract or parcel of land, situated in the Town of Westport, County of Fairfield and State of Connecticut, designated as Lot #9 on a map entitled "Map of Property Prepared for the Estate of E. Louise Bradley, Gershom Bradley, Admr., Jeanette Hughes, Admx., Westport & Norwalk, Conn., December 6, 1954, Scale 1"= 60', Certified 'Substantially Correct', Martin J. Capasse, Westport, Conn., Surveyor", on file in the Office of the Town Clerk of the said Town of Westport, bearing File Number , in quantity .485 acre, being more particularly bounded and described as follows:

Northerly, 135.22 feet by Hiawatha Lane, so-called;
Easterly, 168.80 feet by Lot #8 as shown on the aforesaid map, being other land of the Grantors;
Southerly, 105.77 feet by land now or formerly of Helena F. and Eugene J. Devine; and
Westerly, 181.10 feet by Lot #10 as shown on the aforesaid map.

Together with a right of way over Hiawatha Lane in common with others to whom said right has been or may hereafter be granted for all purposes whatsoever for which a public highway might be used.

TO HAVE AND TO HOLD the above granted and bargained premises, with the privileges and appurtenances thereof, unto them, the said Grantees, and unto the survivor of them, and unto such survivor's heirs and assigns forever, to them and their own proper use and benefit forever. And We, the said Administrators, do hereby covenant with them, the said Grantees and with the survivor of them, and with such survivor's heirs and assigns, that we have full power and authority, as Administrators aforesaid, to grant and convey the above described premises in manner aforesaid, and for ourselves and our heirs, executors, administrators and successors, do further covenant to WARRANT AND DEFEND the same to them, the said Grantees, and to the survivor of them and to such survivor's heirs and assigns, against the claims and demands of any person or

[illegible]
ATTORNEYS AT LAW
NORWALK - WESTPORT
CONNECTICUT

persons whomsoever claiming by, from or under us as such Administrators aforesaid, and that the same is free from all encumbrances whatsoever except

2.75

1. Building and zoning regulations and restrictions of the Town of Westport;
2. Taxes of the Town of Westport on the List of October 1954, which the Grantees herein assume and agree to pay;
3. The restriction that only a one-family house shall be erected on said premises, the house or plans for which shall be approved by the Grantors;
4. Agreement with the Bridgeport Hydraulic Company to supply water to the said premises and the Grantees agree to pay for the water consumed on the premises, or in any event, a minimum charge of Forty ($40.00) Dollars per year per house until such time as such minimum charge is reduced, which minimum charge shall commence as soon as water is available to the premises.

IN WITNESS WHEREOF, We, as such Administrators aforesaid, have hereunto set our hands and seals, this 7th day of July 1955.

Signed, Sealed and Delivered in the Presence of:

Gershom B. Bradley (LS)

Jeanette Bradley Hughes (LS)
Administrators

STATE OF CONNECTICUT
COUNTY OF FAIRFIELD } ss. Westport, July 7th, 1955.

Personally appeared GERSHOM B. BRADLEY and JEANETTE BRADLEY HUGHES, Administrators of the Estate of EMMA LOUISE BRADLEY, signers and sealers of the foregoing instrument, and acknowledged that they executed the same in the capacity and for the purpose therein stated, and that the same is their free act and deed, as such Administrators, before me.

Commissioner of the Superior Court.
Notary Public.

Received for record Sept. 27, 1955 at 4:20 P.M. and recorded by Doris R. Clark
Westport Town Clerk

- #3 -

LOT 10

State of Connecticut
OFFICE OF SECRETARY OF STATE

The foregoing is a true copy of a certificate filed in this office and of the endorsement of approval thereon.

In Testimony Whereof, I have hereunto set my hand and affixed the Seal of said State, at Hartford, this 12th day of July A. D. 1955.

Mildred P. Allen
Secretary of State

Received for record July 13, 1955 at 8:40 a.m. and recorded by Joann C. Morrell
Assist. Town Clerk

TO ALL PEOPLE TO WHOM THESE PRESENTS SHALL COME, GREETING:-

WHEREAS, at a Court of Probate holden at Westport, within and for the District of Westport on the 6th day of July, 1955, upon written application of GERSHOM B. BRADLEY and JEANETTE BRADLEY HUGHES, Administrators of the Estate of EMMA LOUISE BRADLEY, late of Westport, in said District, deceased, praying that the Court order the sale of certain real estate owned by the decedent, and empowering them as such Administrators to sell and convey the same, the said Administrators were ordered, authorized and empowered to sell any or all of the said real property described in the inventory of said estate, at private sale, and give a deed of conveyance thereof; and pursuant thereto, the said Administrators have sold at private sale the real estate, hereinafter described, to JOHN FERRAIO and ALICE FERRAIO, of the said Town of Westport;

NOW, THEREFORE, Know Ye, that We, GERSHOM B. BRADLEY and JEANETTE BRADLEY HUGHES, Administrators of the Estate of EMMA LOUISE BRADLEY, late of the Town of Westport, County of Fairfield and State of Connecticut, deceased, in pursuance of the power and authority and direction aforesaid, and in consideration of the sum of One ($1.00) Dollar and other valuable considerations, received to our full satisfaction of JOHN FERRAIO and ALICE FERRAIO, the receipt whereof is hereby acknowledged, do give, grant, bargain, sell, confirm and convey unto the said JOHN FERRAIO and ALICE FERRAIO, all the right, title and interest which the said EMMA LOUISE

BRADLEY had at the time of her decease, or which we, as Administrators aforesaid, have or ought to have in and to

All that certain tract or parcel of land, situated partly in the Town of Westport and partly in the Town of Norwalk, County of Fairfield and State of Connecticut, designated as Lot #10 on a map entitled "Map of Property Prepared for The Estate of E. Louise Bradley, Gershom Bradley, Admr., Jeanette Hughes, Admx., Westport & Norwalk, Conn., Dec. 6, 1954, Scale 1" = 60', Certified 'Substantially Correct', Martin J. Capasse, Westport, Conn., Surveyor", in quantity .517 Acre, being more particularly bounded and described as follows:

Northerly,	125 feet by Hiawatha Lane, so called;
Easterly,	181.10 feet by Lot #9, as shown on the aforesaid map, being other land of the Sellers;
Southerly,	125.03 feet by land now or formerly of Helena F. and Eugene J. Devine; and
Westerly,	178.94 feet by Lot #11, as shown on the aforesaid map, being other land of the Sellers.

TO HAVE AND TO HOLD the above granted and bargained premises, with the privileges and appurtenances thereof, unto him, the said Grantee, his heirs, successors and assigns forever, to him and their own proper use and benefit, forever. And We, the said Administrators, do hereby covenant with him, the said Grantee, his heirs and assigns, that we have full power and authority, as Administrators aforesaid, to grant and convey the above described premises in manner aforesaid, and for ourselves and our heirs, executors, administrators and successors, do further covenant to WARRANT AND DEFEND the same to him, the said Grantee, his heirs and assigns, against the claims and demands of any person or persons whomsoever claiming by, from or under us as such Administrators aforesaid, and that the same is free from all encumbrances whatsoever except

1. Building and zoning regulations and restrictions of the Town of Westport; and of the Town of Norwalk;

2. Taxes of the Town of Westport on the List of October, 1954, and taxes of the Town of Norwalk on the List of October, 1954, which the Grantee herein assumes and agrees to pay;

3. Restriction that only a one-family house shall be erected on said premises, the house or plans for which shall be approved by the Grantors;

4. Agreement with the Bridgeport Hydraulic Company to supply water to the said premises and the Grantee agrees to pay for the water consumed on the premises, or in any event, a minimum charge of Forty ($40.00) Dollars per year per house until such time as such minimum charge is reduced, which minimum charge shall commence as soon as water is available to the premises.

IN WITNESS WHEREOF, We, as such Administrators aforesaid, have hereunto set our hands and seals, this 13th day of July, 1955.

Signed, Sealed and Delivered in the Presence of:

Gershom R. Bradley (LS)

Alan H. Nevas

Jeanette Bradley Hughes (LS)
Administrators

STATE OF CONNECTICUT }
COUNTY OF FAIRFIELD } ss Westport, July 13, 1955.

Personally appeared GERSHOM R. BRADLEY and JEANETTE BRADLEY HUGHES, Administrators of the Estate of EMMA LOUISE BRADLEY, signers and sealers of the foregoing instrument, and acknowledged that they executed the same in the capacity and for the purpose therein stated, and that the same is their free act and deed, as such Administrators, before me.

Alan H. Nevas
Commissioner of the Superior Court
~~Notary Public~~

Received for record July 13, 1955 at 12:34 P.M. and recorded by Joan C. Mosnaim
Westport Town Clerk

TO ALL PEOPLE TO WHOM THESE PRESENTS SHALL COME, GREETING:-

WHEREAS, at a Court of Probate holden at Westport, within and for the District of Westport on the 6th day of July, 1955, upon written application of GERSHOM B. BRADLEY and JEANETTE BRADLEY HUGHES, Administrators of the Estate of EMMA LOUISE BRADLEY, late of Westport, in said District, deceased, praying that the Court order the sale of certain real estate owned by the decedent, and empowering them as such Administrators to sell and convey the same, the said Administrators were ordered, authorized and empowered to sell any or all of the said real property described in the inventory of said estate, at private sale, and give a deed of conveyance thereof; and pursuant thereto, the said Administrators have sold at private sale the real estate, hereinafter described, to JOHN FEBBRAIO and ALICE FEBBRAIO, of the said Town of Westport;

NOW, THEREFORE, Know Ye, that We, GERSHOM B. BRADLEY and JEANETTE BRADLEY HUGHES, Administrators of the Estate of EMMA LOUISE BRADLEY, late of the Town of Westport, County of Fairfield and State of Connecticut, deceased, in pursuance of the power and authority and direction aforesaid, and in consideration of the sum of One ($1.00) Dollar and other valuable considerations, received to our full satisfaction of JOHN FEBBRAIO and ALICE FEBBRAIO, the receipt whereof is hereby acknowledged, do give, grant, bargain, sell, confirm and convey unto the said JOHN FEBBRAIO and ALICE FEBBRAIO, all the right, title and interest which the said EMMA LOUISE

BRADLEY had at the time of her decease, or which we, as Administrators aforesaid, have or ought to have in and to

All that certain tract or parcel of land, situated partly in the Town of Westport and partly in the Town of Norwalk, County of Fairfield and State of Connecticut, designated as Lot #10 on a map entitled "Map of Property Prepared for The Estate of E. Louise Bradley, Gershom Bradley, Admr., Jeanette Hughes, Admx., Westport & Norwalk, Conn., Dec. 6, 1954, Scale 1" = 60', Certified 'Substantially Correct', Martin J. Capasse, Westport, Conn., Surveyor", in quantity .517 Acre, being more particularly bounded and described as follows:

Northerly,	125 feet by Hiawatha Lane, so called;
Easterly,	181.10 feet by Lot #9, as shown on the aforesaid map, being other land of the Sellers;
Southerly,	125.05 feet by land now or formerly of Helena F. and Eugene J. Devine; and
Westerly,	178.94 feet by Lot #11, as shown on the aforesaid map, being other land of the Sellers.

TO HAVE AND TO HOLD the above granted and bargained premises, with the privileges and appurtenances thereof, unto him, the said Grantee, his heirs, successors and assigns forever, to him and their own proper use and benefit, forever. And We, the said Administrators, do hereby covenant with him, the said Grantee, his heirs and assigns, that we have full power and authority, as Administrators aforesaid, to grant and convey the above described premises in manner aforesaid, and for ourselves and our heirs, executors, administrators and successors, do further covenant to WARRANT AND DEFEND the same to him, the said Grantee, his heirs and assigns, against the claims and demands of any person or persons whomsoever claiming by, from or under us as such Administrators aforesaid, and that the same is free from all encumbrances whatsoever, except

1. Building and zoning regulations and restrictions of the Town of Westport; and of the Town of Norwalk;

2. Taxes of the Town of Westport on the List of October, 1954, and taxes of the Town of Norwalk on the List of October, 1954, which the Grantee herein assumes and agrees to pay;

3. Restriction that only a one-family house shall be erected on said premises, the house or plans for which shall be approved by the Grantors;

4. Agreement with the Bridgeport Hydraulic Company to supply water to the said premises and the Grantee agrees to pay for the water consumed on the premises, or in any event, a minimum charge of Forty ($40.00) Dollars per year per house until such time as such minimum charge is reduced, which minimum charge shall commence as soon as water is available to the premises.

IN WITNESS WHEREOF, We, as such Administrators aforesaid, have hereunto set our hands and seals, this 13th day of July, 1955.

Signed, Sealed and Delivered in the Presence of:

Gershom B. Bradley (LS)

Alan H. Nevas

Jeanette Bradley Hughes (LS)
Administrators

STATE OF CONNECTICUT }
COUNTY OF FAIRFIELD } ss Westport, July 13, 1955.

Personally appeared GERSHOM B. BRADLEY and JEANETTE BRADLEY HUGHES, Administrators of the Estate of EMMA LOUISE BRADLEY, signers and sealers of the foregoing instrument, and acknowledged that they executed the same in the capacity and for the purpose therein stated, and that the same is their free act and deed, as such Administrators, before me.

Alan H. Nevas
Commissioner of the Superior Court
~~Notary Public~~

U.S.I.R.
Stamps—
$3.95

Received for Record April 23, A. D. 1956 at 10:02 A.M. and recorded by
Metty P. Delany
Town Clerk.

LOT 20

TO ALL PEOPLE TO WHOM THESE PRESENTS SHALL COME, GREETING:-

WHEREAS, at a Court of Probate holden at Westport, within and for the District of Westport on the 20th day of October, 1955, upon written application of GERSHOM B. BRADLEY and JEANETTE BRADLEY HUGHES, Administrators of the Estate of EMMA LOUISE BRADLEY, late of Westport, in said District, deceased, praying that the Court order the sale of certain real estate owned by the decedent, and empowering them as such Administrators to sell and convey the same, the said Administrators were ordered, authorized and empowered to sell any or all of the said real property described in the inventory of said estate, at private sale, and give a deed of conveyance thereof; and pursuant thereto, the said Administrators have sold at private sale the real estate, hereinafter described to MARY T. BOTTONE and FIORE BOTTONE, and unto the survivor of them, and unto such survivor's heirs and assigns forever;

2.75

1.10

NOW, THEREFORE, Know Ye, that We, GERSHOM B. BRADLEY AND JEANETTE BRADLEY HUGHES, Administrators of the Estate of EMMA LOUISE BRADLEY, late of the Town of Westport, County of Fairfield and State of Connecticut, deceased, in pursuance of the power and authority and direction aforesaid, and in consideration of the sum of One ($1.00) Dollar and other valuable considerations, received to our full satisfaction of MARY T. BOTTONE and FIORE BOTTONE, both of the said Town of Westport, the receipt whereof is hereby acknowledged, do give,

grant, bargain, sell, confirm and convey unto the said MARY T. BOTTONE and FIORE BOTTONE and unto the survivor of them, and unto such survivor's heirs and assigns forever, all the right, title and interest which the said EMMA LOUIS BRADLEY had at the time of her decease, or which we, as Administrators aforesaid, have or ought to have in and to

All that certain tract or parcel of land, situated in the Towns of Westport and Norwalk, both in the County of Fairfield and State of Connecticut, designated as Lot #20 on a map entitled "Map of Property Prepared for the Estate of E. Louise Bradley, Gershom Bradley, Admr., Jeanette Hughes, Admx., Westport & Norwalk, Conn., December 6, 1954, scale 1" = 60', Certified 'Substantially Correct', Martin J. Capasse, Westport, Conn., Surveyor", in quantity 0.554 acre, being more particularly bounded and described as follows:

Northerly: 81.71 feet by land now or formerly of Helen C. Johnson;
Easterly : 168.36 feet by Lot 21 as shown on the aforesaid map;
Southerly: 128.02 feet by Hiawatha Lane, so called;
Westerly : 275.48 feet by Lot 19, as shown on the aforesaid map;
Northeasterly: 123.90 feet by land now or formerly of Helen C. Johnson.

TO HAVE AND TO HOLD the above granted and bargained premises, with the privileges and appurtenances thereof, unto them, the said Grantees, and unto the survivor of them, and unto such survivor's heirs and assigns forever, to them and their own proper use and benefit forever. And We, the said Administrators, do hereby covenant with them, the said Grantees and with the survivor of them, and with such survivor's heirs and assigns, that we have full power and authority, as Administrators aforesaid, to grant and convey the above described premises in manner aforesaid, and for ourselves and our heirs, executors, administrators and successors, do further covenant to WARRANT and

DEFEND the same to them the said Grantees, and to the survivor of them and to such survivor's heirs and assigns, against the claims and demands of any person or persons whomsoever claiming by, from or under us as such Administrators aforesaid, and that the same is free from all encumbrances whatsoever except

1. Building and zoning regulations and restrictions of the Towns of Westport; and Norwalk;
2. The last half of taxes on the List of October, 1954, which the Grantees herein assume and agree to pay;
3. The restriction that only a one-family house shall be erected on said premises, the house or plans for which shall be approved by the Grantors;
4. Agreement with the Bridgeport Hydraulic Company to supply water to the said premises and the Grantees agree to pay for the water consumed on the premises, or in any event, a minimum charge of Forty ($40.00) Dollars per year per house until such time as such minimum charge is reduced, which minimum charge shall commence as soon as water is available to the premises.

IN WITNESS WHEREOF, We, as such Administrators aforesaid, have hereunto set our hands and seals this 20th day of October, 1955.

Signed, Sealed and Delivered
in the Presence of:

Alan H. Nevas

Dorothy F. Sanchez

Jeanette Bradley Hughes (LS)

Gershom B. Bradley (LS)
Administrators

STATE OF CONNECTICUT }
COUNTY OF FAIRFIELD } ss Westport, October 20, 1955

Personally appeared GERSHOM B. BRADLEY and JEANETTE BRADLEY HUGHES, Administrators of the Estate of EMMA LOUISE BRADLEY, signers and sealers of the foregoing instrument, and acknowledged that they executed the same in the capacity and for the purpose therein stated, and that the same is their free act and deed, as such Administrators, before me.

Alan H. Nevas
Commissioner of the Superior Court
~~Notary Public~~

Received for record Oct 24 1955 at 12:45 P.M. and recorded by Lois R. Clark
Westport Town Clerk

VOL 129 PAGE 518

LOT 2, 0

STATE OF CONNECTICUT } ss. Norwalk August 15, 1955

COUNTY OF Fairfield

Personally appeared KNOX W. PFEIFFER and MERILLA K. PFEIFFER,

signer and sealer of the foregoing instrument, and they acknowledged the same to be their free act and deed, before me.

Notary Public

Received for record Aug 16 1955 at 9:03 A.M. and recorded by Lois R. Clark Westport Town Clerk

TO ALL PEOPLE TO WHOM THESE PRESENTS SHALL COME, G R E E T I N G:-

WHEREAS, at a Court of Probate holden at Westport, within and for the District of Westport on the 6th day of July 1955, upon written application of GERSHON B. BRADLEY and JEANETTE BRADLEY HUGHES, Administrators of the Estate of EMMA LOUISE BRADLEY, late of Westport, in said District, deceased, praying that the Court order the sale of certain real estate owned by the decedent, and empowering them as such Administrators to sell and convey the same, the said Administrators were ordered, authorized and empowered to sell any or all of the said real property described in the inventory of said estate, at private sale, and give a deed of conveyance thereof; and pursuant thereto, the said Administrators have sold at private sale the real estate, hereinafter described, to LOUIS NISTICO;

NOW, THEREFORE, KNOW YE, that We, GERSHON B. BRADLEY and JEANETTE BRADLEY HUGHES, Administrators of the Estate of EMMA LOUISE BRADLEY, late of the Town of Westport, County of Fairfield and State of Connecticut, deceased, in pursuance of the power and authority and direction aforesaid, and in consideration of the sum of One ($1.00) Dollar and other valuable considerations, received to our full satisfaction of LOUIS NISTICO, of the said Town of Westport, the receipt whereof is hereby acknowledged, do give, grant, bargain, sell, confirm and convey unto the said LOUIS NISTICO, all the right, title and interest which the said EMMA LOUISE BRADLEY had at the time of her decease, or which we, as Administrators aforesaid, have or ought to have in and to

2.20

1.10

All that certain tract or parcel of land, situated in the Town of Westport, County of Fairfield and State of Connecticut, designated as Lot #21 on a map entitled "Map of Property Prepared for The Estate of E. Louise Bradley, Gershon Bradley, Admr., Jeanette Hughes, Admx., Westport & Norwalk, Conn., Dec. 6, 1954,

Scale 1"= 60', Certified "Substantially Correct", Martin J. Capasse, Westport, Conn., Surveyor", in quantity .506 Acre, being more particularly bounded and described as follows:

Northerly, 130.01 feet by land now or formerly of Helen C. Johnson;
Easterly, 170.00 feet by Lot #22, being other land of the Grantors, as shown on the aforesaid map;
Southerly, 130 feet by Hiawatha Lane, so-called; and
Westerly, 168.36 feet by Lot #20 as shown on the aforesaid map.

Together with a right of way over Hiawatha Lane in common with others to whom said right has been or may hereafter be granted for all purposes whatsoever for which a public highway might be used.

TO HAVE AND TO HOLD the above granted and bargained premises, with the privileges and appurtenances thereof, unto him, the said Grantee, his heirs, successors and assigns forever, to him and their own proper use and benefit forever. And We, the said Administrators, do hereby covenant with him, the said Grantee, his heirs and assigns, that we have full power and authority, as Administrators aforesaid, to grant and convey the above described premises in manner aforesaid, and for ourselves and our heirs, executors, administrators and successors, do further covenant to WARRANT AND DEFEND the same to him, the said Grantee, his heirs and assigns, against the claims and demands of any person or persons whomsoever claiming by, from or under us as such Administrators aforesaid, and that the same is free from all encumbrances whatsoever, except

1. Building and zoning regulations and restrictions of the Town of Westport;
2. Three-quarters of the taxes on the List of October 1954, which the Grantee herein assumes and agrees to pay;
3. Restriction that only a one-family house shall be erected on said premises, the house or plans for which shall be approved by the Grantors;
4. Agreement with the Bridgeport Hydraulic Company to supply water to the said premises and the Grantee agrees to pay for

the water consumed on the premises, or in any event, a minimum charge of Forty ($40.00) Dollars per year per house until such time as such minimum charge is reduced, which minimum charge shall commence as soon as water is available to the premises.

IN WITNESS WHEREOF, We, as such Administrators aforesaid, have hereunto set our hands and seals, this 12th day of August 1955.

Signed, Sealed and Delivered in the Presence of:

Jeanette Bradley Hughes (LS)

Gershom B. Bradley (LS)

Administrators

STATE OF CONNECTICUT }
COUNTY OF FAIRFIELD } ss. Westport, August 12, 1955.

Personally appeared GERSHOM B. BRADLEY and JEANETTE BRADLEY HUGHES, Administrators of the Estate of EMMA LOUISE BRADLEY, signers and sealers of the foregoing instrument, and acknowledged that they had executed the same in the capacity and for the purpose therein stated, and that the same is their free act and deed, as such Administrators, before me.

Commissioner of the Superior Court.
~~Notary Public~~

Received for record Aug. 16, 1955 at 11:45 a.m. and recorded by Lois R. Clark
Westport Town Clerk

- #3 -

TO ALL PEOPLE TO WHOM THESE PRESENTS SHALL COME, G R E E T I N G:- LOT 22

WHEREAS, at a Court of Probate holden at Westport, within and for the District of Westport on the 6th day of July 1955, upon written application of GERSHON B. BRADLEY and JEANETTE BRADLEY HUGHES, Administrators of the Estate of EMMA LOUISE BRADLEY, late of Westport, in said District, deceased, praying that the Court order the sale of certain real estate owned by the decedent, and empowering them as such Administrators to sell and convey the same, the said Administrators were ordered, authorized and empowered to sell any or all of the said real property described in the inventory of said estate, at private sale, and give a deed of conveyance thereof; and pursuant thereto, the said Administrators have sold at private sale the real estate, hereinafter described, to WILLIAM FRANCIS CRIBARI and OLGA ELIZABETH CRIBARI, and unto the survivor of them, and unto such survivor's heirs and assigns forever;

NOW, THEREFORE, Know Ye, that We, GERSHON B. BRADLEY and JEANETTE BRADLEY HUGHES, Administrators of the Estate of EMMA LOUISE BRADLEY, late of the Town of Westport, County of Fairfield and State of Connecticut, deceased, in pursuance of the power and authority and direction aforesaid, and in consideration of the sum of One ($1.00) Dollar and other valuable considerations, received to our full satisfaction of WILLIAM FRANCIS CRIBARI and OLGA ELIZABETH CRIBARI, husband and wife, of the said Town of Westport, the receipt whereof is hereby acknowledged, do give, grant, bargain, sell, confirm and convey unto the said WILLIAM FRANCIS CRIBARI and OLGA ELIZABETH CRIBARI, and unto the survivor of them, and unto such survivor's heirs and assigns forever, all the right, title and interest which the said EMMA

ATTORNEYS AT LAW
WESTPORT
CONNECTICUT

LOUISE BRADLEY had at the time of her decease, or which we, as Administrators aforesaid, have or ought to have in and to

All that certain tract or parcel of land, situated in the Town of Westport, County of Fairfield and State of Connecticut, designated as Lot #22 on a map entitled "Map of Property Prepared for The Estate of E. Louise Bradley, Gershom Bradley, Admr., Jeanette Hughes, Admx., Westport & Norwalk, Conn., Dec. 6, 1954, Scale 1"= 60', Certified 'Substantially Correct', Martin J. Capasse, Westport, Conn., Surveyor", in quantity .502 acre, being more particularly bounded and described as follows:

Northerly, 130 feet by land now or formerly of Helen C. Johnson;

Easterly, and Southeasterly, 187.12 feet by Hiawatha Lane, so-called;

Southerly, 100 feet by Hiawatha Lane, so-called; and

Westerly, 170 feet by Lot #21 as shown on the aforesaid map, being other land of the Grantors.

Together with a right of way over Hiawatha Lane in common with others to whom said right has been or may hereafter be granted for all purposes whatsoever for which a public highway might be used.

TO HAVE AND TO HOLD the above granted and bargained premises, with the privileges and appurtenances thereof, unto them, the said Grantees, and unto the survivor of them, and unto such survivor's heirs and assigns forever, to them and their own proper use and benefit forever. And We, the said Administrators, do hereby covenant with them, the said Grantees and with the survivor of them, and with such survivor's heirs and assigns, that we have full power and authority, as Administrators aforesaid, to grant and convey the above described premises in manner aforesaid, and for ourselves and our heirs, executors, administrators and successors, do further covenant to WARRANT AND DEFEND the same to them the said Grantees, and to the survivor of them and to such survivor's heirs and assigns, against the claims and demands of any person or persons whomsoever claiming by, from or under us as

SEAL, SEAL AND SEAL
ATTORNEYS AT LAW
NORWALK - WESTPORT
CONNECTICUT

such Administrators aforesaid, and that the same is free from all encumbrances whatsoever, except:

1. Building and zoning regulations and restrictions of the Town of Westport;
2. Three-quarters of the Taxes of the Town of Westport on the List of October 1954, which the Grantees herein assume and agree to pay;
3. The restriction that only a one-family house shall be erected on said premises, the house or plans for which shall be approved by the Grantors;
4. Agreement with the Bridgeport Hydraulic Company to supply water to the said premises and the Grantees agree to pay for the water consumed on the premises, or in any event, a minimum charge of Forty ($40.00) Dollars per year per house until such time as such minimum charge is reduced, which minimum charge shall commence as soon as water is available to the premises.

IN WITNESS WHEREOF, We, as such Administrators aforesaid, have hereunto set our hands and seals, this 11th day of August 1955.

Signed, Sealed and Delivered in the Presence of:

Jeanette Bradley Hughes (LS)

Gershom B. Bradley (LS)

Administrators

STATE OF CONNECTICUT }
COUNTY OF FAIRFIELD } ss. Westport, August 11, 1955.

Personally appeared GERSHOM B. BRADLEY and JEANETTE BRADLEY HUGHES, Administrators of the Estate of EMMA LOUISE BRADLEY, signers and sealers of the foregoing instrument, and acknowledged that they executed the same in the capacity and for the purpose therein stated, and that the same is their free act and deed, as such Administrators, before me.

Commissioner of the Superior Court.
~~Notary Public.~~

Received for record Sept. 30, 1955 at 9:20 a.m. and recorded by Lois R. Clark
Westport Town Clerk

EXHIBIT C

VOL 13[illegible] PAGE [illegible]

STATE OF CONNECTICUT, }
DISTRICT OF WESTPORT, } ss. [illegible]

This certifies that the Estate of EMMA LOUISE BRADLEY, also known as E. LOUISE BRADLEY, late of Westport, in said District, deceased, has been duly [illegible] in this Court that GERSHOM B. BRADLEY and WILLIAM B. BRADLEY, both of said Westport, heretofore have been ascertained by this Court to be the sole heirs-at-law of said deceased and the sole distributees of said estate; and that there descends to said GERSHOM B. BRADLEY and WILLIAM B. BRADLEY each an undivided one-half (1/2) interest in and to the following described real estate:

FIRST TRACT: All that certain piece, parcel or tract of land, located partly in the Town of Norwalk and partly in the Town of Westport, County of Fairfield and State of Connecticut, bounded and described as follows:

NORTHERLY: 486 feet, more or less, by land now or formerly of William and Marion Garofalo, and land now or formerly of Helen C. Johnson, each in part;

EASTERLY: 392 feet, more or less, by land now or formerly of Helen C. Johnson;

SOUTHERLY: 699.85 feet, more or less, by other land of the heirs of Emma Louise Bradley;

WESTERLY: 749 feet, more or less, by land now or formerly of Elinor L. F. and James F. Lyon, and land now or formerly of Gershom B. Bradley, each in part.

SECOND TRACT: All that certain piece, parcel or tract of land, located partly in the Town of Norwalk, and partly in the Town of Westport, County of Fairfield and State of Connecticut, bounded and described as follows:

NORTHERLY: 1,059 feet, more or less, by land now or formerly of Gershom B. Bradley;

NORTHEASTERLY: 318 feet, more or less, by land now or formerly of Cornelius Otz;

WESTERLY: 103 feet, more or less, by land now or formerly of Cornelius Otz;

NORTHERLY, again, 325 feet, more or less, by land now or formerly of Michael Renzulli, et al, and land now or formerly of Gershom B. Bradley, each in part;

EASTERLY: 82 feet, more or less, by Indian Hill Road;

SOUTHERLY: 147 feet, more or less, by land now or formerly of Louis Stroffolino, et al;

EASTERLY, again, 112 feet, more or less, by land now or formerly of Louis Stroffolino, et al;

NORTHERLY, again, 116 feet, more or less, by land of said Stroffolino;

EASTERLY, again, 88 feet, more or less, by Indian Hill Road;

SOUTHERLY, again, 175 feet, more or less, by land now or formerly of M. Renzulli, et al;

See corrected Probate Certificate Vol. 1647 - 534

EASTERLY, [illegible] feet, more or less, by land [illegible] Manelli, et al, [illegible] formerly of V. [illegible] et al, each in part;

SOUTHERLY, again [illegible] feet, more or less, by land now or formerly of Peter Hilanes, et al;

EASTERLY, again, 181 feet, more or less, by land of said Hilanes;

SOUTHERLY, again, 150 feet, more or less, by Hiawatha Lane;

WESTERLY, again, 161 feet, more or less, by land now or formerly of Tony Cretella;

SOUTHERLY, again, 225 feet, more or less, by land now or formerly of said Cretella, Fred and Jennie Pascarelli, and Giunta, each in part;

EASTERLY, again, 160 feet, more or less, by land of said Giunta;

SOUTHERLY, again, 83 feet, more or less, by Hiawatha Lane;

WESTERLY, again, 160 feet, more or less, by land of Aulenti;

SOUTHERLY, again, 85 feet, more or less, by land of said Aulenti;

EASTERLY, again, 181 feet, more or less, by land of said Aulenti;

SOUTHEASTERLY and EASTERLY: 320 feet, more or less, by Hiawatha Lane;

SOUTHERLY, again, 225.42 feet, more or less, by land of Fred and Jennie Pascarelli;

EASTERLY, again, 100 feet, more or less, by land now or formerly of said Pascarelli;

SOUTHERLY, again, 12 feet, more or less, by Hiawatha Lane;

WESTERLY, again, 548 feet, more or less, by land now or formerly of Helen C. Johnson.

THIRD TRACT: Lots 1, 2, 3, 4, 5, 7, 11, 12, 13, 14, 15, 16, 17, 18 and 19 as shown on "Map of Property Prepared for The Estate of E. Louise Bradley, Gershom Bradley, Adm'r. Jeanette Hughes, Adm'x., Westport & Norwalk, Conn., Dec. 6, 1954, Scale 1" = 60', Certified Substantially Correct, Martin J. Capasso, Westport, Conn., Surveyor", which map is on file in the Town Clerks' offices of the Towns of Westport and Norwalk.

Together with all of the right, title and interest which E. Louise Bradley had at the time of her death in and to any and all of the private roads referred to above or shown on the above map, as adjoining the tracts hereinabove described.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of this Court on the 9th day of April, A.D. 1956.

Marion E. Wood
CLERK

Received for record May 4 1956 at 9:57 A.M.

and recorded by Joan C. Moandis
Asst. Westport Town Clerk

Fyt
18 to
Parcel 2

STATE OF CONNECTICUT } ss. PROBATE COURT
DISTRICT OF WESTPORT }

ESTATE OF EMMA LOUISE BRADLEY, a/k/a E. LOUISE BRADLEY, deceased

to GERSHOM B. BRADLEY, ET AL

The purpose of this Certificate is to correct the description of the Second Tract set forth in the Probate Certificate dated April 9, 1956 and recorded in Volume 137, Page 396 of the Westport Land Records and in Volume 513, Page 125 of the Norwalk Land Records. The correct description is as follows:

All that certain piece, parcel or tract of land, located partly in the Town of Norwalk, and partly in the Town of Westport, County of Fairfield and State of Connecticut, bounded and described as follows:

NORTHERLY:	1,059 feet,	more or less by land now or formerly of Gershom B. Bradley;
NORTHEASTERLY:	318 feet,	more or less by land now or formerly of Cornelius Otz;
WESTERLY:	100 feet,	more or less by land now or formerly of Cornelius Otz;
NORTHERLY, again:	325 feet,	more or less by land now or formerly of Michael Renzulli, et al, and land now or formerly of Gershom B. Bradley, each in part;
EASTERLY:	82 feet,	more or less, by Indian Hill Road;
SOUTHERLY:	147 feet,	more or less by land now or formerly of Louis Stroffolino, et al;
EASTERLY, again:	110 feet,	more or less by land now or formerly of Louis Stroffolino, et al;
NORTHERLY, again:	130 feet,	more or less, by land of said Stroffolino;
EASTERLY: again:	80 feet,	more or less, by Indian Hill Road;
SOUTHERLY, again:	175 feet,	more or less by land now or formerly of M. Renzulli, et al;

EASTERLY, again:	176 feet,	more or less by land now or formerly of M. Renzulli, et al, and by land now or formerly of V. Decicco, et al, each in part;
SOUTHERLY, again:	166 feet,	more or less, by land now or formerly of Peter Milazzo, et al;
EASTERLY, again:	161 feet,	more or less by land of said Milazzo;
SOUTHERLY, again:	150 feet,	more or less by Hiawatha Lane;
WESTERLY, again:	161 feet,	more or less by land now or formerly of Tony Cretella;
SOUTHERLY, again:	225 feet,	more or less by land now or formerly of said Cretella, Fred and Jennie Pascarelli, and Giunta, each in part;
EASTERLY, again:	160 feet,	more or less by said Giunta
SOUTHERLY, again:	83 feet,	more or less by Hiawatha Lane;
WESTERLY, again:	160 feet,	more or less by Aulenti;
SOUTHERLY, again:	85 feet,	more or less by said Aulenti
EASTERLY, again:	181 feet,	more or less by said Aulenti
SOUTHEASTERLY and EASTERLY:	320 feet,	more or less by Hiawatha Lane;
SOUTHERLY, again:	225.42 feet,	more or less by land of Fred and Jennie Pascarelli;
EASTERLY, again:	100 feet,	more or less by land now or formerly of said Pascarelli;
SOUTHERLY, again:	24.13 feet,	more or less by Hiawatha Lane; and
WESTERLY, again:	622.73 feet,	more or less by land now or formerly of Helen C. Johnson.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court on the 16th day of March, 1961.

Marion E. Wood
MARION E. WOOD, CLERK

Received for record May 26 1961 at 10:55 A.M. and recorded by Dorothy Jansen.
Westport Town Clerk

EXHIBIT D

VOL 144
PG 360

VOL 144 PAGE 360

State of Connecticut } ss. Westport
County of Fairfield } November 21, A.D. 1958

Personally Appeared THOMAS E. ABBOTTS and ANTOINETTE V. ABBOTTS *Signers and Sealers of the foregoing Instrument, and acknowledged the same to be* their *free act and deed before me.*

Commissioner of the Superior Court

Received for record Dec. 4, 1958 at 10:04 a.m. and recorded by Doris H. Clark
Westport Town Clerk

LOT 1

C38— WARRANTY DEED—Individuals

Form No. 1 Lab Co. Philadelphia Pa.

To all People to whom these Presents shall come, Greeting:

Know Ye, That EDMOND P. BRADLEY, of the Town of Westport, County of Fairfield and State of Connecticut, as the Executor of the Estate of William B. Bradley, deceased, late of Westport, and GERSHOM B. BRADLEY of said Westport,

For the consideration of One ($1.00) Dollar and other valuable considerations received to our full satisfaction of JOSEPH MAZZARO and SADIE MAZZARO, of said Westport

do give, grant, bargain, sell and confirm unto the said JOSEPH MAZZARO and SADIE MAZZARO

and unto the survivor of them and unto such survivor's heirs and assigns forever.

3.30

All that certain tract or parcel of land, situated in the Town of Westport, County of Fairfield and State of Connecticut, designated as Lot #1 on a map entitled "Map of Property Prepared for the Estate of E. Louise Bradley, Gershom Bradley, Admr., Jeanette Hughes, Admx., Westport & Norwalk, Conn., Dec. 6, 1954, Scale 1" - 60', Certified 'Substantially Correct', Martin J. Capasso, Westport, Conn., Surveyor", in quantity 0.725 acre, being more particularly bounded and described as follows:

NORTHERLY: 261.34 feet by Hiawatha Lane, so called;

SOUTHEASTERLY: 240.24 feet by land now or formerly of James P. Valiante;

SOUTHWESTERLY: 241.94 feet by Lot 2, as shown on the aforesaid map;

NORTHWESTERLY: 56.98 feet by Hiawatha Lane.

Together with a right of way over Hiawatha Lane for all purposes for which a public highway might be used.

The Grantee herein agrees to pay a minimum water charge of Forty ($40.00) Dollars per lot as soon as water is installed in the road adjoining said lot.

These premises are conveyed subject to:

1. Building and zoning regulations and restrictions of the Town of Westport.
2. Taxes on the List of October, 1955 which the Grantees herein assume and agree to pay.
3. Restriction that only a one-family house shall be erected on said premises, the house or plans for which shall be approved by the Grantors.
4. Water agreement with Bridgeport Hydraulic Company to pay a minimum of $40.00 per year for water until such time as such minimum charge is reduced by the Bridgeport Hydraulic Company, which minimum charge shall commence as soon as water is available to the said premises.

To Have and to Hold the above granted and bargained premises, with the appurtenances thereof, unto the said grantee and unto the survivor of them and unto such survivor's heirs and assigns to their and their proper use and behoof forever. And we the said grantors do for ourselves and our heirs, executors and administrators, covenant with said grantee and unto the survivor of them and unto such survivor's heirs and assigns, that at and until the ensealing of these presents we are well seized of the premises as a good indefeasible estate in fee simple, and have good right to bargain and sell the same in manner and form as is above written, and that the same are free from all encumbrances whatsoever, except as above noted.

3.30

And Furthermore, [illegible] the said grantors do by these presents bind our [illegible] and our [illegible] forever to WARRANT AND DEFEND the above granted and bargained premises [illegible] and to the survivor of them and to such survivor's heirs and assigns against all [illegible] except as above stated.

In Witness Whereof, We have [illegible] our hands and seals this 7th day of August, 1956.

Signed, Sealed and Delivered in presence of:

Elizabeth B. Bradley
Colin H. [illegible]
Margaret A. Sheridan
[illegible]

Edmond P. Bradley [SEAL]
Executor of the Estate of William B. Bradley, deceased.

Gertrude B. Bradley [SEAL]

STATE OF CONNECTICUT
County of FAIRFIELD ss. Westport August 8, A. D. 1956

Personally appeared EDMOND P. BRADLEY, as Executor of the Estate of William B. Bradley, deceased signer and sealer of the foregoing instrument, and acknowledged the same to be his free act and deed, before me.

Elizabeth B. Bradley
Notary Public - Justice of the Peace
Commissioner of the Superior Court

STATE OF CONNECTICUT
County of FAIRFIELD ss. Westport August 7 A. D. 1956

Personally appeared GERTRUDE B. BRADLEY

signer and sealer of the foregoing instrument, and acknowledged the same to be her free act and deed, before me.

[illegible]
Notary Public - Justice of the Peace
Commissioner of the Superior Court

Received for record Dec. 4, 1956 at 10:07 a.m. and recorded by Doris B. Clark
Westport Town Clerk

To all People to whom these Presents shall come, Greeting:

KNOW YE, THAT I, Antoinette G. Linch Brown of the Town of Westport, County of Fairfield and State of Connecticut,

for the consideration of Six Thousand ($6,000.00) Dollars

received to my full satisfaction of John C. Fanton of the Town of Weston, County of Fairfield and State of Connecticut

do give, grant, bargain, sell and confirm unto the said John C. Fanton

All that certain tract or parcel of land, with the buildings thereon, situated in the Town of Westport, County of Fairfield and State of Connecticut as referred to on a certain map entitled "Map of Property of Antoinette G. Linch, Westport, Conn. April 1041, which map is on file in the Westport Town Clerk's Office bearing file No 1695. Said premises being bounded and described as follows: In quantity 3.86 acres, more or less.

WESTERLY by highway, Weston Road, so-called, 171.49 feet;
NORTHERLY by land now or formerly of Catherine & William M. Frazer, 214.78 feet;
WESTERLY again, by land now or formerly of Catherine & William M. Frazer, 212.55 feet, more or less;
NORTHERLY again then
EASTERLY by the center line of the Saugatuck River;
NORTHERLY again by land now or formerly of Laura G. Frazer, 165.86 feet;
EASTERLY again by land now or formerly of Laura G. Frazer, 168.36 feet;
SOUTHERLY by land now or formerly of Clinton R. DuPuy, 804.41 feet.

Together with the right, title and interest of the Grantor, in and to the highway adjoining said premises to the center line thereof.

Being the same premises conveyed to Antoinette G. Linch by two Warranty Deeds, first recorded Westport Land Records in Vol. 65, page 128 and the second recorded in Westport Land Records in Vol. 87, page 591.

Said premises are subject to the following encumbrances:
1. Zoning and building regulations of the Town of Westport.
2. Current taxes.
3. Restrictions as appear of record
4. Mortgage in favor of John C. Fanton dated April 14th, 1955 and recorded in Westport Land Records in Vol. 125, page 180.

See instrument purporting to be a release Vol. 148 Pg. 465.

C 55— WARRANTY DEED—Individual

Facsimile Sales Co., Philadelphia, Pa.

To all People to whom these presents shall come, Greeting:

Know Ye, *That* we, GERSHOM F. BRADLEY and EDMOND F. BRADLEY, Executor of the Estate of William J. Bradley, deceased, both of the Town of Westport, County of Fairfield and State of Connecticut

LOT 2

For the consideration of One ($1.00) Dollar and other valuable considerations received to our full satisfaction of VINCENT PASCARELLI and CATHERINE C. PASCARELLI, husband and wife, of the said Town of Westport,

do give, grant, bargain, sell and confirm unto the said VINCENT PASCARELLI and CATHERINE C. PASCARELLI,

and unto the survivor of them and unto such survivor's heirs and assigns forever.

3.00

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#302

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All that certain tract or parcel of land, situated in the Town of Westport, County of Fairfield and State of Connecticut, in quantity 0.658 acres and designated as Lot #2 on a certain map entitled "Map of Property Prepared for the Estate of E. Louise Bradley, Gershom Bradley, Admr., Jeanette Hughes, Admx., Westport & Norwalk, Conn., Dec. 6, 1954, Scale 1"= 60', Certified 'Substantially Correct', Martin J. Capasso, Westport, Conn., Surveyor", bounded and described as follows:

Northwesterly, 130 feet by Hiawatha Lane;

Northeasterly, 241.94 feet by Lot #1 as shown on the aforesaid map;

Southeasterly, 120 feet by land now or formerly of James P. Valiante et ux;

Southerly, 61.18 feet by Lot #4 as shown on the aforesaid map; And

Southwesterly, 286.07 feet by Lot #3 as shown on the aforesaid map.

Together with a right of way over Hiawatha Lane for all purposes for which a public highway might be used.

The Grantees herein agree to pay a minimum water charge of FORTY ($40.00) DOLLARS per lot as soon as water is installed in the road adjoining said lot.

The said premises are conveyed subject to

1. Building and zoning regulations and restrictions of the Town of Westport;
2. The last half of taxes of the Town of Westport on the List of October 1960, which the Grantees herein assume and agree to pay;
3. Restriction that only a one-family house shall be erected on said premises, the house or plans for which shall be approved by the Grantors;
4. Water agreement with the Bridgeport Hydraulic Company to pay a minimum of $40.00 per year for water until such time as such minimum charge is reduced by the Bridgeport Hydraulic Company, which minimum charge shall commence as soon as water is available to the said premises.

To Have and to Hold the above granted and bargained premises, with the appurtenances thereof, unto the said grantees and unto the survivor of them and unto such survivor's heirs and assigns forever, to them and their proper use and behoof. AND ALSO, we, the said grantors do for our selves, our heirs, executors and administrators, successors and assigns, covenant with said grantees and with the survivor of them and with such survivor's heirs and assigns, that at, and until the ensealing of these presents, we are well seized of the premises as a good indefeasible estate in FEE SIMPLE; and have good right to bargain and sell the same in manner and form as is above written; and that the same is free from all incumbrances whatsoever, except as above stated.

(Mrs. [illegible])

And Furthermore, we, [illegible] do by these presents bind our selves [illegible] forever, to WARRANT AND DEFEND the above granted and bargained premises to them [illegible] and to the survivor of them and to such survivor's heirs and assigns against all claims and demands whatsoever, except as above stated.

In Witness Whereof, we have hereunto set our hands and seals, this 9th day of November 1956.

Signed, Sealed and Delivered in presence of

Allan H. Treman
as to both

Elizabeth Brion
as to both

Gershom B. Bradley [SEAL]

Edmond P. Bradley [SEAL]
Executor of the Estate of William B. Bradley, deceased.

[SEAL]

STATE OF CONNECTICUT
County of Fairfield } ss. Westport, November 9, A. D. 1956

Personally appeared GERSHOM B. BRADLEY

signer and sealer of the foregoing instrument, and acknowledged the same to be his free act and deed, before me,

Allan H. Treman
Notary Public - Justice of the Peace
Commissioner of the Superior Court

STATE OF CONNECTICUT
County of Fairfield } ss. Westport, November 9, A. D. 1956

Personally appeared EDMOND P. BRADLEY as Executor of the Estate of William B. Bradley, deceased

signer and sealer of the foregoing instrument, and acknowledged the same to be his free act and deed, before me,

Allan H. Treman
Notary Public - Justice of the Peace
Commissioner of the Superior Court

Received for record Nov. 30 1956 at 8:30 o'clk. and recorded by Lois R. Clark
Westport Town Clerk

Release of Mortgage

KNOW ALL MEN BY THESE PRESENTS, That The Westport Bank and Trust Company, of Westport, Connecticut, a corporation organized and existing under and by virtue of a charter from the State of Connecticut does hereby release and discharge a certain mortgage from GWENDOLYN FISK MARSH to said The Westport Bank and Trust Company dated MARCH 2 in 56 and recorded in the Records of the town of WESTPORT county of Fairfield and State of Connecticut in book 135 at page 507.

In Witness Whereof, Releasor has hereunto caused its name and seal to be affixed this 31 day of OCTOBER A. D. 19 56.

Witness:
Harry R. Sherwood
Joseph Adams

The Westport Bank and Trust Company
By [illegible]
Its President
[illegible]
Its Secretary

STATE OF CONNECTICUT,
COUNTY OF FAIRFIELD, } ss. WESTPORT October 31 1956.

Personally appeared E. W. ANDERSEN and WILLIAM E. STONE

Vice-President and Asst. Secretary respectively of The Westport Bank and Trust Company, Signers and Sealers of the foregoing instrument, and acknowledged the same to be their free act and deed, and the free act and deed of said Company, before me.

Received for record Nov. 30 1956 at 8:50 o'clk.
and recorded by Lois R. Clark
Westport Town Clerk

Harry R. Sherwood
Com. of the Superior Court
Notary Public

LOT 5

To all People to whom these presents shall come, Greeting:

Know Ye, [illegible] of the Town of Westport, County of Fairfield and State of Connecticut, as the Executor of the Estate of William B. Bradley, deceased, late of Westport, and GERSHOM B. BRADLEY, of said Westport,

For the consideration of One ($1.00) Dollar and other valuable considerations received to our full satisfaction of MARIANO CAIRO and CARMELA CAIRO, of the Town of Westport, in said County and State

do give, grant, bargain, sell and confirm unto the said MARIANO CAIRO and CARMELA CAIRO

and unto the survivor of them and unto such survivor's heirs and assigns forever.

All that certain tract or parcel of land situated in the Town of Westport, County of Fairfield and State of Connecticut, designated as Lot No. 5 on a map entitled "Map of Property Prepared for the Estate of E. Louise Bradley, Gershom Bradley, Admr., Jeanette Hughes, Admx., Westport & Norwalk, Conn., December 6, 1954, Scale 1" - 60', Certified 'Substantially Correct', Martin J. Capasse, Westport, Conn., Surveyor", in quantity 0.712 acres, being more particularly bounded and described as follows:

Northerly: 111.15 feet, by a right of way;
Easterly: 258.30 feet by Lot No. 4 as shown on the aforesaid map;
Southeasterly: 118.75 feet by land of New York, New Haven & Hartford Railroad Company;
Westerly: 300.15 feet by Lot No. 6 as shown on the aforesaid map;

#3102

The Grantees herein agree to pay a minimum water charge of Forty ($40.00) Dollars per lot as soon as water is installed in the road adjoining said lot.

These premises are conveyed subject to:

1. Building and zoning regulations and restrictions of the Town of Westport.
2. Taxes on the List of October, 1955 which the Grantees herein assume and agree to pay.
3. Restriction that only a one-family house shall be erected on said premises, the house or plans for which shall be approved by the Grantors.
4. A water drainage easement now existing on said premises, the exact location of which will be shown on a map to be prepared and placed on file in the Office of the Town Clerk of Westport.

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To Have and to Hold the above granted and bargained premises, with the appurtenances thereof, unto the said grantees and unto the survivor of them and unto such survivor's heirs and assigns forever, to them and their proper use and behoof. AND ALSO, We the said grantor S do for OUR selves OUR heirs, executors and administrators, successors and assigns, covenant with said grantees and with the survivor of them and with such survivor's heirs and assigns, that at, and until the ensealing of these presents, WE ARE well seized of the premises as a good indefeasible estate in FEE SIMPLE; and have good right to bargain and sell the same in manner and form as is above written; and that the same is free from all incumbrances whatsoever, except as above stated.

And Furthermore, We [illegible] do hereby covenant, to WARRANT AND DEFEND by these presents [illegible] the said premises and to the survivor of them [illegible] the above granted and bargained premises [illegible] the said premises, and to the survivor of them [illegible] survivor's heirs and assigns against all claims and demands whatsoever, except as above stated.

In Witness Whereof, We have hereunto set our hands and seals this 7 day of May, A.D. 1956.

Signed, Sealed and Delivered in presence of

[illegible] Gershom B. Bradley [SEAL]

[illegible] Edmond P. Bradley Executor [SEAL]

STATE OF CONNECTICUT } ss. Westport, May 7 A.D. 1956
County of FAIRFIELD }

Personally appeared EDMOND P. BRADLEY, as Executor of the Estate of William R. Bradley, deceased signer and sealer of the foregoing instrument, and acknowledged the same to be his free act and deed, before me.

[illegible] Notary Public - Justice of the Peace, Commissioner of the Superior Court

STATE OF CONNECTICUT } ss. Westport May 7 A.D. 1956
County of FAIRFIELD }

Personally appeared GERSHOM B. BRADLEY signer and sealer of the foregoing instrument, and acknowledged the same to be his free act and deed, before me.

[illegible] Notary Public - Justice of the Peace, Commissioner of the Superior Court

Received for record May 8, 1956 at 11:18 a.m. and recorded by Tom C. Maanalis Asst. Westport Town Clerk

KNOW ALL MEN BY THESE PRESENTS:
THAT I, WALTER A. PECK,

of the Town of Weston in the County of Fairfield and State of Connecticut do hereby release and discharge a certain mortgage

from JOHN L. BRICKER and MARION D. BRICKER

to WALTER A. PECK

dated June 6, 1955 and recorded Westport Land Records, Volume 127, Page 248,

The indebtedness secured thereby having been fully paid and satisfied.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 8th day of May, A. D. 1956.

Signed, Sealed and Delivered in presence of

[illegible] Walter A. Peck L.S.

[illegible] L.S.

STATE OF CONNECTICUT }
COUNTY OF FAIRFIELD } ss. Westport, May 8th, A.D. 1956.

Personally appeared WALTER A. PECK,

Signer and Sealer of the foregoing instrument and acknowledged the same to be his free act and deed

before me,

[illegible] Commissioner of the Superior Court

Received for record May 8, 1956 at 3:15 P.M. and recorded by Tom C. Maanalis Asst. Westport Town Clerk

LOT 7

VOL 58 PAGE 201

To all People to whom these Presents shall come, Greeting:

Know Ye, THAT WE EDMOND F. BRADLEY, of the Town of Westport, County of Fairfield and State of Connecticut, as the Executor of the Estate of William E. Bradley, deceased, late of Westport, and GERSHOM E. BRADLEY, of said Westport,

for the consideration of One ($1.00) Dollar and other valuable considerations received to our full satisfaction of MARY CRIBARI, of said Westport

do give, grant, bargain, sell and confirm unto the said MARY CRIBARI

All that certain tract or parcel of land situated in the Town of Westport, County of Fairfield and State of Connecticut, designated as Lot No. 7 on a map entitled "Map of Property Prepared for the Estate of E. Louise Bradley, Gershom Bradley, Admr., Jeanette Hughes, Admx., Westport & Norwalk, Conn., December 6, 1954, Scale 1" - 60', Certified 'Substantially Correct', Martin J. Capasse, Westport, Conn., Surveyor", in quantity 0.817 acres, being more particularly bounded and described as follows:

Northerly: 100 feet by Hiawatha Lane;
Easterly: 337.81 feet by Lot 6, as shown on the aforesaid map;
Southeasterly: 102.41 feet by land of the New York, New Haven & Hartford Railroad Co.;
Southwesterly: 14.60 feet by land of the New York, New Haven & Hartford Railroad Co.;
Westerly: 359.92 feet by Lot 8 as shown on the aforesaid map;

The Grantee herein agrees to pay a minimum water charge of Forty ($40.00) Dollars per lot as soon as water is installed in the road adjoining said lot.

These premises are conveyed subject to:

1. Building and zoning regulations and restrictions of the Town of Westport.
2. Taxes on the list of October, 1955 which the Grantees herein assume and agree to pay.
3. Restriction that only a one-family house shall be erected on said premises, the house or plans for which shall be approved by the Grantors.

To Have and to Hold the above granted and bargained premises, with the privileges and appurtenances thereof, unto her the said grantee her heirs, successors and assigns forever, to her and their own proper use and behoof. And also, we the said grantors do for our selves our heirs, executors, administrators, successors and assigns, covenant with said grantee her heirs, successors and assigns, that at and until the ensealing of these presents, we are well seized of the premises, as a good indefeasible estate in FEE SIMPLE; and have good right to bargain and sell the same in manner and form as above written; and that the same is free from all incumbrances whatsoever, except as above stated.

And Furthermore, We [illegible] by these presents bind OurSelves OUR heirs, successors and assigns forever, to defend the above granted and bargained premises to HIM the said grantee HIS heirs, successors and assigns against all claims and demands whatsoever, except as [illegible]

In Witness Whereof, We [illegible] have hereunto set our hands and seals this 21st day of May, A.D. 1956.

Signed, Sealed and Delivered in presence of:

Julia Bradley

Alan H. Nevas

Edmond P. Bradley
Executor of the Est. of William B. Bradley [SEAL]

Gershom Bradley [SEAL]

STATE OF CONNECTICUT
County of FAIRFIELD } ss. Westport May 21 A.D. 19 56

Personally appeared EDMOND P. BRADLEY, as Executor of the Estate of William B. Bradley, deceased signer and sealer of the foregoing instrument, and acknowledged the same to be his free act and deed, before me.

Alan H. Nevas
Notary Public - Justice of the Peace, Commissioner of the Superior Court for County.

STATE OF CONNECTICUT
County of FAIRFIELD } ss. Westport May 21 A.D. 19 56

Personally appeared GERSHOM BRADLEY signer and sealer of the foregoing instrument, and acknowledged the same to be his free act and deed, before me.

Alan H. Nevas
Notary Public - Justice of the Peace, Commissioner of the Superior Court for Fairfield County.

Received for record June 4, 1956 at 11:00 A.M. and recorded by Joan E. Marnato
Asst. Westport Town Clerk

KNOW ALL MEN BY THESE PRESENTS, THAT The MERCHANTS BANK AND TRUST COMPANY, a corporation under the laws of the State of Connecticut, and located and having its principal place of business in the City of Norwalk, in the County of Fairfield, and State of Connecticut, acting herein by PAUL J. KIRMAYER, its ASS'T. VICE PRES., hereto duly authorized for the consideration of one dollar and other valuable considerations, does hereby release and discharge a certain mortgage from CHARLES SERBESKY,

to the said The Merchants Bank and Trust Company, dated April 26, 1956, recorded in Volume 137, Page 226, of the land Records of the Town of Westport, Fairfield County, State of Connecticut, the note secured by said mortgage having been fully paid and satisfied.

IN WITNESS WHEREOF said, The Merchants Bank and Trust Company has caused its corporate seal to be hereto affixed and these presents to be signed by PAUL J. KIRMAYER, its ASS'T. VICE PRES. this 4th day of June, A.D. 1956.

Signed, sealed and delivered in presence of

THE MERCHANTS BANK AND TRUST COMPANY (Seal)
By Paul J. Kirmayer
its ASS'T. VICE PRES.

STATE OF CONNECTICUT
COUNTY OF FAIRFIELD } ss. Norwalk, June 4th, 19 56

Personally appeared PAUL J. KIRMAYER, ASS'T. VICE PRES. The Merchants Bank and Trust Company, signer and sealer of the foregoing instrument and acknowledged the same to be the free act and deed of said Bank, and his own free act and deed as ASS'T. VICE PRES. as therein described, before me.

NOTARY PUBLIC

Received for record June 6, 1956 at 8:50 A.M. and recorded by Joan E. Marnato
Asst. Westport Town Clerk

EXHIBIT E

LOTS 11-19

To all People to whom these Presents shall come, Greeting:

Know Ye, [illegible] E. BRADLEY and JEANETTE H. B. HUGHES, of the Town of Westport, County of Fairfield and State of Connecticut, and CONRAD ULMER, of Scarsdale, New York,

for the consideration of ONE DOLLAR ($1.00) and other valuable considerations received to our full satisfaction of UNITED AIRCRAFT CORPORATION, a Delaware corporation having an office and place of business in the Town of East Hartford, County of Hartford and State of Connecticut,

do give, grant, bargain, sell and confirm unto the said UNITED AIRCRAFT CORPORATION -

All that certain tract or parcel of land situated partly in the Town of Westport and partly in the Town of Norwalk, County of Fairfield and State of Connecticut, and being bounded and described as follows:

NORTHWESTERLY	459.74 feet, more or less, by land of the State of Connecticut;
EASTERLY	150 feet, more or less, by land of the State of Connecticut;
NORTHWESTERLY again,	188.70 feet, more or less, by land of the State of Connecticut;
EASTERLY again,	122.23 feet, more or less, by land now or formerly of Mary T. and Flore Bottoms;
EASTERLY again,	46.67 feet, more or less, by a private road, Hiawatha Lane, so-called;
SOUTHERLY	125 feet, more or less, by land now or formerly of Febbraio;
EASTERLY again,	116.94 feet by land now or formerly of Febbraio;
SOUTHERLY again,	621.37 feet by land now or formerly of Helena F. and Eugene J. Devine;
WESTERLY	371.20 feet by land now or formerly of Elinor L. P. and James P. Lyon.

TOGETHER WITH a right of way over Hiawatha Lane, in common with others to whom said right has been or may hereafter be granted, for all purposes whatsoever for which a public highway might be used.

For a more particular description of said premises, reference is hereby made to a certain map entitled "Map of Property Prepared for The Estate of E. Louise Bradley, Gershom Bradley, Admr., Jeanette Hughes, Admx., Westport, and Norwalk, Conn., Dec. 6, 1954, Scale 1" = 60', Certified 'Substantially Correct', Martin J. Capasse, Westport, Conn. Surveyor" on file in the Town Clerk's Office of the Town of Westport bearing File No. 3602, and to a certain map entitled "Towns of Norwalk-Westport, Map Showing Land & Rights of Access Acquired from Est. E. Louise Bradley by The State of Connecticut, Greenwich-Killingly Expressway, Scale 1" = 40', 1953 Supp. Chapter 107, Part IV, Newman E. Argraves, Highway Commissioner, August 1955, Revised Feb. 1956", on file in the Town Clerk's Office of the Town of Westport bearing File Nos. 4171, 4172 and 4173.

The said premises are conveyed subject to: (1) Building lines, if any, and building and zoning regulations and restrictions of the Towns of Westport and Norwalk; (2) three-fourths (3/4ths) of taxes of Town of Westport on the list of October 1, 1956, which, by the acceptance of this deed the grantee assumes and agrees to pay; (3) Taxes of the Town of Norwalk hereafter becoming due and payable; (4) The right on the part of the municipal authorities of the Town of Westport to establish a turnaround at the westerly end of Hiawatha Lane to comply with requirements for acceptance of Hiawatha Lane as a public highway.

To Have and to Hold the above granted and bargained premises, with the privileges and appurtenances thereof, unto it, the said grantee, its successors and assigns forever, to its and their own proper use and behoof.

And also, we, the said grantors, do for ourselves, our heirs, executors, administrators, successors and assigns, covenant with said grantee, its successors and assigns, that at and until the ensealing of these presents we are well seized of the premises, as a good indefeasible estate in FEE SIMPLE; and have good right to bargain and sell the same in manner and form as above written; and that the same is free from all incumbrances whatsoever, except as above stated.

And Furthermore, we, the said grantors, do hereby for these presents bind OURSELVES, OUR heirs, successors and assigns forever to warrant and defend the above granted and bargained premises to it, the said grantee, its successors and assigns against all claims and demands whatsoever, except as above stated.

In Witness Whereof, We have hereunto set our hands and seals this 30th day of September, 1959.

Signed, Sealed and Delivered in presence of

(Alan H. Nevas)

(Daniel F. Wheeler)

Julia S. Bradley [SEAL]

Jeanette H. B. Hughes [SEAL]

Conrad Ulmer [SEAL]

STATE OF CONNECTICUT
County of FAIRFIELD ss. Westport, September 30 A.D. 1959

Personally appeared JULIA S. BRADLEY, JEANETTE H. B. HUGHES and CONRAD ULMER signer s and sealer s of the foregoing instrument, and acknowledged the same to be their free act and deed, before me.

(Alan H. Nevas)

Commissioner of the Superior Court for Fairfield County.

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Received for record Dec. 18, 1959 at 3:36 P.M. and recorded by Dorothy Jansen Westport Town Clerk

DEATH NOTICE

STATE OF CONNECTICUT, COUNTY OF FAIRFIELD, } ss. Probate District of Westport

This certifies that MINNIE MINZAR HUMPHREY, who has dwelt at Westport, and who at the time of her death was the owner of real estate situated in the Town of Westport, in said District, died on the 17th day of October, 1959, leaving a will. Dated at Fairfield, Conn. this 16th day of December, A. D. 19 59.

Received for record Dec. 21, 1959 at 9:01 a.m. and recorded by Dorothy Jansen Westport Town Clerk

Horace R. Humphrey
Executor of the will of said deceased

To all People to whom these Presents shall come, Greeting:

Know Ye, That we, JULIA S. BRADLEY and JEANETTE H. B. HUGHES, of the Town of Westport, County of Fairfield and State of Connecticut, and CONRAD ULMER, of Scarsdale, New York,

for the consideration of ONE DOLLAR ($1.00) and other valuable considerations received to our full satisfaction of UNITED AIRCRAFT CORPORATION, a Delaware corporation having an office and place of business in the Town of East Hartford, County of Hartford and State of Connecticut,

do give, grant, bargain, sell and confirm unto the said UNITED AIRCRAFT CORPORATION -

All that certain tract or parcel of land situated partly in the Town of Westport and partly in the Town of Norwalk, County of Fairfield and State of Connecticut, and being bounded and described as follows:

NORTHWESTERLY	450.74 feet, more or less, by land of the State of Connecticut;
EASTERLY	150 feet, more or less, by land of the State of Connecticut;
NORTHWESTERLY again,	188.71 feet, more or less, by land of the State of Connecticut;
EASTERLY again,	122.23 feet, more or less, by land now or formerly of Mary T. and Flora Battone;
EASTERLY again,	48.67 feet, more or less, by a private road, Hiawatha Lane, so-called;
SOUTHERLY	125 feet, more or less, by land now or formerly of Febbraio;
EASTERLY again,	176.94 feet by land now or formerly of Febbraio;
SOUTHERLY again,	621.37 feet by land now or formerly of Helene F. and Eugene J. Devine;
WESTERLY	371.20 feet by land now or formerly of Elinor L. P. and James P. Lyon.

TOGETHER WITH a right of way over Hiawatha Lane, in common with others to whom said right has been or may hereafter be granted, for all purposes whatsoever for which a public highway might be used.

For a more particular description of said premises, reference is hereby made to a certain map entitled "Map of Property Prepared for the Estate of E. Louise Bradley, Gershom Bradley, Admr., Jeanette Hughes, Admx., Westport, and Norwalk, Conn., Dec. 6, 1934, Scale 1" = 60', Certified 'Substantially Correct', Martin J. Capasso, Westport, Conn. Surveyor" on file in the Town Clerk's Office of the Town of Westport bearing File No. 3602, and to a certain map entitled, "Towns of Norwalk-Westport, Map Showing Land & Rights of Access Acquired from Est. E. Louise Bradley by The State of Connecticut, Greenwich-Killingly Expressway, Scale 1" = 40', 1953 Supp. Chapter 107, Part IV, Newman E. Argraves, Highway Commissioner, August 1955, Revised Feb. 1956", on file in the Town Clerk's Office of the Town of Westport bearing File Nos. 4171, 4172 and 4173.

The said premises are conveyed subject to: (1) Building lines, if any, and building and zoning regulations and restrictions of the Towns of Westport and Norwalk; (2) Three-fourths (3/4ths) of taxes of Town of Westport on the List of October 1, 1958; which, by the acceptance of this deed the grantee assumes and agrees to pay; (3) Taxes of the Town of Norwalk hereafter becoming due and payable; (4) The right on the part of the municipal authorities of the Town of Westport to establish a turnaround at the westerly end of Hiawatha Lane to comply with requirements for acceptance of Hiawatha Lane as a public highway.

To Have and to Hold the above granted and bargained premises, with the privileges and appurtenances thereof, unto it, the said grantee, its heirs, successors and assigns forever, to its and their own proper use and behoof.

And also, we, the said grantors do for ourselves, our heirs, executors, administrators, successors and assigns, covenant with said grantee, its heirs, successors and assigns, that at and until the ensealing of these presents, we are well seized of the premises, as a good indefeasible estate in FEE SIMPLE; and have good right to bargain and sell the same in manner and form as above written; and that the same is free from all incumbrances whatsoever, except as above stated.

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And Furthermore, we, the said grantor s do by these presents bind ourselves, our heirs, successors and assigns forever to warrant and defend the above granted and bargained premises to it, the said grantee, its successors and assigns, against all claims and demands whatsoever, except as above stated.

In Witness Whereof, We have hereunto set our hands and seals this 30th day of September, 1959.

Signed, Sealed and Delivered in presence of

(Alan H. Nevas)

(Daniel F. Wheeler)

U.S.I.R.
Stamps
$58.85

Julia S. Bradley [SEAL]
Julia S. Bradley

Jeanette H. B. Hughes [SEAL]
Jeanette H. B. Hughes

Conrad Ulmer [SEAL]
Conrad Ulmer

STATE OF CONNECTICUT
County of FAIRFIELD ss. Westport, September 30 A.D. 1959

Personally appeared JULIA S. BRADLEY, JEANETTE H. B. HUGHES and CONRAD ULMER signer s and sealer s of the foregoing instrument, and acknowledged the same to be their free act and deed, before me.

(Alan H. Nevas)
Notary Public, Justice of the Peace, Commissioner of the Superior Court for Fairfield County.

Received for Record September 30 A.D. 1959 at 4:27 P.M. and recorded by
Mary B. Dalton, Town Clerk

Mortgage Deed

To All People To Whom These Presents Shall Come—Greeting:

KNOW YE, THAT I, WE, EDWARD B. WILSON of the Town of Norwalk County of Fairfield and State of Connecticut, hereinafter called the Grantor, for the consideration of Ten thousand dollars ($10,000) received to my full satisfaction of FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF NORWALK, a corporation organized under the laws of the United States of America and located in the Town of Norwalk, County of Fairfield, State of Connecticut, hereinafter called the Grantee, do give, grant, bargain, sell and confirm unto the said Grantee, its successors and assigns forever, all that certain piece, parcel, or tract of land, with the buildings, and all other improvements thereon or hereafter placed thereon, situated in the Town of Norwalk County of Fairfield and State of Connecticut, and described as follows: Lots Nos. 17 and 18, on a certain map entitled "Map of 'Pershing Park', Norwalk, Conn., owned by Adams & Ingalls", The Parsons Engineering Co., Stamford, Conn., August 1924, which Map is on file in the Town Clerk's Office at said Norwalk as Map #583. Reference to said Map is herein made and had for a more particular description.

Said premises are bounded as follows:

NORTHERLY: 126.75' by Mansion Avenue;

EASTERLY: 50' by Lot No. 19 on said Map;

SOUTHERLY: 102.82' by Lot No. 19 on said Map; and

WESTERLY: 55.47' by Ely Avenue.

Said premises are conveyed subject to the following:

1 - Taxes on the List of the City of Norwalk hereinafter due.

2 - Limitations of use imposed by governmental authority.

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EXHIBIT F

LOT 3

TO ALL PEOPLE TO WHOM THESE PRESENTS SHALL COME, G R E E T I N G:

KNOW YE, that We, THE WESTPORT BANK & TRUST COMPANY, a banking institution organized under the laws of the State of Connecticut, having its office and principal place of business in the Town of Westport, County of Fairfield and State of Connecticut, acting herein by CHARLES C. LUNGY, a Vice-President, and WILLIAM E. STONE, Secretary, CONSERVATOR OF THE ESTATE OF GERSHOM B. BRADLEY, and EDMOND P. BRADLEY, of the said Town of Westport, County of Fairfield and State of Connecticut, EXECUTOR OF THE ESTATE OF WILLIAM B. BRADLEY, for the consideration of ONE DOLLAR ($1.00) and other valuable considerations, received to our full satisfaction of FREDERICK PASCARIELLO and ERIKA PASCARIELLO, of the said Town of Westport, County of Fairfield and State of Connecticut, do give, grant, bargain, sell and confirm unto the said FREDERICK PASCARIELLO and ERIKA PASCARIELLO, and unto the survivor of them and unto such survivor's heirs and assigns forever.

All that certain tract or parcel of land, situated in the Town of Westport, County of Fairfield and State of Connecticut, designated as Lot #3 on a certain map entitled "Map of Property Prepared for The Estate of E. Louise Bradley, Gershom Bradley, Admr., Jeanette Hughes, Admx., Westport & Norwalk, Conn., Dec. 6, 1954, Scale 1" = 60', Certified 'Substantially Correct', Martin J. Capasse, Westport, Conn. Surveyor", in quantity 0.843 acre, being more particularly bounded and described as follows:

NORTHEASTERLY	288.07 feet by Lot #2, as shown on the aforesaid map;
SOUTHERLY	259.31 feet by Lot #4, as shown on said map, and by a right of way, each in part;
WESTERLY	135.10 feet by a private road, Hiawatha Lane, so-called;
NORTHWESTERLY	by a curve in said Hiawatha Lane, having a radius of 60.28 feet for a distance of 55.67 feet; and
NORTHERLY	17.29 feet by Hiawatha Lane, so-called.

5.30

TOGETHER WITH a right of way over Hiawatha Lane in common with others to whom said right has been or may hereafter be granted for all purposes whatsoever for which a public highway might be used.

TOGETHER WITH all of the right, title and interest of the grantors in and to the center line of the 40 foot right of way shown on said map abutting the said lot.

The said premises are conveyed subject to:

1 - Building and zoning rules and regulations of the Town of Westport.

2 - Three-fourths (3/4ths) of taxes of the Town of Westport on the list of October 1, 1958, which, by the acceptance of this deed, the grantees herein assume and agree to pay.

3 - Easements and restrictions of record.

TO HAVE AND TO HOLD the above granted and bargained premises, with the appurtenances thereof, unto the said grantees and unto the survivor of them, and unto such survivor's heirs and assigns forever, to their and their proper use and behoof. And also, we, the said grantors, do for ourselves, our heirs, executors and administrators, successors and assigns, covenant with said grantees and with the survivor of them and with such survivor's heirs and assigns, that at, and until the ensealing of these presents, we are well seized of the premises as a good indefeasible estate in FEE SIMPLE; and have good right to bargain and sell the same in manner and form as is above written; and that the same is free from all encumbrances whatsoever, except as above stated.

AND FURTHERMORE, we, the said grantors, do by these presents bind ourselves and our heirs forever, to WARRANT AND DEFEND the above granted and bargained premises to them, the said grantees and to the survivor of them and to such survivor's heirs and assigns against all claims and demands whatsoever, except as above stated.

IN WITNESS WHEREOF, THE WESTPORT BANK & TRUST COMPANY has hereunto caused to be set its hand and seal by CHARLES C. LUNNY, a Vice President, and by WILLIAM E. STONE, its Secretary, this 30th day of September, 1959, and EDMUND P. BRADLEY has hereunto set his hand and seal this 29th day of September, 1959.

SIGNED, SEALED AND DELIVERED
IN PRESENCE OF:

Suzanne Heinrich
Suzanne Heinrich

Raymond H. Fitch
Raymond H. Fitch

THE WESTPORT BANK & TRUST COMPANY

By Charles C. Lunny
Charles C. Lunny, Vice President

By William E. Stone
William E. Stone, Secretary

CONSERVATOR OF THE ESTATE OF
GERSHOM B. BRADLEY

Suzanne Heinrich
Suzanne Heinrich

Raymond H. Fitch
Raymond H. Fitch

Edmund P. Bradley (LS)
Edmund P. Bradley,
EXECUTOR OF THE ESTATE OF
WILLIAM B. BRADLEY

VOL 175 PAGE 516

STATE OF CONNECTICUT } ss: Westport September 30 , 1959
COUNTY OF FAIRFIELD

Personally appeared CHARLES C. LUNNY, Vice President, and WILLIAM E. STONE, Secretary, of THE WESTPORT BANK & TRUST COMPANY, Conservator of the Estate of Gershom B. Bradley, signers and sealers of the foregoing instrument, and they acknowledged the same to be their free act and deed, and the free act and deed of said corporation, before me.

