

RTM Minutes  
February 5, 2019

**The Call**

1. To take such action as the meeting may determine, upon the recommendation of the Board of Finance and the Board of Selectmen and a request from the land owner, Gerald F. Romano, Jr, to approve the acceptance of a gift of real property to the Town located at 0 Compo Road North, on the Northeast corner of North Compo Road and Main Street in accordance with Section 3(C) of the Policy for Gifts to the Town.
2. To take such action as the meeting may determine, upon the recommendation of the Board of Finance and a request of the Director of Public Works, to approve an appropriation in the amount of \$876,000.00 along with bond and note authorization to the Municipal Improvement Fund Account for Heating and HVAC Upgrades within the Police Department facility.
3. To take such action as the meeting may determine, upon the recommendation of the Board of Finance and a request of the Director of Public Works, to approve an appropriation in the amount of \$82,500.00 along with bond and note authorization to the Municipal Improvement Fund Account for the design of the Avery and Baldwin parking lots.
4. To take such action as the meeting may determine, upon the petition request of at least 2 RTM members, to approve an ordinance to prohibit the storage, disposal, or use of fracking waste or any products or by-products thereof in or by the Town of Westport. (Second Reading. Full text available in the Town Clerk's Office.)
5. To take such action as the meeting may determine, upon the petition request of at least 20 electors of the Town of Westport, pursuant to Town Code Section 30-95, to review and reject the action of the Conservation Commission regarding the applications from Summit Saugatuck LLC for rental units on Hiawatha Lane Ext.

**Minutes**

Moderator Velma Heller:

We welcome those who are joining us tonight in the Town Hall auditorium, as well as those watching us streaming live on westportct.gov, and those watching on Optimum Government Access Channel 79 or Frontier Channel 99. My name is Velma Heller and I am the RTM Moderator. On my right is Jackie Fuchs, the RTM Secretary. Tonight's Invocation will be delivered by Lisa Parrelli Gray.

Invocation, Lisa Parrelli Gray, district 4:

A very good evening to my colleagues, constituents, Town employees, friends and neighbors. Some of you may or may not know that among the many things that I engage in, I am an artist. I have been studying and painting since I was 11 years old. I happened to win an elementary school art show and right away, my mother signed me up for art lessons. So, I have been studying painting for over 40 years and I have been fortunate enough to study with some wonderful and amazing artists. One in particular has moved me on many levels and he was the one to suggest that when we paint from our heart, we have the power to connect and move the world. So, I will try to paint from my heart with the hope to connect with some of you. February is the shortest month,

yet it has much to celebrate. We celebrate Presidents Day, honoring two president's birthdays: George Washington and Abraham Lincoln; we celebrate Black History Month, honoring the contributions of many African Americans such as Dr. Martin Luther King, Jr., Crispus Atticus, Maya Angelou, Rosa Parks and Frederick Douglas and it is also the month that we celebrate love, or Valentine's Day. The definition of love, according to my Webster's New Collegiate Dictionary, given to me at my high school graduation, is "A strong affection for another arising out of kinship or personal ties; affection based on admiration, benevolence or common interests; an attraction based on sexual desire." I thought these definitions were a bit sterile. So, I went to the internet to find something more promising; however, the definitions were pretty much same...proving to me that modern technology doesn't always offer up improvements. However, what the internet did allow me to do was research people's views on the definition of love to understand it. So, I googled love, poets, authors and a couple of names kept coming up; authors/poets Marianne Williamson and Maya Angelou. What was intriguing to me was that they both agreed that you could not have love without forgiveness. So, I googled and looked up the meaning of forgiveness. My dictionary had a similar definition as on the internet "To cease to feel resentment towards another; to pardon one's enemies; to excuse." I found it compelling that we could not have true love without forgiveness. In forgiveness, we make space for love and it is love that brings joy. In the Book of Joy, co-authored by the Dalai Lama and Desmond Tutu with Douglas Abrams, the book paints a beautiful picture of friendship during a weeklong visit to celebrate the Dalai Lama's birthday. Douglas Abrams facilitates the discussion, guiding the conversation sometimes with questions and other times just allowing the two friends to share memories or experiences. Sometimes, the chapters are repetitive but I believe that is intentional. The secret to joy is having loving relationships that depend on forgiveness. We are not perfect beings. And yet, we assume that the pain we feel from someone else's misguided actions or a difference of opinion should be the end of a relationship. Desmond Tutu tells a little story that I think we all can relate to, that he is driving in South Africa with a friend when another driver cuts him off. Immediately, his passenger began yelling and cursing him out. Desmond Tutu's response changed my perception of this common occurrence. His response was simply, "He must have some place important to be and it appears he is running late." I think we can all relate to the driver that cut Desmond Tutu off but I can't remember ever thinking the way Desmond Tutu did in response to the passenger's outrage and the driver. Being on opposing political sides was responsible for breaking up a longtime friendship between John Adams and Thomas Jefferson. It was the power of forgiveness, negotiated by Dr. Benjamin Rush, a great friend and fellow signer of the Declaration of Independence that reunited these two men until their deaths, only hours apart on the same day. We have all seen different Town bloggers photograph cars that take up two parking spaces. We are shamed for doing so but what if we actually took a step back and thought about the infinite reasons that this could have happened...a new driver who just earned his driving license and has yet to master the parallel parking dynamic? A crazed parent trying to drive safely while navigating screaming children? Or someone so caught up in their own thoughts trying to accomplish their mission that they simply did not notice that they took up two parking spaces? I have been all of these and then some. It happens. We make mistakes. But I prefer to assume positive intent. I assume when I pick up garbage that

has floated onto Compo Beach that it blew off the deck of someone's boat and they were unable to retrieve it. I assume this because it has happened to me. I assume that when I clean up after someone else's dog on the beach or a walkway, that they didn't notice their dog going to the bathroom. I assume this because it has happened to me. Last month, Keven Hart was fired from hosting the Oscars because of negative comments he made referencing gay and lesbians from over a decade ago; comments that he has several times apologized for. I do not agree with his comments but what I do agree with is moving forward and allowing people the space to evolve and move on. Assuming positive intent is liberating and forgiveness makes room for more love in our lives. I leave you with a poem by Marianne Williamson. I am sure most of you have read or heard it. I myself have framed it and given it to my daughters, friends and family and I try to read it most every day. Our love and forgiveness for others begins with ourselves. She writes:

Our deepest fear is not that we are inadequate. Our deepest fear is that we are powerful beyond measure. It is our light, not our darkness that most frightens us. We ask ourselves, who am I to be brilliant, gorgeous, talented and fabulous? Actually, who are you not to be? You are a child of God. Your playing small does not serve the world. There is nothing enlightened about shrinking so that other people won't feel insecure around you. We are all meant to shine, as children do. We were born to manifest the glory of God that is within us. It is not just in some of us; it is in everyone. And as we let our own light shine, we unconsciously give other people permission to do the same. As we are liberated from our own fear, our presence automatically liberates others.

I wish you a Happy Valentine's Day.

There were 33 members present. Mr. Gold, Ms. Lautenberg and Ms. Soloff notified the Moderator that they would be absent.

### **Announcements**

Dr. Heller:

The minutes to the January meeting were not distributed. When you receive them, if you have any corrections, please notify Jackie Fuchs, Velma Heller or Town Clerk, Patty Strauss.

February birthday greetings to Lisa Parelli Gray, Jimmy Izzo, Matt Mandell and Jackie Fuchs. Congratulations to all.

To start off the announcements, I would like to say it is my pleasure to recognize our own Diane Cady, district 1 representative and Diane has sent her resignation effective January 29. She will be moving to Colorado to be with her daughter. I am going to ask Matt Mandell to come up and add to this a little bit.

Matthew Mandell, district 1:

Diane Cady was not just my colleague, she was also my fiend and one of the mentors who sort of shaped me. Her thinking always came from the heart, always came from humanity, it always came from her soul and that's how she always looked at it. She was

a pleasure to work with and she is going to be missed as an RTM member but she is going to have a great time living with her family in Colorado. Just before this meeting, the remaining District 1 representatives got together to elect a new RTM member. Under the Town code, if the fifth place person gets within 45 percent of the first place person, that person is automatically asked whether or not they want to be an RTM member. Rick Jaffe ran for RTM and he did come within 45 percent of the vote. In our vote, we asked Mr. Jaffe whether he wanted to be an RTM member and he did. We voted unanimously to have Rick Jaffe become an RTM member. So, Rick, come on up and take the oath of office and join us as a colleague.

Dr. Heller:

While Rick is coming up, I do have to tell you one special thing about Diane and I. We go back a long time. Our oldest sons went to nursery school together and that's where we first met. That was a long-term relationship.

Rick, welcome.

Patty Strauss:

Richard Jaffe will be serving out the term until December 1, 2019.

Town Clerk Patty Strauss administered the oath of office to Richard Jaffe.

### **RTM announcements**

Amy Kaplan, district 3:

I want to tell you today about Rach's Hope. Rach's Hope is a new foundation that Lisa and Al Doran have started in honor of their daughter, Rachel Hope. Rachel was just 21 years old last August 17 when complications from a rare reaction to a common medication claimed her life. In just 35 days, Rachel went from being a healthy vibrant college student interning in the fashion world in New York City to being admitted to Bridgeport Hospital's Connecticut Burn Center to taking her last breath in the ICU in Columbia Presbyterian Medical Center. A 2015 graduate of Staples High School, a rising senior at Cornell University, Rachel was well known here in Westport as well as at school as a trusted friend, a promising scholar, a talented fashion designer and cook. Her love and passion were far reaching and profound. Rachel's battle with what was eventually diagnosed as Stevens-Johnson Syndrome and Toxic Epidermal Necrolysis Syndrome was excruciating, but courageously fought. Her family and loved ones never left her side through this horrific ordeal, and five months after losing Rachel, the grief is as pervasive and painful as ever. As a part of the Doran's healing process they hope to create something that will honor Rachel's life and carry on her memory, while also helping others. Rach's Hope was founded to address the challenges families face during and after a child's critical illness requiring an extended stay in Intensive Care. The fund will provide families with emotional and financial support and resources to help them navigate the immediate and ongoing complexities involved with severe illnesses which require prolonged hospital stays. From the logistics of hospital and hotel stays, to managing bills, to providing counseling resources, Rach's Hope will help families weather the storm their situations have created, so that they can strive to move forward

and find a new normal. Rach's Hope Kick-Off event, will be held at Penfield Pavilion in Fairfield, CT on Saturday, March 2<sup>nd</sup>, which will be the day after what would have been Rachel's 22<sup>nd</sup> birthday. We hope you will consider supporting this event. You can find it on Bevenbrite.com at Rach's Hope. If you are not able to make it to the event, you will be able to donate to the fund.

Mr. Mandell:

Tough one to follow. I hope it works out.

So, what are you doing for your Valentine? Saturday night, Supper and Soul. Dinner and concert, eight different restaurants; although, some of them are sold out because we are doing pretty well on sales but tickets are still available. Over the next few days, we are going to open up a few concert only tickets. There are a number of RTM members who are already attending. So, come on out. If you haven't bought your tickets, go to the Westport/Weston Chamber of Commerce/soul.

Kristan Hamlin, district 4:

Matt has asked me in the past to endorse his incredible music selection skills. He needs to go into that line of work in addition to everything else he does because the music that he has found is incredible. So, I've got to endorse Matt's effort here.

Mr. Mandell:

Thank you so much. So come on out. The name of the band is David Wax Museum. It is Americana folk, a little bit of rock. They are a really wonderful act. Just to let you know the Chamber does not sleep, come March, will be a new event. It is called the Great Westport Burger Contest. If you remember, last year we had a pizza contest with 15 restaurants all vying for who makes the best pizza. This year it will be about 15 restaurants all vying for who makes the best burger? Classic burger. Cheeseburger. Gourmet burger, veggie, non-beef, sliders and fast food. Shake Shack has already come in. I am trying to get McDonalds. Let them duke it out. So, the same contest with different food. The Great Westport Burger Contest. You'll see that in March. In the meantime, please buy your tickets to Supper and Soul. Support your downtown restaurants and this event.

Jack Klinge, district 7:

I am a member of the Board of the Westport Senior Center. This Sunday, we just finished our 15<sup>th</sup> Super Bowl Tailgate Party. We are following it up with this Sunday February 10, a free music concert with lunch featuring Terry Eldh, Westport's own iconic Broadway chanteuse. She played in Phantom of the Opera for two years as the super star. She will sing at two o'clock. At one o'clock, we start our lunch. It is being catered as a pizza party theme thanks to donations of 38 pizzas so far from eight Westport pizzerias. So, come one, come all. Great show. Terry Eldh. Great show Westport Senior Center starting at one o'clock.

Dr. Heller:

Before we get to the business of the agenda, I would like to call your attention to the almost elephant in the room and that is there is a Bof meeting going on which you know. We recognize this. We will make every effort to run an efficient meeting so that those of you who wish to attend that meeting can get there as soon as possible after our meeting. We've done our best to arrange that the video of that meeting will be posted as soon as possible on tomorrow morning so that people get a chance to see it. Hang in with us so that we can get through these items.

In your packet is a list of monetary gifts to the Town of Westport of up to \$20,000 for the calendar year 2018 as required by the Town gifts policy. No action is required.

**The secretary read item #1 of the call – To approve the acceptance of a gift of real property to the Town located at 0 Compo Road North, on the Northeast corner of North Compo Road and Main Street in accordance with Section 3(C) of the Policy for Gifts to the Town. By show of hands, the motion passes unanimously.**

### **Presentation**

Helen Garten, Chair, First Selectman's Real Property Committee:

We're here tonight to ask for your acceptance of this gift of real property located at 0 Compo Road North. It's very unusual for a resident to wish to donate property to the Town so we are grateful to Mr. Romano. This property is .59 acres and it is located at one of the busiest intersections in Westport, the intersection of Main Street, route 57 and Compo Road North, route 136. You may remember that this intersection was subject to a major rebuild by the State of Connecticut a few years ago, in part, to deal with flooding problems caused by Willow Brook. Willow Brook runs right across this property in question. It's about three-quarters wetlands and the rest is steep slopes. This property is classified as unbuildable. It has no house on it but it certainly a property the Town would not like to be built upon. So, our plan is to take this property, keep it unchanged, keep it as open space so it can serve as flood storage, which will be very valuable in that area because it is a very highly congested area of Town. So, the Conservation Department is totally in favor of this gift. In addition, the Public Works Department has plans to extend the downtown sidewalk network to North Compo right by this property. While the sidewalk will be on the public right of way, not on this property, it may require some grading at the corner so the Public Works Department is also in favor of this gift. This gift has been approved by the Real Property Committee on Nov. 29, the bof on Dec. 5, Planning and Zoning Commission on Dec. 20 and the Board of Selectmen on Jan. 19, so you are the last stop. I'm happy to answer any questions.

### **Committee report**

Planning and Zoning Committee, Mr. Mandell:

This is not the Last time you'll see me tonight. I'll be up here a bunch of times. The RTM P&Z Committee met just prior to this meeting to discuss the land donation. It is on the northwest corner of that intersection as we discussed. Sidewalks are a possibility. Conservation is also interested for a flood storage area. That's part of it as well. Currently, the taxes on it are \$275/year so that is what we would be sacrificing the

income in exchange for open space. Jay Keenan made the motion; Carla Rea seconded and we unanimously voted to accept the land.

**Members of the Westport electorate** – no comments.

Mr. Wieser read the resolution and it was seconded.

**RESOLVED:** That upon the recommendation of the Board of Finance and the Board of Selectmen and a request from the land owner, Gerald F. Romano, Jr, the acceptance of a gift of real property to the Town located at 0 Compo Road North, on the Northeast corner of North Compo Road and Main Street in accordance with Section 3(C) of the Policy for Gifts to the Town, is hereby approved.

Dr. Heller: It has been moved and seconded.

**Members of the RTM**

Mr. Mandell:

It's wonderful to have open space brought into the Town but the question that I am going to ask the Town at this point is what are we doing with the land that we do own? How are we going to take care of it? The reason that I'm bringing this up is, if you have seen Barons Park South, if you've seen Lillian Wadsworth Arboretum, if you've seen the park on Riverside Avenue, you've noticed that the tree cutting there has been immense. In the spirit of Diane Cady who loved trees, we have to come to grips with how are we going to deal with our land. I believe that too many trees are being cut down in the idea that we are getting rid of invasives. No one is realizing that we are sacrificing the habitats that exist in the lower areas of the parks of the land that we have. By driving these animals out, we create indirect problems. If there are coyotes there and there are vermin there to eat, if the vermin are gone, where are they going to go? They will go to your backyard. I am calling on the Town, Parks and Rec., the Departments of Public Works and Conservation to create a policy or come to an agreement on how we are going to balance the needs for taking care of this land. I drive by Riverside Avenue and it kind of breaks my heart. It was an area with lots of trees, it was lush. It was wonderful. And now we are seeing wholesale loss of the trees and lots of wood chips. I think at this point, we need to step back and think how are we going to manage our land properly.

Louis Mall, district 2:

I can agree with part of what Matt says and I can disagree with another part of it. One of the things that has been done is taken property that has been ignored. I think neglected is a mild term and turned it into property that the public can use and enjoy. Starting with Lillian Wadsworth, secondly with Riverside Park. In budget time, come in everyone and state your case of what we can do to improve our little pocket parks and make them viable. One of the things with Riverside is that it is an unsafe destination. It wasn't safe for women to walk from Riverside down to the water. There were a lot of invasives and no one knew if there were homeless people back there. What we have done is just to clear the invasives out of there. We do need a game plan. I would like to see RTM

members of each district to come and identify the properties that they would like to see improved and start showing up at Parks and Rec. Tree Board meetings and Conservation and so forth and try and get this thing done.

**By show of hands, the motion passes unanimously.**

**The secretary read item #2 of the call - To approve an appropriation in the amount of \$876,000.00 along with bond and note authorization to the Municipal Improvement Fund Account for Heating and HVAC Upgrades within the Police Department facility. By show of hands, the motion passes 31-0-1; Ms. Hamlin abstains.**

### **Presentation**

Pete Ratkiewich, Director of Public Works:

This appropriation request is for energy upgrades to the police building involving three main action plans: To modernize and upgrade the HVAC systems in the building, connect them to a building management system that will control all the systems together and to convert the fuel source to natural gas, install 12 new split AC units running on 410A refrigerant, effectively when done, the VMS controls will replace a myriad of independently operating systems with one comprehensive HVAC system operating as efficiently as possible. At the combined Finance and Public Works Committee meeting, I promised that I would have our building maintenance superintendent, Mike Frawley, here to answer any technical questions about the existing system as well as a representative from Environmental Systems Corporation who is also here because there were a lot of technical questions involved there. So, if there are any questions, we'll be happy to answer them.

### **Committee report 46.57**

Public Works and Finance Committees, Jay Keenan, district 2:

The Public Works and Finance Committees met on Tuesday, Jan. 29 to review the appropriation of \$876,000.00 to cover the costs associated with the design/build and permitting of the new proposed HVAC system at the Police Station. The Police Station is approximately 20,000 sf and was originally built in the 1950's with renovations in the mid 1980's. As Pete mentioned, the existing HVAC system consists of several different systems running independent of each other and this project will put them all in the same Building Management System. The contractor selected to perform this work is Environmental Systems Corp (ESC). ESC will act as a design/build firm and will shop out the project trades and engineering services to obtain maximize savings for the Town. ESC also provided documentation and calculations to Eversource as part of the State energy incentives and the Town should receive \$42,808 in incentives. Additionally, the conversion from oil to gas will save the Town approximately \$44,000 annually. The committees asked a few questions. One was whether this was the appropriate time to work on this project with the uncertainty of CMS renovation costs. Other questions asked were related to CMS as well, whether the building air quality had been vetted. Do we want the same issues that we have at Coley Middle School. Both committees voted unanimously to approve the appropriation.

**Members of the Westport electorate**

Jim Marpe, First Selectman:

I come before you to urge you to approve this appropriation. As Jay just referenced, in another room in this building tonight, we are the Board of Finance and the Board of Education are exploring how we remedy the situation we have at Coleytown Middle School. I believe this project that I ask you to approve tonight is an example of the Town proactively taking care of its buildings and making sure we are good stewards of the physical assets that we have. We have to do this on a continuous basis. Perhaps this is something we should have done sooner but the reality is we are doing it now. I urge you to vote on this appropriation, not only that, from an economic standpoint, from a stewardship of our assets stand point and not only that, conservation standpoint in doing right by switching from oil to natural gas. So, I urge you to support it.

Mr. Wieser read the resolution and it was seconded

**.RESOLVED:** That upon the recommendation of the Board of Finance and a request of the Director of Public Works, the sum of \$876,000.00 along with bond and note authorization to the Municipal Improvement Fund Account for Heating and HVAC Upgrades within the Police Department facility, is hereby appropriated.

Dr. Heller: It has been moved and seconded.

**Members of the RTM**

Ms. Hamlin:

I have some questions for you. What are the present energy costs for the Police Department?

Mr. Ratkiewich:

I don't have those in the summary. What I have is the savings per year.

Ms. Hamlin:

How would you know what the savings are if you don't know what the costs are?

Mr. Ratkiewich:

These were provided by Environmental Systems Corporation.

Lauren Marotta, Environmental Systems Corporation:

We were given copies of the utility bills.

Ms. Hamlin: So you know what the energy costs are presently?

Ms. Marotta: It's in the documentation. I don't know what the exact numbers are.

Ms. Hamlin: Did we go out for a competitive bid on this?

Mr. Ratkiewich:

My predecessor chose Environmental Systems Corp. about five years ago. We've been working on this about five years. They pulled them off of the State bid site. They are still on the State bid site as a design build contractor. The way that works is the estimate we see here is an ASHRAE\* level 1 audit of all the energy conservation measures. The basic estimate is a budget estimate. Upon implementing the project, ESC will go in and do an ASHRAE\* level 2 audit which is a more detailed audit. It's been our experience with ESC that the costs come in at or below and, in any case, we get a firm estimate for each energy conservation measure and the owner is at that point able to decide whether we want to move forward with that ECM or not.

\*American Society of Heating, Refrigerating and Air-conditioning Engineers

Ms. Hamlin:

So, with regard to following our policy of competitive bids over \$25,000, that's our procurement policy, your answer is the reason you didn't bid it is because five years ago, one of your predecessors selected this organization?

Mr. Ratkiewich:

No. This organization is still on the State bid site and the State bid site is listed as an exception in section 3 of the purchasing policy.

Ms. Hamlin:

So you're saying, if you're selecting one of several vendors from the State bid site that you don't have to put it through a competitive bid?

Mr. Ratkiewich:

That's correct. That's what the policy says. But this is not a competitive bid. Each element, each energy conservation measure, will be bid out at Environmental Systems Corporation's option. If they want to do it in house, they can do it in house; in any case, they are going to come to us with a firm price, one with a bid out price or one they are doing with in house forces, and the owner still has the option to do the conservation measure or not.

Ms. Hamlin: They. Who is they? Is that the Police Department?

Mr. Ratkiewich:

Environmental systems Corporation. They are the design build contractor.

Ms. Hamlin:

They can do it in house or bid it out. Is that what you're saying? [Yes.] So, you're saying this is kind of a ceiling, the maximum of what we would need? It might come in lower? Is that what you're telling us?

Mr. Ratkiewich:

Correct. There is also a 10 percent contingency in case we have unknowns. It is rather an old building so we may find some unknowns.

Ms. Hamlin:

This may sound silly to you but I have a 90 year old house. We just added 4,000 sf. And altogether it's 9,000 sf. We put a \$30,000 HVAC system in the new side and \$10,000 to redo the system in the 90 year old side. For 9,000 sf it was \$40,000 and for 20,000 sf, it was \$876,000. I'm just using my own common experience to respond to this price but I'm always kind of gob smacked at the prices of what we pay for things in Town. How did we get to \$876,000 for a 20,000 sf building. I wonder if the whole building is worth that amount of money.

Mr. Ratkiewich:

The estimate is clearly laid out here in this document. There is no comparison to a residential property. It was built 50 years ago. It was renovated in the 80's. There are a myriad of systems in here where you are comparing one system, we have probably about five systems here. Each system has different components. For instance, the air conditioning system has 12 different air handlers. Each of them has to be replaced. The access to get to any of these things, especially in the old building, involves going up and over into the bowels of the building. It is going to be difficult to move and replace them. It is going to be very complicated and I can't compare it to your residence.

Kristin Schneeman, district 9:

You talked about the building being built in the 50's and renovated in the 80's. About how old are the components?

Mr. Ratkiewich:

I'll let our building superintendent Mike Frawley answer that question.