Raymond H. Fitch
Raymond H. Fitch Notary Public
~~Commissioner of the Superior Court~~

STATE OF CONNECTICUT } ss: Westport September 29 , 1959
COUNTY OF FAIRFIELD

Personally appeared EDMOND P. BRADLEY, Executor of the Estate of William B. Bradley, signer and sealer of the foregoing instrument, and he acknowledged the same to be his free act and deed, before me.

Raymond H. Fitch
Raymond H. Fitch Notary Public
~~Commissioner of the Superior Court~~

Received for record July 13, 1960 at 3:30 P.M.

and recorded by Dorothy Janssen
Westport Town Clerk

EXHIBIT G

Lot 4

TO ALL PEOPLE TO WHOM THESE PRESENTS SHALL COME, G R E E T I N G :

KNOW YE, That THE WESTPORT BANK AND TRUST COMPANY, a corporation specially chartered by the State of Connecticut, located in the Town of Westport, County of Fairfield and State of Connecticut, and JEANETTE HALE HUGHES, a.k.a. JEANETTE BRADLEY HUGHES, of said Westport, Executors of the Will of GERSHOM B. BRADLEY, late of Westport, deceased, by virtue of the Will of GERSHOM B. BRADLEY, deceased, and THE WESTPORT BANK AND TRUST COMPANY, a corporation specially chartered by the State of Connecticut, located in said Westport, and JEANETTE BRADLEY HUGHES, of said Westport, Trustees under the Will of WILLIAM B. BRADLEY, late of Westport, deceased, and in consideration of the sum of One (1) Dollar and other good and valuable considerations received to their full satisfaction JOHN A. KALLAY and KATHLEEN KALLAY, both of the Town of Fairfield, County of Fairfield, State of Connecticut, do give, grant, bargain sell and confirm unto the said JOHN A. KALLAY and KATHLEEN KALLAY, and unto the survivor of them and unto such survivor's heirs and assigns forever, all the right, title, interest, claim and demand which the said GERSHOM B. BRADLEY and WILLIAM B. BRADLEY had at the time of their decease, or which they as such Executors and Trustees have or ought to have, in and to a certain piece or parcel of land, referred to as Lot # 4 on a map entitled "Map of Property Prepared for the Estate of E. Louise Bradley Gershom B. Bradley, Admr. Jeanette Hughes, Admx. Westport & Norwalk, Conn. Dec. 6, 1954 Scale 1" = 60' Certified Substantially Correct Martin J. Capasso Westport, Conn. Surveyor", which map is on file in the office of the Town Clerk of the Town of Westport as Map No. 3802, and which Lot is bounded and described as follows:

NORTHERLY - 200.49 feet by Lots No. 3 and No. 2 as shown on said map;.

EASTERLY - 200.[illegible] feet by land now or formerly of James P. [illegible], et ux;

SOUTHEASTERLY - 239.86 feet by land now or formerly of the New York, New Haven and Hartford Railroad; and

WESTERLY - 283.30 feet by Lot No. 5 and a 25 foot right of way as shown on said map.

Together with a right of way for all lawful purposes to the private roads as shown on said map.

TO HAVE AND TO HOLD the above granted and bargained premises with the appurtenances thereof, unto them the said grantees and unto the survivor of them and unto such survivor's heirs and assigns forever, to them and their proper use and behoof. And they the said Executors and Trustees to hereby covenant with them the said grantees and with the survivor of them and with such survivor's heirs and assigns, that they have full power and authority, as Executors and Trustees aforesaid, to grant and convey the above described premises in manner and form aforesaid and for themselves and their heirs, executors, administrators, successors and assigns, do further covenant to warrant and defend the same to them the said grantees and to the survivor of them and to such survivor's heirs and assigns, against the claims of any person or persons whomsoever, claiming by, from or under them as Executors and Trustees aforesaid.

The said premises are conveyed subject to:

1. Riparian rights of others in and to the stream as shown on said map.

2. Utility grants and easements of record.

3. Rights of others to the private roads as shown on said map.

4. Any facts that an accurate survey or a physical examination of the premises might disclose.

5. Taxes of the Town of Westport on the list of October 1, 1961.

6. Building and zoning rules and regulations of the Town of Westport.

IN WITNESS WHEREOF, THE WESTPORT BANK AND TRUST COMPANY, acting herein by CHARLES C. LUNNY, its Vice President and Trust Officer, and WILLIAM STONE, its Secretary, has hereunto set its hand and caused its corporate seal to be affixed, and JEANETTE HALE BRADLEY a.k.a. JEANETTE BRADLEY HUGHES has hereunto set her hand and seal, this 21st day of June, 1962.

Signed, sealed and Delivered in the presence of:

Jean R. Husveth
Walter M. Andrews Jr.

THE WESTPORT BANK AND TRUST COMPANY
Executor of the Will of Gershon B. Bradley

By Charles C. Lunny (L.S.)
Charles C. Lunny
Its Vice President and Trust Officer

By William Stone (L.S.)
William Stone
Its Secretary

Jean R. Husveth
Walter M. Andrews Jr.

Jeanette Hale Hughes (L.S.)
JEANETTE HALE HUGHES a.k.a.
JEANETTE BRADLEY HUGHES, Executor
of the Will of Gershon Bradley

Jean R. Husveth
Walter M. Andrews Jr.

THE WESTPORT BANK AND TRUST COMPANY
Trustee under the Will of William B. Bradley

By Charles C. Lunny (L.S.)
Charles C. Lunny
Its Vice President and Trust Officer

By William Stone (L.S.)
William Stone
Its Secretary

Jean R. Husveth
Walter M. Andrews Jr.

Jeanette Bradley Hughes (L.S.)
JEANETTE BRADLEY HUGHES, Trust under
the Will of William B. Bradley

Vol. 193 Pg. 456

STATE OF CONNECTICUT) ss: Westport June 26, 1962
COUNTY OF FAIRFIELD)

Personally appeared CHARLES C. LUNNY, Vice President and Trust Officer of, and WILLIAM STONE, Secretary of THE WESTPORT BANK AND TRUST COMPANY, signers and sealers of the foregoing Instrument and acknowledged the same to be their free acts and deeds and the free act and deed of THE WESTPORT BANK AND TRUST COMPANY as Executor of the Will of Gershom B. Bradley, and Trustee under the Will of William B. Bradley, before me,

Walter M. Andrew Jr.
Commissioner of the Superior Court
~~Notary Public~~
Walter M. Andrew Jr.

STATE OF CONNECTICUT) ss: Westport June 26, 1962
COUNTY OF FAIRFIELD)

Personally appeared JEANETTE HALE HUGHES, a.k.a. JEANETTE BRADLEY HUGHES, Executor of the Will of Gershom B. Bradley and Trustee under the Will of William B. Bradley, signer and sealer of the foregoing Instrument and acknowledged the same to be her free act and deed as such Executor and Trustee.

Walter M. Andrew Jr.
Commissioner of the Superior Court
~~Notary Public~~
Walter M. Andrew Jr.

Received for record June 26, 1962 at 10:56 A.M. and recorded by Dorothy Janson.
Westport Town Clerk

Memorandum

To: Members, Planning and Zoning Commission

From: Mary Young, Assistant Planning Director

Date: July 5, 2007

Re: **§8-24 Request regarding a private extension of the sanitary sewer to Hiawatha Lane Extension, Assessor's Map A5 and B5, Zone B**

I. DESCRIPTION

The First Selectman is seeking a report from the Planning and Zoning Commission in response to a request received from Summit Saugatuck LLC, regarding a private sewer extension to connect properties on Hiawatha Lane to the public sewer. The properties to be served are described in a letter from Milone and MacBroom dated 7/2/07, and consist of a 6.815 acres area, including: 38, 41, 42, 43, 44, 45, and 47 Hiawatha Lane. The attached letter further describes the sewer extension is designed to serve a future 52-unit townhouse development. A portion (30%) of the development will be either affordable housing as defined in accordance with C.G.S. §8-30g or will be Workforce Housing. Correspondence from the Town Engineer dated 5/17/07 describes the request as follows:

> *"In that there are currently no public mainline sewer facilities fronting the development site, the owners propose to install, at their own expense, an on-site private pumping station and a pressurized mainline sewer. This pressurized line will extend approximately 950' to the terminus of the existing public gravity mainline sewer on Davenport Avenue, and will be located within the private right-of-way of Hiawatha Lane and the public right-of-way of Davenport Avenue. Although this extension will be designed and constructed to Town standards, it is currently anticipated that the system will remain a private facility.*

A map was submitted by the property owner *(see attached Site Plan prepared by Blades and McGovern, dated 4/17/07)*, that depicts the location of the proposed sewer line and pump station. The map also shows a conceptual layout of multiple buildings where the future 52-unit townhouse development may be located adjacent to the Westport/Norwalk municipal boundary.

Whereas extension of the sewer is designed to serve a potential multi-family residential development, the housing development is not subject to §8-24 Review, nor are any draft zoning regulations permitting a change in allowable density within the B zoning district or any new zoning district that may be proposed. Applications must be filed for review by the Planning and Zoning Commission prior to adoption of any text amendments or map amendments or prior to any approval for a site development plan.

If a Positive §8-24 Report is issued by the Planning and Zoning Commission than the sewer extension request will subsequently be reviewed by the Water Pollution Control Authority in accordance with the Department of Public Works *"Policy Regarding Private Sanitary Sewer Main Line Extensions (MLE)," revised 7/13/05.*

II. BACKGROUND

A. History

Summit Development, LLC presented preliminary plans for a multi-family residential development project located in the Hiawatha Lane area of Westport, at a Code Enforcement Committee meeting held on 11/16/05. At this meeting questions and concerns of various Town departments were raised including:

- The Deputy Town Engineer identified a drainage report will be needed in part to determine what if any effect there may be on Indian River; and the Water Pollution Control Authority will need a sewer feasibility plan with flow rates.
- The Conservation Director raised concerns about water quality. She noted that portions of Indian River are located within the project area and this watercourse is severely impaired. She additionally inquired about the need for blasting as this may further exacerbate water quality concerns.
- The Police Chief raised concerns about providing adequate parking within the development to eliminate spillover of vehicles onto adjacent streets. He also identified the need for adding sidewalks along the streets and to improve sight lines so as to improve pedestrian safety. Additionally he stressed the importance for affordable housing and workforce housing for Town employees.
- The Building Official noted soil borings may be required to determine soil capacity for any multi-family residential development.
- The Fire Chief observed that emergency access to the site is important and he requested the developer include sprinkler systems in any new buildings.
- Planning and Zoning staff identified the proposed development did not comply with current zoning regulations and the applicant would be required to make subsequent proposals for modifications to existing text to permit more intensive development in the B Zone or a proposal for a new zoning district.

B. 1997 Town Plan of Conservation and Development:

The Utilities Chapter discusses the existing Wastewater Treatment Plant and the need to limit extension of sewer service to areas where septic systems will not work and to reserve capacity for commercial lots and residential households which are not yet connected to the sewer system, but are within the established service area. The Utilities Plan recommends:

> *"A sewer service and waste treatment system that is adequate to serve the disposal requirements of the Town of Westport, but which is not intended to promote new or more intensive development." The Plan further recommends that "the Health Department, Department of Public Works and the Planning and Zoning Department should review sanitary disposal and facility conditions in small lot neighborhoods, high density areas, areas with poor soil types, poor drainage characteristics and flood hazard to ascertain needs and priorities for sewer extensions." p. 41*

C. Existing Zoning:

The properties at 38, 41, 42, 43, 44, 45, and 47 Hiawatha Lane are located in the Res B district. The Res B district is intended to encourage higher-density development for primarily residential and related purposes in areas served by centralized sewerage facilities, according to the Purpose Statement listed in §14-1 of the Westport Zoning Regulations.

D. Public Utilities:

The properties are currently served by individual septic systems.

E. Flood Zone Designation:

The properties at 41 and 43 Hiawatha Lane are partially located within the 100-year flood zone (A6, elevation 12). The properties at 38, 42, 44, 45, and 47 Hiawatha Lane are outside the 100-year flood plain.

F. Development Potential:

The properties at 38, 41, 42, 43, 44, 45, and 47 Hiawatha Lane are oversized lots located in the Res B district. Each lot exceeds the 6,000 SF minimum lot size standard for the underlying zoning district. Individual surveys of the properties were not submitted, but tax cards for the properties show each lot is at least 0.45 acres (19,602 SF) or greater in size. Additional building lots may be created from the Hiawatha Lane properties if a subdivision application was approved; based upon the available existing gross lot area information.

G. Other Information:

A wastewater facility plan was prepared in 2002 by Stearns and Wheler for the Town of Westport that evaluated the existing conditions and capacity of the Town's sewage treatment plant, known as the Water Pollution Control Facility. The 2002 wastewater facility plan concluded that an expansion and upgrade of the existing facility was recommended to meet current state and federal mandates for nitrogen reduction in effluent. Plans for the facility upgrade and expansion were designed by Stearns and Wheler. The Planning and Zoning Commission granted a Positive §8-24 Report for the facility expansion at the September 19, 2002 meeting and granted Special Permit/Coastal Site Plan approval at the April 15, 2004 meeting. A Zoning Permit was issued on March 25, 2005.

The 2002 Stearns and Wheler Plan established an evaluation map that ranked the need for sewer service within the sewer boundary. Three criteria were used to evaluate the sewer need for individual areas including:

1. Availability of septic system reserve area;
2. Septic system repair rate; and
3. Suitability of the soil for septic systems.

Appendix G of the 2002 Stearns and Wheler Report identifies the three criteria listed above were given varying levels of influence to determine the overall rating of a property. The report states the relative confidence for the three characteristics was best expressed by applying the following factors in descending order of confidence: 3 for the soils, 2 for repair rate, and 1 for reserve area. The report further states the three characteristics were weighted according to their perceived reliability. The soil ratings are considered to be the most reliable. The use of the repair rate is not considered to be as reliable an indicator as the soil rating because the repair rate only includes septic system failures since the 1970's and only those that were reported. The reserve area characteristic is considered the least reliable because adequate records indicating reserve area exist for only those lots that had septic systems installed or repaired recently. The footnote at the bottom of the Septic System Evaluation Summary Table listed in Appendix G states the following:

Sum of Values (weighted)=(Likelihood of reserve area) x 1 + (Incidence of repair) x 2 + (Suitability of soil) x 3

The properties at 38, 41, 42, 43, 44, 45, and 47 Hiawatha Lane are located within the established sewer area. The sewer service evaluation map prepared by Stearns and Wheler rates these properties as "Low to Moderate" with regard to the need for connection to the public sewer.

III. ANALYSIS

A private mainline sewer extension requires a Positive §8-24 Report from the Planning and Zoning Commission and approval from the Water Pollution Control Authority (WPCA). There was a change in the procedures outlined in the "Policy Regarding Private Sanitary Sewer Main Line Extensions (MLE)." The WPCA revised their policy on 3/9/05 to require a favorable §8-24 Report from the Planning and Zoning Commission prior to review by the WPCA for a private sewer mainline extension. A copy of the most recently revised WPCA policy dated 7/13/05 is attached herein.

The applicant has submitted information to help ascertain the need for sewer. This includes documented septic repairs on the subject properties (1 repair at 45 Hiawatha Lane), and surrounding properties, as well as surrounding soil conditions. The 7/2/07 letter from Milone and McBroom, the applicant's engineer, suggests their research supports the need for extension of the sewer. The septic feasibility research was forwarded to the Health Department for their review and comment.

IV. CONSIDERATIONS

A. Procedural Considerations

§8-24 of the Connecticut General Statutes requires a report for any proposal to extend public utilities including sewerage. A report must be prepared by the Planning and Zoning Commission within 35-days of receipt of a request from the First Selectman. In this case, the Commission has until 7/26/07 to submit a report to the First Selectman.

B. Other Considerations

i. Criteria for review

The Planning and Zoning Commission has not specified any criteria to date for evaluation of private mainline sewer extensions. A meeting was held on 10/14/05 to discuss sewer/septic policies between members of the Planning and Zoning Commission, and staff from the Westport Weston Health District, Department of Public Works, and Conservation Department. A copy of these meeting minutes is attached herein. In the past the Commission has reviewed the following documents as part of their evaluation:

- The 1997 Town Plan of Conservation and Development;
- The Stearns and Wheler 2002 Wastewater Facility Plan; and
- The Westport Zoning Regulations.

The Town Plan recommends sewers should not be used to encourage more intense development. In this case, the sewer may be used to support a 52-unit residential development as described by the property owner. The draft zoning regulations included in the 7/2/07 letter from Milone and McBroom includes a Utilities section that requires public sewer for any new developments. Alternatively, the sewer may be used to serve the existing homes located on the Hiawatha Lane properties if they are not redeveloped.

The Town Plan further recommends that "the Health Department, Department of Public Works and the Planning and Zoning Department should review sanitary disposal and facility conditions in small lot neighborhoods, high density areas, areas with poor soil types, poor drainage characteristics and flood hazard to ascertain needs and priorities for sewer extensions." As stated herein, priority areas were established by Stearns and Wheler as part of their 2002 Wastewater Facility Plan and are shown on their sewer service evaluation map. The map rates the properties as "Low to Moderate" with regard to the need for connection to the public sewer.

The Town Plan additionally notes that when reviewing requests for sewer connections, consideration should be given to commercial development and existing lots and households within the established service areas, but which are not yet connected to the system. As stated herein, the properties are located within the established sewer area.

The Westport Zoning Regulations identifies in §14-1 that the Res B district is intended to encourage higher-density development for primarily residential and related purposes in areas served by centralized sewerage facilities. This purpose statement does not exclude from consideration homes served by individual septic systems, but it identifies that the Res B district is primarily intended to be served by centralized sewerage facilities.

A Positive or Negative §8-24 Report on the sewer request should not be construed as an opinion by the Planning and Zoning Commission on the proposed multi-family development for which it is designed to serve, as shown on the site plan. The merits of any future text or site development plan will be evaluated by staff and the Planning and Zoning Commission upon receipt of a formal application from the property owner.

ii. Future Sewer Service
The property owner has requested the proposed pump station and sewer line extension remain a private facility, if constructed. Approval from the property owner as well as the Water Pollution Control Authority would therefore be required prior to any other properties connecting to it. Any comments offered by the Planning and Zoning in an §8-24 Report should identify whether sewer tie-ins from surrounding properties will also require further review by the Commission if contemplated in the future, as was the case in the §8-24 Report issued for 0 Newtown Turnpike, wherein the Commission recommended:

> *"The [sewer] contract should provide for review and approval by the Planning and Zoning Commission for any property to tie into the private sewer line, prior to review by the Westport Water Pollution Control Authority."*

Department Comments
Comments have not yet been received from other departments. Members of the Planning and Zoning Commission should give particular consideration to any comments received from the Health Department related to their evaluation of the septic feasibility data submitted by the property owner's engineer, Milone and McBroom.

Public Works Department:	Referral sent
Westport Weston Health District:	Referral sent
Conservation Department:	Referral sent
Police Department:	Referral sent
Fire Department:	Referral sent
Parks and Recreation Department:	Referral sent
Building Department:	Referral sent
City of Norwalk:	Referral sent

Attachments
§8-24 Request from the First Selectman, dated 6/21/07
Letter from Milone and McBroom dated 7/2/07, including Site Plan prepared by Blades and McGovern, dated 4/17/07
Policy Regarding "Private Sanitary Sewer Main-Line Extension" (MLE), revised 7/13/05
Meeting minutes from 10/14/05 Sewer/Septic policy meeting

Submitted by Carol Ann Curry at Public Hearing 9/6/07

SAVE OLD SAUGATUCK

SOS SOS SOS

post office box 3330, saugatuck, connecticut, 06880

ferrylanewest*hiawathalane*indianhill*davenport*heritagecourt*dr.gillette*hiawathalaneextension*westend

July 14, 2007

No to a Hiawatha Lane Extension sewer system! No to Charney and unacceptable density!
Our septic systems work just fine for those of us who operate on septic!

name printed	name written	address	date
Sally DeMatto	Sally DeMatto	33 Hiawatha Lane Ext	7/14/07
Elva W. Skrensky	Elva W. Skrensky	26 Hiawatha Lane Ext	7/14/07
Nancy Alaimo	Nancy Alaimo	31 Hiawatha Lane Ext	7-14-07
Peter Alaimo		31 Hiawatha Lane Ext	7/14/07
Adele Gazzelli	Adele Gazzelli	37 Hiawatha Lane Ext	7/14/07
Kathleen Pappas	Kathleen Pappas	35 Hiawatha Lane Ext	7/14/07
Christopher G Pappas	Christopher G Pappas	35A Hiawatha Lane Ext	7-14-07
Selma Miriam	Selma Miriam	29 Hiawatha Lane Ext	7/18/07

A7

A8

SAVE OLD SAUGATUCK

SOS SOS SOS

post office box 3330, saugatuck, connecticut, 06880

ferrylanewest*hiawathalane*indianhill*davenport*heritagecourt*dr.gillette*hiawathalaneextension*westend

July 14, 2007

No to a Hiawatha Lane Extension sewer system! No to Charney and unacceptable density!
Our septic systems work just fine for those of us who operate on septic!

name printed	name written	address	date
Kenneth R. Sosnoski Jr.		24 HIAWATHA LANE EXT	7-15-07
Joanne C Sosnoski		24 HIAWATHA LANE EXT	7-15-07
Ralph DeMattio		35 HIAWATHA LANE EXT	7-15-07
Elizabeth [redacted] J. Licari		19 HIAWATHA LANE	7-15-07
JOHN P. LICARI		19 HIAWATHA LANE	7-15-07
ANNE MANTIA		28 HIAWATHA LANE EXT	7-15-07
Denise D Sedgwick		17 HIAWATHA LANE	7-15-07
Tom E. Sedgwick		17 HIAWATHA LANE	7-15-07

SAVE OLD SAUGATUCK

SOS SOS SOS

post office box 3330, saugatuck, connecticut, 06880

ferrylanewest*hiawathalane*indianhill*davenport*heritagecourt*dr.gillette*hiawathalaneextension*westend

July 14, 2007

No to a Hiawatha Lane Extension sewer system! No to Charney and unacceptable density!

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name printed	name written	address	date
Anthony Luciano	Anthony D Luciano	8 Davenport Ave.	7/22
Anna Kiss	Anna Kiss	7 Davenport Ave	7/22
Ed Backus	[illegible]	23 Davenport Ave	7/22
Susan Lucia Palmieri	Susan L Palmieri	3 Davenport Ave.	7/22
Andrea J. Lucaro	Andrea J. Lucaro	5 Davenport Ave	7/22
Leslie Hughes Ogilvy	Leslie Hughes Ogilvy	27 Hiawatha Lane Ext	7/22
Frank Spero	[illegible]	12 Davenport Ave	8-30-07
Michael Spero	[illegible]	12 Davenport Ave	8-30-07

SAVE OLD SAUGATUCK

SOS SOS SOS

post office box 3330, saugatuck, connecticut, 06880

ferrylanewest*hiawathalane*indianhill*davenport*heritagecourt*dr.gillette*hiawathalaneextension*westend

July 14, 2007

No to a Hiawatha Lane Extension sewer system! No to Charney and unacceptable density!

Our septic systems work just fine for those of us who operate on septic!

name printed	name written	address	date
SAMUEL J ANASTASIA	[illegible]	16 DAVENPORT AVE	9/4/07
SANDRA A. ANASTASIA	Sandra Anastasia	16 Davenport Ave	9/4/07
BERNARD PIANKA	Bernard W Pianka	4 DAVENPORT	9/6/07
~~Adele Gazzelli~~ Already signed	~~Adele Gazzelli~~	~~37 Hiawatha Lane~~	9/6/07
Antonetta Cretella	Antonetta Cretella	32 Indian Hill Road	9-06-07
CARMELLA M. VENTO	Carmella Vento	32 Indian Hill Road	9-06-07
Olga Criburi	Olga Criburi	4 West End Ave	9-06-07

A10

Hiawatha lane Extension	one acre/ 43560sq ft	Actual property size in sq ft	
38	50%	21,780	allen/charney*
42	50%	21,780	caputo/charney*
44	55%	23,958	battone
45	48%	20,908	ogilvy
43	75%	33,106	walsh
41	81%	35,719	rivera/charney*
47	45%	19,602	tiberio/charney*

Submitted by
Carol Ann Curry
at Public Hearing
9/6/07

LAND-TECH CONSULTANTS, INC.
ENVIRONMENTAL SCIENTISTS AND ENGINEERS

August 5, 2010

Mr. Gordon F. Joseloff, First Selectman
Water Pollution Control Authority
Town of Westport
110 Myrtle Avenue
Westport, CT 06880

RE: Application for Private Sewer Extension, Davenport Lane, Hiawatha Lane, and Hiawatha Lane Extension; Confirmation of Sewer Discharge Capacity; Owner/Applicant: Summit Development.

Dear Mr. Joseloff:

As you are aware, we represent Summit Development with regard to the above-referenced sewer application that was submitted to the Westport Water Pollution Control Authority ("WPCA") on June 30, 2010, as provided by General Statues § 7-246a and the WPCA's regulations.

It is our understanding that the sewer application has been referred to, and placed upon the upcoming September 16, 2010 meeting agenda of, the Westport Planning and Zoning Commission ("Commission") for a General Statues §8-24 ("§8-24") review. There is no reason to have this matter referred to the Commission for a §8-24 review.

The sewer application is not a request to extend the sewer line connection relative to a specific subdivision proposal that has been submitted to the Commission. Therefore, there is no need, or authority, for a §8-24 referral at this time. The sewer application seeks conceptual approval for a private sewer extension, and confirmation of sewer discharge capacity, to service the properties depicted on the conceptual plan for a residential development submitted with the sewer application. This is permitted by §7-246a. As described in the sewer application, the conceptual residential development complies with the area's current Residence B Zone regulations. The properties depicted on the conceptual plan are located within a designated sewershed area referred to as the "blue line" in the Town's Wastewater Facilities Plan dated March, 2002. The residential development plan included with the sewer application to the WPCA is conceptual plan submitted for purpose of assisting the WPCA in determining whether the sewer may be extended to service the properties depicted on the plan, and to confirm that there is sewage disposal capacity to service the properties shown on the plan. If a subdivision proposal is subsequently submitted to the Commission, then a §8-24 referral may be appropriate.

In addition, the sewer application was filed on June 30, 2010. General Statues §7-246a requires that the WPCA render a decision on the sewer application within sixty-five days of receipt of the sewer application. The date of receipt is the date of the WPCA's

205 Playhouse Corner • Southbury, CT 06488
Phone: 203.264.8300 • Fax: 203.264.5995
31 Franklin Street • Westport, CT 06880
Phone: 203.454.2110 • Fax: 203.454.4971
On the Web: www.landtechconsultants.com

next regularly scheduled meeting which is July 14, 2010. Therefore, the WPCA has until September 17, 2010, to make a decision on the sewer application.

Once again, Summit Development requests conceptual approval of a private sewer extension to service the properties as shown on the conceptual residential development submitted with the sewer application, and confirmation of 5,486 gpd of sewer capacity to serve Summit's properties along this extension.

If you have any questions or require any additional information, please call me at (203) 454-2110, extension 15.

Very truly yours,
Land-Tech Consultants, Inc.

Peter T. Romano
Partner

MINUTES

The Water Pollution Control Authority held a public hearing on Wednesday, Sept. 15, 2010, at 4 p.m. in Rooms 309/307 of the Westport Town Hall. Present at the meeting were: Gordon F. Joseloff, Shelly A. Kassen, R. Gavin S. Anderson, Ira W. Bloom, John Kondub, Stephen Edwards, Peter Ratkiewich, Bryan Thompson, James Hisey, Peggy Klein, Richard Kotchko, Chris Smith, Peter Romano, Ann Chernow, Martha Hauhuth, Maggie Feczko, Nancy Diamond, Carol Ann Currey, Morley Boyd, Pamela Weight-Boyd, and Patricia Scully recording secretary.

MINUTES

1. The recording secretary presented the minutes of the Water Pollution Control Authority's Aug. 18, 2010 special public hearing. Upon motion by Shelly A. Kassen, seconded by R. Gavin S. Anderson and passed by a vote of 3-0, it was:

> RESOLVED: That the minutes of the Water Pollution Control Authority's public hearing of Aug. 18, 2010 as presented are hereby APPROVED.

REQUEST BY LAND-TECH CONSULTANTS FOR PRIVATELY-OWNED SANITARY SEWER MAIN LINE EXTENSION TO SERVICE PROPERTIES ADJACENT TO DAVENPORT AVENUE, HIAWATHA LANE AND HIAWATHA LANE EXTENSION

2. Item #2was presented by Attorney Chris Smith representing Summit Development. Town Attorney Ira Bloom also spoke to the issue. A motion was made by Shelly A. Kassen and seconded by R. S. Gavin Anderson. Attorney Bloom clarified the request and suggested the call be revised. It was requested that the Water Pollution Control Authority confirm the capacity of the sewerage treatment plant and that the property was within the blue line. Under Connecticut Statute 7-246a, the Water Pollution Control Authority needs to act within 65 days of a request for confirmation of the available capacity. A memo from Public Works Director Stephen Edwards confirms that there is capacity and that the property is within the sewer service area assuming existing developments and conditions remain. Mr. Bloom stated that the WPCA was not granting approval to extend the sewer. The applicant would need to come back to the WPCA with a defined plan before approval for a sewer extension would be considered.

Attorney Smith stated that the request to the WPCA was two parts – first the applicant was seeking confirmation from the WPCA that the capacity of the facility could service this property; and second, the applicant was seeking confirmation that they could extend the sewer line to service this area. It was Mr. Smith's belief that once receiving the confirmations the applicant would not have the return to the WPCA for approval to extend the sewer.

Attorney Bloom reiterated that the applicant was not presenting a defined plan (only conceptual plans) and that he believed it was appropriate at this time for the WPCA to give confirmation of the capacity of the facility and that the property was within the blue line. Attorney Bloom suggested a proposed resolution to the WPCA for their consideration.

Ms. Kassen opened the meeting to the public. Westport resident Carol Ann Currey spoke expressing her concerns about the Gault/Hamilton Development project.

Upon motion by Shelly A. Kassen, seconded by R. Gavin S. Anderson, and passed by a vote of 3-0, it was:

> RESOLVED: That the request to amend the resolution as recommended by Town Attorney Ira W. Bloom regarding a privately-owned sanitary sewer main line extension to service properties adjacent to Davenport Avenue, Hiawatha Lane and Hiawatha Lane Extension is hereby APPROVED.

Upon motion by Gordon F. Joseloff, seconded by Shelly A. Kassen and passed by a vote of 3-0, it was:

> RESOLVED: That the Water Pollution Control Authority hereby affirms the contents of the letter from Stephen J. Edwards, Director of Public Works, to Honorable Gordon F. Joseloff, dated September 15, 2010, regarding Hiawatha Sewer Service and the request by Summit Development, and further this resolution should not be construed as an approval for any sewer connection or extension, and further action from the Water Pollution Control authority will be required at such time when the final plan is submitted, is hereby APPROVED.

REVIEW OF THE WATER POLLUTION CONTROL AUTHORITY'S REGULATIONS REGARDING BILLING PROCEDURE USING ACTUAL WATER CONSUMPTION FOR SEWER USE CHARGES

3. Item #3 was presented by Public Works Director Stephen Edwards. Finance Director John Kondub, WPCA Coordinator Bryan Thompson and Tax Collector Peggy Klein were also present for the discussion. It was noted that no action would be taken by the Water Pollution Control Authority. Mr. Edwards gave a summary of the history of changing the billing procedures from the user unit basis to the water consumption basis. Since the WPCA approved the change in the billing procedures, the bills have gone out to sewer users. The Public Works Department has received many inquiries regarding the bills. WPCA Coordinator Bryan Thompson has responded to each inquiry. The first step in appealing a sewer use bill would be with the Public Works Department. Mr. Edwards and Mr. Thompson have dealt with each one on a case-by-case basis. If the sewer user is not satisfied, they may appeal to the WPCA. Mr. Edwards and Mr. Thompson have made adjustments, and will make a report to the WPCA on a monthly basis of any changes.

The cost for operating the sewer system has risen close to 12 percent (operating costs such as personnel, supplies, electricity, rose between 1 – 2 percent, and the debt service for the renovations to the sewerage treatment plant was up between 10 -11 percent). With this increase in costs and if the user fee was still based on units, the annual sewer use fee would be approximately $450.00.

The treatment plant was finished in 2008 at a cost of $34 million, with approximately $12 million from a federal grant, and therefore the town's cost would be $20 million. The treatment plan funding distribution of costs was approved by the RTM and would be 25 percent from the general fund and 75 percent from the user sewer fund.

Sewer user bills were sent out by the Tax Collector. There were 4,035 total accounts; 1,935 accounts were billed below $450; 1,586 accounts were billed between $450 and $1,000; and 514 accounts were billed above $1,000.

In industry's standards for water usage were 90 gallons of water per person per day. Therefore using the industry standards, one person at 90 gallons per day per year would be billed $260.00; two people at 90 gallons each per day per year would be $520; and for a family of four it would approximately $1,000.

The board discussed the debt service, including the balloon payment, for the sewerage treatment plant renovations project with the Finance Director.

Mr. Edwards confirmed that there was a reserve fund of $123,000 to cover individual adjustments that might be necessary. As of this date, one-half of this reserve had been used. Mr. Edwards plan to bring a monthly report to the Water Pollution Control Authority on these adjustments. He also confirmed that no fire hydrants were included in the calculations; the calculations did not include the approximately 350 homes of the Saugatuck Shores sewer project (which would come on line in two years); and that the town, through the Tax Collector's Office and Town Attorney, was researching if a payment schedule could in instituted this year to help elevate hardship on sewer users whose bill rose dramatically.

Mrs. Kassen asked if any Westport resident would like to speak. Morley and Pamela Wriedt Boyd expressed their concern for their sewer use bill. Westport resident Michael Calise requested that the town implement as soon as possible a semi-annual payment schedule for the sewer user fee.

No action was taken by the Water Pollution Control Authority.

Upon motion by R. Gavin S. Anderson, seconded by Gordon F. Joseloff and passed by a vote of 3-0, the public hearing was adjourned at 7:35 p.m.

Patricia Scully
Recording Secretary

Rec'd
1/8/15
3pm

WESTPORT CONNECTICUT

DEPARTMENT OF PUBLIC WORKS
TOWN HALL, 110 MYRTLE AVE
WESTPORT, CONNECTICUT 06880

January 5, 2015

MEMORANDUM

TO: Laurence Bradley
Director of Planning and Zoning

FROM: Stephen J. Edwards
Director of Public Works

RE: **8-24 Request by the First Selectman pursuant to an application to the WPCA by Summit Saugatuck, LLC to serve a proposed 186 unit multi-family development on Hiawatha Lane Extension**

This office has reviewed the subject application and the independent review performed at our request by Weston and Sampson and cannot recommend approval of this application at this time. The 2002 Westport Wastewater Facilities Plan (Plan) identifies Hiawatha Lane Extension as an area for future sewer consideration. The Plan, however, assumes current zoning densities and does not anticipate a proposal for 186 apartments. The report by Weston and Sampson indicates that approval of this additional flow coupled with the anticipated build-out of the area would exceed the capacity of Pump Station #2.

Chapter 103, Sec. 7-246(b) of the Connecticut General Statutes (CGS), authorizes the municipal Water Pollution Control Authority (WPCA) to prepare a water pollution control plan and to define where sewers are to be located. This is to be consistent with the necessary supporting infrastructure. The Plan identified the extension of sewers to service Hiawatha Lane Extension based on the existing infrastructure of Pump Station #2. The existing infrastructure cannot support the proposal as presented. To approve an application which would exceed the capacity of the pump station would put the Town of Westport at risk of an illegal discharge and a violation of our National Pollutant Discharge Elimination System (NPDES) Permit.

Cc: James S. Marpe, First Selectman

(203) 341-1120 FAX (203) 454-5783 publicworks@westportct.gov

CHAIRMEN: Senator Winfield

Representative Butler

MEMBERS PRESENT:

SENATORS: Hwang, Winfield

REPRESENTATIVES: Adams, Arce, Brycki, Butler, Davis, Kupchick, Rose

SENATOR WINFIELD: Order the public hearing of the Labor and Public Employees Committee -- Housing. I'm sorry. I have a lot of committees I'm on.

REP. BUTLER: That was a test.

SENATOR WINFIELD: Of the Housing Committee. I'm

sorry. We're going to begin with the Commissioner of Housing Evonne Klein, and then what we are going to do is, we -- we are going to alternate between the public officials and the public list. We think it's pretty important to hear from the public, so we want to get them in early. And hopefully we can go through this pretty quickly. There will be three minutes allotted for testimony, and then Members of the Committee will be allotted the chance to ask questions if they so choose, and hopefully we can get through this in a timely fashion.

I don't know exactly how the announcement is supposed to work for exits, but there are two exits over there; there's an exit over here; and an exit over here in the case of fire or some emergency. Are there any comments from my co-chair?

REP. BUTLER: Thank you, and I just want to take a moment to thank the City of New Haven, the great City of New Haven, for allowing us to convene here today in Aldermanic Chambers. I'd like to thank yourself and our clerk which is from New Haven as well, Brandon McCall, and for those who still want to sign up to speak, stand up so they can see you. He's right there, okay. And just to make it clear where the speakers need to come and speak, there's a couple of microphones right up here in the first row. So when your name is called, that's where we're going to ask you to come to give your testimony.

And we look forward to hearing from everyone, and we ask everyone to please follow that three-minute rule. If you look around the room, there's quite a few people here. If we have people going on after we ask for your final thoughts, we'll be here quite some time. So we ask that everyone adhere to that three minutes, and thank you all for coming.

SENATOR WINFIELD: And -- and just for your information, when you show up to testify, please give us your name so we know who we are -- who is addressing us, and who we are addressing.

Commissioner Klein.

COMMISSIONER EVONNE KLEIN: Thank you. Good evening, Senator Winfield, Representative Butler, and Members of the Committee. Thank you for this opportunity to speak in New Haven this evening.

I will be presenting testimony tonight regarding House Bill 557, as well as Senate Bills 123, 172, 403, 407, 5055, 5057, 5254, 5306, 5576, 5578, 79, 5581, 82, 5802, 03, 04, 6126, 6127, 6128, 6129, 6130, 31, 35, 39, 6140, and 45, and 46, which are all on the Agenda this evening and affect Section 8-30g of the General Statutes.

The Department of Housing staunchly opposes any legislation that would weaken the Affordable Housing Land Use Appeals Procedure law impeding the production of new Affordable Housing units. For over two decades the Appeals Procedure has helped to create thousands of affordable units, directly and indirectly, while combating exclusionary zoning and furthering fair housing.

There is no denying the need for these units in Connecticut. Far too many individuals and families are rent-burdened, paying more than 30 percent of their income on housing costs, and the proportion of households paying more than 50 percent of their incomes is staggering, especially among low and extremely low-income households. Not surprisingly, household costs are especially high and often out of reach for many in the state's workforce in the communities where there is the most job growth.

This is unsustainable. The financial burden of excessively high housing cost prevents families from affording other critical needs such as healthcare, warm clothing, and nutritious food. It further inhibits individuals and families from saving money, forcing them into the precarious position of being one costly emergency away from becoming homeless.

A critical component of Governor Malloy's efforts to invest Connecticut's economy is increasing access to safe, quality, and affordable housing throughout the state. Since taking office in 2011, Governor Malloy has invested more than a half a billion dollars in Affordable Housing initiatives. However, years of limited funding prior to the Malloy administration has left the state playing catch up to meet the demand for Affordable Housing. Only 31 municipalities currently meet the 10 percent threshold set forth in the law. The majority of the remaining 138 municipalities have less than 5 percent Affordable Housing in their communities.

Now that the state has funding to support the development, the Appeals Procedure is a critical tool to promote the growth of Affordable Housing statewide.

All municipalities in Connecticut are required under Section 8-2 of the General Statutes to encourage the development of housing opportunities, including opportunities for multi-family dwellings, and to promote housing choice and economic diversity in housing, including housing for both low and moderate-income households. However, there is no vehicle for enforcement under 8-2. Twenty-five municipalities do

SENATOR HWANG: You went longer than I do. So, no I'm fine. Thank you. Thank you for your time. You're done.

SENATOR WINFIELD: Thank you very much.

We will hear from Carolanne Curry and then Ralph Piselli.

CAROLANNE CURRY: Good evening, Members of the Housing Committee. My name is Carolanne Curry, and I'm from the Saugatuck neighborhood of Westport.

I -- I just wanted to bring to your attention, there -- there has got to be some thinking on your part that the towns that qualify, or the towns that are exempted are such a very, very, very small number. So there -- there is something about the 8-33 that is affecting this. And there also is the realization of the 169 towns in the state of Connecticut, there are towns that the developers really have no interest in developing because the market rate that they would receive would not be as advantageous as the market rates that they would receive in towns like Stamford, Fairfield, Westport, Norwalk.

My ten years as a director of welfare in Bridgeport and in New Haven certainly makes me aware of why you want to give opportunities to diversify housing to areas outside of these cities, and it's a very well intended effort. What we are concerned about, and what Matthew has talked about is that there is a wild card in this whole discussion, and that wild card is the developer. There seems to be no control, no reasoning, and nothing that deviates the developer from the profit that they're trying to make. So I ask you to consider the many times that we have mentioned the developer in this conversation tonight, and it seems that maybe there's been only one developer in this room tonight, and everybody else has been either the municipalities or the non-profits, and so we know that the developers are quite happy with this law.

The thing that also concerns me is working in my neighborhood against the developer for the last ten years, he has made ten -- he has made five attempts to come into our neighborhood, and this is a neighborhood that started in the 1800s when the families built the railroad, and then the neighborhood again reconstructed itself when the highway cut through all their homes, and they came into this small swampland that the State gave them, and they put their -- by deed restriction they had to put a small house on large wetlands. And that was in the fifties on my street. And everybody followed those deed restrictions. People that moved out of those houses, they continued to hold those houses very -- to be very small.

The developer wants to put 186 units on that street, and of course it's a nightmare because there's only one way in and one way out. And I think that the -- some of the members of the community had a chance to see this, and to appreciate that there is an organically-grown neighborhood of affordable houses that we, in some way, should be able to identify and make part of our count. Thank you.

SENATOR WINFIELD: Thank you very much. Are there questions or comments from members of the Committee? Thank you very much, Carolanne, and thank you for having -- I had the opportunity to take a tour with you and Senator Hwang. Thank you having walked me around.

CAROLANNE CURRY: Yes. Thank you very much.

SENATOR WINFIELD: Thank you.

Next we will hear from Ralph Piselli, and then Robert Appicelli.

RALPH PISELLI: Thank you. Dear Chairman Butler, Holder-Winfield, as well as the rest of the Committee, thank you.

For the record, my name is Ralph Piselli. I'm from Milford, Connecticut, and as the former chairman of Milford's Planning and Zoning Board, and as a resident, I've observed and witnessed the negative impact of the law known as the Connecticut Affordable Care -- Affordable Appeals Act, 8-30g.

I'd like to share some -- several facts, my experience, opinion and thoughts as how to bring about a change through finding solutions. I'd also like to thank State Representative Kim Rose and the Committee for holding the public hearing here in New Haven to address the Affordable Housing issue, and I think Kim Rose, Representative Rose, has been an effective leader in moving the issue forward.

The Connecticut Affordable Appeals Act 8-30g is a result of the Blue Ribbon Commission that was appointed by Governor Bill O'Neill back in 1989, and there was two members of that, two co-chairs, and one of them was Terry J. Tundro who is a professor of University Law School, who recently passed away, and also Anita Baxter, who was the First Selectwoman of New Hartford.

So in conducting my research, this is what I came across. So Terry Tundro wrote an article ten years after the law was enacted. It was entitled "Connecticut's Affordable Housing Appeals Statute: After Ten Years of Hope, Why Only Middling Results." So he writes that the Blue Ribbon Commission was established in response to increasing costs -- the increasing cost of housing in Connecticut, and their concerns were as follows: the problem of homelessness, the number of people who had access to homes on two levels; and then also the concerns that children in one of these towns would not be able to afford and live here after their parents home.

Now the legislation proposed by the Commission was promised on the idea that zoning regulations of affordable housing would be simplified to reduce the number of generalized, intermediate reasons that could be used to defeat proposal of the bill for Affordable Housing. Now actually the Appeals Act weakened the position of land use commissions, and made it possible for towns to lose a case when it did come to trial, as opposed to the former near certainty that it would win in appeal from this decision.

Memorandum

To: Members, Planning and Zoning Commission

From: Steve Palmer, Planning & Zoning Director

Date: September 6, 2016, ***Revised October 18, 2016***

Re: Text Amendment #719, New Section 20A
Combined Multi-Family Housing Zone (CMHZ), ***Revised Section 20A – Combined Multi-Family Housing OVERLAY Zone(CMHOZ)***

Statutory Time Lines

Application Submission Date: July 1, 2016

Application Receipt Date: July 7, 2016

65 Days from Date of Receipt (when public hearing must open): September 10, 2016

Applicant Granted a 5-day Extension of time to open the Public hearing on August 29, 2016

Public Hearing Opened (scheduled to open): September 15, 2016

35 Days from Public Hearing Commencing (when hearing must close): October 20, 2016

65 Days from Close of Public Hearing (when decision required): December 24, 2016

****10/18/16 The revised comments below in Bold are in response to the submission of "Supplemental Materials" dated September 27, 2016 by the Applicant.**

SUMMARY

Summary

Have all the documents been submitted as required pursuant to *(insert §42, §44, or §52, as applicable)*?	YES
Were any waivers to submit documents granted by the Planning Director pursuant to §44-4?	NO
Were any variances granted by the Zoning Board of Appeals pursuant to §46 or are any waivers requested from the Planning and Zoning Commission pursuant to §51-3 *(include as appropriate)*?	NO
Does the application appear to meet all applicable filing requirements? If not, indicate why not?	**See "Other Comments"**
Have all approvals been received pursuant to *(insert §44-2 or 52-5, as applicable)*?	N/A

Other comments?	**The Commission should determine whether the revisions are substantive and have changed the nature of the application which may require new legal noticing. The Applicant believes that the changes *"narrow the geographical scope"* and *"only clarify proposed provisions" and "can be considered at, a continuation of the hearing begin on September 15, 2016."* (refer to page 2 of the Supplemental Materials package dated 9/27/16).**

Description of Application

Applicant	Summit Saugatuck LLC, Timothy Hollister Attorney for the applicant.
Requested Action	Commission approval of a Text Amendment
Purpose	To insert new text in Section 20A and a new zone named the Combined Multi-Family Housing Zone (CMHZ) to facilitate a public-private development partnership that will consist of a private market rate multi-family rental apartment development and a quasi-public rental apartment development that will preserve for moderate and low income households, which will comply with the affordability requirements of the Connecticut General Statutes §8-30g. It must be noted that according to the application, the applicant's future development scenario is not intended to be an 8-30g application as there will be a separate, market-rate component, not combined. **The applicant has revised the application to incorporate the proposed new Zone as an Overlay (CMHOZ).**
Existing Zoning	Residential B Zone and the Commercial GBD Zone **The revised applicable zoning is only the Residential B Zone.**
Location	Varies greatly due to the zoning districts where the text amendment would be applicable. However, according to the application the intended location is an area on Hiawatha Lane Extension where the applicant owns or controls several parcels of land. **The revised location is specifically limited to the B zone area of Hiawatha Lane and Hiawatha Lane Extension.**
Lot Size	The application indicates that (5) contiguous parcels totaling 5.34 acres and another (5) contiguous parcels totaling 2.87 acres on Hiawatha lane Extension, which the applicant has ownership interest

	in. Together, they comprise a total lot area of 8.21 acres.
Existing Land Use	There are (3) residential B zoned areas in town which permit single family dwellings on smaller lots with a minimum lot area of 6,000 sf. These areas consist of primarily modestly sized single family dwellings. The GBD Zone is the most prevalent commercial zoning district in Westport, encompassing much of Post Road East, with areas on Post Road West, Riverside Avenue, Saugatuck Avenue, Railroad Place, and Bridge Street. The primary uses in the GBD zone include, retail, office, medical, service, and restaurants. One Single family dwelling is permitted per lot in in the GBD and multi-family is permitted in limited circumstances in limited areas. The area contemplated in this application is located in the B Zone on Hiawatha Lane Extension, which consists primarily of single family uses at the inner and western most section of the B zoned neighborhood. The area is generally characterized as an older well established neighborhood where homes are typically owner occupied and many have been passed down through generations. There are a few properties which contain legally non-conforming two and multi-family dwellings and the entrance to the neighborhood contains limited number of businesses, which are located in the GBD Zone. To the immediate west is the Westport/Norwalk town line and the State of Connecticut right of way for Interstate 95. **As noted above, the GBD Zone has been eliminated as an eligible zone for the CMHOZ regulations and the only eligible area proposed has been limited to the B Zone of Hiawatha Lane and Hiawatha Lane Extension thereby removing all other B zoned areas for consideration. There are actually six (6) B Zoned areas in town varying in size and location not (3) as noted above.**
Surrounding Land Use and Zoning	B zoned areas permit the smallest lot sizes in Westport and they are primarily surrounded by A zoned (half acre) residential single family neighborhoods. GBD zoned properties are surrounded by other commercial zones laterally (along Post Road East) and residential A zoned neighborhoods to the rear as the GBD zone generally has only a 200 ft. depth from the Post Road.
2007 Town Plan of Conservation and Development	See references under "Proposal" and "Considerations" sections of this report.
Zoning History	See "Background" below

Applicable Regulations	§4-5 Maximum Allowable Multi-Family Dwellings, §14 Residence B District, §24 General Business District

Background

In 2007, the applicant first appeared before the Commission requesting a positive §8-24 Report regarding the extension of the public sewer line to Hiawatha Lane Extension. The extension would serve a proposal for a 55-unit residential development. This request was subsequent to a request that was withdrawn before it was heard.

After careful consideration, the Commission issued a negative report on September 20, 2016, and offered the following reasons:

1. *The Res B district allows single-family homes located on 6,000 SF lots.*
2. *Two-family and multi-family dwellings are not permitted uses in the Res B district.*
3. *New zoning regulations are required to allow for the multi-family development on Hiawatha Lane Extension as proposed by Summit Saugatuck, LLC.*
4. *The property owner should first seek approval for new zoning regulations; then seek approval for a sewer extension. It is premature to first request extension of the public sewer.*
5. *The 1997 Town Plan of Conservation and Development recommends:*

   > *"The Health Department, Department of Public Works and the Planning and Zoning Department should review sanitary disposal and facility conditions in small lot neighborhoods, high density areas, areas with poor soil types, poor drainage characteristics and flood hazard to ascertain needs and priorities for sewer extensions." p. 41*

   Neither the Health Department nor Public Works department has qualified a need for the sewer. Comments dated 8/31/07 from the Westport Weston Health District state, "The WWHD does not have any data that would support that this area is in need of public sewers." The 2002 Wastewater Facility Plan sewer service evaluation map, prepared by Stearns and Wheler for the Department of Public Works, rates the Hiawatha Lane properties as "Low to Moderate" with regard to the need for connection to the public sewer.
6. *The 1997 Town Plan of Conservation and Development, also states:*

   > *"A sewer service and waste treatment system that is adequate to serve the disposal requirements of the Town of Westport, but which is not intended to promote new or more intensive development." p. 41*

   The proposal is inconsistent with the Town Plan as the sewer is designed to support a 55-unit residential development; a greater density than what is currently allowed under existing zoning.

7. *Letters and a petition with 30 signatures was submitted by owners and residents of property located on Hiawatha Lane Extension stating they do not support the proposed mainline sewer extension.*

In October of 2014 the applicant again submitted a request for a positive §8-24 report for a sanitary sewer main line extension to serve (19) properties from Davenport Avenue to Hiawatha Lan Extension. This request was related to the applicant's proposal for a 186 multi-family development. Again, after careful consideration, the Commission unanimously voted to issue a negative report on January 22, 2015, The reasons in the report were far more specific than in 2007 as more thorough analysis was conducted of the condition and capacity of the existing

sewer lines, Water Pollution Control Facility and Pump Station 2 by the Town's professional wastewater consultant, Weston Sampson. The findings and reasons are below:

I. FINDINGS

A. *On October 24, 2014, Attorney Timothy Hollister from the firm of Shipman & Goodwin, LLP on behalf of Summit Saugatuck, LLC (hereafter "Summit") submitted to the Town of Westport - Water Pollution Control Authority (WPCA) a request for a sewer extension. The Board of Selectman (BOS) acting as the WPCA officially received the application at their November 12, 2014 meeting, but took no testimony or action at that time.*

B. *On December 19, 2014, the First Selectman, pursuant to the Town's policy regarding sanitary sewer Main Line Extensions submitted a request for a positive or negative report from the Planning & Zoning Commission on the proposed sewer extension pursuant to Connecticut General Statute §8-24. This statute provides, in part, that no "municipal agency" [WPCA] shall "extend public utilities and terminals for ...sewerage...until the proposal to take such action has been referred to the [Planning and Zoning] commission for a report." Accordingly, the Planning and Zoning Commission is required to undertake this review as part of its planning function.*

C. *Nineteen (19) existing lots will be served by the proposed extension*

D. *All of the properties are located in the Residence B Zone which has a minimum lot size of 6,000 square feet (0.13 acres). All of the lots except for two (2) have a potential for further division either though a "First Cut" or through a subdivision approval process. The total number of additional building lots that could theoretically be developed under the existing zoning is between 44 and 60 additional single family building lots. This assumes a maximum build out at the minimum lot size of 6,000 square feet per lot based strictly on lot area excluding other constraints such as wetlands, steep slopes, etc.*

E. *As described in the October 22, 2014 Application from Summit for Extension of Private Sewer, "this extension will serve a 186-unit multi-family rental apartment development..." including 253 parking spaces located in 5 buildings. The project is proposed to have 112 one bedroom units and 74 two bedroom units.*

F. *Of the 19 lots which would be served by this request 11 of these lots would be used for the proposed new development. The lots which are proposed as part of the new development are numbers 0, 28, 36, 38, 39, 41, 42, 43, 44, 45 and 47 Hiawatha Lane. The total acreage of these eleven lots is 5.65 acres based upon data from the Town's GIS system. The report from applicant indicates the total area to be 8.21 acres. The remaining parcels are not part of the proposed project and will likely remain as single family houses.*

G. *The area is adjacent to the City of Norwalk and is located between Interstate I-95 and the New Haven Railroad. The properties at 41 and 43 Hiawatha Lane are partially located within the 100-year flood zone (AE, Elevation 12', NAVD). All of the other properties in the proposed sewer service area are located outside of the 100-year flood zone. The 100-year flood zone is a regulated area pursuant to §31-11 of the Westport Zoning Regulations. This area represents a 1% chance that a property will experience flooding in any given year. The area of the proposed sewer line is also outside of the Coastal Area Management (CAM) boundary.*

H. *This is the third time that an §8-24 request has been submitted to extend sewers in this area. The first request was submitted to the P&Z Commission on June 21, 2007 but it was withdrawn July 9, 2007. No hearing was held.*

I. *A second §8-24 request was submitted on August 21, 2007, and a public hearing was held on September 6, 2007. The Planning & Zoning Commission issued a negative*

report September 20, 2007. The negative §8-24 report was not appealed to the RTM. The proposal at that time was submitted to support a proposed 55-unit townhouse development project. Included with the application at that time was a draft text amendment to create a new zoning district to support the then proposed project.

J. *CGS §8-24 provides no specific criteria for evaluating a request. However, the Planning & Zoning Commission is acting in its planning capacity when reviewing such requests and, therefore, the Commission should consider general planning considerations and any guidance available that can be found within the Plan of Conservation and Development (POCD).*

K. *The WPCA as part of its review of this application contracted for an independent outside expert to evaluate the potential impacts of this sewer extension on the Town's public sanitary sewer system. This report was important for the Commission as well, as the Commission must evaluate the sanitary sewer system capabilities as part of its planning criteria.*

L. *In a report from the engineering firm, Weston & Sampson, received on December 29, 2014, the impact of the proposed sewer extension and the proposed multi-family housing project is analyzed. The consultants specifically focused on the impacts on the sewer lines that will connect to the area to be served and the capacity of the Town of Westport's Pump Station Number 2 which is located at 595 Riverside Avenue, adjacent to the Black Duck Café.*

M. *Pump Station Number 2 serves as a collection point for all of the existing and future sanitary sewer connections which are located on the west side of the Saugatuck River. The pump station collects all the flow on this side of the river and then discharges it through a pipe under the river directly to the Town of Westport's Wastewater Treatment Facility located on the east side of the river located on Elaine Road between I-95 and the Metro-North Railroad.*

N. *The report concludes that based upon the existing capacity of Pump Station Number 2 and the existing and current project sewerage flows (based upon the approved density levels); the proposed sewerage extension and project being proposed by the applicant would put the pump station over its allowable capacity.*

O. *Specifically, the report cites the maximum gallons per minute (GPM) that the pump station is currently able to process is 1,100 GPM. The table on page 7 of the Weston & Sampson report indicates that the existing flow at Pump Station Number 2 is 970 GPM. If all of the areas which have the ability to connect to this station are fully developed at current zoning, and if the proposed Hiawatha Lane project of an additional 186 units is connected the projected flow would be 1,220 GPM. This would place the pump station over its design capacity by 11% or 120 GPM. Thus the proposed sewer extension and project would prevent "as of right" development from being constructed on the west side of the river. The report also states that "there are enough unconnected properties in sewer shed 2 that the capacity of Pump Station #2 could be exceeded simply by adding all of the currently unconnected homes." The Commission will also note that the Weston & Sampson report assumes that Pump Station Number 2 is operating efficiently. It does not consider that the Pump Station is actually old and presumably has some level of obsolescence, rendering its current capabilities even more questionable.*

P. *Based upon testimony during the public hearing provided by Steve Edwards, Westport's Director of Public Works, there are over 100 existing properties within the sewer shed of Pump Station Number 2 that would be prevented from connecting to sanitary sewers if the proposed extension were constructed and the proposed 186-unit development were to be built.*

Q. *The Commission also notes that there are a number of other approved and proposed future projects slated for the west side of the Saugatuck River that would also be prevented from being developed in the future if the proposed Hiawatha Lane project is built and consumes the remaining allowable capacity of Pump Station Number 2.*

R. *The approved projects include: 27 units approved pursuant to P&Z Resolution #07-018, -- the Marsh Development, LLC (Gault) project approved by the Planning & Zoning Commission on June 21, 2007, which pursuant to Public Act 11-5 is a viable project until 2016. Further, the Planning & Zoning Commission conducted a Pre-Application review for a project at 54 Wilton Road for a mixed use commercial and residential project at the former Save the Children property. In addition, there are other projects that are in development such as a mixed use project on Railroad Place. All of these future projects would be precluded if the current application exhausts the remaining capacity of Pump Station Number 2.*

S. *Testimony from Steve Edwards, confirmed by testimony from Mr. Chris Wester of Weston & Sampson, was presented to the Commission that replacement of Pump Station Number 2 and the connecting force main could take up to five (5) years. No contradicting testimony was offered by the applicant.*

T. *The Town of Westport's Wastewater Facility Plan (WFP) was prepared in 2002 by the firm of Stearns & Wheler. It evaluated the existing conditions and capacity of the Town's sewage treatment plant, known as the Water Pollution Control Facility (WPCF).*

U. *The WFP codified the potential sewer service area in Westport which is commonly known as the "blue line." The blue line defines the limits of sewage extensions which are anticipated in Westport and is depicted on the sewer facilities plan (map) that accompanies the WFP. The WFP also includes an evaluation map that ranks the need for sewer service within the blue line or sewer boundary area. Three criteria were used to evaluate the sewer need for individual areas including:*

1. *Availability of septic system reserve area;*
2. *Septic system repair rate; and*
3. *Suitability of the soil for septic systems.*

V. *All of the properties within the proposed sanitary sewer service area are located within the blue line. The sewer service evaluation map rates these properties as "Low to Moderate" with regard to the need for connection to the public sewer.*

W. *The applicant has submitted an informational booklet with supporting documentation about this request. The applicant's cover letter which is found in Tab #2 of the booklet provides some background information about septic system repair rates in the proposed sewer service area. Section D of the cover letter indicates that only five (5) septic system repairs have been needed in the area between 1983 (earliest date in the table) and 2007 (date when the table was compiled). No update to this table has been provided by the applicant. The applicant provided no back-up data on soil conditions nor did they provide the actual records from the Westport Weston Health District (WWHD) about the nature or extent of these repairs. It should be noted that based upon the WFP this entire area has a "low to moderate" need for connection to public sanitary sewers.*

X. *Further, based upon testimony provide by a number of residents of the proposed sewer service area, none of them were experiencing any problems with their septic systems. One resident was incorrectly identified by the applicant as having a failing septic system.*

Y. *The Commission also finds that the applicant has not supplied any additional information to support the need for this request. No supporting documentation has been provided*

from the Westport Weston Health District about the status of existing septic systems in the proposed service area, no information about soil suitability for septic systems in this area has been provided, and no information about proximity or impacts to inland or tidal wetlands has been submitted.

Z. *The few repairs documented, the lack of any update regarding existing septic systems in the proposed service area, the lack of information about soil suitability, the lack of information regarding proximity or impacts to inland or tidal wetlands, and the first hand testimony of multiple residents of the area leads to the conclusion that sufficient need for this request has not been shown.*

AA. *The Commission notes that Section 10 of the 2007 Plan of Conservation and Development has a goal list on page 10-1 to "Configure utility infrastructure to support the growth patterns approved by the Planning & Zoning Commission."*

AB. *The Commission notes that Section 10 of the 2007 Plan of Conservation and Development has states on page 10-4 that "It is the goal of the Plan to promote a sewer service and waste treatment system that is adequate to serve the disposal requirements of the Town of Westport, but is not intended to promote new or more intensive development."*

After discussion, it was moved by Ms. Walsh and seconded by Mr. Gratrix to issue a NEGATIVE Report to the First Selectman regarding a sanitary sewer extension to nineteen (19) existing lots from Davenport Avenue to Hiawatha Lane Extension, to serve a proposed 186 unit multi-family development, Assessor's Map B05, Residence B zone.

II. REASONS FOR A NEGATIVE REPORT

a. *Based upon the Weston & Sampson report authorized by the Public Works Department for the WPCA, the Commission finds that the proposed sewer extension and multi-family project will have a severe negative impact on the ability of the Town of Westport to provide sanitary sewer service for existing properties on the west side of the Saugatuck River—properties that already have the right to connect to public sewers given the limitations of Pump Station Number 2—based upon the conclusion in the Weston & Sampson report that the applicant's proposal will place Pump Station Number 2 over its allowable capacity.*

b. *Based upon the Weston & Sampson report authorized by the Public Works Department for the WPCA, the Commission finds that the proposed sewer extension and multi-family project will have a severe negative impact on the ability of the Town of Westport to provide sanitary sewer service to future development projects on the west side of the Saugatuck River, based upon the conclusion in the Weston & Sampson report that the applicant's proposal will place Pump Station Number 2 over its allowable capacity.*

c. *The Commissions finds that the proposed application is premature as any proposed improvements or increases in capacity for Pump Station Number 2 will require state and federal permits and will take a substantial amount of time to obtain and implement, as the testimony to the Commission disclosed.*

d. *The Commission finds that the sewer service evaluation map rates these properties as "Low to Moderate" with regard to the need for connection to the public sewer and*

thus there are areas within the Town of Westport which are of a higher priority in terms of connecting to sewers.

e. *The few repairs documented, the lack of any update regarding existing septic systems in the proposed service area, the lack of information about soil suitability, the lack of information regarding proximity or impacts to inland or tidal wetlands, and the first hand testimony of multiple residents of the area leads to the conclusion that sufficient need for this request has not been shown.*

f. *Proper planning considerations including the needs of existing property owners who have a current right to connect to the sewer system, the existing and anticipated property owners who have projects to be connected, and the clear lack of evidence showing need require this Commission to issue a negative report.*

In April of 2016, the applicant submitted a Pre-Application that the Commission considered at their April 7th meeting. It must be noted that Pre-Applications require a process and are heard at public meetings but they are non-binding on the Commission and the applicant. The objective of the process is to allow for applicants to introduce, inform and review future conceptual development plans or planning objectives in a less formal setting with the Commission and receive helpful feedback. As allowed, the applicant presented their conceptual plan and offered some background and the Commission offered general feedback. However, no directive was given by the Commission.

Subsequent to that pre-app, the applicant submitted a third §8-24 request for a sewer main line extension, which was heard by the Commission on July 7, 2016. The applicant submitted a narrative description of the proposal for development and supporting documentation that was based on the conceptual plan discussed during the Pre-Application review. It described a request received for a 1600 ± ft. private sewer extension, an allocation of sewer capacity, and a conditional approval to connect eighteen (18) properties on Hiawatha Lane and Hiawatha Lane Extension to the public sewer. Further the applicant outlined their intention to develop a project in the future with 155 multi-family dwelling units contained within two (2) distinct developments as a public-private partnership Westport Housing Authority. This development scenario is similar if not the same as is being proposed and would be permitted by the proposed text amendment application under consideration.

After careful consideration of the materials submitted and hearing testimony from Public Works Director, the Commission voted on July 7, 2016, to unanimously to issue a negative report of this request. It was largely based on the lack of progress and little change in circumstances that were identified by the Commission in their 2015 negative report. Their reasons were as follows:

II. *REASONS FOR A NEGATIVE REPORT*

A. The Commission finds that the reasons stated in the Commission's January 22, 1015, NEGATIVE Report, dated January 26, 2015, are also applicable to this request and are hereby incorporated (attached). Especially, after reviewing all of the material submitted by the applicant, the Commission finds that there is no material difference in this new request and finds that a proposed increase in sewer flow from the proposed will put Pump Station #2 over its allowed capacity as well as the pipe under the Saugatuck River as determined in the January 2015, 8-24 Report.

B. The Commission finds, after reviewing all material submitted by the applicant, that the

passage of time alone or a change in the future proposed development scheme are not at issue in this request and neither factors have changed the present condition of the sewer system which has been determined to be inadequate to serve additional flows from the proposed sewer extension.

C. The Commission also finds that this request for a positive report is premature for the following reasons:

1. *The Commission finds that the necessary upgrades, while identified, are only in the design stage;*
2. *that no funding has been approved by Town Bodies;*
3. *that the final design plans have not been reviewed and approved by CT DEEP or any other local, state or federal agencies as may be required;*
4. *and that to date, there is only a general goal for scheduling actual work to commence the necessary upgrades, and that work will not likely begin in less than 2 to 4 years.*
5. *The current sewer infrastructure cannot accommodate the increase in flow including but not limited to sewer flow through the pipe under the Saugatuck River.*

The Commission should be aware that on July 21, 2016, the Water Pollution Control Authority (WPCA) denied the applicant's request for the same main line extension proposal. That denial has since been appealed by the applicant and it is pending.

PROPOSAL

The applicant has provided an explanatory statement of the proposed text amendment request and its purpose. It reads:

"The CMHZ regulation is intended to facilitate a public-private development partnership that will consist of multi-family rental apartments to be developed by Summit Saugatuck LLC, which is affiliated with Summit Development; and rental apartments that will be preserved for moderate and low income households, to be developed by Hiawatha, LLC, a newly-formed affiliate of the Westport Housing Authority. The units that will be subject to maximum rent and household income limits will qualify as "assisted housing," meaning that they will utilize financial assistance from a government agency, most likely the Connecticut Housing Finance Authority, and will comply with the affordability requirements of General Statutes § 8-30g. (However, the eventual zoning application will not comply with or be submitted under § 8-30g, because it will include a separate, market-rate component.)

These market-rate and assisted housing components will be developed on adjacent parcels that front on Hiawatha Lane and Hiawatha Lane Extension, near the Westport-Norwalk line. The Commission reviewed this development on a conceptual, pre-application basis at its meeting on April 7, 2016. Summit's ownership interests in the area include 36, 38, 41, 42, and 47 Hiawatha Lane Extension, and the Extension itself, totaling 5.34 acres. Summit also has options to purchase five additional parcels on Hiawatha Lane Extension (Nos. 28, 39, 43, 44, and 45), which collectively total 2.87 acres. Hiawatha Lane and Hiawatha Lane Extension are located south of I-95, north of the Metro North Railroad, abutting and east of the City of Norwalk municipal boundary, and west of Saugatuck Avenue. Other streets located in this area are Ferry Lane, Indian Hill Road, Davenport Avenue, Heritage Court, Dr. Gillette Circle, and West End Avenue.

This is area is zoned Residence B, except for an area directly adjacent to Ferry Lane, which is zoned General Business District. All parcels owned or controlled by Summit are Residence B. In the Residence B Zone, the primary permitted use is single-family detached homes on lots of at least 6,000 square feet, a lot size that requires sewer. The Westport Zoning Regulations state: "The Residence B District provisions are intended to encourage higher density development for primarily residential and related purposes in areas served by centralized sewerage facilities."

At this time, Summit and the Westport Housing Authority / Hiawatha, LLC are in discussions with the Connecticut Department of Transportation about a parcel of DOT-owned land located between Parcels 28 / 36 and Parcels 38 / 42 / 44. For this reason, Summit has developed two conceptual site plans, "Option 1," which is the preferred option and includes the part of the DOT land; and an alternative that does not include any DOT land. Tab 8 of this package is Option 1; the market-rate development is Buildings A and B, and the assisted / income-restricted are Buildings F, G, H, I, J, L, M, and N. In the alternative (Tab 9), the market- rate development remains Buildings A and B, but the assisted / income-restricted units are Buildings C, D, and E.

After Summit obtains all of the requisite land use and zoning approvals for both development components, the ten parcels that Summit currently owns or has an option to purchase, and Hiawatha Lane Extension, will be consolidated into two separate parcels, to be developed with a total of 155 rental apartment homes. The proposed construction of these 155 rental apartment homes will be completed in two phases. Phase One will consist of 85 market-rate units on combined parcels 39, 41, 43, 45, and 47. Phase Two, Hiawatha, LLC's70-unit income-restricted development, will be located on parcels 28, 36, 38, 42, and 44, and potentially some portion of the Department of Transportation's land that bifurcates parcels 28 and 36 from parcels 38, 42, and 44.

Summit is presently in the process of applying to the Westport Water Pollution Control Authority for an extension of the existing private sewer from Davenport Lane to Hiawatha Lane Extension, allocation of sewer capacity, and conditional approval to connect the proposed multi- family rental apartment homes to the sewer. This extension will serve both developments, and will also be connected to eight existing homes abutting Hiawatha Lane / Hiawatha Lane Extension.

The regulation amendment, a final draft of which is at Tab 4, is intended to facilitate development as described above. The regulation specifically delineates the combination of market-rate and assisted housing rental units. The proposed regulation lists standards that will frame the architectural illustrations at Tabs 8 and 9. All sections are based on (and in some cases taken verbatim from) existing sections or subsections of the Westport Zoning Regulations.

The regulation amendment, as shown in the attached conceptual site plans and architectural illustrations (Tabs 8 and 9), are intended to achieve the goals articulated during the pre-application meeting held April 7, 2016: a pedestrian-friendly development that will be integrated into the existing, adjoining Saugatuck neighborhood. The proposed assisted housing will also provide the Town of Westport with substantial points toward a four-year moratorium on § 8-30g development applications."

As noted, the applicant has modified the test to limit the scope and location of where the new CMHOZ regulations would be applicable. The change, while a reduction is

significant as it provides more focus on one particular targeted area. The applicant has modified clarified several sections of the regulations in response to the last meetings testimony. The applicant should review in detail the changes proposed.

ANALYSIS PROPOSED TEXT

(standards may vary depending on type of application reviewed)

**The chart below does not include a comparison of the commercial GBD Zoning District requirements as the standards will vary too widely.*

ZONE	Residential "B" – Existing	CMHZ - Proposed
Types of Uses:	s/f dwelling Accessory uses customary to single family use	Multi-family dwellings, one (1) and two (2) bedroom rental units. Accessory uses including recreational uses, manager's office, and other customary uses for multi-family use.
Minimum Lot Area	6000 sf. or .1377 acres	5 acres minimum, 12 acres maximum **Modified to 7 acres min, to 11 acres max.**
Setbacks:	Front - 20 ft.; sides - 7.5; Rear –25 ft.	Front - 15 ft. **(clarified as measured from the street line and not centerline of the street)**; Sides - 7.5 ft.; Rear 10 ft.
Coverage:	15% Building, 35% Total	20% Building, 50% Total
Height & Stories:	2.5 Stories, 35 feet	3 Stories, 45 feet
Density	1 s/f dwelling per lot (6000 sf.)	1 unit per 2,307 sf. lot area with a CAP of 160 units in the CMHZ Zone.
Floor Area:	Not Stated	Not Stated
Floor Area Ratio:	Not Stated	Not Stated
Parking Computations:	Per §34 of the regulations	Per §34 of the regulations except that (1) space required for an assisted housing unit
Landscape	Per §35 of the regulations	Per § 35 of the regulations except

Computations:		front porches, patios, balconies, and similar features area exempt from the 15 ft. requirement.

- The last provision in the proposed text §20A-17 states:

  "If any provisions of these CMHZ regulations conflicts with a generally applicable provision of the Westport Zoning Regulations, the provisions of §20A will control." (Tab 4 pg. 20A-6)

  This is a very broad statement that is designed to override any provision of the zoning regulations and could have broad implications on a future application under this section.

  This section has been eliminated from the modified Text.

- There are many scenarios to consider regarding 20A-7's effects. One regulation that is of great importance to the Commission in the past has been §4-5, Maximum Allowable Multi-Family Dwellings. The Commission is very familiar with this regulation and understands that the Town is very close to reaching the 10% limits set by the regulation. If §20A was approved and a development was proposed similar to what is described in this application, the 10% CAP would be exceeded and §20A-7 would supersede §4-5. The Commission would be advised to consider the effects of the language of §20A-7.

- The text amendment is clearly designed to accommodate the construction of a specific development; the future development that is described in the application for two distinct multi-family developments with a very sophisticated agreement between two parties. This application, however, is regarding a Text Amendment only and should be treated as such in the Commissions review. It does not include a site plan/special permit for a development and the Commission should review the supplemental information as conceptual only.

- Additionally, while the applicant has identified a specific zone where the text amendment would apply, no map amendment application has been received. The applicant should explain in detail whether the CMHZ will be a floating zone, an overlay, or a full zone change. It is unclear in the application how the new zone will be implemented.

- **The revised application does narrow the scope of the proposed regulations and the potential eligible locations they could be applied to if approved by use of an Overlay Zone.**

- **However, there is a significant change in that the CMHOZ would be an overlay zone applying to one specific area within one (1) of the six (6) B zones within the Town.**

- **The Commission should consider that the proposed regulations would only apply to one very specific area on Hiawatha Lane and Hiawatha Lane Extension of one B zoned area and not uniformly throughout all B zoned areas and therefore should determine whether the proposed regulations are in conflict with CGS Section 8-2 which states in part:**

  "All such regulations shall be uniform for each class or kind of buildings, structures or use of land throughout each district."

CONSIDERATIONS

Westport is an inclusive community, providing a wide range of housing options for residents of all income levels. The Commission understands the importance of housing diversity as evidenced in the recommendations contained in the 2007 Plan of Conservation and Development and its subsequent efforts by adopting new regulations and creating new zones to encourage development of housing market rate housing, below-market-rate housing, and affordable housing as defined by the Connecticut General Statutes.