Mike Frawley, Superintendent of Maintenance, Public Works Department:

The building was renovated in the '80's. The west wing was put on in the 80's. All the air conditioning units put in in the '80's are running on 22 Freon which is banned. We can get it but it's about \$800 for one can. They are all air handling units with heating coils so it's completely different from any residential which you would see. The units are all in dropped ceilings except for four of them which are in the attic ceiling. All of the units are from the '80's. The parts are now becoming obsolete. The Freon which runs them is obsolete. To change those units out, it's not just changing the units. We also have to change the condensing units outside have to be changed so we have to open up the walls.

Ms. Schneeman:

Is there a compelling reason to do it now? It sounds like the Freon might be a compelling reason. You might give it a few more years but it would be even harder to change it out.

Mr. Frawley:

We are constantly repairing them every day. It is getting expensive to maintain them. It's an old system. We have contractors that come in constantly to maintain them. We are not able to regulate each room and each zone. The way it was built originally, we

literally have in a space three thermostats. We can heat, cool at the same time which is part of our problem. We have no setbacks. We are turning the units down manually. We're constantly fixing them. You can talk to the Police Department. We are getting calls every day telling us they are cold, hot. They are just getting older and more expensive to maintain. The longer we wait, the more expensive it will be.

Ms. Schneeman:

So we've got energy savings cost but we've also got some potential cost savings reflected here.

Mr. Ratkiewich:

If I may add to that. This is not a project that just got started this year. It was started five years ago. We've been pushing it off and pushing it off. As Mike said, even in the last week with these fluctuations in temperature, there were three overtime calls to go in and fix heating. That's just an example in one week.

Mr. Keenan:

How does fresh air get into the building and is it pre-treated with this system?

Mr. Frawley:

Every air handler has a fresh air intake. All the air comes in. We have outside air handlers that always bring in fresh air. It's like most commercial buildings. You cannot open the windows. All the air is controlled from outside dampers in the units and no, it is not pretreated.

Mr. Keenan:

Are there any humidity controls? One of the things we are talking about with CMS is control when the outside humidity gets to a certain point, the dampers shut down. He said yes.

**By show of hands, the motion passes 31-0-1; Ms. Hamlin abstains.**

Mr. Kraut left at 8:17 p.m.

**The secretary read item #3 of the call - To approve an appropriation in the amount of \$82,500.00 along with bond and note authorization to the Municipal Improvement Fund Account for the design of the Avery and Baldwin parking lots. By roll call vote, the motion carries 16-15-1.**

### **Presentation**

Mr. Ratkiewich:

This request is for the design of the combination of the two lots known as the Baldwin lot which is accessed off of Elm Street and the Avery lot which is a private lot accessed off of Avery Place. Over the past three years, we have been working with the owner of the owner of the private Avery lot trying to get a lease agreement finalized with that

owner. We thought we were very close to that agreement and at the last moment, we asked them one more time and they decided that they were going to take a different direction and not sign the lease. We feel that they left the door opened just slightly and maybe at some point in the future there may still be a possibility that we can combine these two lots which will certainly improve circulation within both lots and the downtown area in general. So, our plan is to go ahead and design as if we were combining both lots so our utility extensions, our conduits for lighting, our conduits for CCTV and blue lights will all be in place up to the property line. The site and the configuration of these two lots is such that we can terminate these things right on the property line including the parking. Essentially, in the future, if there is the possibility of combining the second lot, we would be in a position to just simply continue the construction work. In the meantime, the Baldwin lot itself has some pretty severe drainage problems. It floods regularly. That's because the pipes in the lot are either flat or flow backwards. The drainage system was never really quite well installed. The idea of continuing with the design of two properties is that we are going to design both lots and build one until such time that the situation changes. This way we don't have to go back and redo work that would normally be in good shape. The cost of the design is estimated at an appropriation \$82,500. We did go out to bid on this project. We had eight respondents. The respondent that we chose was Langon Engineering. The total cost of their bid was \$75,300 with some variables for construction inspection and meetings and other options that they put in with their bid. We still feel that the \$82,500 is adequate in the event there are any extras on this project. We hope that we will actually spend less.

### **Committee reports**

Finance and Public Works Committees, Mr. Keenan:

Pete covered most of this. At the same meeting on Tuesday, Jan. 29, Public Works and Finance discussed the appropriation of \$82,500.00 to cover the expense of the design to upgrade the existing Baldwin parking lot and possible incorporation and design of the adjacent Avery lot. The project will elevate the lot 2'-3' and incorporate new upgraded drainage, re-paving, re-striping, upgrades to LED lighting, installation of blue light system and security cameras as well as new landscaping. The committees asked a few questions regarding revenue opportunities and car/bike charging stations. I didn't actually write down the answers to those so maybe Pete could answer it when we're done. Public Works voted unanimously to approve this. The Finance Committee voted 3-1-1 to recommend approval to the full RTM.

Pete, could you answer the question of will there be car charging and bike charging?

Mr. Ratkiewich:

We will extend a conduit to the best potential location for electric chargers pending a decision by the Town of the charging brand or flavor, if you will, that will be used. As some people may know, there are a lot of charging initiatives out there, many from private entities. The charging world is changing very quickly. Having said that there is one area on the lot, actually two areas on the Baldwin lot that are very appropriate for charging stations and the simple act of running a conduit to that location and making it flexible enough to take different chargers will cover that possibility for the future, as well.

### **Members of the Westport Electorate**

Morley Boyd, 6 Violet Lane:

I'm still little concerned. It seems that the underlying premise for this entire project has evaporated because the private partner with whom the Town negotiated has walked off and if comments are accurate, they are going in a different direction. I don't know what the different direction is, whether they will be doing tiered parking, going residential but I don't understand why, at this point, we are moving forward with this project. I will note that in the Downtown Plan from which this project came, it was listed at an estimated cost of \$140,000 with a net gain of 40 spaces. I don't know where the \$140,000 came from but now I am understand, for half the project, a cost of \$800,000 with a net gain of 15 spaces. That pencils out to something like \$53,000/parking space which to my mind is an awful lot of money. And not for nothing, if I were the owners of the private lot, I would regard the Town moving forward without it as a hostile act. How would you feel if you found that your neighbor had brought in hundreds and hundreds of yards of fill and raised the lot three feet. What's the message? It looks like intimidation. I just want to say that. I'm not sure what the taste is that will be left in their mouths. Then, on the environmental aspect of it, a big aspect of the downtown Plan talks about Low Impact Development, LID. Yet, here we are. Earlier on your agenda was the discussion about acquiring open space for flood storage. One of your members raised the issue of the importance of asking, 'What is this property for?' ...cutting down trees, how are we maintaining it? The appropriation contemplates cutting down all trees that form a filtration device that form a wind screen and a visual screen for residential abutters and filling in a water retention device, blacktopping it, a retro 1950's kind of approach. I guess I'm asking where are all the low impact development techniques to be deployed that we pledged that we were going to follow? Here's our first opportunity and instead we seem to be doubling down on something that seems to result in more flooding even when we're done because the Saugatuck River goes up, the back flow preventer closes and the parking lot fills with water. It's done so since the beginning. I guess the swamp that is down there that we turned into a parking lot, we shouldn't be surprised when it floods. I guess what I'm trying to say is we're concerned about the cost, number one, but number two, why we're not considering other devices bio-swales, rain gardens, other devices to address the issue. I thought we had committed ourselves in a serious way to addressing climate change. Here's an opportunity to walk the talk and we're sort of using a hammer where a scalpel might be more advisable. It concerns me, not a little, that Conservation did even not know about the project. With all the unanswered questions, I would urge you to tap the brakes. With all the issues going on about Coleytown, I wonder about the cost here and I wonder about the approach.

Mr. Wieser read the resolution and it was seconded.

**RESOLVED:** That upon the recommendation of the Board of Finance and a request of the Director of Public Works, the sum of \$82,500.00 along with bond and note authorization to the Municipal Improvement Fund Account for the design of the Avery and Baldwin parking lots, is hereby appropriated.

### **Members of the RTM**

Ms. Schneeman:

At the committee meeting, you touched on the process going forward for this and opportunities for public input and design issues. Can you talk about that going forward.

Mr. Ratkiewich:

This project has not been designed yet. There is a conceptual layout of parking to give the bidders an idea of what the main concept is. Going forward, the consultant that we selected has not only civil engineering skills and electrical engineering skills, but they also have a landscape architecture component to their team. There's nothing that has been decided yet but that we would build half of the lot. To do that, we first have to get the design together and then take it through all the regulatory bodies. This is an appropriation request; it is not a design approval request. Design approval will come as we move through the various bodies that need to approve this primarily Planning and Zoning. Components of Planning and Zoning include that this is a village district so we would anticipate getting village district approval from a combined ARB and HDC committee. We intend to have a public information meeting when we get to about a 30 percent design for this project. The other thing is that this project is really about relieving the flooding in this lot. If you look at the adjacent lot, the Avery lot, it was just characterized that we would be bringing in thousands of yards of fill and elevating our lot above theirs. In fact, ours is below theirs right now and the elevation of the lot will be a couple of feet to make the drainage pipes go downhill instead of uphill. These are all concepts at this point. We have to wait for our designer to come back with a design that can be vetted.

Ms. Schneeman:

Thank you. The \$1.3 million cost did make me gulp a little bit. This is in my district because it is downtown and it doesn't seem exciting to go to meetings about a parking lot but I would encourage people to stay on top of the process.

Wendy Batteau, district 8:

I agree with Mr. Boyd essentially. I would also point out that we have an ordinance in Town that prohibits people from doing anything that will cause runoff into a neighbor's yard and if we are elevating the parking lot two feet above the Avery lot without having some agreement beforehand. He said we'll be higher than them.

Mr. Ratkiewich:

I'm sorry to correct you but I did not say we would be two feet higher. That's what Mr. Boyd said. I said we will be filling in about two feet at the highest point in the lot, two to two and a half feet to be equal with them. This is why it is important to look at both lots. In addition, in between the two lots, there is already a drainage plot from the Avery lot into the Baldwin lot. Again, these are all design details that have to be worked out in the design process.

Ms. Batteau:

My mistake. I misunderstood; however, nevertheless, before we spend money on this, I would prefer that even in its conceptual form that it go through the Conservation

Department and then come to the Environment Committee for review just this kind of issue before we vote to appropriate \$82,000 just for design.

Jeff Wieser, district 4:

I was the dissenting vote on the Finance Committee. I think it's the first time I voted solely on my own against my committee. The one thing that hasn't been mentioned here and I spoke to Pete about this, this is the design phase, is that the Avery lot, it would be great if they would combine but there are three lots back there. There is the Christ and Holy Trinity lot too and that hasn't even been brought into the planning of this and there's a question if they could be brought in at this price. I hate the Baldwin lot. You get back in there and cars are going every which way. I can't believe we can't sit down and figure out a better way to make that happen. I'm not convinced that's part of the process. This is going to be \$1.3 million or \$800,000 so by voting on \$82,000, we're really voting on something that we're going to spend \$1.3 million or \$800,000, probably within the next six months, and then it's going to be good for the next 20 years or however long parking lots last. We did such a good job down at the train station. I just don't get the sense that we're really committed to make this happen. I've talked with the church and they are willing to talk about ways to make this work. They redid theirs 10 years ago. They spent a lot of money. It's a nice lot and it's all theirs so they have to protect it for occasions and funerals and all that so there would have to be something worked out but I'm not a parking lot designer. I don't get the sense that we're focusing on that. I was hoping to get a little more though into it all. I agree that designers are the ones who are going to come up with ideas. I just want to make sure that they at least think about all three lots; talk to the church; talk to the Avery people some more because this is going to be with us for 20 years and I am going to be aggravated so much every time I drive by if it just gets done like this. I know Pete knows every inch of the parking lot, all three of them. I know it's a hard puzzle to work out. I'd just as soon take a breather and make sure we get this right.

Catherine Calise, district 2:

I would have to say that I agree with Morley and Jeff and Wendy. I think there are too many unknowns at this point to approve the funds to go down this path. I almost think it's a back door approach. I'd like to see some plans. I'd like to see other avenues explored, like with the church. I think if we have more information we can make a more informed decision and we can see what the overall impact would be to the surrounding properties. So, I think we have to wait on this until we have more information.

Jessica Bram, district 6:

I thinking I'm missing something here which is there is a theoretical plan with the Avery lot but so far the owner has said no. Correct?

Mr. Ratkiewich: At this time they have said no. That's correct.

Ms. Bram:

So, if we were to make the assumption that the owners of the Avery lot were going to say no meaning the only lot would be the Baldwin lot, would the cost still be \$82,000 or proportionally less?

Mr. Ratkiewich:

In actuality, we have to design both lots so that we don't adversely affect that property or any other property around this lot. The project is to design the Baldwin lot but we have to look at the other lots. The Avery lot is a very simple lot. It does not take a lot to figure it out, two rows of parking and some lighting. The differential in cost is going to be minimal because in order to design the Baldwin lot, we have to make sure it's at the right grade and will not adversely affect the Avery lot or the church lot for that matter.

Ms. Bram:

So, you are saying the design expense will be the same even if we will never be able to get the Avery lot.

Mr. Ratkiewich:

That's correct. The same goes for the church parking lot. We would have to look at all the grades surrounding the Baldwin lot but the main focus is to improve the Baldwin lot to alleviate flooding which happens several times per year. This is an appropriation request with a contingency on it. If we can spend less money, we will. We have looked at the overall surrounding area. We have to fix the drainage problems in the Baldwin lot and not adversely affect or cause drainage problems in the other lots. The bonus is, if we do it right, with a little extra effort, if the Avery lot comes in at some point in time, even the church lot, we could probably expand into that lot in the future for very little design cost, if at all. Right now, I have no design so people who are looking for more information, I have no design to give them more information. I need a designer to show me what's possible and then present it to the RTM and all the approving bodies as well.

Mr. Mall: How many spots did we lose by moving Kemper Gunn over to this parking lot?

Mr. Ratkiewich:

I don't know the exact numbers for Kemper Gunn. I believe it was 15 or 16 spots. You're talking about the 33 Elm Street building? There was a net gain of spaces on the other side of the street where the Mexican Restaurant building came down. Overall we had a net gain of eight spaces.

Mr. Mall:

The second question that I have: Of infrastructure projects on your plate, where does this rank in importance to you as Public Works Director?

Mr. Ratkiewich:

As Public Works Director, this is one of the worst lots in the downtown area. The pavement is in poor condition mainly because of the drainage problems. The drainage is falling backwards so we have constant flooding problems. I would say of the five lots downtown, this is the first one to tackle. So, we have the Baldwin lot, Parker Harding,

we go across the street to the Jesup lot, the rear library lot and then perhaps the Imperial lot. That is actually the sequence that the Downtown Planning Implementation Committee has recommended. I think it's the right one because we cannot shut all the lots down at once. We need to sequence them. The worst one is the Baldwin lot due to its poor drainage characteristics. The second would be Parker Harding.

Mr. Mall:

Approximately how many cars do we lose to flooding in the Baldwin lot when we have a major flooding downtown?

Mr. Ratkiewich:

If all spaces are filled, there are approximately 15 or 16 spaces that get flooded out.

Mr. Klinge:

Some of the discussion has gone beyond planning to the cost of \$800,000 or so; say it's a million dollar job between moving earth around, black topping it, and all the security electronics that are going to be part of it.

Mr. Ratkiewich: Is it timing you're looking for?

Mr. Klinge: No. the dollars.

Mr. Ratkiewich:

I'm basing the \$1.3 million on the combined lots of Avery and Baldwin and that's very comparable to the size and complexity of the project lot one construction down at Saugatuck. If you take out the construction for Avery, it's not a 50/50 split. The Avery lot is more like 30 percent. I would say about \$800,000 or \$900,000.

Mr. Klinge:

How would you break down the \$800,000 between moving earth around, putting down the blacktop and all the security?

Mr. Ratkiewich:

Security is only about 15 percent of the cost. Landscaping is 15 percent of the cost. The drainage is probably 20 percent and the remaining 50 percent is paving and finishing the project.

Ms. Hamlin: Have you gone to P&Z yet about this?

Mr. Ratkiewich:

No. We wouldn't do that until after we have the preliminary design. When we have about 30 percent, we'll start looking at permits.

Ms. Hamlin:

I find myself being persuaded by what Wendy said. We may be putting the cart before the horse. I'm completely on board with the idea of doing this but her suggestion that we go first go to Conservation and then got to the RTM Environmental Committee to

discuss this beforehand, I think, makes a lot of sense. I don't think any of us have forgotten what Chris Tait and I have come to call "the bathroom by the Watergate debacle" where some people had concerns about designs and where it was and wanted to discuss some of these things, the answer was 'We've already spent money on design fees and it would cost a lot more money to redesign it.' So we hit a roadblock where the cost for designs ended up driving our Town's inability to respond to some of the suggestions. We can kind of have our cake and eat it here too. Rather than barreling forward with spending \$82,000 on the design right now, why don't we hit the pause button, ask them to speak with RTM Environment Committee, speak with the Conservation Department. I would suggest speaking with P&Z would be a good idea. So, I don't want to say I'm against it. I think it's a great idea. Let's do it the right way.

**By roll call vote, the appropriation carries 16-15-1.**

Dr. Heller: It is a simple majority so the motion carries.

From the audience: Inaudible.

Dr. Heller: An abstention is not a vote.

Attorney Ira Bloom: The ruling is correct.

**The secretary read item #4 of the call - To approve an ordinance to prohibit the storage, disposal, or use of fracking waste or any products or by-products thereof in or by the Town of Westport. (Second Reading. Full text available in the Town Clerk's Office.) By show of hands, the motion passes unanimously.**

### **Presentation**

Ms. Batteau:

From the Environment Committee. First I should say that Westport is not alone in wanting to protect ourselves from the negative impacts of fracking waste. So far, 55 Connecticut towns and cities have passed this ordinance, most recently: Weston, Stamford, Ridgefield, Greenwich and including Bridgeport, Hartford, New Haven, Guilford, Milford, Madison, Redding and 45 more. You have the list that is complete as of last week. So, what's it about? The process of extracting oil and natural gas using hydraulic fracturing (or fracking) produces large amounts of liquid and solid waste. The emphasis there is on extracting oil as well as natural gas. Fracking waste includes rock and drilling lubricant left over from the process of drilling a well as well as wastewater and sand from the fracking and production processes. Chemicals used and naturally-occurring toxins from the ground that mix into these wastes are known to cause multiple cancers, multiple organ damage, neurological and developmental problems, birth defects, embryo toxicity and other serious health problems. Lead, arsenic, radioactive radium, strontium, barium, etc., etc., are just a few of the natural toxins that commonly contaminate this waste. These are all listed in the FAQ's I sent you and they are also listed in the Ordinance Committee questionnaire. I am just abbreviating to save time.

Waste from wells that are not fracked are also radioactive and these have contaminated waterways and products in towns and consumers in other states in which they have been sold and used. Waste from wells that are not fracked are also radioactive and these have contaminated waterways and products in towns and consumers in other states in which they have been sold and used. Huge amounts of oil and gas extraction wastes bi-products are being inadequately tested, treated and disposed of and otherwise used, for example, sold off as construction fill, brownfield capping material, deicer and for dust control. Construction fill that has later been found unstable to build on and contaminated and radioactive deicing and dust control products have been sold and used in other states. Radioactive radium, lead, chlorides, benzene and toluene have been found in materials permitted for use as deicer and for dust control. Permits have resulted in contaminated property, roads and waterways. Some freshwater mussels are now radioactive. Spills of waste on the ground have seeped and contaminated aquifers. Connecticut has no oil or gas deposits; therefore, no fracking; however, fracking waste has been shipped regularly to states from those like Pennsylvania where fracking does occur. Also, in Bridgeport and other locations in Connecticut, there are hazardous waste treatment facilities and there have been attempts to ship fracking waste there. Beyond public health issues, bringing contaminated materials into Westport risks future remediation expenses. Fill that is unstable creates slippage and requires repair in unsafe conditions. The State of Connecticut does currently have a moratorium banning certain types of hydraulic fracturing wastes from gas only, not from oil wells. Drilling, storage and leachate wastes from fracked gas wells are not included in the definition. Also, no wastes from any oil wells or from conventional gas wells are not fracked, are prohibited by the State of Connecticut. In more detail, there is circular language in the State moratorium that refers right back to the purpose of hydraulic fracturing when prohibiting wastes “derived secondarily”, so what is actually considered secondary use is unclear. Yesterday, the State Legislature was taking testimony considering another ban just introduced at the State level very similar to what we have here and what is being passed in towns and cities all over the state. But it is unclear whether that law will make it to vote this year. To preview a couple of possible questions: In all communities having passed this in Connecticut and New York State, prices for alternatives have not gone up. This is mainly from lawyers and public works people in other towns but, from direct reports to me from Stamford, Connecticut and also from New York Nassau County five towns, which passed their ban in 2014. In all the Connecticut and New York communities, only one contractor refused to use the required language. That was in Stamford. They received 63 bids for a project and the contractor who decided not to use the language was not the lowest bid. No others have declined in all other communities since 2012 when Westchester County passed the prohibition. So, now it’s time for us to act and protect ourselves.

### **Committee reports**

Ordinance Committee, Brandi Briggs, district 7:

The Ordinance Committee met yesterday with Town Attorney Ira Bloom and Wendy Batteau who was representing the RTM Environment Committee to discuss this proposed ordinance. As she stated, ordinances with almost exact language have been

passed in 55 Connecticut towns. The Westport ordinance added a line at the end that said: "The ordinance shall take effect 30 days after its legal adoption." in order to give Town departments time to adjust their paperwork. This was the only change from other ordinances in other towns. They presented that there has not been any negative feedback from the towns that have adopted similar ordinances and that there was a previous State ban but it has expired. We discussed the penalties for violation and it was stated that the Town could impose a fine for violation but it would be likely referred to DEEP. We then reviewed the language of the ordinance and discussed whether language should be added to the paragraph that dealt with bids and contracts which is the statement that a contractor or vendor would do when they were bidding; when they were making a bid, they would have to include this statement. We talked about whether there should be reference back to the ordinance in the statement and it was determined that we did not want to do that. We did not want to deter vendors or contractors from submitting bids. We discussed whether there had been any complaints from vendors or contractors in other towns and, at this point, they were not aware of any. Lauren Karpf made a motion to recommend that the ordinance prohibiting waste generated from oil and gas drilling and extraction activities is ready for RTM review. Christine Meiers Schatz seconded and the motion passed unanimously 5 – 0.

### **Members of the Westport electorate**

Representative Jonathan Steinberg, 1 Bushy Ridge Road:

I am pleased the RTM is taking up this ordinance today. I was one of those who testified before the Legislature's Environment Committee yesterday in favor of moving from a moratorium to a ban. As one of the legislators most involved with the creation of the moratorium in the first place, I am as aware as anyone about the tenuous aspect of a moratorium. It was predicated on the assumption that DEEP would promulgate specific regulations relating to this kind of waste beyond this existing hazardous waste regulation which has not happened. Part of the reason that it has not happened is that they require specific information from the hydraulic fracking companies, sort of some insights into their special sauce, which has not been forthcoming. But that could change at any given time. So, a moratorium at the State level is certainly not as strong in terms of force of law as a full ban would be in this case. What would be before the full Legislature now would be a full ban. As Wendy mentioned, it would not cover oil fracking, only gas fracking. That is the biggest concern. Some of you may remember that some years ago, the governor of New York, Governor Cuomo, was considering whether or not to allow fracking in the State of New York which would have brought fracking to our own borders 30 or 40 miles away and we would have been much more concerned about the possibility of transportation or importation of fracking waste into the State. Thanks to Governor Cuomo that that did not happen. The other reason why there may be some less than sense of urgency is that the pace of new fracking wells has flowed due to the low price of natural gas in recent years. But, as we know, that tends to be a cyclical event. Right now, America is riding high on natural gas. The other major concern is that we are going through the easier to obtain natural gas and may start to rely on fracked natural gas going forward. Obviously, it will increase costs, be more difficult to extract and have greater environmental hazards. Just to follow up on what Wendy said about the real risks inherent in fracking waste, to be clear, each of these

fracking wells involves millions of gallons of water which we are simply not effective in making clean, let alone ever potable again. But in this fracking waste, which is often reduced to sludge, they try to get rid of it any way they can, giving it away, to use as road salt or any other purpose, to put on agricultural grounds which is very scary, you have heavy metals, VOCs, radioactive materials, the shale deposits in Pennsylvania and New York where recorded levels of radioactive material are hundreds of times above safe human levels. We also should be concerned about the chlorides and the bromides which are very much part of it because they foul, interfere and effectively destroy waste water management systems. So, we don't want it in the State. We don't want to store it. We don't want to transport ideally. This is an opportunity for Westport to put its own mark down. We are hopeful that the State will follow through this year but there are no guarantees.

Mr. Wieser read the resolution and it was seconded.

**RESOLVED:** That upon the petitioned request of at least two RTM members, an ordinance to prohibit the storage, disposal, or use of fracking waste or any products or by-products thereof in or by the Town of Westport, is hereby approved. (Second reading. Full text is below)

Dr. Heller: It has been moved and seconded.