The 2007 Plan of Conservation and Development (POCD) recommends creating more affordable housing opportunities. Chapter 6, *(Create a Range of Housing Opportunities and Choices)*, includes the following goals:

- *"Seek ways to expand the variety of housing choices and options of Westport in order to help meet the needs of existing and future residents while maintaining the character and integrity of the town." Pg. 6-1*
- *"As Westport work towards providing more housing choices, it will do so in ways that are appropriate for the community and that protect the public health and safety. In addition, Westport will consider ways of integrating affordable, workforce and market rate housing in future projects in partnerships with public and private organizations." Pg. 6-3*
- *"Require that all housing construction in Westport either provide affordable housing units or pay into an affordable housing trust fund." Pg. 6-4*
- *"Consider requiring that any multi-family development provide affordable housing units." Pg. 6-4*
- *"The Town should adopt an inclusionary zoning regulation requiring some percentage of units in a multi-family development to be deed restricted to affordable levels." Pg. 6-4*
- *"Strategies giving priority to residents and Town employees should be established to ensure affordable housing serves the needs of Westport." Pg 6-4*

The 1997 and 1987 Town Plan of Development also encouraged enacting zoning regulations to create below-market-rate housing. Since adoption of these plans Westport has made significant strides to implement these recommendations as follows.

A. Local Initiatives

In the 1990's, Westport took the following significant steps to provide a variety of housing types including below-market-rate dwelling units:

1. Converted the Saugatuck School to moderately priced dwelling units for older adults.
2. Purchased 16 homes on Wassell Lane from the U.S. Government for low to moderate-income housing.
3. Adopted zoning regulations to authorize apartments that existed prior to 1959.
4. Adopted a zoning regulation that allows an increase in floor area for accessory apartments for individuals over the age of 62.
5. Amended §16, the Mobile Home Park regulations to allow for mobile home replacement units thereby creating a mechanism to avoid losing the existing below-market-rate housing stock if the existing mobile home units were not replaced when needed.

6. Adopted §32-15, a zoning regulation that allows for Managed Residential Communities with a density bonus based on the number of affordable units provided.

In the 2000's the Westport Zoning Regulations were amended to provide additional diversity in housing types and below-market-rate dwelling units including:

1. Adopted §19, Residential Affordable Housing Zone (R-AHZ), a "floating" zone applicable to public or privately owned residentially zoned property, that requires a portion of the total number of dwelling units to be affordable housing as defined by State Statutes, and subsequently approved a Map Amendment to rezone property located at Wilton Road and Edge Hill Lane from Res AA to R-AHZ.
2. Adopted §20, Municipal Housing Zone (MHZ), a floating zone applicable to Town-owned property and land owned by the Westport Housing Authority, that requires 100% of all dwelling units to be affordable as defined by State Statutes, and subsequently approved a Map Amendment to rezone property at Hales Court from Res AA to MHZ.
3. Adopted §32-17, a zoning regulation that allows for conversion of existing buildings and/or construction of new buildings on Town-owned land for at least 50% affordable housing and 50% middle-income housing.
4. Amended §19, Residential Affordable Housing Zone (R-AHZ), to modify specific provisions to encourage and promote affordable housing by making the R-AHZ regulations less risky and more workable for potential developers.
5. Adopted §24A, General Business District Saugatuck (GBD/S), a floating zone applicable to public or privately owned non-residentially zoned property that requires a portion of the total number of dwelling units to be affordable housing as defined by State Statutes. The Planning and Zoning Commission subsequently approved a Map Amendment to rezone property at 553, 570, 580 Riverside Avenue and 9 Ketchum Street from GBD to GBD/S and approved a Special Permit/Coastal Site Plan application to develop these properties for multi-family development including affordable housing. A second Map Amendment was also approved by the Planning and Zoning Commission to rezone property at 12, 16, 20 Ketchum Street and 518 Riverside Avenue from GBD to GBD/S. A Special Permit/Coastal Site Plan application to develop these properties for multi-family development including affordable housing is currently pending.
6. Adopted §32-1, a zoning regulation that allows for conversion of existing, or construction of new dwelling units applicable to public or privately owned, residentially zoned property, for Supportive Housing use requiring all units shall be affordable, and subsequently approved a development for 6 dwelling units at 10 West End Ave.
7. Modified §4-5 to exempt multi-family affordable housing from the cap of 10%. Also exempt any future affordable units from being included in the cap of 10%.
8. Modified §18 to allow the redevelopment and/or adaptive reuse of existing non-residential buildings on Riverside Avenue into larger sized dwelling units on lots over two-acres in size in non-residentially zone lots or residentially zoned lots that are currently have a permitted non-residential use with a minimum of 200-feet of frontage on Riverside Avenue and served by public water and public sewer and to

identify it is in the public interest to preserve the existing historic scale, massing and character of the affected area. This amendment requires that a minimum of fifteen percent (15%) of the total number of market rate dwelling units shall be designated as workforce or affordable housing.

9. Adopted §19A- Residential Affordable Housing Zone/Workforce (R-AHZ/W) to allow two-family and multi-family dwelling units including market rate dwelling units, affordable housing and workforce housing, subject to Special Permit/Site Plan approval on properties that are a minimum of 1-acre in size and no more than 4-acres in size; have a minimum width of 100 feet; have a lot shape that can contain a rectangle of 100 feet by 150 feet; are contiguous to or directly (on a perpendicular) across the street from a non-residential zone, with the exception of the Design Development District; have a minimum thirty (30) feet of frontage on an Arterial street; and have public water and sewer available.
10. Adopted §11-2.4.12B to allow Affordable Accessory Apartments no larger than 800 SF and no larger than 25% of the floor area of the house if a deed restriction is placed on the land records stating the apartment will be rented as "affordable" for at least 10 years.
11. In March 2007, the Planning and Zoning Commission again formally committed to find ways to address the existing shortage in affordable housing units in Town. An Affordable Housing subcommittee of the Planning and Zoning Commission was formed with the goal of continuing to develop regulations to promote affordable housing in Westport.
12. Adopted§39A, Inclusionary Housing Overlay District (IHZ), was authored by the Planning and Zoning Commission and became effective on 12/3/10 pursuant to Amendment #619. An Overlay Zone is defined as a zoning district that encompasses one or more underlying zones and that imposes additional requirements above that required by the underlying zone(s). The IHZ regulations allow "mixed-use" development of residential and non-residential uses with a requirement that 20% of the residential units shall be owned or rented as affordable units in accordance with C.G.S. §8-30g. There are forty-six (46) properties currently eligible for rezoning to IHZ, see list prepared by Michelle Perillie revised 12/21/15, available in the file.

The Planning and Zoning Commission, in Res. #10-034, cited four (4) reasons for adopting the IHZ regulations:

1) *"The Planning and Zoning Commission finds the amendment is consistent with Westport Zoning Regulations.*
2) *The Planning and Zoning Commission finds the amendment is consistent with the 2007 Plan of Conservation and Development.*
3) *The amendment will provide opportunities to create affordable housing units, as defined in CGS §8-30g, in Westport where there is an existing shortage.*
4) *The amendment will provide opportunities to increase the diversity in housing types.*

Following the Planning and Zoning Commission's adoption of Text Amendment #619 the amendment was appealed to the Representative Town Meeting (RTM). The RTM voted to

sustain the Commission's action in December 2010. Following the RTM vote the Text Amendments were appealed to Superior Court by a Westport resident. On October 13, 2011, the Court found in favor of the Commission and did not overturn the amendment. No further appeals were taken.

13. Amended §39A in April 2012, pursuant to Text Amendment #642. Planning Consultant Mel Barr obtained approval to modify §39A to reduce the required non-residential floor area from 40% to 30% in the GBD, RBD, BCD, BCD/H and DDD#2 zones, to delete the non-residential floor area requirement in the RPOD, RORD and BPD zones, and to modify the Traffic Analysis requirement to grant the Commission discretion to waive this requirement.
14. Adopted Map Amendment #709, rezoning property located at 1141 Post Road East from Residence A/GBD to Residence A/GBD-IHZ on March 3, 2016.
15. Adopted Map Amendment #712, rezoning of property located at 785 Post Road East from Residence A/GBD to Residence A/GBD-IHZ effective May 28, 2016.
16. Adopted Text Amendment #714 and Map Amendment #715 on September 1, 2016, and approved Site Plan Application #16-011, which together provide for text that will permit a fully compliant §8-30g project consisting of 94 units of rental housing at 1177 Post Road East in the newly designated Residential- Rental Housing Opportunity Zone (R-RHOW) Zone

RECENT PROJECTS

The Planning and Zoning Commission has approved the creation of seven (7) affordable Housing developments since 2007 as follows: **10/18/16 There are now (8).**

1. A development project at 19 Indian Hill/3 Bradley Lane/86 Saugatuck Avenue was approved by the Planning and Zoning Commission in November 2007 which allowed for the construction of 20 multifamily units with 4 units being affordable per the State Statutes. The four (4) affordable units are sold to families whose income does not exceed 80% of the state median income.
2. A redevelopment project at 575 Riverside Avenue was approved by the Planning & Zoning Commission in February 2007 and allowed for the construction of 4 affordable units to be rented to families whose income does not exceed 80% of the state median income.
3. A redevelopment project at Hidden Brook/Sasco Creek (1655 Post Road East) was approved by the Commission on 9/6/12 and will allow for the construction of twenty-one (21) new affordable units.
4. A Special Permit/Site plan application was approved on 12/4/08 for development of the Hale's Court site. The project constructed 38 new units for rent.
5. A redevelopment project at 0 Church Lane was approved by the Planning & Zoning Commission on 8/15/13 and will allow for the construction of 5 affordable units to be rented to families whose income does not exceed 80% of the state median income. The project is under construction.
6. The first IHZ development was approved in February 2015 for property at 1135 Post Road East, pursuant to Res. #14-053 involving residential and non-residential development including construction of a building for a Bank with Drive Through and Office Use, a building for Retail Use, and four (4) residential buildings consisting of a total

of twelve (12) dwelling units (of which 2 are affordable dwelling units). This project is currently under construction and is near completion.

7. In March 2016, the Planning and Zoning Commission adopted Map Amendment #709, rezoning property located at 1141 Post Road East from Residence A/GBD to Residence A/GBD-IHZ. The application is currently under consideration.
8. **In September of 2106, the Commission approved a fully compliant 8-30g application for a 94-unit rental housing development on property located at 1177 Post Road East.**

As shown, the Planning and Zoning Commission has made significant progress in creating opportunities through text and map amendments to create more affordable housing in Westport. Including the recent approval of a fully compliant 8-30g application at 1177 Post Road East, the Commission has approved by approving the creation 110 new affordable units within the last 10 years.

B. State Initiatives

In addition to acting on recommendations from the local Plan of Conservation and Development, Westport's affordable housing efforts are also guided by policies established at the State level. The State of Connecticut established a goal that affordable housing should represent 10% of the total housing inventory in each municipality throughout the State.

The affordable housing inventory in Westport equals 319 units, according to the most recently available data. This represents approximately 3.07% of the total housing inventory (10,065 single and multi-family dwelling units) as listed in the 2000 U.S. Census, see attached memorandum Affordable Housing Units, document, dated March 2016, and Maximum Sale Price of Affordable Units under §8-30g, dated 5/10/16.

C.G.S. §8-30g allows a **moratorium** to the appeals process if a community can demonstrate significant progress in meeting the State's goal. Westport does not yet qualify for this process but it has made significant progress through by creating regulations that facilitate the development of affordable housing opportunities in areas well suited to accommodate the increase in densities necessary to make developments viable.

Westport needs 208 moratorium points to qualify for a moratorium. An analysis has been done by staff that identifies Westport has 118.75 existing moratorium points based upon projects that have received certificates of occupancy (C.O.'s). Coupled with projects that have been approved but are yet to be constructed or completed, there Town would meet and exceed the 208 points with a potential total of **238.25.** This includes the recently approved 8-30g project at 1177 Post Road East, which provided 67.25 points.

For further clarification on C.G.S. §8-30g and the moratorium process see memorandum State Moratorium on Affordable Housing (§8-30g (I): State Certificate of Affordable Housing Completion, Moratorium on Applicability of C.G.S. §8-30g to Certain Affordable Housing Applications, revised 5/12/16, available in the file.

PRIVATE SEPTIC & PUBLIC SEWER SERVICE

As noted earlier, there is no public sewer available to the area contemplated by this application. The applicant is correct in stating that in the Purpose Statement in §14-1 of the regulations says

the following:

> *"B District provisions are intended to encourage higher density development for primarily residential and related purposes in areas served by centralized sewerage facilities."*

However, the section appears to qualify what is meant by higher density:

> *"the purpose of the B District is to allow single family residences on a minimum 6,000 square foot lot."*

The densities proposed in the CMHZ Zone would allow (1) unit per 2,307 sf. of land area based on 8.21 acres and 155 units. This is more than twice the density currently permitted and would most certainly require that public sewer be provided due to the public health code requirements. However, as noted in the Commission's 2007 negative 8-24 report Reason #5, which is based on the existing uses (single family) and zoning classification as residential B (6,000 sf lots):

> *"Neither the Health Department nor Public Works department has qualified a need for the sewer. Comments dated 8/31/07 from the Westport Weston Health District state, "The WWHD does not have any data that would support that this area is in need of public sewers." The 2002 Wastewater Facility Plan sewer service evaluation map, prepared by Stearns and Wheler for the Department of Public Works, rates the Hiawatha Lane properties as "Low to Moderate" with regard to the need for connection to the public sewer."*

There is no subsequent information or statements by the WWHD or the Public Works Department in the application that the area's conditions have changed or that their opinion has changed with regard to the need for public sewer. Moreover, there is no evidence of a public health hazard or imminent condition that necessitates that the area be served by public sewer at this time.

The fact that sewer is not available to the site and does not appear to be necessary is an important consideration in a review of this application that proposes to transform an established moderate density single family neighborhood into a high density multi-family neighborhood.

ADDITIONAL CONSIDERATIONS

As important to increasing housing opportunities and choices in Westport, is maintaining the quality and character of existing residential neighborhoods to maintain community character and preserve existing housing options. One of the eight (8) "underlying philosophies" identified in the POCD is to:

- *Protect the predominantly single-family residential focus and small town feeling of Westport" pg. vi.*

The POCD also states:

- *"It's is a central goal of this Plan and of prior plans to maintain the low density single family residential character of Westport's neighborhoods. The overall character and ambience of existing neighborhoods is responsible for recognized quality of life in Westport.*
- *In order to achieve this goal, regulations protecting residential districts and zoning standards must be maintained, improved, strengthened where needed, and*

enforced. Westport must strive to maintain a balance between its established neighborhoods and the need to revitalize, modernize and allow for the diverse economics of its citizenry." Pg. 5-1

It further states:

- *"Westport's variety of housing types from modest homes and historic structures to grand manor homes is one of its strongest features. IN fact, the recognized quality and diversity of its residential neighborhoods is an asset which has helped make Westport the desirable community that it is." Pg. 5-2*

The Commission recognizes that increasing density allowances are necessary toward creating a successful formula to provide affordable housing opportunities. However, the Commission must consider where best to identify those areas and to regulate their development while adhering to the principles of the POCD in preserving modest and other single family neighborhoods.

There is evidence of the Commission's resolve to meet both goals. In addition to the progress noted above on Post Road East with the IHZ, the recent 2014 Downtown Master Plan has further identified the downtown area as an appropriate location for increased density with affordability based on its walkability, proximity to services, transportation, employment opportunities, and adequate infrastructure including sewer and water service, as well as an adequate road network.

Furthermore, additional planning will begin this fall to study the Commercial area of Saugatuck under a $440,000 grant obtained recently through the Office of Policy and Management (OPM) to promote Transit Oriented Development, which is mixed use development proximate to mass transit, complete with pedestrian friendly amenities. While some great progress has been made in redeveloping historically underutilized properties in Saugatuck around the train station, future development pressure with require a coordinated plan to provide detailed guidance regarding how future development should take shape. This study will likely take a year to complete was begun.

While the subject B zone area is near the train station it has not been included or identified as part of the proposed study area. The subject B zoned area is one of only three small lot single family B zoning districts in town. Furthermore, the subject area is located in a well-established, modest, and predominantly single-family residential neighborhood. The other B zoned areas including Richmondville Avenue is also characterized as a modest single family neighborhood with strong a strong community history. And Wassell Lane is military former army single family housing which is now owned by the Westport Housing Authority. Each of the three (3) B zoned areas is integral to the community in tradition and in providing modest affordable single family housing options in Westport.

Summary

The Commission has broad authority when considering a proposed zoning text amendment as it is acting in its legislative capacity. In addition to§42 of the zoning regulations, §8-2 of the Connecticut General Statutes contains the guiding language when considering amending the zoning regulations. It states in part,

> *"Such regulation shall be made in accordance with the comprehensive plan and in adopting such regulations the commission shall consider the plan of conservation and development prepared under Section 8-23."*

The "comprehensive plan" as described on page 66 in Robert Fuller's Treaties, 2015 Edition, "Land Use Law and Practice", aptly describes the term and its applicability in this text amendment application:

> *"Unlike the plan of development which is always subject to quick changes, the scheme of development in the community as shown by existing uses together with the zoning regulations and map provides stability and consistency of treatment of land in the municipality and is more likely to reflect community interests."*

In considering this request, the Commission must determine if the proposed new zoning regulations and potential Overlay zone is in accordance with the comprehensive plan.

The CGS Section 8-2 outlines additional guidance to and responsibilities of Commissions in reviewing requests for regulation amendments:

- ***"Such regulations shall be designed to lessen congestion in the streets; to secure safety from fire, panic, flood and other dangers; to promote health and general welfare;"***
- ***"to provide for adequate light and air; to prevent the overcrowding of land;"***
- ***"to avoid undue concentration of population and to facilitate the adequate provision for transportation, water, sewerage, schools, parks and other public requirements."***

Department Comments

Health Department:	No comment received to date
Engineering Department:	No comment received to date
Conservation Department:	No comment received to date
Fire Department:	No comment received to date
Police Department:	No comment received to date

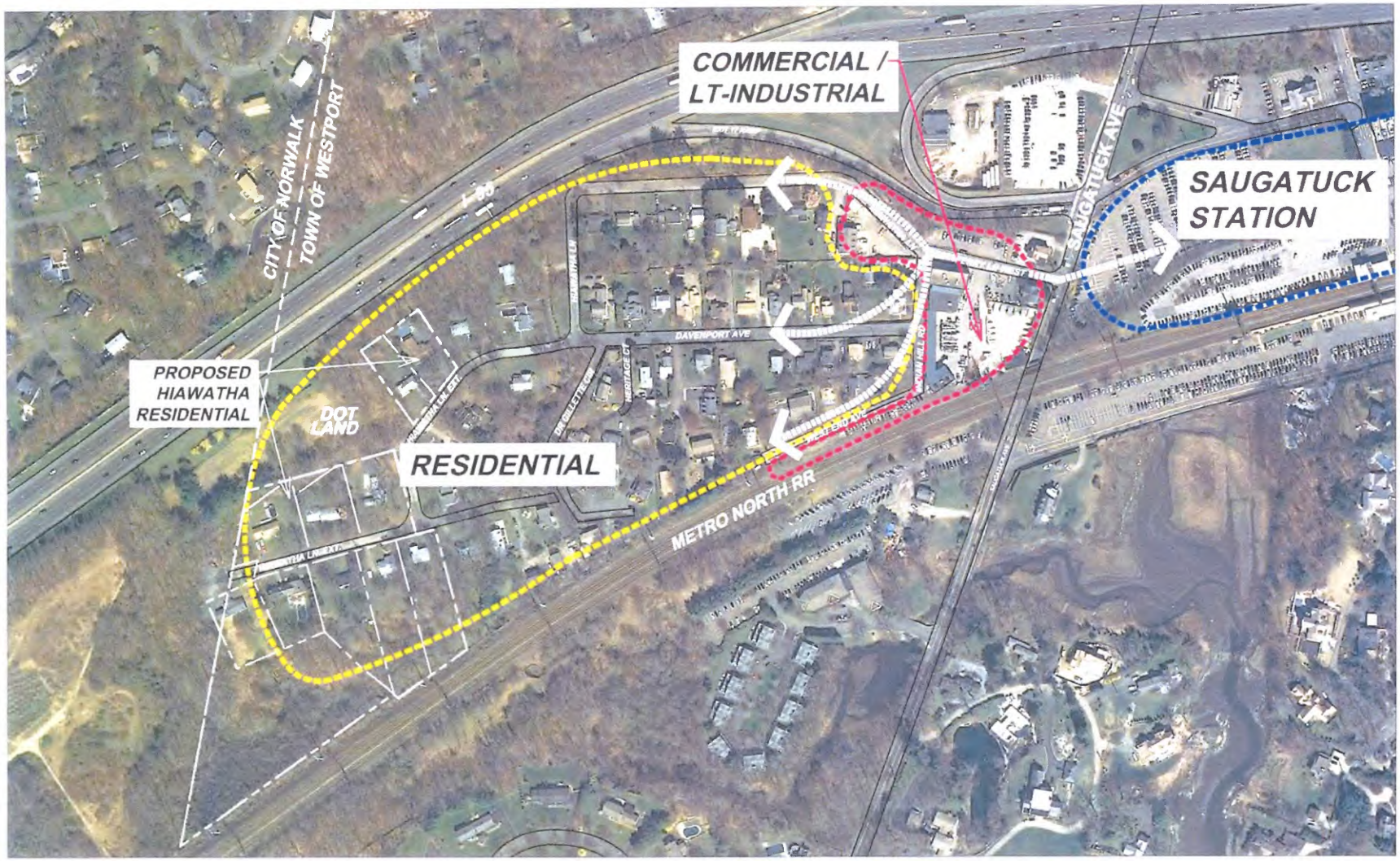
Westport Planning and Zoning

Zoning Regulation Amendment to Create New Section 20A, Combined Multi-Family Housing Zone

www.shipmangoodwin.com

September 15, 2016

Doc # 5088350



NEIGHBORHOOD CONTEXT
WESTPORT, CONNECTICUT

HIAWATHA LANE

2T

TRANSCRIPT OF PUBLIC HEARING

TOWN OF WESTPORT

PLANNING AND ZONING COMMISSION

HELD AT THE
WESTPORT TOWN HALL AUDITORIUM
110 MYRTLE AVENUE
WESTPORT, CT 06880

March 7, 2019
7:00 P.M.

IN RE: TEXT AMENDMENT # 760; APPL.#18-079, MAP AMENDMENT #761, APPL.#18-180 AND 28,36,38,39,41-45, 47/PARCEL A0/LOT 5 HIAWATHA LANE AND HIAWATHA LANE EXTENSION, THE ROAD BED OF HIAWATHA LANE EXTENSION ON THE SOUTH SIDE OF 38-42- 44, AND A PORTION OF THE ROAD BED OF HIAWATHA LANE ABUTTING THE EASTERN BOUNDARY OF 38 HIAWATHA LANE, INCLUDING THE PRIVATE ROAD BED OF HIAWATHA LANE, FROM ITS INTERSECTION WITH DAVENPORT AVENUE WHERE UTILITY INSTALLATION IS PROPOSED

ATTENDANCE:

Paul Lebowitz, Chairman
Chip Stephens
Catherine Walsh
Greg Rutstein
Neil Cohen
Danielle Dobin
Jon Olefson

Electronically Recorded by the Town of Westport
Planning and Zoning Commission

Transcript Prepared By:
Fiore Reporting and Transcription Service, Inc.
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Shelton, CT 06484
(203)929-9992

1 their turn. Do we all agree?
2 CHIP STEPHENS: Yes.
3 CATHERINE WALSH: Absolutely.
4 PAUL LEBOWITZ: All right. So, I have a
5 list. Anybody who is not signed up, would like to
6 sign up, please do sign up.
7 Thank you, both of you gentlemen.
8 Appreciate it. And I'm sorry. Did you say, should we
9 break? I heard the break.
10 UNIDENTIFIED SPEAKER: Yes.
11 PAUL LEBOWITZ: So what we will do, for
12 those of you in the audience who want to speak, we
13 will be back in 10 minutes. Promise. We'll be
14 refreshed and ready.
15 (Session Break)
16 PAUL LEBOWITZ: Ladies and gentlemen, thank
17 you very much. Please take your seats. We're going
18 to go to the public portion.
19 I have on my list here -- by the way, just
20 because you didn't sign in doesn't mean you can't
21 speak. I'll be asking for hands at the end.
22 First on my list is Selma Miriam.
23 SELMA MIRIAM: Okay. Can anybody hear me?
24 PAUL LEBOWITZ: Oh, yeah.
25 CHIP STEPHENS: Oh, yeah.

1 PAUL LEBOWITZ: Thank you.

2 SELMA MIRIAM: Good. Okay. So my name is
3 Selma Miriam. I am 84 years old. I have lived at 29
4 Hiawatha Lane Extension since 1962, when my then
5 husband and I bought the least expensive house which
6 we could afford for $15,000 here in Westport.
7 Okay. Excuse me. Okay. Now a standard
8 beginning type house used to be about 18 to 21,000,
9 and that was a cheap small house. That's what we got
10 at that time, and the only reason we got it for 15,000
11 was that there was water in the basement and the area
12 was and is a swamp, a marsh, whatever you want to call
13 it.
14 This neighborhood was then and remains
15 today, the only naturally occurring home-owned
16 working-class neighborhood in Westport. It began to
17 house Italians who built the railroad and continued to
18 house the people who were forced to move by the advent
19 of the throughway.
20 This intimate neighborhood, where almost
21 everyone was related to everyone else, will be
22 destroyed as such if you accept the applicants for a,
23 quote, "Saugatuck Village," a fake designation of
24 course.
25 The residents of this putative village will

1 all be renters, not homeowners, with 130 of those
2 families paying high-end rent, and 56 moderate income,
3 according to 8-30g.
4 During the Hollister presentation last week,
5 I could not help but think about the old saw about how
6 this or that might be a good plan. For example,
7 universal health care, but that the devil was in the
8 details. Mr. Hollister presumed that the Charney plan
9 was just fine and we would all agree to it, so he only
10 addressed the details at great length, explaining how
11 well thought out they were, how fixable if need be.
12 You have to give him credit for that.
13 He made the presumption that we, and you,
14 didn't have to think at all about whether 187 rental
15 apartments and a 325-car space in his project is
16 appropriate or safe getting in or out of a single-
17 access road, Ferry Lane West.
18 And I really want to thank the commission
19 for bringing up so many issues about traffic. I think
20 you maybe didn't dwell as much as I would on the fact
21 that this particular spot, I know you've probably all
22 been there, but it is the intersection of 33, 136, the
23 train station, and Exit 17 of the throughway.
24 So a lot of the discussion about the
25 crowding, even on an urban street, this is a different

1 situation and any other rural community that had
2 similar developments would not have the train station,
3 136, 33, and Exit 17. So that complicates things.
4 Mr. Hollister's experts bragged to the
5 Conservation Commission that they have designs to take
6 care of water removal, flooding, with backup plans as
7 well. When asked what might happen to other houses in
8 the neighborhood as a result of their plans, they said
9 they weren't paid to study that.
10 Mr. Hollister was pleased to tell us that
11 the Architectural Review Board liked the craftsman
12 proposed design of the new apartment building. He did
13 not mention that they did not like buildings three-
14 stories high, and in fact our local architects
15 considered the Hollister Attorney plan entirely
16 inappropriate for this site, and therefore they voted
17 unanimously against it.
18 One must wonder about the experts Mr.
19 Hollister hired. At least some of them. Now last
20 week, and all of this was switched a bit tonight, but
21 we heard much about their extensive credentials. Some
22 fire officials claimed there would be no fires in the
23 project because they were going to use fireproof
24 materials. And as for the rest of us, they didn't
25 address whether there would be traffic problems

1 getting their trucks and other emergency vehicles on
2 to Hiawatha Lane.
3 And how in the world -- now this -- this is
4 last week, okay. How in the world could a traffic
5 expert decide that 187 rented apartments and 325
6 planned parking spaces would have little or no effect
7 on traffic at the junction of Routes 33, 136, I-95
8 Exit 17, and the railroad station? It's unthinkable.
9 A second traffic expert said that there
10 might be as many as 50 more cars per day. Now, do you
11 believe that? I think the commission doesn't believe
12 it either.
13 Apparently, it is thought that 350 plus
14 tenants will stay at home. You know. They'll stay at
15 home, or they'll go out in shifts during the day is
16 what we were told tonight, or that they will all
17 likely walk a mile or two to the station. I live on
18 this street, okay? And I know the kind of walk that
19 it is because I just took it when we came back from
20 New York and, you know, couldn't drive to commute to
21 New York or to Stamford. Okay.
22 So if this all makes sense to you, the
23 things that you've heard tonight and last week, that
24 the details are so well cared for and the presumption
25 that this plan is good and is safe, and will not

1 impact everyone in Westport because Mr. Hollister says
2 so, then let me remind you of the children's story
3 called, the Emperor's New Clothes.
4 There are a lot of fake claims in our nation
5 these days, but I do hope that the members of this
6 commission, as well as others, will realize that this
7 proposed zoning change to allow a purported, quote,
8 village, will not only destroy my own neighborhood and
9 my home, but will actually paralyze any Westporter's
10 desire to take -- to get to the train station and the
11 throughway, and the road to Norwalk and so forth.
12 One has to wonder how and why these experts
13 came to their conclusions.
14 Thank you, and I do appreciate all the
15 questions that you asked of the traffic expert.
16 PAUL LEBOWITZ: Thank you very much.
17 (Applause)
18 PAUL LEBOWITZ: No. I'm sorry. Sorry,
19 please, please, again, it's not an open outcry
20 session.
21 Next on my list appears to be Mr. Mandel.
22 CHIP STEPHENS: Two-minutes time?
23 CATHERINE WALSH: One minute's time.
24 PAUL LEBOWITZ: Ouch.
25 MATTHEW MANDEL: Matthew Mandel, RTM

1 highway, all the cars, bad ways of getting in and out
2 of one entrance. There is nothing good in this for
3 Westport. We have an affordable neighborhood. Why
4 don't we just let it be?
5 We are all about having affordable housing.
6 I think we've had many projects in the past five
7 years, more. But this is not an appropriate place.
8 You put it on a main road where there's a way to get
9 in, way to get out, safety for people. Not on a tiny
10 road with one way in and one way out. Flood lands.
11 And we've seen all the pictures. Why are we going
12 further?
13 I'm coming after so many people that spoke
14 so many things so I'm not going to go over them again.
15 I think it's pretty clear and a lawyer that's supposed
16 to be representing us than fighting us, I think that's
17 pretty clear too. We need to make a decision. Either
18 they're with us or against us.
19 That's all I can say, guys. You know what
20 to do. Thank you.
21 PAUL LEBOWITZ: Thank you. Chris Gazelli.
22 CHRIS GAZELLI: Chris Gazelli, 37 Hiawatha
23 Lane. I'll start with the traffic issues that have
24 been brought up. I would just like to show you --
25 rather than people describing it to you, I'd like to

1 show you what's going on.
2 They mentioned about Penna Construction and
3 Gault Stone. These are the trucks that go through
4 there regularly. They're large dump trucks, large 18-
5 wheeler trucks. That's Ferry Lane West, and that's
6 the only way in or out of this area for about five or
7 six streets.
8 There are several other trucks. There is a
9 forklift. This forklift -- the 18-wheeler trucks park
10 on the opposite side of Gault stone. The 18-wheeler
11 truck parks, takes up a lot of space. This is on
12 Ferry Lane West, which is where the exit point is.
13 The forklifts have to move back and forth between --
14 you know, so they're actually crossing the traffic
15 where cars would be going through. So you're
16 introducing 300 to 400 cars into this situation. I
17 don't see how that's not going to cause a congestion
18 problem.
19 Here is just another one. What they do is
20 they like to use it also as a turnaround in Ferry Lane
21 West, or just going back. And like, you'll have a --
22 so you will have a big truck trying to back up while
23 cars are coming.
24 Again, there are more trucks that just use
25 it as a turnaround. This is all happening at the exit

1 point. More trucks. Eighteen-wheeler being unloaded
2 with a forklift right in the middle of the road that's
3 supposed to have 300 cars going through it.
4 This is what somebody else was referring to;
5 all the parking that's going on right in that area.
6 This is Hiawatha -- not Hiawatha Extension. There's
7 two -- there's Hiawatha Lane and there's Hiawatha Lane
8 Extension. This is Hiawatha Lane. This is -- goes
9 into Ferry Lane West, and you have a large number of
10 cars that park on that narrow road. This is the road
11 that's going to go to Ferry Lane West, and in turn go
12 on to Saugatuck Avenue.
13 So you have two rows of cars that park which
14 make it very difficult for two cars to go, you know --
15 to cross each other. That's to give you an example of
16 that. Here is just another photograph of it and to
17 give you an example of that.
18 I took my car and just, you know, went to
19 the stop sign. And as you can see, another car, if it
20 was coming the other way, would never be able to cross
21 me. I'd have to -- that whole -- that area would have
22 to be cleared out before anybody could go back that
23 way. And you can't go the other way because Davenport
24 Avenue is a one-way street.
25 And last but not least, referring to

1 traffic, I haven't heard anybody really mention about
2 this left turn on Ferry -- at Ferry Lane West. This
3 is the -- this is the exit point for like about five
4 streets. Davenport, Heron, Dr. Gillette, Hiawatha
5 Lane, Hiawatha Lane Extension. I'm probably leaving
6 out a few more. Indian Hill.
7 This is where the red light is, where you
8 would exit. And that's where all these cars have to
9 exit.
10 Now this left turn here is the one that goes
11 to Exit 17, the Saugatuck train station, and into
12 downtown Westport. And this intersection -- back the
13 left turn, you immediately take a left and you land
14 right into a red light, where Exit 17 is, where the --
15 where Park Street is. That intersection with Exit 17,
16 Exit Park Street, and Saugatuck Avenue. So only about
17 -- I mean, any of my neighbors can tell you this.
18 Only about four cars can probably make that left turn
19 out of that street. So, you know, usually what
20 happens, if there's like more than four or five cars,
21 there's going -- you know, and they're all making a
22 left, that's it. There's not going to be any more
23 cars that can go through.
24 Now keep in mind also that there are 18-wheelers,
25 dump trucks that come through here that have to exit

1 also. So I can't possibly see how this isn't going to
2 cause a massive traffic jam. And that is a red light.
3 This -- when this -- when our light turns green, this
4 light is red and so that -- so everybody has to stop.
5 So you're looking at about maybe four or
6 five cars. How are you going to -- how is it you're
7 going to clear that area with 300 cars? I have no
8 idea.
9 So the flood plain is based on a 25-year
10 flood. I think we've had about three of those last
11 year. So I mean, you know, to give you an example,
12 this is the corner -- a corner where They want to put
13 one of their buildings. Unfortunately, I don't have a
14 screen, but this is a corner where they want to --
15 there goes where I circled it.
16 If you pay attention, this is one of the --
17 this is -- this -- pay attention to the green door of
18 this house here. This -- so this is the corner of the
19 building. This is the -- this is this green door
20 here. This is what happened in a rain storm where
21 that green door is.
22 So they want to build a building about 25
23 feet away from there, and that's a rushing -- that's
24 rushing water.
25 Same thing goes for this building as well.

1 This is where they want to put one of the corners.
2 I'd say about 50 feet where this fence is, we had this
3 area flood here, and this is a photograph of that
4 flood. This is the beginning of our road. This is
5 the only entrance on to Hiawatha Lane Extension, and
6 this is the water overrunning the culvert and just
7 spilling on to the street.
8 So -- and this is rushing water. This was --
9 this was you could -- if someone tried to walk
10 through that, they'd fall over and they'd go into the
11 river. So that's a -- in my opinion, that's a safety
12 concern.
13 These are additional photographs of that.
14 I'll submit all this. This was on September 6th,
15 2018. You could check weather records. There was
16 also a major one on April of 2018.
17 Again, this is the overflow of water. It's
18 going right down the -- it's spilled over the culvert
19 at the beginning of our road. How 300 cars are going
20 to go through that, I have no idea. How pedestrians
21 are going to walk through there, impossible. They'll
22 die.
23 This is what -- to give you -- to make you --
24 I'm not lying. I'm not exaggerating. The rush of
25 the water causes this to happen to the road. That's

1 all the -- that's the -- the road buckled and the
2 asphalt lifted out of the road. That's what -- how --
3 what the force of the water did. And those are
4 additional photographs of that.
5 The back path where Norden is, that was
6 never intended to be anything other than a back path.
7 The original owners of the street said that they made
8 that agreement with United Air Craft, that that was
9 never meant to be any kind of throughway of any kind.
10 It is meant to be just a path for just access and
11 nothing more. And I have an article of an RTM meeting
12 all the way back in 1960 that says that.
13 So this is just a GIS map of the area, just
14 to give you an idea of how much water comes through
15 there. So you have the Norwalk wetlands. Basically,
16 Metro North acts as a dam. The water is coming from
17 I-95 and coming from the Indian River. The water
18 that's coming from I-95 and Norwalk empties out into
19 their wetlands. That water, they only have about
20 three small two-foot by two-foot culverts to handle
21 that. One of them -- oh, actually two of them are
22 probably not in the best condition. I have
23 photographs of that.
24 They -- one of them is nonfunctional. So
25 that water kind of like hits the metro north and just

1 kind of just glides down when -- in large storms, just
2 glides down to Westport to Hiawatha Lane wetlands, and
3 that culvert has to deal with that kind of drainage.
4 Not to mention what was coming from the Indian River,
5 what I showed you.
6 So, the water drains out in two -- it
7 requires two culverts to drain out. There is the one
8 culvert under metro north, and then there's one on
9 something called an Eno Lane Path. But they need both
10 -- the water has to pass through two -- both of those
11 in order to basically alleviate Hiawatha Lane of any
12 drainage.
13 So this is the condition of the Metro North
14 culvert. You can see, that's the outlet side. It's
15 buried. It's blocked. So there's drainage issues,
16 you know. You're trying to build some massive
17 development in a strained environment as it is.
18 And this is the Indian Hill one. I'm just
19 showing you a collapsed culvert there. The water has
20 to get through both of those to alleviate, otherwise,
21 it will back up.
22 That's a picture of the one collapsed. And
23 that's damage to it.
24 I also have a petition that I circulated
25 that a number of my neighbors signed. We're concerned

1 about the high-density housing that's creating the
2 traffic issues that I mentioned, the increase in the
3 population, the hi -- the -- where we're situated on
4 wetlands and the impact to property values.
5 So in summary, I'm not here -- that left
6 turn is not being discussed. I don't see how it's
7 possible that, you know, that a turn that's only going
8 to allow four or five cars at a time to get -- I mean,
9 because everybody is going to turn to get on to Exit --
10 to I-95. I don't see how that is possible when only
11 four or five cars are allowed to turn at a time, not
12 to mention the oncoming traffic from Saugatuck Avenue
13 in the first place that's going to get to that light.
14 And the -- and as far as the drainage, the --
15 you know, the wetlands have some issues that -- some
16 drainage issues. They're not fully functional. You
17 know, they're not fully functional and adding that
18 incredible amount of volume with underground parking
19 garages, they need pumps to, you know -- that need
20 pumps in case the water is going to flood them. I
21 just don't see how that's a feasible idea.
22 And not to mention the fact that I find this
23 highly, I don't know, I'll say irregular, that you
24 know, this is being done to a neighborhood where
25 people in -- you know, they came with the assumption

1 that they were going to live in a residential
2 neighborhood, you know, invested in their homes to
3 have this come along and basically have towering
4 apartment buildings right in front of them when that's
5 not what they came there for. They came there to buy
6 and live in a nice quiet residential neighborhood.
7 This is not -- I mean, you know, you don't dump a mat
8 -- five -- apartment -- four-story apartment complexes
9 in a residential neighborhood like that, in a small
10 cul de sac, and you know, tucked away in a corner, and
11 now you're -- and you're going to convert it into this
12 massive city? I'm sorry, but that's absolutely wrong.
13 Thank you. I'll submit all this.
14 PAUL LEBOWITZ: Thank you very much.
15 MARY YOUNG: This is my email address, if I
16 could get your information.
17 CHRIS GAZELLI: Yes.
18 PAUL LEBOWITZ: Mr. Mike Calise, please.
19 CHRIS GAZELLI: Actually -- actually --
20 MARY YOUNG: You can just email me what you
21 presented tonight that would be great.
22 CHRIS GAZELLI: Can I just submit it, the
23 documentation?
24 MARY YOUNG: Can I have both?
25 CHRIS GAZELLI: Yes, sure.

1 Yeah, I just wanted to show you -- I meant
2 to show you --
3 MARY YOUNG: If you're not leaving that with
4 us, showing us on your phone is not going to be
5 helpful.
6 CHRIS GAZELLI: Can I -- can I email it to
7 you?
8 MARY YOUNG: You can, and we'll be back --
9 PAUL LEBOWITZ: Please do.
10 CHRIS GAZELLI: Okay.
11 MARY YOUNG: -- on the 21st if you want to
12 return.
13 CHRIS GAZELLI: Okay. So you're going to
14 need me to email this?
15 MARY YOUNG: Yep.
16 CHRIS GAZELLI: I'll submit this to you.
17 I'll send it to you.
18 MARY YOUNG: Yep. Thank you.
19 PAUL LEBOWITZ: Thank you.
20 MICHAEL CALISE: Michael Calise, 7 Road
21 South. The first thing I'd like to speak to is the
22 importance of the access way from Norwalk, without
23 saying a word about it.
24 You have in front of you, a copy of a GIS
25 map which I've marked up, showing the route of a fire

1 time.
2 PAUL LEBOWITZ: Thank you. Our last name on
3 the list, but if you want to speak you can put your
4 hand up, is Carolanne Curry.
5 CHIP STEPHENS: Carolanne, you're up.
6 CAROLANNE CURRY: Good evening,
7 commissioners. My name is Carolanne Curry and I live
8 at 29 Hiawatha Lane Extension. I've lived there since
9 1988. The first 15 years were delightful. The last
10 15 years have been hell.
11 Sometime in 2002 or 2003, Summit Saugatuck
12 decided to buy its first piece of property because
13 this to Summit was an opportunistic opportunity where
14 they take depressed properties and turn it around for
15 investors. That's on their website.
16 I have a lot of stuff. I may not finish it
17 all tonight, but there's a couple things I do want to
18 mention. Because the Avalon history is one that I'm
19 familiar with, I was very curious as to what was going
20 to happen. And I called Avalon several days ago,
21 identified myself, I asked if the man that I had
22 worked with for many years was still there, Grant
23 Jabore. And they said, no, he had retired. And I
24 said, well, is there anyone there that I can talk to
25 about the emergency exit on the Norden property.

1 At that time, they told me that the Town of
2 Westport had asked that the access road be widened.
3 This surprised me. Why would Westport be asking for
4 this?
5 And the woman on the phone said, let me get
6 back to you and see if I can give you some more
7 details. She did not get back to me, and a couple of
8 days later I went to the office. I wanted them to
9 know that I was serious about finding out about this
10 access road.
11 At the time, the woman said to me that the
12 fire marshal had asked for the access road to be
13 widened so that it could accommodate the requirements
14 needed for emergency vehicles or fire trucks to get on
15 to Hiawatha Lane.
16 In the course of that conversation, she also
17 mentioned that they would be talking to their general
18 counsel, Attorney Hollister. And I kind of looked at
19 her and I said, Attorney Hollister for Avalon, and
20 Attorney Hollister for Summit. I just sort of
21 digested that.
22 And then today I got another call from her,
23 and she said at that point, she verified again that it
24 was a fire marshal from Westport that was asking for
25 these accommodations on the path. All of that seems

1 so bad to me that I knew I needed to tell you in my
2 presentation tonight before anything else.
3 My understanding is that if there's a change
4 in that access road, it's in Norwalk, and Norwalk will
5 take care of it. And I think if there were some
6 meetings that had happened or were scheduled to
7 happen, I believe our town attorney was very clear
8 that our town isn't going to make sure that they help
9 the developer get this access road developed for the
10 convenience and the profit of the developer.
11 If the developer, Summit Saugatuck, wants to
12 make change in the road, they've got to go to the
13 property owner, who is Avalon. Summit and Avalon then
14 have to go to the Conservation Commission in Norwalk.
15 There is no need for Westport to be involved in that
16 at this point.
17 The Conservation Commission of Westport may
18 be asked to join in in making an assessment, but it
19 would be invitation. It would not be legal
20 requirement. So that's my Avalon conversation.
21 The other thing that I want to go to is I'm
22 confirming that Chris Gazelli -- just get this up --
23 did talk to you about the RTM not wanting to put in
24 1993 -- 1960, the RTM saying, no, we don't want to
25 have access because the -- because the residents of

1 that road have already been traumatized by the highway
2 going through. But what the RTM was also doing at
3 this evening, was determining that Hiawatha Lane
4 Extension was not going to be a public road. This was
5 a meeting to determine eight roads in Westport and
6 maybe six got to be public that evening, but not
7 Hiawatha Lane.
8 So I just want you to know that it remained
9 an extension up until this point, and it was always
10 the thought that it might be a prior -- it might
11 become a public road.
12 I'm going to jump to something else.
13 There's a map amendment, and in my research, I found
14 out under the Connecticut 124 zoning agreement that if
15 you can get 20 percent of the property owners that are
16 being effected by the 500 feet, that reach out to
17 their -- or that affect their property, if you can get
18 these signatures, bring them in, then you need a
19 certain amount of votes to make a map amendment.
20 I'd like to give you this so that you know
21 that I got the right number of property owners. There
22 are -- there are 94 on this page, and I found out that
23 there was a duplicate that had been made of all the
24 letters that had been sent out to the properties
25 within 500 feet of the -- of Westport and Norwalk, and

1 I would give you that list so you'll know who I went
2 to and who I was supposed to see.
3 Yes, it's a working-class neighborhood. I
4 asked residents who might not be able to come if they
5 wanted to send any kind of letter. One of them was
6 Dana Johnson and Jenny, and just asking to include us
7 in any -- in supporting any presentations to prevent
8 Mr. Charney from building his condos on Hiawatha Lane.
9 Sam Anastasia former fireman. We've lived
10 in the area in our home for 50 years. We're very
11 happy that Save Old Saugatuck was founded to protect
12 our area and support it fully. A project this size
13 does not belong in this area. Our narrow roadway and
14 one way in and one way out can barely accommodate the
15 residents that live there now. Sam and Sandra, 16
16 Davenport.
17 Linda Amakis and Lazlokiss, 7 and 9
18 Davenport Avenue. My husband and I are long-term
19 homeowners on Davenport. Over 75 years myself alone.
20 As you can imagine, we've seen a lot of changes. Some
21 good, not so -- some not so good.
22 This has been the worst of them all and we
23 are all tired and continually fighting this unwanted
24 fight. Just for safety reasons alone, this proposal
25 will impact our neighborhood like never before. We

1 accepted Gault moving in with their many big tractor
2 trailer trucks lined up on both sides of Ferry Lane
3 West to either load up with materials or deliver
4 materials. They can only get in and out one way.
5 There is no other way. Clearly, the traffic is
6 already overwhelming, at times waiting for two or
7 three light changes just trying to exit Ferry Lane
8 West to go in any direction.
9 People seem to be confirming tonight, this
10 traffic problem. We are worried about the first
11 responders in an emergency.
12 We're also concerned about the sewer system.
13 Everybody knows the pipes on Davenport Avenue are very
14 old and cannot possibly handle what's going to come
15 from 187 units.
16 A resident on 17 Hiawatha Lane, wishing she
17 could attend. She's writing concerning the folly of
18 Summit on Saugatuck Lane Extension. It's
19 incomprehensible to imagine with all the traffic from
20 187 units are going to empty out on to Hiawatha as it
21 flows into Ferry Lane West. It's a narrow road that's
22 already clogged with large trucks and traffic from
23 Gault, and is very busy intersection of I-95 and Exit
24 17.
25 Another concern is the damage of the road

1 that is going to occur during any construction of
2 units. During previous town meetings the plans have
3 included large heavy dump trucks carting debris from
4 the site and supplies, and who's going to be
5 responsible for the upkeep and repair of the current
6 roads?
7 Summit has weaseled their way past current P
8 & Z regulations by promising some low-income units.
9 Our current neighborhood consists of multiple small
10 Cape Cod ranch style homes low-income units. They are
11 already affordable market of Westport homes. Why is
12 the Town of Westport going to spend a lot of money
13 installing new sewer lines and stretching our school
14 budgets and classroom sizes?
15 I just highlight this last area from Jerry
16 Walker. Works in the police station. He's on
17 Heritage Court. He compares the traffic of the Long
18 Island Expressway in his mind is not going to be
19 nearly as bad as the traffic problems from this --
20 from this project.
21 He knows that he leaves every day, every
22 weekday, leaving our neighborhood to go north, east or
23 west, becomes a nightmare. On leaving Ferry Lane West
24 we have three choices. The only good choice but
25 doesn't help if your destination is anywhere, is from

1 northwest to east.
2 He talks about the turns just as we've heard
3 tonight, and he said our suburban streets are built
4 without sidewalks. I have walked half-mile loop from
5 Davenport to Hiawatha Lane, back to Indian Road, and
6 back to our house, literally hundreds of times.
7 That's a pleasant walk with only 70 or 80 cars in our
8 neighborhood. I fear for the children, pet owners,
9 when that same walk will have 3 to 400 cars added to
10 the mix.
11 I'll enclose those letters and make them
12 available.
13 There's a question that we have about
14 traffic safety. I think some have been raised.
15 Parking along Hiawatha Lane. The vehicular activity
16 and traffic patterns and parking practices associated
17 with the Gault and Penna businesses, railroad parking
18 activity and illegal parking at the intersection of
19 Indian Hill and West End. The number of residences
20 served by driveways without back-arounds on Davenport
21 and Hiawatha, at least 12 or more, school bus routes,
22 scheduled bus stops, and pick up locations, and the
23 condition of the existing roadways and street systems.
24 In all the years that Summit has claimed
25 road ownership, it was one call that we had to make

1 after that 100-year storm when the road was totally
2 torn up, where I said to Attorney Hollister, if your
3 guy owns the road, he'd better get over here and get
4 some repair. One time. The road is in shit condition
5 right now.
6 Additionally, the projected peak hour
7 traffic volumes provided are unaccountably low in
8 comparison found with standards found in the Institute
9 of Transportation Engineer's Trip Generation, 7th
10 Edition. And there is reason that Saturday -- and is
11 there a reason that Saturday traffic counts were not
12 included in the report? Equally questionable is the
13 assertion that traffic generated by the new
14 development will be limited to Hiawatha Lane. Logic
15 defies that conclusion and the consultant has offered
16 no evidence to support.
17 As we've said before, if there is going to
18 be anything to do with the (indiscernible)
19 designation, sidewalks, crosswalks, street lights and
20 other improvements would be needed. Center lines and
21 stop bars, striping signs, and other improvements for
22 enhanced safety are needed.
23 If you need copies -- and a few questions
24 about fire safety.
25 Applicants purport that the fire marshal

1 recommends a higher standard of construction which
2 exceeds the minimum code requirements for the benefit
3 of fire safety. As building plans submitted do not
4 provide details of code compliance, where is the
5 assurance that such standards would be observed?
6 Does the P & Z have the statutory authority
7 to mandate as a condition, a higher grade of
8 construction that is legally required? The adequacy
9 of water to the hydrants. Field investigations
10 revealed the efficiency in water quality and pressure
11 currently on the site in (indiscernible) likely the
12 result of water tank obsolescence and worn out water
13 lines. Substandard water service for firefighting
14 purposes poses a serious impediment to public health
15 and safety.
16 As neither of these very serious issues are
17 within the developer's power to correct or improve
18 absent the submission of established written
19 protocols, a time table for execution, and a
20 commitment to do so etched in stone and certified by
21 the water company, Aquarion. This is not a matter
22 that can be prudently addressed as a condition of
23 approval.
24 The mere existence of an easement and an
25 informal gravel driveway of varying widths, subject to

1 significant grades of 15 percent or more is not a
2 sufficient basis for a conditional approval.
3 At the very least, favorable comments from
4 such Norwalk agency as fire and police, planning and
5 zoning, DPW, if not the common counsel, must be
6 available for submission for the subject application.
7 I'll give you these.
8 MARY YOUNG: Thank you.
9 CAROLANNE CURRY: A long time ago there was
10 thoughts of a highway coming through. A Louise
11 Bradley owns a lot of property along I-95 by the
12 Hiawatha. They designed a program, a survey, that
13 showed 10 houses on Hiawatha Lane, another five or six
14 over on the Norwalk side, and there was a stipulation
15 that these houses and these sites be limited to the
16 single family houses because the rest of the
17 properties, the rest of the homes, the rest of the
18 streets in Old Saugatuck had been built up with
19 rooming houses from the railroad builders. It had
20 received multiple houses that were moved from the way
21 of the highway so that you do have multiple unit
22 houses, but it has nothing to do with the fact that
23 those multiple unit houses, therefore, 187 units,
24 should be introduced on to Hiawatha Lane Extension.
25 Those are there so that the community continues to

1 exist of single-family homes.
2 To that end, on many of these deeds, if not
3 all of them, the restriction says that only one family
4 house shall be erected on said premises. The house or
5 plans for which shall be approved by the grantors. I
6 have my research one, two -- so you don't even have to
7 do this, Attorney Hollister. It's all done for you.
8 One, two, three, four, five, and six.
9 MARY YOUNG: Thank you.
10 CAROLANNE CURRY: And seven, lot 21.
11 Anyway, the intent was to continue this as a small
12 community of one-family houses. This is what Bradley
13 wanted, and this should continue.
14 I came across something else that I thought
15 was kind of interesting. In the notes that talk about
16 the zoning commission decision in 2009, the approval
17 of the project for Avalon will expire one year from
18 the effective date of November 27, 2010. The approved
19 special permit allows for a 240-unit multifamily
20 development and four single-family residents.
21 And my question to you is, if those four
22 single-family residents on paper never got developed,
23 a certain amount of time has expired and those are not
24 valid anymore. That's simply now a piece of land. So
25 there has no need, no matter who owns those four

1 single-family sketches, they're not there anymore. If
2 they want to have them, they'd better go back to
3 Norwalk and ask for them. I believe I'm right on
4 that. I can certainly be proven wrong, but -- and I -
5 - Matthew Mandel, I knew that I had it, and I knew
6 that he had asked a name that you'll probably be
7 familiar with, Dory Wilson from the planning and
8 zoning. She mailed them to Matthew. He mailed them
9 to me so that you know where I marked it.
10 And this -- I'm sending down to you what
11 those four sites are. Those four sites are 400 feet
12 from the boundary of Hiawatha Lane and Norwalk. We
13 are no longer able to protect you Westport Fire Union.
14 This is just verification, again, of the water
15 problems and the safety problems as a result of it,
16 because the water pressure is not there for us.
17 I'm very curious about something. I found a
18 letter -- maybe I don't have it. I'll bring it next
19 time. Now here's something else that I researched.
20 We have to do our own work because we don't have
21 attorneys. But here it is.
22 There was a question and answer. The
23 Westport Planning and Zoning Commission evidently
24 asked Michael Green, the director of Planning and
25 Zoning in Norwalk, to get some answers for him. And

1 one of the interesting -- will there be permanent deed
2 restrictions on the undeveloped portion of the
3 property?
4 Yes, there's a conversation easement.
5 Can insurances be provided that aside from
6 four single-family homes indicated -- remember, this
7 is back in 2009 -- are any other additional residents
8 -- will be constructed on the Westport side of the
9 property?
10 The site application is for four lots only.
11 That's the response. On the Westport side of the
12 property.
13 Evidently, there's a jut out and they call
14 that the Westport side.
15 Will the -- who will provide emergency
16 services to the four single-family homes that are
17 accessed from Hiawatha Lane?
18 According to Norwalk and Westport fire
19 department officials, in an emergency situation the
20 closer department will respond. Okay. What if
21 they're equal distance away? What if they're both,
22 you know, two minutes? Who will do this?
23 How will -- there's another one in here
24 that's good.
25 The need for a deed restriction to be in

1 favor of the residents of Hiawatha Lane in the Town of
2 Westport for a development on the Westport side of
3 property is limited to the four proposed single-unit
4 buildings; that there be a perpetual conservation
5 easement restricting development on the center portion
6 of the property -- this is Norwalk -- gated, both
7 sides, access for emergency utility maintenance, only
8 on a gravel road running through conservation area.
9 I think you should have this for the record,
10 because this is coming from the P & Z director of
11 Norwalk. Maybe I'll have to go and get that all
12 copied again.
13 There has been question about the septic
14 system that's been in place since these homes went up
15 on Hiawatha Lane Extension. Of course you know, the
16 lots were large enough to accommodate septic systems,
17 and Summit Saugatuck representatives have consistently
18 represented that these septic systems are not healthy
19 and not working.
20 Well, I've consistently gone behind them to
21 the Director of Health, the Weston -- Westport, and we
22 are fine. Our septic systems are good systems. And
23 the ones that may be having trouble are not ours,
24 they're Summit's. And if they don't report their
25 problems then that's on them.

1 When we wanted to put in a new pool, or we
2 wanted to put in additional bedroom on some of the
3 homes on Hiawatha Lane, they were reported to the
4 health department. Dr. Cooper gives us a very healthy
5 -- and I think I'll stop here and ask if I can talk
6 again at the next.
7 I found something for Norden and -- Norden
8 and Julie Bradley. But I only have one page of it so
9 I think I want to be more complete on that the next
10 time. Thank you.
11 PAUL LEBOWITZ: Thank you very much. All
12 right. At this time, we've exhausted the list and us,
13 so I'd like to know by a show of hands, is there
14 anybody who would like to speak?
15 Seeing none --
16 CAROLANNE CURRY: Some people want to come
17 next week.
18 CHIP STEPHENS: We get that.
19 PAUL LEBOWITZ: Yes. We have -- next week
20 is not a meeting. That would be the 14th.
21 CAROLANNE CURRY: Okay.
22 PAUL LEBOWITZ: But we do have a meeting on
23 the 21st. We'll have more opportunities to hear from
24 the public as well, and maybe subsequently after that
25 if need be. So, Mary, where are we?

1 CERTIFICATE

2

3 I, CHRISTINE FIORE, certified electronic reporter and
4 transcriber, certify that the foregoing is a correct
5 transcript from the official electronic sound
6 recording of the proceedings in the above-entitled
7 matter.

8

9 Christine Fiore

10 _____

11 Christine Fiore, CERT
12 Transcriber
13 November 23, 2019

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TRANSCRIPT OF PUBLIC HEARING

TOWN OF WESTPORT

PLANNING AND ZONING COMMISSION

HELD AT THE
WESTPORT TOWN HALL AUDITORIUM
110 MYRTLE AVENUE
WESTPORT, CT 06880

March 21, 2019
7:00 P.M.

IN RE: TEXT AMENDMENT # 760; APPL.#18-079, MAP AMENDMENT #761, APPL.#18-180 AND 28,36,38,39,41-45, 47/PARCEL A0/LOT 5 HIAWATHA LANE AND HIAWATHA LANE EXTENSION, THE ROAD BED OF HIAWATHA LANE EXTENSION ON THE SOUTH SIDE OF 38-42- 44, AND A PORTION OF THE ROAD BED OF HIAWATHA LANE ABUTTING THE EASTERN BOUNDARY OF 38 HIAWATHA LANE, INCLUDING THE PRIVATE ROAD BED OF HIAWATHA LANE, FROM ITS INTERSECTION WITH DAVENPORT AVENUE WHERE UTILITY INSTALLATION IS PROPOSED

ATTENDANCE:

Paul Lebowitz, Chairman
Chip Stephens
Danielle Dobin
Greg Rutstein
Jon Olefson
Mary Young, P&Z Director

Electronically Recorded by the Town of Westport
Planning and Zoning Commission

Transcript Prepared By:
Fiore Reporting and Transcription Service, Inc.
4 Research Drive, Suite 402
Shelton, CT 06484
(203)929-9992

1 MARYANN LISTENER: Good evening,
2 commissioners. My name is --
3 UNIDENTIFIED SPEAKER: Can you lower --
4 MARYANN LISTENER: Yes.
5 UNIDENTIFIED SPEAKER: There you go.
6 MARYANN LISTENER: My name is Maryann
7 Listener. I live at 31 Lincoln Street in Westport.
8 I asked the commissioners to reject all
9 three parts of this application submitted by Summit
10 Saugatuck, LLC. There is no safe way to take in 325
11 additional cars and trucks in this area. Thank you
12 very much.
13 PAUL LEBOWITZ: Thank you. Mary, do we need
14 our fire experts?
15 MARY YOUNG: Can you repeat that?
16 PAUL LEBOWITZ: Do we need our fire experts
17 to remain with us for the rest of the duration?
18 MARY YOUNG: I don't. You can let them go.
19 PAUL LEBOWITZ: Gentlemen, thank you very
20 much. We'll see you again. You can thank Mr.
21 Stephens for that.
22 Leslie Ogilvy.
23 PAUL LEBOWITZ: Unless you want to stay.
24 LESLIE OGILVY: Good morning. My name is
25 Leslie Hughes Ogilvy. I live at 27 Hiawatha Lane

1 Extension, and I have lived in the neighborhood for 25
2 years.
3 I oppose the current development project
4 proposed in our neighborhood. I oppose it for many
5 reasons, but tonight I wanted to speak briefly to the
6 traffic concerns.
7 Just to give a few kind of real-world day-
8 to-day things that we notice coming and going from the
9 neighborhood.
10 For a number of years, I kind of had in my
11 mind that we have a very short amount of time to get
12 out of the neighborhood before the light changes. And
13 I tested it earlier this week, and as I remembered, we
14 have 16 seconds to get out of the neighborhood before
15 the light changes. And then the traffic on Saugatuck
16 has a minute, and then we get our 16 seconds again.
17 Seems like normally four or five cars can
18 get out of the neighborhood, which under the current
19 conditions works pretty well because most of us are
20 turning left, and there's really only room for about
21 four cars before you get to the light at the off ramp
22 of 95 North.
23 So adding more cars to that, adding more
24 pedestrians, you know, we're turning as the
25 pedestrians are walking across the road, so with more

1 pedestrians they walk slower, sometimes only two cars
2 get by. And if there are a couple of other cars that
3 are already waiting at that light, sometimes we back
4 up, and being typical Westporters, people block the
5 intersection because they want to make sure they get
6 that next light, or hoping that everybody turns right
7 heading towards the train station and then the traffic
8 will flow. But if it doesn't, it backs up, and that's
9 just what we live with and we're kind of used to that.
10 The other thing that happens, school buses
11 pretty much can make the turn with people that are
12 waiting at the light to leave the neighborhood. They
13 sometimes go over the curb that's on their close side,
14 on the passenger's side. There's a big tree there, so
15 they can't cut that curb too closely without hitting
16 the tree.
17 But the trucks that come and go, depending
18 on how big they are, long, wide, we sometimes have to
19 back up. And, you know, I don't go right up to the
20 light and wait, but sometimes people do and if there
21 are two or three of us, we have to kind of organize to
22 all back up together so those trucks can get in.
23 That's just the current situation. So
24 adding more to that just seems to me to be a little
25 problematic. So let's see what else I wrote. Yep.

1 So that's that page.

2 So just to kind of wrap up, the development

3 in downtown Saugatuck along Riverside was really

4 welcome and wonderful for our community, and we feel

5 part of that larger Saugatuck community. It was

6 carefully planned; it was well executed. I would just

7 ask that as you continue making your decisions on

8 this, that anything that might happen with our part of

9 Saugatuck is done with the same amount of thought and

10 careful planning, and that it fits into the larger

11 long-term plan of the overall development. I do not

12 believe that this project meets those criteria. So,

13 thank you.

14 PAUL LEBOWITZ: Thank you very much. And is

15 it Steve?

16 STEVE KINCANNON: Yes, sir.

17 PAUL LEBOWITZ: Thank you.

18 STEVE KINCANNON: Good evening,

19 commissioners. My name is Steve Kincannon. I also

20 live at 27 Hiawatha Lane Extension, which is to say

21 it's the first house on the left once you cross over

22 the river.

23 I ask that the commissioners reject all

24 three parts of this application submitted by Summit

25 Saugatuck, LLC for two reasons.

1 The first reason is when we have those peak
2 traffic hours, both in the morning and the afternoons,
3 when we have six cars trying to leave Ferry Lane West,
4 when a larger truck from the Gault establishment -- it
5 is a great establishment by the way -- tries to turn
6 in the neighborhood, having entered and exited the
7 neighborhood over the last 10 plus years, I would say
8 50 percent of the time the trucks can make that turn.
9 The other 50 percent of the time they cannot turn
10 right on to Ferry Lane West to enter the neighborhood,
11 which causes a backup from the exit ramp from I-95.
12 The second thing I would like to state,
13 Chris has a video that I filmed on my property when
14 one of the storms came through, and he's going to play
15 that video for you in a moment. I would kindly ask
16 that you watch the video that's going to be played,
17 that I filmed on my property last September 15th.
18 Thank you.
19 PAUL LEBOWITZ: Thank you, sir. Allen --
20 STEVE KINCANNON: Chris is going to play the
21 video now.
22 PAUL LEBOWITZ: Oh, Chris -- okay, because
23 Chris is on the list down number 11 as well.
24 CHRIS GAZELLI: Because I'm playing his
25 video.

1 PAUL LEBOWITZ: Okay. Go ahead. Please.
2 CHRIS GAZELLI: He wanted me to introduce
3 it.
4 PAUL LEBOWITZ: Sorry. You get an
5 opportunity. Sure.
6 CHRIS GAZELLI: Thank you. Chris Gazelli,
7 37 Hiawatha Lane.
8 PAUL LEBOWITZ: Chris, how long is this
9 video?
10 CHRIS GAZELLI: Not very long. Like a few -
11 - like a minute and -- a minute, maybe.
12 UNIDENTIFIED SPEAKER: It's one minute and
13 15 seconds.
14 PAUL LEBOWITZ: Rock on. Have at it.
15 CHRIS GAZELLI: This occurred on September
16 25th of 2018. The -- according to Norwalk Health
17 Department Rooftop Data Research, their rain gauge
18 charts, which you can find online, the accumulated
19 amount of rain was, at max, 5.34 inches.
20 PAUL LEBOWITZ: Chris, you want to tell us
21 what we're looking at?
22 CHRIS GAZELLI: You're looking at the
23 entrance of the Hiawatha Lane. This is the only
24 entrance and the only exit. This would be the only
25 way to get through. The water is coming from a

1 culvert -- the culvert at the entrance of Hiawatha
2 Lane. The -- obviously the culvert couldn't take it
3 and it spilled over and caused a large rush of water
4 that is sweeping down towards -- you know, obviously
5 it's no longer in the Indian River anymore and it's
6 just, you know, on top -- you'll see in a minute that
7 it is going all the way across the street, so there's
8 no way to cross and you could barely stay on your
9 feet.
10 So I mean, if you're going to introduce five
11 apartment complexes with this many people and they're
12 going to try walking through this with children, maybe
13 wanting to play in something like this, I say this is
14 a safety issue which 8-30g stipulates if there are
15 safety issues -- and I think this qualifies as a
16 safety issue.
17 PAUL LEBOWITZ: Thank you.
18 CHRIS GAZELLI: So the --
19 PAUL LEBOWITZ: Are you done with the video?
20 CHRIS GAZELLI: I'm done with the video.
21 Yes.
22 PAUL LEBOWITZ: Okay. Next on our list is -
23 -
24 CHRIS GAZELLI: Just -- no actually, I have
25 a few more things to say.

1 PAUL LEBOWITZ: Okay. I think you're number
2 11, Chris.
3 CHRIS GAZELLI: Oh, okay. You want me to go
4 back down and then come back?
5 PAUL LEBOWITZ: Well, August Sarno might
6 have something to say about that. There you go.
7 CHRIS GAZELLI: It's okay for me to
8 continue?
9 UNIDENTIFIED SPEAKER: He says go ahead.
10 PAUL LEBOWITZ: He says go ahead. All
11 right.
12 CHRIS GAZELLI: Okay.
13 PAUL LEBOWITZ: You got his spot. Ready?
14 Is this another video?
15 CHRIS GAZELLI: No.
16 (Pause.)
17 CHRIS GAZELLI: Okay. Hold on.
18 PAUL LEBOWITZ: Is this the photos that you
19 showed us the last time?
20 CHRIS GAZELLI: No. Well, there's a few
21 others. Okay, I'm going to let -- I'm going to let
22 him speak until I get this straightened out.
23 PAUL LEBOWITZ: All right. Thank you very
24 much.
25 CHRIS GAZELLI: Thank you.

1 have.

2 Now, if you happen to have title, you've

3 conveyed valid title. So it's a valid conveyance, but

4 it's --

5 CHIP STEPHENS: Okay. I'll repeat the

6 second part of that question and if the Town of

7 Westport was to acquire a piece of property or road,

8 would they require a warranty deed?

9 PETE GELDERMAN: Yes. Yeah.

10 CHIP STEPHENS: Okay. That's my first

11 question. My second question I don't think has been

12 touched on yet, but most of the houses on Hiawatha and

13 Hiawatha Extension, Dr. Gillette, as we know, it's

14 quite a historic area, have a covenant or a

15 restriction on them that the property was to only have

16 a one-family house on it. And this was done, I

17 believe, back in the 50s when the benefactors and the

18 philanthropists gave a lot of these properties for a

19 dollar consideration, whatever, for people to build

20 the highways and everything.

21 Do those covenants and restrictions go on ad

22 infinitum, or is there a way to get out of them?

23 Because right here, we're taking some of those

24 properties and we're putting on something other than a

25 one-family house.

1 PETE GELDERMAN: Right.

2 CHIP STEPHENS: What happens to covenants

3 and deeds int his --

4 PETE GELDERMAN: Well, first there are

5 private contractual arrangements. So the people who

6 are the beneficiaries of those covenants would be able

7 to enforce them. That may be the other owners who all

8 have those covenants attached to their property. So

9 they could go on forever. That depends to a large

10 extent what they say. Circumstances sometimes can

11 affect those covenants, but -- and again, covenants

12 also can't be against public policy.

13 Back years, and years, and years ago, there

14 were covenants that today you would, you know, be

15 shocked that somebody would put that on their -- on

16 the land records and they wouldn't be valid. But

17 they're a private contractual arrangement between the

18 property owners who are giving the promise and

19 receiving the promise, getting the benefit of the

20 covenant and also putting their -- letting the

21 restriction be on their property, so it's a kind of

22 a --

23 CHIP STEPHENS: So it doesn't run with the

24 property.

25 PETE GELDERMAN: It runs with the property.

1 CHIP STEPHENS: Okay.

2 PETE GELDERMAN: But a covenant typically --
3 you know, it's -- it has a beneficial owner and it's a
4 dominant and a servient kind of thing. You know, like
5 an easement almost. So somebody gets the benefit of
6 that covenant, somebody has the burden of that
7 covenant. And when it's a neighborhood, generally
8 each property has both so they can enforce it against
9 another property. It can be enforced against them,
10 but it's a private -- it's a private enforcement.

11 CHIP STEPHENS: I ask this on a more
12 universal basis because many times when we're looking
13 at open space or other issues, we well know that we
14 can pass a law -- not a law. A regulation or a
15 restriction, but it can be overturned at any time.
16 And we often say, if you really want it to hold water,
17 put a you know, a restriction or a covenant on the
18 property because we're under the understanding if you
19 do that it's more permanent.

20 PETE GELDERMAN: Well, if it's a valid
21 covenant, it runs with the land.

22 CHIP STEPHENS: Okay.

23 PETE GELDERMAN: So it's permanent in that
24 sense. That means it doesn't terminate when the
25 property changes hands.

1 CHIP STEPHENS: So I guess what you're
2 saying is, in terms of these deed restrictions and
3 covenants on these properties, you'd have to delve
4 further into it to understand.
5 PETE GELDERMAN: I have not looked at
6 them --
7 CHIP STEPHENS: Okay.
8 PETE GELDERMAN: -- so --
9 CHIP STEPHENS: You've answered my questions
10 and I thank you very much.
11 PETE GELDERMAN: Thank you. Appreciate
12 that.
13 CHIP STEPHENS: Danielle has something.
14 DANIELLE DOBIN: I have one quick question.
15 PETE GELDERMAN: Oh, go ahead.
16 DANIELLE DOBIN: Pete, can we pull the title
17 reports with all the backup?
18 PETE GELDERMAN: Pardon me?
19 DANIELLE DOBIN: Didn't we pull the title
20 reports and all the back up?
21 PETE GELDERMAN: Well, you'd do a title
22 search --
23 DANIELLE DOBIN: Yeah.
24 PETE GELDERMAN: -- to get that information.
25 DANIELLE DOBIN: Can we get --

1 PETE GELDERMAN: It's possible to --
2 PAUL LEBOWITZ: Can we -- no, no, no, no --
3 DANIELLE DOBIN: -- the backup docs?
4 PAUL LEBOWITZ: Danielle. Danielle.
5 DANIELLE DOBIN: What?
6 PETE GELDERMAN: Oh, yeah.
7 CHIP STEPHENS: Can we demand that the
8 applicant provide them for us?
9 PETE GELDERMAN: I think you can ask that
10 the applicant provide them for you. I don't think
11 there's anything in the regulations that would require
12 the applicant to give that to you, and obviously if
13 it's something that's important to you in your
14 deliberations and you don't get that information, then
15 you, you know, don't have that information on which
16 the --
17 DANIELLE DOBIN: It's just hard to
18 investigate what restrictions may run with the land if
19 we don't see the backup for the --
20 PETE GELDERMAN: Yeah. I mean, you can
21 certainly ask.
22 DANIELLE DOBIN: -- title report.
23 PETE GELDERMAN: If that's -- if you
24 consider that to be a relevant factor, yes.
25 CHIP STEPHENS: So, Pete if --

1 GLORIA GOUVEIA: First of all, I don't think
2 that would be appropriate because the town attorney
3 does not work for me. Moreover, moreover, those
4 documents are in your possession. I've just told you
5 where they are in the file --
6 PAUL LEBOWITZ: Okay.
7 GLORIA GOUVEIA: -- and where they can be
8 had, and I think the query to the town attorney needs
9 to come from the Planning and Zoning Commission.
10 PAUL LEBOWITZ: So, Mary, it sounds like
11 you've got a little job to do there.
12 All right. Thank you very much, Gloria. I
13 appreciate it.
14 Chris Gazilla (sic), Gazelli.
15 CHRIS GAZELLI: Chris Gazelli, 37 Hiawatha
16 Lane. I am not using the laptop anymore.
17 I have printouts of what I need to display
18 anyway. So wherever -- where I left off, so this
19 would be a photograph of the same conditions that you
20 saw, but only the first condition I showed you
21 happened on September 25th of 2018. This occurred on
22 April 16th of 2018. I have it logged here so the date
23 is correct. This is off my cell phone and it shows
24 you the date.
25 So on that date -- and here's another

1 photograph. And this would be like the rear of where
2 they want to build, one of their buildings. So that -
3 - going back to the rain gauges that April storm, the
4 accumulation was -- excuse me a minute. The
5 accumulation was about 3.5, max it was about 3.35
6 inches. And this is off rain gauge official rain
7 gauges from the Norwalk website. Norwalk Health
8 Department Rooftop Data Refresh Rain Gauge Chart.
9 It's City of Norwalk Department -- City of Norwalk
10 Health Department Rain Gauge.
11 So my point is, is that what happened on
12 April 16th was about 3.35 inches of rain. And I went
13 to look to see how many instances those were, where
14 this type of thing is going to occur, and I found six
15 within this year. On 10/13, 3.68 inches; on 10/2,
16 3.54 inches; 9/25, 5.34 inches; 6/28, 4.4 inches;
17 10/30, 3.39 inches.
18 So my point is, is this does happen quite
19 often. That's what happens to the street when you get
20 about three inches of rain. It becomes a safety issue
21 in my opinion. It is not -- you know, and a safety
22 issue is a concern with 8-30g.
23 And going over the drainage plan, sub-water
24 shed BB1. Access runoff from the infiltration systems
25 will be directed to the onsite wetland. Subset

1 watershed BB2, excess runoff infiltration systems will
2 be directed to the onsite wetland. Subsystem BB3,
3 excess runoff will be directed towards the onsite
4 wetland. Sub water shed BB4 will be directed to the
5 onsite wetlands. Sub water shed BB5 will be directed
6 to the onsite water shed -- wetlands. Sub water shed
7 BB7, runoff will go to the storm pipes, will be
8 directed to the onsite wetland. And BB8, with this
9 area, will drain to the existing sewer on Hiawatha
10 Lane.
11 So there is accumulations of water and we do
12 have these storms that do cause these drainage issues.
13 I'm not going to go over my other
14 submissions, but I showed you possible conditions that
15 cause these things. I also wanted to go over for the
16 past 15 years, what this neighborhood has experienced.
17 In 2014, one of the rentals from the
18 developer, they were running a heroin factory in it.
19 Two people were arrested, and they were dealing heroin
20 out of the house. This is unprecedented in our
21 neighborhood. It's not something that is indicative
22 of our neighborhood.
23 The conditions of those homes that are
24 rentals, one time I saw the condition and I thought
25 the place was condemned.