### **Members of the RTM**

Ms. Hamlin:

One measure of a life well lived is somebody who leaves the world a better place for having lived here. By that measure, Wendy Batteau has introduced an extraordinarily important environmental measure to this Town with this ordinance; I believe has also participated in the plastic bag ordinance; has been working with Andrew Colabella on plastic straw; helped protect the Town with dangerous turf. I'm sure I'm leaving other things out. Wendy, you have made our Town a better place for having lived here. I am so grateful for everything that you do. Some of us don't have the same knack for coming up with these great measures that you have but at least we can be in the room for taking action on this kind of thing and recognizing new legislation that makes our Town a better place. We can be there with our votes supporting these measures that make our world a cleaner environment and a better place. So, I know I'll probably get a bad reputation for complementing my RTM colleagues too much but I'm really so impressed with everything you have done for the Town. Thank you.

**By show of hands, the motion passes unanimously**

**The secretary read item #5 of the call - Upon the petition request of at least 20 electors of the Town of Westport, pursuant to Town Code Section 30-95, to review and reject the action of the Conservation Commission regarding the applications from Summit Saugatuck LLC for rental units on Hiawatha Lane Ext. By show of hands, the motion fails 3-25-3. In favor: Mall, Colabella, Calise; abstaining: Hamlin, Arthurs, Schine.**

**Presentation**

Carol Ann Curry, 29 Hiawatha Lane Extension:

You'll hear an awful lot about Hiawatha Lane tonight but what we're talking about is Hiawatha Lane Extension. This is the older part of old Saugatuck. This was an area of swamp land that was filled so that single-family houses could be moved here when the highway went through Saugatuck. I have lived in old Saugatuck since 1988. Many Westporters may not know where this neighborhood is as they are more familiar with the commercial Saugatuck center, the focus of a master plan and transit-oriented development focus in 2018. These are two very different spots. Tonight, the residents of Save Old Saugatuck are asking that you do know about Hiawatha Lane Extension. I have served as spokesman for the residents for the past 15 years when we first heard of Summit Saugatuck beginning to buy up houses on Hiawatha Lane Extension at maybe three times the market price. I am appreciative of the governing process that enables our peaceful dissent and our request for a review and rejection of a specific Oct. 26 approval by Conservation Commission given to Summit Saugatuck. I thank the RTM members for their time and attention tonight. I am fully aware of the challenges we face in our request and review of rejection. No one has taken more time than Ira Bloom to define the limits of the review but our position is that the Conservation Commission issued an approval that was premature. The work may have been of a quality; it may have been very, very good work but it was premature. Hiawatha Lane, if this continues, will experience the real estate equivalence of a rape, pillage and plunder and the wholesale disappearance of the homes and lives that have been an integral part of the character and quality of life in this community. It is not lost on the vulnerable of the Save Old Saugatuck community that they face the powerful in money and experts. We do not have experts with letters or high profit powers to help us. What we have is our experience living in this community and trying to convey to you the amount of water that is going to be displaced by this project. What I am asking Attorney Bloom is if I can take this document that constitutes the letter of approval of the application and make some observations and ask some questions that go to that realization that this is a premature approval of the application. The first thing we came across is we understand that all these lots on Hiawatha Lane that are near that high water area that are extraordinarily large in size because they were built on a swamp and were only supposed to be for single family homes and the rest of Hiawatha Lane and the rest of these other streets will not be involved in this proposed development at this time. We have certainly seen pictures and illustrations since 2007 that show this entire area is proposed for development. Besides the lots in Westport, there are two lots in Norwalk and I am asking if Norwalk knows about this and has approved the development of these lots and has approved the exits and entrances that are proposed from Westport to Norwalk and back. There is one, two, three, four areas of serious wetland dangers that are addressed in this which speaks again to the water. There is the Indian Brook that goes all the way down here and an unnamed tributary that causes tremendous flooding in that area. Since we have had in the past few months, two 100 year storms, we are very concerned that it will continue to flood. One of the things we cannot do is we cannot talk about the IWW findings. That has to do with soil. We can't tell you how poor the soil is. There is also a statement that talks about none of this approval by the Conservation Department will be issued if the sewer is not approved. Again, that makes this

application premature. The other thing many of the residents in SOS because this is such a large project, by the way, the Architectural Review Board turned thumbs down because of the immense size and the water that it would disperse. This approval process and this visual is here to tell you that we have, since 1956 in this area, been living with this water, the high water table, the swampland and everything else because when this was set up, the residents knew they could have single-family homes, that the systems that they had would be maintained and recently Dr. Cooper has said that they have been well maintained for 50 years. So, it's not anything other than intensive development that is promoting this project. Our feeling about this is that we wanted to accept the process of talking to the full RTM. I know the developer did not want to go to the full RTM when they questioned the WPCA decision but as a resident of this Town, I feel this is a very important process so that the people will know what our concerns are. I know the RTM is concerned with representing the lives and the principals that guide us in Westport and I am truly appreciative of that. We have many recommendations from the Conservation Commission. I believe there are 39 conditions that must be satisfied before the application is finally approved. Those 39 are a message of how much water is in this area.

Dr. Heller:

I have been asked to allow the applicant to respond if you wish to respond at this time. [No.]

### **Committee report**

Environment Committee, Ms. Batteau:

This report is rather long. I've cut it down from what you have but I hope my voice will hold out. It doesn't give me great pleasure to read this but, here goes.

The Environment Committee met on January 3 and Jan 10, 2019, to review the appeal of the Westport's Conservation Commission's approval of Summit Saugatuck, LLC's application under the Westport Waterway Protection Line Ordinance, Section 30-80 to 30-97 of the Town Code, as per a petition filed by at least 20 electors, pursuant to Section 30-95 of the Town Code.

The Flood and Erosion Control Board approved the application on July 11, 2018; this decision and most of the matters Ms. Curry just mentioned was not appealed by the Petitioners who indicated this was not a choice on their part, but rather an accidental omission on the petition form. Although the petitioners also asked the RTM to review the Conservation Commission's decision under the Inland Wetlands and Watercourses law and regulations, that decision is not appealable to the RTM. It has to go to the DEEP so the RTM's review is limited to the Conservation Commission's decision under the WPLO, a Town ordinance. The purpose of the WPLO is to "protect all waterways of the Town from activities that would cause hazards to life and property and/or activities having adverse impact upon the waterways of the Town and the waterway in question is Indian Brook. The only activity regulated by the WPLO with regards to this application is the sewer connection taking place within Hiawatha Lane. The proposed sewer line will

be placed beneath the brook in a culvert beneath the street. The connection line would be encased in a concrete pipe. It is significant that the creation of the road and the culvert have already disturbed the area, that there would be no digging in the WPLO area and that Town engineers deem disturbance from this activity would be minimal to none. Before we considered the appeal, our Town Attorneys Ira Bloom and Peter Gelderman advised the Environment Committee and all RTM members that a decision by the RTM to reverse the Conservation Commission must be based upon "substantial evidence." They said your review is limited to impact on the waterways. Evidence supporting a different decision, must be sufficient to counterweigh the evidence on which the Conservation Commission relied. To this end, the Environment Committee members became as familiar with the Conservation Commission's record as if we had been part of that commission as they evaluated the application and all evidence through its various phases. The Conservation Commission retained the services of GHD Services, well-known experts in this area, to aid in its review of the application and determine what, if any, impact there will be to wetlands and watercourses as defined by the "Inland Wetland and Watercourse Regulations of the Town of Westport" and the Town's "Waterway Protection Line Ordinance." GHD's analysis of proposed impacts is summarized in its memo to the Commission dated July 11, 2018. This is one of the documents that is on the Town Website along with extensive other documents and videos. Based on the documents provided to GHD, it found that:

The applicant is not proposing any direct impact to wetlands or waterways on or adjoining the site and also the applicant has provided an analysis and discussion of proposed mitigation measures to address potential indirect short-term and long-term adverse impacts on the wetland and watercourses as a result of the project. GHD listed 22 action items that were to be addressed that would better protect the wetlands and watercourses. Several subsequent go 'rounds between GHD and Summit Saugatuck Yielded additional revisions as did conversations with Alicia Mozian, Conservation Director, and the plans were then further reviewed by the Engineering Department, revisions were made and the Engineering Department said that the "office is satisfied with the revisions made to the project. Per this review, the application is substantially complete and requires no further resubmission. While the granting of this approval is at the discretion of the Commission, we find no issues in my review that would preclude such action." The Conservation Commission based their findings on expert testimony, as noted before and the findings are attached to the report that you got and to all the materials posted on the website. It included over 1,000 documents, five public hearings, two site visits and, again, you can find all those on the webpage. The CC recommended that the neighbors hire another outside expert to conduct a similar assessment but that was not done for financial concerns according to the petitioners. No evidence was submitted to the effect that the regulated activity would cause any negative impact to the waterway as defined under the WPLO. Petitioners attending our committee meetings spoke about the issues that led to their request for a review, presented photos of flooding and maintenance issues in the vicinity, and showed a PowerPoint

presentation. We discussed these to discover their pertinence to WPLO review requirements and to obtain a better understanding of the site issues.

Some key topics of discussion included:

\* *Since the issue of sewer accessibility in the area is currently being appealed, should the Conservation Commission have considered this application?* Town Attorneys Peter Gelderman and Eileen Flug advised both the Conservation Commission and the RTM that our consideration was indeed required. Eileen Flug stated also that the Conservation Commission does not have the option of denying a WPLO application based on the applicant's failure to receive approvals from other boards or commissions. If the Conservation Commission had not considered the application, by law, that application would have been considered approved within 15 days.

\* *What issues raised by both Petitioners and Committee members could only be considered under appeal to the Flood and Erosion Control Board, Planning & Zoning, or under the different jurisdiction of the State Inland Water and Wetlands law, and not under the strict jurisdiction that we looked at?* This defined much of the committee's conversation. We discovered we were not to take into account and you are not to take into account matters such as the availability of sewers in the area; potential or actual flooding, drainage and/or erosion conditions in the area; general maintenance of the development site including the culvert under the brook; possible contamination of the site due from a toll plaza previously located there; potential water incursion into the development buildings or underground parking garages; requests for environmental site assessments; potential effects on underground aquifer and on wetlands; problems noted during recent severe storms; changes to site conditions caused by such matters as sea level rise and climate change; questions about what might happen within 100-year flood lines; changes that might be made to regulations before development. In other words, we were very, very limited in the scope of what we looked at. Given that, the Committee found that the Conservation Commission had acted based on a substantial body of expert evidence, none of which was contradicted, that the regulated activity (the installation of a sewer line under a culvert roadbed would not cause adverse impacts on the specific waterway Indian Brook) On a motion by Mandell, seconded by Lautenberg, the committee voted unanimously to recommend the full RTM sustain the Conservation Commission's decision under WPLO guidelines on this application. We also endorsed all the conditions and suggestions included in the Conservation Commission's findings and based on issues raised by the petitioners, the Committee made several other nonbinding recommendations for further review and action by other Town bodies:

- a. The Environment Committee supports, as a high priority, revision of the WPLO within the parameters allowed by the State.
- b. Petitioners and other neighbors attend all future meetings of the Flood and Erosion Control Board, and there is one tomorrow night at 7:30, Planning and Zoning, and other Town bodies to make the points falling under their jurisdictions.

- c. The Flood and Erosion Control Board, and Planning and Zoning review recent flooding issues.
- d. Assessment of the culvert's condition and maintenance; If remediation is necessary we recommend the developer do so.
- e. Obtain water quality assessments of the aquifer.
- f. Phase 1 and 2 environmental site assessments be completed.
- g. Examine and remediate, if necessary, the catch basins.

Any questions, I'm here.

### **Members of the Westport electorate**

Tina Torraco, 82 Riverside Avenue:

I am here to support the Save Old Saugatuck community. It is my hope that this legislative body would recognize and support all pre-existing affordable housing. I am asking the RTM to review and reject this application.

Mr. Boyd:

I realize while listening to the petitioner's account that I met her 15 years ago and it was over this very issue. So, I can't imagine what it's like to have slogged through this for 15 years, as an aside. I, too, would like to lend my voice of support to the idea of reviewing and rejecting this application.

Selma Miriam, 29 Hiawatha Lane Ext.:

When I was at the Conservation Commission and we asked the experts there because they spoke in their very informed way about how they would deal with any water problems in their 185 apartment complex, and they had all these backup measures. When we asked, have you considered what effect this would have on the neighbors, earlier tonight talking about the parking lot, people said how important it was to consider the effect on the neighbors, and they said we weren't paid to do that. That's what those experts said. So, that means, we, as residents, have to pay experts to prove that this would be problematic. What Carol Ann didn't mention, when a lot of us bought houses there were things we had to sign that there would not be any more than a single house on a large lot, a deed restriction. It was because of the recognition of the fact that this area was susceptible to flooding. We adjust to it by having a lot of plantings and trees. I know none of this is relevant and the Conservation Commission did what they had to do by law. But it's still a very terrible thing that will be done to this community to have 185 apartments in terms of conservation. It's going to be horrendous in terms of traffic. There's just one little road that goes out to route 33, 136, exit 17 and the train station. This is a nightmare of a project. They are going to do everything they can because they have a lot of money.

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 Code Section 30-95, the action of the Conservation Commission regarding the applications from Summit Saugatuck LLC for rental units on Hiawatha Lane Ext., is hereby reviewed and rejected.

Dr. Heller: It has been moved and seconded.

### **Members of the RTM**

Ms. Schneeman:

I'm just giving Jeff Wieser a workout to make him get up for me...I feel like I'm on a fool's errand here. I have specific questions to ask representatives of the Town. I'm out of my depth in terms of expertise here. I did feel moved to probe because I felt frustrated because we had this very narrow window through which to look at this decision or this whole project. As I was reading this decision, there were a couple of things that jumped out at me about the WPLO. We have been told that the very narrow regulated activity within the WPLO is the placement of the sewer line but I did hear in one of the meeting recordings, the engineer for the applicant mentioned that the sewer pump station is also a regulated activity. What I didn't remember was whether it was within the WPLO. I wanted to know if the placement of the sewer pump is also a regulated activity.

Alicia Mozian, Conservation Director:

The sewer pump was part of the review when we did the new sewer line under the Saugatuck River. It's not even on this property. There's a generator there. That's what you're pointing to.

Ms. Schneeman: I think the generator had to do with the sewer pump.

Ms. Mozian:

I don't view it as a pump station. There's a force main there so there probably is a pump. The blue line is the WPLO line so that wouldn't even be within the WPLO boundary.

Ms. Schneeman:

I think I misunderstood but I did think I heard it referred to as a second regulated activity. I'm embarrassed to be even asking these questions but I am not the expert. You had written an email to Attorney Hollister on October. You were suggesting to their engineer *that he recap how the design will be handling the water from the project so that it does not exacerbate the flooding in the area. This is related to the runoff section in the IWW regs and also a consideration under the WPLO.* I did not understand. So, here we're talking about how water discharge and runoff might be a consideration under the WPLO. What was meant by that?

Ms. Mozian: Under Inland Wetlands, there is a discharge and runoff section.

Ms. Schneeman: Which we are not supposed to be looking at, right?

Ms. Mozian:

Page 10 of 12 of the findings is Discharge and Runoff. I'm sure you've all read our findings and resolutions. There are several bullet points that goes through how our

consultant reviewed the analysis of the applicant's engineer along with our own engineering department who looked at the project's acceptability under the Town's drainage standards. When I wrote this about this being considered under the WPLO, I guess you consider flooding under the WPLO but you narrow the focus into the regulated activity within that WPLO. It's probably a confusing answer. When the Flood Board acts, they have to look at the activity within the WPLO but when Town engineer reviews a project, they are looking at it under the WPLO but they are also looking at it under the Town's drainage standards. In a way, the Engineering Department serves double duty reviewing it under the Inland Wetland regs under the Discharge and Runoff section that conforms with the Town's drainage standards. A lot of times, I can use that same analysis to see if it's consistent with the WPLO but usually a project covers a lot more area than just what's on here. Maybe I should point that out on the map. The blue line is the WPLO boundary, right here so all the buildings, the parking lot, even the rain gardens are outside that boundary. This is where the Indian Brook comes here and this is where the sewer crossing is going underneath the culvert in the street. The buildings are further to the west.

Ms. Schneeman:

I kind of agree that it's hard to overturn the decision what was made based on this narrow circumstance. I think you all did an incredibly thorough job. I agree with the petitioner that the fact that you put on all the conditions is kind of a testament to the difficulty of the site and, to put it nicely, some issues with the process. I'm not sure why the Flood and Erosion Control Board acted so narrowly in their approval. I know there are a lot of things we're not supposed to talk about in this case. I want to thank the petitioners for having brought this forward. I know they can't talk about things and we can't talk about things but a lot of people in this room heard you as well. You brought every body's attention to this issue in a way that had not been done before. I appreciated that. It called to mind some comments I had made about the Wilton Road in district 9 building, a 19 unit building, obviously not on a scale of this one. The words that I used were almost totally applicable here: that a project of this scale could be built hard up against wetlands without having a significant impact on them despite the fact that they are outside the boundary of the wetland. It might not technically be a flood plain but we are all cognizant of the fact that coastal flood zones are increasing on an almost annual basis. Continuing to build large dense structures so close to the tidal rivers is the opposite of what we should be doing if we are committed to environmental sustainability. As a Town, in keeping with the 2017 Plan of Conservation and Development, I'll be with the residents at the Planning and Zoning meetings going forward because it's in P&Z's purview to consider the potential impact of the rising sea level, coastal flooding and erosion patterns when making decisions. Clearly, water is an issue in this area. According to Climate Central, Westport has already experienced over five inches of rising sea level rise over the last 34 years of record. Climate change is projected to drive much more rise over this century. I think we're all experiencing that on a daily basis. So, large dense projects like this in environmentally sensitive coastal areas like this seem like the exact wrong way we should be going as a Town. So, I thank the residents for bringing this forward.

Mr. Mall:

I promise to be brief. I've been going through something very similar for 17 years next door to me so I understand how Ms. Curry feels as far as being worn out and ground down by developers with deep pockets with investors where you aren't able to afford your own legal expense or to go out and hire expert witnesses. I will say that I go by the expert witnesses of the people who live there. I'm going to listen to what the neighbors have to say because they probably know more than any paid advisor or consultant. What they're telling us is when it rains it floods and then you want to add 185 units with parking spaces and so forth. It's only going to get worse. So, I am going to support my neighbors in district 1 as they have supported district 2 when we have these assaults on our neighborhood. We have to do something to protect residential neighbors against these developers who are only interested in their return on investment. Once they've built and moved on, they could care less what happens to our Town. So, I am sticking with my neighbors and I am voting that we reject this finding.

Mr. Mandell:

I'm going to take you on a history lesson so you can understand where we've come for the last 16 years to get to this point. It all began first when property just to the west of here, the Norden property, 30 acres of land used for Norden bomb sights where they'd come in and sight for the second world war. Spinnaker Development and Summit Development, these guys here, decided they would come in and build three apartment buildings of 110 units each, bang, bang, bang, right next to each other, one on the border of Hiawatha Lane Extension with a road going to Westport. Carol Ann Curry and I teamed up at that point and worked together and actually stopped that development. Strangely enough, it was Norwalk's Conservation Commission, that our arguments together, created the reason for denial of the plan. After that point, Spinnaker Development sat down with Carol Ann Curry and I and we worked out a plan for a different type of development. Spinnaker would build one building all the way to the east of the property of 400 units. The center section of the land would be saved as open space, 11 acres. Next to Hiawatha Lane would be four single family homes that would access. None of the other buildings or properties would access Westport. Spinnaker, at that point, moved on with their project and Summit started to buy houses in Westport. That's where Carol Ann Curry began to fight that development and I, along with other RTM members from district 1, came on board. So, what occurred? They needed a sewer to be able to build what was then 40 to 50 units to do so. This was a business decision that they made, to go and buy these buildings without seeking any help from the Town or asking the Town whether they wanted it or didn't want it. They asked for a sewer extension. The Planning and Zoning Commission said no, you can't have a sewer. They said there are septic problems. There weren't any septic problems. They said they needed the sewer for x, y and z. The Planning and Zoning Commission remained firm. That was back in the Diane Farrell days. Once again, four or five years later, under the Joseloff administration, they came back and asked for the sewer again. Planning and Zoning once again said no. We thought they went away. They did not. Finally, we get to the point, a few years ago, they came back to Planning and Zoning and asked for it and P&Z says no. The rules of the 8-24 are if there is a denial of an 8-24, the body to come to to ask for a reprieve is the RTM. Summit chose not to go to the

RTM. Instead they went directly to the WPCA, the Water Pollution Control Authority which is also the Board of Selectmen. The Board of Selectmen said to them, and rightly so, according to State Statute, you don't have an 8-24 approval from the Planning and Zoning Commission so the answer is no. This was appealed to Superior Court. That judge didn't overturn it. What he did is remanded it and said you have got to go back and review the situation again. Here's the rub at this point. The request was for 165 units for the sewer but they come back to the WPCA and said we want 187 units under an 830g. Our Water Pollution Control Authority then said 'scuse us, the remand was for 165 units not 187 units. You have to go back to the P&Z for this. Summit Development said, 'no, we're not going to do that.' The Water Pollution Control Authority denied them again. So, what do we see here. We see an organization that comes in and buys houses, a business decision without seeing if the Town is interested or not. The remand from the court saying go back and see if they are willing to go with 165 units but, instead, they switch it to 187 units, making it an 8-30g. They are not playing by the rules but Westport continues to play by the rules as we will tonight. We will play by the rules. When they appealed the WPCA, the judge overturned the WPCA saying that because the need for affordable housing outweighs this, you need to approve the sewer extension. Our Town Attorneys have gone to the Appellate Court. It is not automatic that the Appellate Court will make a review of this. They have to get permission. Appellate court has accepted that. Why? The Town of Westport is absolutely correct. The State Statute says that before you can have a municipal improvement, a sewer extension, you must have a positive 8-24. I believe you will be successful in court and Ira, thank you for all the time you've done in doing this. I believe you will be successful and that, believe it or not, all this time up to this will be for naught. But, ultimately, where are we looking at? We are looking at a bad business decision that is now putting it to the Town, the community and this neighborhood. One hundred eighty-seven units is being proposed in this area using 8-30g as the tool. This is not about affordability. It is about profitability. They are using the State Statute to find their way out of a bad business decision and the Town, the community and this neighborhood is taking it in the neck. We should have no part of it. Summit Development should have been working with this Town a long time ago to find a way to work this out. It's never been the case. It's always been what can they get out of it not really what they could be returning to the Town. Here we are at this crossroads. As much as I don't like this project, as much as I don't like this procedure and how it's gone forward, the rule of law says we don't have the jurisdiction or the purview to overturn it. So, tonight, we won't be or at least I won't be. You guys, it's your decision but I urge you not to. The Conservation Commission did a phenomenal job. They analyzed this and came up with 39 conditions that must be met. One of the most important things they said was that the Flood and Erosion Control needs to review this. They told the P&Z, 'make sure that they do this.' Why? Because they know something is wrong. It isn't in their jurisdiction to make that call but they're pointing it out. And Carol Ann thank you for your community coming to the RTM. Why? Because during our meetings we heard about flood and erosion problems. We heard about culvert problems. We heard about Summit Development not being interested in fixing the culvert even if there is a problem. They're not willing to rise to the task of taking care of the issues that they will be creating. They are going to be putting a garage 16 feet under the ground. What kind of water problems is that going to occur? I urge this Town to step

forward and do the right thing, to go to flood and erosion and make sure that's taken care of, to go to P&Z and argue properly that the health and benefits of this Town are in jeopardy because of this development. It is not about affordable housing. We approved 1177 Post Road and there was a ribbon cutting that the First Selectman, I and the head of Planning and Zoning Commission were at. This Town doesn't have a problem with affordable housing. We have a problem with bad development. This is bad development and this is what we must be fighting, not because it is about affordable housing. This is not about affordable housing. This is about profitability and that's what we have to be worrying about. I am tired of Summit Development coming back with more and more and more units because each time it takes longer for them and they have to spend more money and now they have to find a way to bring the money back into their pockets. Sometimes there's a bad business decision and that's the way it has to be. One small point, along the way, before they got into affordable housing, they were using regular attorneys. Somewhere along the line, they brought in Shipman and Goodman. I think you've heard for a long time that Shipman and Goodman is the attorney for the Board of Education and boy, they have their own headache at this time. We have both partners, one representing the Board of Education and one here combatting us and suing us all the time. It's a conflict of interest. It's not their conflict of interest. The law says that a lawyer can represent both sides. It's our conflict of interest. It's time that we say you either have to be an attorney who helps this Town or an attorney who doesn't help this Town.

Dr. Heller: Mr. Mandell, please try to stick to the resolution a little bit more closely.