PAUL LEBOWITZ: Chris.

CHRIS GAZELLI: Yes.

PAUL LEBOWITZ: Sorry. You're talking about -- you're not talking about the developer's properties now. You're talking about the houses in the neighborhood?

CHRIS GAZELLI: No, I'm talking about one of the rental units where there was a heroin -- yes. Yes, one of the developer's properties.

PAUL LEBOWITZ: One of their properties?

CHRIS GAZELLI: Yes.

PAUL LEBOWITZ: That they're going to knock down?

CHRIS GAZELLI: Yeah -- well, yes.

PAUL LEBOWITZ: Okay.

CHRIS GAZELLI: But I'm saying that we don't have heroin dealers in my neighborhood. This was something what they got --

PAUL LEBOWITZ: I got you.

CHRIS GAZELLI: -- they rented to this person --

PAUL LEBOWITZ: Thank you.

CHRIS GAZELLI: -- and there was a heroin fact --

PAUL LEBOWITZ: Okay. That's clear.

1 CHRIS GAZELLI: And this also happened at 42
2 Hiawatha Lane. The person who was rented -- that's
3 another one of his properties. Forty --
4 PAUL LEBOWITZ: Chris. Chris. We get it.
5 CHRIS GAZELLI: Okay. And I also have a
6 petition for that -- of everybody against this.
7 Basically, it's saying that they don't approve of the
8 high-density housing, what the impact is going to be
9 to the wetlands, and the impact to the schools, and
10 the impact to our -- to our property values. And
11 that's it. Thank you.
12 PAUL LEBOWITZ: Thank you very much.
13 Appreciate that.
14 I'm going to actually backtrack. Is this
15 Denise? No? Okay. I spelled it wrong twice, so.
16 Brooke Porter. Thank you very much.
17 BROOKE PORTER: Hi. It's Brooke Porter in
18 Roland Court, 2 Roland Court in Saugatuck Shores.
19 I wasn't going to come tonight. I wasn't
20 paying any attention and one of our neighbors said, do
21 you know this is going on? And I'm telling you that
22 because I think I probably represent a lot of people
23 who it's not on their radar.
24 One thing I learned -- I've only lived in
25 Saugatuck Shores about four years. I used to live on

CERTIFICATE

I, CHRISTINE FIORE, certified electronic reporter and transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

Christine Fiore

Christine Fiore, CERT
Transcriber
November 23, 2019

4T

TRANSCRIPT OF PUBLIC HEARING

TOWN OF WESTPORT

PLANNING AND ZONING COMMISSION

HELD AT THE
WESTPORT TOWN HALL AUDITORIUM
110 MYRTLE AVENUE
WESTPORT, CT 06880

April 11, 2019
7:00 P.M.

IN RE: TEXT AMENDMENT # 760; APPL.#18-079, MAP AMENDMENT #761, APPL.#18-180 AND 28,36,38,39,41-45, 47/PARCEL A0/LOT 5 HIAWATHA LANE AND HIAWATHA LANE EXTENSION, THE ROAD BED OF HIAWATHA LANE EXTENSION ON THE SOUTH SIDE OF 38-42- 44, AND A PORTION OF THE ROAD BED OF HIAWATHA LANE ABUTTING THE EASTERN BOUNDARY OF 38 HIAWATHA LANE, INCLUDING THE PRIVATE ROAD BED OF HIAWATHA LANE, FROM ITS INTERSECTION WITH DAVENPORT AVENUE WHERE UTILITY INSTALLATION IS PROPOSED

ATTENDANCE:

Paul Lebowitz, Chairman
Chip Stephens
Danielle Dobin
Michael Cammeyer
Catherine Walsh
Greg Rutstein
Jon Olefson
Mary Young, P&Z Director
Cindy Tyminski, Deputy P&A Director

Electronically Recorded by the Town of Westport
Planning and Zoning Commission

Transcript Prepared By:
Fiore Reporting and Transcription Service, Inc.
4 Research Drive, Suite 402
Shelton, CT 06484
(203)929-9992

1 The first one on my list is Chris Gazzelli.
2 Chris, you have new material for us?
3 CHRIS GAZZELLI: Yes.
4 PAUL LEBOWITZ: Thank you.
5 CHRIS GAZZELLI: Chris Gazzelli, 37 Hiawatha
6 Lane. I'll just be brief.
7 I just want to cover the deeds, the original
8 deeds for our properties. I pulled the one out for my
9 property from Edmund P. Bradley, Town of Westport,
10 County of Fairfield, State of Connecticut, and Gershon
11 B. Bradley of said Westport.
12 The lot in the Town of Westport, lot 5,
13 which is mine, I'm not going to go through the whole
14 deed, but the main portion that I'd like to cover is
15 these premises are conveyed subject to, one, building
16 and zoning regulations and restrictions of the Town of
17 Westport. Two, taxes on list of October 1955, which
18 the guarantee herein assumes and agrees to pay. And
19 most important number three, restrictions.
20 Restriction that only a one-family house shall be
21 erected on said premises, the house or plans for which
22 shall be approved by the grantors.
23 So my intention is that I will enforce that
24 condition and I would expect that the developer honors
25 those conditions as well for his properties. Some of

his properties have that same stipulation and I would intend to enforce that. I can't build a large apartment complex on my property and neither should the developer be allowed to either.

Also just briefly about the traffic. I just looked at a quick Google map. From the left turn on Ferry Lane West to the traffic light is about 15 -- I think about 75 feet which is good for about four cars. So only four cars can make that turn at a time. And that's it. Thank you.

PAUL LEBOWITZ: Thank you very much.

Ms. Gail Lavielle.

GAIL LAVIELLE: Good evening. For the record, I'm State Representative Gail Lavielle. I live in Wilton. I represent the part of Westport where Hiawatha and Davenport and the entire area is located. Thank you for the opportunity to speak. I just have a short set of remarks.

I attended I think the first public hearing. I believe I missed the second one. But I am still hearing a number of the same things, notably to do with pedestrian safety, very, very strong concerns, and certainly with access that is necessary on the side where we don't control -- Westport does not control the access, does not control the road, does

1 in this neighborhood who have houses in this
2 neighborhood. This is what we are. We're a
3 neighborhood in Westport. You want to keep Westport
4 as a community, that's who we are. We are epitome of
5 what you want. Keep it.
6 PAUL LEBOWITZ: Thank you.
7 Carolann, please.
8 Let's step this up.
9 CAROLANN CURRY: Good evening. My name is
10 Carolann Curry. I live at 29 Hiawatha Lane Extension.
11 I was conflicted tonight whether I should be
12 brief because you've had all the challenges covered.
13 And then I didn't know whether we wanted to kind of
14 pour our heart out and sum up 16 years and what a
15 terrible ride this has been. But one of the things
16 that I thought would be first important is we still
17 have some letters. And I'll just briefly overview
18 them before I give them to you.
19 This is from Larry Weisman. And he said
20 some projects, even though they may appear to be
21 technically approvable, are just too large, too
22 disruptive and too inappropriate to be allowed to
23 proceed. This is such a project. And even though it
24 may be the case that the statute of 8-30g appears to
25 have tied your hands to some extent, it simply cannot

1 be the case that it must be read to deprive you of all
2 decisions.
3 When a project such as this threatens the
4 essential character of an old important and already
5 congested part of town is guaranteed to change the
6 quality of life of a significant number of residents
7 and will add to the already unmanageable traffic
8 problem, it is not only your right, but your duty to
9 reject it.
10 Consider that whereas Westport's population
11 grew only by 2.5 percent in the 20 years from 1990 to
12 2010, this project alone will likely result in the
13 increase of as much as 1.5 percent in one fell swoop.
14 This is unsupportable and unjustified by the addition
15 of -- this is unsupportable and unjustified even by
16 the addition of 36 affordable units notwithstanding.
17 I'm confident that a carefully drafted
18 denial of the pending application will withstand
19 judicial scrutiny and I urge you to test that
20 confidence by denying the pending application to spare
21 Westport the problem that this overly ambitious,
22 outside intrusion is certain to create.
23 I consider that kind of an interesting
24 letter.
25 The other one that I would just bring to

1 your attention is from Roseann Caruso. She's third
2 generation living at 6 Davenport Avenue. She's not
3 seen traffic on their one-way street as she has seen
4 it increase over the last few years. She is asking
5 considering the traffic -- everyone would be put at
6 risk -- god forbid, emergency vehicles if they would
7 have to respond -- and adding another 325 vehicles
8 would be unbearable and detrimental to our community.
9 Another Westporter, Sam Anastasia. I'm one
10 of the few called native Westporters, born in
11 Saugatuck. He grew up to be a firefighter. He is
12 saying that we have roughly 72 homes in our area.
13 Several of these are multifamily from previous eras.
14 A conservative estimate that over 200
15 vehicles currently serve our area or are in our area
16 now. To allow a complex of 187 units in an already
17 highly-congested area is by conservative estimate
18 adding another 276 vehicles to the area. A project
19 this size does not belong in an area that has limited
20 access.
21 My thinking is that when a project of this
22 size comes in front of members of the town boards they
23 should first review the entire project to see if it's
24 workable. Well, that didn't happen. It could save
25 board members, residents and others a lot of time in a

1 situation such as ours if the project was reviewed
2 with a site visit.
3 And then looking at the map, you can readily
4 conclude that this area and its location, highly
5 congested with only one entrance and exit cannot
6 accommodate 187 units.
7 Please reject the application. Sam
8 Anastasia, 16 Davenport Avenue.
9 PAUL LEBOWITZ: Thank you very much.
10 CAROLANN CURRY: The only other thing that I
11 would offer, in this area, first came the railroad and
12 cut the area in half. It was farm area. Then the
13 next swath that cut through it was I-95. Two
14 powerful, intrusive factors. The third tool that's
15 going to try to be used to cut this area in half is 8-
16 30g.
17 So we have recognized in our community for
18 the last 16 years that this 8-33 as 8-30g, as it
19 applies to this site specifically, is an exploitation
20 and an abuse of the state housing regulation 8-30g.
21 How it works in this specific area is based on the
22 dream of profiteers and persuaders and it should work
23 with the intent and the sensitivity of people.
24 During the four-year moratorium that's
25 coming up, I expect that our Commissioners and our

1 community will see that an approach to housing and
2 housing diversity in Westport will permanently relieve
3 us of the hostage of 8-33 will be something that
4 reflects Westport and not the bottom line of the
5 developer.
6 The only other thing that I would like to
7 mention is that in those early years when the
8 Saugatuck community was formed, there was contempt for
9 the inhabitants. The Fabrios, the Ventos, the
10 Carusos, the Lucianos, there was contempt for their
11 presence. Here in 2019, there is contempt for the
12 residents of this neighborhood.
13 The Fabrios, the Carusos, the Lucianos,
14 these were the police officers. These were the
15 firemen. This was the workforce that made this
16 community special. And this contempt is unacceptable
17 to us. Thank you very much.
18 PAUL LEBOWITZ: Thank you.
19 Anybody else like to speak?
20 Right here, sir.
21 MATTHEW MANDELL: Matthew Mandell, RTM
22 District One, and this property is within my district
23 and I'm representing them tonight.
24 You didn't see a lawyer get up and represent
25 this community and you have to wonder why? This is

1 business. Yet across the street on Hiawatha Lane, the
2 three-legged dog can exist.
3 If you approve this text amendment, you will
4 be signing the death warrant to the rest of this
5 community because this project won't be an 8-30g
6 project. You will have created a text amendment that
7 allows it to be done as of right on Hiawatha Lane and
8 then extending down to Davenport. Don't you dare do
9 the text amendment at all.
10 There are problems with the deeds that
11 hasn't been resolved as yet. You saw one member of
12 the community get up and say that his property
13 specifically says it can only be for a single-family
14 home. Well, how are there going to be five
15 multifamily buildings on properties that specifically
16 say there can only be one house there?
17 Now this doesn't have to be something that
18 the community needs to go and sue the developer over
19 in civil court. You guys can take it on the mantel
20 and say, you know what, it's absolutely right. The
21 deed says we can't do it, so we're not going to do
22 that. It has nothing to do with 8-30g. That's what
23 the law already says. It doesn't override something
24 that was written in 1955.
25 The road ownership issue. That's not clear

1 CERTIFICATE

2

3 I, CHRISTINE FIORE, certified electronic reporter and
4 transcriber, certify that the foregoing is a correct
5 transcript from the official electronic sound
6 recording of the proceedings in the above-entitled
7 matter.

8

9 Christine Fiore

10 _____

11 Christine Fiore, CERT
12 Transcriber
13 November 23, 2019

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TRANSCRIPT OF PUBLIC HEARING

TOWN OF WESTPORT

PLANNING AND ZONING COMMISSION

HELD AT THE
WESTPORT TOWN HALL AUDITORIUM
110 MYRTLE AVENUE
WESTPORT, CT 06880

April 25, 2019
7:00 P.M.

IN RE: TEXT AMENDMENT # 760; APPL.#18-079, MAP AMENDMENT #761, APPL.#18-080 AND 28,36,38,39,41-45, 47/PARCEL A0/LOT 5 HIAWATHA LANE AND HIAWATHA LANE EXTENSION, THE ROAD BED OF HIAWATHA LANE EXTENSION ON THE SOUTH SIDE OF 38-42- 44, AND A PORTION OF THE ROAD BED OF HIAWATHA LANE ABUTTING THE EASTERN BOUNDARY OF 38 HIAWATHA LANE, INCLUDING THE PRIVATE ROAD BED OF HIAWATHA LANE, FROM ITS INTERSECTION WITH DAVENPORT AVENUE WHERE UTILITY INSTALLATION IS PROPOSED

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Planning and Zoning Commission

Transcript Prepared By:
Fiore Reporting and Transcription Service, Inc.
4 Research Drive, Suite 402
Shelton, CT 06484
(203)929-9992

1 last minute submissions and plans, despite the sheer
2 physical weight of the applicant's submission, the
3 fact remains that the applicant has not met his burden
4 of proof that the proposed development is even
5 feasible.
6 If the Commission is not satisfied that the
7 applicant has met this burden of proof, if the
8 Commission is not satisfied that it has been given
9 enough information to make an informed decision, then
10 surely that lack of necessary documentation is a
11 reason for denial. Thank you.
12 PAUL LEBOWITZ: Thank you very much.
13 Other members of the public who wish to
14 address this?
15 Please, sir.
16 Oh, we got a horse race. All right. Those
17 who want to speak, come on down front. Come on down
18 front and sit with us. Come join us. Have a front
19 row seat.
20 Carolann, are you going to speak? You're
21 next. Thank you. Carolann, just so you know, we did
22 receive your email. It was in our email box. It did
23 come around late this evening, but I have read it.
24 CAROLANN CURRY: Okay.
25 PAUL LEBOWITZ: So please, if you want to

1 address that.

2 CAROLANN CURRY: Yes. I sent to you within

3 the time frame that I had my conversations.

4 PAUL LEBOWITZ: That's fine.

5 CAROLANN CURRY: So I got it off.

6 CATHERINE WALSH: Carolann, the microphone.

7 Thank you.

8 CAROLANN CURRY: All right. I'm going to

9 try to keep very calm this evening. I'll introduce

10 myself as Carolann Curry. I live on Hiawatha Lane

11 Extension. I've lived there for about 30 years. And

12 for the past 16 years, we have been resisting

13 development on our street.

14 However, in all those years I never thought

15 that I would be subject to public slander. And I

16 would expect at some point a public apology from

17 Attorney Hollister. I have pursued everything in this

18 effort with integrity and honesty. And I believe no

19 one will question that. I believe that my statements

20 have been documented and found to be accurate.

21 Because we are not attorneys either, we had

22 to read. We had to discuss. We had to go to every

23 board and commission in god's free world to learn what

24 we had to learn about this project.

25 And aside, just aside, the staff of Westport

1 has a 10-plus, 100-plus from us because it was from
2 the staff, who are public employees serving the
3 public, that gave us the information that we needed.
4 I would ask Attorney Hollister if he knows
5 who the vice president and associate general counsel
6 of Avalon is? What's his name?
7 PAUL LEBOWITZ: You can ask.
8 TIM HOLLISTER: (Inaudible.)
9 CAROLANN CURRY: So I have emails exchanged
10 with Brian Lerman. I have consistently stayed in
11 touch with Avalon, here in Fairfield, and recently --
12 I can't remember where he's from -- but I know that
13 it's in my -- it's in here (referring to her cell
14 phone). I can back it up.
15 And today because we were approaching this
16 meeting tonight, I made a last call. And I have been
17 taught by Gloria Gouveia up to the very last minute
18 keep checking because surprises and sabotages may
19 occur.
20 PAUL LEBOWITZ: Okay.
21 CAROLANN CURRY: So today, around the time
22 you got your email, I had gotten off the phone with
23 Brian Lerman. Brian Lerman did not commit to
24 anything.
25 Then I got off the phone and got onto the

1 phone conversation with Fire Marshal Sawyer.
2 Now I have had numerous conversations
3 because that's what you have to do. These documents
4 came in late that you got from Summit today. So we
5 had no idea -- at SOS -- when things would begin to
6 happen, but if we set up a consistent call to these
7 people, asked them if anything was happening --
8 Brenda, Alexis Cherichetti in Conservation Commission,
9 we went to them consistently to see what was being
10 submitted because we know the process of what has to
11 be done with the access road.
12 Commissioner Walsh, you're right, it's a
13 path. And Attorney Hollister never told you that Fire
14 Marshal Sawyer said I have nothing to do with it
15 because when you go through the process, if you get it
16 approved, we never have need for that path because
17 around Avalon there is an absolute way. We have
18 protected it with our fire safety. To travel around,
19 the access into Avalon, it's been all taken care of.
20 Anything that's going on that path is to serve the
21 needs of Westport. That was a conversation I had with
22 him about two or three weeks ago, when I talked to him
23 again directly, just as I talked to Attorney Lerman
24 directly.
25 And to infer that I didn't know who I was

1 talking to, no, you cannot do that, sir.
2 I told you I also checked with conservation
3 commission. I also told you that I went and spoke
4 with Joanne Lockridge --
5 I wonder who she is, Attorney Hollister?
6 -- associated with Avalon here in the
7 Fairfield office.
8 So we have done due diligence trying to find
9 out how this process goes. We have asked questions.
10 We have done everything in our power because we are
11 not attorneys. This whole community that I live in is
12 not rich. These are working-class people. Some are
13 not even working because it's subsidized. I don't
14 know -- I don't know how -- there's such a mixture in
15 that neighborhood, but it's not rich.
16 We've never had the privilege of an
17 attorney. We've never had the privilege of anybody
18 who's going to be charging one, two, three, four, five
19 hundred dollars an hour. But we had ourselves. We
20 have a history. We have a commitment. We have a
21 reason that says to us it defies logic how you can
22 take a small space like Hiawatha Lane Extension and
23 put up something -- the biggest project in Westport's
24 history, yes.
25 This is my -- the irony. Taking a look at

1 your sidewalk plans, it seems that those that live in
2 the Avalon -- it seems that those that are going to
3 live in the new set of apartments have concrete
4 sidewalks, but the rest of us have asphalt. Now this
5 is not insulting. Nothing is.
6 I think you know from our history of
7 appearing before you that what we say is truthful and
8 what we have learned from this town and from Norwalk
9 is accurate. We ask you to deny this application.
10 PAUL LEBOWITZ: Thank you very much.
11 Anybody else want to --
12 Oh, I'm sorry, you were on deck as they say.
13 Please, have at it.
14 LAURENCE TIRRENO: I'm Laurence B. Tirreno.
15 I live on 137 Riverside Avenue.
16 PAUL LEBOWITZ: Can you turn the volume up
17 just a hair, please.
18 LAURENCE TIRRENO: I thought I did that.
19 I'm Laurence B. Tirreno. I live on 137
20 Riverside Avenue. I've been living there over 30
21 years with my family.
22 But I'd like to tell you that even on my
23 main road, Riverside Avenue, it runs right in front of
24 my house, I can remember at least ten vehicles stuck,
25 sometimes even abandoned in front of my house -- and

1 CERTIFICATE

2

3 I, CHRISTINE FIORE, certified electronic reporter and
4 transcriber, certify that the foregoing is a correct
5 transcript from the official electronic sound
6 recording of the proceedings in the above-entitled
7 matter.

8

9 Christine Fiore

10 _____

11 Christine Fiore, CERT
12 Transcriber
13 November 23, 2019

14
15
16
17
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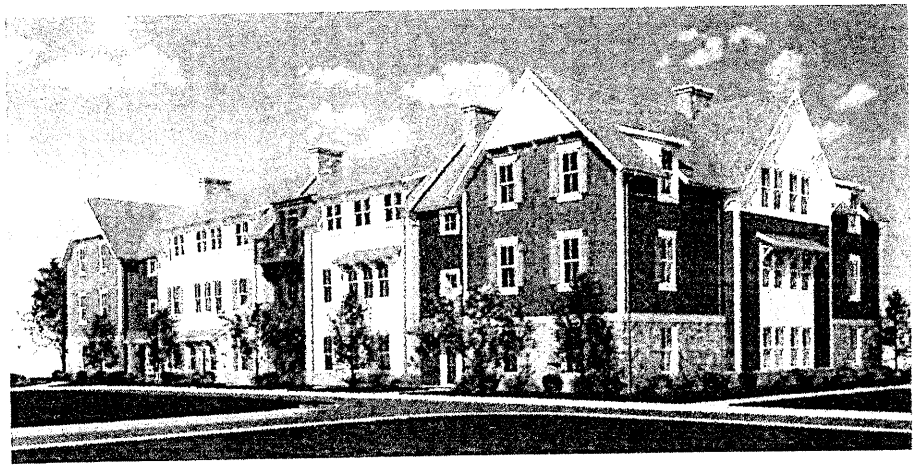
21
22
23
24
25

APPLICATION OF SUMMIT SAUGATUCK LLC TO WESTPORT PLANNING AND ZONING COMMISSION FOR ZONING REGULATION AMENDMENT, REZONING, SITE PLAN, AND COASTAL SITE PLAN, HIAWATHA LANE AND HIAWATHA LANE EXTENSION

Applicant's Fourth Supplemental Materials
April 5, 2019



Timothy S. Hollister
thollister@goodwin.com
Shipman & Goodwin LLP
One Constitution Plaza
Hartford, CT 06103-1919
(860) 251-5000

William L. Kenny, PWS, PLA
wkenny@wkassociates.net
William Kenny Associates LLC
195 Tunxis Hill Cutoff South
Fairfield, CT 06825
(203) 366-0588

Philip R. Sherman, P.E.
psherman@prsherman.com
444 Wilmot Center Road
P. O. Box 216
Elkins, NH 03233-0216
(603) 526-6190

David R. Ginter, P.E.
d.ginter@rednissmead.com
Redniss & Mead, Inc.
22 First Street
Stamford, CT 06905
(203) 327-0500

Michael A. Galante
mgalante@fpclark.com
Frederick P. Clark Associates, Inc.
41 Ruane Street
Fairfield, CT 06824
(203) 255-3100

David Ball, AIA
dball@themonroepartnership.com
The Monroe Partnership
8 Knight Street
Suite 204
Norwalk, CT 06851
(203) 957-3900

Adam Henry, PG, LEP
adam.henry@gza.com
GZA
35 Nutmeg Drive
Suite 325
Trumbull, CT 06611
(860) 858-3166

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atung@divneytungschwalbe.com
Mark J. Shogren, P.E.
mshogren@divneytungschwalbe.com
Divney Tung Schwalbe
One North Broadway
White Plains, NY 10601
(914) 428-0010

Felix Charney
fcharney@summitdevelopment.com
Jake Grossman
jake@grossmanco.com
Summit Saugatuck LLC
55 Station Street
Southport, CT 06890
(203) 354-1500

7517292

7. Single-family deed restriction. Several property owners in the Saugatuck neighborhood have placed into the record deeds containing a "single-family use" restriction, along with a 1954 subdivision map that includes several of the lots now owned by or under option / contract to Summit, and to be part of the redevelopment plan. These deeds by themselves do not establish enforceability of the single-family restriction, *see DaSilva v. Barone*, 83 Conn. App. 365 (2004) (Tab 7). At p. 372, the Appellate Court identifies the elements of a "common plan of development" and restrictive covenants. There is no evidence in the record that, in this case, there was a common grantor of all of the lots on the 1954 map, or that the same or similar single-family restriction was imposed on all of the lots and has been maintained intact to today. In fact, the lots in Norwalk shown on the 1954 map were never built, and whatever their status, were superseded by the 2009 approval of the Avalon East Norwalk development's four lots. Thus, several, old individual deeds involving lots shown on the 1954 map do not support an enforceable covenant prohibiting multi-family use. Also, it may be noted that the existing Residence B Zone Regulations allow a variety of multi-family and non-single-family use, indicating Westport's at least tacit acknowledgement that there is no enforceable restriction.

MEMORANDUM

To: Town of Westport Planning & Zoning Commission
From: Shipman & Goodwin LLP
Date: April 5, 2019
Re: Ownership of Hiawatha Lane[1]

The Westport Land Records indicates that title to the private portion of Hiawatha Lane (the "Private Road") is vested in Summit Development, LLC, a Connecticut limited liability company, by virtue of those four (4) quitclaim deeds attached as Exhibit A-1, and a copy of Map No. 3802 as referenced therein is attached as Exhibit A-2. The basis for such ownership in the Private Road is found in that certain certificate issued by the Probate Court for the District of Westport dated April 9, 1956 and recorded in Volume 137 at Page 396 of the Westport Land Records, revised pursuant to that certain certificate dated March 16, 1961 and recorded in Volume 184 at Page 534 of the Westport Land Records, copies of which are attached as Exhibit B (the "Probate Certificates"), were issued by the Court in connection with the death of E. Louise Bradley, late of Westport, deceased.

The Town of Westport has recognized E. Louise Bradley as owner of the Private Road on at least two separate occasions. Prior to death of E. Louise Bradley, Ms. Bradley deeded two easements to the Town of Westport for drainage pursuant to that certain grant dated November 8, 1951 and recorded in Volume 104 at Page 337 of the Westport Land Records (the "Drainage Easement"). One easement runs "from the catch basin *on the private road, Hiawatha Lane*, so-called, across a strip of land ten feet in width to the brook lying westerly of Hiawatha Lane, and one from the catch basin on Davenport Avenue, so-called, *across Hiawatha Lane, where it connects with Davenport Avenue, southwesterly across a ten foot strip of land to the brook.*" (emphasis added.) The second easement concerns the Private Road, being more particularly shown on Map No. 3102. Copies of such grant and such map are attached as Exhibit C. By virtue of the acceptance of this grant, the Town of Westport accepted E. Louise Bradley as owner of the Private Road and the land over which the second easement exists.

Subsequent to the grant of the Drainage Easement and the death of Ms. Bradley, but prior to the issuance of the Probate Certificates, the Administrators of the Estate of E. Louise Bradley granted utility easements to The Connecticut Light and Power Company and the Bridgeport Hydraulic Company over real property which included the Private Road, copies of which are attached as Exhibit D. The aforementioned Drainage Easement and utility easements are reflected in the devise of the Private Road as set forth in the Probate Certificates.

An heirs search was conducted to determine the heirs-at-law of E. Louise Bradley, which resulted in the identification of those heirs from whom quitclaim deeds have been obtained. The affidavit of Thomas F. Heffernan, the author of the heirs search, dated August 15, 2014 (the

---

[1] This memorandum is not, and is not intended to be, a legal opinion, certificate of title, abstract of title or other instrument purporting to determine marketability of title to the properties referenced herein, and may not be relied upon for the same.

Exhibit A-1

Quitclaim Deeds

(see attached)

MEMORANDUM

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From: Shipman & Goodwin LLP
Date: April 5, 2019
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---

[1] This memorandum is not, and is not intended to be, a legal opinion, certificate of title, abstract of title or other instrument purporting to determine marketability of title to the properties referenced herein, and may not be relied upon for the same.

"Affidavit"), concerning the heirs-at-law of Gershom Burr Bradley and Frances Stevens (the issue of which are E. Louise Bradley and the two devisees pursuant to the Probate Certificates, to wit, Gershom B. Bradley and William B. Bradley), concludes that, after having examining certain public records referenced therein, including certain probate court records, the only living heirs of Gershom Burr Bradley and Frances Stevens are Craig Bradley and Laura Lakey née Bradley (both of whom have provided quitclaim deeds), and, other than the foregoing, their last remaining heir died in 2004. A copy of the Affidavit is attached as Exhibit E.

As set forth in Standards 13.2, 13.3 and 13.4 of the Connecticut Standards of Title, copies of which are attached as Exhibit F, there exists a "ten year rule" with respect to the determination of marketability of title which provides that the possibility of the probate court ordering real property to be sold to satisfy claims more than ten years after the death of a decedent is too remote to affect marketability and that, generally, the administration of an estate shall not be granted nor shall the will of any person be admitted to probate after ten years from the death of a decedent. Accordingly, as all of the living heirs-at-law of Gershom Burr Bradley and Frances Stevens, as determined by the Affidavit, have provided quitclaim deeds, and more than ten years has elapsed since all other heirs-at-law of Gershom Burr Bradley and Frances Stevens, as determined by the Affidavit, have died, the Westport Land Records indicates that title to the Private Road is vested in Summit Development, LLC, and the possibility of a claim by another with respect to the Private Road is too remote to affect marketability of title to the Private Road.

Exhibit A-1

Quitclaim Deeds

(see attached)

Cohen + Wolf, PC
320 Post Rd W
Westport, CT 06880
Attn: GKB

Doc ID: 003421380001 Type: LAN
Book 3562 Page 112
File# 2105

QUIT CLAIM DEED

TO ALL PEOPLE TO WHOM THESE PRESENTS SHALL COME, GREETING:

KNOW YE, That **GAIL BRADLEY**, of , 40 Amos Landing Road, Mashpee, MA 02649, herein designated as the Releasor, for **ONE ($1.00) DOLLAR** and other valuable consideration, received to Releasor's full satisfaction from **SUMMIT DEVELOPMENT, LLC**, of 55 Station Street, Fairfield, Connecticut 06824, herein designated as the Releasee, does by these presents remise, release and forever Quit-Claim unto the said Releasee and to the Releasee's heirs, successors and assigns forever,

All the right, title, interest, claim and demand whatsoever as the said Releasor has or ought to have in or to all that certain piece or parcel of land, situated in the Town of Westport, County of Fairfield and State of Connecticut, being shown and designated as "Hiawatha Lane" on a certain map entitled, "Map of Property Prepared for The Estate of E. Louise Bradley, Gershom Bradley, Adm. Jeanette Hughes, Adm., Westport and Norwalk, Conn., Dec. 6, 1954, Scale 1" 60' ", Certified Substantially Correct, Martin J. Capasse, Surveyor, which map is on file in the Office of the Town Clerk of the Town of Westport as Map No. 3802. Reference thereto being hereby made for a more particular description.

TO HAVE AND TO HOLD the premises hereby remised, released and quit-claimed with all the appurtenances unto the said Releasee and to the Releasee's heirs, successors and assigns forever, so that neither the Releasor nor the Releasor's heirs, successors or assigns nor any other person claiming under or through the Releasor shall hereafter have any claim, right or title in or to the premises or any part thereof, but therefrom the Releasor and they are by these presents, forever barred and excluded.

(In all references herein to any parties, persons, entities or corporations the use of any particular gender or the plural or singular number is intended to include the appropriate gender or number as the text of the within instrument may require.)

IN WITNESS WHEREOF, the Releasor has signed and sealed this instrument this 1st day of October, 2014.

Signed, Sealed and Delivered
in the presence of:

Wendy W Weston (witness)

Kathy Bogen (witness)

Gail Bradley
Gail Bradley

State
$18.75
Town
$6.25

CONVEYANCE TAX
COLLECTED
Patricia H Strauss
TOWN CLERK OF WESTPORT

STATE OF MASSACHUSETTS)
) ss:
COUNTY OF BARNSTABLE)

The foregoing instrument was acknowledged before me this 1st day of October, 2014, by Gail Bradley, as her free act and deed.

Amy Barao Kullar
Notary Public
My Commission Expires: Oct. 21, 2016

AMY BARAO KULLAR
Notary Public
Massachusetts
Commission Expires Oct 21, 2016

Received for Record at Westport, CT
On 10/23/2014 At 4:21:31 pm
Patricia H. Strauss, Town Clerk

Cohen + Wolf PC
320 Post Rd W
Westport, CT 06880
attn: GKB

Doc ID: 003421390001 Type: LAN
Book 3562 Page 113
File# 2106

QUIT CLAIM DEED

TO ALL PEOPLE TO WHOM THESE PRESENTS SHALL COME, GREETING:

KNOW YE, That **CRAIG BRADLEY**, of, 1820 N. Bissell Street, Unit A, Chicago, IL 60614, herein designated as the Releasor, for **ONE ($1.00) DOLLAR** and other valuable consideration, received to Releasor's full satisfaction from **SUMMIT DEVELOPMENT, LLC**, of 55 Station Street, Fairfield, Connecticut 06824, herein designated as the Releasee, does by these presents remise, release and forever Quit-Claim unto the said Releasee and to the Releasee's heirs, successors and assigns forever,

All the right, title, interest, claim and demand whatsoever as the said Releasor has or ought to have in or to all that certain piece or parcel of land, situated in the Town of Westport, County of Fairfield and State of Connecticut, being shown and designated as "Hiawatha Lane" on a certain map entitled, "Map of Property Prepared for The Estate of E. Louise Bradley, Gershom Bradley, Adm. Jeanette Hughes, Adm., Westport and Norwalk, Conn., Dec. 6, 1954, Scale 1" 60' ", Certified Substantially Correct, Martin J. Capasse, Surveyor, which map is on file in the Office of the Town Clerk of the Town of Westport as Map No. 3802. Reference thereto being hereby made for a more particular description.

TO HAVE AND TO HOLD the premises hereby remised, released and quit-claimed with all the appurtenances unto the said Releasee and to the Releasee's heirs, successors and assigns forever, so that neither the Releasor nor the Releasor's heirs, successors or assigns nor any other person claiming under or through the Releasor shall hereafter have any claim, right or title in or to the premises or any part thereof, but therefrom the Releasor and they are by these presents, forever barred and excluded.

(In all references herein to any parties, persons, entities or corporations the use of any particular gender or the plural or singular number is intended to include the appropriate gender or number as the text of the within instrument may require.)

IN WITNESS WHEREOF, the Releasor has signed and sealed this instrument this 2nd day of October, 2014.

Signed, Sealed and Delivered
in the presence of:

(witness)

(witness)

Craig Bradley

State
$18.75
Town
$6.25

CONVEYANCE TAX
COLLECTED
Patricia H Strauss
TOWN CLERK OF WESTPORT

STATE OF ILLINOIS)
) ss:
COUNTY OF COOK)

The foregoing instrument was acknowledged before me this 2 day of October, 2014, by Craig Bradley, as his free act and deed.

Notary Public
My Commission Expires: 5/19/18

OFFICIAL SEAL
JOSEPH L DAVENPORT
Notary Public - State of Illinois
My Commission Expires May 19, 2018

Received for Record at Westport, CT
On 10/23/2014 At 4:22:15 pm
Patricia H. Strauss, Town Clerk

Cohen & Wolf PC
320 Post Rd W
Westport, CT 06880
attn: GKB

Doc ID: 003421400001 Type: LAN
Book 3562 Page 114
File# 2107

QUIT CLAIM DEED

TO ALL PEOPLE TO WHOM THESE PRESENTS SHALL COME, GREETING:

KNOW YE, That **LAURA LAKEY**, of 6225 Avalon Woods Drive, McKinney, TX 75070, herein designated as the Releasor, for **ONE ($1.00) DOLLAR** and other valuable consideration, received to Releasor's full satisfaction from **SUMMIT DEVELOPMENT, LLC**, of 55 Station Street, Fairfield, Connecticut 06824, herein designated as the Releasee, does by these presents remise, release and forever Quit-Claim unto the said Releasee and to the Releasee's heirs, successors and assigns forever,

All the right, title, interest, claim and demand whatsoever as the said Releasor has or ought to have in or to all that certain piece or parcel of land, situated in the Town of Westport, County of Fairfield and State of Connecticut, being shown and designated as "Hiawatha Lane" on a certain map entitled, "Map of Property Prepared for The Estate of E. Louise Bradley, Gershom Bradley, Adm. Jeanette Hughes, Adm., Westport and Norwalk, Conn., Dec. 6, 1954, Scale 1" 60' ", Certified Substantially Correct, Martin J. Capasse, Surveyor, which map is on file in the Office of the Town Clerk of the Town of Westport as Map No. 3802. Reference thereto being hereby made for a more particular description.

TO HAVE AND TO HOLD the premises hereby remised, released and quit-claimed with all the appurtenances unto the said Releasee and to the Releasee's heirs, successors and assigns forever, so that neither the Releasor nor the Releasor's heirs, successors or assigns nor any other person claiming under or through the Releasor shall hereafter have any claim, right or title in or to the premises or any part thereof, but therefrom the Releasor and they are by these presents, forever barred and excluded.

(In all references herein to any parties, persons, entities or corporations the use of any particular gender or the plural or singular number is intended to include the appropriate gender or number as the text of the within instrument may require.)

IN WITNESS WHEREOF, the Releasor has signed and sealed this instrument this 3 day of October, 2014.

Signed, Sealed and Delivered
in the presence of:

(witness)

Laura Lakey

(witness)

WILLIAM EARL JOHNSON
Notary Public
STATE OF TEXAS
My Comm. Exp. 04-20-15

STATE OF TEXAS)
) ss:
COUNTY OF Collin)

The foregoing instrument was acknowledged before me this 3 day of October, 2014, by Laura Lakey, as her free act and deed.

Notary Public
My Commission Expires:

State
$18.75

Town
$6.25

CONVEYANCE TAX
COLLECTED
Patricia H Strauss
TOWN CLERK OF WESTPORT

Received for Record at Westport, CT
On 10/23/2014 At 4:22:42 pm
Patricia H. Strauss, Town Clerk

Cohen & Wolf, P.C.
320 Post Rd. W.
Westport, CT 06880
attn: GKB

Doc ID: 003421410001 Type: LAN
Book 3562 Page 115
File# 2108

QUIT CLAIM DEED

TO ALL PEOPLE TO WHOM THESE PRESENTS SHALL COME, GREETING:

KNOW YE, That **SUMMIT DEVELOPMENT, LLC**, of, 55 Station Street, Southport, Connecticut 06890, herein designated as the Releasor, for **ONE ($1.00) DOLLAR** and other valuable consideration, received to Releasor's full satisfaction from **SUMMIT SAUGATUCK, LLC**, of 55 Station Street, Southport, Connecticut 06890, herein designated as the Releasee, does by these presents remise, release and forever Quit-Claim unto the said Releasee and to the Releasee's heirs, successors and assigns forever,

All the right, title, interest, claim and demand whatsoever as the said Releasor has or ought to have in or to all that certain piece or parcel of land, situated in the Town of Westport, County of Fairfield and State of Connecticut, being shown and designated as "Hiawatha Lane" on a certain map entitled, "Map of Property Prepared for The Estate of E. Louise Bradley, Gershom Bradley, Adm. Jeanette Hughes, Adm., Westport and Norwalk, Conn., Dec. 6, 1954, Scale 1" 60' ", Certified Substantially Correct, Martin J. Capasse, Surveyor, which map is on file in the Office of the Town Clerk of the Town of Westport as Map No. 3802. Reference thereto being hereby made for a more particular description.

TO HAVE AND TO HOLD the premises hereby remised, released and quit-claimed with all the appurtenances unto the said Releasee and to the Releasee's heirs, successors and assigns forever, so that neither the Releasor nor the Releasor's heirs, successors or assigns nor any other person claiming under or through the Releasor shall hereafter have any claim, right or title in or to the premises or any part thereof, but therefrom the Releasor and they are by these presents, forever barred and excluded.

(In all references herein to any parties, persons, entities or corporations the use of any particular gender or the plural or singular number is intended to include the appropriate gender or number as the text of the within instrument may require.)

IN WITNESS WHEREOF, the Releasor has signed and sealed this instrument this 23rd day of October, 2014.

Signed, Sealed and Delivered
in the presence of:

Randall W. Becker (witness)

PATRICIA REICH (witness)

SUMMIT DEVELOPMENT, LLC

By: Felix Charney
Its: Managing Director

CONVEYANCE TAX
COLLECTED
Patricia H. Strauss
TOWN CLERK OF WESTPORT

STATE OF CONNECTICUT)
) ss: Westport
COUNTY OF FAIRFIELD)

The foregoing instrument was acknowledged before me this 23rd day of October, 2014, by Felix Charney, as his free act and deed.

Notary
My Commission Expires:

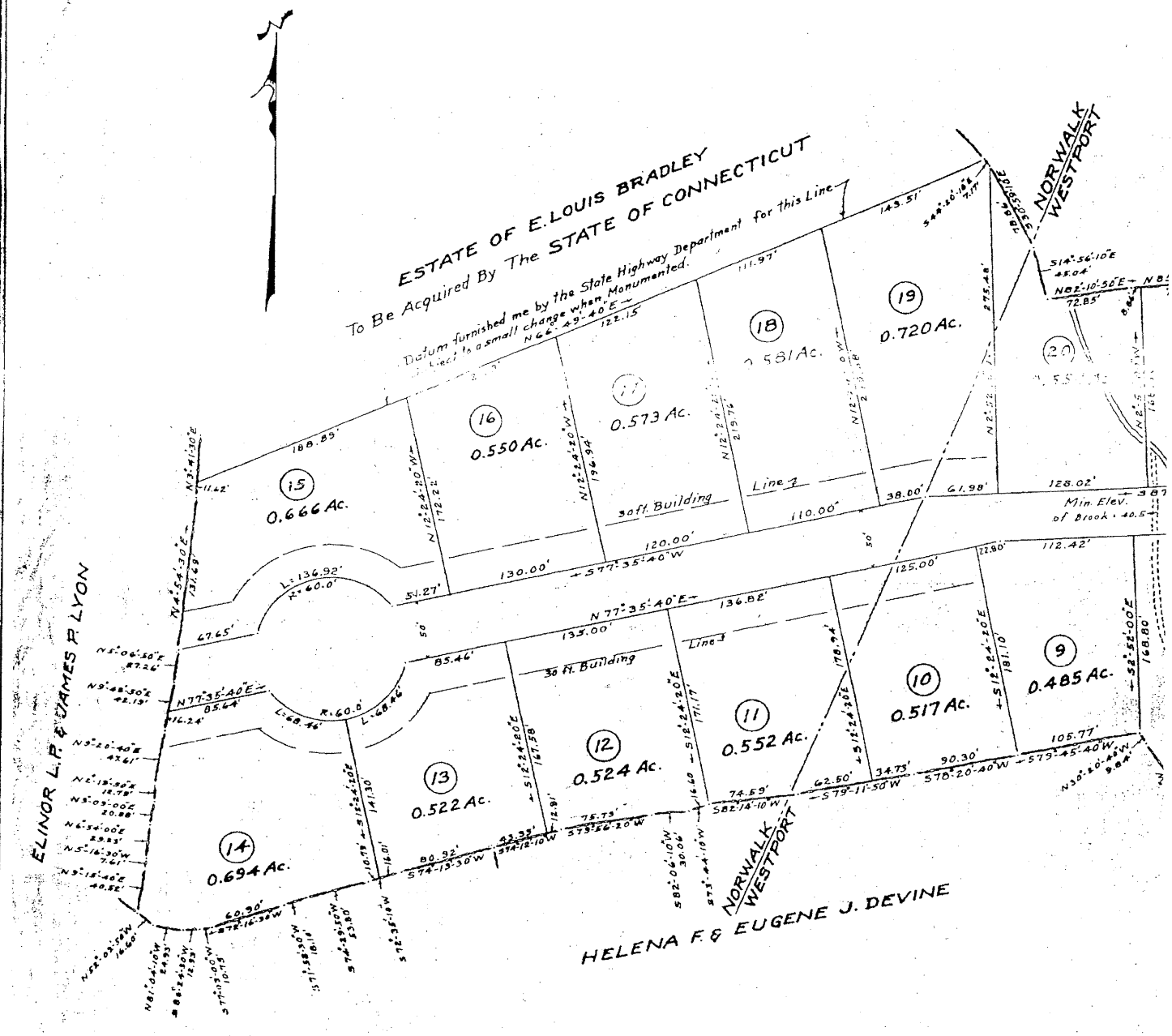
RANDALL N. BECKER
NOTARY PUBLIC - CONNECTICUT
My Commission Expires
October 31, 2016

Received for Record at Westport, CT
On 10/23/2014 At 4:23:20 pm
Patricia H. Strauss, Town Clerk

Exhibit A-2

Map No. 3802

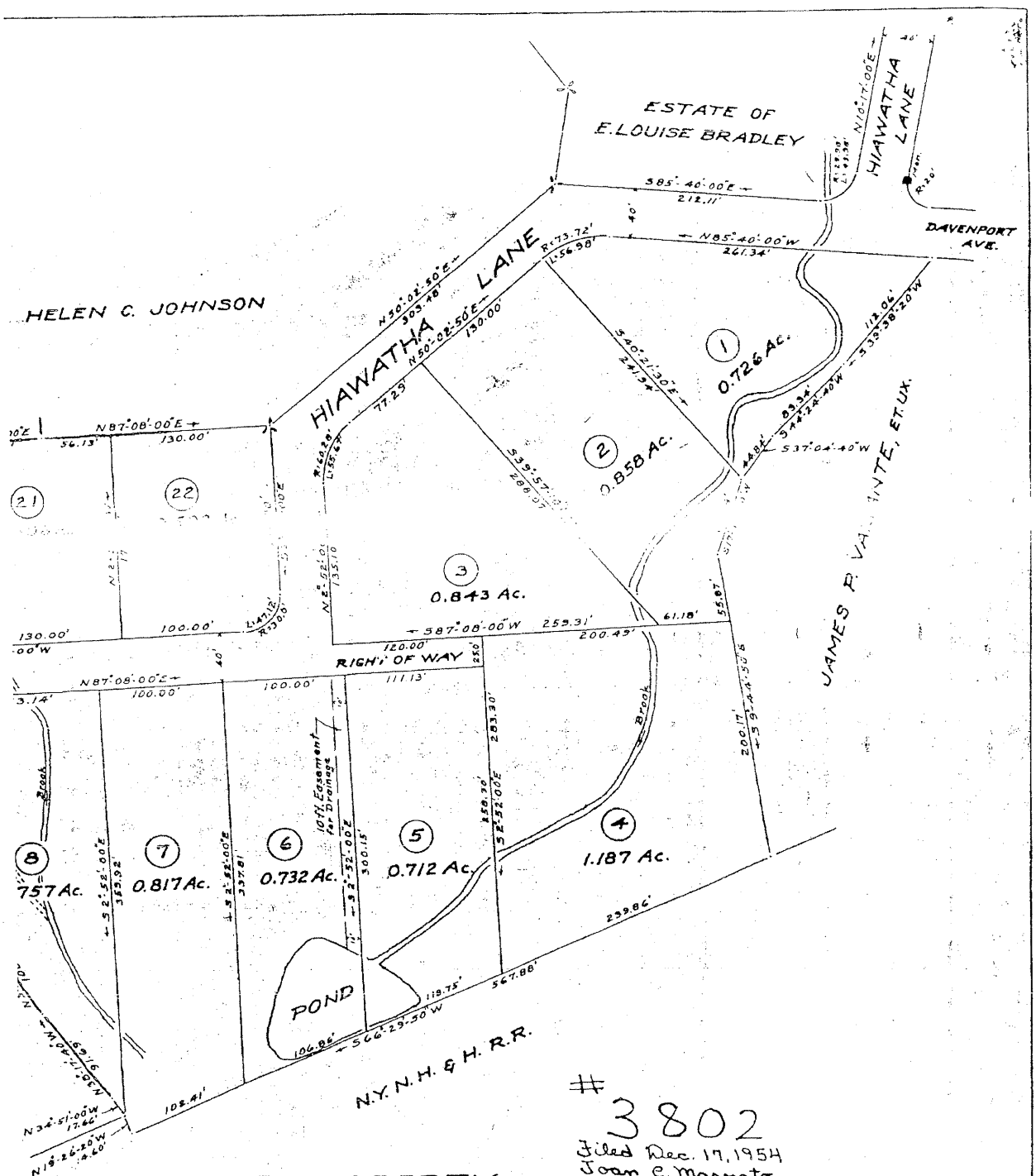
(see attached)



APPROVED BY THE PLANNING & ZONING COMMISSION.

15 Dec. 1954
Date

Chairman



3802

Filed Dec. 17, 1954
Joan C. Masnato,
Asst. Town Clerk.

MAP OF PROPERTY
PREPARED FOR
THE ESTATE OF
E. LOUISE BRADLEY

ERSHOM BRADLEY, Admr. JEANETTE HUGHES, Admx.

WESTPORT & NORWALK, CONN.

DEC. 6, 1954 SCALE 1" = 60'

Certified Substantially Correct
Martin J. Espinosa
Westport, Conn. Surveyor

1

Exhibit B

Probate Certificates

(see attached)

STATE OF CONNECTICUT, }
DISTRICT OF WESTPORT, } SS. PROBATE COURT

This certifies that the Estate of EMMA LOUISE BRADLEY, also known as E. LOUISE BRADLEY, late of Westport, in said District, deceased, has been duly settled in this Court; that GERSHOM B. BRADLEY and WILLIAM B. BRADLEY, both of said Westport, heretofore have been ascertained by this Court to be the sole heirs-at-law of said deceased and the sole distributees of said estate; and that there descends to said GERSHOM B. BRADLEY and WILLIAM B. BRADLEY each an undivided one-half (1/2) interest in and to the following described real estate:

FIRST TRACT: All that certain piece, parcel or tract of land, located partly in the Town of Norwalk and partly in the Town of Westport, County of Fairfield and State of Connecticut, bounded and described as follows:

NORTHERLY: 486 feet, more or less, by land now or formerly of William and Marion Garofalo, and land now or formerly of Helen C. Johnson, each in part;

EASTERLY: 392 feet, more or less, by land now or formerly of Helen C. Johnson;

SOUTHERLY: 699.85 feet, more or less, by other land of the heirs of Emma Louise Bradley;

WESTERLY: 749 feet, more or less, by land now or formerly of Elinor L. P. and James P. Lyon, and land now or formerly of Gershom B. Bradley, each in part.

SECOND TRACT: All that certain piece, parcel or tract of land, located partly in the Town of Norwalk, and partly in the Town of Westport, County of Fairfield and State of Connecticut, bounded and described as follows:

NORTHERLY: 1,059 feet, more or less, by land now or formerly of Gershom B. Bradley;

NORTHEASTERLY: 318 feet, more or less, by land now or formerly of Cornelius Otz;

WESTERLY: 100 feet, more or less, by land now or formerly of Cornelius Otz;

NORTHERLY, again, 325 feet, more or less, by land now or formerly of Michael Renzulli, et al, and land now or formerly of Gershom B. Bradley, each in part;

EASTERLY: 82 feet, more or less, by Indian Hill Road;

SOUTHERLY: 147 feet, more or less, by land now or formerly of Louis Stroffolino, et al;

EASTERLY, again, 110 feet, more or less, by land now or formerly of Louis Stroffolino, et al;

NORTHERLY, again, 130 feet, more or less, by land of said Stroffolino;

EASTERLY, again, 80 feet, more or less, by Indian Hill Road;

SOUTHERLY, again, 175 feet, more or less, by land now or formerly of M. Renzulli, et al;

See corrected Probate Certificate Vol. 184 Pg. 534

EASTERLY, again, 176 feet, more or less, by land now or formerly of M. Renzulli, et al, and by land now or formerly of V. Decicco, et al, each in part;

SOUTHERLY, again, 166 feet, more or less, by land now or formerly of Peter Milazzo, et al;

EASTERLY, again, 161 feet, more or less, by land of said Milazzo;

SOUTHERLY, again, 150 feet, more or less, by Hiawatha Lane;

WESTERLY, again, 161 feet, more or less, by land now or formerly of Tony Cretella;

SOUTHERLY, again, 225 feet, more or less, by land now or formerly of said Cretella, Fred and Jennie Pascarelli, and Giunta, each in part;

EASTERLY, again, 160 feet, more or less, by land of said Giunta;

SOUTHERLY, again, 83 feet, more or less, by Hiawatha Lane;

WESTERLY, again, 160 feet, more or less, by land of Aulenti;

SOUTHERLY, again, 85 feet, more or less, by land of said Aulenti;

EASTERLY, again, 181 feet, more or less, by land of said Aulenti;

SOUTHEASTERLY and EASTERLY: 320 feet, more or less, by Hiawatha Lane;

SOUTHERLY, again, 225.42 feet, more or less, by land of Fred and Jennie Pascarelli;

EASTERLY, again, 100 feet, more or less, by land now or formerly of said Pascarelli;

SOUTHERLY, again, 62 feet, more or less, by Hiawatha Lane;

WESTERLY, again, 548 feet, more or less, by land now or formerly of Helen C. Johnson.

THIRD TRACT: Lots 1, 2, 3, 4, 5, 7, 11, 12, 13, 14, 15, 16, 17, 18 and 19 as shown on "Map of Property Prepared for The Estate of E. Louise Bradley, Gershom Bradley, Admr. Jeanette Hughes, Admx., Westport & Norwalk, Conn., Dec. 6, 1954, Scale 1" = 60', Certified Substantially Correct, Martin J. Capasse, Westport, Conn., Surveyor", which map is on file in the Town Clerks' offices of the Towns of Westport and Norwalk. #3302

Together with all of the right, title and interest which E. Louise Bradley had at the time of her death in and to any and all of the private roads referred to above or shown on the above map, or adjoining the tracts hereinabove described.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of this Court on the 9th day of April, A.D. 1956.

Marion E. Wood
CLERK

Received for record May 4, 1956 at 9:57 a.m.

and recorded by Joan C. Macnab
Asst. Westport Town Clerk

STATE OF CONNECTICUT }
DISTRICT OF WESTPORT } ss. PROBATE COURT

ESTATE OF EMMA LOUISE BRADLEY, a/k/a E. LOUISE BRADLEY, deceased

----------to GERSHOM B. BRADLEY, ET AL----------

The purpose of this Certificate is to correct the description of the Second Tract set forth in the Probate Certificate dated April 9, 1956 and recorded in Volume 137, Page 396 of the Westport Land Records and in Volume 513, Page 125 of the Norwalk Land Records. The correct description is as follows:

All that certain piece, parcel or tract of land, located partly in the Town of Norwalk, and partly in the Town of Westport, County of Fairfield and State of Connecticut, bounded and described as follows:

NORTHERLY:	1,059 feet,	more or less by land now or formerly of Gershom B. Bradley;
NORTHEASTERLY:	318 feet,	more or less by land now or formerly of Cornelius Otz;
WESTERLY:	100 feet,	more or less by land now or formerly of Cornelius Otz;
NORTHERLY, again:	325 feet,	more or less by land now or formerly of Michael Renzulli, et al, and land now or formerly of Gershom B. Bradley, each in part;
EASTERLY:	82 feet,	more or less, by Indian Hill Road;
SOUTHERLY:	147 feet,	more or less by land now or formerly of Louis Stroffolino, et al;
EASTERLY, again:	110 feet,	more or less by land now or formerly of Louis Stroffolino, et al;
NORTHERLY, again:	130 feet,	more or less, by land of said Stroffolino;
EASTERLY: again:	80 feet,	more or less, by Indian Hill Road;
SOUTHERLY, again:	175 feet,	more or less by land now or formerly of M. Renzulli, et al;

EASTERLY, again:	176 feet,	more or less by land now or formerly of M. Renzulli, et al, and by land now or formerly of V. Decicco, et al, each in part;
SOUTHERLY, again:	166 feet,	more or less, by land now or formerly of Peter Milazzo, et al;
EASTERLY, again:	161 feet,	more or less by land of said Milazzo;
SOUTHERLY, again:	150 feet,	more or less by Hiawatha Lane;
WESTERLY, again:	161 feet,	more or less by land now or formerly of Tony Cretella;
SOUTHERLY, again:	225 feet,	more or less by land now or formerly of said Cretella, Fred and Jennie Pascarelli, and Giunta, each in part;
EASTERLY, again:	160 feet,	more or less by said Giunta
SOUTHERLY, again:	83 feet,	more or less by Hiawatha Lane;
WESTERLY, again:	160 feet,	more or less by Aulenti;
SOUTHERLY, again:	85 feet,	more or less by said Aulenti
EASTERLY, again:	181 feet,	more or less by said Aulenti
SOUTHEASTERLY and EASTERLY:	320 feet,	more or less by Hiawatha Lane;
SOUTHERLY, again:	225.42 feet,	more or less by land of Fred and Jennie Pascarelli;
EASTERLY, again:	100 feet,	more or less by land now or formerly of said Pascarelli;
SOUTHERLY, again:	24.13 feet,	more or less by Hiawatha Lane; and
WESTERLY, again:	628.73 feet,	more or less by land now or formerly of Helen C. Johnson.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court on the 16th day of March, 1961.

Marion E. Wood
MARION E. WOOD, CLERK

Received for record May 26 1961 at 10:55 a.M. and recorded by Dorothy Janson.
Westport Town Clerk

Exhibit C

Drainage Easement

(see attached)

VOL 104

This agreement shall be binding upon and enure to the benefit of the heirs, executors, administrators, representatives, successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals and to a duplicate of like tenor and date, the day and year first above written.

In the Presence of:

Dorothy M. Haselton (LS)
THE PORT REALTY COMPANY
By Henry Poemier, (LS)
Its President hereunto duly authorized.

Received forrecord Nov. 9, 1951.
at 9:35 a.m., and recorded by Lois R. Clark Town Clerk.

GRANT

KNOW ALL MEN BY THESE PRESENTS: THAT I, E. Louise Bradley, of the Town of Westport, County of Fairfield and State of Connecticut, for the consideration of One Dollar and other valuable considerations, received to my full satisfaction of the Town of Westport, a municipal corporation situate in the County of Fairfield and State of Connecticut, do by these presents grant unto the Town of Westport, and its successors forever, two easements, one from the catch basin on the private road, Hiawatha Lane, so-called, across a strip of land ten feet in width to the brook lying westerly of Hiawatha Lane, and one from the catch basin on Davenport Avenue, so-called, across Hiawatha Lane, where it connects with Davenport Avenue, southwesterly across a ten foot strip of land to the brook. The two easements are more particularly described on "Plan and Profile of Hiawatha Lane Westport, Conn. June 1951", on file in the Westport Town Clerk's Office bearing file #3102.

These easements are to be used by the Town of Westport for the purpose of draining water from Hiawatha Lane and Davenport Avenue, with the privilege of digging a ditch and laying a drain pipe, with the further privilege of entering upon the land of the Grantor for the purpose of necessary construction, maintenance, and repairs.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 8 day of Nov. A.D.1951.

Signed, Sealed and Delivered
in Presence of:
Gershom B. Bradley
Joseph P. Melillo

E. Louise Bradley (L.S.)

STATE OF CONNECTICUT)
COUNTY OF FAIRFIELD) SS: Westport, Nov. 8, A.D. 1951.

Personally appeared E. Louise Bradley, signer and sealer of the foregoing instrument, and acknowledged the same to be her free act and deed, before me.

Joseph P. Melillo, Justice of Peace,(Seal)

Received for record Nov.9, 1951.
at 10:35 a.m., and recorded by Lois R. Clark Town Clerk.

WARRANTY DEED

TO ALL PEOPLE TO WHOM THESE PRESENTS SHALL COME, GREETING: KNOW YE, THAT I, Edna L. Evans, of the Town of Westport, County of Fairfield and State of Connecticut for the consideration of One ($1.00) Dollar and other valuable considerations received to my full satisfaction of Raymond P. Weyer and Arlene C. Weyer, husband and wife, of the said Town of Westport do give, grant, bargain, sell and confirm unto the said Raymond P. Weyer and Arlene C. Weyer and unto the survivor of them, and unto such survivor's heirs and assigns forever

All those certain tracts or parcels of land, together with the buildings thereon, situated in the Town of Westport, County of Fairfield and State of Connecticut, known and designated as Lots 18 and 19 on that certain map entitled "Map of Chapel Hill, Greens Farms, Westport, Conn., May 1946, Scale 1".50', Certified 'Substantially Correct', Charles S. Lyman, Surveyor", which map is on file in the Office of the Town Clerk of the said Town of Westport and is numbered 2078.

Together with a Right of Way for all purposes over the roadways as shown on said map, from said lots to Hillandale Road.

Being the same premises that are referred to in deeds recorded in Volume 95, Page 459 and Volume 102, Page 164 of the Westport Land Records.

TO HAVE AND TO HOLD the above granted and bargained premises, with the appurtenances thereof, unto them the said grantees, and unto the survivor of them, and unto such survivor's heirs and assigns forever, to them and their own proper use and behoof.

AND ALSO, I the said grantor do for myself, my heirs, executors, administrators, and assigns, covenant with the said grantees and with the survivor of them, and with such survivor's heirs and assigns, that at and until the ensealing of these presents I am well seized of the premises, as a good indefeasible estate in Fee Simple; and have good right to bargain and sell the same in manner and form as is above written; and that the same is free from all incumbrances whatsoever, except a mortgage to the Merchants Bank and Trust Company, on which there

(continued)

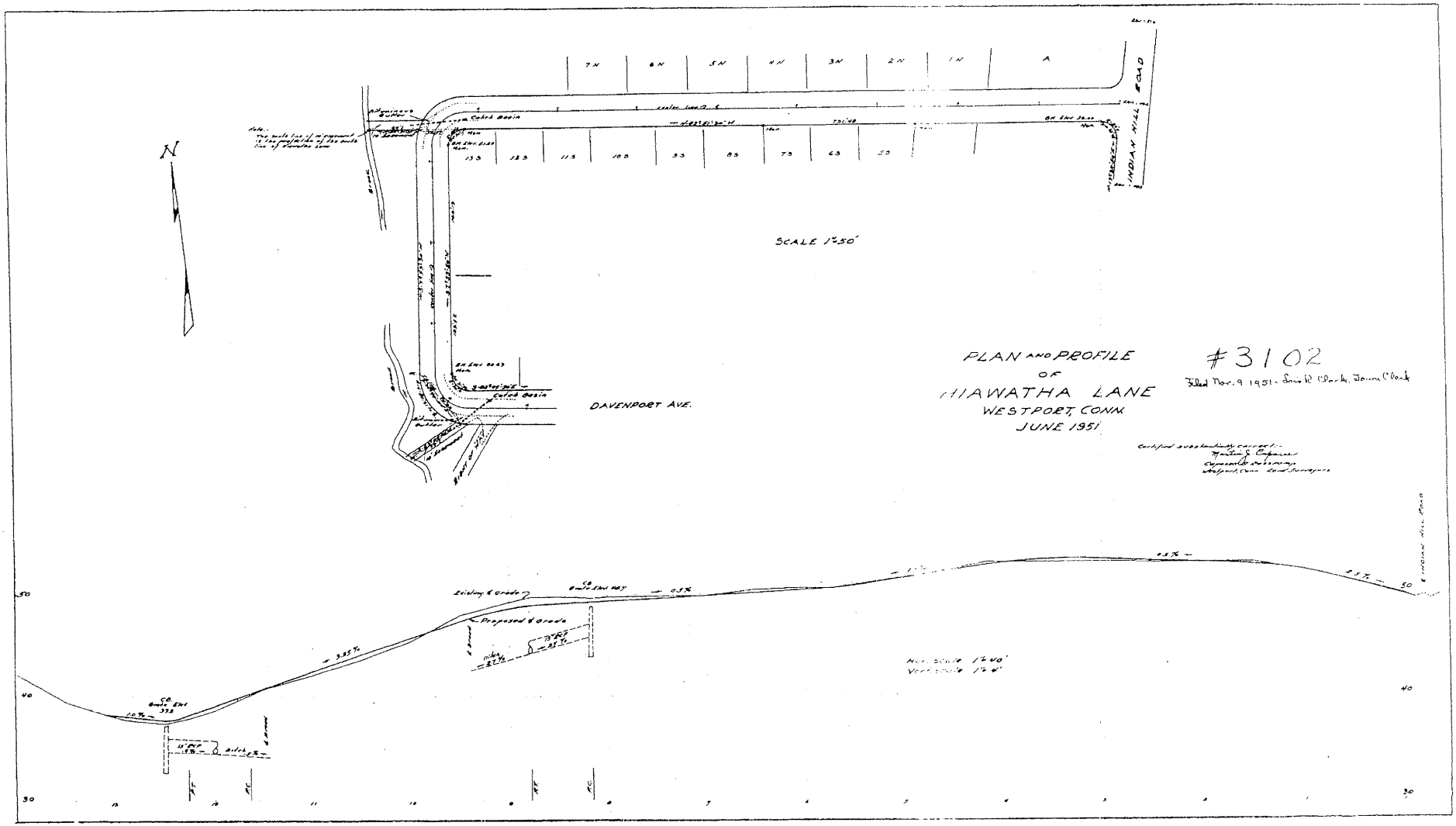

PLAN AND PROFILE
OF
HIAWATHA LANE
WESTPORT, CONN.
JUNE 1951
#3102
SCALE 1"=50'
DAVENPORT AVE.
INDIAN HILL ROAD
N
7N
6N
5N
4N
3N
2N
1N
A
Catch Basin
Existing ℄ Grade
Proposed ℄ Grade

Exhibit D

Utility Easements

(see attached)

(E)

TO ALL PEOPLE TO WHOM THESE PRESENTS SHALL COME, G R E E T I N G :

WHEREAS, at a Probate Court holden at Westport, within and for the District of Westport, on the 13th day of July, 1955, upon application of GERSHOM B. BRADLEY and JEANETTE B. HUGHES, Administrators of the Estate of ELLA LOUISE BRADLEY, late of Westport, in said District, deceased, an order was made authorizing and directing said Administrators to sell at private sale, to THE CONNECTICUT LIGHT AND POWER COMPANY, a corporation specially chartered by the General Assembly of the State of Connecticut and having its principal office in the Town of Berlin, County of Hartford, in said State, a perpetual easement, privilege and right of way for an electric line, with its appurtenances, upon, over and across real estate of said Estate, as hereinafter described, and return make, all of which will more fully appear by the records of said Court, reference thereto being had; and

WHEREAS, pursuant to said order, they sold to THE CONNECTICUT LIGHT AND POWER COMPANY, at private sale, for a valuable sum in dollars, an easement, privilege and right of way upon, over and across real estate of said Estate, as hereinafter described;

NOW, THEREFORE, KNOW YE, That we, GERSHOM B. BRADLEY and JEANETTE B. HUGHES, as such Administrators, in pursuance of the authority and direction given as aforesaid, and in consideration of said sum, received to our full satisfaction of THE CONNECTICUT LIGHT AND POWER COMPANY, do give, grant, bargain, sell and confirm unto said THE CONNECTICUT LIGHT AND POWER COMPANY, the right to set or relocate and permanently maintain poles and guys on any or all of the private or public streets or passways now or hereafter laid out or located on land of said Estate, hereinafter described, situated in the Towns of Westport and Norwalk, County of Fairfield, State of Connecticut.

Together with the right to erect, operate and permanently maintain electric conductors and other usual fixtures and appurtenances used and adapted for the transmission of electric current for light, heat, power or for any other purpose and for telephone purposes on any or all of said private or public streets or passways.

Together also with the right to erect and permanently maintain guys and anchors as are from time to time needed on property adjoining said roadways in locations not to exceed ten (10) feet from the limits of said private or public streets or passways.

Together also with the right to trim and keep trimmed, cut and remove such trees as in the judgment of the Grantee may endanger said electric line or its operation.

Said above mentioned land is bounded now or formerly as follows:

NORTHERLY by land of the State of Connecticut, land of Helen C. Johnson, and land of the Estate of E. Louise Bradley;
EASTERLY by Davenport Avenue and land of James P. Valiante, et ux.;
SOUTHERLY by land of The New York, New Haven and Hartford Railroad Company and by land of Helena F. and Eugene J. Devine; and
WESTERLY by land of Elinor L. P. and James P. Lyon.

Further described on map entitled "Map of property prepared for The Estate of E. Louise Bradley, Gershom Bradley, Admr. Jeanette Hughes, Admx. Westport and Norwalk, Conn., December 6, 1954, Scale 1" - 60', Certified Substantially Correct by Martin J. Capasse, Surveyor."

Any right herein described or granted or any interest therein or part thereof may be assigned to any Telephone Company and other assignee or assignees by the Grantee or its successors and assigns, and the Grantors for themselves, their successors and assigns, hereby agree to and ratify any such assignment or assignments.

If any part of the above described land upon or over which said poles, guys, anchors, guy stubs and electric conductors, fixtures and appurtenances shall be located, is now or shall hereafter become a public street or highway or a part thereof, permission, as provided in the General Statutes of Connecticut relating to adjoining land owners, is hereby given to the Grantee and to its successors and assigns, to use that portion for the purposes and in the manner above described.

TO HAVE AND TO HOLD the said granted and bargained easement, privilege and right of way and its appurtenances to said Grantee and to its successors and assigns forever, to its and their proper use and behoof.

IN WITNESS WHEREOF, We have hereunto set our hands and seals this 14th day of July, 1955.

Signed, Sealed and Delivered in presence of

Dorothy F. Saunders — Jeanette Bradley Hughes (SEAL)

Alan H. Nevas — Gershom B. Bradley (SEAL)

Administrators of Estate of EMMA LOUISE BRADLEY.

STATE OF CONNECTICUT, COUNTY OF FAIRFIELD, } SS: Westport, July 14, 1955.

Personally appeared GERSHOM B. BRADLEY, Administrator of the Estate of EMMA LOUISE BRADLEY, signer and sealer of the foregoing instrument, and acknowledged the same to be his free act and deed as such Administrator, before me,

Alan H. Nevas
~~Notary Public.~~
Com. of Sup. Ct.

STATE OF CONNECTICUT, COUNTY OF FAIRFIELD, } SS: Westport, July 14, 1955.

Personally appeared JEANETTE B. HUGHES, Administratrix of the Estate of EMMA LOUISE BRADLEY, signer and sealer of the foregoing instrument, and acknowledged the same to be her free act and deed as such Administratrix, before me,

Alan H. Nevas
~~Notary Public.~~
Com. of Sup. Ct.

Consideration less than $100.00.

Received for record July 14, 1955 at 9:25 a.m. - 3 - and recorded by Joan C. Magnotta
Asst. Westport Town Clerk

(E)

VOL 129 PAGE 251

KNOW ALL MEN BY THESE PRESENTS:

THAT Gershom B. Bradley, Jeanette Hughes, Administrators, Estate of E. Louise Bradley, of the Town of Westport, County of Fairfield and State of Connecticut, hereinafter called the GRANTOR, for the consideration of One Dollar and other valuable considerations, does hereby give and grant to the BRIDGEPORT HYDRAULIC COMPANY, a Connecticut corporation located and doing business in the Town of Bridgeport, County of Fairfield and State of Connecticut, and to its successors and assigns forever, the perpetual right, privilege and easement to lay, replace and permanently maintain water pipes, water boxes, hydrants and any other accessories used in supplying water in any or all of the private roads or passways now or hereafter laid out or located on all that certain tract or parcel of land, situated in the Town of Westport, County of Fairfield and State of Connecticut, bounded and described as follows:

NORTHERLY by land of Helen C. Johnson and Estate of E. Louise Bradley

EASTERLY by land of James F. Valiante, et ux

SOUTHERLY by land of Helena F. & Eugene J. Devine and by the New York, New Haven & Hartford Railroad

WESTERLY by Norwalk-Westport Town Line

For a more particular description of said premises, reference is ~~hereby made to~~ Map #3802, Westport Town Records, dated December 6, 1954.

If any part of the above described land shall hereafter become a public highway, the GRANTOR also grants to the BRIDGEPORT HYDRAULIC COMPANY, its successors and assigns, permission to use that portion for the purposes and in the manner provided in the General Statutes of Connecticut, relative to adjoining landowners.

In witness whereof, the undersigned have hereunto set their hand and seal this 3rd day of June A. D. 1955.

Signed, sealed and delivered
in presence of:

Elizabeth B. Gordon — Gershom B. Bradley
Dorothy F. Sanders — Jeanette Hughes

STATE OF CONNECTICUT)
COUNTY OF FAIRFIELD) ss. Westport June 3 A. D. 1955.

Personally appeared Gershom B. Bradley, Jeanette Hughes, Administrators of Estate of E. Louise Bradley signer and sealer of the foregoing instrument, and acknowledged the same to be his free act and deed, before me

Elizabeth B. Gordon
Notary Public

Received for record Aug. 2, 1955 at 11:30 a.m. and recorded by Lois R. Clark
Westport Town Clerk

Exhibit E

Affidavit

(see attached)

AFFIDAVIT

File Number

STATE OF NEW YORK)
SS
COUNTY OF KINGS)

I, Thomas F. Heffernan, being duly sworn upon his oath deposes and says:

1. I am the Managing principal of Robert Cook Associates (hereinafter referred to as RCA), located in New York City. I received a Bachelor of Arts degree, majoring in history and have been conducting genealogical research for more than thirty years. I submit this Affidavit of Heirship identifying the descendants of Gershom Burr Bradley and Frances Stevens his wife. (See attached: Tree 1 and Tree 2.)

   Whereas: "Lot 4 was conveyed to Jeanette Bradley Hughes and the Westport Bank and Trust Company, as Trustee on April 9, 1962, Volume 191, Page 636. No appurtenant rights were granted."

   Whereas: "That Lot 4 was then conveyed on June 26, 1962, from the Estates of Gershom B. Bradley and William B. Bradley, on June 26, 1962, In volume 193, page 493, appurtenant rights in and to the private road as were granted in this deed. This property became 35A, 35B and 35C Hiawatha Lane, MAP: B5 Parcels:51, 52 and 53." (See: Appendix, page 5.)

   Therefore the purpose of this search is to identify and locate the heirs-at-law of Gershom Burr Bradley and Frances Stevens.

2. June 22, 2014, attorney G. Kenneth Bernhard of Cohen and Wolf, PC, retained Robert Cook Associates ("RCA") to assist by conducting a genealogical search of this Bradley family. This document reports the results of RCA's independent research.

3. Gershom Burr Bradley and Frances Stevens had three children: (1) William Burr Bradley and (2) Emma Louise Bradley and (3) Gershom B. Bradley. (See: Exhibits 10 and 24. These Exhibits serve to limit the family.

   a. William B. Bradley follows.

   b. Emma Louise Bradley was born in Westport, CT, on February 26, 1869, and died unmarried and without issue in Westport, CT, on April 13, 1953. (See; Exhibit 31.)

   c. Gershom B. Bradley was born in Westport, CT, on October 18, 1871, He died a widower without issue in Westport, CT, on August 7, 1960, and was buried at Mt. Grove Cemetery, Bridgeport, CT. (See: Exhibit 15.)

Attached hereto are:

Exhibit 1. **Bradley, William: 1900 U.S. Federal Census, Westport, Fairfield County, CT.**

This document reports that William Bradley was born in Connecticut in August 1867. Enumerated with him are his wife, Anna H. Bradley, age 31, who born in August 1868; a son, George G. Bradley, age 8, who was born in January 1898; a daughter, Janette Bradley, age 6, who was born in October 1893; a son, William Bradley, age 5, who was born in April 1895; and a worker, Frank Abronistie, age 30.