Mr. Mandell:

To sum up: We don't have a tough decision tonight. We have a tough decision moving forward. We are about to get the moratorium and these people who are doing 830g's are throwing things across the transom left and right. We are not a community that has a problem with affordable housing. We are a community that likes to develop our housing properly and that's how we should continue to move forward.

Jimmy Izzo, district 3:

In 1989, Public Act 89-311 came into play. It was first enacted in our State. It became better known as 8-30g. In the house, 76 legislators voted for this legislation; sixty-nine were Democrats. It was a Democratic vote across the board. I am urging my Democratic friends to get up to Hartford, get your representative up there and start fighting it. Everyone in Fairfield County could have taken this trump card and said, 'Give us cred for housing that we built.' Oh, no. We're worrying about other things. Roosters come home to roost. This stuff is real. Mr. Hollister is the real deal. This guy Friedman over on Canal Street, we were just talking about, he's the real deal. They know the law. They live the law. This has to be fought in Hartford. We should have gotten credit for this years ago. We're 30 years into this so let's get our heads out of the sand and start a march on Hartford on this. On the local level, we can only do so much so our best bet right now is to look at these things, sit down with these developers, work it out, make it happen,. Matthew is not wrong. I'm not wrong. We've got to start fighting Hartford and get after your legislation up there because it is important. Hartford to Westport effects

us. We have the other attorney up there, his partner is ringing up the bell. The bell keeps ringing. We keep paying. It's time for it all to stop. I'm willing to help my Democratic friends change and get credit because enough is definitely enough.

Mr. Klinge:

At 7:30 tonight, I looked at item five on our agenda on whether we were going to vote to overturn the Conservation Commission's decision. That was what was on the agenda. It was not a bunch of speeches. Thanks to Alicia, I actually was able to find the minutes on the website of the Oct. 26 meeting. Believe it or not, I read them. I also visited the land down there. But what I read in those minutes was very straightforward. The developer, whether you like him or not, I happen to think it is a terrible idea for the neighbors and the Town of Westport but the developer complied with the regulations of the Conservation Commission. The one reservation you should make note of is it is all contingent upon hooking up to Town sewers which is still in litigation. It's not a reality. It's not for sure so we cannot look ourselves in the mirror and say that we voted in favor of overturning the Conservation Commission. Their decision was absolutely correct given their purview, what they asked the developer to do and like it or not, we have an obligation not to overturn the Conservation Commission as you heard an hour and a half ago from Wendy. So, let's not prolong this anymore. I'd like to see us all get up and vote for what's right. That's our Conservation Commission; what they decided is correct.

Carla Rea, district 8:

I yield my time to the Chairman of Conservation Commission.

Anna Rycenga, Chairman, Conservation Commission:

I'm present to discuss the process. I'm going to be brief so I don't repeat what others have already said and Wendy's report was very thorough and addressed a lot of my comments. There were two applications that were considered before the Commission, the Inland Wetlands application and the WPLO. There were several meetings held. There were five public hearings, one special meeting and four site walks. Basically, we process and rendered our decision on several criteria: the WPLO, the aquifer protection area and this property is not within the aquifer protection area, inland wetlands and watercourses regulations and also as the regulations carry out under Connecticut General Statutes 22a-36 through 22a-45. Also under our purview we have standards of review that include regulating, permitting and enforcing under the Inland Wetland Regulations. That includes general standards, water quality, erosion and sedimentation, natural habitats, discharge and runoff, recreation and public use and the list goes on. This is done to ensure the preservation and protection of the wetlands and watercourses. We have to render a decision within the statutory timeframe but with that included the public hearing and any reports and testimony from experts and the public. During the hearings, there was expert testimony offered and submitted. Without naming everyone, there were nine experts and this was overseen by our Town Counsels, Attorney Ira Bloom and Attorney Peter Gelderman. Based on the evidence of record and expert testimony, we granted a permit with conditions. As you know, the only regulated activity are of consideration relative to the WPLO is the utility sewer line that is under Indian Brook. All other regulated activity is outside the WPLO boundary. I think

it's important to note that there was documentation, photos and verbal testimony submitted by the public and adjacent property owners regarding this application relative to flooding and other issues. Obviously, the Flood and Erosion Control Board did approve this application on July 11. However, we recognized that there was an issue with flooding from the testimony that was presented. So, what we did, if you refer to our conditions of approval, on page 6, the sense of the meeting #2, we recommended to the Planning and Zoning Commission for its consideration when reviewing the application that the application be resubmitted to the Flood and Erosion Control Board. We recognize that but our umbrella is limited. Planning and Zoning's is a little bit larger. Also, testimony was presented by the public regarding maintenance of the property. Unfortunately, we cannot speculate what if and Attorney Ira Bloom who is here would agree. We as a commission have the authority to approve or deny any regulated activity where there is a short-term and long-term impact of the proposed regulated activity on wetlands or watercourses and the maintenance and enhancement of long-term productivity of such wetlands and watercourses. Lastly, as Chair of our Conservation Commission and several of our members are here tonight, I am confident that we based on decision on substantial evidence in the record that was submitted by expert testimony. We voted to grant the permit for the regulated activity with conditions. I just want to respond to Carol Ann's comment regarding the City of Norwalk. This is statutory. Whenever a project is within 500 feet of a municipality, we have to notify them. It is by certified mail to the City of Norwalk Clerk and the Norwalk Inland Wetlands Agency. During the process, I did ask if we received any recommendations or suggestions from the City of Norwalk and there was none. Secondly, in response to Mr. Mandell's comment about the sewer, we recognize that that was the issue and we did raise the question to our Town Counsel and we had no choice but to proceed with the application even though it was in litigation. I thank you all for your time.

The vote to reject the decision of the Conservation Commission is to vote yes. To sustain the decision is to vote no. **By show of hands, the motion fails 3-25-3. In favor: Mall, Colabella, Calise; abstaining: Hamlin, Arthurs, Schine.**

The meeting adjourned at 10:05 p.m.

Respectfully submitted,

Patricia H. Strauss

Town Clerk



by Jacquelyn Fuchs

## Attendance: February 5, 2019

DIST.	NAME	PRESENT	ABSENT	NOTIFIED MODERATOR	LATE/ LEFT EARLY
1	Richard Jaffe	X			
	Matthew Mandell	X			
	Kristin M. Purcell	X			
	Chris Tait	X			
2	Catherine Calise	X			
	Jay Keenan	X			
	Louis M. Mall	X			
	Christine Meiers Schatz	X			
3	Mark Friedman	X			
	Arline Gertzoff	X			
	Jimmy Izzo	X			
4	Andrew J. Colabella	X			
	Kristan Hamlin	X			
	Lisa Parrelli Gray	X			
	Jeff Wieser	X			
5	Peter Gold		X	X	
	Nicole Klein	X			
	Karen Kramer	X			
	Greg Kraut	X			LEFT 8:17 PM
6	Jessica Bram	X			
	Seth Braunstein	X			
	Chas Durkin	X			
	Cathy Talmadge	X			
7	Brandi Briggs	X			
	Lauren Karpf	X			
	John Klinge	X			
	Ellen Lautenberg		X	X	
8	Lee Arthurs	X			
	Wendy Batteau	X			
	Carla Rea	X			
	Lois Schine	X			
9	Charles Carey	X			
	Velma Heller	X			
	Kristin Schneeman	X			
	Lauren Soloff		X	X	
<b>Total</b>		<b>33</b>	<b>3</b>		

**Roll Call Vote: Item #3 Baldwin Parking Lot Design Appropriation**

<b>DIST.</b>	<b>NAME</b>	<b>ABSENT</b>	<b>YEA</b>	<b>NAY</b>	<b>ABSTAIN</b>
1	Richard Jaffe			X	
	Matthew Mandell				X
	Kristin M. Purcell			X	
	Chris Tait		X		
2	Catherine Calise			X	
	Jay Keenan		X		
	Louis M. Mall		X		
	Christine Meiers Schatz		X		
3	Mark Friedman			X	
	Arline Gertzoff			X	
	Jimmy Izzo			X	
	Amy Kaplan		X		
4	Andrew J. Colabella		X		
	Kristan Hamlin			X	
	Lisa Parrelli Gray		X		
	Jeff Wieser			X	
5	Peter Gold	X			
	Nicole Klein			X	
	Karen Kramer			X	
	Greg Kraut	X			
6	Jessica Bram		X		
	Seth Braunstein		X		
	Chas Durkin			X	
	Cathy Talmadge		X		
7	Brandi Briggs		X		
	Lauren Karpf			X	
	John Klinge		X		
	Ellen Lautenberg	X			
8	Lee Arthurs			X	
	Wendy Batteau			X	
	Carla Rea			X	
	Lois Schine		X		
9	Charles Carey		X		
	Velma Heller		X		
	Kristin Schneeman		X		
	Lauren Soloff	X			
<b>Total</b>			<b>16</b>	<b>15</b>	<b>1</b>

## Appendix I – Item #2

**RESOLVED:** That upon the recommendation of the Board of Finance and a request of the Director of Public Works, the sum of \$876,000.00 along with bond and note authorization to the Municipal Improvement Fund Account for Heating and HVAC Upgrades within the Police Department facility, is hereby appropriated.

**BOND RESOLUTION**

**RESOLVED:** That upon the recommendation of the Board of Finance, the Town of Westport, Connecticut (the “Town”) hereby appropriates the sum of Eight Hundred Seventy-six Thousand and 00/100 Dollars (\$876,000) to pay costs associated with upgrading and modernization of the HVAC systems within the Town’s police station Facility including: i) the installation of a Building Energy Management System; ii) fuel conversion from oil to gas; iii) the installation of twelve (12) new high efficiency air conditioning units; and iv) related design, engineering, analysis, auditing, administrative, financing, contingency and other soft costs (the “Project”).

As recommended by the Board of Finance and for the purpose of financing Eight Hundred Seventy-six Thousand and 00/100 Dollars (\$876,000) of the foregoing appropriation, the Town shall borrow a sum not to exceed Eight Hundred Seventy-six Thousand and 00/100 Dollars (\$876,000) and issue general obligation bonds for such indebtedness under its corporate name and seal and upon the full faith and credit of the Town in an amount not to exceed said sum for the purpose of financing the appropriation for the Project.

The First Selectman, Selectmen and Finance Director are hereby appointed a committee (the “Committee”) with full power and authority to cause said bonds to be sold, issued and delivered; to determine their form, including provision for redemption prior to maturity; to determine the aggregate principal amount thereof within the amount hereby authorized and the denominations and maturities thereof; to fix the time of issue of each series thereof and the rate or rates of interest thereon as herein provided; to designate the bank or trust company to certify the issuance thereof and to act as transfer agent, paying agent and as registrar for the bonds, and to designate bond counsel. The Committee shall have all appropriate powers under the Connecticut General Statutes including Chapter 748 (Registered Public Obligations Act) to issue the bonds and, further, shall have full power and authority to do all that is required under the Internal Revenue Code of 1986, as amended, and other applicable laws and regulations of the United States and the state of Connecticut, to provide for issuance of the bonds in tax exempt form, including the execution of tax compliance and other agreements for the benefit of bondholders, and to meet all requirements which are or may become necessary in and subsequent to the issuance and delivery of the bonds in order that the interest on the bonds be and remain exempt from federal income taxes, including, without limitation, to covenant and agree to restriction on investment yield of bond proceeds, rebate of arbitrage earnings, expenditure of proceeds within required time limitations and the filing of information reports as and when required and to execute Continuing Disclosure Agreements for the benefit of holders of bonds and notes.

The Bonds may be designated “Public Improvement Bonds of the Town of Westport,” series of the year of their issuance and may be issued in one or more series, and may be consolidated as part of the same issue with other bonds of the Town; shall be in serial form maturing in not more than twenty (20) annual installments of principal, the first installment to mature not later than three (3) years from the date of issue and the last installment to mature not later than twenty (20) therefrom, or as otherwise provided by statute. The bonds may be sold at not less than par and accrued interest at public sale upon invitation for bids to the responsible bidder submitting the bid resulting in the lowest true interest cost to the Town, provided that nothing herein shall prevent the Town from rejecting all bids submitted in response to any one invitation for bids and the right to so reject all bids is hereby reserved, and further provided that the Committee may sell the bonds, or notes, on a negotiated basis, as provided by statute. Interest on the bonds shall be payable semiannually or annually. The bonds shall be signed on behalf of the Town by the First Selectman and the Finance Director, and shall bear the seal of the Town. The signing, sealing and certification of said bonds may be by facsimile as provided by statute. The Finance Director shall maintain a record of bonds issued pursuant to this resolution and of the face amount thereof outstanding from time to time, and shall certify to the destruction of said bonds after they have been paid and cancelled, and such certification shall be kept on file with the Town Clerk.