Exhibit 2. **Bradley, William B: 1910 U.S. Federal Census, Westport, Fairfield County, CT.**

This document reports that William B. Bradley, age 42, resides in Westport, CT. Enumerated with him are his wife, Anna H. Bradley, age 41; a son, George G. Bradley, age 18; a daughter, Jeannette H. Bradley, age 16; a son, William S. Bradley, age 14; a son, Francis B. Bradley, age 7; and a son, Edmond P. Bradley, age 3.

Exhibit 3. **Bradley, William B: 1920 U.S. Federal Census, Westport, Fairfield County, CT.**

This document reports that William B. Bradley, age 52, resides in Westport, CT. Enumerated with him are his wife, Anna H. Bradley, age 51; a son, George G. Bradley, age 27; a daughter, Jeannette H. Bradley, age 26; a son, William S. Bradley, age 24; a son, Francis B. Bradley, age 17; a son, Edmond P. Bradley, age 13; and Susie E. Bradley, age 50.

Exhibit 4. **Bradley, William B: 1930 U.S. Federal Census, Westport, Fairfield County, CT.**

This document reports that William B. Bradley, age 62, resides in Westport, CT. Enumerated with him are his wife, Anna H. Bradley, age 61; a son, George G. Bradley, age 37; a son, Francis B. Bradley, age 27; and a son, Edmond P. Bradley, age 23..

Exhibit 5. **Bradley, William B: 1940 U.S. Federal Census, Westport, Fairfield County, CT.**

This document reports that William B. Bradley, age 72, resides in Westport, CT. Enumerated with him are his wife, Anna H. Bradley, age 71; a son, George Bradley, age 48; and Harry Hughes, age 61.

4. William B. Bradley (a/k/a William Badger Bradley) was born in Westport, CT, on August 24, 1867, to Gershom Burr Bradley, his father, and Frances Stevens, his mother. He died in Westport, CT, on June 30, 1954, and was buried in Willowbrook Cemetery, Westport, CT. (See: Exhibit 13.)

   He married Anna Hale and they had five (5) children: (1) George Gershom Bradley, (2) Edmond Platt Bradley, (3) Francis Burr Bradley, (4) William Stevens Bradley and (5) Jeanette Hale Hughes.

   Anna Hale Bradley was born in Westport, CT, on September 10, 1868, to George Hale, her father, and Sarah Jane Mills, her mother. She died in Westport, CT, on January 30, 1944, and was buried at Willowbrook Cemetery, Westport, CT. (See: Exhibit 14.)

   a. George Gershom Bradley was born on January 9, 1892, and died without issue in Westport, CT, ON April 27, 1963.

   b. Edmond Platt Bradley (a/k/a Edmond P. Bradley) was born in Westport, CT, on October 2, 1906, and died in Norwalk, CT, on March 9, 1966. He was buried at Willowbrook Cemetery, Westport, CT. (See: Exhibit 16.)

      Edmond P. Bradley married Julia Sherman. They had two children: (1) Arthur Sherman Bradley and (2) Robert Hale Bradley.

      1) Arthur Sherman Bradley (a/k/a Arthur S. Bradley) was born in Connecticut on March 23, 1938, and died in Nashpee, Barnstable County, MA, on September 17, 2008. He married Gail Nash and they had two children: (1) Laura Bradley and (2) Craig Bradley. (See: Exhibit 25, 26 and 30.)

      2) Robert Hale Bradley was born in Connecticut on February 2, 1947, and died having never married and without issue in Westport, CT, on September 14, 2004. (See: Exhibits 24, 27, 28 and 29)

(The following addresses are reported in estate filing for Arthur Sherman Bradley. See Exhibit 32. The phone numbers were found in the national phone directories on the Internet. While the addresses and phone numbers are believed to be current, they have not been verified. Addresses: Laura Lakey née Bradley resides at 7908 Linksview Drive, McKinney, Texas 75070; 214-585-0092; Gail Nash Bradley, age 74, resides at 40 Amor Landing Road, Nashpee, MA 02649; phone: 508-681-8080; Craig Bradley resides at 1820 North Bissell Avenue, Unit A. Chicago, Illinois 60614.)

c. Francis Burr Bradley was born in Westport, CT, on July 20, 1902, and died without issue in Westport, CT, on July 22, 1977. He married Nellie Bratusky. (See: Exhibit 17.)

d. William Stevens Bradley was born on April 24, 1895, in Westport, CT, and died without issue on March 13, 1961. He was buried in Willowbrook Cemetery.

e. Jeanette Hall Hughes née Bradley was born in Westport, CT, on October 5, 1893 and died a widow without issue in Norwalk, CT, on March 8, 1980. She was married to Harry B. Hughes. (See: Exhibit 18.)

Attached hereto are:

Exhibit 6. **Bradley, William Stevens: U.S. World War II Draft Registration Cards, 1942.**

This document reports William Stevens Bradley was born in Westport, CT, on April 24, 1895, and reside at Indian Hill, Saugatuck, Westport, CT.

Exhibit 7. **Bradley, William Stevens: Application for Headstone or Marker.**

This document reports that William S. Bradley was born on April 24, 1895, and died on March 13, 1961. And it reports that he was buried at Willowbrook Cemetery, Westport, CT.

Exhibit 8. **Bradley, George Gershom: U.S. World War II Draft Registration Cards, 1942.**

This document reports that George Gershom Bradley was born in Westport, CT, on January 1, 1892, and reside at Indian Hill, Saugatuck, Westport, CT.

Exhibit 9. **Bradley, Edmon[d] P.: Connecticut Death Index, 1949-2001.**

This document reports that Edmond P. Bradley was born about 1907 and died in Norwalk, CT, on March 9, 1966. It identifies his wife as juli.

Exhibit 10. **Bradley, Gershom: 1870 U.S. Federal census, Westport, Connecticut.**

This document reports that Gershom Bradley, age 50, is a famer residing in Westport, CT. Enumerated with him are his mother, Lorinda Bradley, age 74; his wife, Frances E. Bradley, age 38; a son, William B. Bradley, age 2; a daughter, Emma L. Bradley, age 1; a son Gershom B. Bradley, age 8; and a servant, Bridget Upton, age 18.

Exhibit 11. **Hughes, Jeanette: U.S. Social Security Death Index, 1935-2014.**

This document reports that Jeannette Hughes was born on October 5, 1893 and died in October 1980.

Exhibit 12. **Hughes, Jeanette: Connecticut Death Index, 1949-2001.**

This document reports that Jeannette Hughes was born on October 5, 1893 and died a widow in Westport, CT, on March 8, 1980.m It identifies her spouse as Harry [Hughes}.

Exhibit 13. **Bradley, William Badger: Certificate of Death, Westport, CT, June 30, 1954.**

This document reports William Badger Bradley was born in Westport, CT, on August 24, 1867, and died in Westport, CT, on June 30, 1954. It identifies his father as Gershom Burr Bradley, his mother as Frances Stevens, and the informant as Jeannette Hughes. In addition, it reports that he resided on Indian Hill Road, Westport, CT.

Exhibit 14. **Bradley, Anna Hale: Certificate of Death, Westport, CT, January 30, 1944.**

This document reports Anna Hale Bradley was born in Westport, CT, on September 10, 1868, and died in Westport, CT, on June 30, 1954. It identifies her father as George Hale, her mother as Sarah Jane Mills, and the informant as William B. Bradley. In addition, it reports that she resided on Indian Hill Road, Westport, CT.

Exhibit 15. **Bradley, Gershom B.: Certificate of Death, Westport, CT, January 30, 1944.**

This document reports Gershom B. Bradley was born in Westport, CT, on October 18, 1871, and died in Westport, CT, on August 7, 1960. It identifies his father as Gershom B. [Burr] Bradley, his

mother as Frances Stevens, and the informant as Jeannette Hughes. In addition, it reports that he resided at 19 Indian Hill Road, Westport, CT.

Exhibit 16. **Bradley, Edmond P.: Certificate of Death, Westport, Connecticut, March 9, 1966.**

This document reports that Edmond P. Bradley was born in Westport, CT, on October 2, 1906, and died in Westport, CT, on March 9, 1966. It identifies his father as William B. Bradley, his mother as Anna Hale, and the informant as Julia Bradley. In addition, it reports that he resided at 47 Treadwell Avenue, Westport, CT.

Exhibit 17. **Bradley, Francis Burr: Certificate of Death, Westport, Connecticut, July 22, 1977.**

This document reports that Francis Burr Bradley was born in Westport, CT, on October 2, 1906, and died in Westport, CT, on July 22, 1977. It identifies his father as William B. Bradley, his mother as Anna Hale, and the informant as Nellie B. Bradley. In addition, it reports that he resided at 41 Treadwell Avenue, Westport, CT.

Exhibit 18. **Hughes, Jeanette Hale: Certificate of Death, Norwalk, Connecticut, March 8, 1980.**

This document reports that Jeanette Hale Hughes was born in Westport, CT, on October 5, 1893, and died in Westport, CT, on March 8, 1980. It identifies her father as William B. Bradley, her mother as Anna Hale, and the informant as Arthur Bradley. In addition, it reports that she resided at 19 Indian Hill Road, Westport, CT.

Exhibit 19. **Bradley, Edmond P.: Probate Court, Estate Filing, Westport, Connecticut.**

These documents identify the children of Edmond P. Bradley as Robert Hale Bradley and Arthur Sherman Bradley.

Exhibit 20. **Bradley, Francis B: Probate Court, Estate Filing, Westport, Connecticut.**

These documents report that Francis B. Bradley died without issue.

Exhibit 21. **Hughes, Jeanette B: Probate Court, Estate Filing, Westport, Connecticut.**

These documents report that Jeanette Hughes née Bradley died without issue.

Exhibit 22. **Bradley, William Stevens: Probate Court, Estate Filing, Westport, Connecticut.**

These documents report that William Stevens Bradley died without issue. It identifies his wife as Jessie Rosenau Bradley.

Exhibit 23. **Bradley, George G and Gershom B. Bradley: Probate Court, Estate Filing, Westport, Connecticut.**

These documents report that George G. Bradley died on April 27, 1963. It reports that a conservator was appointed for Gershom B. Bradley.

Exhibit 24. **Bradley, gershom: 1880 U.S. Federal census, Westport, Connecticut.**

This document reports that Gershom Bradley, age 60, is a famer residing in Westport, CT. Enumerated with him are his mother, Lorinda Bradley, age 84; his wife, Frances E. Bradley, age 48; a son, William B. Bradley, age 12; a daughter, Emma L. Bradley, age 10; and a son Gershom B. Bradley, age 8.

Exhibit 25. **Bradley, Arthur Sherman: United States Obituary Collection, The Hour, September 25, 2008.**

This document reports that Arthur Sherman Bradley died in Massachusetts on September 17, 2008. It identifies his wife as Gail Bradley and his children as Craig Bradley and Laura Lakey née Bradley.

Exhibit 26. **BLANK.**

Exhibit 27. **Bradley, Robert H: United States Obituary Collection, Westport News, September 18, 2004**

This document reports that Robert Bradley died in Westport, CT, on September 14, 2004, and that he died without issue.

Exhibit 28. **Bradley, Robert H: Certificate of Death, Westport, Connecticut, September 14, 2004.**

This document reports that Robert H. Bradley was born in Westport, CT, on February 2, 1947, and died in Westport, CT, on September 14, 2004. It identifies his father as Edmond P. Bradley, his mother as Julia Sherman, and the informant as Arthur S. Bradley. In addition, it reports that he resided at 47 Treadwell Avenue, Westport, CT. He was buried at Mt. Grove Cemetery, Bridgeport, CT

Exhibit 29. **Bradley, Robert H: Probate Court, Estate Filing, Westport, Connecticut.**

These documents report that Robert H. Bradley died intestate and that his brother Arthur S. Bradley was appointed administrator..

Exhibit 30. **Bradley, Arthur S: Certificate of Death, Falmouth, MA, September 17, 2008.**

This document reports that Arthur S. Bradley was born in Bridgeport, CT, on March 23, 1938, and died in Falmouth, MA, on September 17, 2008. It identifies his father as Edmond P. Bradley, his mother as Julia Sherman, and his wife as Gail Nash.

Exhibit 31. **Bradley, Emma Louise.: Certificate of Death, Westport, CT, April 13, 1953.**

This document reports Emma Louise Bradley was born in Westport, CT, on February 26, 1869, and died in Westport, CT, on April 13, 1953. It identifies her father as Gershom B. [Burr] Bradley, her mother as Frances Stevens, and the informant as Gershom B. Bradley (her brother). In addition, it reports that she resided on Indian Hill Road, Westport, CT.

Exhibit 32. **Bradley, Arthur S: Estate Filings from Probate and Family Court, Barnstable County, MA., CT, September 17, 2008.**

These documents report that Arthur S. Bradley died in Mashpee, MA, on September 17, 2008. They identify his wife as Gail Bradley and his children as Laura Braley Lakey and Craig Bradley.

5. **Conclusions:** Based upon information and belief, RCA concludes that the Gershom Burr Bradley and Frances Stevens are presumed deceased and that they had three children: (1) William B. Bradley, (2) Emma Louise Bradley and (3) Gershom B. Bradley.

Based upon information and belief, RCA concludes that Emma Louise Bradley was born on February 26, 1869, and died unmarried without issue in Westport, CT, on April 13, 1953.

Based upon information and belief, RCA concludes that Gershom B. Bradley was born in Westport, CT, on October 18, 1871, and died without issue in Westport, CT, on August 7, 1960.

William B. Bradley Follows:

Based upon information and belief, RCA concludes that William B. Bradley was born in Westport, CT, on August 24, 1867, and died a widower in Westport, CT, on June 30, 1954, and left issue; that he married Anna Hale; and that they had five (5) children: (1) George Gershom Bradley, (2) Edmond Platt Bradley, (3) Frances Burr Bradley, (4) William Stevens Bradley and (5) Jeanette Hale Bradley.

Based upon information and belief, RCA concludes that George Gershom Bradley was born on January 9, 1892, and died without issue in Westport, CT, on April 27, 1963.

Based upon information and belief, RCA concludes that Edmond Platt Bradley was born in Westport, CT, on October 2, 1906, and died in Norwalk, CT, on March 9, 1966; that he married Julia Sherman; and that they had two children: (1) Arthur Sherman Bradley and (2) Robert Hale Bradley.

Based upon information and belief, RCA concludes that Arthur Sherman Bradley was born in Connecticut on March 23, 1938; that he died in Nashpee, MA, on

September 17, 2008, and left issue; and that he had two children: (1) **Laura Bradley and (2) Craig Bradley.**

Based upon information and belief, RCA concludes that Robert Hale Bradley was born on February 2, 1947 and that he died unmarried and without issue in Westport, Ct, on September 14, 2004.

Based upon information and belief, RCA concludes that Frances Burr Bradley, was born in Westport, CT, on July 20, 1902, and died without issue in Westport, CT, on July 22, 1977.

Based upon information and belief, RCA concludes that William Stevens Bradley was born on April 24, 1895, in Westport, CT, and died without issue on March 13, 1961.

Based upon information and belief, RCA concludes that Jeanette Hale Bradley was born in Westport, CT, on October 5, 1893; that she married Harry B. Hughes; and that she died a widow without issue in Norwalk, CT, on March 8, 1980.

Based upon information and belief, RCA concludes that Gershom Burr Bradley and his wife, Frances Stevens are deceased; that their children: William B. Bradley, Emma Louise Bradley and Gershom Burr Bradley are deceased; that their grand children: George Gershom Bradley, Edmond Platt Bradley, Francis Burr Bradley, William S. Bradley and Jeanette Hale Hughes née Bradley are deceased; and that their great grandchildren: Arthur Sherman Bradley and Robert H. Bradley, are deceased; that their only great-great grandchildren are **Craig Bradley** and **Laura Lakey née Bradley;** and that Craig Bradley and Laura Lakey survive and are their nearest descendants.

Robert Cook Associates

By: Thomas F. Heffernan

Thomas F. Heffernan

Managing Principal

Subscribed and sworn to

Before me on August 15, 2014

Notary Public

VANESSA RUSSELL
Notary Public, State of New York
Qualified in Kings County
No. 01RU6188211
My Commission Expires 06-02-2016

Exhibit F

Standards of Title

(see attached)

13.2

STANDARD 13.2

* * * * *

WHEN THE PROBATING OF AN INTESTATE ESTATE MAY NOT BE REQUIRED TO ESTABLISH MARKETABILITY OF TITLE OF THE DECEDENT'S REAL PROPERTY WHICH HAS DEVOLVED TO THE DECEDENT'S HEIRS

The title of real property inherited by the heirs of an intestate decedent is not dependent on the probating of the decedent's estate since title to such real property passes automatically to the heirs upon the death of the decedent. The marketability of that title, however, is dependent on record evidence (1) of the identity of the heirs who have succeeded to the interest of the decedent in real property, and (2) a determination pursuant to these Standards of Title that the possibility of the heirs' title may be defeased and cut off by a sale of the property by the fiduciary pursuant to an order of the probate court has become too remote to affect the marketability of title of such property.

The title of real property of the decedent's heirs and their transferees is marketable under any of the following circumstances:

(a) The decedent's estate has been probated and the probate court having jurisdiction has accepted the administrator's final administration account and has issued a certificate of descent and distribution which has been recorded in the land records of the town in which the property is located; or

(b) The decedent has been dead for more than ten years and no estate has been opened, provided there has been recorded an affidavit made pursuant to § 47-12a which purports to identify all of the heirs of the decedent, stating the relationship of the persons so identified to the decedent, and there is no contrary record evidence regarding heirship; and provided further that the possibility that the heir's title may be defeased by a sale by the fiduciary has become sufficiently remote; or

(c) The decedent has been dead for at least ten years and, although an estate was opened with respect to the decedent, the estate has not been settled and no certificate of descent or distribution has been issued by the probate court, provided the decedent's heirs have been identified either by a finding and order of the probate court or by a recorded affidavit made pursuant to § 47-12a which purports to identify all of the heirs of the decedent and which states the relationship of the persons so identified to the decedent, and there is no contrary record evidence regarding heirship; and provided further that the possibility that the heir's title may be defeased by a sale by the fiduciary has become sufficiently remote; or

(d) The decedent has been dead for at least ten years and no certificate of descent or distribution has been issued by the probate court having jurisdiction and no affidavit of heirship made pursuant to § 47-12a has been recorded, but the property of the decedent was conveyed after the death of the decedent by one or more persons

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by deed or deeds which have been recorded for at least ten years in which deed or deeds it is recited that the grantors are all of the heirs of the decedent.

Comment 1. Since title to the real property of a decedent passes at the time of death to the decedent's heirs or devisees, the probating of an intestate estate is not for the purpose of transferring title to that real property, but it is for the purpose of establishing record evidence that the decedent's debts have been discharged, and that the property of the decedent, both real and personal has devolved and been distributed to those who are entitled to the same under the laws of intestate succession. A certificate of descent or distribution is the best evidence of these facts.

Section 45a-431 requires the court of probate to ascertain the heirs and distributees of each intestate estate. Section 45a-433 provides that after payment of expenses and charges an intestate estate shall be distributed by the administrator or other fiduciary charged with the administration of the estate, or in the discretion of the court by three disinterested persons appointed by the court to make the distribution. The same statute provides that distribution may also be in accordance with a written agreement of all persons interested in the estate or their representatives "made, executed and acknowledged like deeds of land."

Section 45a-450(a) provides that when the real property of a decedent descends to or has been distributed and set out to the heir or heirs or spouse of the decedent or has been legally divided by mutual distribution, the fiduciary of the estate shall, within one month after the acceptance by the court of the final administration account of such fiduciary, procure from the court a certificate signed by the judge, clerk or assistant clerk which sets forth the name and place of residence of each person to whom such real property or any portion thereof or interest therein to whom such property descends or to whom it has been distributed, set out or divided, with a particular description of the estate, which has descended to or has been distributed and set out to such persons.

Since under § 45a-453, the probate court may issue a certificate of distribution or devise only "after payment of expenses and charges," the certificate of distribution and devise is not only evidence of the identity of the heirs, but where the certificate was issued after the acceptance of the administration account, it is also satisfactory evidence that charges and expenses against the estate (including claims which were duly presented and allowed) have been paid. However, § 45a-450(b) permits the court of probate upon application of the fiduciary and after such notice and hearing the court may order to issue a certificate of distribution prior to the acceptance of the final administration account "if it finds that the issuing of such a certificate is in the best interests of the parties in interest." If a certificate of descent and distribution was issued by the court pursuant to this statute, and if the probate records do not reveal that there was thereafter an acceptance by the court of the fiduciary's final administration account, then

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marketability of title cannot be established under subparagraph (a) of the headnote of this Standard.

It is clear that to provide as much certainty as possible as to the identity of the decedent's heirs and of the satisfaction of claims against the estate which might result in an order of sale of the estate property, whenever possible or practical to do so there should be administration of the decedent's estate, and that upon completion of the administration of the estate, the decedent should obtain an appropriate certificate of descent or distribution from the probate court to be recorded in the appropriate land records.

Comment 2. It is recognized that often many years have passed since the death of an intestate decedent before it is necessary to establish marketability of title of the heirs. If the decedent has been dead for more than ten years at the time of determination of marketability and if the estate were never submitted to probate, there is no assurance that the probate court having jurisdiction would grant letters of administration. Section 45a-330 limits the time for granting administration to a period of ten years from the date of the decedent's death, except for cause shown. If letters of administration had been granted but the estate was not settled within ten years of the decedent's death, § 45a-331 authorizes the probate court to order or decree the estate to be closed for dormancy, and thereafter the estate may be reopened only on further order of the court.

Subparagraphs (b), (c) and (d) of this Standard permit marketability of title of the inherited property to be established where more than ten years have passed since the death of the decedent and the decedent's estate was never opened, or if opened, was not fully administered. In order to establish marketability of title under
any of such circumstances, the identity of the decedent's heirs must
be satisfactorily established of record, and it must further be established that the possibility of defeasance of the heirs' title by a sale by the fiduciary has become sufficiently remote that it may be disregarded.

The first objective is to establish of record the identity of the decedent's heirs who are now the owners of the decedent's real property. If the decedent has been dead for at least ten years, this Standard recognizes that an affidavit of heirship made pursuant to § 47-12a is acceptable evidence of the identity of the heirs. Affidavits made and recorded in accordance with this statute are, by virtue of the provisions of this statute, *prima facie* evidence of the facts recited therein pertaining to heirship. Such affidavits may be admitted in any court proceeding as *prima facie* evidence of facts stated relating to heirship so far as those facts affect title to real property in any action involving the title to that real property or any interest therein if the affiant is deceased or otherwise not available to testify. Section 47-12a.

There are many instances where probate proceedings were never commenced

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with regard to a decedent who died owning an interest in real property, or, if commenced, were never completed within ten years and it is no longer possible to obtain an adequate affidavit of heirship. Subparagraph (d) of the head note of this Standard provides that such property is, nevertheless, marketable if there is recorded evidence of identity of the decedent's heirs by recital in deeds of conveyance of the property which were recorded at least ten years prior to the determination of marketability.

Such recitals are, of course, self-serving and have no statutory or other legal probative value as such. Nevertheless, the passing of at least ten years from the recording of such deed or deeds without any recorded evidence of a claim of interest in the subject property by one or more persons who were not parties to the prior deeds may be accepted by the title searcher as sufficient evidence of the probity of the recitals of heirship in such deeds, absent any contrary claim or evidence appearing of record.

Comment 3. The second requirement to establish marketability of title under this Standard is to determine that the possibility of defeasance of the heir's title by a probate court ordered sale of the heirs' real property has become sufficiently remote that such possibility does not affect marketability of title of the inherited property. This subject is discussed in Standard 13.4 of this chapter.

Comment 4. Unless marketability of title of the property of an intestate decedent can be established in one of the ways set forth in this Standard, it is recommended that those claiming title to such real property establish that title and its marketability judicially by an action to quiet title.

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STANDARD 13.3

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WHEN THE COMPLETION OF ADMINISTRATION OF A TESTATE ESTATE MAY NOT BE REQUIRED TO ESTABLISH MARKETABILITY OF TITLE

While the title to real property of a testate decedent passes immediately upon the death of the decedent to devisees named or identified in the decedent's will, the identity of the devisees cannot be determined until the will has been duly admitted to probate. Once the will has been admitted to probate, the title of the devisees is confirmed.

As in the case of the title of heirs of an intestate decedent, the title of the devisees is subject to divestment by a sale by the fiduciary. Because of that possibility of defeasance, the title of the devisees is not marketable until either:

(a) The fiduciary's administration account has been accepted by the court of probate and a certificate of devise has been issued; or, in the alternative, that a certificate of devise pursuant to § 45a-450(b) has been issued by the court of probate prior to the acceptance of an administration account; or

(b) More than ten years have passed since the admission of the will to probate, even though the fiduciary's final administration account has not been presented or accepted by the court and no certificate of devise has been issued by the court.

Comment 1. While the devisee takes title by virtue of the decedent's will rather than by the probate certificate of devise, such title can never be proved unless the will has been duly admitted to probate by a probate court of competent jurisdiction. *Johnes v. Jackson,* 67 Conn. 81, 88-90 (1895); *Ferriday v. Grosvenor,* 86 Conn. 698, 707-709 (1913). An order of the court of probate proving or disapproving a will is binding on all persons who have received or waived notice of hearing, subject to appeal. Section 45a-286 requires that any court of probate shall, before approving or disapproving any will or codicil thereto, hold a hearing thereon, of which notice, either public or personal or both as the court may deem best, has been given to all parties known to be interested in the estate, unless all parties so interested sign and file in court a written waiver of such notice, or unless the court, for cause shown, dispenses with such notice. Once a will is admitted to probate, and absent appeal from the court's order admitting the will to probate, the devisee's title is confirmed.

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Therefore, the first requirement for marketable title of property inherited by the devisee is the will's admission to probate.

Comment 2. If the identity of the decedent's devisees is established by the decedent's will which has been presented to the court of probate having jurisdiction, and has been admitted to probate by that court, no further evidence of the identity of the devisees who take title to the decedent's real property is required. The identity of the devisees is established and the title of those devisees is confirmed as of the admission of the decedent's will to probate, subject, of course, to appeal. Since the will itself is the muniment of title of the devisees, a certificate of devise has a much more limited function than the certificate of descent or distribution, which evidences the judicial ascertainment of identity of the heirs of an intestate decedent. If, however, a devise is made to a class of devisees, the identity of the members of that class must be established and documented. This is best accomplished by a certificate of devise issued by the court of probate after a finding as to the identity of the members of the devisee class. If the membership of the class cannot be determined as of the date of the decendent's death, then a subsequent supplemental certificate of devise issued by the probate court upon application when the members of the class can be ascertained is the best evidence of the identity of members of the class. For example, if the will provides for a devise of Blackacre to children of the testator who are living at the time of the death of the testator's widow to whom is devised a life estate in Blackacre, the members of this class cannot be ascertained until the death of the widow.

If the will identifies devisees only as members of a class and if a certificate of devise has not been issued, or if issued, designates the devisees only as a class, a recorded affidavit made pursuant to § 47-12a which identifies all members of that class may also be relied upon. If the decedent's will provides for the lapse of a devise in the event the devisee predeceases the testator, the fact that such devise has or has not lapsed cannot be established from the will itself, but from extraneous evidence that is best incorporated in a certificate of devise, or in a statutory affidavit.

Comment 3. While the title of a devisee is confirmed by the probate court order admitting the decedent's will, this title is not absolute and indefeasible at that time because of the possibility that it may be cut off by a conveyance by the fiduciary authorized by the will or directed or authorized by an order of the probate court. Thus, the devisee's title is not marketable until that possibility of defeasance has become too remote to affect marketability of title.

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The authority of an executor to sell and convey real property in an estate must be found in the terms of the will or in an order of the probate court authorizing and directing the fiduciary to sell and convey real property of the estate. The statutory power of the court of probate to order the fiduciary to sell property in the estate of the decedent applies equally to testate and intestate estates, and for that reason, the possibility of defeasance of the title of both devisees and heirs by a sale pursuant to a court order is discussed in Standard 13.4.

Comment 4. As previously noted, the possibility that devised property may be sold by the fiduciary impairs the marketability of title of that property until the possibility of such sale and the defeasance of the devisee's title has become sufficiently remote. This Standard recommends that the possibility of defeasance of the devisee's title by a sale by the fiduciary be considered sufficiently remote that it does not impair marketability of the devisee's property if the final administration account or statement in lieu of account of the fiduciary filed pursuant to § 45a-176 has been accepted by the probate court . It is also the recommendation of this Standard that if it has been more than ten years since the decedent's will was admitted to probate, the possibility of defeasance of the devisee's title by a sale by the fiduciary be considered too remote to affect marketability of title, even though a final administration account was not filed by the fiduciary or accepted by the probate court, and no certificate of devise has been issued by the probate court.

Comment 5. The title searcher .may find that the executor has executed and recorded an executor's deed to the person or persons designated in the decedent's will as the devisee(s) of the real property described in that deed. The question then arises as to whether the title to that property may be deemed marketable prior to the acceptance of the executor's final administration account or statement in lieu of account.

In such case, it is likely that the executor's deed was intended to be in lieu of a probate certificate of devise. This transfer does not, however, insulate the property from proper claims of creditors where there are not other assets in the estate sufficient to pay those claims. Accordingly, the title of the grantee under such deed is not marketable until the possibility of defeasance of the grantee's title by a court ordered sale of the real property has become sufficiently remote under the provisions of this Standard, either by the acceptance by the court of probate of the executor's final administration account or statement in lieu of account or by the passage of ten years from the death of the decedent without completion of administration of the estate.

It may be noted that under § 45a-450(b) a court of probate is empowered, upon request of a fiduciary responsible for filing the final administration account and after such notice and hearing as the court may order, to issue a certificate of devise or a certificate of descent or distribution as to any real property of a decedent prior to the acceptance

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of a final administration account if it finds that issuing such certificate is "in the best interest of the parties in interest." Since the "parties in interest" would include creditors of the decedent and of the estate as well as the heirs and devisees, it is reasonable to assume that a court would not issue a certificate of devise or of descent or distribution with respect to real property unless the court had reached a determination that there were sufficient other assets in the estate to pay claims and expenses of administration. For that reason, this Standard provides that the issuance of an interim certificate of devise under § 45a-450(b) may also be relied upon to establish marketability of title of heirs or devisees.

Comment 6. If the will adequately identifies the devisees of real property who are designated as grantees in an executor's deed and the probate court records indicate that the executor's final administration account or statement in lieu of account has been filed and accepted by the court, it is not necessary that the probate court issue a certificate of devise and that the executor cause such certificate to be recorded to establish marketability of title of devised real property. The two requirements for marketability under this chapter, namely, the satisfactory identification of the persons to whom the decedent has devised the property and the ascertainment that the possibility of defeasance of title of the devisees has become sufficiently remote, are met.

That having been said, executors should, whenever possible, obtain and record certificates of devise. The law pertaining to executors requires no less. Section 45a-450(a) states:

Section 45a-450. Descent or distribution of real property to be recorded.

(a) When the real property of any deceased person, or any part thereof or interest therein, is devised or distributed or set out to the devisee or devisees, heir or heirs or spouse of such decedent, the fiduciary of the estate shall, within one month thereafter, or in case of descent to the heir or heirs or spouse of such decedent, within one month after the acceptance by the court of the final administration account of such fiduciary, procure from the judge, clerk or assistant clerk of the court of probate having jurisdiction of the settlement of the estate of such decedent, and cause to be recorded in the land records in each of the towns where such real property is situated, a certificate signed by such judge, clerk or assistant clerk. Such certificate shall contain the name and place of residence of each person to whom such real property, or any portion thereof or interest therein,

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is distributed set out or divided or descends, and a particular description of the estate, portion or interest distributed, set out or divided or descending to each person.

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STANDARD 13.4

* * * * *

WHEN THE POSSIBILITY OF DEFEASANCE OF THE TITLE OF HEIRS OR DEVISEES MAY BE CONSIDERED TOO REMOTE TO AFFECT MARKETABILITY OF TITLE

Although the title of real property of heirs and devisees exists from the moment of death of the decedent, that title may be defeased and cut off by a sale of the property by the executor pursuant to a testamentary power or by the executor or administrator pursuant to an order of sale by the court of probate which has jurisdiction over the decedent's estate.

The possibility of defeasance of the title of heirs or devisees by such fiduciary's sale may be considered too remote as to affect marketability of title under the following circumstances:

a. The decedent's estate has been settled, and the fiduciary's final administration account has been accepted by the court and a certificate of devise or a certificate of descent or distribution has been issued by the probate court; or

b. The decedent's estate has not been submitted to probate and no fiduciary has been appointed, provided at least ten years have passed since the death of the decedent; or

c. Although an estate was opened for the decedent (whether testate or intestate) and a fiduciary appointed, the fiduciary has not presented a final administration account, and the probate court has not issued a certificate of devise or of descent or distribution, provided that at least ten years have passed since the death of the decedent.

Comment 1. Since the title to all interests in real property owned by the decedent at the time of death vests in the heirs or devisees as of the time of death, at no time does the executor or administrator have title to such property. The fiduciary, however, may have authority to sell and convey such property and any such sale will defease the title of the heirs or devisees.

The authority of the fiduciary to sell and convey real property inherited by heirs or devisees may be conferred by an order of the probate court made pursuant to statute. Executors may also have authority to sell and convey such real property pursuant to the terms of the decedent's will.

Comment 2. A testamentary power granted to an executor to sell and convey or mortgage real property in the estate may be either general and unlimited or limited. In any case, the conveyance of estate property by the executor must be consistent with the

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power and authority expressed in the will. If it is not, the conveyance is voidable by the probate court upon application of a successor fiduciary or of any person having an interest in the estate.

If the power of the executor to sell and convey as set forth in the will is general and unlimited, the question may arise as to whether the executor's power to sell and convey extends to property in the estate that has been specifically devised. If the will has granted a general power of sale to the executor without limiting that authority with respect to specifically devised real property (as the testator would clearly have had the right to do), any such limitation of the fiduciary's authority, if there be any, must be found in statute law.

Subsection (b) of § 45a-428 is sometimes cited as imposing such a statutory limitation on the otherwise general and unlimited power of the fiduciary to sell as conferred by the will itself:

> Section 45a-428(b). Except as provided in this section, real property of the decedent whose estate is solvent and either specifically devised by will or forbidden by will to be sold or to be mortgaged shall not be so ordered to be sold or mortgaged without the written consent of the specific devisees or other parties interested as distributees of such real property....

It should be noted that the statute does not prohibit the executor from selling and conveying specifically devised property, but provides that if the estate is solvent and either specifically devised by will or forbidden by will to be sold or mortgaged, then such property "shall not be *so ordered* to be sold or mortgaged without the written consent of the specific devisees...." (emphasis added) The sale of property by the executor under a general and unlimited power set forth in the will does not require an order of the probate court unless the executor elects to apply for and obtain such an order. In that case, the statute would clearly apply and the written consent of the specific devisees to the sale should be obtained and filed with the probate court or recorded in the land records. If the executor elects to sell specifically devised property pursuant to an unlimited general power in the devisees. Title to specifically devised property conveyed by an executor under an unlimited testamentary power to convey and without an order of the court of probate authorizing such sale should be considered marketable, whether or not there has been written consent of the specific devisees.

Comment 3. The title of devisees or heirs to real property may also be cut off or extinguished by a sale of the subject property during the administration of the estate pursuant to an order of the probate court. Section 45a-162 provides that the probate court having jurisdiction of an insolvent debtor's estate "may at any time order the sale of... all or any property as it finds for the interest of the estate, in a manner and after notice which it judges reasonable." Section 45a-164 permits the executor or administrator of an estate to sell or mortgage any interest in real

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property in this state of the decedent, or of any real property, the legal title to which has been acquired by such executor or administrator, upon application of the fiduciary to the probate court, if the court finds that such sale would be "for the best interest of the parties in interest" to grant the application. The court, after notice and hearing as provided in this statute, may enter an order for the sale or mortgage of the property and such order shall be conclusive upon all persons then or thereafter existing "whose interests have been represented at the hearing."

Comment 4. The court of probate may also order a sale of the real property to satisfy debts, taxes and administration charges against the estate pursuant to § 45a-428(a).

> Section 45a-428(a) If the court of probate finds that the estate of a deceased person is insolvent and if the real property has been specifically devised or if the court finds that the estate of such person is solvent but there are no assets of the estate, other than real property specifically devised or forbidden by a will to be sold or mortgaged, from which debts, taxes and administration charges against the estate may be paid, the court shall order personal notice of the pendency of the application for a decree authorizing the sale or mortgage of such real property to be given to all devisees of such real property whose existence, names and residences can be ascertained by the court and shall order such notice as it deems advisable to be given to all such devisees whose existence, names and residences cannot be ascertained by the court.

Comment 5. If the title of the heirs or devisees has not been defeased and cut off by a sale of the fiduciary as of the time of examination of title, at what point may the possibility of future extinguishment of their title by a sale by the fiduciary be considered too remote to affect marketability of title? The only express statutory limitation on the time in which a probate court may order a sale of property is § 45a-327 which prohibits the probate court from ordering a sale more than ten years after the death of the decedent if there has been a prior sale by the heirs or devisees to a purchaser in good faith and for value. Even after ten years from the death, as long as title to the inherited property remains in the heirs or devisees, there is always a possibility that the probate court may order the property to be sold to satisfy lawful claims of creditors of the decedent or of the estate which are not otherwise time-barred. *Hewitt v. Sanborn,* 103 Conn. 352, 372-373 (1925). Even after a certificate of devise or distribution has been recorded and regardless of the number of years involved, unless laches by the creditor applies, a fiduciary sale by probate court order may occur to satisfy claims not otherwise barred. *Griswold v. Bigelow, 6* Conn. 258, 263 (1826); *Davis v. Weed,* 44 Conn. 569, 575 (1877).

For reasons that are set forth hereafter, this Standard recommends that the mere

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possibility of the defeasance of title of the heirs or devisees by sale and conveyance by the fiduciary be considered too remote to *affect* marketability of title under the following circumstances:

(a) the decedent's estate has been settled, the final administration account of the fiduciary has been approved and the probate court has issued a certificate of devise or descent or distribution with respect to the subject property; or

(b) the decedent has been dead for at least ten years and no will of the decedent has been admitted to probate and no letters of administration have been issued by the court; or

(c) the decedent has been dead for at least ten years and, although the will of the decedent was admitted to probate or letters of administration have been issued and an administrator of the estate appointed, yet the decedent's estate has not been settled and no certificate of devise or descent or distribution has been issued by the probate court.

It should be noted that this Standard addresses only the issue of remoteness of possibility that the title of heirs or devisees may be cut off by a future sale by a fiduciary. Even where such possibility may be deemed too remote to affect marketability of title under this Standard, the requirement of record evidence identifying heirs of an intestate decedent as discussed in Standard 13.2 must still be satisfied to establish marketability of title of inherited property.

Comment 6. The rationale for the "ten year rule" set forth in subparagraphs (b) and (c) of this Standard 13.4 is grounded in both statute and case law.

Section 45a-330 provides that, except as provided in § 45a-242 (replacement of fiduciary after removal, resignation, incapacity or death of the original fiduciary) administration of the estate of any persons shall not be granted nor shall the will of any person be admitted to probate after ten years from his decease, unless the court of probate upon written petition and after public notice and hearing finds that administration of such estate ought to be granted, or that such will should be admitted to probate. Section 45a-331 authorizes the court of probate to order and decree any estate to be closed for dormancy, it may thereafter be reopened only by future order of the court.

In any case, the possibility of the probate court ordering real property to be sold to satisfy claims more than ten years after the death of the decedent is remote by reason of § 45a-353 through § 45a-384, inclusive, pertaining to claims against estates of decedents dying on or after October 1, 1987, and by various statutes of limitation applicable to claims that might be made by such creditors.

The following are statutes which require claims to be presented to the fiduciary in

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a timely manner, and provide bars against claims not so presented:

Section 45a-354 requires the court of probate to cause newspaper notice to be published at least once notifying all persons having claims to present their claims to the fiduciary. Section 45a-356 provides that as to any claim not presented to the fiduciary within 150 days of the fiduciary's appointment, no fiduciary shall be chargeable for any assets that a fiduciary may have paid or distributed in good faith in satisfaction of lawful claim, expenses or taxes or to any beneficiary before such claim was presented.

Section 45a-357 provides that a fiduciary may also at any time give notice to any person which the fiduciary has reason to believe may have a claim against the estate that unless such claim is presented within ninety days from the date of such notice, the person will be "forever barred from asserting or recovering on any such claim from the fiduciary, the estate of the decedent or any creditor or beneficiary of the estate."

Section 45a-363 provides that where a fiduciary has rejected in whole or in part any claim of an alleged creditor of the estate, that person whose claim has been rejected is barred from recovering on such claim from the fiduciary, the estate of the decedent or any creditor or beneficiary of the estate unless suit is commenced within 120 days from the date of such rejection.

In addition to statutes which bar claims not timely presented after notice by the fiduciary to creditors, there are statutes of limitation which *affect* creditors' rights to recover claims by the sale of real property inherited by heirs and devisees. Subsection (c) of § 45a-375 provides that except as to claims against an estate accruing after the death of a decedent, no claim may be presented and no suit on such claim may be commenced against the fiduciary, the estate of the decedent or any creditor or beneficiary of such estate but within (1) two years from the date of the decedent's death or (2) the date upon which the statute of limitations applicable to such claim, including any period of limitation established pursuant to § 45a-357, would otherwise have expired, whichever shall occur first.

Subsection (d) of § 45a-375 pertains to any claim against the estate arising after the death of the decedent. This subsection provides that no claim may be presented and no suit on such claim may be commenced against the fiduciary, the estate of the decedent or any creditor or beneficiary of the estate but within (1) two years from the date the claim arose or (2) the date upon which the statute of limitations applicable to such claim, including any period of limitation established pursuant to § 45a-357 would otherwise have expired, whichever shall first occur.

Also to be considered in connection with the lack of probability of any claims being made against an estate is the rule that the creditor's claim against real estate of a decedent can be barred by laches on the creditor's part. *Wooster v.*

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Hunt Lyman Iron Co., 38 Conn. 256 (1871); *Griswald v. Bigelow,* 6, Conn. 258 (1826); *Hewitt v. Sanborn,* 103 Conn. 352, 372 (1925).

Comment 7. The basis of the recommendation under subparagraph (a) of the head note of this Standard is as follows: The power and authority of an executor to convey real property in a testate estate without a court order is strictly determined by the terms of the will itself. The duration of any such power, if not limited by the will, continues through the settlement of the estate, but logically terminates when the estate has been settled and a certificate of devise has been issued by the probate court setting out the decedent's interest in the real property to the devisees who are entitled to the same. For that reason, the title examiner may deem the possibility of divestment of a devisee's title to real property by an executor's discretionary sale under an unlimited testamentary power to be extinguished once a certificate of devise has been recorded setting the property out to the devisee.

Similarly, when an intestate estate has been settled and a certificate of descent or distribution has been issued setting out the real property in the decedent's estate to the heirs or distributees, the title examiner may deem the possibility of divestment of such title by a court ordered sale to be too remote to affect marketability.

The settlement of the estate and the issuance by the probate court of a certificate of devise or descent or distribution does not necessarily extinguish the possibility that the executor may be ordered by the probate court to sell any such real property in order to pay lawful claims against the estate. Since, however, it is highly unlikely as a matter of practice that a probate court would issue a certificate of devise or descent or distribution without ascertaining that all claims presented to and allowed by the fiduciary have been paid or that there are assets of the estate other than the real property which are sufficient to pay such claims, it is recommended that the issuance by the probate court of a certificate of devise or descent or distribution with regard to the subject property be considered as rendering the possibility of a subsequent sale by order of the probate court to satisfy claims against the estate too remote to affect marketability of the devisee's or heir's title.

Comment 8. The case *of Hewitt v. Sanborn,* 103 Conn. *352 (1925)* gives further support to the conclusion reached in this Standard that after ten years from the death of the decedent, the possibility that the title of the devisee may be extinguished by a sale of the devised property to satisfy claims against the estate is too remote to affect marketability of title. This case involved the title of a specific devisee of real estate after the will had been admitted to probate but before the probating of the estate had been completed. In ruling upon the devolution of title, the court stated:

> The title to the Sanborn farm vested in the devisee. The devise being a specific one and of the character it was, there went with it the right to the immediate possession of the property. The vesting of the plaintiff's title, together with the right of possession, was not in suspension during the settlement of the estate of the testator, nor

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delayed by the fact that the property might be wanted for the payment of debts, as it was not in fact. *Foote v. Brown,* 81 Conn. 218, *224, 225 (1908); Beckwith v. Cowles, 85* Conn. *567, 570* (1912). While in possession under the devise, Isabel Sanborn, and her heirs-at-law after her, had a right to sell the property, and could

give good title so far as the estate of John Beattie was concerned, subject only to the lien of creditors for his debts, *and after ten years from his death could give title free from this lien. Hewitt,* 103 Conn. at 373 (some citations omitted).

Comment 9. A cursory examination of Conn. Gen. Stat. § 45a-374 might lead a title examiner to conclude that even prior to the expiration of the ten-year time period set forth in this Standard, the title of a purchaser in good faith and for valuable consideration from an heir or devisee is protected. However, Conn. Gen. Stat. § 45a-374 only provides that the title of the purchaser in good faith and for valuable consideration from an heir or devisee is protected against the claims of any creditor and against any judgment obtained by such creditor under Conn. Gen. Stat. § 45-368 against the heir or devisee to whom the conveyed real property had been distributed, provided that at the time of such sale by the heir or devisee there was no recorded notice of the pendency of such claim against the heir or devisee. Section 45a-374 does not *affect* the right of the probate court to order the sale of the decedent's real property within the ten-year period following the death of the decedent, whether or not the property may have been previously conveyed by heirs or devisees. The only limitation on the probate court's authority to order a sale is the ten-year period after the death of the decedent as set forth in Conn. Gen. Stat. § 45a-327. Therefore, if there is not a completion of administration of the estate, an approved final account, and a certificate of devise or distribution issued and recorded, and if there has been less than ten years from the date of death, then Conn. Gen. Stat. § 45a-374 may not be relied upon to protect the title of a grantee of a conveyance made by an heir or devisee. For this reason, this Standard establishes the ten-year period referred to in subsection b and c of the Standard.

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Town of Westport
Planning and Zoning Commission
Town Hall, 110 Myrtle Avenue
Westport, CT 06880
Tel: 203-341-1030 Fax: 203-454-6145
www.westportct.gov

Hearing: September 12, 2019
Decision: September 19, 2019

September 20, 2019

Timothy Hollister, Esq.
Shipman & Goodwin, LLP
One Constitution Plaza
Hartford, CT 06103-1919

RE: Text Amendment #760/Application #18-079-R

Dear Attorney Hollister:

This is to certify that at a meeting of the Westport Planning and Zoning Commission held on Sept. 19, 2019, it was moved by Ms. Dobin and seconded by Ms. Walsh to adopt the following resolution.

RESOLUTION #18-079-R

WHEREAS, THE PLANNING AND ZONING COMMISSION met on September 19, 2019 and made the following findings:

Background

1. The applicant is Summit Saugatuck, LLC, affiliated with Summit Development and Grossman Industries, represented by Attorney Timothy Hollister of Shipman and Goodwin, LLC.
2. The applicant in November 2018 submitted a three-part application as part of single Affordable Housing Development proposal submitted pursuant to §8-30g of the Connecticut General Statutes, including:
    A. Text Amendment #760/Appl. #18-079; to create §19C, Saugatuck Village District or SV District;
    B. Map Amendment #761/Appl. #18-080; to rezone the applicant's properties (located as described in Finding #2 herein) to the SV District; and
    C. Coastal Site Plan Appl. #18-081; to develop the applicant's properties consistent with the SV District standards for a 187-unit multi-family rental development in five new buildings with associated site improvements and a mainline connection to the public sewer.

3. The Affordable Housing Development proposal was reviewed and testimony was received at five (5) public hearings held in 2019 including: Feb. 28, March 7, March 21, April 11, and April 25, 2019.
4. The Affordable Housing Development was denied by the Planning and Zoning Commission at the June 20, 2019 meeting. The reasons for denial of the three applications are listed in Res. #18-079, Res. #18-080, and Res. #18-081; documents contained in the record.
5. A legal notice of decision was published on June 28, 2019 in the WestportNews; the local newspaper.

Resubmission

6. Attorney Timothy Hollister on behalf of the applicant on 7/12/19 submitted a Modification to the 3-part Affordable Housing Development proposal within the appeal period following the 6/20/19 decision as permitted pursuant to CGS §8-30g(h).
7. The Modification was officially received on 7/18/19; the date of the next regularly scheduled meeting following the date of submission.
8. The 3-Part Affordable Housing Development proposal comprised of the Text Amendment, Map Amendment and Coastal Site Plan applications when resubmitted were assigned by P&Z Staff the original application numbers followed by the letter "R" for resubmission; therefore the pending applications are known as Text Amendment #760/#18-079-R, Map Amendment #761/#18-080-R, and Coastal Site Plan Appl. #18-081-R.
9. The Modification to the Text Amendment proposes a new zoning district, §19C, Saugatuck Village District or SV District. The application is identical to the original submission.
10. Attorney Hollister offered materials as part of the Modification in furtherance of arguing the law of CGS §8-30g, and to supplement the record with reasons why the Planning and Zoning Commission should have adopted the original proposal.
11. A public hearing was held and testimony was received on the Modification on September 12, 2019.
12. Attorney Hollister confirmed at the September 12, 2019 public hearing the Modification contained no changes to his Text Amendment proposal in comparison to what was denied on June 20, 2019.
13. Attorney Hollister additionally offered his opinion at the September 12, 2019 public hearing that he is under no obligation to change his proposal when seeking a Modification pursuant to CGS §8-30g(h).

14. Attorney Peter Gelderman of the Westport Town Attorney's Office offered his opinion in a memorandum dated September 12, 2019 and in testimony at the September 12, 2019 hearing that Attorney Hollister's arguments may be proper subjects for an appeal to Superior Court, but they do not appear to constitute 'Modifications' to the original proposal as defined in CGS §8-30g(h).
15. Attorney Gelderman in his September 12, 2019 memorandum stated:

    "The purpose of such resubmission is not to 'clarify', 'explain', or 'reach a consensus.' Rather it is to allow an applicant to modify the original proposal in a manner that seeks to respond to the reasons for denial. Materials that argue the law or supplement the record with reasons why the commission should have adopted the original proposal are not relevant and do not further the purpose of the resubmission. Only materials that explain the modification or distinguish the modified proposal from the original proposal are relevant. The purpose of the public hearing on the proposed modification is not to re-hash the arguments from the original application; rather the purpose is to receive information and comment with respect to the proposed modification(s)."

Reasons for Denial

16. The Commission finds no changes were made by the applicant to the Text Amendment to create §19C, Saugatuck Village District or SV District; since last revised by the applicant on 4/5/19 (See Tab 2 of Binder Titled *"Applicant's Fourth Supplemental Materials April 5, 2019."*
17. The Commission therefore reconfirms the same reasons for denial cited in Resolution #18-079 issued on June 20, 2019 for Text Amendment #760.

For the reasons stated above, which the Commission adopts as a collective basis for its action, the Commission adopts the following Resolution:

RESOLVED: Text Amendment #760: Appl. #18-079-R submitted by Summit Saugatuck LLC affiliated with Summit Development as represented by Attorney Timothy Hollister of Shipman & Goodwin, LLC for a new zoning district §19C, Saugatuck Village District, or SV District, with associated zoning standards, allowing multi-family dwelling units (rentals), no greater than 2-bedrooms in size, with 30% of the units deed restricted as affordable housing as defined in §8-30g of the Connecticut General Statutes, at a density of 22-units per acre, in buildings up to 62-feet and 5-stories in height (except when located above underground parking), with 100' of frontage on Hiawatha Lane or Hiawatha Lane Extension, where connection to public water and public sewer is available, on properties at least 6 acres, but less than 11 acres in size, inclusive of private rights-of-way, subject to Site Plan approval by the Planning and Zoning Commission. This Text Amendment application is proposed in combination with a Map Amendment application to rezone property to the SV District and it is proposed in combination with a Coastal Site Plan application to develop property utilizing the proposed SV District standards; all three applications are considered part of a single Affordable Housing Development proposal submitted pursuant to §8-30g of the Connecticut General Statutes is hereby **DENIED**.

VOTE:

AYES	-7-	{Lebowitz, Dobin, Stephens, Walsh, Rutstein, Cammeyer, Olefson}
NAYS	-0-	
ABSTENTIONS	-0-	

Very truly yours,

Paul Lebowitz / MY

Paul Lebowitz, Chairman
Planning & Zoning Commission

cc: First Selectman James Marpe
Town Attorney Ira Bloom
Attorney Peter Gelderman
Public Works Director Peter Ratkiewich
Fire Marshal Nate Gibbons
Police Chief Foti Koskinas
Conservation Director Alicia Mozian
Mr. Sharat Kalluri, Peer Reviewer
Chief Andrew Kingsbury, Peer Reviewer
RTM P&Z Committee Chairman

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Planning and Zoning Commission
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www.westportct.gov

Hearing: September 12, 2019
Decision: September 19, 2019

September 20, 2019

Timothy Hollister, Esq.
Shipman & Goodwin, LLP
One Constitution Plaza
Hartford, CT 06103-1919

RE: Map Amendment #761/Application #18-080-R

Dear Attorney Hollister:

This is to certify that at a meeting of the Westport Planning and Zoning Commission held on Sept. 19, 2019, it was moved by Ms. Walsh and seconded by Mr. Lebowitz to adopt the following resolution.

RESOLUTION #18-080-R

WHEREAS, THE PLANNING AND ZONING COMMISSION met on September 19, 2019 and made the following findings:

Background

1. The applicant is Summit Saugatuck, LLC, affiliated with Summit Development and Grossman Industries, represented by Attorney Timothy Hollister of Shipman and Goodwin, LLC.
2. The applicant in November 2018 submitted a three-part application as part of single Affordable Housing Development proposal submitted pursuant to §8-30g of the Connecticut General Statutes, including:
    A. Text Amendment #760/Appl. #18-079; to create §19C, Saugatuck Village District or SV District;
    B. Map Amendment #761/Appl. #18-080; to rezone the applicant's properties (located as described in Finding #2 herein) to the SV District; and
    C. Coastal Site Plan Appl. #18-081; to develop the applicant's properties consistent with the SV District standards for a 187-unit multi-family rental development in five new buildings with associated site improvements and a mainline connection to the public sewer.

3. The Affordable Housing Development proposal was reviewed and testimony was received at five (5) public hearings held in 2019 including: Feb. 28, March 7, March 21, April 11, and April 25, 2019.
4. The Affordable Housing Development was denied by the Planning and Zoning Commission at the June 20, 2019 meeting. The reasons for denial of the three applications are listed in Res. #18-079, Res. #18-080, and Res. #18-081; documents contained in the record.
5. A legal notice of decision was published on June 28, 2019 in the WestportNews; the local newspaper.

Resubmission

6. Attorney Timothy Hollister on behalf of the applicant on 7/12/19 submitted a Modification to the 3-part Affordable Housing Development proposal within the appeal period following the 6/20/19 decision as permitted pursuant to CGS §8-30g(h).
7. The Modification was officially received on 7/18/19; the date of the next regularly scheduled meeting following the date of submission.
8. The 3-Part Affordable Housing Development proposal comprised of the Text Amendment, Map Amendment and Coastal Site Plan applications when resubmitted were assigned by P&Z Staff the original application numbers followed by the letter "R" for resubmission; therefore the pending applications are known as Text Amendment #760/#18-079-R, Map Amendment #761/#18-080-R, and Coastal Site Plan Appl. #18-081-R.
9. The modification to the Map Amendment proposes to rezone $8.8^{+/-}$ acres of property from §14, Residence B District to proposed §19C, Saugatuck Village District or SV District. The application is identical to the original submission.
10. Attorney Hollister offered materials as part of the Modification in furtherance of arguing the law of CGS §8-30g, and to supplement the record with reasons why the Planning and Zoning Commission should have adopted the original proposal.
11. A public hearing was held and testimony was received on the Modification on September 12, 2019.
12. Attorney Hollister confirmed at the September 12, 2019 public hearing the Modification contained no changes to his Map Amendment proposal in comparison to what was denied on June 20, 2019.
13. Attorney Hollister additionally offered his opinion at the September 12, 2019 public hearing that he is under no obligation to change his proposal when seeking a Modification pursuant to CGS §8-30g(h).

14. Attorney Peter Gelderman of the Westport Town Attorney's Office offered his opinion in a memorandum dated September 12, 2019 and in testimony at the September 12, 2019 hearing that Attorney Hollister's arguments may be proper subjects for an appeal to Superior Court, but they do not appear to constitute 'Modifications' to the original proposal as defined in CGS §8-30g(h).
15. Attorney Gelderman in his September 12, 2019 memorandum stated:

    "The purpose of such resubmission is not to 'clarify', 'explain', or 'reach a consensus.' Rather it is to allow an applicant to modify the original proposal in a manner that seeks to respond to the reasons for denial. Materials that argue the law or supplement the record with reasons why the commission should have adopted the original proposal are not relevant and do not further the purpose of the resubmission. Only materials that explain the modification or distinguish the modified proposal from the original proposal are relevant. The purpose of the public hearing on the proposed modification is not to re-hash the arguments from the original application; rather the purpose is to receive information and comment with respect to the proposed modification(s)."

Reasons for Denial

16. The Commission denied Text Amendment #760/#18-079-R at the September 19, 2019 meeting citing the Modification contained no changes to the original proposal and reconfirmed the same reasons for denial cited in Resolution #18-079 for Text Amendment #760 issued on June 20, 2019. The Modification to the Map Amendment application must be denied as the Text Amendment was not adopted.
17. The Commission finds no changes were made by the applicant to Map Amendment #761/#18-079-R to rezone 8.8$^{+/-}$ acres of property from §14, Residence B District to proposed §19C, Saugatuck Village District or SV District Text.
18. The Commission therefore reconfirms the same reasons for denial cited in Resolution #18-080 issued on June 20, 2019 for Map Amendment #761.

For the reasons stated above, which the Commission adopts as a collective basis for its action, the Commission adopts the following Resolution:

RESOLVED: Map Amendment #761 Appl. # 18-080R submitted by Summit Saugatuck LLC affiliated with Summit Development as represented by Attorney Timothy Hollister of Shipman & Goodwin, LLC for property owned by Saugatuck Summit LLC, Anne M. Mantia, Estate of Crystal Christensen, Hannelore Walsh, Frank P Bottone and David H Ogilvy, to rezone property from §14, Residence B to §19C, Saugatuck Village District, or SV District, a proposed zoning district. This Map Amendment application is proposed in combination with a Text Amendment application to create §19C, Saugatuck Village District or SV District, and it is proposed in combination with a Coastal Site Plan application to develop the properties utilizing the SV District standards; all three applications are considered part of a single Affordable Housing Development proposal submitted pursuant to §8-30g of the Connecticut General Statutes. A copy of the

proposed map amendment is on file in the Westport Town Clerk's Office and is on file in the Westport Planning and Zoning Office. The property affected by this proposed Map Amendment is described as follows: 8.8 acres, comprised of 28, 36, 38, 39, 41, 42, 43, 44, 45, and 47 Hiawatha Lane and Hiawatha Lane Extension; Parcel A05/Lot 4; Parcel A05, Lot 5; the road bed of Hiawatha Lane Extension on the south side of Lots 38-42-44; and a portion of the road bed of Hiawatha Lane abutting the eastern boundary of Lot 38. A metes and bounds description and a map illustration of these parcels are contained in Summit Saugatuck's November 16, 2018 application, Tabs 12 and 16, on file with the Westport Planning and Zoning Office. This application is hereby **DENIED.**

VOTE:

AYES	-7-	{Lebowitz, Dobin, Stephens, Walsh, Rutstein, Cammeyer, Olefson}
NAYS	-0-	
ABSTENTIONS	-0-	

Very truly yours,

Paul Lebowitz /MJ

Paul Lebowitz, Chairman
Planning & Zoning Commission

cc: First Selectman James Marpe
Town Attorney Ira Bloom
Attorney Peter Gelderman
Public Works Director Peter Ratkiewich
Fire Marshal Nate Gibbons
Police Chief Foti Koskinas
Conservation Director Alicia Mozian
Mr. Sharat Kalluri, Peer Reviewer
Chief Andrew Kingsbury, Peer Reviewer
RTM P&Z Committee Chairman

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Hearing: September 12, 2019
Decision: September 19, 2019

September 20, 2019

Timothy Hollister, Esq.
Shipman & Goodwin, LLP
One Constitution Plaza
Hartford, CT 06103-1919

RE: Coastal Site Plan Application #18-081-R, 28-47 Hiawatha Lane

Dear Attorney Hollister:

This is to certify that at a meeting of the Westport Planning and Zoning Commission held on Sept. 19, 2019, it was moved by Mr. Rutstein and seconded by Mr. Cammeyer to adopt the following resolution.

RESOLUTION #18-081-R

WHEREAS, THE PLANNING AND ZONING COMMISSION met on September 19, 2019 and made the following findings:

FINDINGS

Background/Property Description

1. The applicant is Summit Saugatuck, LLC, affiliated with Summit Development and Grossman Industries, represented by Attorney Timothy Hollister of Shipman and Goodwin, LLC.
2. The applicant's property consists of 28, 36, 38, 39, 41, 42, 43, 44, 45, 47 Hiawatha Lane, Parcels A0/Lot 4, and A05/Lot 5 Hiawatha Lane, and the privately owned portion of Hiawatha Lane/Hiawatha Lane Ext. The area equals 8.8+/- acres combined and is located in the Residence B Zoning District where minimum lot size is 6,000 SF.
3. The properties with street addresses contain ten (10) single-family homes; the two aforementioned parcels are vacant.

4. The 8.8+/- acre project area is not contiguous. It is comprised of two parcels. The north and south project area (referred to herein as north and south parcels) are separated by land owned by ConnDOT, formerly used as a staging area for the I-95 tollbooths. The north parcel is approximately 0.75 acres in size (comprised of 28 and 36 Hiawatha Lane); the remainder of the property is in the south parcel, of which 3.17 acres will be encumbered with a Conservation Easement, leaving 5.63 acres of developable land.

History

5. The applicant in November 2018 submitted a three-part application as part of single Affordable Housing Development proposal submitted pursuant to §8-30g of the Connecticut General Statutes, including:

   A. Text Amendment #760/Appl. #18-079; to create §19C, Saugatuck Village District or SV District;

   B. Map Amendment #761/Appl. #18-080; to rezone the applicant's properties (described in Finding #2 herein) to the SV District; and

   C. Coastal Site Plan Appl. #18-081; to develop the applicant's properties consistent with the SV District standards for a 187-unit multi-family rental development in five new buildings with associated site improvements and a mainline connection to the public sewer.

6. The Affordable Housing Development proposal was reviewed and testimony was received at five (5) public hearings held in 2019 including: Feb. 28, March 7, March 21, April 11, and April 25, 2019.

7. The Affordable Housing Development was denied by the Planning and Zoning Commission at the June 20, 2019 meeting. The reasons for denial of the three applications are listed in Res. #18-079, Res. #18-080, and Res. #18-081; documents contained in the record.

8. A legal notice of decision was published on June 28, 2019 in the WestportNews; the local newspaper.

Resubmission

9. Attorney Timothy Hollister on behalf of the applicant on 7/12/19 submitted a Modification to the 3-part Affordable Housing Development proposal within the appeal period following the 6/20/19 decision as permitted pursuant to CGS §8-30g(h).

10. The Modification was officially received on 7/18/19; the date of the next regularly scheduled meeting following the date of submission.

11. The 3-Part Affordable Housing Development proposal comprised of the Text Amendment, Map Amendment and Coastal Site Plan applications when resubmitted were assigned by P&Z Staff the original application numbers followed by the letter "R" for resubmission; therefore the pending applications are known as Text Amendment #760/#18-079-R, Map Amendment #761#18-080-R, and Coastal Site Plan Appl. #18-081-R.

12. The Modification to the Coastal Site Plan Application proposes to construct a multi-family housing project pursuant to Connecticut General Statute (CGS) §8-30g(h) containing 187 dwelling units (rentals) of which 30% or 57 units are proposed to be deed restricted for 40-years as Affordable Housing, located in five (5) new buildings with associated site improvements, including a mainline extension of the Westport municipal sewer. The application is identical to the original submission.

13. A public hearing was held on the Modification on Sept. 12, 2019.

14. Attorney Hollister at the Sept. 12, 2019 public hearing offered his opinion he is under no obligation to change his proposal when seeking a Modification pursuant to CGS §8-30g(h).

15. Attorney Hollister confirmed at the Sept. 12, 2019 public hearing the Modification contains no <u>on-site</u> changes to the Site Plan proposal in comparison to what was denied on June 20, 2019.

16. Attorney Hollister offered potential Modifications including further refinements to conceptual <u>off-site</u> improvements to:

    A. Address pedestrian access concerns expressed in the June 20, 2019 resolution of denial;

    B. Address emergency access concerns expressed in the June 20, 2019 resolution of denial; and

    C. Address water supply concerns by upgrading the existing water main on Ferry Lane West and Hiawatha La. to sufficiently support the water demands of the 187 residential units based upon an agreement with Aquarion Water Company (AWC) documented in a letter from AWC dated Aug. 28, 2019.

17. Attorney Hollister stated in a memorandum *(see Tab 1 of the July 11, 2019 submission):*

    "The purposes of a § 8-30g resubmission are to allow the applicant to respond to the Commission's denial resolutions with plan changes, clarifications, corrections, or additional explanations, and to try to reach consensus, by converting denial reasons to approval or approval with conditions. If consensus is not achievable, then the resubmission process is aimed at narrowing the issues that will need to be addressed on appeal."

18. Attorney Hollister in a memorandum found in Tab 5 of the July 11, 2019 submission stated the Fire Safety concerns expressed in the June 20, 2019 resolution of denial were based upon opinions from Westport Fire experts and were neither "factually or legally dispositive." In the same memorandum Attorney Hollister suggests inadequate evidence was offered by the Fire experts to meet the §8-30g review standards.

19. Attorney Hollister in the same memorandum found in Tab 5 addressed Pedestrian Safety concerns expressed in the June 20, 2019 resolution of denial that cited the inadequacies of the applicant's recommended off-site improvements by others to Davenport Lane or Hiawatha Lane to demarcate a sidewalk.

20. Attorney Hollister in the same memorandum found in Tab 5 re-stated his opinion that an at-grade striped walkway within the existing road right-of-way with pedestrians walking next to moving vehicles is "acceptable," as is conditioning an approval requiring the Town Traffic Authority to institute parking restrictions along either side of either street to accommodate the suggested walkway to compensate for the existing narrow roadway widths.

21. Alternatively, Attorney Hollister in Tab 6 of the July 11, 2019 submission re-stated his offer to accept as a condition of approval a mandate to provide a shuttle from the proposed development to the Westport Train Station for 5-years that will provide transportation during morning and evening peak hours to project residents for a fee.

22. Attorney Peter Gelderman of the Westport Town Attorney's Office offered his opinion in a memorandum dated Sept. 12, 2019 and in testimony at the Sept. 12, 2019 hearing that Attorney Hollister's arguments do not appear to constitute "Modifications" to the original proposal as defined in CGS §8-30g(h).

23. Attorney Gelderman in his Sept. 12, 2019 memorandum stated:

> *"The purpose of such resubmission is not to 'clarify', 'explain', or 'reach a consensus.' Rather it is to allow an applicant to modify the original proposal in a manner that seeks to respond to the reasons for denial. Materials that argue the law or supplement the record with reasons why the commission should have adopted the original proposal are not relevant and do not further the purpose of the resubmission. Only materials that explain the modification or distinguish the modified proposal from the original proposal are relevant. The purpose of the public hearing on the proposed modification is not to re-hash the arguments from the original application; rather the purpose is to receive information and comment with respect to the proposed modification(s)."*

24. Attorney Gelderman in his Sept. 12, 2019 memorandum also stated:

> *"In fact, other than the proposed 'solutions' to pedestrian access found in Tab 6 of the applicant's July 11, 2019 submission or Tab 5 of the August 29, 2019 supplemental submission and the fact that the applicant has stated that it will pursue the necessary approvals from the City of Norwalk to improve the pathway between the project and Avalon, this office is unable to discern any proposed modifications or changes to the original proposal. In fact, both of these 'solutions' were discussed to some degree during the original public hearing process. Every other submission appears to be either an argument as to why the original application should have been approved or information that attempts to refute findings by the Commission in its resolutions of denial. These arguments may be proper subjects for an appeal to the Superior Court, but they do not appear to constitute 'modifications' to the original proposal."*

Supplemental Information for the Record

25. Additional evidence was offered into the record by Westport Town Officials and consultants hired by the Town in response to the applicant's that claims inadequate information was previously submitted to support the Fire Safety and Pedestrian Safety concerns listed in the June 20, 2019 resolution of denial.

Fire Safety

26. Former Westport Fire Department Chief Andrew Kingsbury was hired by the Town of Westport as a peer reviewer and evaluated the applicant's original proposal. He is currently the Fire Chief for the Nichols, CT Fire District, is an adjunct Instructor at the Connecticut Fire Academy, and is currently the Chairman of the Fairfield County Hazardous Incident Response Team. His credentials are included in the record. He is an expert in the techniques and requirements of firefighting.

27. Chief Kingsbury submitted two peer review reports dated Aug. 27, and Sept. 9, 2019, and he offered testimony at the Sept. 12, 2019 public hearing.

28. Chief Kingsbury in his Aug, 27, 2019 report stated:

> *"The peer review reports are based on experience, best practices and conditions that are site specific. Having nearly forty years of experience in the fire service and thirty years working in the Westport community, recommendations included in the reports are based on applying education, local experience and nationally recommended practices, they are not simple opinions."*

29. Chief Kingsbury in his Aug 27, 2019 report also stated:

> *"Comments regarding emergency vehicle access being blocked by falling trees or power lines is based on experience. Westport frequently experiences coastal storms, extratropical cyclones and other severe weather events. It would not be unusual for dozens of streets to be blocked after such events, the Saugatuck area of town has often been cut off from the rest of Westport during these storms. Additionally, the concern of man-made emergencies blocking access are real. Disabled vehicles, transportation accidents, hazardous materials incident, and natural or liquid propane gas releases in the vicinity can and do happen."*

30. Westport's Fire Marshal Nate Gibbons in a report dated Sept. 10, 2019 provided statistics that quantify concerns expressed by Chief Kingsbury in his Aug. 27, 2019 report. The Fire Marshal wrote that from January 2015 through August 2019 the Fire Department responded to 795 calls involving trees and/or wires across the roadways or into buildings. He also reported that for the years 2010-2019 there were 12 calls for wires down on Hiawatha Lane, Davenport Avenue and Indian Hill Road-the vicinity of the proposed development. The Fire Marshal concluded that this factual record shows that there is a specific quantifiable probability of blocked access that is much more than a theoretical possibility.

31. Chief Kingsbury in his Aug. 27, 2019 report offered the following in response to the applicant inquiring why would a fire at a new fully-sprinklered building "overtax" current fire-fighting capabilities and why would the proposed conditions be any different than a fire at one of the existing building in the neighborhood?:

> *"A fire in a residential building of the size and density proposed would likely require all of Westport's on-duty personnel, as well as its mutual-aid partners, including Norwalk, to respond. A full fire suppression sprinkler and standpipe systems, along with adequate access significantly help reduce risk. However, response to even a moderate smoke condition in one of the buildings requiring occupant evacuation would overtax Westport's on-duty personnel, the fire department would simply run out of people to simultaneously fight a fire and evacuate civilians.*
>
> *In 2017, the Matrix Consulting Group conducted an Assessment & Strategic Study of the Westport Fire Department. As part of the study, Matrix identified four risk categories by property occupancy, height, square footage, etc. The applicant's residential apartment complex as proposed would likely fall into the Special Risk category. This risk category and accompanying response tables, as shown on pages 21 and 22 of the study, requires many more personnel than are available to immediately respond in Westport. The risk assessment of this proposed apartment complex is different than the existing structures in the neighborhood, thus requiring a different fire department response."*

32. The Fire Marshal submitted reports dated Sept. 10, Sept. 11, and Sept. 12, 2019, and he offered testimony at the Sept. 12, 2019 public hearing.

33. The Fire Marshal in his Sept. 10, 2019 report clarified why two means of egress are needed in his professional opinion as the Authority Having Jurisdiction (AHJ):

> *"The second access road has been required through CSFSC 18.2.3.3 in order to address this increased risk.*
>
> *NFPA 1411 (2017 ed.), Standard for Fire Protection Infrastructure for Land Development in Wildland, Rural and Suburban Areas, provides the factual basis for this requirement.*
>
> *Table 5.1.4.1(a) Required Number of Access Routes for Residential Areas states that "0 - 100 households require 1 access route; 101-600 households require 2 access routes; >600 households requires 3 access routes…*

34. The Fire Marshal in his Sept. 10, 2019 report offered additional evidence as to the need for two means of access to the proposed development including:

    A. An article questioning the safety of exclusively relying on sprinklered buildings (see Article, "Common Mistakes that Cause Fire Sprinkler failure,") and

    B. A video documenting the reality of traversing on the existing obstacle-filled, narrow roadway network leading to the site (this video was additionally displayed at the Sept. 12, 2019 hearing and is contained in the Modification record).

    In his Sept. 10, 2019 report the Fire Marshal introduced the aforementioned evidence:

> *"This office has recorded on video driving the two approaches to the Hiawatha project: via Ferry Lane West and Hiawatha Lane, and via Ferry Lane West and Davenport Avenue. The street and traffic conditions are from a weekday morning between 11:00 and noon. They provide a more complete picture of neighborhood roads than the Applicant's two Google Earth images.*
>
> *Fire Sprinkler systems are effective at saving lives and property, which is why Connecticut law mandates their use in apartment buildings. This office is supplying the commission with an article on the common causes of sprinkler system failures and the critical role human error plays in these instances."*

35. The Fire Marshal in his Sept. 11, 2019 report also offered the following in support of the need for two means of egress to the proposed development:

> *"Under Tab 11 [from the Applicant's Aug. 29, 2019 submission], the Applicant has illustrated several Westport residential developments that utilize a single access road.*

This office has reviewed the developments under NFPA 1411 (2017) and developed the accompanying table.

In order to provide the Commission with a complete picture of existing Westport multi-family developments, this office included several complexes that the Applicant did not list under their Tab 11 information. The added properties are shaded in green.

Name	Total Households	Access Road(s) Provided	NFPA 1411 Access Roads Required	Street Water Main Size
Indian River Green	20	1	1	8"
Lansdowne Condos	50	2	1	16"
Sasco Creek Village	54	1	1	16"
Whitney Glen Condos	50	2	1	8"
Harvest Commons Condos	50	2	1	8"
Regent's Park Condos	50	2	1	8"
1177 PRE Apartments	80	2	1	16"
1141 PRE Managed Care	96	2	1	16"

As the Applicant included the recent Fairfield "Garden Homes" Appellate decision in their supplement; that household count, access road count and water main size is included for comparison.

Nam e	Total Households	Access Road(s) Provided	NFPA 1411 Access Roads Required	Street Water Main Size
Garden Homes, Fairfield	91	1	1	unknown
Summit Saugatuck Proposal	187	1	2	8" (12" proposed)

Large residential developments in Westport have almost always (75%) included a second means of fire department access since the first condominiums were built in 1981. In Recent projects (1170, 1141 PRE), the developers voluntarily included additional access as a safety benefit to their tenants.

It is notable that the Summit Saugatuck proposal is more than double the size of the largest prior Westport development (and 9 times the size of the smallest development they cite in their supplement).

A fully code-compliant second access road is a prudent necessity and supported by the Fire Code."

36. Chief Kingsbury in his Sept. 9, 2019 report also distinguished the Summit Saugatuck proposal from existing Westport multi-family developments. The following table was included in his report [see Figure 3] comparing the length of access roads from the existing and proposed developments:

Project Name	Year Built	Square Feet of Largest Building	Units in Building	Access Road in Feet
Indian River Green	1988	3700	2	420
Landsdowne Condominiums	1982-1986	9500	5	1,500
Sasco Creek/Hidden Pond	2000-2015	13,589	4	115
Whitney Glen Condominiums	1982-1986	11,000	10	550
Summit Saugatuck	New Const	79,784	68	2,100

Sources: Westport GIS/Vision Online Solutions/Monroe Partnership

The Commission finds the 2,100-foot distance to access the Summit Saugatuck development is distinct, as it requires access over Local Roads. The 2,100-foot distance was measured from Route 136/Saugatuck Avenue (an Arterial Road), to Ferry Lane West (a Local Road), to Hiawatha Lane (a Local Road) to the site.

Pedestrian Safety

37. Sharat Kalluri, Project Manager with CDM Smith Inc., was hired by the Town of Westport to perform a Traffic Access and Impact Peer review of the applicant's original proposal as well as review the applicant's Modification. Mr. Kalluri is a certified licensed Traffic Engineer with extensive experience working in Westport.

38. Mr. Kalluri submitted three reports dated Aug. 23, Sept. 5, and Sept. 12, 2019 in response to the applicant's July 11, Aug. 29, and Sept. 11, 2019 Modification submissions, and he offered testimony at the Sept. 12, 2019 public hearing.

39. Mr. Kalluri in his final report dated Sept. 12, 2019 concluded:

> *"We still have the following outstanding comments and concerns:*
>
> - *It appears that travel width in the non-painted portion of the roadway on Hiawatha Lane Extension and Indian Hill Road would be about 16 to 18 feet wide. This width is not adequate for two-way travel on these roadways.*
> - *We'd like to get a clarification on the use of 'painted walkway.' How is this defined? Is the roadway painted to delineate the walkway portion for pedestrians vs. the traveled portion for automobiles? If it's painted, who will be responsible for the maintenance of the painted portion of the walkway?*
> - *The walkway is still at-grade at many locations and this poses a concern for pedestrian travel."*

40. Amrik Matharu, Engineer with the Town of Westport Public Works Department, submitted comments on pedestrian safety concerns dated Sept. 6, 2019 and Sept. 12, 2019. In his Sept. 12, 2019 comments Mr. Matharu offered the following comments in response to the Tab 1, Pedestrian Access, contained in the applicant's Sept. 11, 2019 submission:

> *"The applicant proposes in Item 2. Pedestrian Safety,* [see Item #2, Tab 1 pg. 2] *that a painted walk will be an improvement. We disagree for the following two reasons:*
>
> *First, such a painted walk would reduce the travel portion of the road available for vehicles. As stated in my previous review, paved roadway widths vary (approximately) from 20' to 23' wide, resulting in lane widths of 10-11.5'. Adding a 4' paved walking lane would reduce these travel lanes potentially to 8' and 9.5'. These lanes would be less than the standard 10' width, much less than the 26' wide standard road width I referred to in my previous review.*
>
> *Second, such a painted walk would invite pedestrians into this walkway with a false sense of security. A lack of pedestrian striping or other facilities is an indication that it is not advisable to traverse this neighborhood on foot.*
>
> *Asphalt or concrete curbing and sidewalks would be the most prudent way to safely improve pedestrian access in the neighborhood. This would be a project a significantly larger scope as stated in my previous memo.*
>
> *The applicant states that ADA compliance does not extend to public sidewalks.*
>
> *Title II of the Americans with Disabilities Act extends the accessibility requirements to state and local agencies. More specifically and at a minimum, curb ramps will be required."*

Affordable Housing

41. As described in the *Summary of Affordable Housing in Westport* memorandum prepared by M. Perillie revised 7/29/19, submitted as background information by Planning and Zoning Staff into the Modification record (with an earlier version included in the original record), Westport has 350 units designated as Affordable Housing pursuant to CGS §8-30g as they received certificates of Occupancy after 1990. There are additional below-market rate housing units in Westport that meet the Affordable Housing income limits, but cannot be categorized as Affordable Housing as they were built prior to 1990.

42. Westport is committed to creating affordable housing and carefully evaluates any application that includes opportunities for more affordable housing in recognition there is both a local and regional need for more affordable housing.

43. Westport has created multiple zoning regulations to inspire more development of affordable housing, *see "Westport's Affordable Housing Regulations and Project Memorandum," prepared by M. Perillie, revised 7/19/19 contained in the aforementioned Summary of Affordable Housing in Westport.*

44. The State of Connecticut Department of Housing recognized Westport's continued efforts to create affordable housing when granting a Certificate of Affordable Housing Completion to Westport on March 5, 2019.

45. The granting of this Certificate has not quashed the Town's efforts to create more affordable housing.

46. As recently as August 2019, subsequent to the State's grating of the Certificate of Affordable Housing Completion, the Planning and Zoning Commission worked cooperatively with a local developer and his attorney Christopher J. Smith to enact additional zoning regulations to create another affordable housing opportunity. Text Amendment #772 was adopted on 7/25/19 and became effective on 8/6/19 which enabled a 32-unit multi-family development to be approved effective 8/8/19, inclusive of 7 units of Affordable Housing as defined in §8-30g or 22%, located at 1480 Post Road East.

47. The Commission disagrees with Attorney Hollister's claims the Commission did not properly balance the need for affordable housing against substantial public health or safety concerns or provide adequate explanation when denying the Affordable Housing proposal on June 20, 2019 (see Tab 5, pg. 7 of applicant's July 11, 2019 submission). The risks to the public safety of the future residents of the proposed development as well as the existing residents in the surrounding neighborhood that will be compromised outweigh the need for affordable housing as proposed by the applicant, for the reasons stated in the original resolutions of denial as well as for the reasons cited in the Supplemental Information referenced herein.

Other (Correction of Facts)

48. Attorney Hollister claimed factual inaccuracies were included in the original record and again in correspondence received from Westport Town Officials during the Modification process. When brought to the attention of Town Officials by Attorney Hollister, the record was promptly corrected. Attorney Hollister was likewise informed when he too inadvertently cited inaccurate facts. For the record, Attorney Hollister offered testimony at the Sept. 12, 2019 Public Hearing confirming his understanding that Multi-Family dwellings are NOT an allowable use in the underlying Residence B Zoning District (he had confused the Res B with the similar-sounding RBD district). Multi-Family dwellings are allowed in nine (9) other zoning districts in Westport, but the Residence B district is not one of them.

REASONS FOR DENIAL

49. The Commission finds no distinguishable changes were made by the applicant as part of the Coastal Site Plan Modification in comparison to the original proposal.

50. The pedestrian access suggestions offered by the applicant are located off-site, were not well defined, are beyond the applicant's authority to implement, and no evidence was submitted into the record suggesting any likelihood they would be achieved.

51. The emergency access improvements described by the applicant are located off-site, are subject to approvals from the City of Norwalk, no requests to secure approvals from the City of Norwalk were filed by the applicant with the City of Norwalk, and no evidence was submitted into the record suggesting any likelihood the necessary approvals would be received.

52. The Commission therefore reconfirms the same reasons for denial cited in the Resolution #18-081 issued on June 20, 2019 for Coastal Site Plan Application #18-081.

For the reasons stated above, which the Commission adopts as a collective basis for its action, the Commission adopts the following Resolution:

RESOLVED: 28, 36, 38, 39, 41-45, 47, Parcel A0/Lot 4, and Parcel A05/Lot 5 Hiawatha Lane and Hiawatha Lane Extension, the road bed of Hiawatha Lane Extension on the south side of 38-42-44, and a portion of the road bed of Hiawatha Lane abutting the eastern boundary of 38 Hiawatha Lane, including the private road bed of Hiawatha Lane, from its intersection with Davenport Avenue where utility installation is proposed: Coastal Site Plan Application #18-081R submitted by Summit Saugatuck LLC affiliated with Summit Development as represented by Attorney Timothy Hollister of Shipman & Goodwin, LLC for property owned by Saugatuck Summit LLC, Anne M. Mantia, Estate of Crystal Christensen, Hannelore Walsh, Frank P Bottone and David H Ogilvy, for approval of a 187-unit multi-family rental development in five new buildings with associated site improvements and a mainline connection to the public sewer. This Coastal Site Plan application is proposed in combination with a Text Amendment application to create §19C, Saugatuck Village District or SV District, and it is proposed in combination with a Map Amendment application to rezone the properties to the SV District; all three applications are considered parts of a single Affordable Housing Development proposal submitted pursuant to §8-30g of the Connecticut General Statutes is hereby **DENIED**.

The risk to safety caused by inadequate fire protection; the risk to pedestrian safety caused by the lack of sidewalks, adequate lighting, traffic congestion and narrow roadways; the risk of the adverse impact a project of this magnitude would have on the current water supply of the Town; and the risks caused by the existence of frequent severe flooding in the area, are all significant public policy considerations that have been established in the record and clearly outweigh the need for affordable housing. Moreover, no reasonable changes to the proposed plan can correct the risks and dangers associated with the proposed development, nor are needed off-site changes within the applicant's control or authority to complete

VOTE:

AYES	-7-	{Lebowitz, Dobin, Stephens, Walsh, Rutstein, Cammeyer, Olefson}
NAYS	-0-	
ABSTENTIONS	-0-	

Very truly yours,

Paul Lebowitz

Paul Lebowitz, Chairman
Planning & Zoning Commission

cc: First Selectman James Marpe
Town Attorney Ira Bloom
Attorney Peter Gelderman
Public Works Director Peter Ratkiewich
Fire Marshal Nate Gibbons
Police Chief Foti Koskinas
Conservation Director Alicia Mozian
Mr. Sharat Kalluri, Peer Reviewer
Chief Andrew Kingsbury, Peer Reviewer
RTM P&Z Committee Chairman

Town of Westport
Planning and Zoning Commission
Town Hall, 110 Myrtle Avenue
Westport, CT 06880
Tel: 203-341-1030 Fax: 203-454-6145
www.westportct.gov

April 30, 2021

PLANNING & ZONING COMMISSION
NOTICE/AGENDA

Monday, May 3, 2021, 6:00 PM
SPECIAL MEETING

Pursuant to the Governor's Executive Order No. 7B, there will be no physical location for this meeting. This meeting will be held electronically. Remote participation instructions:

Dial in via telephone:
+1 646 876 9923

Meeting ID: 893 0478 9609
Passcode: 733109

Notice is hereby given that the Town of Westport Planning and Zoning Commission will hold a Special Meeting on Monday, May 3, 2021 at 6:00pm for the following purposes:

I PUBLIC MEETING

1. **Commission to potentially vote to go into Executive Session**

II EXECUTIVE SESSION

The executive session will be held by a separate electronic meeting that will not be open to the public.

1. **Discuss pending litigation: Summit Saugatuck LLC v. Westport Planning and Zoning Commission.**

A copy of the Legal Notice/ Agenda for the Planning & Zoning Commission Special Meeting on May 3, 2021 is available on-line at www.westportct.gov, on the Planning and Zoning Department web page under "Planning & Zoning Department". Due to the closing of Town Hall to the public during the COVID-19 emergency, and pursuant to the Governor's Executive Order #7I, the Legal Notice/ Agenda for the Planning & Zoning Commission Special Meeting on May 3, 2021 cannot be viewed at the Westport Town Clerk's Office or the Westport Planning and Zoning Office at this time.

It is the policy of the Town of Westport that all Town-sponsored public meetings and events are accessible to people with disabilities. If you need assistance in participating in a meeting or event due to a disability as defined under the Americans with Disabilities Act, please contact Westport's ADA Coordinator at 203-341-1043 or eflug@westportct.gov at least three (3) business days prior to the scheduled meeting or event to request an accommodation.

Dated at Westport, Connecticut on this 30th day of April 2021, Danielle Dobin, Chairman, Planning and Zoning Commission.

Town of Westport
Planning and Zoning Commission
Town Hall, 110 Myrtle Avenue
Westport, CT 06880
Tel: 203-341-1030 Fax: 203-454-6145
www.westportct.gov

May 10, 2021

SPECIAL NOTICE ABOUT PROCEDURES FOR THIS ELECTRONIC MEETING:
Pursuant to the Governor's Executive Order No. 7B, there will be no physical location for this meeting. This meeting will be held electronically and live streamed on www.westportct.gov. This meeting will also be shown on Optimum Government Access Channel 79 and Frontier Channel 6020. Public comments may be received PRIOR to the Public Meeting and should be sent to PandZ@westportct.gov by 12:00pm the day of the meeting. Public comments may be also be received DURING the meeting if they: (i) are sent to PandZComments@westportct.gov (ii) state your full name and address.

PLANNING & ZONING COMMISSION

NOTICE/AGENDA, Rev. #1

Wednesday May 12, 2021, 6:30 PM

SPECIAL MEETING

Pursuant to the Governor's Executive Order No. 7B, there will be no physical location for this meeting. This meeting will be held electronically.

Notice is hereby given that the Westport Planning and Zoning Commission will hold a Special Meeting on Wednesday, May 12, 2021, at 6:30pm for the following purposes:

I PUBLIC MEETING

Remote participation instructions:

Zoom Link:https://us02web.zoom.us/j/83329590354?pwd=aEVLaCsvbzhjdTdtWEVjcjM4ZDBSZz09

Dial in via

telephone:
+1 646 876 9923

Meeting ID: 833 2959 0354
Passcode: 349393

1. Commission to potentially vote to go into Executive Session to discuss:
   A. Pending litigation: Summit Saugatuck LLC v. Westport Planning and Zoning Commission (Docket No. HHD-CV19-6120090-S), for a 157-Unit Affordable Housing Development and other terms.
   B. Pending litigation: Cross Street LLC v. Westport Planning and Zoning Commission (Docket No. HHD-CV18-6103065-S).

The executive session will be by a separate electronic meeting not open to the public.

II EXECUTIVE SESSION

1. Discuss Pending litigation: Summit Saugatuck LLC v. Westport Planning and Zoning Commission (Docket No. HHD-CV19-6120090-S), for a 157-Unit Affordable Housing Development and other terms.
2. Discuss Pending litigation: Cross Street LLC v. Westport Planning and Zoning Commission (Docket No. HHD-CV18-6103065-S).

III PUBLIC MEETING, 7:00pm

Remote participation instructions ***(Be aware, this is a different link than what is on Page 1, herein):***

Zoom Link:https://us02web.zoom.us/j/81658416015?pwd=SDFkRkFHTzJTOE9EMllTU2Y3bDUzdz09

Dial in via

telephone:
+1 646 876 9923

Meeting ID: 816 5841 6015
Passcode: 221876

1. Potentially Vote on Pending litigation: Summit Saugatuck LLC v. Westport Planning and Zoning Commission (Docket No. HHD-CV19-6120090-S), for a 157-Unit Affordable Housing Development and other terms.
2. Potentially Vote on Pending litigation: Cross Street LLC v. Westport Planning and Zoning Commission (Docket No. HHD-CV18-6103065-S).

A copy of the Legal Notice/ Agenda for the Planning & Zoning Commission Special Meeting on May 12, 2021 is available on-line at www.westportct.gov, on the Planning and Zoning Department web page under "Planning & Zoning Department". Due to the closing of Town Hall to the public during the COVID-19 emergency, and pursuant to the Governor's Executive Order #7I, the Legal Notice/ Agenda for the Planning & Zoning Commission Special Meeting on May 12, 2021 cannot be viewed at the Westport Town Clerk's Office or the Westport Planning and Zoning Office at this time.

It is the policy of the Town of Westport that all Town-sponsored public meetings and events are accessible to people with disabilities. If you need assistance in participating in a meeting or event due to a disability as defined under the Americans with Disabilities Act, please contact Westport's ADA Coordinator at 203-341-1043 or eflug@westportct.gov at least three (3) business days prior to the scheduled meeting or event to request an accommodation.

Dated at Westport, Connecticut on this 10th day of May 2021, Danielle Dobin, Chairman, Planning and Zoning Commission.

RTM Special Meeting
June 8, 2021

REPRESENTATIVE TOWN MEETING NOTICE
REVISED 6/4/21

Change Start time to 7:00pm

Add Item #3

All Representative Town Meeting members and inhabitants of the Town of Westport are hereby notified that a special meeting of the Representative Town Meeting members will be held on Tuesday June 8, 2021 at ~~7:30pm~~ **7:00pm**. for the purposes listed below. If necessary, the meeting shall reconvene on Tuesday, June 15, 2021, to deal with agenda items not disposed of at the adjournment of the June 8, 2021 meeting. There is no physical location for this meeting. It will be held electronically.

SPECIAL NOTICE ABOUT PROCEDURES FOR THIS ELECTRONIC MEETING:

Pursuant to the Governor's Executive Order No. 7B, there will not be a physical location for this meeting. This meeting will be held electronically and live streamed on westportct.gov and shown on Optimum Government Access Channel 79 and Frontier Channel 6020. Meeting materials will be available at westportct.gov along with the meeting notice posted on the Meeting List & Calendar page.

INSTRUCTIONS TO ATTEND ZOOM MEETING:

Members of the public may attend the meeting by VIDEO by sending an email at any time before or during the meeting to RTMcomments@westportct.gov stating your name and address, and meeting participation details will be emailed to you to enable you to participate by video.

PUBLIC COMMENTS:

Members of the Westport electorate attending the meeting by video may comment on any agenda item. Comments will be limited to 3 minutes.

Emails may be sent before the meeting to RTMmailinglist@westportct.gov, which goes to all RTM members. These emails will not be read aloud during the meeting.

1. To take such action as the meeting may determine, upon the request of the Board of Education and the recommendation of the Board of Finance, to approve an appropriation in the amount of $1,470,000 along with bond and note authorization to the Municipal

Improvement Fund Account in order to award BOE 21-011-RFP to Silktown Roofing, Inc., for a partial roof replacement at Saugatuck Elementary School.

2. **This item will not be addressed until 7:30pm**: To take such action as the meeting may determine, at the request of at least 20 electors of the Town of Westport, pursuant to Town Charter C5-1F and C10-4, to review and reject the Planning and Zoning Commission decision issued on May 13, 2021, in adopting a new zoning district boundary: SV District as seen on "Proposed Zoning Map - SH Z2, entitled: The Village at Saugatuck, Hiawatha Lane, Town of Westport, CT for Summit Saugatuck LLC," dated May 10, 2021.

3. To take such action as the meeting may determine, upon a request by the Finance Director and the Personnel/Human Resources Director, to revise the Retirement Plan for Non-Union Supervisory Employees of the Town of Westport to include current management of the Police and Fire Departments.

_____
Velma E. Heller, Moderator

It is the policy of the Town of Westport that all Town-sponsored public meetings and events are accessible to people with disabilities. If you need assistance in participating in a meeting or event due to a disability as defined under the Americans with Disabilities Act, please contact Westport's ADA Coordinator at 203-341-1043 or eflug@westportct.gov at least three (3) business days prior to the scheduled meeting or event to request an accommodation.

RTM Special Meeting
June 8, 2021

The call

1. To take such action as the meeting may determine, upon the request of the Board of Education and the recommendation of the Board of Finance, to approve an appropriation in order to award BOE 21-011-RFP to Silktown Roofing, Inc., for a partial roof replacement at Saugatuck Elementary School.
2. To take such action as the meeting may determine, at the request of at least 20 electors of the Town of Westport, pursuant to Town Charter C5-1F and C10-4, to review and reject the Planning and Zoning Commission decision issued on May 13, 2021, in adopting a new zoning district boundary: SV District as seen on "Proposed Zoning Map - SH Z2, entitled: The Village at Saugatuck, Hiawatha Lane, Town of Westport, CT for Summit Saugatuck LLC, dated May 10, 2021.
3. To take such action as the meeting may determine, upon a request by the Finance Director and the Personnel/Human Resources Director, to revise the Retirement Plan for Non-Union Supervisory Employees of the Town of Westport to include current management of the Police and Fire Departments. **Postponed to June 15.**

The meeting

Moderator Velma Heller:
Good evening. This meeting of Westport's Representative Town Meeting is now called to order and we welcome those who are joining us the evening. My name is Velma Heller and I'm the RTM Moderator. Procedures for this Electronic Meeting: Pursuant to the Governor's Executive Order No. 7B, this meeting is being held electronically. It will be live streamed on westportct.gov, and shown on Optimum Government Access Channel 79 or Frontier Channel 6020. Meeting materials will be available at *westportct.gov* along with the meeting notice posted on the Meeting List & Calendar page. Instructions To Attend Zoom Meeting: Members of the electorate may attend the meeting by VIDEO by sending an email at any time before or during the meeting stating your name and address, and meeting participation details will be emailed to you to enable you to participate by video. You will be called upon to speak by the Deputy Moderator. Public Comments: Members of the electorate attending the meeting by video may comment on any agenda item. Comments will be limited to three minutes. Emails may be sent prior to meeting to *RTMmailinglist@westportct.gov*, which goes to all RTM members. These emails will not be read aloud during the meeting.

Tonight's invocation will be delivered by: Kathie Bennewitz, Westport's Town Curator. In this role, she's responsible for advising the town on the care of its art and sculpture collection. Westport owns several hundred works of art, displayed in Town Hall, the Senior Center, Parks & Rec headquarters, even the Fire Department. Statues include the Minuteman and Doughboy on Veterans Green. Kathie volunteered with the Westport Schools Permanent Art Collection. Working with Mollie Donovan and Eve Potts. She learned the depth and breadth of Westport's arts history. She has worked professionally at Greenwich's Bush-Holley House and the Fairfield Museum. She also was appointed tri-chair of the Permanent Art Collection, and served on the Westport Arts Advisory

Dr. Heller: It has been moved and seconded. Now it is the time for RTM comments.

Members of the RTM - No comments

By show of hands, the motion passes unanimously 34-0. (Mr. Shackelford arrived.)

The secretary read item #2 of the call - To review and reject the Planning and Zoning Commission decision issued on May 13, 2021, in adopting a new zoning district boundary: SV District as seen on "Proposed Zoning Map - SH Z2, entitled: The Village at Saugatuck, Hiawatha Lane, Town of Westport, CT for Summit Saugatuck LLC, dated May 10, 2021.

Dr. Heller:
For your information, the order of speakers will be: Ira Bloom will present background on the context of the petition and the role of the RTM in addressing the resolution before us; Danielle Dobin and Paul Liebowitz will present for the Planning and Zoning Commission; Gloria Gouveia will present for the for the Petitioners and Attorney Hollister has been invited to present for the developer.

Presentation
Ira Bloom, Town Attorney:
This is one of the more complicated equations, complicated decisions that I have faced and you may face because of the number of lawsuits involved and the number of complicated issues that have impact for the town. I'm going to try to go through this, explain, as best I can, these issues. I am going to explain the Charter provision that allows the RTM to review this, the proposed map change and, indirectly, the overall stipulation. I'm also going to explain the background here, the same background that was discussed extensively by members of the Commission, that your own Planning and Zoning Subcommittee reviewed a couple of weeks ago. I am going to be as candid as I can about these three lawsuits that are essential to this decision. In doing so, I do it at some risk. I do not normally stand in public and evaluate a case quite directly like this but it has to be done. I did it at the P&Z; I did it at your Subcommittee. I'll do it again tonight. I think it's essential that you hear my best assessment of these cases which provided the background for the Planning and Zoning Commission. You need to hear everything I can offer and others to make your best decision, of course. To frame this issue, it seems to me that there are a couple of key questions that you might want to listen to as you hear, not only my presentation, but Danielle's and Paul's and Gloria's and everyone else who provides commentary. Number one, is it preferable for the town to control its own destiny by deciding, through this settlement, what to do with this land use project and the pending land use cases, is it preferable to make our own decisions so we have some control of the land use decisions in the next few years or would you rather have it decided by others, the Department of Housing, DOH, or by the courts? That's the question, number one. And number two, is this settlement in the best interest of the entire community? So, I think I

would ask you to consider that in terms of framing the issues that you will face here tonight.

Let me start by discussing why we are here under our Charter. Westport has what is called a Special Act Charter. It was granted by the General Assembly of the State in the late 1950's. Not all Charters are derived from that kind of grant. Because of that, we have a kind of unique section of the Charter, Section C10-4. What it provides is that certain zoning actions by the Planning and Zoning Commission, specifically, zone text changes or changes or fixing of zone boundaries, text changes and map changes, can be reviewed by the RTM. That's a unique provision. Over the years, I think we've found only two other municipalities in the State that have something like this where the legislative body can override a decision by the Planning and Zoning Commission. That's the authority you have under our Charter. It's been utilized somewhat infrequently over decades. The last 10 years or so, it's been utilized more than it had been in the past. We adopted some guidelines for this in 2010. I think you have those in your packet also. To override the Planning and Zoning decision on the map change, which is the proposal before you, the map change that was part of the stipulation, to override, that requires a flat 2/3 of the RTM membership; that means 24 people regardless of how many people are here. There are 34 people here. It still needs 24. If there were 25 people, it still needs 24. If there were 23 people here, it still needs 24. That's the key number required to overturn a map change in the proposal. It's part of the stipulation.

The second topic that I said I was going to talk about is the legal landscape and I think it's critical that you understand where we are with three critical cases. There actually are four but I am going to focus on three cases. The first case, I'll call it the Zoning Appeal. The Planning and Zoning Commission originally turned down the Summit Saugatuck proposal for 187 units. An appeal was taken. That case is pending before the Bridgeport Superior Court, Judge Berger. That case has been fully briefed by all sides and there has been a trial for that case already. It is in the judge's hands. This is an affordable housing appeal under section 8-30g of the Connecticut General Statutes. Many of you perhaps know that these are difficult cases. The burden has shifted to the Commission to prove why to turn down a project under 8-30g. It is a difficult burden. Historically, Commissions that have turned down such applications have lost in court maybe 70 or 75 percent because the burden is quite high. That has been the historical pattern over the years. But I think there is something more recent here that needs to be noted. I think the legal landscape for 8-30 cases is changing in the last few years because there is a focus on the critical shortage of affordable housing in the State. I'm sure you all know this and follow the various activities in the State Legislature. I think that has had an effect on cases in recent years. In this particular case involving Summit, it involves fire safety. The proposed building complies with the Fire Code; however, our Fire Marshall thought there should be more than just compliance with the Fire and Safety Code and he recommended certain other things, most notably, a second means of access, egress to the property. So, what you have before the court is, on one hand you have a building which is code compliant and, on the other hand, you have the local Fire Marshall that says I think it needs more. And that's basically it. What has been happening is that in these kind of cases where you have code versus Fire Marshall, code has been winning. We saw that

ourselves with the Cross Street/Lincoln Street case which was decided against the town on a very similar issue, code compliance versus the recommendations of the Fire Marshall. Our Fire Marshall is an outstanding Fire Marshall and he will tell you that he would like and wants more than just code compliance; however, the cases, one from Westport and others seem to suggest that is not a winning position. The reason is, number one, there is a lot of focus on affordable housing in the State and number two, the point of 8-30g, affordable housing, is to remediate the problem with housing. The courts have said directly 'This is a remedial statute' to remediate a problem, the problem being the shortage of affordable housing. That's the legal landscape that we have on this zoning case. In my judgment, and I've said this before, we don't have a high probability of prevailing. That's case number one. Case number two is a challenge to Westport's moratorium. You know, of course, that in 2019, the town received a four-year moratorium from the Department of Housing, DOH. We had to apply. It was an extensive process and we had to present a certain number of points because of the existence of certain housing in town and we made that application after a lot of hard work. When it went to DOH, 2019, they reviewed our application. What they did in simple terms, on one hand, they took away some points that we had claimed. They came up with a different calculation. It's a complicated formula. So, they took away a few points but then when it came to a different project, the Hidden Brook project which is the old trailer park on the Post Road, they did their own analysis and, based upon their own records, not records we presented, they awarded us more points. They took away on one hand and they gave in the other. The result, because they gave us 30 or so extra points for Hidden Brook, we stayed over the top and we were awarded a moratorium. We got this letter in 2019 where they said that was exactly what they did. They awarded us more points. We said, 'Thank you very much' and we moved forward. Unfortunately, there was a challenge to that by Summit Saugatuck as well as Garden Homes which is the developer on Wilton Road. That process went on for some time. For about two years we worked hand in hand with DOH. They were represented by the Attorney General's Office. There were various motions. Also, this case was before Judge Berger. On March 22 of this year, we received a letter that was quite a shock. I think you have copies of it. The letter came from Department of Housing and it said they intended to revoke Westport's moratorium. The letter said they went back to look at their records and, as it was explained to us, they were preparing for hearings and they could not locate their records. These were not records that we had submitted. They said they were their own records. We were quite surprised to put it mildly. We have attempted to discuss that with them. At one point in time, we asked Carol Martin, the Head of the Housing Authority if she could look at her records. She actually provided them with one additional document. They said it was similar but it wasn't the document they were looking for. They gave us 30 days from March 22 and then they intended to revoke the moratorium. We intended to respond. Jim Marpe wrote a very strong letter to them in an effort to dissuade them from doing that. Eventually, we proceeded to this settlement phase. At the town's initiative, we have had them on hold since March 22. They have not yet revoked the moratorium. They are aware of the settlement that you have before you tonight. They have sent us an email which I read to the subcommittee. The position of DOH now is as follows as of May 25:

DOH is tentatively on board to keep the moratorium in place as requested by the town of Westport and Summit Saugatuck to allow the parties to pursue the settlement in their pending zoning case.

So, they are tentatively on board. That is very important.

If, however, the settlement agreement does not go through, DOH cannot make any guarantees about its final decision on the intent to revoke the moratorium.

What they have said to us after many, many conversations with the Attorney General's office is that they are tentatively onboard with this settlement. Now, why? Because there is a separate lawsuit, as I mentioned, brought by Summit Saugatuck and Garden Homes to the Department of Housing. The town was not originally named as part of that suit but we intervened at our initiative and became a party to that suit. So, there is a lawsuit against the Department of Housing and, frankly, they don't want that either. So, if the settlement goes through, it seems likely, based on that, we will preserve our moratorium. If the settlement does not go through, then my best assessment, and Pete Gelderman from my office has been on all these calls also and I think he'll agree, my assessment is that they are very likely to revoke our moratorium. In my opinion and in P&Z's opinion, that has significant consequences to the community. We would lose two years of the moratorium. We may have to give back the two years that we got. We know there are some developers ready to come forward. I have received calls from lawyers interested in this so it will expose the entire town in every district to 8-30g applications if we lose the moratorium. If we have the moratorium, then we go forward. The purpose of the moratorium is to allow the Planning and Zoning Commission to plan for the community; to make proper decisions for the community; to decide where affordable housing should be and where it should not be. So, it gives us a cooling off, planning period. That's the point of the moratorium. So, we would either keep it or it seems like there is a high likelihood we would lose it.

Those are two of the cases. The third case is before the Supreme Court of the State. That one also has significant consequences. It's kind of interesting. At the first P&Z meeting, I heard someone say we should go all the way to the Supreme Court. Let me just state for the record, we are at the Supreme Court on this case. The third case involves the Water Pollution Control Authority, which you know is the Board of Selectmen and the sewer connection. Westport has a policy that before anybody connects to the town's sewer system, they must get a positive report under section 8-24 of the statutes from the Planning and Zoning Commission. If they don't get that, then the project doesn't go forward. That has been the town policy for many, many years. It has been an effective policy. It has worked well and it is something that we wish to preserve. That is the challenge before the Supreme Court, whether failure to get an 8-24 prevents a developer from connecting to the town sewer system. We could win that case. We could lose that case. If we lose that case, it has significant impact on the town's sewer policy and on development. The case has been fully briefed by Pete Gelderman. You can read all these things too. He argued the case before the Supreme Court and we have the Supreme Court literally on hold until later in June. They are waiting for your decision and they will wait until the 25th of June, I believe, and then I do not believe they will wait any longer. I should have said this before, similarly, we have the Department of Housing on hold for you to make this decision tonight, perhaps by the 15th if it is not decided tonight. Then we

have the trial court judge on the zoning case on hold because he is ready to make a decision. I don't think everyone will wait indefinitely but they will wait until the RTM completes this process.

Let me back up to how these negotiations evolved. Pete and I have been speaking to the Planning and Zoning Commission in executive session for many months. I think we started in December. We were discussing what we are now saying here publically. At a point in time, the seven members of the Planning and Zoning Commission appointed a negotiating team. They thought they should reach out to the developer and that's what started the negotiations. The developer responded and it has gone back and forth. It has taken hours of hard bargaining and we reached this point here. The Commission said, at the outset, that it has to tie into the moratorium case. How did DOH get into this? They got into this because the Commission said we have to keep our moratorium if we are even going to discuss with Summit about any sort of settlement. So, we basically combined the two cases. That's how we got Department of Housing into this discussion. They are prepared to do what I said, based on that email. The case will go away. We will keep our moratorium if this is passed. Every one of the conditions in the stipulation is contingent upon one another. If one piece doesn't go forward, the house of cards falls. It's a package deal. That was by design. That was the Commission's choosing also.

Those are the three cases. I've had the opportunity to look at four questions that were submitted by the petitioners and I thank Gloria Gouveia for providing these in advance. I'd like to answer them now so we can get them out on the table here.

1. Can Summit be held to an agreement to not exercise their legal rights as in item 1B and 14F? The answer is yes. This is how we settle all zoning cases. It is a settlement agreement. We have a contract between the parties. Once they sign, it is a binding contract. Not only is it a contract, but this will become a court judgment. Once it's signed, we take it to the court; the court has to review it. The judge has to review it, find it fair and equitable, and then it's entered as a judgment of the court. So, it's binding on all the parties and it's enforceable. That's the routine we follow for all zoning cases.

2. Does Summit have the authority to execute an agreement binding upon Garden Homes and/or the Department of Housing as stated in items 14 C & D? I think that needs a little clarification. Summit is not really executing an agreement binding Garden Homes. Summit is signing an agreement with the town, the Planning and Zoning Commission. Garden Homes is a party in the challenge to the moratorium, the Department of Housing. That's a separate case. If this goes through, the second case will be withdrawn with prejudice. That will also be discussed before the judge. Garden Homes is really impacted and affected by the moratorium case which will be withdrawn. It won't be withdrawn until we have their letter keeping our moratorium in place and all the other provisions go forward. No one is binding Garden Homes. That case will be withdrawn and they have to agree to that withdrawal. They have to physically sign a withdrawal. DOH, similarly, if this goes forward, they are making a commitment to keep Westport's moratorium and will issue a document to that effect. We have proposed a draft to them already. When we get that, that will be their commitment to keep the moratorium. The case against them will be

withdrawn. Summit will be bound by the settlement agreement that you've looked at, the contract, and that will be covered by the court judgment also.

3. Does the Planning and Zoning Commission have the power to modify the requirements of the Fire Marshall as per item 7? Let me step back. Nobody, certainly not the Planning and Zoning Commission, has the power to modify or waive the Fire Code. That can't be done but that's not being done. The building meets the Fire Code standard as presented to the Commission. The Fire Marshall wanted more than code compliance. So, we're not impacting the code in any way. What happened, candidly, is we spoke to the Fire Marshall Nate Gibbons. He believes in the second means of access, that was his recommendation. But when we explained where we were with all the ramifications, we asked him to give us some other fire protections and provided the six items which you see in the stipulations. Those came from the Fire Marshall. We didn't make them up. So, that's how we got to those points.

4. Does the Planning and Zoning Commission have the authority to agree to item #15 on behalf of the Westport Building Official? Number 15, the stipulation, it just basically restates the law. It says that if the developer, Summit, complies with the settlement agreement stipulation and if they comply with the Building Code, the Building Official will issue the proper permits. That restates the law. That's all it does. Why did we put it in there? We put it in there because there was concern by the developer that they would have trouble at that stage and we said 'Alright, we will put in what the law says. If you comply with the stipulation, if you comply with the Building Code, then the Building Official will give you your appropriate permits.' That is the law. Without diluting it or altering it, it is a restatement of the law.

I think I've probably said enough. I hope that's helpful. At the right time, I'll be happy to answer your questions when we get to that point in the deliberations. I'll just leave you with my initial thoughts about exercising control over our land use future. That's what the Commission determined. That's what your subcommittee determined and they also determined that the settlement was in the best interest of the community as a whole. I thank you for your patience. It was a long dissertation here but that wraps up my comments.

Dr. Heller:
Thank you Mr. Bloom for your very thorough and thoughtful comments. You have clarified a number of things for us. We'll move next to Danielle Dobin and Paul Lebowitz. I know Jim Marpe also wanted to comment.

Danielle Dobin, Chair, Planning and Zoning Commission:
Thanks so much Velma and thanks so much Ira for the great review of the legal situation. It's nice to see all of you and some of your kids that are popping in and out of the video screens. I wanted to provide you with a little bit more context for why the Commission acted to do this with regards to the settlement, how this came about and a little bit of the history and answer any questions that you may have. First, I want to echo what Ira said, which is that the Commission worked really hard to represent the best interests of both

the neighborhood including the immediate neighbors and the town. That was our goal and we had a challenging set of circumstances and we really did the best that we could. A refresh for those of you who are unfamiliar with 8-30g. Ira referenced it and I know a lot of the members of the public are joining us. 8-30g was adopted in 1989. It allows developers to bypass local zoning rules if their projects include at least 30 percent affordable units as affordability is defined by that statute in any town that lacks 10 percent of affordable housing. In Westport, less than four percent of our units qualify as affordable. Westport does have other naturally occurring affordable housing outside of the four percent but that older housing and the shelters, etc. are basically invisible as far as 8-30g is concerned. It has been true since the statute was adopted in 1989. So, affluent towns in Connecticut are really the targets for 8-30g. There have been two different approaches as to how to meet or ignore the requirements of the statute. New Canaan and Darien are two examples of towns where the P&Z together with town leadership, like the Board of Selectmen, proactively planned for affordable housing. New Canaan even funds all of its own affordable developments through a housing development fund that assesses a fee on everything from renovating a patio to putting in a pool to building a single family house to building a big house and everything in between. As a result, those towns enjoy stacked moratoriums meaning that they have sufficiently increased their affordable housing to be exempt for multiple four year periods from 8-30g. Put very simply, in New Canaan, no developer can propose a Hiawatha- sized project in a family neighborhood because the P&Z and the town leadership have worked for decades to insure that those towns have control over their zoning. And, at the same time, and this is really important, they are also providing diverse housing types that qualify as affordable under 8-30g and welcome a number of people to those towns who wouldn't otherwise have the opportunity to live in them. Our current P&Z, as many of you know and many of you have worked with us to do this, has really worked tirelessly to put us back on track with New Canaan and Darien. If you are interested, I'll answer questions later about how we're doing that. I don't want to take up too much of your time now to go through all of the details. But we have really worked to sprinkle multi-family throughout town. There's a lot of multi-family on Post Road East but we've really looked at Post Road West, downtown, Saugatuck; basically, anywhere there's a sewer, P&Z is working to see that there is a diversity of housing at this point. It really breaks my heart, as a Commission, that the P&Z can't stop this project from being built at the end of what it, without question, a really quiet cul de sac that has houses that you don't find most places in Westport. But, as a town, Westport failed to build affordable housing that counts for points even though we had the opportunity since 1989. The failure to act has consequences. A group of neighbors at the end of Hiawatha Lane extension voluntarily chose to sell their homes to a developer and he could file an 8-30g application because the town of Westport left the door open. I have no magic wand, I wish I did, to change the past. All I can do is what the Commission is doing right now which is working really hard to change the future and insure that Westport continues to have control over our zoning. You are going to hear from neighbors from the Hiawatha area and you'll be tempted and we were tempted, really, really tempted at our meeting to tell them we ditched the settlement and keep fighting. It's so upsetting that in connection with 8-30g, legitimate traffic concerns are ignored. Density in an area of really small homes is irrelevant to the calculation. But fighting would be a pyric victory because they'd end up with 187 units with very few affordable units for families, Westport would be without

its moratorium and sewers would be allowed everywhere at simply each developer's whim. All of the hard work and planning that we have done would be pretty much for nothing. I think Ira did a really good job laying out the legal situation. What I want to emphasize is that the site plan special permit text amendment and map amendment to build 187 units, to a certain extent, that's really the case. It's over. The long and short of it is the town fought the special permit for years and years based on a lack of sewer capacity but since the Saugatuck sewer system was improved and the pump station was upgraded, it's impossible for us to argue that there's a lack of capacity. That means there's really no legal justification to stop this project from being built. Oral arguments have already taken place and if you watch them, you'll see. The judge, the same judge who overturned the denial of the 8-30g case at Wilton Road and Kings Highway seems not only inclined but enthusiastic about approving all 187 units there and the recent case law including our loss at Cross Street underscores that Fire Code compliance, not local Fire Marshall testimony, is relevant to the court. In this case, Fire Code compliance is clear. The building, as proposed originally with 187 units, is Fire Code compliant. So, the question, in terms of continuing the fight is really whether we want to continue the fight and lose and get 187 fire-unsafe units or if we want to settle for a smaller project, the elimination of building B, the inclusion of three bedroom units, both affordable and market rate, which provide opportunities for new families to live in Westport, repaving of the road, rebuilding of the culvert, and preserving, for the neighborhood, access to the Norden Preserve. Also, included in the settlement, is the developer, at their expense, is planting a very large number of evergreens between their project and the adjacent neighbors. So, the next issue is the 8-24 statute which you're more than welcome to ask me about, as well. Ira touched on this. Essentially, the 8-24 statute operates so that the Board of Selectmen asks for a positive 8-24 report for a sewer connection and P&Z does or doesn't do that. In the event that P&Z makes a negative report, the RTM then has the opportunity to weigh in and overturn that to issue a positive report. If we lose this case, that whole 8-24 approval process basically goes away. We'll end up in a situation where instead of the Board of Selectmen in conjunction with the P&Z and sometimes the RTM making the decision about where to extend the sewers, when to extend the sewers, we will have applicants being able to make that decision for us. It is a really serious issue for the town in terms of our future planning. Lastly, we have the moratorium case which Ira reviewed and I'm happy to answer questions. The long and short of that is we want to have control over our zoning. Right now, because of the moratorium, we do. It is really important that we keep that. In terms of the settlement itself, to go over some of the details, instead of 187 units in a complex with major fire safety issues, the settlement results in 157 fire-safe units. An entire building that jutted out into the neighborhood has been eliminated. The land underneath where that building was going to be located will only be developed as single family homes and the building itself now includes three bedrooms and that's really important because, to the extent that any of us really cares about affordable housing for people who wouldn't otherwise have the opportunity to live in Westport and I think a lot of you do care particularly about that, another huge flaw of 8-30g is that 8-30g apartments generally don't accommodate families. But this project will because the P&Z literally demanded that three bedroom apartments be included. So that's there now. We'll have 19 three bedroom apartments and that's a really big difference in a town like Westport. As another feature of the settlement, the neighbors will retain access to the open space

at the Norden preserve and the developer will rebuild the culvert and provide landscaping as I talked about before. Many people have asked me why didn't we negotiate a better deal, why isn't it smaller? The truth is the developer was holding all the cards. They knew it and we knew it. As Ira pointed out, we're all the way up in the Supreme Court. All of these courts are on hold waiting for us. They only chose to go on hold because we were working in good faith to find a settlement. If we were going to do that, we had to be realistic. We couldn't walk in there and say, 'We want 25 units' because we knew after almost two decades that it simply wasn't going to happen when it seemed so likely that they were going to be able to have 187. So in terms of the project itself, I met with a number of the Hiawatha neighbors in person to talk about how the town can invest in their neighborhood. I have already started to coordinate with the State DOT to talk about traffic. The Traffic Authority, under the Board of Selectmen is really going to take the lead on that but because of the proactive work the P&Z has been doing to create a new affordable community for families on DOT land in Greens Farms, we have a good relationship with the DOT and I knew it would be helpful for me to talk to them about what we're trying to do here and how they could help. And I'm going to continue to talk about traffic and infrastructure because it may not matter in terms of 8-30g but it matters a lot to the P&Z Commission and the P&Z Commissioners and it certainly matters a lot to me. So, as you think about voting with regard to this map amendment, I just want you to keep in mind that voting yes to overturn is really a vote to empower developers to put the sewer wherever they want to have it; build projects wherever they want to have it; and have 187 units at the end of this small road. Like I said before, we did the best we could in really challenging circumstances and I wish that we could have achieved a far, far smaller result but I'm glad that we are where we are right now. At least we are in a position to settle these cases in a way that improves the situation that is going to result from the court cases for the town and the Hiawatha neighborhood. I would really welcome your support. It has been really challenging to go at this alone as a P&Z Commission. As hard as it is to talk all about it for so many meetings with the RTM, we're really happy to have you guys involved. We're happy to have your questions and as we look to the future, and in the near future as a town, we need to create an 8-30j affordability plan that we submit to the State. That's due next summer. We really, really want, and I speak for the Commission, all the RTM members to be involved. I know that you're all thinking about this issue and being proactive about housing now. The best way for us to be proactive as a town is for us to work together. So, thank you to all of you who come to so many of the Affordable Housing Subcommittee meetings before. In all the discussion about the moratorium and the sewer, what I don't want to have lost in this is that this will result in 48 new affordable units in Westport, many of which will be affordable units designed for families. That is something that is really important for us, as a town, to be supplying. It's a start of what we're doing in other places all over town proactively to not just take control over our zoning but create opportunities for new people to live here. So, thank you so much. I'm sorry for taking so long. I am happy to answer any questions for me or about how the Commission approached this if Paul isn't able to answer them as well.

Dr. Heller:
Thank you Danielle. I just wanted to let you know that questions will be asked during RTM comments. Now, I'd like to see if Paul has anything he'd like to add at this point.

Paul Lebowitz, Planning and Zoning Commission:
Thank you, Velma, and thank you to the RTM. Some of you may recall, many years ago, I, too, was one of the bodies sitting in those chairs. I see Cathy Talmadge is here. A shout out to her because it is all her fault! She asked me to do it. Certainly, Danielle and Ira gave you a comprehensive look at how we got to where we are. There she is. Hi Cathy! Hope you're feeling well, dear.

Cathy Talmadge, district 6: Yes, I am. Thank you.

Mr. Lebowitz:
I just want to flesh out a couple of details. The first thing is about the neighbors. I have the advantage now of being one of the longest serving members on the Commission which means I was there for many, not all, but many of the attempts by this developer to bring this project forward. I see Kathy Walsh is with us. She goes back even farther and can tell you about the very beginning of it. But I was there for a significant amount which means I was also there to listen to a significant amount of the neighbors' concerns. The neighbors came forward every time the developer came to us and presented an application. The neighbors came forward and presented their concerns. Their concerns were many and their concerns were obvious and their concerns were legitimate. A lot of their concerns, unfortunately, have no bearing on an 8-30g. So, the town people would come in, and this is on any 8-30g, whether it's Wilton Road, Cross Highway, Hiawatha, the town people would come in and say 'It's an F rated traffic and you're going to add all these cars and it's going to be horrible. Nobody will be able to get out of their driveway.' I get that. I live in a building that was, at one time, an 8-30g, a good 8-30g. The point I'm trying to make is while that is a legitimate concern, if you take that to the judge, he'll say, 'Sorry. We don't consider that part of the reason to turn down an 8-30g.' So, while I would love to say 'That DOT intersection is horrible; that's why we're not going to let them build.' A judge would look at that and say 'Are you kidding?' And that is exactly what has happened. The same thing goes with the sewer. The sewer was one of our pieces of legislation where we were able to say we don't have the capacity to take your 100+ unit of development and handle it in our sewer. Well, guess what? We built a new sewer pump station. We have the capacity. So, now we can't use that item. So, there are a couple of things taken out of our arsenal to fight back. People say to us, 'What about the fire?' This developer, after getting turned down by our Fire Marshalls, being lambasted in several meetings for trying to build an unsafe building, came back with a building that would qualify, not only qualify, but we still turned it down and they took us to court. When they took us to court, we could see, as Ira has given you, chapter and verse, that was not going to win so the fact that the traffic was horrible, the fact that the project was not up to our Fire Marshall's code, these things were not winning and, at some point, you have to stop and say, 'If we're going to lose, let's at least try and make a win out of it.' That's what came about this past winter, the idea of at least negotiating with this developer to at least we could make it smaller, which is something that Danielle led the charge on, more family friendly, again, she literally said to them, 'You don't have any three bedrooms. Where are your three bedrooms? If you are interested in helping affordable housing families, show us.' I remember the neighbors giving us a video, several applications ago, of the flooding

in the street. It was horrible. So, when you are dealing with the developer, you say, 'By the way, that culvert has to be fixed.' We had neighbors come in and say that this is a horrible place to have cars and trucks driving. We are going to walk. What about pedestrian safety? You can't take pedestrian safety to a judge and get him to overthrow an 8-30g application. But, what you can do is you can negotiate with the applicant to say 'Please make that part of your plan.' So, there were a lot of things we were not going to win on but instead of completely losing on all of them, we tried to incorporate them into the negotiations we were doing so that at least we would come out with something. Do you want smaller? Yes. We don't want building E looming over the neighbors' houses. We want the area that you are going to build be the only area that can be built. In other words, you want a zoning change but it will be for just your plot. We don't want this spreading all over town. So, it is doing the best you can with the cards you are dealt with. Let me make just one more point. This is not an easy decision. I've read a lot of interesting flame-mail: How can you give up? How can you just walk away? Why can't you fight? We have been fighting. And that is the Royal We: that is the town, the First Selectman's Office, the RTM, and certainly the P&Z going all the way back many, many years. There are a few constituents, and I can spot them on this call, who have been fighting this development for 20 years. When it came time to sit down across the table from this developer, every one of the seven members of the Planning and Zoning Commission agreed that it is time to negotiate. We took a vote and it was unanimous. We then took a vote to see who would lead the charge and we asked the Chairwoman Danielle to do it. Danielle asked Jon Olefson and myself to join her so that she would go one on one with them. So, I want to emphasize that point. This is not something that one or two folks in town decided to settle in the dark of night. This was several meetings that were executive sessions with the Town Attorney, with our Department Head from the Planning and Zoning office, and every single one of the sitting and voting members of the Planning and Zoning Commission. Whether they are on the Commission now or not, they were in the room making the decisions with us so that we could operate as a team to serve the town. The time to object for a Commission member has long since passed. That's a ship that has sailed. This is not something that somebody liked. There were plenty of opportunities to make it better. Instead of running away from it, you work hard and you work diligently to improve it. Some of our members didn't do that. That's okay. That's their choice. But I have to tell you that Danielle hung in there all the way through. This was not easy. She spent hours and hours of her own personal unpaid time, as you know, (none of you are paid; none of us are paid.) to try and get something that worked for the town of Westport. I, for one, think she did a damn good job. I also want to shout out to Ira and his office because none of us are lawyers like them and none of us are 8-30g experts like them. So, we leaned heavily on their expertise and these are gentlemen with years of experience in watching judges as they slowly shift away from where they were 10 years ago to where they are today when it comes to approving or denying these applications. They gave us the heads up. We have three cases in court. We could wind up with three losses. If it wasn't for them, we would probably have lost that at the Supreme Court level, lost at the Superior Court level, lost on the Fire Marshall and ended up with a far worse project, a far bigger project with far fewer amenities or at least give backs, if you don't want to call them amenities. That's the art of negotiation. I'm not happy. Our Commission is not happy. The RTM is not happy. I guarantee Carolanne Curry is not happy. I see her

shaking her head. But, you know what? The developer is not happy either. Nobody got everything they wanted. Everybody got a little bit of their hide taken away. But the key for us, as a town, is to keep that moratorium, keep that sewer negotiation as part of our arsenal, not theirs, and to bring in this last 8-30g. It is the only one that preceded our moratorium. Let's get this one done, out of the way. Let's get the points and, as Danielle mentioned, let's stack those points up so that we have a rolling moratorium going forward.

Dr. Heller:
Thank you very much Mr. Lebowitz. I think Mr. Marpe would like to comment.

Jim Marpe, First Selectman:
Thank you Madam Moderator and members of the RTM. Thank you for the opportunity to speak to this agenda item. I appreciate the concerns and issues that have led to this petition. Almost from the first day I came into office seven years ago, I've been dealing with Summit Saugatuck proposals for Hiawatha Lane and trying to find a solution that respects the neighborhood, improves it and addresses the wider community concerns such as traffic and the impacted infrastructure. Those Summit Saugatuck proposals, as Paul pointed out, pre-date any of us in elected office by probably a decade. At the same time, I believe, as a community, we have a moral obligation to offer a diversity of housing options and, as such, I have worked with Chairman Dobin and her predecessors including Paul, Chip and Kathy to find solutions to the affordable housing challenges that Westport faces so that those solutions are situated in all areas of Westport, not just one and, at the same time, working with our P&Z professionals and our attorneys to find a negotiated end that will give us long-term control for the development of affordable housing in Westport. For those reasons, I ask members of the RTM to vote not to reject the decision of the Planning and Zoning Commission who reached the settlement that has been described. Recognizing the concerns that have been raised by the community members concerning certain aspects of the settlement, I am committed to using the Board of Selectmen working as the local Traffic Authority to work with the State Department of Transportation to address specific traffic issues that are related to the settlement and to be sure that the developers commit to making critical infrastructure improvements that will address the quality of life issues that arise from the project. I thank you for the opportunity to speak this evening.

Dr. Heller: Now let's move to the lead petitioner Gloria Gouveia.

Gloria Gouveia, lead petitioner:
Good evening ladies and gentlemen. My name is Gloria Gouveia. I am the lead petitioner representing Save Old Saugatuck and their friends and many supporters. I hope you've had the opportunity to read some of the documentation that we submitted which may have reached you late and I'd like to explain the reason for that. This was a new process for the new Town Clerk and myself. There's a learning curve and that led to a delay in getting this information out and disseminated. With grateful thanks to Mr. Braunstein and to our Town Clerk, Jeffrey Dunkerton, we put our heads together and about 4 p.m. this afternoon figured it out and made it right. For that reason, you have these documents in your hands tonight. I'm very pleased the Town Attorney got my memo in advance because

my memo consisted of questions that we liked answers to and the Town Attorney did that; however, when it comes to fire safety, here is why we are still questioning the issue of fire safety despite everything you have heard to date. I'm going to harken back to my memo regarding fire safety, the exhibits that were submitted accompanying that memo. One of the exhibits is 180 or more pages. I submitted them from the court record. I felt obliged to submit all of the documentation without any editorial changes because I thought that would flaw the objective of documentation. I've also submitted a copy of Peter Gelderman's brief on the subject of fire safety. With regard to that enormous court record, I submitted it because nowhere in that record, in all those pages, does the Fire Marshall not require a second means of egress. Also, in Mr. Gelderman's brief, we're very fortunate to have such talented people representing the town of Westport (Mr. Gelderman and I have worked together since we were children), in his brief on page nine, the first paragraph, the last sentence:

> In the instant case, the failure to present a second access road rendered the project code-noncompliant as a matter of fact, not opinion.

Those are very strong words. That's a lot of documentation from the Fire Marshall. We're concerned that somehow Summit is getting around an important safety concern. So, we have questioned that. You'll be pleased to know that I am limiting my discussion tonight to only the most major points. We won't get into the details of the woeful landscaping; instead, I am going to talk about the other major concerns that we have. Gary Romano is here tonight. He has done a great deal of research on traffic safety. He spent a lot of time talking with his new best friends and he's got some interesting information to give you. I'll leave that to him. My concerns about traffic safety are, in regard to traffic safety during construction, as we know, the existing Hiawatha community is approximately 60 properties including Mr. Gault's business. Obviously, the contrast between that and the applicant's proposal is enormous. I'm astounded that Summit did not, of their own volition, offer some kind of plan or protocol for traffic safety during construction. We know that construction will go on for some time. I don't think any of us know how long, a year or two and, during that time, I know that the former Chair of the Planning and Zoning Commission is here tonight and she may know off the top of her head the number of trips that 18 wheelers will be required but imagine many, many 18 wheelers barreling down Hiawatha Lane for the duration of their need on the project. They will be followed by other large pieces of equipment that will be using the public section of Hiawatha Road to get to the worksite. These are small, narrow roads and they're not going to get any wider during construction but what could ameliorate these concerns was a better traffic safety plan from the applicant, at least during construction. Now you may say there is no precedent for this; ah, but there is. I know because I was involved in the precedent for a construction safety plan. It had to do with the demolition and construction of a home on Old Mill Beach where we were bringing in materials and equipment via PT boat. We were required to provide a schedule of our work according to the tides, a number of safety precautions that we agreed to make and everyone was clear about, right down to providing everyone with the telephone numbers of the contractor, the clerk of the works, the architect and me. I gave them my phone number so if it was the weekend and there was a problem, I could be called and I would resolve it. So, there is precedent in unique circumstances for things like traffic safety plans. I also think about the fact that they are likely going to need a crane. A crane is a huge piece of equipment. My other concern with the neighborhood

safety has to do with the pedestrian improvements. This is a smaller issue and I'm delighted to hear that Mr. Marpe has agreed that he will do whatever he can through his office to make sure that this neighborhood gets the best pedestrian improvements possible. There are already significant safety hazards in this neighborhood of narrow roads with Davenport being narrow and private. There's a lack of sidewalks. There's a lack of lighting that this project is not going to improve. In fact, the only sidewalks that are being proposed for the neighborhood are not, in my opinion, sidewalks. They are asphalt strips. I'm quite sure the Town Engineer is not going to be pleased with that and that's not a zoning regulation. In addition, there will be an enormous amount of wear and tear on Hiawatha Lane. While the applicant has agreed to make repairs here and there, there is no mention of repairing Hiawatha Lane which is already in need of another coat of paving. We know that construction causes unavoidable delays and traffic jams which can impeded emergency vehicles as well as anyone trying to enter or exit the neighborhood or visit Mr. Gault's business. That's a particular concern of mine and having heard Mr. Marpe's comments tonight, I am very hopeful that his good offices will make a difference. One of the other concerns I have about a pedestrian plan is that there have been a number of pedestrian plans and some of them proposed usurping the parking lot used by the Gault business so that the traffic that is normally parked and narrows the width of Hiawatha Road, that on-street parking can be required to use this parking lot that Mr. Gault relies on heavily. That's going to be a problem. Finally, I am concerned about the zoning regulation which is not part of the stipulation but, as Attorney Bloom pointed out, is in the court record and I've examined it thoroughly and here's my concern and it needs to be the concern of many others: The zoning regulation proposed by Summit would eliminate any power the Commission currently has in reviewing this kind of application when it comes to Summit. So, once this stipulation is executed, the only authority over Summit's project and the necessary revisions, because we haven't seen the new plan or the new number of units; there is not an existing parking plan. One will have to be designed and submitted to P&Z staff for approval. I'm concerned because an activity that would normally fall within the special permit section of our zoning regulations which give the Commission fairly broad latitude when it comes to public safety, without the Commission's input, the staff is going to be put in an unenviable position. The staff will be entirely responsible for approving the new plans including parking plans and for issuing permits as soon as the applicant has submitted the requisite documents. I think that is a lot of responsibility for the staff. I'm troubled by the Planning and Zoning Commission being cut out of this process and that makes me concerned about this regulation which we don't have at our fingertips. I have some other comments which I think are considerations that we should think about. Once this stipulation is signed, there's nothing that prevents Summit from selling this project out to somebody else. That makes dealing with things like stipulations and other agreements very difficult because we are not dealing with the person who was involved in the stipulation. These negotiations imply a certain amount of native knowledge of an application. Without the original applicant, I think things get lost in the translation. All of us are happy to see, and I'm sure Danielle Dobin, in particular, is happy to see that the Legislature has finally given us a toe in the door toward leavening the terrible effects of 8-30g. I am finally, after 20 years, hopeful that something will come of this because this, in my opinion, is a disastrous regulation that does not necessarily result in the product that it is supposed to. That is affordable

housing. Additionally, we've heard that the trial is over, that all of the exhibits and information have been submitted, the judge has listened and has reviewed. But, my question is: Has the judge come out to the Hiawatha Lane neighborhood and seen it for himself? I don't think this is an extraordinary request. I think this is essential to the serenity of the people in the neighborhood and the people in the town of Westport.

Tim Hollister, Partner, Hinckley, Allen and Snyder (Hartford office):
I am assuming that all the members have a copy of my May 21 letter addressed to the Moderator and members. All I want to do is summarize the main point of that letter which has not been brought up. The petition that is before you asks the RTM to review the Planning and Zoning Commission's adoption of the zoning map change. But the Planning and Zoning Commission did not do that. It approved a motion under a State Statute asking a Superior Court Judge for approval of a settlement that includes a zone change. But the State Law under which that motion was made says that the terms of the settlement are not effective until they are approved by the Superior Court Judge. So, you are being asked to review something that hasn't happened yet. On top of that, the provision is under C10-4 of Westport's Charter, section D says:

> Nothing contained in this section shall impair or limit any right or appeal to a court conferred by the General Statutes.

The Planning and Zoning Commission agreed to a motion to the court to approve a settlement. This RTM proceeding is interfering with the exercise of a right in a court appeal. So, with all due respect, and I said this at the Subcommittee level also, this proceeding violates the Charter. I will conclude by saying I really have no need to counter what Ms. Gouveia has said point by point but, just in the way of making the record clear, I will point out one thing. Traffic was not a denial reason in the zoning case by the Planning and Zoning Commission. The Town Attorneys did not raise it in their brief. It was not raised in front of Judge Berger in the oral argument and, even at the Commission level, the Traffic Safety Consultant and Traffic Engineer hired by the Planning and Zoning Commission in town did not disagree with Summit's Engineer. They agreed, the consensus of the traffic engineers, that there will be no substantial impact from the traffic. That's just by way of example. You need to correct facts of the case. Thank you Madam Moderator for the opportunity to speak. That's all I have.

Committee report
Planning and Zoning Committee, Seth Braunstein, district 6, Acting Chair:
I'd like to take a moment to explain why I am delivering the committee report this evening rather than our Committee Chair, Matt. At the outset of our meeting on May 25, Matt read a statement into the record recusing himself from this issue. As you know, Matt has been the person on the RTM who has been most focused on this issue for the last decade plus. His tireless efforts on behalf of our community have thoughtfully helped guide the strategy and response to many of the most controversial zoning related issues we've faced and the Hiawatha Lane development, in particular. Matt has decided it was prudent to recuse himself on this particular matter given how personally invested he has been in advocating for this community. Matt wants to be certain that his work on this issue does not in any way prejudice our committee's consideration of this appeal. Ultimately, his recusal is driven by his desire for the RTM to consider this appeal under the most objective

conditions possible. I'd like to point you all to an endnote that includes the text of Matt's statement. It's available in the packet for this evening's meeting. Before I move on, I would like to say thank you to Matt. I think we all owe him a debt of gratitude for the many, many hours he's put in working for the community.

In an effort to distill what is a very complex issue down to its essence, our committee met to respond to a petition which was presented to the RTM by 20 petitioners which asked the RTM to overturn a recent agreement that Westport's Planning & Zoning Commission (P&Z) entered into with two developers, Summit Saugatuck and Garden Homes, that relates to a development project on Hiawatha Lane Extension in the Saugatuck neighborhood of town. Before addressing what was covered during our meeting I think it is important to note that on May 25th, in addition to the eight committee members present, there were also 15 other RTM members that joined this meeting for a total of 23 out of the full 36 member RTM that tuned in to hear the committee discussion. The purpose of this meeting was to understand what exactly the Planning & Zoning Commission agreed to, why they reached the conclusion that it was advisable to enter into this agreement, and how this agreement would impact both the residents that presented the petition and the town at large. We wanted to understand not just what had happened but also why it had happened and what the broader implications from these developments would be for Westport. Before diving into the "what and the why" of this agreement, we first needed to determine if the RTM was in fact permitted to take up the petitioners' appeal. As you heard from Town Attorney Ira Bloom this evening and at the meeting, that the RTM has authority under town Charter section C10-4 to hear an appeal related to a zone text change or map change. He explained that Westport is unique in this regard and is one of only a handful of municipalities that include this special act charter. The petition to be addressed this evening is asking us to overturn the agreement based upon a zone map change. In fact, it could have addressed both the map change and text change but is only focused on the map change. The RTM can't amend or change the Planning and Zoning Commission decision, but as a body we do have the right to vote to either uphold or overturn this specific agreement. Ira cited that there were perhaps up to 10 times where the RTM had previously exercised these powers. To be clear, as you've heard, under the charter it takes a vote of 2/3 of the entire membership of the RTM to overturn a P&Z decision (not two-thirds of members present, but rather two-thirds of the overall membership - so 24 out of 36 members).

Once the legality of this petition and the role of the RTM in hearing this appeal was established, we then asked Town Attorney Bloom to detail the outstanding litigation between the town and Summit Saugatuck/Garden Homes and how the status of these outstanding suits impacted the decision reached by the P&Z on this matter. I'm not going to go into that because Ira did an exceptional job walking through the three cases.
These are complicated, long standing legal disputes, but the takeaway from what we heard on May 25th from the Town Attorney is that the agreement reached between the P&Z and the developers will resolve all outstanding litigation with Summit Saugatuck and Garden Homes. They key here is that each of the three outstanding suits have the potential to further limit the town's control of future development projects. Should we lose in any one of these three cases, let alone all three, not only do we run the risk of a much

larger development being foisted on the town on Hiawatha Lane but we would almost certainly see an immediate flood of 8-30g projects presented to the town since we would no longer be protected by our current moratorium, and our ability to control future projects would be diminished. Ira went on to explain that faced with the outcomes in these cases now looking problematic for the town, the P&Z determined that the best course of action was for a negotiated settlement. When Ira concluded his comments, we then turned to hear from P&Z Chair Danielle Dobin and Commission member Paul Lebowitz. You heard what they've said tonight. I will just go on to say while Ira did a thorough job in detailing what has been happening on the legal front, the P&Z provided us with insight into what drove their decision to settle. Essentially, the P&Z recognized that they ran the risk of losing these cases and the only leverage they had in discussions with the developer would be to premise any settlement on the Hiawatha project with the dismissal of these suits with prejudice. We could continue to fight what appear to be losing cases or we could reach an agreement that would reduce the size of the Hiawatha project from 187 units to 157 units, would eliminate one of the buildings in the project, would create open space that would be protected as part of the project, would repair the roads and culvert in the neighborhood and most importantly would resolve the outstanding legal claims. We also heard how with the points gained from the Hiawatha project and a number of other approved projects we would put ourselves in line for another four year moratorium stacked on top of the current moratorium and there was some discussion of how we could conceivably earn a third consecutive moratorium as well which would mean a period of twelve consecutive years where the town would be succeeding with thoughtful affordable housing development without the threat of additional imminent 8-30g projects.

As you heard tonight, Danielle also provided some brief history, or perspective on how Westport's approach to 8-30g has differed from other Fairfield communities like Darien and New Canaan where, instead of taking an adversarial approach to developer plans, these communities instead took the lead and formulated their own plans often using municipal property as sites for affordable housing. While there is nothing that can be done to modify Westport's historical decisions, Danielle explained that we are now at a point where our actions today can set the town up for a more constructive approach to affordable housing developments for the future.

The portion of the settlement in our committee meeting that got the most attention or was the focus of the most questions was the linkage of an agreement between the town and the developers to the maintenance of the current moratorium. We learned that the only way the agreement will stand is if, in fact, the moratorium is upheld. We also heard an explanation for why additional developers would lack legal standing in efforts to bring similar challenges to the moratorium in the future and why given that we are already two years into this moratorium it would be impractical for another developer to even try since we would be through the full four year period before any challenge to the moratorium would be heard. We also heard from the developer's representative, Mr. Hollister. As you've heard this evening, Mr. Hollister had a different view on the legality of the RTM hearing this appeal - he felt we were not within our rights to have a voice on the P&Z's decision since this was a stipulated agreement subject to a court ruling. Crucially though, Mr. Hollister stated unequivocally that his understanding of the settlement was in

complete agreement with the Town Attorney and the P&Z's understanding of how the settlement that had been negotiated would resolve all of the outstanding suits that were hanging over the town. Importantly, this meeting also provided a voice to the petitioners. Understandably, we heard a high degree of frustration. Petitioners and community members voiced concern over the nature of the settlement and, more broadly, a persistent dissatisfaction for how 8-30g eliminated the very valid concerns over significant safety and traffic related considerations. There was also a clear sense that members of this community were being unfairly impacted by a number of recent developments on the west side of the Saugatuck River. Petitioners and other public comments focused on a number of areas including:

- As you've heard, being appalled at how little consideration the DOH and the courts seem to give the issues of public safety, property values and traffic impact.
    - As you've heard, 8-30g development does not allow for these types of issues to be considered.
- Not believing that the Town negotiated enough and did not get a good deal.
    - The P&Z explained at length why this was the best deal able to be achieved.
- We also heard from some of the residents that there was no consideration given to existing Saugatuck residents regarding access to the new affordable units.
    - We learned that Federal Fair Housing statutes do not allow for preferential placement.
- We've also heard that the Saugatuck residents were not consulted by the Town during the negotiation process and that there was now a short window in which to react.
    - Unfortunately, what we've heard is here is the town is forced to react. They can't be proactive in setting the schedule for certain elements including this appeal. Timeframes are set by the courts so we can only schedule these types of appeals within those timeframes.
- One of the other things that was brought up in our committee meeting was the persistent feeling that the Town did not do something to appeal the DOH threat to revoke the moratorium.
    - Referring back to the explanation of the ongoing litigations with this developer and the fact that it is clear that we have, in fact, been fighting over many, many years and have already made our case to the courts, have already moved to appeal in one of the cases and in another suit we are already in front of the State's Supreme Court.
- Finally, one of the items that garnered some discussion was from the lead petitioner Gloria Gouveia, who questioned why the text amendment related to the negotiated settlement had not been included in the public documents provided for review ahead of this meeting.
    - In response to that, P&Z explained that the final text was still in process and that it would have been premature to have included a preliminary draft that was still being fine-tuned. P&Z wants to be careful that as the text is finalized it is limited exclusively for the land under the three buildings accounted for under the terms of the negotiated settlement. It was also noted that the petitioner had only focused on the map amendment and had not included the text amendment in their appeal to the RTM.

After digesting all of this information the Committee conducted a vote. Before we got to the voting, we tried to be very deliberate about the language and the phrasing of the resolution and how the issue would be presented for a vote. To be clear, a vote for the petition/resolution would be a vote to overturn the P&Z's settlement agreement while a vote against would be a vote to uphold the P&Z's decision. Of the seven eligible voting members (keeping in mind that Matthew Mandell had chosen to recuse himself) there was one vote to overturn the P&Z agreement (Carla Rea), five that voted to uphold the P&Z agreement (Seth Braunstein, Karen Kramer, Amy Kaplan, Wendy Batteau and Ellen Lautenberg) and one that abstained (Jay Keenan). While not a unanimous vote, it was in favor of supporting the P&Z's decision to reach a negotiated settlement. Thank you for your patience this evening.

Members of the Westport electorate
Gerald Romano, 38 Saugatuck Avenue:
Can I ask you a question before I start? My wife is here also to speak. If I go over, can she give me her time?

Dr. Heller:
No. She can speak after you. If you go over slightly, we will try to let you finish your thought.

Mr. Romano:
I am going to read this if I may. This evening's topic: A 157 unit apartment complex at the end of Hiawatha Lane. I am speaking tonight to help the RTM understand some critical facts about this project. Hopefully, what I say will guide the members to vote with better understanding of the facts. One thing I did read was the stipulation and I tried to find the square footage of the structure, the total apartment spaces, total bedroom count, total unit designs as to one, two and three bedrooms and the square footage of each unit. Item 3 in the stipulation said the unit mix and bedroom count among the 157 units shall be depicted in the site plan dated May 7, 2021 and attached hereto as exhibit A. I scrolled down to where it said site map. I opened up the map and saw a top view of some building structures and some surface parking and no other information. Hopefully, all the members got that. I was very disappointed. I am very concerned about the increase of traffic, 300+ cars that would be generated by this 157 unit apartment complex entering onto Saugatuck Avenue, Route 33, from Ferry Lane West. The conundrum at this intersection appears to me to be a very big traffic and safety issue. To understand the traffic and safety issue, I called the Connecticut Department of Transportation, Office of the State Traffic Administration. I asked about high volumes of traffic exiting onto Route 33, Saugatuck Avenue. I was given Iman Flannery, PE, Transportation Engineer. In our discussion, he asked the gross size of the building and parking spaces. I said 157 unit apartment building has 300 cars. They will all exit on Ferry Lane West onto Route 33. Iman said this will fall under a major traffic generator. He sent me a link to major traffic generators. I hope you all got it. What it basically says is that a developer must prove to the State of Connecticut that the intersection is safe or unsafe and that is a process that takes months to do and is required to be done by the developer. The 157 unit apartment building at the end of

Hiawatha Lane is a major traffic generator. They must apply for an administration decision or a certification process to prove that the traffic at the intersection at Ferry Lane West and Route 33 is a safe intersection. Traffic count: Iman Flannery, PE, Traffic Engineer sent me a line to show the traffic generation at several intersections on Route 33. I sent it to everybody. I hope they got it.

Mr. Braunstein: Madam Moderator, we are now at six minutes.

Mr. Romano:
Due to the pandemic, the State was not able to complete a new traffic count for 2020. The figures I have in front of me are from 2017. An example: On Saugatuck Avenue, goring north, there is an average of 13,500 cars daily between the Saugatuck railroad bridge to the end of Treadwell Avenue. I would like to focus on an actual intersection. Ferry Lane West.

Dr. Heller:
Mr. Romano, I would like to ask you to try to wrap up because you are way, way over.

Mr. Romano:
I'm not a fast reader. I'd like to focus on the actual intersection of Route 33 and Ferry Lane West. Let's look at the traffic from the potential 157 unit apartment complex on the end of Hiawatha Lane. One hundred fifty-seven units indicate that there will be 300 cars leaving the apartment building going to work, the park, Compo Beach, Beach School, school bus, picking up the kids from school, UPS, Amazon, U.S. Postal Service making deliveries just to mention a few. The only way out of this 64 home community is to exit Ferry Lane West. This road is 24' wide. Each side has 12 feet and you have the landscapers in and out of Gault with stone supplies. Aside from the 300 cars leaving the 157 apartments, you must also add the cars from the 64 home community. Some of the homes have multiple families so that is 135 more. So, 435 cars will be exiting a 12' wide road on Route 33/Saugatuck Avenue, an already crowded intersection. Let's look at safety. Example: you have 435 cars trying to leave Ferry Lane West. You have a school bus trying to turn into Ferry Lane West. The mailman is making his rounds trying to deliver to homes. You have cars backed up on Hiawatha. Then bam. Then comes the 911 call. Heart attack in the 157 unit apartment complex at the end of Hiawatha Lane. Fire call. Dr. Gillette Circle. House on fire. Then you have Fire Department, EMT, Westport Police trying to save lives through all this traffic. This is one of many scenarios. In conclusion, RTM members, Jim Marpe, Planning and Zoning Commission members and citizens of Westport Connecticut, I lived in Westport over 50 years as a building contractor and real estate broker. Of all the condominiums and apartment complexes that are built in Westport and are being built, not one of them has destroyed a neighborhood. This 157 unit apartment complex with 30 percent affordable units at the end of Hiawatha Lane with a traffic count of 300 plus cars will desecrate and rake beyond recognition the existing 64 homes of their community. I ask the RTM members to reverse the P&Z decision and not allow this apartment complex to be built.

Dr. Heller:

Mr. Romano, I want to explain that we did let you go way over time. I guess we're trying very hard not to repeat again and again. We appreciate all the time you put into that. Thank you very much. Do we have any others?

Mr. Wieser:
T.J. Elgin is on the list and Kathy and Mark have their hands up here.

Dr. Heller:
I'm going to say again, we strive for the three minute mark. We hope that you will adhere to it. I tried to accommodate Mr. Romano because I know he put a lot of effort into it.

Mr. Braunstein: I will give you a 30 second warning.

Kathy Walsh, former Chair, Planning and Zoning Commission:
Madam Moderator, thank you very much. This is a public hearing. I am a member of the public. I beg you to allow me to continue. Three minutes is very short. We've had this discussion before. I don't want my voice cut short. It is not healthy for healthy debate.

Dr. Heller: Kathy, we're not going to have an argument. Do the best you can.

Ms. Walsh:
This is a really tough issue. First of all, it's Planning and Zoning and there are maybe one or two people on this call who are really Planning and Zoning experts, maybe three or four. It's really hard for most people to get their arms around all the components of it. I'm going to just cut to the chase. This is about a subdivision. I think we have been handed a gift. I have nothing to gain or lose from this but I prefer to continue to fight for the people that are being handed a disservice. As Jerry and Gloria have both suggested, there are some major gaps in the settlement. There is nothing in Attachment A that does count the housing units which is really a part of every P&Z application, every settlement that we've had, every application, the 1177 building, you have to put down where the apartments are, how many there are, how many are affordable. That is a glaring omission on everything that's on the settlement. One of the other things, we've heard, there's been a lot of distortion. There was a lot of discussion about the construction traffic and there was concern expressed when we turned it down because of the enormous construction traffic. We did note that but that paperwork is not here for you to see. So, that was a big distortion on the part of Attorney Hollister. So many people who live in the neighborhood for whom the settlement is supposedly going to be better for really know the risk that they're running. They know that they may end up with 30 extra units but they're willing to go the whole nine yards... Pete and Ira know this because I've said it in our executive sessions. This is the only one that I have been this strongly opposed to because of the safety of all the people who live there. It's something that you have to consider why you should turn it down. We have regulations on the books that say you can't have a major project with more than 20 parking spaces on a local road. This is a very local road. I want to hit on the Lincoln Street project. I'll tie it in.

Dr. Heller: Let's stick to this.

Ms. Walsh:
We lost it but after we lost it, the developer came back and we were able to renegotiate a much better deal for the people who live there. We were able to reduce the units from 90-something to 60-something. I think there was a rush to get this piece of paper moved off the desk. I think we have a long ways to go on this. I think we can accomplish a lot more. I think the first step is to turn down the rezoning. I think the Commission also has to address the text amendment. The text amendment is wide open and it allows for a lot more development in that area. We got burned on this once before because in another 8-30g application, we overlooked the text amendment that went with it which did hurt us. So, I really think that we have to find a way to correct some of these issues. I know I'm fighting an uphill battle. I know you guys don't want to hear this or hear it from me. That's okay. I'm just here to point it out. At the very least, I hope you take some time, look over some of the things that have been submitted; consider what people are saying and work to get this fixed. Jim Marpe will have a lot of control. Traffic Control will have a lot of control on this project. The construction safety plan is really something that we do all the time and I know that Jim will do that but it is going to be super tough to do. I appreciate the extra time. I am somewhat dismayed that we would ever do this but thank you so much for listening to me.

Dr. Heller:
You know we did say to call in and let us know so that we have addresses and stuff. The next person with a hand up is Mark?

Ms. Walsh: You have two emails and nobody responded.

Dr. Heller: I didn't get it. Mark, we can't hear you.

Mark Lazar, 42 Hiawatha Lane Extension:
First, the negotiation they made, we are at 157 units now, right? The original application was for 155. It's not a negotiation at all. He stepped it up somewhere along the way to get you to negotiate it back down to where he originally wanted it; now plus two units. Adding to that, now, some of the units get to grow in size. So, he really is getting more than he originally wanted. That is not a negotiation by any means. The moratorium, the whole, let them do this you can get it back, let me just put a metaphorical statement: the big kid just took our toys away and he's making us eat dirt to get it back. That's kind of the simplest way I can put it. I'm sorry I'm going fast. I know I only have three minutes. Another: They talk about giving new families opportunities. Why is it in a place where people already live? Why isn't it going into open space? It's not fair to say 'We need to give these people opportunities. Alright you, out.' That's not how it's supposed to work. They say fire safety doesn't satisfy the State. Traffic safety doesn't satisfy the State. Pedestrian safety doesn't satisfy the State. What does satisfy the State? That's like everything. I agree with Gloria. The judge should come down here and see the neighborhood for himself. You should consider all these things and overturn Planning and Zoning's decision.

Dr. Heller:
I know it's high speed and we really appreciate it. There are so many people who want to speak.

TJ Elgin, 4 Robert Lane:
I know a lot of meetings have been going back and forth within Town Hall. I don't understand why something like this which is going to shape Westport isn't being had in Town Hall. We've accepted a lot of Federal funding to make everything COVID friendly, all that good stuff. We're not allowing people back in while we're making something this drastic of a change. I just think this meeting should be continued. It shouldn't be voted on tonight. It should be put forward another night to allow people to be involved in person. There are so many people who haven't been able to get online. People don't have access to have the means to be on here. I just think this is being force on many people and I just don't agree with it.

Dr. Heller: Thank you for your comments Mr. Elgin.

Mr. Braunstein: I believe Carolanne Curry has her hand raised.

Carolanne Curry, 29 Hiawatha Lane Extension:
Good evening RTM members. I appreciate that you are having this procedural step before Summit proceeds to the next step but I see you've all met Tim Hollister, the bully, for a couple of years; and I think whatever we say or do tonight, he'll probably litigate. I think that the thing I want to tell you is you know that we have fought for 18 years. You know that we have been successful in our fight for 18 years. Unanimous decisions from Planning and Zoning have upheld work that we have done, a working class community that does not have the financial access to attorneys as other parts of Westport do. Paul Lebowitz would really like this community to look more like Westport but, nonetheless, we are going to keep trying to retain our identity, no matter what happens. We have been sacrificed. We realize it. We have been thrown under the bus. We realize it. We are the have nots. We realize it. So, after this is over, we certainly hope you realize how many people will be displaced from this neighborhood and you will reach out and try to find some sort of remediation for this. I think the elected members of the RTM who represent all of Westport should be aware that this neighborhood is the history of Westport. I think we deserved more but we didn't get it. I know the developer got a lot more.

Mr. Wieser read the resolution and it was seconded.
RESOLVED: That upon the petitioned request of at least 20 electors of the Town of Westport, pursuant to Town Charter C5-1F and C10-4, the Planning and Zoning Commission decision issued on May 13, 2021, in adopting a new zoning district boundary: SV District as seen on "Proposed Zoning Map - SH Z2, entitled: The Village at Saugatuck, Hiawatha Lane, Town of Westport, CT for Summit Saugatuck LLC," dated May 10, 2021 is hereby reviewed and rejected.

Dr. Heller: The motion has been stated and seconded.

Members of the RTM

Rick Jaffe, district 1:

The Hiawatha folks are not just my district 1 constituents, they are my neighbors, right over my left shoulder, a few minute walk from here. I am not an affordable housing expert; however, when I joined the RTM, the first thing I did was sit down and read 8-30g because I knew it was important to the future of Westport. I attend as many P&Z's affordable housing meetings as I can. As an RTM representative, I see my job as twofold: First, to look after the best interests of my district 1 constituents and second, the best interests of all of Westport. This development is not in the best interest of my district 1 constituents or my Hiawatha neighbors. In this rare case of divergence of the best interest of my constituents and the best interest of the town, I have to go with the town. A apologize to my district 1 constituents but I believe that our Planning and Zoning Commission is now doing a terrific job of planning for the future of Westport to get back full control of our development of affordable housing. I also believe that our Planning and Zoning Commission and other entities in our town over the last 10 years, over the last 20 years, have not been as successful in representing the best interests of the citizens of Westport. I urge you, citizens of Westport, when it comes time for election, never let up. Always apply yourself. Try your best. Select the best representatives, even district 1 representatives, even me because your opinion and your judgment matter for the future of Westport.

Kristin Schneeman, district 9:

First of all, I want to align myself with all of Ms. Curry's comments. To think that the residents of this neighborhood got the short end of the stick is an understatement of epic proportion. This project is heinous in so many ways. I remember when this came before us last time, it's been before the RTM twice now. The last time was a Conservation decision and a very narrow scope in which we had any authority to act. I was pretty new on the RTM at that point and I spent a lot of time trying to push a camel through the eye of a needle. I asked a lot of questions, probably to the point of being annoying. I do have a few questions in this case. I will try to keep them brief. Ira, I wonder if you could give us your response to Attorney Hollister's contention that this is not appropriately before the RTM because a map change has not actually been made yet, that it is a proposed part of a legal settlement that we don't actually have authority to act in this case. I know you said you disagree with his opinion but I wonder if you could give us your thinking on that.

Attorney Bloom:

I said before and I'll say again, I do not agree with his analysis at all. The Charter, I think, is very clear. As I said earlier, it is a Special Act Charter. It is a grant from the General Assembly. It has the force of law and the language is pretty clear. It says any action by the Planning and Zoning Commission, either in terms of text or map changes, can be appealed in this manner. My position is the Planning and Zoning Commission took an action. They acted and, therefore, I think the RTM has the right to undertake this review.

Ms. Schneeman:

Part of his commentary was that we were interfering with a legal agreement or settlement. You're saying that you don't agree with that contention.

Mr. Bloom:
I do not agree with that contention. It's a multi-step process because of this admittedly unique provision. This is part of the process.

Ms. Schneeman:
We're being given a map change to potentially reject. On what basis can we reject a map change? What specific things should we be taking into consideration or looking at?

Mr. Bloom:
That's a tough one. On one hand you have a multi-faceted stipulation and we're talking about all of those issues. At the same time, the petition is for a map change. Whether it was for a zone change or a map change, the same comments would apply. That's a very narrow focus. You have to look at it from a land use perspective in terms of the land use application that was proposed to the P&Z. That would be my suggestion. I understand it forces you to look at the overall settlement to try to determine if it is in the best interests of the community as a whole. More narrowly, in terms of the petition before you, is the map amendment before you appropriate as a land use decision. It's a dilemma because of the way this is structured, the limitations in the Charter versus the overall settlement which presents many issues for you consider.

Ms. Schneeman:
My last question is, I think, for Danielle and Paul. My question is there seems to be a lot of things that have been put out on the table that are unfinished business, that have yet to be concluded, the language of the text amendment. People have talked about the position of the units and whether that is reflected appropriately in exhibit A, people have asked if the Planning and Zoning Commission, if this agreement goes through, have authority over the redesigned project and the parking plan. There are a lot of issues that seem to relate to: what happens next? If this agreement were to go through, what unfinished business needs to be dealt with? That's unclear. If this agreement goes through, what details haven't been worked out yet that might be important for us to know about.

Ms. Dobin:
I think I understand what you're asking and I think it is a fair question. First off, if you read the stipulation, there are a number of items that are specifically left to be worked out, on purpose. The reason it was drafted in that way is, as Ira pointed out, we are at the point with all these legal cases where decisions are almost upon us. If the decisions are issued, we will lose our ability to continue this discussion, negotiation, and settlement and it won't be the best for the town. So, we made the decision collectively to leave certain items to be negotiated after the settlement is signed. That way, we know what we have and we can work out the details that matter. So, I included the language with regard to the text amendment because I was deeply concerned that the text amendment applicable in this case only have applicability for these particular lots and parcels and not any applicability anywhere else in the Hiawatha neighborhood or anywhere else in the town. That's why that language is included as language that will be worked out. Depending on what

happens tonight, I will or won't spend the time to redraft the text amendment which the applicant has agreed and at the P&Z Subcommittee we essentially put on the record through his attorney that they are agreeing to our changes to insure that the text amendment is only going to be applicable to those parcels. With regard to the layout, we did include numbers about it and there is a site plan that does show parking. Does it show how the parking is striped in the subterranean parking downstairs? No. But we have code that covers what the parking has to look like. There is also State Fire Code. In the end, the striping beneath the subterranean garage is not going to be what makes or breaks this project. Certainly, with regard to 8-30g's generally, as you know, we don't have special permit standards that we get to use. We don't even have our regular site plan standards that we get to use. It's sort of like *you get what you get and you don't get upset.* In this case, we've actually exercised more control. Putting a number of these items into the to be determined category actually allows us to continue to have control over them. A lot of it will be handled by our excellent staff and Mary Young, Director of Planning and Zoning, with regard to insuring that our regs are all complied with.

Mr. Lebowitz:
I can add a little bit to that also. I want to remind all those on this call that the stipulation is an agreement to move forward in a certain fashion with the original application plus modifications. So, when you talk about striping in parking lots and parking plans, when you talk about landscape, when you talk about excavation and fill standards, all the regular zoning issues are actually in the application which was brought to us, which we rejected, which they then sued on, which we're now stipulating to. Although you don't see the voluminous mass of paperwork that the applicant has brought to us, it is available. It's available in the original iteration, the most recent application, Hiawatha, and that one is for 187 units. It is comprehensive. It is all-encompassing. It's a million pages long. It covers every possible angle you can think of from the number of exhaust fans in the garage to how much curbing is going to be outside for fire trucks to hop over. It's got it all. We rejected that even though it was comprehensive and now we're actually going back and settling with modifications to that. It is very important to understand that the stipulation refers back to the application. So, while the stipulation before you might seem like a dearth of information, if you go on the town website and look at the last application for it, you're going to find about 600 pages worth of meat to go through and have at. I do want to remind you that the two are tied together.

Peter Gold, district 5:
I've got a couple of questions. I guess they're mostly for Ira. If Danielle or Paul want to add things, that's fine. One of the things that has to happen is for Garden Homes to agree to the settlement. Why would Garden Homes ever agree to it? What do they get out of it?

Attorney Bloom:
They have agreed to it, first of all. I will be getting something in writing from them. They are not a party to the Summit zoning application which is the threshold application that we have here. They are mentioned in it. They are a party to the moratoriums and they will have to sign a withdrawal.

Mr. Gold: Why would they? What do they get out of it?

Attorney Bloom:
I can't really speak for them. They have been going along with Summit challenging the moratorium and they have agreed to the overall settlement. They have agreed to withdraw the moratorium case along with Summit and that will have to be done in a formal court document. I'd rather not get into why.

Mr. Gold:
We didn't hear of anything in exchange. [No.] You mentioned that the judge has to approve the settlement. I imagine that if people are desirous of fighting it, they could attend that hearing and make their case, yet again.

Attorney Bloom: That's correct.

Mr. Gold:
I gather, from Mr. Romano that the State Traffic Administration has to review this at some point?

Attorney Bloom:
That is my understanding too. I think that comes a little later in this. Mary Young may have more details on that.

Mr. Gold:
If the Saugatuck people wanted to bring up the traffic issues, that would be the time and the place to do that?

Attorney Bloom: That I'm not sure of exactly how they handle it at the State level.

Mr. Gold:
What happens if the traffic administration doesn't agree with it? Does the settlement fall apart?

Attorney Bloom:
I don't know if the settlement falls apart or if they have to make changes. I don't know the answer to those questions. They usually occur further down the road. I would assume if there were some problems with the State Traffic Authority that the applicant would have to address them.

Mr. Gold:
My last question, this is just something I don't understand about the moratorium. The State Statute says you get a moratorium if you have 'X' number of points. We either have 'X' number of points or we don't have 'X' number of points. How can the Department of Housing say 'You don't' have 'X' number of points but we're going to give you the moratorium anyway.'

Attorney Bloom:
As I said, they first determined two years ago that we did have the number of points. As I said, they took a few away and they added a few more. The few more were based on Hidden Brook. They said to us in writing that they determined from their own records, not records that we submitted, that we had actually underestimated the number of points for Hidden Brook. Therefore, they took away with one hand and added more with the other hand and we were still over the limit and they granted the moratorium. As of March 22, they have a different position on that.

Mr. Gold:
Having taken that different position, saying, 'Oh, guys, you don't have enough points', how can they turn around and say 'Despite the fact that we've told you that you don't have enough points, we're going to turn around and give you the moratorium anyway.' Either we have the points or we don't have the points.

Attorney Bloom:
They said in the letter that they were unable to locate the documentation. That's what they said and they were prepared to revoke the moratorium. They have not removed the moratorium because we asked them not to. We said we were going to try to provide them with documents. I went through this before with Carol Martin, etc., etc. Then we got into this negotiation stage. They went through a long period reviewing this at some level at the DOH with the Attorneys General and they came back and said they will keep it intact as part of this overall settlement.

Kristin Mott Purcell, district 1:
Frankly, it's been said tonight and in the prior committee meeting, the situation is untenable. In fact, I think it's been described a number of times as 'This sucks.' There is no good outcome. As one of your representatives, I thought it was important to share my thoughts. I applaud and support the Saugatuck Community and neighbors for your commitment and tireless efforts to preserve this very special community and neighborhood. Thank you for all your research, passion, insights and very important issues you raised tonight in your emails, in your comments and over the last many 18 years. I have been very supportive of your efforts to continue to fight the fight and you have laid out legitimate concerns that make this decision even more difficult. However, given all the recent developments, I will not vote to support the petition to overturn the May 13 P&Z vote and believe that the settlement is the best option for the Saugatuck community and the town of Westport. This is not a decision that has come easily as everybody has discussed but based on all the information that is available to us, this is the best and most pragmatic option. A long-term commitment to expanding affordable housing options is essential to Westport to continue to be a vibrant and diverse community but I believe the expansion needs to be controlled by the town. Losing that control would have a far greater negative impact on Saugatuck community and all of Westport. Thank you to all the participants who have worked tirelessly on this issue for so many years including the neighbors, Carolanne, Gloria, all the people who have spoken tonight and to Danielle, the full P&Z, Ira, for your tireless work and my RTM colleagues, particularly, Matt Mandell. Regretfully, I will not be supporting the petition to overturn the P&Z decision.

Chris Tait, district 1:
Yes. This sucks. This whole thing, I feel terrible about because, honestly, we were painted into a corner. Their attorney has been very good about controlling the narrative of our town and painted us into a corner. As a town, we failed the residents of Saugatuck. That's the crux of all this. I do have a couple of questions. Ira, you're saying you are guaranteeing we get a moratorium from the settlement?

Attorney Bloom:
No. I am not guaranteeing it at all. I read to you what the DOH has said as of May 25. I don't think their position has changed since May 25. They are tentatively onboard:

> To keep the moratorium in place as requested by the town of Westport and Summit Saugatuck.

I believe they will adhere to that but I can't guarantee anything.

Ms. Dobin:
I just want to clarify: This stipulated settlement is contingent on the moratorium staying in place. If they don't issue the letter revoking their intention to revoke, there is no settlement. We believe that they will because they want to see all of this settled and the two companies who are suing the DOH are going to withdraw with prejudice their litigation as part of this settlement agreement. But, if for any reason, the Department of Housing did not issue their revocation of their intent to revoke we wouldn't be settling any of these cases. We made this settlement contingent upon that because that is our leverage to make sure that that happens.

Attorney Bloom:
Can I just underscore, if we don't get the letter, the whole deal falls apart. I do believe, from my multiple conversations with the Attorneys General who are working on this case that we will get that letter. But that is precisely the language that they gave to us and authorized me to read it.

Mr. Tait:
This is the only reason to even be thinking about this. My other concern is you are talking about DOH who said 'My dog ate my homework.' All of a sudden, they lost this information which seems kind of suspicious to me but that's my opinion. This developer knows, quite frankly, that this area is affordable housing and we're taking affordable housing to blow up affordable housing. We're making market value real estate with 30 percent affordable housing. I'd like to know how affordable is market rate? Can anyone tell me what a one-bedroom apartment in affordable housing will cost?

Ms. Dobin:
Sure. They are not condos. They are rental apartments. So, for people who make 80 percent of the median income, a one bedroom will rent for $1,429/month. A three bedroom will rent for $1,934/month. For a 60 percent SMI, a one bedroom will rent for $1044/month. A three bedroom will rent for $1,401/month. They are, as compared to renting single family homes or market rate apartments in Westport, they are substantially less

expensive. They are not low income. They are designed for a family who make an income of $80,000/year or $60,000 so they are not very low income. The market rate apartments at 793 Post Road East rent for close to $5,000/month.

Mr. Tait:
[Inaudible.] I do agree we have to start getting ahead of the curve. When the time comes to look at affordable housing, what we want to do and how we want to do it, they should have a priority if they have been displaced. Can we make them a priority of whatever place we develop?

Ms. Dobin:
I think that's a really good question. After this was brought up initially, I did some research. All of the houses involved were voluntarily sold to the developer so they chose to sell their homes and then the developer rented them with short-term leases to other people with those people having the knowledge that they were working towards developing those parcels to be a new development. We've heard from a lot of people all over Westport recently, long-term renters or people who have only been renting for a year or two, because the real estate market is so hot, people are now selling their houses and the renters are being displaced. Or, someone rented a house for $5,000/month and now the landlord want $18,000/month. They can't afford to stay there. There is no rent control in the State of Connecticut or in the town of Westport that gives special rights to tenants to stay in a house that they lease or an apartment beyond the expiration of a term. I went to the developer as part of our negotiations and said, 'People who rent the existing houses from you, I'm concerned that they are not going to have the opportunity to stay in Westport. Some of them have children and we don't want the children to have to leave the Westport School System. Is there anything you can do?' They replied, 'That's what's wrong with Westport. You always want to put the people you want to put in there. That's not what is legally required. What is legally required is that there is a lottery and they should apply to be on our list and they will have the same exact opportunity for housing as anyone else. So, we cannot earmark housing. We have looked at it before for police officers, for fire fighters, for town employees to see what we could do to provide opportunities for people who work in town, for our teachers to stay in town. There is not a lot that we are able to do because of the Fair Housing Act, unfortunately. But we get asked about it because obviously we want people who live here to be able to stay here.

Mr. Tait:
I understand that but keep in mind pricing. We could control pricing. With affordable housing, we could control what someone pays for rent.

Ms. Dobin:
The RTM is a funding body. The P&Z is not. The RTM could certainly come up with some means of creating funding to make up the difference, like a local Section 8 voucher of sorts, to allow people to live in other housing in Westport when they've already lived in housing that's redeveloped but it's definitely within the purview of one of the funding bodies, not the P&Z.

Mr. Tait:
With this situation of Saugatuck, we've painted ourselves in a corner and I'm very disappointed in how we've handled this up to now. I think we've got to start looking forward and we've got to remember who got screwed on this. We need to put that as a priority. If we don't, it's another black mark on us. From our perspective, we've got to start taking control of the narrative of who we are in Westport because the way the narrative has been told is not true. For somebody who has grown up in Westport, that is not the case of affordable housing. Like I said, we've got Hales Court and I could go through a whole list. Unfortunately, the 8-30g, in 1989, does not include any of that. Again, that's not our fault. That's the State's fault. It is using 8-30g for developers to laugh all the way to the bank. It's unfortunate that in a situation like this, it can't be amplified that in a community like this that has been affordable for 80 years, and a lot of people were able to enjoy Westport who couldn't afford it without having their own home or living in an apartment there. I want to say if anything can be done and if we do this settlement, there has to be some understanding that if we do displace people, we have to think about that. If there are kids in the school system, things like that, we've got to come up with something. The RTM has to come up with some sort of way to compensate them. I think it's fair because I think it's our fault we're here. I hope this moratorium comes through. Danielle, affordable housing, going forward, that's now up to us to control our own destiny. We need to get on the ball starting tomorrow.

Ms. Dobin:
You are always welcome to come to our Affordable Housing Subcommittee meetings. Many of the people here have. I'm sure that you know that the P&Z Affordable Housing Subcommittee spearheaded the development of a new community, entirely affordable, entirely designed for families in central Greens Farms. The Greens Farms Neighborhood Association came out to be supportive of the project. The immediate neighbors came out and created an indie group, Yes in My Backyard, to be supportive so we're looking to be doing 30 to 40 three bedroom townhouses by engineering transfer of land from the State DOT to the Westport Housing Authority. Mr. Marpe has been tremendously supportive and has come to all of the meetings, tag teamed with me working to get the land so we truly have turned the page. Forget about turning the page. We have opened a completely different book in town where we are proactively planning for the type of housing that we need in Westport to diversify what is available here and also at the same time earn a lot of points with regard to 8-30g. Many of you come to the meetings so I won't bore you with the details but please continue to come. Continue to be supportive because that's what we need in order to move forward. And thank you Paul for being my right-hand man on all of this.

Mr. Tait:
So, Ira, we feel we're going to lose some of these cases. When we say we feel, do we know? Are we just not taking a chance? I've heard from many people that we're going to lose this. Where did we come up with that thought process?

Attorney Bloom:

We don't know for sure, of course, but as I was trying to say, particularly on the 8-30g, the underlying zoning case, the appeal on 187 units, I've looked at other cases, I've read probably every affordable housing case that has come out, I've lectured to groups on that and I follow it very closely so I'm giving you my best assessment. There have been other cases that have been very similar to this in terms of Fire Code versus Fire Marshall, so to speak, I'm simplifying, of course; in fact, we had one of those in Cross Street /Lincoln Street. So, it's my best assessment reviewing other cases. The moratorium, based on the conversations we've had and the pre-trial that we had before the judge, if there is not settlement, it appears more likely than not, perhaps very likely, that we will lose our moratorium.

Mr. Tait:
Again, this is going to be a very tough decision, something I do not look forward to. I want to thank everybody in our district that put up a fight for many years and I swallow this with a heavy heart because I think we, as a town, have painted ourselves into a corner. We allowed them to control the narrative of who we are as a town and we didn't fight back in that regards. But I thank everyone involved and I hope we can move forward collectively.

Mr. Braunstein:
Madam Moderator, I promise to keep my comments within the 10 minute time limit. I want to start out by saying being the timekeeper is not a fun job and I am hugely apologetic to the individuals who showed up this evening and felt they were constrained. From a process standpoint, I don't think that is a great outcome. But those are the rules. So, apologies for pressuring any individuals. My comments are largely built on what Chris just said. To me, there is a policy issue here and then there are a lot of people here. Unfortunately, the policy issue is going to impact some people in an adverse manner. I think everybody here regrets it and wishes it wasn't the case. From a policy perspective, it seems very difficult for me to see how we can't reach a settlement. Otherwise, we would be taking too much risk of losing whatever control we have. So, when I think about the people that are being impacted, the very first thing I did on May 26 after the committee meeting was I picked up the phone and called Elaine Daignault who heads up the Health and Human Services Department for the town and I said, 'Elaine, this is unconscionable. There are 23 people that are going to be displaced. What can we do? How can we help these individuals if the development goes through?' It was quite discouraging. Elaine had done her homework. She knew the issue and there is no easy answer. There is no way we could put the displaced individuals into a preferred position for any housing consideration. So, I want to know what we can do for these people. Is there anything from the town's perspective? It does not seem to be an easy answer. I also want to be super responsive to some of the points that were brought up here tonight. Can we have a traffic safety plan during construction formalized into some form of agreement to be responsive to what the lead petitioner brought up here? I thought her point about the transfer of stipulations to a new owner was a very valid consideration. What can we take comfort in in terms of whether a successor to the Saugatuck people would be required to adhere to the stipulations that had been agreed to. I want the individuals who are impacted by this to understand that we see them; we hear them. We're sensitive to it but I think it would be, from the town's perspective, at this point, to continue fighting it seems to me would

put us in harm's way across all three of these outstanding litigations. I do have one question, perhaps for the developer's attorney Mr. Hollister. How does the developer think about moving forward without this agreement? Is this just a fight to the death and something is going to end up there no matter what? How would we think about the future without an agreement? I guess we're subject to the outcomes of the litigation and we're going to end up with 187 units but I'd just like to have that confirmed.

Ms. Dobin:
I can't speak for the developer. I can say if we don't settle this, there will be decisions in the legal cases and those will be binding. I don't think the developer would choose to withdraw and abandon these cases if the settlement didn't work out but I will let them answer for themselves.

Attorney Bloom:
They can answer but while they are preparing an answer, I'll just say the decision on the zoning case is probably imminent. As soon as we report to the judge, which we have to do after this RTM proceeding, the judge is going to issue a decision within a fairly short period of time. The Supreme Court is on hold. I think their decision will be soon. I don't know if it is written or partially written. So, I think it will be soon also so we will get those two decisions very quickly.

Attorney Hollister:
I agree with what Ira just said. If I understand Mr. Braunstein's question, if we do not settle, we will proceed with the court decisions which will likely be issued in short order. To go back to an earlier question, Garden Homes has agreed to the settlement.

Wendy Batteau, district 8:
I've been attending meetings and hearings about this for about 14 years. I think the previous Planning and Zoning Commissions did the best they could. They didn't necessarily look ahead to settlements but they worked with what they were given and refused where refusals were justified but I have to say I greatly appreciate Danielle and Paul and the rest of the P&Z. I think that they were as proactive as possible in working out a solution which is as good as we're going to get and which will enable us to go forward without quite so many balls and chains attached to our bodies. That having been said, I have some questions because this whole thing makes me as sick as possible. I agree with Chris Tait and have questions along the same lines as Peter Gold. First, with the excess traffic generator study that is required, Ira, you've said that traffic is not a concern for the court with respect to 8-30g projects so if the excess traffic study shows there is way too much traffic and shouldn't be allowed, how will that play into any decision that is made whether or not the court says we have to proceed with this?

Attorney Bloom:
Traffic congestion is not a ground to deny an 8-30g application. Traffic safety could be. So, that's the basic 8-30g law. We'll get a decision from the trial judge, Judge Berger, fairly soon. If it's adverse, we go from there. But as far as the developer, he has to go to the State. If Pete Gelderman or Mary Young is here, they work with this kind of post-court

decision proceeding. It's more of an administrative review, different standards from the 8-30g type standards as far as I know. They have to comply with the State regulations at that point. That usually comes later and, frankly, I'm not usually involved at that point.

Mary Young, Director, Planning and Zoning Department:
With respect to OSTA, Office of State Traffic Authority, that is a requirement that the applicant submit all of their plans which are still under development, still being designed, pursuant to the draft settlement. That will take place. I am not aware that there is a place for public interventions so to speak. It is a very administrative proceeding. The applicant hired a competent traffic engineering firm with Michael Galante as their lead, a consultant, a gentleman who the town of Westport has hired for the same purposes. I would venture to guess that he has not designed anything that would not get approval from OSTA. If that approval is not obtained, then, as so many other moving parts, the project fails. They cannot develop the site without all the necessary State approvals but the State regulations are unique in saying that no applicant can seek OSTA review and approval until all local approvals are obtained initially which is why it is an outstanding request for the applicant to obtain that because they are now working to dot their 'i's and cross their t's to obtain local approvals including tonight's proceedings.

Ms. Batteau:
It pretty much answers it. I'm just wondering If OSTA finds fault with the plan, then we don't agree with the settlement?

Ms. Young:
I'll say one more thing and then I'll let Ira respond to your language in the settlement document, better for him than I. My experience is that back and forth correspondence, if OSTA had a concern, they would direct their concern to the applicant's traffic engineer to identify is a modification of some kind needs to be made or further clarification to address their concern. It is, in my experience, a pro-forma exercise.

Ms. Batteau:
With respect to traffic and fire, I understand the Fire Marshall doesn't have sway if the Fire Code is complied with. So, say, there's a fire and somebody gets killed because fire engines couldn't get there in time and we've been warned by our Fire Marshall that what we're doing is approving something that he feels is inadequate, who's liable? I know who is morally liable but who is legally liable since we have been put on notice. The State would have been put on notice. The courts would have been put on notice. Are we liable? I have the same question if somebody is hit by a school bus or there is a collision because the traffic is just too awful, would we, the town, be liable to be sued?

Attorney Bloom:
It really depends on the particular facts but, in general, I don't think the town would be liable. The building has to be built to fire code and building code and it will be or it won't get built. The Fire Marshall, as I've said before, tries to go beyond the Fire Code. In this case, although he did not get the second access, he did get six other points and they are

not insignificant. That was his recommendation to the negotiating team and they accomplished that.

Ms. Batteau:
I understand that. I was just going back to what Gloria Gouveia said about how the second access remained in the recommendation so I'm just wondering about that. As others have said, I'm feeling awful about this and I'm hoping our Health and Human Services Committee, Health and Human Services Department and the Planning and Zoning Affordable Housing Subcommittee and someone from the First Selectman's Office can come together and try to pursue some kind of financial program as Danielle suggested because that's actually the first helpful possibility that I've heard. But the other thing, didn't somebody say in the last meeting that, although the Department of Housing lost its documentation for our credits, that somebody in our Planning and Zoning Department actually found documentation for that or did I misunderstand that?

Mr. Wieser: You are at 10 minutes.

Ms. Dobin:
Ira, can I just jump in quickly. The lawsuit that was filed by Attorney Hollister and Attorney Brand on behalf of their clients articulates a number of issues that they allege with the moratorium. Something that came up was that Westport made its application. It was presented for 30 days of public comment and feedback which is required by the regulation. There is a statute and there is a separate regulation. Then the Department of Housing came to a conclusion in a letter where they denied some of the points that Westport had brought up but then presented their own points. They did not then provide another period for public review of those points for the assessment. That's really the nature of what happened. There are other issues. I don't think it serves us to go through it. You can read the filings and see the other issues they allege. I don't think it's good for the town to talk about anything that anybody did. As you know, when any decision is made, if you go back and look at it with a fine tooth comb, you'll find something is amiss with this or that. The important part is when the Intent to Revoke letter was issued by the Department of Housing, they articulated quite clearly that they did nothing wrong but they have tremendous broad discretion to revoke for any reason. So they can revoke if they lost something, if they didn't think they handled the process correctly. The stipulated settlement with a letter from the DOH included actually gives a lot more protection to the town of Westport than just an independent issuance of the moratorium because it's part of a stipulated legal settlement and therefore has more protection than anything does because they do have so much broad discretion. Again, it's not in the statute; it is in the regulation that accompanies it.

Ms. Batteau:
Thank you. That's helpful and I'm not getting that Westport did anything wrong. Here's my concern: DOH grants us a moratorium. Summit sues DOH. DOH then withdraws our points. If we, then, sign the agreement which will require Summit to withdraw its lawsuit against DOH, DOH will give us back our moratorium. That sure smacks of quid pro quo

to me. I may abstain just because I don't feel I can be a part of that. Nevertheless, I thank you for all the great work you've done. I really can't be complementary enough.

Karen Kramer, district 5:
We're in a bad position and I know that. I have been to so many meetings over the years in Westport and Norwalk to try and stop this project. What is the best thing, Danielle or Ira, that the town gets out of this terrible deal for Saugatuck?

Ms. Dobin:
There are a few things we get. Number one, we would have ended up with 187 units that were fire unsafe and now we'll have fewer units and a lot of the fire safety requests. The old fire safety requests that the Fire Marshall had subsequent to the original application have been complied with. Number two, everyone keeps talking about the moratorium. From my personal perspective, the 8-24 case is the most important. It would be very challenging for the town if we lost the moratorium. Obviously, there would be a lot of applications. There would be a lot of issues but we can work out, however many years it is, we can apply for another one. Right now, the expansion of sewers in the town of Westport requires a request from the Board of Selectman, the approval of the Planning and Zoning Commission and if the Planning and Zoning Commission does not agree with the Board of Selectmen, then the RTM can intercede and make it happen. The 8-24 case puts that at risk completely, not just for this case because that's not the question in front of the court. The question in front of the court is whether an 8-24 is required, period. I think part of this settlement from my perspective is that we retain control over where we sewer and when we sewer. In terms of basic planning for the town, the importance of that cannot be overstated. I would just have you look at some of the biggest undeveloped tracks in town, all of which are in Coleytown and Long Lots, etc. Quite literally, all of those would be at risk for very intense development if sewers were available there. As a community, we don't use sewers...oh, if you don't have sewers we won't intensify development. Daybreak is on septic. But it is a way for us to thoughtfully control our planning.

Ms. Kramer:
The planning is important but I do hope when we get all this in writing, Ira wouldn't let it go through without that but hopefully we as a town will be able to do something with the displaced people.

Ms. Dobin:
Karen, the settlement is what the settlement is. There's no option to continue to negotiate it but the group who can do something in terms of assisting people who have been renting homes from the developer is definitely the funding bodies. I think that Elaine is the right person to talk to about it but, I think, again, there are people all over Westport who are being displaced because homes are being redeveloped. At times, developers will buy a home and rent it to somebody while they are submitting their permits and figuring out their plans and sell it as a spec plan with just the images and the approvals. So, I think you need to think about who you want to help, what you want it to look like. That's a good

starting point. I don't think it's a bad inquiry especially if people are renting under a certain level.

Ms. Kramer:
We will deal with that but I guess since this is all in place and it is going to help the town...it sucks. It's a neighborhood. I've gone to Norwalk to support this and to Westport but we have to do what we have to do to support the town. So, I will vote not to overturn while holding my nose.

Mr. Izzo:
In 1989, a partisan legislation in Hartford came up with this 8-30g which I think is wonderful in concept. In theory, it makes wonderful sense. But in 32 years, not once was this thing amended, modified or anything done. I think it's a tragedy what's happened here. What's going on? We've got other stuff coming down the pike. I've worked with Paris Looney. I've worked with Patsy Cimarosa. I've helped them help people. We've all helped each other get people housing. We all want housing. But when you get an attorney like Mr. Hollister who starts on the one yard line with nine downs to get it in and he sits there and he ponders and he counts his money and then he decides to come up with this, I have a hard time with it, Tim. You're a great attorney. I think you can do some wonderful things but, this law is flawed. I wish, at some point in your career, you will help communities like ours do the right thing. More goes into this than one size fits all. Did we look at wetlands? Did we look at different variations in Westport? We have Route 1, I-95, three exits on I-95, two on the Merritt, 136, 57. We have a lot of through traffic. Saugatuck is going to be a mess. I don't begrudge you guys your development but this is kind of greed. I really think this is not in the best interest of Westport. I don't think Garden Homes is in the best interest of Westport but, unfortunately, this deal is something we're going to have to take. Going forward folks, we've got to watch out what's coming on from Hartford. They want to go after us. They want to take over our zoning. It's coming. We have to be prepared. Instead of being on the defense, going forward, we've got to be on the offense. Danielle, I disagree. Did you say Westport fails? We did not fail. We worked hard to make this happen. We were failed by this legislation which I honestly believe is flawed. I am going to work with other people on this board and in this town to fight to make sure this thing is modified and works. Because if our Legislature isn't going to do it, the citizens of Westport will do it.

Dick Lowenstein, district 5:
Last week, I followed Gloria Gouveia's advice and rode Hiawatha Extension. I have a question. When you get to the very end of Hiawatha, it narrows considerably. What's going to happen to that lane? Is it owned by the town? Is it owned by the developer?

Ms. Dobin: Dick, where do you mean specifically?

Mr. Lowenstein: Would that be a private road or a public road?

Ms. Dobin:

Do you mean Hiawatha Lane Extension where the building is going to be built? [Yes.] It's a private road that's owned by the developer.

Mr. Lowenstein: Now part of Hiawatha Lane right now is private?

Ms. Dobin: It is owned by the developer. Maybe Mr. Hollister could answer.

Mr. Lowenstein: Will he maintain that road to a certain standard?

Ms. Dobin:
I believe it is being repaved as part of the settlement agreement after construction.

Mr. Lowenstein: Will it be according to town standards?

Ms. Dobin:
It is being repaved but it doesn't specify. They will have an expensive development there so it is in their best interest to have it be in good condition.

Mr. Lowenstein:
Will all tenants have access to all amenities in the building or will there be discrimination between market rate and affordable?

Ms. Dobin:
All tenants have equal access to everything. The units will be equally distributed throughout the building. There won't be one particular area with affordable units. They will be scattered throughout so nobody will know what is an affordable unit and what is not an affordable unit.

Mr. Lowenstein:
That's helpful. Just a comment...You know the word "sucks" has been used an awful lot tonight. It's also a quote from one of the P&Z Commissioners. But I'd like to use another word for what I see. It's really a form of extortion and I think we are being extorted by the developer. For those of you who don't know it, the principal developer, Mr. Charney lives in Fairfield. In the mid-80's he lived in Westport and he was a member of the Westport Planning and Zoning Commission where he cut his teeth on how to deal with the town. I'll leave you with that thought. It is an interesting fact about the developer.

Ellen Lautenberg, district 7:
I will agree with Jimmy. All of this starts with a bad law, 8-30g. That being said, here we are. As a member of the P&Z Subcommittee that voted on this in committee, I just wanted to clarify something that may have been misunderstood. I am not disputing that this will very negatively impact Saugatuck neighborhood and we all feel terrible about this. I am truly upset for the people who live there; however, as those with experience have said, this evening and in prior discussions, they believe that the greatest likelihood is that the moratorium will be revoked, as Danielle said, the sewer situation could be problematic in addition and the likeliest result will be going back to 187 units versus the slightly smaller

fire-safe project. There is also no legal justification for it to be denied. Fighting it is not going to make it go away, unfortunately. That is just not an option. As much as I feel for the people who have asked us to overturn this, it is not going away. I wish it would. So, I do hope that Summit would attempt to take this issues that the neighbors have into further consideration as they continue to develop the details of this project and perhaps look to become more a part of the neighborhood rather than become an adversary of the neighborhood. I really don't want to see those people being pushed out if at all possible. As Chris Tait said, if there is anything that we, as a town, as an RTM, can do to support families being displaced, I am in favor of that.

Christine Meiers Schatz, district 2:
I have a question for Ira or, maybe, Danielle. I heard a number of times this evening that we wouldn't have moved forward with the settlement if not for being able to tie in the moratorium and I understand how important the moratorium is for the town so that we can plan and put affordable housing. On the other hand, it seems like having 157 units with concessions is better than the very likely outcome of 187 units. I just wanted to check even if we didn't have a moratorium if you think this would still be a good settlement.

Ms. Dobin:
I'll answer that because I think it's more of a question of what the Commission set out to do versus what is in Ira's purview. I do think it's much better for the neighborhood. I think the fire safety makes a difference. I think the size makes a difference. I think preserving access to the Northern Preserve which so many people have used by walking through that property is meaningful. I also believe that the elimination of building E which juts out into the cul de sac insuring that that land will only be redeveloped in the future as of right now which is only smaller single family houses is very positive. That being said, I know you have been to some of our meetings before, during a typical meeting, we have a typical site plan and special permit review, we really try to give a lot of deference to the neighbors. If the neighbors came and they said we know you are telling us we are going to lose in court but we strongly prefer to do that than have this and there were no other considerations whatsoever, if, universally, the neighbors felt strongly, we would probably listen to the neighbors because we really try to advocate for the neighbors even when we sometimes don't agree with them. But, in this case, there were so many other considerations, both the moratorium and the 8-24 case. Also, to be frank, I have heard from people in the neighborhood who are really happy about the 157 versus 187. They didn't feel comfortable commenting publically because the neighborhood is really up in arms about this whole situation. Some of them are newer to the area and they want a certainty about what's going in there. Typically, in our public hearings, people feel comfortable about speaking out even when they disagree. This is obviously so heightened because it has been going on for so long. It is easy to appreciate people who are in the neighborhood who do not agree with their neighbors might not feel comfortable coming forward in a public hearing and testifying. I hope that answers your question. We try and be very supportive of the neighbors unless it's really going to have a bad impact on the rest of town.

Ms. Meiers Schatz:

That's helpful for me to know because sitting here, I'm in some ways looking at this as choosing between the 157 with concessions and the 187 and as much as the 157 is not what we want and it is horrific, it is better than 187. But that background is useful to know. I also wanted to know what leverage did we have going into negotiations that enabled you to get the 157 units in the first place?

Ms. Dobin:
Basically, nothing. We went in and they gave us a list of how much money they wanted us to pay them. They wanted the town to pay for their sewer connection. They wanted the town to increase the size of the water main; a laundry list of things they wanted from us. What we responded with was the only thing we had going for us which was speed. We have speed. You are paying your lawyers. Our lawyers are being paid by taxpayer money. Many people aren't paying attention to this. They certainly haven't paid attention to how much the legal fees have been at this. We can keep going at this and prolong it as much as we can but if you want to get shovels in the ground, you have to work with us. We're not going to pay you any money. We're not going to pay for your sewer connection. We're not going to pay for a larger water main for you or any of those things. That was what we had and we were adamant. The other thing we had going for us was, frankly, that no one had been willing to talk to them before. This had been a substantially smaller project decades ago. Nobody was willing to talk to them and I said that. I said 'I'm elected. I don't even know if I'm going to run again. This may be the last time anybody in this town comes to talk to you. If you want to have an opportunity to settle, then you have to find a way to make the 8-24 issue go away and also save the moratorium for us because that's what we need and we can give you speed in exchange.'

Ms. Meiers Schatz:
That's helpful to know. So, again, looking at the 157 units and the impact on Saugatuck, not a good result. Given that we went into negotiations with only the leverage of delay, I think you guys did a great job and I want to say thank you to the P&Z as a whole, former and current. I think you have one of the hardest jobs in town and I really appreciate you. I also want to say thanks to Seth for running a fantastic committee meeting that I listened to and really helped me through a lot of these issues. The last thing I wanted to do is I think that sometimes we have not always done the best job as elected officials of identifying when we've made mistakes and I bring this up, not for finger pointing but because of the fact that we learn when we make mistakes. That's what I tell my kids. So, I'm going to start the change myself and say through this I have learned that I've probably made mistakes when it comes to these issues. I could have done better. When I came into the RTM with district 2 was when everything was starting to happen with the Lincoln Street development. Having that development there is not a good result for the neighborhood, not a good result for the town. I remember, as an RTM member, reading through the statute and reading through a little bit of the case law and thinking 'This is an uphill battle but I want to represent my neighbors and make sure their voice is heard.' I'm glad I went to the P&Z and I helped voice their concerns but, at the same time, as an elected official, I should have been more proactive, especially knowing that we're probably not going to win these cases in the courts, supporting a more proactive approach to 8-30g. People talk about fighting. Fighting harder isn't going to get you anywhere. You

have to fight smarter. The way to fight smarter in these circumstances is to be proactive and I think have made the same oversight and not contributing to a real solution to this. That's all. I will be voting not to overturn the decision.

Dr. Heller:
Let me give you a lineup so you know what's coming. First Mr. Wieser, then Ms. Klein, then Ms. Hamlin, then Mr. Falk and Mr. Mall. So, you know who you come after. Mr. Tait, I see your hand but I'm going to wait until everyone has had a chance to speak. Remember to take your hand down when you are done speaking.

Jeff Wieser, district 4:
I'm not allowed to raise my blue hand because I'm a co-host so I wanted to raise it for some time on this topic but first, I'd like to, if it's okay with Madam Moderator to make a motion...

Dr. Heller: No. Not yet. Not in the middle of this vote. After this is over.

Mr. Wieser: This is going to take forever and all the police are waiting now to go home.

Dr. Heller: We are in the middle of another item, Mr. Wieser.

Mr. Wieser:
Okay. I just want to make a couple of comments that are a little different from some of the ones that have been made. I'm conflicted a little bit on this whole issue because I agree 8-30g is a very flawed law, act, statute and I think it's flawed because it doesn't take into account the many good things Westport has done in the past. It doesn't take into account that we are the only town in Connecticut that has a homeless shelter, that we have affordable housing that isn't counted because it happened before 1989, before towns were forced, through 8-30g, to do it. I think we suffer from that because we don't get a lot of units counted. On the other hand, I think 8-30g is the main motivator since 1989 to get this town thinking about affordable housing. We talk about how we're being forced into doing this; a good thing we're getting moratorium points; we're getting this, we're getting that but we're getting 47 units of affordable housing. That is a very positive thing. I think that the last few years we've taken a more proactive stance on this. It's interesting that six years ago, we did not overturn P&Z on Baron's South which would have given us a whole bunch of affordable housing units that would have put us in a much better negotiating stance with regard to at least the conversation but it's a funny town. I've seen it firsthand that this town is very proud of the homeless shelter. It's very, very proud of the affordable housing; yet, you try to get affordable housing anywhere and it's fought tooth and nail and then after five years when we recognize that the neighbors are just like you and me, they're proud of the affordable housing. So, we fight it. We think it's terrible but when we get it, we're proud of it. So, I'm certainly not going to vote against this. I think it's a very good thing. I'm still sorry that this body did not overturn the P&Z for Baron's South. It's interesting that six years ago we got about 60 percent of the 70 percent required to overturn and, currently, there are nine members on the RTM who voted to overturn the P&Z and there are six who did not vote so, we're just still at 60 percent. I just think it was

a silly thing to look up. I think I am sorry for the dislocation in the neighborhood and I remind everyone that with Baron's South there wouldn't have been any dislocation but we still found reasons to overturn that. I think it's very good thing for the town to get 47 affordable units. We should applaud that and feel good about that. As well as having all the other concerns, that's all I've got.

Nicole Klein, district 5:
As everyone has said and I completely agree, it's an awful situation but the part I'm flummoxed about is around the moratorium. I'm not quite understanding how the P&Z settlement is contingent upon the moratorium being set when there was a moratorium that was revoked after two years. Is that correct?

Ms. Dobin:
It wasn't revoked. They issued a letter of intention to revoke with a 30-day period and when Judge Berger was informed and the Department of Housing who is represented by the Attorney General's Office that the parties forced a settlement and part of that settlement would be a withdrawal with prejudice of the litigation contesting the moratorium, the DOH held off. The moratorium has not been revoked.

Ms. Klein:
The intention to revoke is there. How can you intend to revoke if the moratorium is there?

Attorney Bloom:
They gave the town 30 days to respond and we have extended the 30 days to 90 days almost. During that time, we have discussed and negotiated with them keeping the moratorium intact and they have tentatively agreed to do that as part of the withdrawal of the case against them, by parties Summit and Garden Homes.

Ms. Dobin:
Nicole, you can read their claims. It's not a good look for Ira and I to walk through details and issues vis a vis a moratorium. It's just not. The Department of Housing wrote a letter where they talked about their intention to revoke. They cited one of the issues that was brought up by the claims made against them by Summit Saugatuck and Garden Homes but there are others that are included. Because the parties that are suing them to overturn the moratorium are willing to withdraw their litigation with prejudice, they are willing to reinstate the moratorium and note in writing that it was validly awarded.

Attorney Bloom:
We have tried, candidly, to work with them at this time. It has not been revoked and we hope it will not be revoked. Depending on how you vote, it appears that it will not be revoked which is what we want. So, we tried to maintain a proper relationship with the Department of Housing and with the Attorneys General. That's where we stand.

Kristan Hamlin, district 4:
I just want to say four things very briefly. Carolanne, thank you very much for bringing this forward. I'm very sorry what has happened to that community. Ira made comments at the

outset that we would need 24 votes to overturn. Anyone who has been listening tonight who can count can see that those votes aren't there. The comments made by the RTM make it clear that the votes to overturn are not here tonight but I want to thank you for bringing this forward and doing a good job in doing so. Second, I just wanted to mention to Danielle Dobin that I thought your presentation was excellent. You were fantastic in answering all of the questions succinctly, crisply and in a way that was very cogent and easy to understand. You really did a tremendous job tonight. Thank you very much. Third, I want to reiterate a theme that Danielle mentioned which is we need to be more proactive like other towns have been. After eight years of being part of this local government, and I see this in the Federal Government, State Governments. It just seems that there's this theme that governments are just reactive and they just don't do the kind of long-term planning that other governments in other countries do. Our community is like that. I just wish we would not think in such short-term basis and we'd be better in terms of long-term planning so I hope, as Christine Meiers Schatz has mentioned, that we all learn from this and try to be more long-term and proactive in our thinking. Finally, because it's very clear from what everybody said tonight that the 24 votes are not there, I have to agree with Jeff Wieser that it's really time to move on. It's 11:07 p.m. The police are waiting. That's going to be a complicated discussion as well. The votes are not there. There's really nothing more to say. I believe we should wrap this up and vote.

Dr. Heller:
Thank you Ms. Hamlin. We do have other people who wish to speak and I do feel I should let them speak.

Harris Falk, district 2:
Thank you. This is awful but 8-30g is awful. It is a law that counts on the despicability of certain developers who will do things like this. If it actually wanted to have affordable housing, the percentage would be much higher but then developers would not want to build it. So, what it counts on is that no one would want a developer to build something like this so the town, the municipality, should be creating the housing. But we didn't do it. The fight was right but it also counted on us bringing in housing. And, yes, pre-1989, we did have housing and we still do and we have a shelter and it's fantastic and we did that. But, we can't be resting on our laurels of what we've done and our reputation. We need to do it not just say what we've done. Unfortunately, that's what happened here. I don't know what our plan was, maybe just to have waited it out but what the town needed to do was invest in the town and build community. By not, we've failed a community and we've failed ourselves. Yes. Westport did fail. It's unfortunate but, as has been said here, we need to learn from it, move from it and make better. Invest in the town. Make community.

Louis Mall, district 2:
Thank you Madam Moderator. One of the underlying themes I have heard the whole time in this discussion is points versus people and what's more important to us. I think that was one of the most interesting comments that was made, I think by Ms. Curry saying 'What's more important to you, points or people?' So I think you know where I'm going with this. People are more important. That's what I was trying to say at 136 Riverside Avenue earlier. I am going to say it again tonight that I am supporting the residents of

Saugatuck and Hiawatha Lane. I went down today to get my bearings. I hadn't been there for a while. As you go in, there is one way in and one way out. That's what the Fire Marshall is telling you. The first thing you come across is Gault and their sand and gravel business that is a very busy commercial enterprise. Then you wind around to another company that has trucks and so forth. Then you go into a single family residential neighborhood of about 70 homes on narrow streets. Think about what would happen when fire trucks go in and out of there. How do you get people out of that area considering the traffic from the train station, Route 136 to Route 33 to the Post Road, all in single lane highway? I ran into a gentleman who happened to live there and he wanted to know what I was doing. I introduced myself, said I was on the RTM and was here just to look around. He said, 'I hope you give them hell.' What he told me was that he was going to be displaced with this, that he can't find anything affordable to move to and what really upsets him is that he doesn't know what he is going to do about his children and their schooling. I asked if anybody had said anything to him about right of first refusal or that he might have a chance and he said that no one had offered anything. Here it is. How ironic. We are talking about one of the last affordable neighborhoods in Westport. By the way, we don't ever see any of these projects being introduced in AAA zone. It is always the affordable neighborhoods that are being bought out with the pressure to move out. So, if you're talking about urbanization or gentrification, urban renew and so forth, the only people who win in all of these deals are the developers. So here we are, somebody who is losing his home. He is going to be forced out. He doesn't have an option to be one of the candidates for affordable housing. Everyone is talking about 'We're getting 30 percent affordable housing here.' Yes, but we're getting 70 percent unaffordable. If these were really notable people who cared about affordable housing, they'd make it 100 percent. But they are developers. They are interested in making a profit. I get it. But I think this is a lousy agreement for the people of Saugatuck. They pay their taxes. We threw in the towel. We folded like a tent. We have given the blueprint of how to lose for developers. We laid it out for them. If you push back at Westport, they will fold instead of sticking up for these people that live in this neighborhood. Another point that I wanted to make is Mr. Hollister wrote the regs and he's built a lucrative practice executing these regs. One of the things that really upsets me about Mr. Hollister is his obnoxious and obscene statements about the town of Westport. And we want to negotiate with him? We want to deal with him? I was very offended by his comments in the *Connecticut Mirror*. I don't know if the rest of you were but I certainly was. And I want to take a moment to thank Matt Mandell who stood up and said 'no mas' to Hollister for double dipping at Shipman and Goodwin, suing the town on one hand and sharing in the profits of the law firm that was serving our schools. Mr. Hollister doesn't get a pass with me. As far as the moratorium points and coming back to points versus people, I'm like Chris Tait. I thought the dog ate the homework. But I've got one even better. I've got a conspiracy theory that somebody took the pile and it will reappear when all this dust settles. That's what we're dealing with. I just want to make one last comment and that's the Fire Marshall. When the Fire Marshall speaks, it is important that we listen. There's one ingress and one egress. We are now talking about adding 157 units to the 70 households that are already there. How are they going to get out? Make sure that the developer and his attorney are held responsible and accountable, not the town of Westport. We have a two lane highway all the way from Norwalk to Wilton, Route 33, Riverside Avenue, Wilton Road into Wilton.

Two lanes. There needs to be a comprehensive traffic plan not something that comes back with this nonsense. I could write the guy's report for him. He always says, 'Oh, it's immaterial.' Stage four cancer, it's not immaterial. Stage five, you're dead and that's what the traffic situation is on this side of the Saugatuck River. I am going to vote to reject, to overturn this agreement and I am going to stick with the people of Saugatuck.

Andrew Colabella, district 4:
Everyone has said a lot of great things tonight. I agree with everything that Lou Mall has said. I agree with everything that Chris Tait has said. I agree with everything that Jimmy Izzo has said. When you think about Hiawatha, it really is an epicenter for Westport. Just around the time when the industrial revolution was happening, late 1800's, Hiawatha was existing in that area. The entire town was in that area. If you really want to talk about history, you had families like Vento, Lucciano, Anastasia, Penna, Genta, Valient Fribari, they all started in this neighborhood. This is where Westport started. In 1952, I-95 was created and Hiawatha to be moved. A lot of churches, a lot of buildings, everything was moved out of that area and a lot didn't survive. But Hiawatha has survived for a long time. Then, in 1989, the same year I was born, 8-30g was born. It had potential. It had a great ability to make housing affordable. I think everyone on this RTM and in this town, we do want affordable housing. But we want fair affordable housing. We want safe affordable housing. This lawsuit has been going on more than 10 years now, 20? I was going to the Italiano Festival and I was still in high school when this was going on. It's been a long time. I think everyone here is exhausted. I know Matt Mandell is exhausted. I've got to give him a lot of credit. When I first got on the RTM, I was deathly terrified to speak at the podium. I got to watch him speak and to see his passion and was able to relay his message of how much he loves Westport, really fighting for the people. And that's what I wanted to do, too. I think that's what all of us are trying to do. I'm surrounded by a lot of great people here tonight. Carolanne Curry, I really appreciate you getting this petition together. I told her that I hoped she would get the petition together. 'I want to hear this. I want to talk about it.' I sat in that Environmental Committee with Wendy and Kristin Schneeman and our purview was so tiny. It was one little pipe underneath the road. The thoughts that we had that we could have done to stop this project. We had nothing. You want to know where this project could have stopped? If Felix Charney, who has been in Westport his whole life, he could have taken these single family homes. He could have remodeled them. He could have made them more up to technological advances of today's standards. He could have reshaped the neighborhood. He could have kept it. A majority of you said this tonight. Greed played into it. We fell asleep. The last 32 years, our town has been taken advantage of. I know why we all moved here. I know why my parents moved here. They wanted to give me a town to grow up in that had a yard, so that I didn't have to go down in an elevator on east 72nd and walk three blocks to go to Central Park. They wanted me to have a small town. The education... the amenities. I think everyone should be able to get that. I think this entire project is horrible. This whole thing sucks. I hate using that word. I really do. It didn't have to be like this and it ended up like this. I've heard a lot of lawyers speak tonight, a lot of people who have inspired me to think more about my future as I'm still developing. Danielle Dobin, amazing. You took advantage of a moment where you knew you had speed. You knew what you had. I think we're making it something better than what it could be. My personal opinion, Judge Berger and

everyone else, they have it out for Westport. When you read *Pro Publica*, a news outlet, I call it a joke, they call us racist. There's nothing racist about this town. There's nothing racist about us. I'm not going to stand for that. You have Tim Hollister standing up and saying 'Does anybody say we need to keep blacks and Hispanics out of Westport? No. But they talk about property values, safety, and preserving open space.' That's got nothing to do with racism, discrimination. That's just a town of 26,000 or 27,000 individuals in this town that want to preserve the character. That is single family properties, diversified residential properties, commercial property, a place for a home for everyone. There is nothing discriminatory or racist about what we are discussing tonight. Because of 8-30g, nothing that has been developed before 1989 counts. We spent $25 million on Hales Court. Hales Court was donated to the town in 1952. That was 14 acres of land from the Hales family. You have 1655 Post Road West. You have Crescent Park. You have Canal Park. If that all counted, we are one of the wealthiest towns in the State, in the country, but we would be one of the wealthiest, most diverse, open towns. We are an open town. It's not about color. It's about keeping what's right for the residents that are there. It's also about opening the environment to people to move here. I'm torn by this. I admire all the attorneys who have spoken, Kristan Hamlin, Ira Bloom...To the great attorneys, thank you. Tim Hollister, I hope you're taking notes. You can take a lot of information from these people. These are lawyers who fight for justice. You've done an injustice.

Arline Gertzoff, district 3:
I listened intently tonight because, as many of you know, I believe I've lived in this town longer than anyone on the RTM. My family came here 80 plus years ago. I'm extremely distressed with this project. I know many of these families who were founding families in Saugatuck. I've known them for ages. I'm truly distressed and I find it really hard to support this thing. I understand it's the best offer we could get but I don't think it's a really good offer and we really missed the boat. Having worked in New Canaan, I know they were way ahead of the curve. I know it's all been said but I felt I had to say something. As was said earlier, if there is anything we can do to help the people who were displaced, that's what we should do. It won't make up for it but I'm extremely distressed. Thank you to all the people who have done such a fabulous job, Danielle. Lou Mall's comments about people resonated to me. Carolanne Curry and all the people who contributed tonight, thank you.

Carla Rea, district 8:
I am stressed out because I believe, after listening to everybody, and thank you everybody for your remarks and your work, that we still don't have any guarantee whatsoever for getting this moratorium for another two years. I also believe the traffic safety is going to play a big, big role considering the place and the size of the road. I just cannot believe it could not be put forward before tonight's meeting to have a safety traffic study of what will happen with 187 or 157 apartments there. We are misplacing 23 people and we are gaining maybe 30 or 40? I just don't understand when the Housing Authority told us by a letter that they had lost the documents with our accounts and they refused to use our paperwork, why couldn't we have sued them?

Attorney Bloom:

Carla, they have not rescinded the moratorium yet. From a strict legal standpoint, there's nothing to sue them for. They haven't done the action yet. We have tried to negotiate and get them to this point where they have agreed to keep the moratorium as part of the settlement.

Ms. Rea:
Sorry to interrupt you. I must have heard this 100,000 times in the past few weeks; however, we still have no guarantee that we are going to retain the moratorium and that's the bottom line. I just don't believe that tonight's meeting speaks very well on the way we are fighting, the way we are doing what we need to do for our neighbors and for Saugatuck. It doesn't speak well. It looks like we don't have the 2/3 vote fighting for our neighbors.

Lauren Karpf, district 7:
We have certainly had a very good and productive discussion here. I'll echo the thank you's to Danielle and all of P&Z and to Ira for all of the hard work. One thing I just want to point out, everyone has shared so many sentiments about every aspect of this but one thing that hasn't been touched on, there is a positive here in the creation of real affordable units for families where we are going to have the three bedrooms which create the below market units. It's the silver lining here. I just wanted to end the night on a little bit of a positive. Thank you guys for all of your hard work.

Mr. Tait:
I wanted to clarify when I was talking about Westport painting us in a corner, meant that as a narrative that their attorney played a little dirty pool, made the narrative against us and we didn't fight back hard enough because we should be very proud of what we've done and what we've done for affordable housing and we should be promoting that. If that narrative gets into the paper that the judge is reading, I think we got painted in the corner with that. What we did in the past with P&Z, fighting, I think was the right thing to do. But I think we should have had a two-pronged approach. That was the narrative their attorney used on us and we should have fought back.

Dr. Heller:
I see that Mr. Elgin's hand is up and I just want to mention that this is the RTM comment time. We had a public comment period. There is no public comment at this time.

There were three members absent at the time of the vote: Talmadge, Briggs and Keenan.

There were two members in favor of the motion: Mall and Rea. There were 29 opposed. There was one abstention: Gertzoff. Mr. Mandell recused himself. The final tally was 2-29-1. The motion does not carry.

Dr. Heller:
We are at a point in the agenda where our Rules of Procedure say that no agenda item shall be placed before the meeting after 11:30 except by an affirmative vote of 2/3 of the members present. Do we have a motion?

Ms. Hamlin:
I'll make a **motion to postpone this item to a date certain, June 15**, the date you discussed, because it's going to be a long discussion and to start this at 11:41 is not fair to the police.

Seconded by Ms. Rea.

Dr. Heller:
I'm sorry it's taken so long but we could not interrupt another item to do this.

Members of the RTM
Mr. Braunstein:
I'm just curious, how it would work if we were to begin this evening and, after a certain period of time, what would our procedures indicate in terms of when we should pause?

Dr. Heller:
There is not. We would just keep going. We have had meetings that went on until 2 o'clock in the morning. It would keep going.

Eileen Lavigne Flug, Assistant Town Attorney:
There could be a motion to postpone any time during the debate but it sounds like that motion is on the floor already.

Dr. Heller: That's the point.

By show of hands, the motion to postpone the meeting to June 15 passes.

Dr. Heller:
The motion to postpone passes. I do apologize to the people who have been waiting all evening. By the time it became clear that it was going to be so late we were already in the middle of the other discussion. That is why we are where we are. We look forward to meeting with you next week. I want to thank everyone for bearing with us all evening and for your thoughtful comments throughout the evening. I look forward to seeing you next week. Thank you all.

The meeting adjourned at 11:42 p.m.

Respectfully submitted,
Jeffrey M. Dunkerton
Town Clerk

Jacquelyn Fuchs

by Jacquelyn Fuchs

NOTICE and AGENDA
SPECIAL MEETING
WATER POLLUTION CONTROL AUTHORITY

Notice is hereby given that the Westport Board of Selectmen, acting in its capacity as the Water Pollution Control Authority, will hold a special meeting on Friday, June 18, 2021 at 10:00 AM in the Westport Town Hall Auditorium, 110 Myrtle Avenue, Westport, CT. It will be live streamed on www.westportct.gov, and broadcast on Westport's Optimum Government Access Channel 79 and Frontier Channel 6020. Emails to the Board of Selectmen/WPCA *prior to the meeting* may be sent to selectman@westportct.gov. Agenda to include the following only:

1. To discuss and take possible action on a proposed settlement and stipulation to settle the case of *Summit Saugatuck, LLC v. Westport Water Pollution Control Authority, Doc. No. FST-CV-20-6047869-S* to permit the allocation of capacity and extension of the sanitary sewer from Davenport Avenue to the Summit Saugatuck property at the terminus of Hiawatha Lane Extension.

James S. Marpe
Chair
June 16, 2021

{01487406.DOCX Ver. 1}

WESTPORT WPCA
June 18, 2021 Special Meeting
APPROVED MINUTES

The Westport Board of Selectmen, acting in its capacity as the Water Pollution Control Authority, held a public meeting at 10:00 AM on Friday, June 18, 2021 in Westport Town Hall Auditorium, 110 Myrtle Avenue, Westport, CT. In attendance were James Marpe, Jennifer Tooker, Melissa Kane, Atty. Ira Bloom, Atty. Peter Gelderman, Public Works Director Peter Ratkiewich, and Eileen Francis, recording secretary.

RE: Application from Summit Saugatuck LLC ("Applicant" or "Summit") pursuant to Conn. Gen. Stat. §7-246a for Extension of Sewer from Davenport Lane to Hiawatha Lane, Allocation of Sewer Capacity, and Conditional Approval to Connect Residential Development (the "Application").

https://play.champds.com/westportct/event/94

The meeting was called to order at 10:10 AM

Attorney Ira Bloom provided context and an overview of the complicated matter, its association with certain zoning appeals taken by Summit Saugatuck, descriptions of those various court cases, the standing of the Town for each, how the cases are linked to this development and sewer extension, and how they may be withdrawn or settled in the interest of all parties and based on the outcome of the meeting.

Attorney Peter Gelderman provided background on the subject application, including the history of the proposed development, the request for the sewer extension and the Town's MLE policy, including the condition for a positive 8-24 receipt form the Planning & Zoning Commission. Attorney Gelderman outlined the terms of the proposed settlement. Further, Attorney Gelderman provided a detail of the court process whereby the Connecticut Superior Court will hold a hearing on July 19, to approve or deny the stipulation and settlement between the WPCA, the Planning & Zoning Commission and Summit Saugatuck.

Director of Public Works Peter Ratkiewich provided the history of the Pump Station #2 and force main upgrades and the association with applications to the WPCA for sewer extension approval and allocation of sewer capacity. He stated that the construction associated with that project was completed in late 2019.

First Selectman Jim Marpe made the following motion and read the findings and resolution into the record:

FINDINGS:

1. The Application dated February 7, 2020 was received by the WPCA on February 11, 2020.
2. On February 25, the First Selectman referred the Application to the Planning and Zoning Commission (the "PZC") for a report in accordance with CGS § 8-24.
3. The First Selectman's referral was withdrawn and resubmitted to the PZC on March 13, 2020.
4. Because of the COVID-19 emergency and the declaration by the Governor of certain executive orders, the referral was again withdrawn on March 17, 2020 to ascertain the effect of such executive orders on the time limitations set forth in said § 8-24.
5. On April 13, 2020 the First Selectman resubmitted the referral.

6. On June 11, 2020, the PZC issued a negative report.
7. The RTM did not override the PZC's negative report.
8. On July 8, 2020, the WPCA heard the Application.
9. On July 8, 2020, the WPCA voted unanimously to deny the Application based solely on the fact that the PZC did not render a positive § 8-24 report.
10. On May 12, 2021, the PZC reconsidered its negative § 8-24 report as part of a global settlement of the application by Summit to construct a multi-unit residential development on Hiawatha Lane Extension.
11. In accordance with the terms of a Stipulation for Judgment in the case entitled *Summit Saugatuck v. Westport Planning and Zoning Commission*, Doc. No. HHD-CV-19-6120090 (the "Zoning Appeal"), the PZC issued a positive § 8-24 report.
12. The only reason for denial of the February 2020 application having been eliminated by the PZC's positive 8-24 report.
13. The extension of the sewer line will provide necessary service to a densely populated area of the Town that is within the "Blue Line".

Therefore, it is hereby RESOLVED:

Upon the motion made by James Marpe and seconded by Jennifer Tooker, the Applicant's request to extend the sewer line (a distance of approximately 1,600 linear feet), allocate sewer capacity with an average daily flow rate of 31,891 gallons, and approve a connection subject to normal engineering and technical compliance with the MLE policy and the Redniss & Mead May 7, 2018 plan (attached to and included in the Stipulation in the Zoning Appeal) is hereby APPROVED, subject to the following:

1. Compliance with and satisfactory completion of each and every condition and requirement as set forth in that certain Stipulation for Judgment in the Zoning Appeal as executed by the parties and approved by the Court.
2. The Town Attorney is authorized to file a motion pursuant to Connecticut General Statutes § 8-8(n) in the matter of *Summit Saugatuck, LLC.v Westport Water Pollution Control Authority,* FST-CV-20-6047869 S, for approval of a Stipulation for Judgment approving the Application.
3. Summit will, by proper motion, withdraw the appeal (SC 20431) currently pending in the Connecticut Supreme Court.

VOTE: AYE – 3 (J Marpe, J Tooker, M Kane)

NAY – 0

ABSTENTION - 0

ADJOURNMENT

Upon motion by Melissa Kane, seconded by Jennifer Tooker and passing by a vote of 3-0, the meeting adjourned at 10:51 AM

/Eileen Francis/

Eileen Francis
Recording Secretary

DOCKET NO.: HHD-CV-19-6120090-S	:	SUPERIOR COURT
SUMMIT SAUGATUCK, LLC	:	JUDICIAL DISTRICT OF HARTFORD/LAND USE DOCKET
V.	:	AT HARTFORD
WESTPORT PLANNING AND ZONING COMMISSION	:	JUNE 28, 2021

MOTION FOR JUDGMENT IN ACCORDANCE WITH STIPULATION PURSUANT TO C.G.S. § 8-8(N) AND PB 14-7B

The Plaintiff, **SUMMIT SAUGATUCK, LLC** ("Summit") and the Defendant, the **TOWN OF WESTPORT PLANNING AND ZONING COMMISSION** ("Commission"), move that the Court approve and enter judgment pursuant to the following agreed upon terms and conditions of this Stipulation ("Stipulation") as settlement of the above-referenced matter.

WHEREAS, Summit is the owner, or holder of a contract or option to purchase, parcels totaling 8.8 acres located on Hiawatha Lane or Hiawatha Lane Extension in southwest Westport, Connecticut (hereinafter, the "Properties"); and

WHEREAS, in December 2017, Summit began seeking various permits from the Town of Westport for a 187-unit multi-family development at the Properties (the "Development"); and

WHEREAS, on November 18, 2018, Summit filed an application with the Commission pursuant to C.G.S. § 8-30g for a zoning regulation amendment, rezoning and coastal site plan approval, agreeing to set aside 57 of 187 rental units for moderate income households for 40 years; and

WHEREAS, on February 28, March 7, March 21, April 11, and April 25, 2019, the Commission held public hearings on the application; and

WHEREAS, on June 20, 2019, the Commission denied the application; and

WHEREAS, on June 28, 2019, the Commission published notice of its denial in the Westport News; and

WHEREAS, on July 11, 2019, as permitted by General Statutes § 8-30g(h), Summit "resubmitted" its zoning application; and

WHEREAS, on September 19, 2019, the Commission held a public hearing, closed the hearing, and denied the resubmitted application; and

WHEREAS, Summit appealed said denial to the Superior Court in the present matter, Docket Number HHD-CV19-6120090-S, with a Return Date of November 12, 2019; and

WHEREAS, the parties now wish to resolve the above-referenced administrative appeal by defining terms upon which the Development may be developed by Summit.

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth herein and other good and valuable consideration, the parties agree as follows, subject to approval by the Court pursuant to Section 8-8(n) of the General Statutes:

1. With reference to site plans dated April 4, 2019 submitted by Summit to the Commission, as modified to September 12, 2019, the Development shall be permitted as follows:

   a. Summit shall eliminate Building E and consolidate Buildings C and D, so that three buildings shall be constructed in total.

   b. The land where Building E is depicted on the site plans will be reserved for future development permitted only "as of right" by the Town's Zoning Regulations. "As of right" refers to development and use of the Properties as authorized by administrative approval pursuant to the Westport Zoning Regulations effective as of the date the Court approves this Stipulation pursuant to C.G.S. § 8-8(n). It is acknowledged that the current Westport

Zoning Regulations allow for single-family homes on subdivided lots of at least 6,000 square feet in Residence B zoning districts. Summit shall not file for any future approvals for the development of the Properties pursuant to C.G.S. § 8-30g or any similar mandatory multi-family housing statute that may be enacted in the future.

2. 157 units shall be permitted, 30% of which shall be set aside for housing pursuant to C.G.S. § 8-30g for 40 years.

3. The unit mix and bedroom count among the 157 units shall be as depicted in the Site Plan dated May 7, 2021 prepared by Divney Tung Schwalbe, LLP and attached hereto as Exhibit A.

4. The garage and parking layouts shall be as follows: 1.5 parking spaces per one-bedroom unit, 2.0 spaces for two-bedroom units and three-bedroom units, with the limit of parking areas to follow the plan approved by the Wetlands/Conservation Commission.

5. The Western half of Building C, closest to the Norwalk boundary, shall be four stories, as depicted on renderings dated May 10, 2021 prepared by The Monroe Partnership LLP, attached as Exhibit B.

6. Fire Safety:

a. All structures shall have a full NFPA 13 fire sprinkler coverage (NO 13R).

b. All corridors shall have a 2-hour fire rating.

c. All dwelling doors into the corridor shall have a 1 hour rating and an automatic closing device compliant with NFPA 80 standards.

d. All vertical openings (stairwells, elevator shafts, trash chutes) shall have a 2 hour rating.

e. All spaces shall be protected by a 24/7 monitored fire alarm.

f. Water main into the complex shall be 6" in size. Water supply shall be constructed in accordance with plans prepared by Redniss & Mead as approved by Aquarion in September 2020, attached as Exhibit C, pages 1-4.

g. The use of wood or metal studs for construction of walls, floors and roofs shall be permitted.

7. As a result of the Fire Safety conditions required pursuant to Paragraph 6 above, secondary access to the Development shall not be required.

8. There shall be no requirement that Summit provide a shuttle service to the train station.

9. The Commission will request in writing that the Board of Selectmen, as the Town's traffic authority, will agree to use "best efforts" to work with Summit on pedestrian improvements as finally proposed by Summit in August – September 2019, which efforts shall include consideration by the Board of Selectmen and the Town of shared costs of improvements between the Town and Summit, because the improvements will also benefit the surrounding neighborhood. Said pedestrian improvements are depicted in the Pedestrian Improvement Plan dated April 17, 2019, as revised and supplemented to September 12, 2019, and attached hereto as Exhibit D.

10. Continued public access to the Conservation Easement area in Norwalk, on the property of the Avalon East Norwalk multi-family residential development shall be permitted through the Properties and a sign indicating "public access walkway" shall be posted between the

Development and Hiawatha Land in a location where neighbors can be reasonably informed of said access.

11. Summit shall re-pave Hiawatha Lane from Lot 39 westward to the Norwalk boundary, and as part of repair of the culvert and installation of the sewer and water lines, shall repair Hiawatha Lane from the intersection with Davenport Avenue to the start of the repaving at Lot 39 described above.

12. Summit shall repair and restore the Hiawatha culvert referenced in the Town of Westport Conservation Commission approval dated October 2018.

13. Summit will use best efforts to provide screening between the project and adjacent neighbors, including evergreen trees, on the east side of Hiawatha Lane as depicted on plans dated May 10,2021 prepared by Divney Tung Schwalbe, LLP, attached hereto as Exhibit E. Such installation may require permission of such property owners. Summit will be obligated to maintain tree plantings utilized as screening for two years from the issuance of a Zoning Certificate of Compliance by the Town.

14. The terms of this Stipulation are expressly contingent on the following. If any of the following are not fulfilled within forty-five (45) days of the Court's approval of this Stipulation pursuant to C.G.S. § 8-8(n), subject to one (1) thirty day (30) extension agreed upon in writing by the parties, then the obligations of the parties to this settlement agreement are null and void:

a. The granting of a withdrawal pursuant to Section 63-9 of the Connecticut Practice Book, Rules of Appellate Procedure of the pending appeal to the Connecticut Supreme Court, *Summit Saugatuck, LLC v. Town of Westport Water Pollution Control Authority*, Docket No. SC 20431 appealing the

decisions of the Superior Court in the consolidated Docket Nos. HHD-CV16-6071538S and HHD-CV16-6071538S.

b. Motion to withdraw, with prejudice, and approval by the court pursuant C.G.S. 8-8(n), of the pending appeal to the Superior Court, *Summit Saugatuck, LLC v. Town of Westport Water Pollution Control Authority*, Docket No. FST-CV20-6047869-S.

c. Withdrawal, with prejudice, by all Plaintiffs (Summit Saugatuck, LLC and Garden Homes Management Corporation) in the pending declaratory judgment action (*Summit Saugatuck, LLC, et al. v. Department of Housing, et al.*, Docket No. HHD-CV20-6127403-S) contesting the moratorium issued pursuant to C.G.S. § 8-30g by the Connecticut Department of Housing ("DOH") to the Town in 2019 ("Moratorium"). It is understood that the entire case, including all claims and issues raised therein, shall be withdrawn in full, with no claims or issues remaining outstanding for disposition by the Court. In so doing, both Summit Saugatuck, LLC and Garden Homes Management Corporation shall waive any and all claims or causes of action to contest the Moratorium in the future.

d. Written confirmation from the DOH that the Moratorium remains in effect and valid.

e. Approval of a positive report pursuant to C.G.S. § 8-24 by the Commission related to the extension of Town sewer service to Hiawatha Lane.

f. Final, unappealable approval by the Town's Water Pollution Control Authority of the sewer extension servicing the Development with an average

daily flow rate of 37,905 gallons, including the right to connect to the existing Town sewer system. Summit agrees to remit any required I&I abatement fees, Pump Station 2 upgrade assessments and sewer benefit assessments to the Town.

g. Administrative approval, which shall not be unreasonably withheld, by the Town of the following, attached hereto as Exhibits:

   i. Exhibit A: updated Site Plan dated May 10, 2021 prepared by Divney Tung Schwalbe, LLP

   ii. Exhibit B: Renderings dated May 10, 2021 prepared by The Monroe Partnership LLP

   iii. Exhibit C: Water Main Extension Plan dated January 29, 2020 and Sewer Main Extension Plan dated May 7, 2018 prepared by Redniss and Mead

   iv. Exhibit D: Pedestrian Improvement Plan dated April 17, 2019, as revised and supplemented to September 12, 2019 prepared by Divney Tung Schwalbe, LLP

   v. Exhibit E: Plantings Plan dated May 10, 2021 prepared by Divney Tung Schwalbe, LLP

h. Administrative approval, which shall not be unreasonably withheld, by the Town of a revision of the SVD zoning regulation dated April 4, 2019, to reflect this stipulation, and a revision of the rezoning map of November 2018, to reflect this stipulation. Said rezoning map is attached hereto as Exhibit F.

i. Approval of this Stipulated Judgment by the Superior Court pursuant to C.G.S. § 8-8(n).

15. Provided that Summit has complied with this Stipulation and all state and local building codes, the Westport Building Official shall issue upon application the appropriate building permit(s).

16. If any provision or provisions of this Stipulation are not met, the Superior Court shall retain jurisdiction to cause such provision to be satisfied and/or enforced.

17. **Non-Admission of Liability.** The entry by the parties into this Stipulation shall not be construed as an admission of liability of any party hereto.

18. **No Representation.** Each party hereto acknowledges that no other party or any agent or attorney of any other party, or any other person, firm, corporation, or any other entity has made any promise, representation or warranty whatsoever, express or implied, not contained herein concerning the subject matter of this Stipulation to induce the execution of this instrument, and each signatory hereby acknowledges that he, she or it has not executed this instrument in reliance on any promise, representation or warranty not contained in this Stipulation.

19. **Counterparts.** This Stipulation may be executed in separate counterparts, each of which shall be deemed to be a fully executed original as to all parties that have executed any one or more of those separate counterparts. The execution of this Stipulation and the transmission thereof by facsimile or electronic (e-mail) shall be binding on the party signing and transmitting same by facsimile or electronic (e-mail) fully and to the same extent as if a counterpart of this Stipulation bearing such party's original signature had been delivered.

Notwithstanding the foregoing, the parties shall exchange original counterparts of the Stipulation promptly following execution hereof.

20. **Binding Effect.** This Stipulation shall be binding upon and inure to the benefit of the parties hereto, and each and all of their heirs, personal representatives, successors and assigns.

21. **Governing Law.** This Stipulation shall in all respects be interpreted, enforced and governed by and under the laws of the State of Connecticut, and the state Courts of Connecticut shall have exclusive jurisdiction.

22. **Construction.** This Stipulation shall be construed without regard to the party or parties responsible for its preparation and shall be deemed as having been prepared jointly by the parties hereto. Any ambiguity or uncertainty existing herein shall not be interpreted or construed against any party hereto. This Stipulation shall be construed as a whole according to its plain meaning.

23. **No Waiver.** No delay or failure by any party to exercise any right under this Stipulation, and no partial or single exercise of that right, shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.

24. **Entire Agreement.** This Stipulation, together with Exhibits and attachments hereto constitutes the entire agreement of the parties and supersedes all prior or contemporaneous agreements, discussions or representations, oral or written, with respect to the subject matter hereof, and each of the parties hereto states that he/she/it has read each of the paragraphs hereof and that he/she/it understands the same and understands the legal obligations created thereby.

25. **Notices.** Any notices given or required to be given under this Stipulation shall be in writing and delivered either personally or via certified mail, or via commercial overnight courier and by electronic (e-mail) mail as follows:

(a) Any notice given to the Plaintiffs shall be sent simultaneously to the following addresses:

Timothy Hollister, Esq.
Hinckley Allen
20 Church Street
Hartford, CT 06103-1221
thollister@hinckleyallen.com

(b) Any notice to the Town or its agencies shall be sent to the following address:

Ira Bloom, Esq.
Berchem Moses, PC
1221 Post Road East
Westport, CT 06880
ibloom@berchemmoses.com

(c) Planning and Zoning Department
Westport Town Hall
110 Myrtle Ave.
Westport, CT 06880

Notices delivered personally or by overnight mail, shall be deemed given when received, as well as electronic (e-mail) messages. Notices delivered by mail shall be deemed given three business days after mailing. Parties may change their address for notices in a notice given pursuant to this paragraph.

26. **Necessary Documents.** The parties agree to enter into and execute such further documents or instruments as may be necessary and appropriate to effectuate this Stipulation, including but not limited to conveyance forms or other documents incident to the closing.

27. **Power and Authority to Execute.** Each party hereto represents and warrants that it has the full power and authority to execute, deliver and perform this Stipulation, that each individual signing on behalf of a party has been duly authorized by that party to execute this Stipulation on its behalf, and that no claims being released under the terms of this Stipulation have been assigned, sold, or otherwise transferred to any other entity.

28. **Advice of Counsel.** Each of the parties has had the benefit of the advice of counsel of its own choice in the negotiating, drafting and execution of this Stipulation, and the language in all parts of this Stipulation is a product of the efforts of all parties and their respective counsel.

29. **Headings.** The paragraph headings in this Stipulation are for convenience only and shall not be used to construe or interpret the meaning of any provision herein.

30. **No Oral Modifications.** This Stipulation constitutes the entire understanding of all of the parties hereto with respect to the subject matter hereof. This Stipulation cannot be modified, amended, supplemented, or otherwise changed except by a writing signed by the party to be charged. The parties expressly intend and agree that there shall be no exceptions to this "no oral modification" clause, including, but not limited to, any present or future claims of partial performance, or equitable estoppel.

31. **No Duress.** The parties acknowledge that they have entered into this Stipulation freely and voluntarily, with the advice of counsel, and without duress.

SUMMIT SAUGATUCK, LLC

BY: _____

Timothy S. Hollister
Hinckley Allen & Snyder LLP
20 Church Street
Hartford, CT 06103-1221
p: 860-331-2823
f: 860-278-3802
Juris No. 428858
ITS ATTORNEY

TOWN OF WESTPORT, PLANNING & ZONING COMMISSION

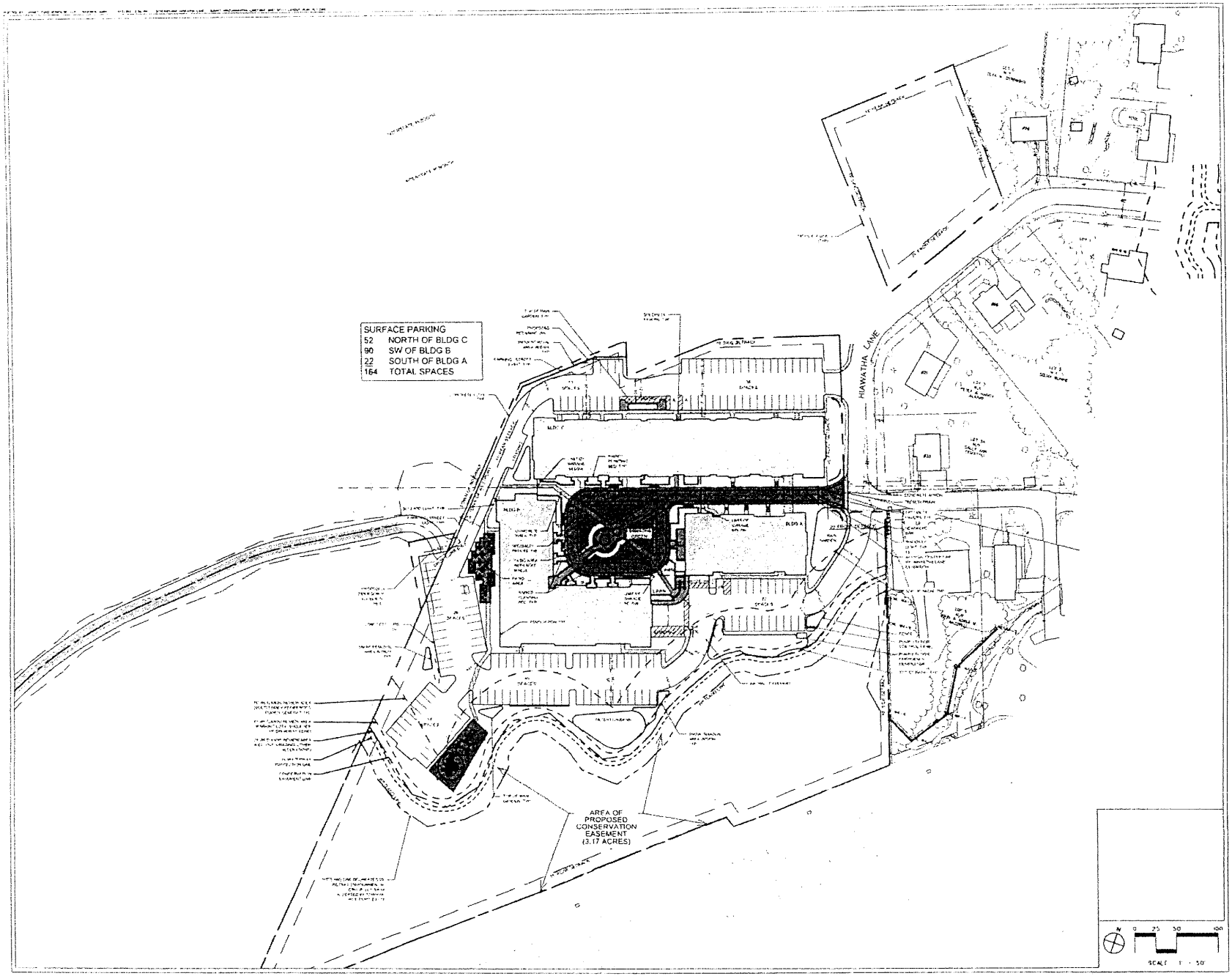
BY: _____

Ira W. Bloom
Berchem Moses PC
1221 Post Road East
Westport, CT 06880
Tel. (203) 227-9545
Fax: (203) 227-2443
Juris No. 065850
ITS ATTORNEY

LIST OF EXHIBITS

A. Site Plan dated May 7, 2021 prepared by Divney Tung Schwalbe, LLP
B. Renderings dated May 10, 2021 prepared by The Monroe Partnership LLP
C. Water Main Extension Plan dated January 29, 2020 and Sewer Main Extension Plan dated May 7, 2018 prepared by Redniss and Mead
D. Pedestrian Improvement Plan dated April 17, 2019, as revised and supplemented to September 12, 2019 prepared by Divney Tung Schwalbe, LLP
E. Plantings Plan dated May 10, 2021 prepared by Divney Tung Schwalbe, LLP
F. Proposed Zone Change Map

EXHIBIT A



THE VILLAGE AT SAUGATUCK

HIAWATHA LANE
TOWN OF WESTPORT, CONNECTICUT

SUMMIT SAUGATUCK LLC

PLANNER, CIVIL ENGINEER, LANDSCA ARCHITECT
DIVNEY • TUNG • SCHWALB
Intelligent Land U

ARCHITECT
THE BADERCIE PARTNERSHIP, LL
8 Knight Street, Suite 201
Norwalk, CT 06851

SURVEYOR
LEWIS ASSOCIATES
260 Main Street
Monroe, CT 06468

SANITARY ENGINEER
REDNISS & MEAD
22 First Street
Stamford, CT 06905

ATTORNEY
SHIPMAN & GOODWIN LLP
One Constitution Plaza
Hartford, CT 06103

WETLAND CONSULTANT
WETLAND KENDY ASSOCIATES LLC
195 Tokeneke Hill Road
Fairfield, CT 06825

SITE LAYOUT PLA

SP-1

EXHIBIT B

The drawings and all the ideas, arrangements, designs and plans indicated thereon or represented thereby are owned by and remain the property of The Monroe Partnership, LLC and no part thereof shall be utilized by any person, firm or corporation for any purpose whatsoever except with the specific written permission of The Monroe Partnership, LLC

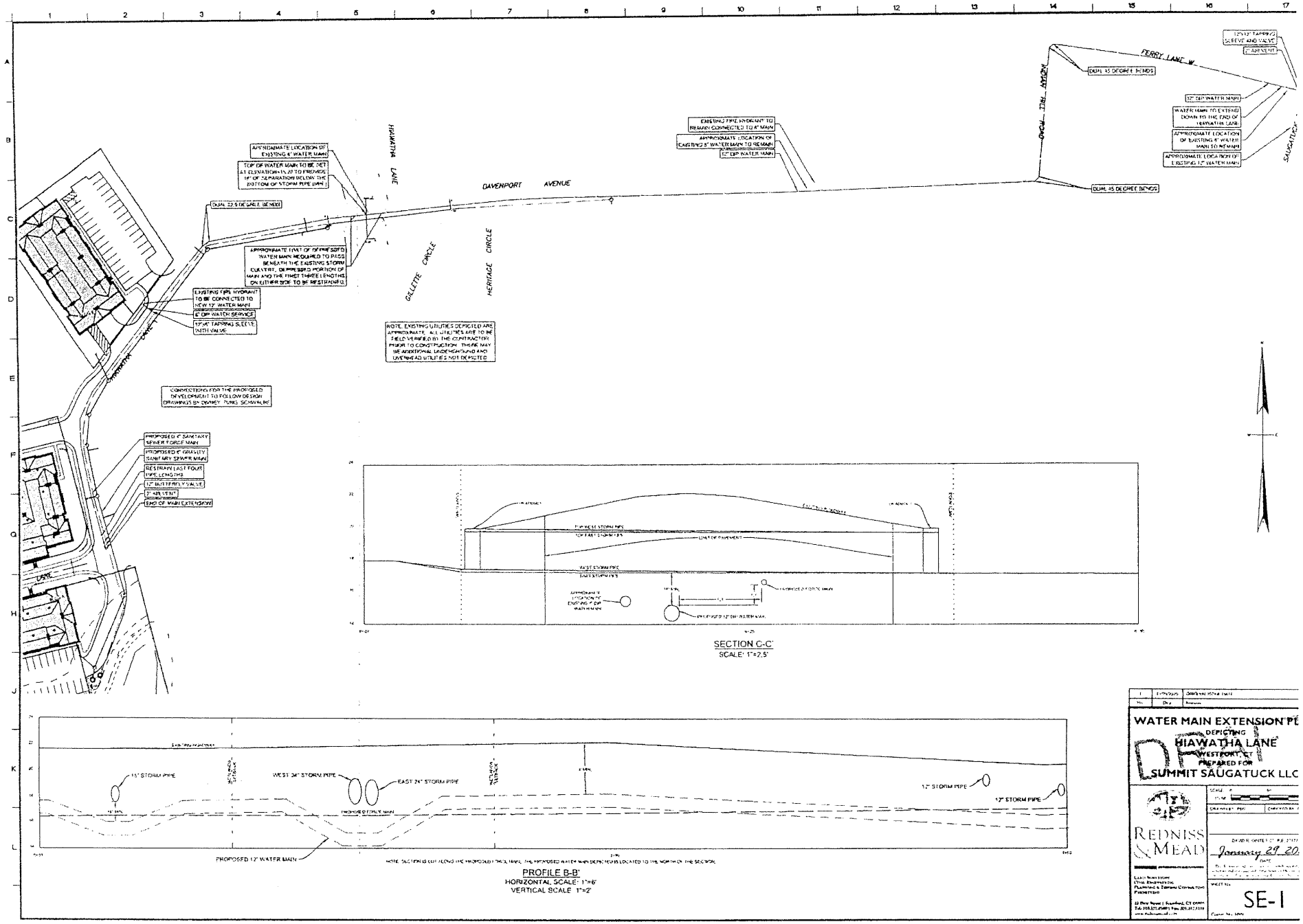
The Monroe Partnership

Residential Development

Hiawatha Lane, Westport, Connecticut
Site Rendering from Courtyard - Southwest

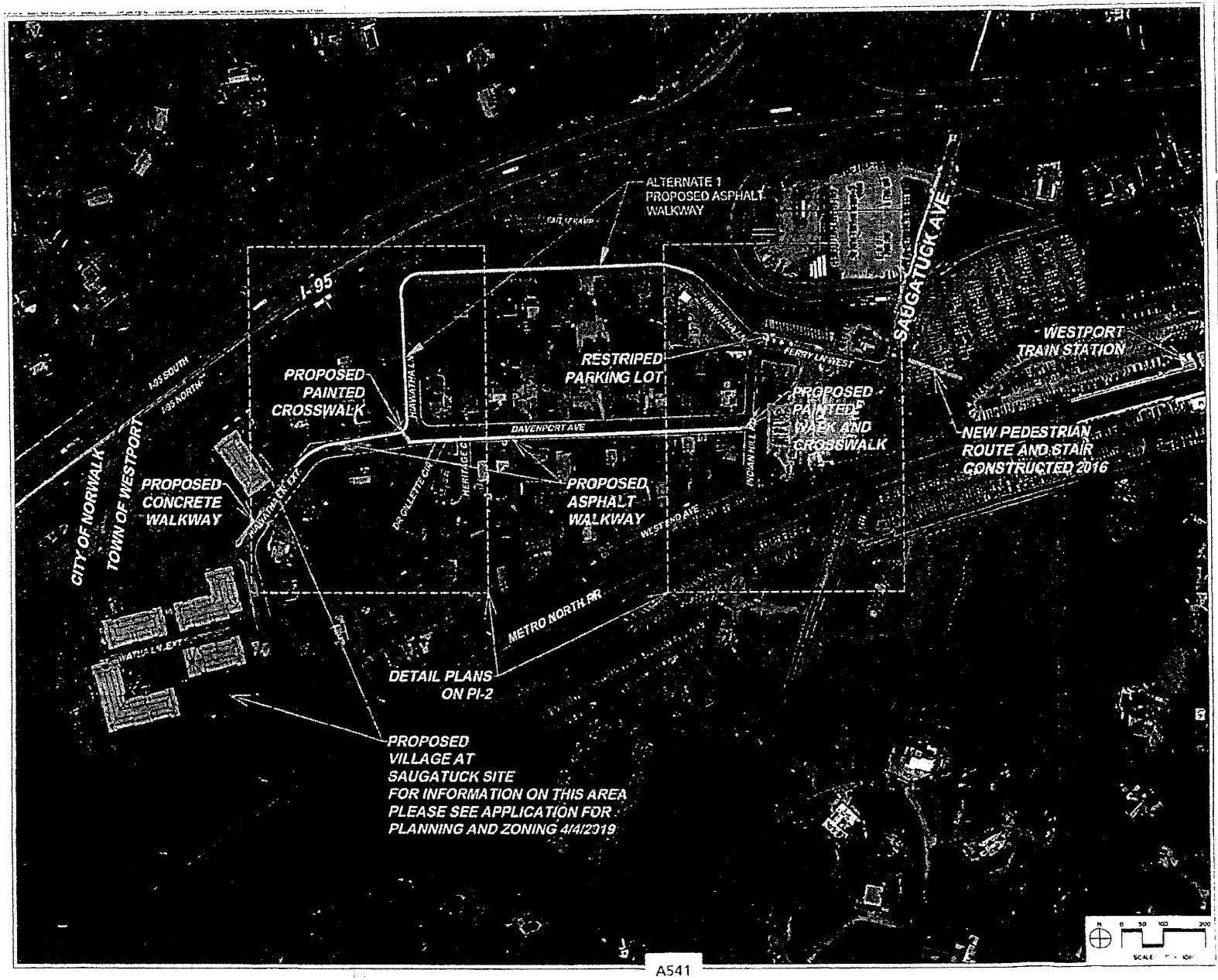
SUMMIT

EXHIBIT C



A270

EXHIBIT D-1



THE VILLAGE AT SAUGATUCK

HIAWATHA LANE
TOWN OF WESTPORT
CONNECTICUT

SUMMIT SAUGATUCK LLC

PLANNER, CIVIL ENGINEER, LANDSCAPE ARCHITECT
DIVINEY · TILKIN · SETKIVALIS

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SURVEYOR
LEWIS ASSOCIATES
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SANITARY ENGINEER
REDNISS & MEAD
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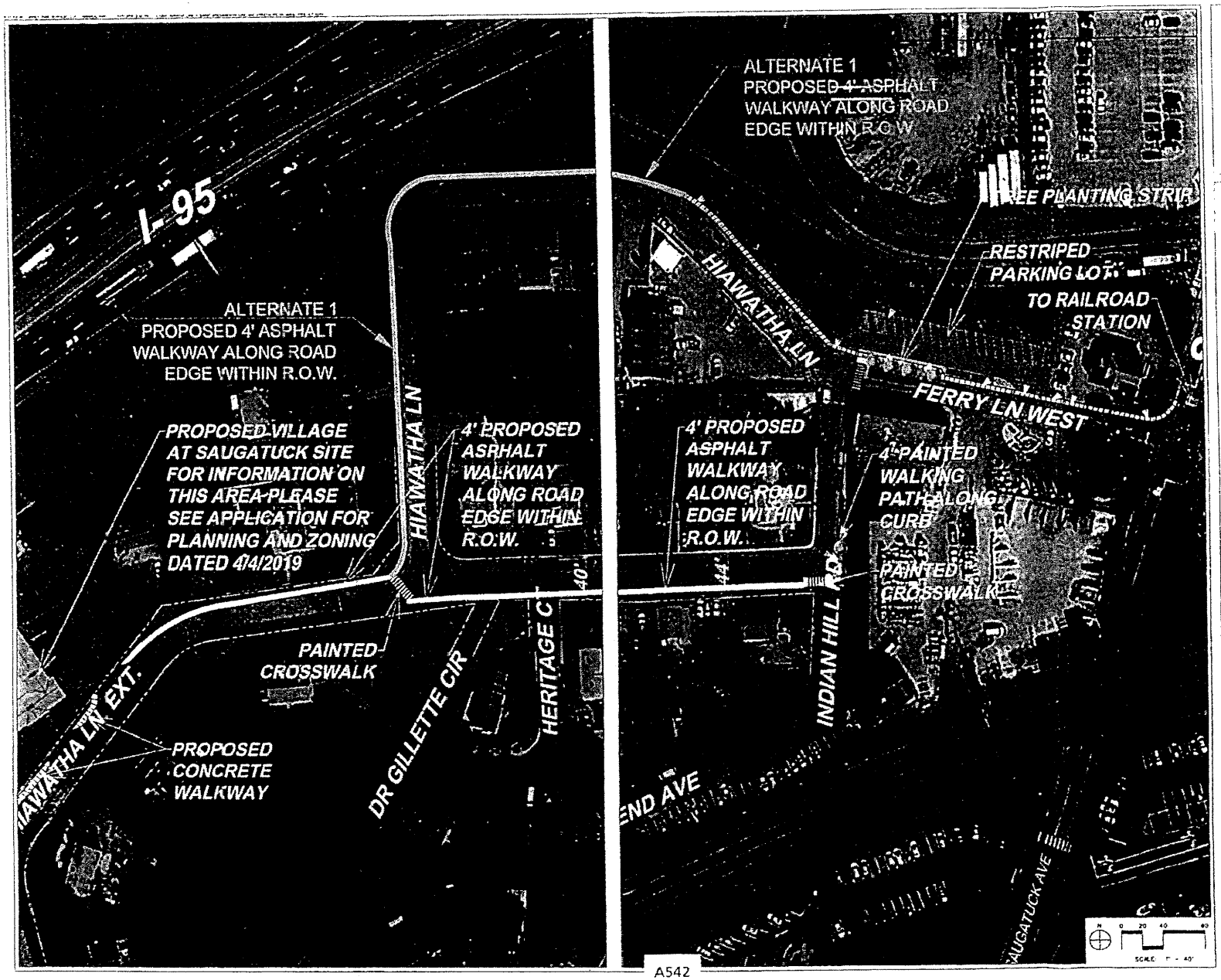
ATTORNEY
SHIPMAN & GOODWIN LLP
One Constitution Plaza
Hartford, CT 06103

WETLAND CONSULTANT
WILLIAM KENNY ASSOCIATES LLC
195 Turnpike Hill Road
Fairfield, CT 06275

PEDESTRIAN IMPROVEMENT PLAN

PI-1

EXHIBIT D-2



THE VILLAGE AT SAUGATUCK

HIAWATHA LANE
TOWN OF WESTPORT,
CONNECTICUT

SUMMIT SAUGATUCK LLC

PLANNER, CIVIL ENGINEER, LANDSCAPE ARCHITECT
DAVNEY • TERRY • SCHWALBE

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LEWIS ASSOCIATES
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SANITARY ENGINEER
REDNISS & HEAD
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ATTORNEY
SHIPMAN & GOODWIN LLP
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Hartford, CT 06103

WETLAND CONSULTANT
WILLIAM KENNY ASSOCIATES LLC
135 Easton Hill Road
Fairfield, CT 06825

PEDESTRIAN
IMPROVEMENT PLAN

PI-2

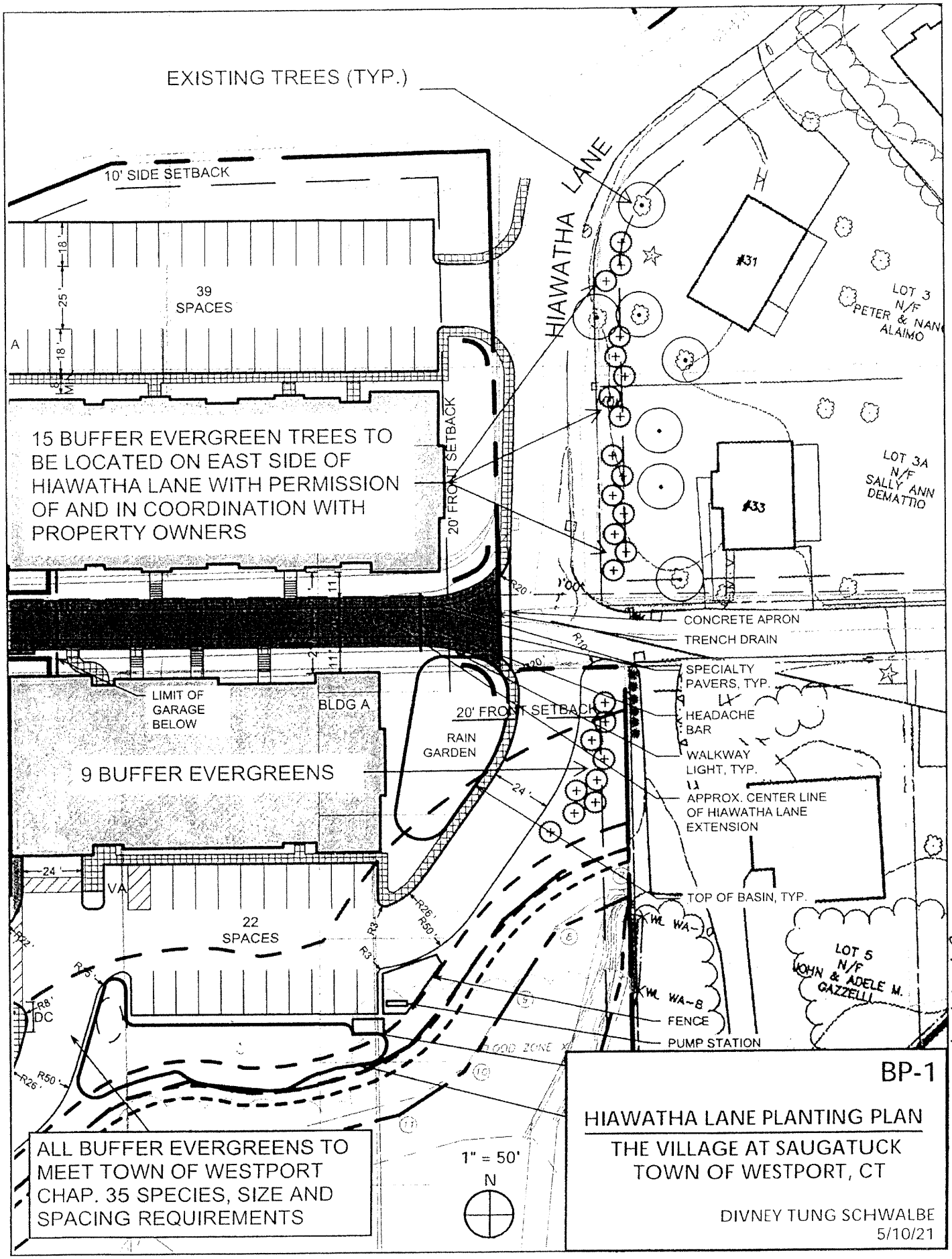
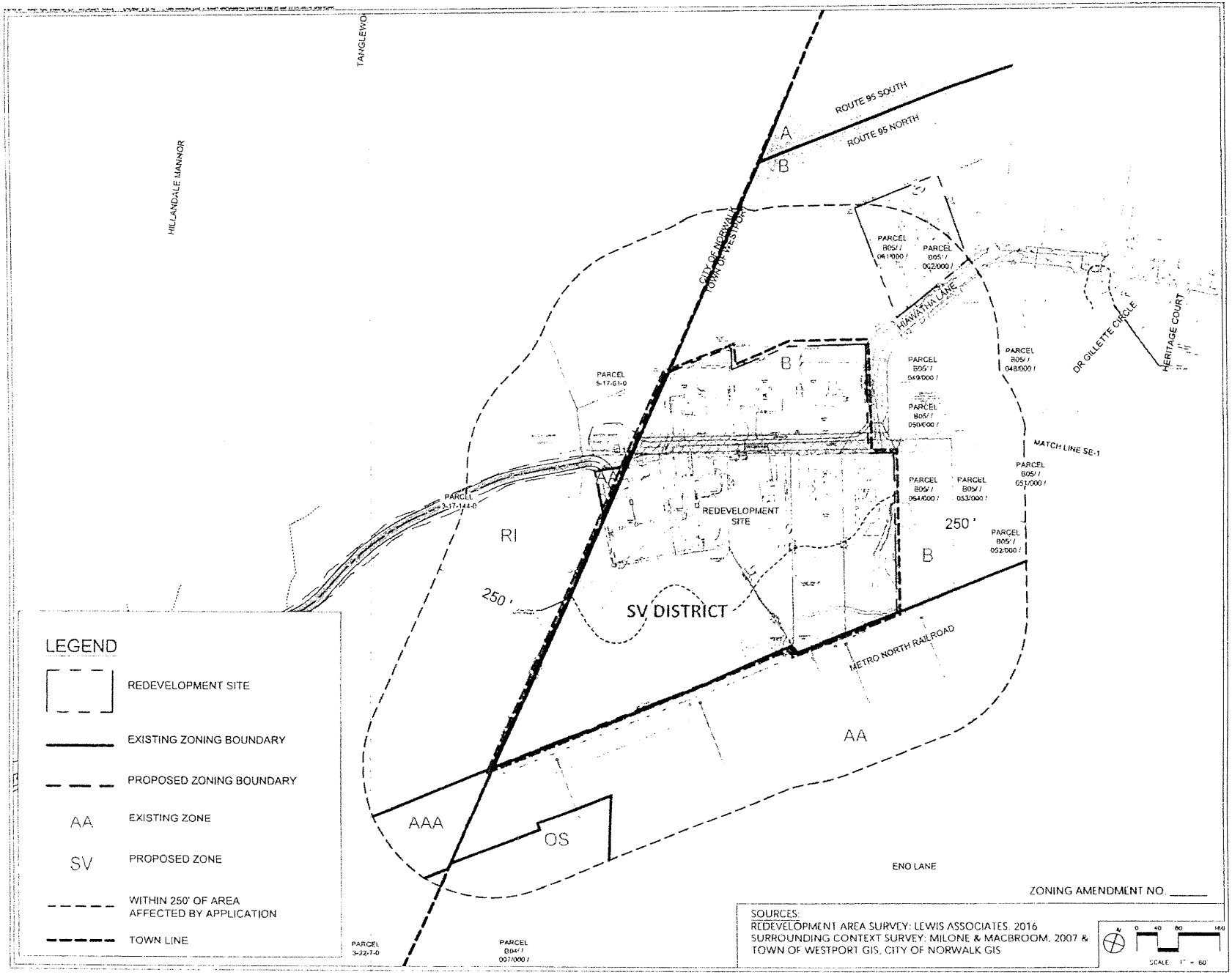

EXISTING TREES (TYP.)
10' SIDE SETBACK
39 SPACES
HIAWATHA LANE
#31
LOT 3 N/F PETER & NANCY ALAIMO
15 BUFFER EVERGREEN TREES TO BE LOCATED ON EAST SIDE OF HIAWATHA LANE WITH PERMISSION OF AND IN COORDINATION WITH PROPERTY OWNERS
20' FRONT SETBACK
#33
LOT 3A N/F SALLY ANN DEMATTIO
CONCRETE APRON
TRENCH DRAIN
SPECIALTY PAVERS, TYP.
HEADACHE BAR
WALKWAY LIGHT, TYP.
APPROX. CENTER LINE OF HIAWATHA LANE EXTENSION
TOP OF BASIN, TYP.
LIMIT OF GARAGE BELOW
BLDG A
20' FRONT SETBACK
RAIN GARDEN
9 BUFFER EVERGREENS
22 SPACES
WA-10
WA-8
FENCE
PUMP STATION
LOT 5 N/F JOHN & ADELE M. GAZZELLI
FLOOD ZONE
ALL BUFFER EVERGREENS TO MEET TOWN OF WESTPORT CHAP. 35 SPECIES, SIZE AND SPACING REQUIREMENTS
1" = 50'
N
BP-1
HIAWATHA LANE PLANTING PLAN
THE VILLAGE AT SAUGATUCK
TOWN OF WESTPORT, CT
DIVNEY TUNG SCHWALBE
5/10/21

EXHIBIT B

EXHIBIT F



THE VILLAGE AT SAUGATUCK

HIAWATHA LANE
TOWN OF WESTPORT, CONNECTICUT

SUMMIT SAUGATUCK LLC

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SHIPMAN & GOODWIN LLP
One Constitution Plaza
Hartford, CT 06103

WETLAND CONSULTANT
WILLIAM KENNY ASSOCIATES LLC
195 Tunxis Hill Road
Fairfield, CT 06825

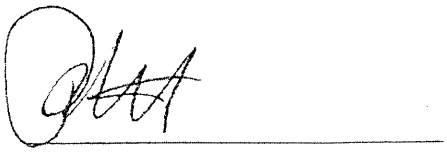
PROPOSED ZONI MAP

Z-2

CERTIFICATION

I hereby certify that a copy of the above was mailed or electronically delivered on the above date, to all counsel and self-represented partied of record and that written consent for electronic delivery was received from all counsel and self-represented parties of record who were electronically served, to wit:

Timothy S. Hollister
Hinckley Allen & Snyder LLP
20 Church Street
Hartford, CT 06103-1221
thollister@hinckleyallen.com



Peter V. Gelderman
Commissioner of the Superior Court

DOCKET NO: HHDCV196120090S	:	SUPERIOR COURT
SUMMIT SAUGATUCK LLC	:	JUDICIAL DISTRICT
v.	:	AT HARTFORD, CONNECTICUT
WESTPORT PLANNING AND ZONING COMMISSION	:	JULY 19, 2021

DOCKET NO. HHDCV206143715S
SUMMIT SAUGATUCK LLC

V.

TOWN OF WESTPORT WATER POLLUTION CONTROL AUTHORITY

DOCKET NO. HHDCV201643605S
HHDCV2016143606S
SUMMIT SAUGATUCK, LLC

V.

CONSERVATION COMMISSION/INLAND WETLAND AGENCY FOR THE TOWN OF NORWALK ET AL

DOCKET NO. HHDCV206127403S
SUMMIT SAUGATUCK, LLC, ET AL

V.

CONNECTICUT DEPARTMENT OF HOUSING, ET AL

BEFORE THE HONORABLE MARSHAL K. BERGER, JUDGE

Recorded By: Kelly Laughery

Transcribed By:
Roberta G. Carlon
Court Monitor
Hartford Superior Court
101 Lafayette Street
Hartford, Connecticut 06106

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1 THE CLERK: The Superior Court of Hartford
2 Judicial District is open and in session the
3 Honorable Marshal K. Berger presiding in the matters
4 of Summit Saugatuck versus Westport Planning and
5 Zoning Commission, Docket No. HHDCV196120090, and
6 Summit Saugatuck versus Westport Water Pollution
7 Control Authority, Docket No. HHDCV206143715, and
8 Summit Saugatuck versus State Department of Housing,
9 Docket No. HHDCV206127403S, and Summit Saugatuck
10 versus Conservation Commission/Inland Wetlands Agency
11 of the Town of Norwalk, the docket numbers are
12 HHDCV206143605 and HHDCV206143606, all of the docket
13 numbers ending in the letter S. Thank you.
14 THE COURT: If counsel could identify
15 themselves. I guess we should start with the P&Z
16 case first.
17 ATTY. HOLLISTER: Good morning, Your Honor.
18 Attorney Tim Hollister representing Summit Saugatuck,
19 LLC and I represent Summit in the PZC appeal, WPCA
20 appeal and the declaratory judgment action.
21 THE COURT: All right.
22 ATTY. BLOOM: Good morning, Your Honor. Ira
23 Bloom representing the Westport Planning & Zoning
24 Commission in the zoning case as well as the DOH case
25 and the Water Pollution Control Authority in the
26 third case.
27 ATTY. SLATER: Your Honor, Ken Slater

1 representing Garden Homes.
2 ATTY. GELDERMAN: And, Your Honor, Pete
3 Gelderman also here on behalf of the town in the WPCA
4 case, P&Z case and DOH case. Thank you.
5 THE COURT: Thank you. Mr. Famiglietti.
6 ATTY. FAMIGLIETTI: Good morning, Your Honor.
7 Anthony Famiglietti from the Attorney General's
8 Office on behalf of the Department of Housing.
9 THE COURT: Thank you. Chris Smith.
10 ATTY. SMITH: Good morning, Your Honor, Chris
11 Smith of Alter and Pearson on behalf of Summit
12 Saugatuck, LLC in the two Norwalk appeals.
13 THE COURT: And we have counsel for Norwalk.
14 ATTY. SAPIENZA: Good morning, Your Honor.
15 Mathew Sapienza for the Conservation
16 Commission/Inland Wetland agency for the city of
17 Norwalk in the two Norwalk appeals.
18 THE COURT: Do we have any other counsel that I
19 may have missed?
20 AT. HOLLISTER: I think you have everybody, Your
21 Honor.
22 THE COURT: And we have a number of guests with
23 us today if they could just identify themselves. I
24 see Ms. Curry on my screen who is on mute.
25 MS. CURRY: I've unmuted myself. Good morning,
26 Judge. I am a part of the neighborhood that's going
27 to be in the construction area. I represent the

1 neighborhood organization that's been after for
2 eighteen years trying to stop this development and
3 it's called Save Old Saugatuck.
4 THE COURT: Thank you. And anyone else? Yes?
5 Gloria someone? My computer does not give your full
6 name so I apologize for that.
7 MS. GOUVEIA: Quite all right. Gloria Gouveia,
8 I'm a friend of Save Old Saugatuck and a Westport
9 resident.
10 THE COURT: Thank you. Could you spell your
11 last name, ma'am? All I see is your first three
12 letters.
13 MS. GOUVEIA: Yes. G-o-u-v as in Victor,-e-i-a.
14 THE COURT: Thank you.
15 MS. GOUVEIA: Thank you.
16 THE CLERK: And Mr. Liotta.
17 THE COURT: Mr. Liotta.
18 MR. LIOTTA: Yeah, I'm here on behalf of
19 Westport Journal as a member of the press. Thank
20 you, Your Honor.
21 THE COURT: Thank you. Welcome everyone. As
22 you all can see, we have a number of cases before us
23 but I'm going to ask a question right off the bat.
24 It deals with the settlement document in the P&Z
25 case. I want to ask you on pages 5 and 6 of that
26 document, you will see first on pages 5, a reference
27 to the Supreme Court case. That is not necessarily

1 in front of me, but it is here, references to a
2 20431, appealing two cases. Now, I want you to look
3 at those two case numbers and you will see that they
4 are the same case number. My guess is that you have
5 made an error and that you meant -- theoretically you
6 might have meant 176086949. I'm not sure you did,
7 but I believe you might have. And I just want to ask
8 you about that.
9 ATTY. HOLLISTER: Your Honor, if I may, this is
10 Tim Hollister. Correct with an explanation. The
11 WPCA case in the Superior Court was originally filed
12 in 2016. It went to Judge Shluger in Norwich who
13 remanded it and then there was a second denial in
14 2017.
15 THE COURT: Um-hum.
16 ATTY. HOLLISTER: It was an appeal taken from
17 that denial, so I believe -- and Mr. Gelderman can
18 correct me if I'm wrong -- but we proceeded at that
19 point with essentially the second appeal having two
20 docket numbers. We refer to it in front of Judge
21 Shluger on the second remand by both the 2016 and
22 2017 document numbers. So I would say the second
23 reference to 2016 number is superfluous but not
24 necessarily incorrect.
25 Pete, would you agree with that?
26 THE COURT: You're on mute, Mr. Gelderman.
27 ATTY. GELDERMAN: Sorry, sorry. Yes, I would

1 agree with that.
2 THE COURT: So what is 176086949?
3 ATTY. HOLLISTER: That is the appeal which was
4 taken in November of 2017 after the second, after the
5 remand to the WPCA resulted in a second denial but
6 Judge Shluger consolidated that one with the 2016
7 since the record had already been filed in that case.
8 So they proceeded on a combined basis. I think the
9 case, the 2016 case number is the governing number of
10 that case. And that's the one that's in front of the
11 Supreme Court.
12 THE COURT: So that would be the Supreme Court
13 20431 appeal that you intend on would govern.*
14 ATTY. HOLLISTER: Correct.
15 THE COURT: And for our records though since we
16 show still the 17 number as the live number for that
17 case.
18 ATTY. HOLLISTER: I think we would accept an
19 amendment to correction to include that number if
20 that would make it easier.
21 THE COURT: Anybody else wish to be heard on
22 that, Mr. Gelderman?
23 ATTY. GELDERMAN: Agreed, Your Honor.
24 THE COURT: All right. You can understand as I
25 was reading it when I read that same case twice. All
26 right. And next on Item B, if we follow along, you
27 have a reference to the withdrawal of Summit

1 Saugatuck, the Water Pollution Control case, you have
2 the Stamford number as opposed to our number.
3 ATTY. GELDERMAN: It was filed --
4 THE COURT: As we will get to the Water
5 Pollution Control case, you have our number for that
6 case as opposed to the Stamford case. It's one and
7 the same?
8 ATTY. GELDERMAN: Yes.
9 THE COURT: Is that my understanding?
10 ATTY. GELDERMAN: Yes, Your Honor. The
11 stipulation was filed prior to it being transferred
12 up to you, I believe. We didn't have the HHD number
13 yet.
14 THE COURT: Okay. Are there any questions about
15 that? Anybody? Okay. With those corrections, who
16 would like to start? Mr. Hollister?
17 ATTY. HOLLISTER: Thank you, Your Honor. Good
18 morning. And first of all, on behalf of all counsel
19 we want to thank Ms. Bowker as always for her
20 intrepid and dogged logistical assistance to us
21 especially complicated here with five matters
22 pending.
23 I'll address the PZC appeal and first note, it
24 has procedural compliance. There is a section
25 8-8(n) motion for entry of judgment in accordance
26 with stipulation that is dated finally June 28th of
27 2021. Last week we filed as -- some had filed as

1 Plaintiff's Exhibit 3, a copy of the Planning &
2 Zoning Commissions' agenda and minutes of May 12,
3 2021 when the commission published and approved the
4 proposed settlement terms and noted that in its
5 minutes.
6 And finally we filed as a pleading last week
7 proof in the publication in the Westport News on June
8 25th of the notice of today's hearing.
9 In brief summary, Your Honor, this is, of
10 course, an 8-30g appeal from the September 2019
11 denial of a three-part application for 187 apartments
12 with a 30 percent set aside on 8.8 acres on Hiawatha
13 Lane property that abuts the city of Norwalk. For
14 the past nine months the zoning appeal proceeded in
15 parallel with the sewer extension appeal and the
16 declaratory judgment action regarding the validity of
17 the moratorium issued by the department of housing in
18 March of 2019. I would summarize by saying that the
19 simultaneous consideration of all three cases by the
20 courts prompted a discussion of a global settlement
21 which started in January of 2021 and discussions
22 continued between counsel on a confidential
23 settlement basis over the succeeding months and
24 culminated in the zoning commissions' approval on May
25 12th of this year of the 8-8(n) motion that is before
26 you.
27 The key terms in very brief summary are a

1 reduction of the proposed density from 187 to 157
2 units, a reduction of the buildings from five to
3 three, regulation amendment rezoning and site plan
4 all revised, reduced, and conformed to that smaller
5 configuration. There have now been staff reviews
6 conducted in Westport to confirm that the revised
7 plans are in accordance with that reduction.
8 Several features desired by the town have been
9 preserved. A 3.1 acre conservation easement
10 reconstruction of a culvert and drainage improvements
11 that will alleviate occasional surface flooding that
12 has occurred in the area, and then cooperation with
13 respect to pedestrian improvements including those
14 leading to the Summit Saugatuck Train Station to the
15 east of the development property.
16 Otherwise, the major change I would say is
17 agreement that the zoning commissions requirement of
18 an additional access for fire trucks which would be
19 through the city of Norwalk has been determined to be
20 not necessary based on Summit's agreement to make
21 other fire safety improvements for the plan at the
22 direction of the Westport fire marshal. There was,
23 of course, further agreement to settle the sewer
24 extension matter and withdrawal of the moratorium
25 challenge.
26 So in terms of process the 8-8(n) motion came
27 before the PZC for a four hour, approximately, public

1 comment period on May 12th after which the commission
2 approved the settlement. It was also then taken to
3 the Westport representative town meeting which in
4 June overwhelmingly reaffirmed the zoning
5 commissions' authority to settle the matter.
6 In terms of compliance with Practice Book 14-
7 7b(j), I can report, I think counsel would agree,
8 that the Freedom of Information Act has been
9 followed. The rules of when settlement
10 communications can be conducted confidentially and
11 when they must be public has been followed. In short
12 order, the settlement has been fully vetted in two
13 very lengthy public meetings in Westport. There have
14 been significant concessions and agreements by both
15 sides. And the process has been indisputably arms-
16 length.
17 I will just finish by saying that as Your Honor
18 noted paragraph 14 of the motion included the inter-
19 related settlement of the sewer extension, the
20 withdrawal of the moratorium case, all as conditions
21 of this settlement. And if the Court approves the
22 settlement today, item Mr. Bloom and Mr. Gelderman
23 and I will be in touch with the Supreme Court
24 promptly to report that the sewer appeal can be
25 withdrawn and then we will file the withdrawal of the
26 declaratory judgment action. So on that basis the
27 parties move for the entry of judgment in accordance

1 with the stipulation as stated in the settlement.
2 And I'll stop there. Thank you.
3 THE COURT: Thank you. Mr. Bloom, your welcome
4 (inaudible) P&Z, response to Mr. Hollister.
5 ATTY. BLOOM: Good morning, Your Honor. Ira
6 Bloom representing the commission. I (inaudible)
7 with everything Mr. Hollister stated. I'll just add
8 a couple of points here. There actually was a third
9 public meeting on this. The RTM as a committee
10 system and the RTM planning and zoning subcommittee
11 met to review this prior to the full RTM. The
12 subcommittee met on May 25th and also supported this.
13 That was another, I'd say at least a couple of hours;
14 so actually there were three public meetings attended
15 by numerous members of the public on this, that's
16 No. 1.
17 The only other point I just wanted to underscore
18 was I think it is important to note some of the fire
19 safety provisions that were added to this agreement
20 because obviously the fire safety issues, the access
21 issue was important to the commissions' original
22 denial of this. But as the negotiations developed
23 the commission and their representatives, including
24 me, met with the local fire marshal and we asked him
25 for his input to enhance the fire safety precautions
26 provisions for the development. And as a result of
27 that in paragraph 6, the settelement agreement --

1 there are seven provisions, probably not necessary
2 for me to go into them. They're self-explanatory I
3 think in terms of fire rating and materials, fire
4 alarm system, etcetera. And those were added to this
5 agreement and were agreed to obviously by Summit and
6 so we believe those are important and they've been
7 agreed to. So I just wanted to highlight those
8 points in paragraph 6.
9 THE COURT: Thank you. Mr. Gelderman, do you
10 have anything to add to that?
11 ATTY. GELDERMAN: No, thank you, Your Honor.
12 THE COURT: Okay. I'm just kind of going to go
13 through all of these cases and then turn to the
14 public afterwards.
15 A companion case, and a small case I guess,
16 related to that would be the Norwalk, the two Norwalk
17 appeals which were brought as a result of the
18 easement in the initial requirement for that second
19 access. Those are being withdrawn. I think Mr.
20 Hollister referenced those.
21 But Mr. Smith, you have the floor on that one.
22 ATTY. SMITH: Okay. Thank you, Your Honor. For
23 the record, Chris Smith on behalf of Summit
24 Saugatuck, LLC and the two referred two Norwalk
25 appeals. And both of those appeals, Your Honor,
26 involved an emergency access easement from the
27 subject property to property located in the city of

1 Norwalk. There were two applications filed with the
2 Conservation Wetlands Agency, the defendant, in
3 Norwalk concerning regulated activities and the use
4 of that emergency access easement. Based on the
5 decision there was an appeal and as represented by
6 Attorneys Hollister and Bloom and Gelderman, there is
7 no -- in that application -- both of those
8 applications, Your Honor, were premised on Westport
9 requiring a second access to service the site, the
10 subject property in Westport, and based upon the
11 stipulated agreement, Your Honor, it's been
12 represented that that secondary access is no longer
13 needed, therefore, the issues raised in the two
14 Norwalk appeals are moot and we respectfully request
15 the Court grant permission to withdraw both of those
16 appeals as provided by Section 22a-43d.
17 I would also just like to inquire with counsel
18 for the town of Westport, Your Honor, and confirm for
19 the record that the conditions of the stipulation and
20 in particular those set forth in paragraph 14 have
21 been satisfied.
22 THE COURT: Thank you. Mr. Sapienza.
23 ATTY. SAPIENZA: Good morning, Your Honor.
24 Mathew Sapienza for the city of Norwalk. I concur
25 with the statements by Attorney Smith as the city is
26 not really making any concessions for the withdrawal.
27 Obviously we concur with the withdrawal by Summit.

1 THE COURT: And Mr. Smith, asked a question
2 about whether -- I think this was directed to you,
3 whether --
4 MR. SMITH: I believe we directed the question
5 to Attorney Hollister or one of the other attorneys,
6 Your Honor.
7 THE COURT: Thank you.
8 ATTY. HOLLISTER: Yes. The conditions of
9 paragraph 14 have been satisfied. I think Attorney
10 Bloom confirmed that as recently as this morning.
11 ATTY. BLOOM: That's correct, Your Honor.
12 ATTY. SAPIENZA: Thank you, Your Honor. And
13 also for the record we did provide the Court with a
14 copy of the newspaper notice publication of this
15 hearing that was published on June 30th of 2021.
16 Thank you.
17 THE COURT: All right. And Mr. Smith noted that
18 these would be 22a-43d withdrawals as opposed to the
19 8-8(n) which is the (inaudible) withdrawal since it
20 (inaudible).
21 On the next step along this route was the
22 moratorium appeals with DOH. Mr. Hollister, I think,
23 referenced those; but is there anything more you'd
24 like to say in connection with the -- now, before I
25 turn to Mr. Slater for that.
26 ATTY. HOLLISTER: Yes. Thank you, Your Honor.
27 This case is before -- not before the Court today in

1 the sense of requesting an 8-8(n) approval. It's a
2 declaratory judgment action.
3 THE COURT: I understand that.
4 ATTY. HOLLISTER: Okay. But we do have a
5 stipulation of the parties dated and e-filed June
6 25th which is intended to state the -- if you will,
7 the background or the agreements regarding the
8 withdrawal of that will survive the withdrawal of
9 itself, just a matter of record that the withdrawal
10 will be with prejudice to refiling any claims or any
11 unasserted claims in full with no claims remaining
12 outstanding and with a waiver of any and all claims
13 or causes of action to contest the 2019 moratorium in
14 the future. So all counsel are in agreement. I've
15 actually provided a copy of the signed withdrawal in
16 escrow to Attorney Famiglietti, Attorney Bloom and
17 Attorney Gelderman. So if the other settlements are
18 approved, we will withdraw -- file that withdrawal
19 forthwith. Thank you.
20 THE COURT: Thank you. Mr. Slater.
21 ATTY. SLATER: Nothing more to add than Attorney
22 Hollister. He has the withdrawal that I signed and
23 has described what we put in the stipulation.
24 THE COURT: Anything further from the department
25 of housing? Mr. Famiglietti?
26 ATTY. FAMIGLIETTI: No, Your Honor. Just the
27 town of Westport and Summit had requested that DOH

1 hold off on issuing the final decision on the
2 revocation. And once the withdrawal is filed DOH
3 will be issuing a letter to the town that the
4 moratorium will remain in effect at the request of
5 the parties so that they could pursue the settlement
6 agreement.
7 THE COURT: And Mr. Gelderman or Mr. Bloom?
8 ATTY. BLOOM: Well, that's all correct, Your
9 Honor, and we have seen the letter. And as soon as
10 this is over we will receive it and hopefully that
11 will take care of this case.
12 THE COURT: Mr. Gelderman, is there anything
13 you'd like to add?
14 ATTY. GELDERMAN: No, thank you, Your Honor.
15 THE COURT: And is that (inaudible) WPCA cases?
16 ATTY. HOLLISTER: Yes, Your Honor. On the WPCA
17 appeal, brief summary, as I mentioned earlier this
18 dates back to 2016. From 2016 to 2019 the Westport
19 WPCA which is the board of selectmen would not
20 approve the sewer extension on the ground that
21 certain components of the system had to be upgraded
22 and completed before the extension could be granted.
23 And in addition Westport's public written published
24 sewer policy says that a sewer extension referred to
25 the planning and zoning commission under Section 8-24
26 of the General Statutes must receive a positive
27 report for the WPCA to be able to approve the

1 extension. The system upgrades were completed as of
2 December 2019 and by that time the case was -- had
3 been proposed to the Supreme Court for certification
4 of the October 2019 decision of the Appellate Court.
5 Meanwhile, in February of 2020 based on a
6 suggestion in a footnote in the Appellate Court
7 decision, Summit refiled, reapplied to the WPCA,
8 which in July of 2020 denied solely for the lack of a
9 positive 8-24 report. And that denial was appealed
10 to the Stamford Superior Court in July of 2020 and
11 then stayed pending the outcome of the Supreme
12 Court's consideration then certification had been
13 granted in the -- what I'll call the 2016-2017 case.
14 Now, when the zoning commission adopted -- the
15 zoning commission adopted its settlement on May 12th
16 of this year, its action included a positive 8-24
17 report and thus the parties filed with the Supreme
18 Court a motion to stay the appeal, which had already
19 been orally argued, to see if we could get a
20 resolution resolving the July 2020 appeal that was
21 pending in the Stamford Superior Court.
22 Last month the WPCA approved the settlement and
23 directed Attorney Gelderman and myself to proceed to
24 settle that case and thus if that approval before the
25 Court -- excuse me -- the motion before the Court is
26 approved, that will become the stipulated judgment
27 and Attorney Bloom and Attorney Gelderman and I will

1 call the Supreme Court clerk and state that the
2 settlement has been effectuated and ask final
3 permission from the Supreme Court under 63-9 of the
4 Practice Book to approve the settlement.
5 Just finally, in terms of procedural compliance
6 -- I'm sorry -- approve the withdrawal of the Supreme
7 Court appeal. Procedural compliance, you have the
8 final motion which is dated June 30, 2021, and I
9 noted to Mr. Gelderman that the caption of that
10 motion should use the HHD Hartford number. It has
11 the correct docket number but it does say FST and it
12 does say Stamford/Norwalk. But with that correction
13 and understanding, that is before you. The WPCA
14 notice of an agenda from June 18th are attached to
15 the motion itself, and last week we e-filed proof of
16 publication in the Westport News on June 25th of the
17 notice of this hearing.
18 And lastly I would just note that the stipulated
19 judgment includes approval of the physical extension
20 of the sewer line, a specific gallonage* or discharge
21 capacity based on the scaled down number of units,
22 and connection, permission to connect to the public
23 sewer system subject to normal engineering as stated
24 in the town's sewer policy. That's it. Thank you,
25 Your Honor.
26 THE COURT: Mr. Bloom or Mr. Gelderman, do you
27 wish to be heard on the WPCA notice?

1 ATTY. BLOOM: I'll let Mr. Gelderman comment if
2 there's any further comments.
3 ATTY. GELDERMAN: No. I think that's an
4 accurate summary, Your Honor, of the events that
5 occurred. So I agree with Attorney Hollister.
6 THE COURT: All right. So I believe, unless I'm
7 forgetting something, that takes care of all of the
8 cases that we have pending with us today.
9 I would like to hear, if they wish to speak and
10 they are under no obligation, from the members of the
11 public at this hearing. Since I see Ms. Curry again
12 on my screen -- I don't see the other two. Ma'am, if
13 you would like to speak, please do so. But again,
14 none of you are under any obligation to.
15 You are on mute, ma'am. You need to unmute.
16 MS. CURRY: Thank you. I see it. Thank you
17 very much. I have one point to make, Your Honor, and
18 it's probably insignificant in the course of these
19 eighteen years, but Hiawatha Lane and Hiawatha Lane
20 Extension are two very distinct and different parts
21 of a neighborhood in which this construction is
22 proposed. Hiawatha Lane is an older area or an older
23 road that's right next to the highway. Hiawatha Lane
24 Extension was a swamp that was filled in so that
25 single family homes could be built there that were
26 homes that were displaced by the highway going
27 through. The Hiawatha Lane Extension was opened up

1 around the late '50s when that highway went through
2 and the state took land away for the highway
3 construction, so they went into what is a wetland
4 area. It's the same wetland area that's in Norwalk
5 just a few feet away. Summit and its attorneys
6 during the years have failed to mention that this is
7 a Hiawatha Lane Extension project. Extension meaning
8 the amount of wetlands and flood waters that are part
9 of the extension area between the highway and the
10 railroad tracks make us very concerned when those
11 buildings go in. And I believe an expert will attest
12 to the water problems and the rising water in that
13 area during the last -- let's say it was constructed
14 in the '60s, so in the last forty-or-so years, that
15 water table has risen and it is concern of the entire
16 neighborhood what is going to happen to Hiawatha Lane
17 Extension upon the completion toward the beginning of
18 this construction.
19 The architectural review board of Westport said
20 that they had not ever seen a project of this
21 intensity in this small piece of land. It is
22 something that you may not be able to do, Your Honor,
23 but it would be an incredible opportunity for you to
24 see what this area looks like physically. And I know
25 you will not hold off any decision today, but at some
26 point it would have been very good to be able to see
27 the distinction between Hiawatha Lane Extension and

1 Hiawatha Lane itself. Thank you.
2 THE COURT: Thank you. We also had two other
3 people. Ms. Gouveia.
4 MS. GOUVEIA: Yes, Your Honor.
5 THE COURT: Is there anything you would like to
6 say?
7 Ms. GOUVEIA: I would. I would like to repeat
8 part of what Ms. Curry said. You know, we have an
9 amazing amount of information about this property
10 before you. The one thing that is not before you is
11 the property itself. And that can only happen, Your
12 Honor, if you visit the area. I think that's an
13 essential piece of all of these proceedings. And to
14 the extent that that makes a difference or could make
15 a difference, I think it's essential. Thank you.
16 THE COURT: Thank you. And our other person --
17 MR. LIOTTA: No comment from me. We want to
18 thank you.
19 THE COURT: No comment. Well, in terms of the
20 request by Ms. Gouveia and Ms. Curry, no, I did not
21 visit this property. I will tell you that I guess
22 there was no request for me to do so. Am I somewhat
23 familiar with the proceedings that have gone on with
24 this project? You bet. I seem to see these lawyers
25 on a somewhat regular basis given this project. But
26 no, I did not go down and visit.
27 I take what you say about the water and wetlands

1 that may or may not be connected to the extension as
2 a problem for the neighborhood, I hear you. I
3 suspect that Mr. Hollister hears you as well and that
4 Mr. Bloom and Mr. Gelderman hear you as well.
5 I reviewed the Norwalk right-of-way in some
6 detail. You should know that I did hear the trial in
7 this -- one of the trials or maybe more, I don't
8 remember now. But I did hear the trial recently.
9 And I worked on it fairly extensively. And then I
10 received a phone call one day that this matter had
11 been resolved. That was connected to the moratorium
12 issue which counsel had all talked about and I was
13 fully familiar with that as well having written a
14 couple of decisions.
15 But I understand the concern about the water and
16 I know that these lawyers will clearly be in touch
17 with their clients about it. This project has been
18 extensively reviewed by all of the Westport
19 commissions. No question about that. The process
20 that you should understand is that where the
21 development of land generally in the State of
22 Connecticut where applications have to go before both
23 the inland wetlands commissions or the conservation
24 commission depending what it's called and that
25 planning and zoning commission or whether it's called
26 the planning commission or the zoning commission or
27 the combined, those are all deliberations made by

1 local entities.

2 We do not, we as judges do not generally hear

3 those matters in the court's (inaudible). I am not

4 the zoning commission board (inaudible). Do I review

5 decisions made by Westport and other communities? Of

6 course. But I do not make decisions in the court's

7 (inaudible). It is for local folks and local

8 commissioners to do that. My guess is the issue of

9 water has been considered. It is something that,

10 frankly, was seen throughout the State of Connecticut

11 and its now (inaudible). Whether it be Westport or

12 any other coastal town or towns that are connected to

13 our rivers. That is an issue that we are all

14 familiar with. I think about it fairly in my role

15 when I review these.

16 So no, I did not go down. My going down at this

17 point would not affect what I'm about to do as you

18 indicated. It may not, frankly, have impacted what I

19 have to consider in this case. The factors that are

20 of prime importance to this case as I do recall the

21 main one is the fire safety issue. There was a

22 secondary one of pedestrian access to the train

23 station. So that safety aspect was raised but mainly

24 as I recall, the secondary fire issue was the main

25 consideration for this case.

26 All right. Do any of the counsel want to

27 address any of the comments by Ms. Curry, Ms.

1 Gouveia? Obviously, you don't have to but if you
2 wish to, I'll let you do so.
3 ATTY. HOLLISTER: For Summit Saugatuck, Your
4 Honor, no comments except to agree that my client is
5 well aware and I will reiterate the concerns
6 expressed today. Thank you.
7 THE COURT: Thank you. And for the town, Mr.
8 Bloom or Mr. Gelderman?
9 ATTY. BLOOM: Your Honor, I have no particular
10 comment to respond. I'm certainly listening
11 carefully and I'll report back to the commission.
12 THE COURT: Thank you.
13 ATTY. GELDERMAN: And, Your Honor, your instinct
14 is correct. This was reviewed by the Westport
15 Conservation Commission at length.
16 THE COURT: Okay. Well, the purpose of the
17 8-8(n) or the 43d, 22a-43d reviews is to make sure
18 that resolutions and settlements between commissions
19 and applicants are made at arms-length, are made in
20 the public light, and are made so that there is no
21 untoward collusion. It seem abundantly clear that in
22 this case, knowing the history of this case and
23 again, as Mr. Hollister alluded to, we are actually
24 dealing with an appeal that's now five years old, six
25 years old, in 2016? But notwithstanding, I see no
26 reason why this settlement process, this request of
27 judgment, these withdrawals, should not be approved.

1 I, frankly, want to compliment the lawyers for
2 all of the work they did, and not just the lawyers,
3 the commissions. This has been a contested issue
4 which has been an issue that I guess has caused some
5 concern for the folks living in Westport. It seems
6 to me throughout this process, this give and take,
7 this indication of compromise by all sides that we've
8 dealt with safety issues, we've dealt with
9 environmental issues, we've dealt with most
10 importantly, housing issues for this community, it's
11 been done in a way that certainly meets the
12 requirements of our statutes. So with that in mind,
13 the withdrawals are all approved. The motion for
14 judgment is approved.
15 As I note from the stipulation I do have
16 continuing jurisdiction over this. It's something
17 from July, so I hope not to see any of you. The
18 Court notes that the moratorium case is completely --
19 another set of totally different issues is now over.
20 That was, of course, not an 8-8(n) situation. It's
21 simply the withdrawal of a case, withdrawal of the
22 declaratory judgment action that didn't need this
23 hearing, but it was combined and I thank you for
24 that. The WPCA cases, the withdrawals in those are
25 also noted in light of the stipulation that
26 sufficient capacities* afforded to this new revised
27 project. With that, I thank you all.

1 Unless there's anything else anybody wishes to
2 say.
3 ATTY. HOLLISTER: Thank you, Your Honor, on
4 behalf of all counsel.
5 ALL: Thank you, Your Honor.
6 THE COURT: With that we stand in recess. Thank
7 you.
8 **(End of proceeding)**
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27 *denotes phonetic spelling

DOCKET NO: HHDCV196120090S ET AL	:	SUPERIOR COURT
SUMMIT SAUGATUCK LLC	:	JUDICIAL DISTRICT
v.	:	AT HARTFORD, CONNECTICUT
WESTPORT PLANNING AND ZONING COMMISSION	:	JULY 19, 2021
ET AL		

CERTIFICATION

I hereby certify the foregoing pages are a true and correct transcription of the REMOTE audio recording of the above-referenced case, heard in Superior Court, Judicial District of Hartford, Hartford, Connecticut, before the Honorable Marshal K. Berger, Judge, on the 19th day of July 2021.

Dated this 5th day of October 2021 in Hartford, Connecticut.

Roberta G. Carlon
Court Recording Monitor

DOCKET NO: HHDCV196120090S

SUMMIT SAUGATUCK LLC
V.
WESTPORT PLANNING AND ZONING COMMISSION

SUPERIOR COURT

JUDICIAL DISTRICT OF HARTFORD
AT HARTFORD

7/19/2021

ORDER

ORDER REGARDING:
06/29/2021 164.00 MOTION FOR JUDGMENT IN ACCORDANCE WITH STIPULATION

The foregoing, having been heard by the Court, is hereby:

ORDER: GRANTED

Short Calendar Results Automated Mailing (SCRAM) Notice was sent on the underlying motion.

080096

Judge: MARSHALL K BERGER JR
Processed by: Abby Bowker

This document may be signed or verified electronically and has the same validity and status as a document with a physical (pen-to-paper) signature. For more information, see Section I.E. of the *State of Connecticut Superior Court E-Services Procedures and Technical Standards* (https://jud.ct.gov/external/super/E-Services/e-standards.pdf), section 51-193c of the Connecticut General Statutes and Connecticut Practice Book Section 4-4.

Connecticut General Statutes Annotated
Title 47. Land and Land Titles
Chapter 821. Land Titles (Refs & Annos)

C.G.S.A. § 47-33c

§ 47-33c. Chain of title for not less than forty years creates marketable record title

Currentness

Any person having the legal capacity to own land in this state, who has an unbroken chain of title to any interest in land for forty years or more, shall be deemed to have a marketable record title to that interest, subject only to the matters stated in section 47-33d. A person has such an unbroken chain of title when the land records of the town in which the land is located disclose a conveyance or other title transaction, of record not less than forty years at the time the marketability is to be determined, which conveyance or other title transaction purports to create such interest in land, or which contains language sufficient to transfer the interest, either in (1) the person claiming that interest, or (2) some other person from whom, by one or more conveyances or other title transactions of record, the purported interest has become vested in the person claiming the interest; with nothing appearing of record, in either case, purporting to divest the claimant of the purported interest.

Credits
(1967, P.A. 553, § 2, eff. Jan. 1, 1968; 1969, P.A. 509, § 2, eff. July 1, 1969; 1978, P.A. 78-105, § 2, eff. May 10, 1978; 1979, P.A. 79-602, § 43.)

Notes of Decisions (5)

C. G. S. A. § 47-33c, CT ST § 47-33c
The statutes and Constitution are current with all enactments of the 2021 Regular Session and the 2021 June Special Session.

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Connecticut General Statutes Annotated
Title 47. Land and Land Titles
Chapter 821. Land Titles (Refs & Annos)

C.G.S.A. § 47-33d

§ 47-33d. Interests to which title is subject

Currentness

Such marketable record title is subject to: (1) All interests and defects which are created by or arise out of the muniments of which the chain of record title is formed; provided a general reference in the muniments, or any of them, to easements, use restrictions or other interests created prior to the root of title are not sufficient to preserve them, unless specific identification is made therein of a recorded title transaction which creates the easement, use restriction or other interest; (2) all interests preserved by the recording of proper notice or by possession by the same owner continuously for a period of forty years or more, in accordance with section 47-33f; (3) the rights of any person arising from a period of adverse possession or use, which was in whole or in part subsequent to the effective date of the root of title; (4) any interest arising out of a title transaction which has been recorded subsequent to the effective date of the root of title from which the unbroken chain of title of record is started; provided such recording shall not revive or give validity to any interest which has been extinguished prior to the time of the recording by the operation of section 47-33e; (5) the exceptions stated in section 47-33h as to rights of reversioners in leases, as to apparent easements and interests in the nature of easements, and as to interests of the United States, this state and political subdivisions thereof, public service companies and natural gas companies.

Credits
(1967, P.A. 553, § 3, eff. Jan. 1, 1968; 1969, P.A. 509, § 3, eff. July 1, 1969; 1978, P.A. 78-105, § 3, eff. May 10, 1978; 1979, P.A. 79-602, § 44; 1994, P.A. 94-198, § 10, eff. June 7, 1994; 1995, P.A. 95-169, § 3.)

Notes of Decisions (57)

C. G. S. A. § 47-33d, CT ST § 47-33d
The statutes and Constitution are current with all enactments of the 2021 Regular Session and the 2021 June Special Session.

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Title 47. Land and Land Titles
Chapter 821. Land Titles (Refs & Annos)

C.G.S.A. § 47-33e

§ 47-33e. Prior interests void

Currentness

Subject to the matters stated in section 47-33d, such marketable record title shall be held by its owner and shall be taken by any person dealing with the land free and clear of all interests, claims or charges whatsoever, the existence of which depends upon any act, transaction, event or omission that occurred prior to the effective date of the root of title. All such interests, claims or charges, however denominated, whether legal or equitable, present or future, whether those interests, claims or charges are asserted by a person sui juris or under a disability, whether that person is within or without the state, whether that person is natural or corporate, or is private or governmental, are hereby declared to be null and void.

Credits
(1967, P.A. 553, § 4, eff. Jan. 1, 1968; 1979, P.A. 79-602, § 45.)

Notes of Decisions (6)

C. G. S. A. § 47-33e, CT ST § 47-33e
The statutes and Constitution are current with all enactments of the 2021 Regular Session and the 2021 June Special Session.

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Connecticut General Statutes Annotated
Title 47. Land and Land Titles
Chapter 821. Land Titles (Refs & Annos)

C.G.S.A. § 47-33f

§ 47-33f. Notice of claim filed within forty-year period

Currentness

(a) Any person claiming an interest of any kind in land may preserve and keep effective that interest by recording, during the forty-year period immediately following the effective date of the root of title of the person whose record title would otherwise be marketable, a notice in writing, duly verified by oath, setting forth the nature of the claim. No disability or lack of knowledge of any kind on the part of anyone suspends the running of the forty-year period. Such notice may be recorded by the claimant or by any other person acting on behalf of any claimant who is: (1) Under a disability, (2) unable to assert a claim on his own behalf or (3) one of a class, but whose identity cannot be established or is uncertain at the time of filing such notice of claim for record.

(b) If the same record owner of any possessory interest in land has been in possession of that land continuously for a period of forty years or more, during which period no title transaction with respect to the interest appears of record in his chain of title and no notice has been recorded by him or on his behalf as provided in subsection (a) of this section, and the possession continues to the time when marketability is being determined, that period of possession shall be deemed equivalent to the recording of the notice immediately preceding the termination of the forty-year period described in subsection (a) of this section.

Credits
(1967, P.A. 553, § 5, eff. Jan. 1, 1968; 1969, P.A. 509, § 4, eff. July 1, 1969; 1979, P.A. 79-602, § 46.)

Notes of Decisions (5)

C. G. S. A. § 47-33f, CT ST § 47-33f
The statutes and Constitution are current with all enactments of the 2021 Regular Session and the 2021 June Special Session.

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