The Committee is further authorized to make temporary borrowings as permitted by the General Statutes and to issue a temporary note or notes of the Town in anticipation of the receipt of proceeds from the sale of the bonds to be issued pursuant to this resolution. Such notes shall be issued and renewed at such times and with such maturities, requirements and limitations as provided by statute. Notes evidencing such borrowings shall be signed by the First Selectman and the Finance Director, have the seal of the Town affixed, which signing and sealing may be by facsimile as provided by statute, be certified by and payable at a bank or trust company incorporated under the laws of this or any other state, or of the United States, be approved as to their legality by bond counsel, and may be consolidated with the issuance of other Town bond anticipation notes. The Committee shall determine the date, maturity, interest rates, form and manner of sale, including negotiated sale, and other details of said notes consistent with the provisions of this resolution and the General Statutes and shall have all powers and authority as set forth above in connection with the issuance of bonds and especially with respect to compliance with the requirements of the Internal Revenue Code of 1986, as amended, and regulations thereunder in order to obtain and maintain issuance of the notes in tax exempt form.

Upon the sale and issuance of the bonds authorized by this resolution, the proceeds thereof, including any premium received upon the sale thereof, accrued interest received at delivery and interest earned on the temporary investment of such proceeds, shall be applied forthwith to the payment of the principal and interest of all notes issued in anticipation thereof or shall be deposited in trust for such purposes with a bank or trust company, or shall be applied or rebated as may be required under the provision of law. The remainder of the proceeds, if any, after the payment of said notes and of the expense of issuing said notes and bonds shall be applied to further finance the appropriation enacted herein.

In each fiscal year in which the principal or any installment of interest shall fall due upon any of the bonds or notes herein authorized there shall be included in the appropriation for such fiscal year a sum equivalent to the amount of such principal and interest so falling due, and to the extent that provision is not made for the payment thereof from other revenues, the amount thereof shall be included in the taxes assessed upon the Grand List for such fiscal year and shall not be subject to any limitations of expenditures or taxes that may be imposed by any other Town ordinance or resolution.

Pursuant to Section 1.150-2 (as amended) of the federal income tax regulations the Town hereby expresses its official intent to reimburse expenditures paid from the General Fund, or any capital fund for the Project with the proceeds of the bonds or notes to be issued under the provisions hereof. The allocation of such reimbursement bond proceeds to an expenditure shall be made in accordance with the time limitations and other requirements of such regulations. The Finance Director is authorized to pay Project expenses in accordance herewith pending the issuance of the reimbursement bonds or notes.

The Town of Westport, or other proper authority of the Town, is authorized to take all necessary action to apply to the State of Connecticut, and accept from the State or other parties, grants, gifts and contributions in aid of further financing the Project. Once the appropriation becomes effective, the First Selectman, or other appropriate official of the town, is hereby authorized to spend a sum not to exceed the aforesaid appropriation for the Project and is specifically authorized to make, execute and deliver any contracts or other documents necessary or convenient to complete the Project and the financing thereof.

The Committee is hereby authorized to take all action necessary and proper for the sale, issuance and delivery of the bonds (and notes) in accordance with the provisions of the Town Charter, the Connecticut General Statutes, and the laws of the United States.

## Appendix II – Item #3

**RESOLVED:** That upon the recommendation of the Board of Finance and a request of the Director of Public Works, the sum of \$82,500.00 along with bond and note authorization to the Municipal Improvement Fund Account for the design of the Avery and Baldwin parking lots, is hereby appropriated.

**BOND RESOLUTION**

**RESOLVED:** That upon the recommendation of the Board of Finance, the Town of Westport, Connecticut (the "Town") hereby appropriates the sum of Eighty-two Thousand Five Hundred and 00/100 Dollars (\$82,500) to pay costs associated with the planning and design of a combined parking lot consisting of the private Avery Lot accessed from Avery Place and the Baldwin Lot accessed from Elm Street including drainage, lighting and security and related engineering, analysis, administrative, financing, contingency and other soft costs (the "Project").

As recommended by the Board of Finance and for the purpose of financing Eighty-two Thousand Five Hundred and 00/100 Dollars (\$82,500) of the foregoing appropriation, the Town shall borrow a sum not to exceed Eighty-two Thousand Five Hundred and 00/100 Dollars (\$82,500) and issue general obligation bonds for such indebtedness under its corporate name and seal and upon the full faith and credit of the Town in an amount not to exceed said sum for the purpose of financing the appropriation for the Project.

The First Selectman, Selectmen and Finance Director are hereby appointed a committee (the "Committee") with full power and authority to cause said bonds to be sold, issued and delivered; to determine their form, including provision for redemption prior to maturity; to determine the aggregate principal amount thereof within the amount hereby authorized and the denominations and maturities thereof; to fix the time of issue of each series thereof and the rate or rates of interest thereon as herein provided; to designate the bank or trust company to certify the issuance thereof and to act as transfer agent, paying agent and as registrar for the bonds, and to designate bond counsel. The Committee shall have all appropriate powers under the Connecticut General Statutes including Chapter 748 (Registered Public Obligations Act) to issue the bonds and, further, shall have full power and authority to do all that is required under the Internal Revenue Code of 1986, as amended, and other applicable laws and regulations of the United States and the state of Connecticut, to provide for issuance of the bonds in tax exempt form, including the execution of tax compliance and other agreements for the benefit of bondholders, and to meet all requirements which are or may become necessary in and subsequent to the issuance and delivery of the bonds in order that the interest on the bonds be and remain exempt from federal income taxes, including, without limitation, to covenant and agree to restriction on investment yield of bond proceeds, rebate of arbitrage earnings, expenditure of proceeds within required time limitations and the filing of information reports as and when required and to execute Continuing Disclosure Agreements for the benefit of holders of bonds and notes.

The Bonds may be designated "Public Improvement Bonds of the Town of Westport," series of the year of their issuance and may be issued in one or more series, and may be consolidated as part of the same issue with other bonds of the Town; shall be in serial form maturing in not more than twenty (20) annual installments of principal, the first installment to mature not later than three (3) years from the date of issue and the last installment to mature not later than twenty (20) therefrom, or as otherwise provided by statute. The bonds may be sold at not less than par and accrued interest at public sale upon invitation for bids to the responsible bidder submitting the bid resulting in the lowest true interest cost to the Town, provided that nothing herein shall prevent the Town from rejecting all bids submitted in response to any one invitation for bids and the right to so reject all bids is hereby reserved, and further provided that the Committee may sell the bonds, or notes, on a negotiated basis, as provided by statute. Interest on the bonds shall be payable semiannually or annually. The bonds shall be signed on behalf of the Town by the First Selectman and the Finance Director, and shall bear the seal of the Town. The signing, sealing and certification of said bonds may be by facsimile as provided by statute. The Finance Director shall maintain a record of bonds issued pursuant to this resolution and of the face amount thereof outstanding from time to time, and shall certify to the destruction of said bonds after they have been paid and cancelled, and such certification shall be kept on file with the Town Clerk.

The Committee is further authorized to make temporary borrowings as permitted by the General Statutes and to issue a temporary note or notes of the Town in anticipation of the receipt of proceeds from the sale of the bonds to be issued pursuant to this resolution. Such notes shall be issued and renewed at such times and with such maturities, requirements and limitations as provided by statute. Notes evidencing such borrowings shall be signed by the First Selectman and the Finance Director, have the seal of the Town affixed, which signing and sealing may be by facsimile as provided by statute, be certified by and payable at a bank or trust company incorporated under the laws of this or any other state, or of the United States, be approved as to their legality by bond counsel, and may be consolidated with the issuance of other Town bond anticipation notes. The Committee shall determine the date, maturity, interest rates, form and manner of sale, including negotiated sale, and other details of said notes consistent with the provisions of this resolution and the General Statutes and shall have all powers and authority as set forth above in connection with the issuance of bonds and especially with respect to compliance with the requirements of the Internal Revenue Code of 1986, as amended, and regulations thereunder in order to obtain and maintain issuance of the notes in tax exempt form.

Upon the sale and issuance of the bonds authorized by this resolution, the proceeds thereof, including any premium received upon the sale thereof, accrued interest received at delivery and interest earned on the temporary investment of such proceeds, shall be applied forthwith to the payment of the principal and interest of all notes issued in anticipation thereof or shall be deposited in trust for such purposes with a bank or trust company, or shall be applied or rebated as may be required under the provision of law. The remainder of the proceeds, if any, after the payment of said notes and of the expense of issuing said notes and bonds shall be applied to further finance the appropriation enacted herein.

In each fiscal year in which the principal or any installment of interest shall fall due upon any of the bonds or notes herein authorized there shall be included in the appropriation for such fiscal year a sum equivalent to the amount of such principal and interest so falling due, and to the extent that provision is not made for the payment thereof from other revenues, the amount thereof shall be included in the taxes assessed upon the Grand List for such fiscal year and shall not be subject to any limitations of expenditures or taxes that may be imposed by any other Town ordinance or resolution.

Pursuant to Section 1.150-2 (as amended) of the federal income tax regulations the Town hereby expresses its official intent to reimburse expenditures paid from the General Fund, or any capital fund for the Project with the proceeds of the bonds or notes to be issued under the provisions hereof. The allocation of such reimbursement bond proceeds to an expenditure shall be made in accordance with the time limitations and other requirements of such regulations. The Finance Director is authorized to pay Project expenses in accordance herewith pending the issuance of the reimbursement bonds or notes.

The Town of Westport, or other proper authority of the Town, is authorized to take all necessary action to apply to the State of Connecticut, and accept from the State or other parties, grants, gifts and contributions in aid of further financing the Project. Once the appropriation becomes effective, the First Selectman, or other appropriate official of the town, is hereby authorized to spend a sum not to exceed the aforesaid appropriation for the Project and is specifically authorized to make, execute and deliver any contracts or other documents necessary or convenient to complete the Project and the financing thereof.

The Committee is hereby authorized to take all action necessary and proper for the sale, issuance and delivery of the bonds (and notes) in accordance with the provisions of the Town Charter, the Connecticut General Statutes, and the laws of the United States.

## Appendix III – Item #4

**RESOLVED:** That upon the petitioned request of at least 2 RTM members, an ordinance to prohibit the storage, disposal, or use of fracking waste or any products or by-products thereof in or by the Town of Westport, is hereby approved. (Second reading. Full text is as follows)

**Ordinance Prohibiting Wastes Generated from Oil & Gas Drilling and Extraction Activities**

**Purpose.**

The prohibition of waste generated from drilling and extraction activities of natural gas and oil is hereby declared necessary for the protection of the health, safety, welfare and property of the residents of the Town of Westport, pursuant to the provisions of Section 7-148 of the Connecticut General Statutes that pertain in any way to the protection of health, safety, welfare and property, as the same may be amended from time to time.

**Definitions for the Purposes of this Ordinance:**

For the purposes of this Ordinance, the following terms, phrases, and words shall have the meanings given here, unless otherwise clearly indicated by the context:

*a) “Hydraulic fracturing”* shall mean the fracturing of underground rock formations, including shale and non-shale formations, by manmade fluid-driven techniques for the purpose of stimulating oil, natural gas, or other subsurface hydrocarbon production.

*b) “Natural gas extraction activities”* shall mean all geologic or geophysical activities related to the exploration for or extraction of natural gas, including, but not limited to, core and rotary drilling and hydraulic fracturing.

*c) “Oil extraction activities”* shall mean all geologic or geophysical activities related to the exploration for or extraction of oil, including, but not limited, to, core and rotary drilling and hydraulic fracturing.

*d) “Natural gas waste”* shall mean: 1) any liquid or solid waste or its constituents that is generated as a result of natural gas extraction activities, which may consist of water, brine, chemicals, naturally occurring radioactive materials, heavy metals, or other contaminants; 2) leachate from solid wastes associated with natural gas extraction activities; 3) any waste that is generated as a result of or in association with the underground storage of natural gas; 4) any waste that is generated as a result of or in association with liquefied petroleum gas well storage operations; and 5) any products or byproducts resulting from the treatment, processing, or modification of any of the above wastes.

*e) “Oil waste”* shall mean: 1) any liquid or solid waste or its constituents that is generated as a result of oil extraction activities, which may consist of water, brine, chemicals, naturally occurring radioactive materials, heavy metals, or other contaminants; 2) leachate from solid wastes associated with oil extraction activities;

and 3) any products or byproducts resulting from the treatment, processing, or modification of any of the above wastes.

f) “*Application*” shall mean the physical act of placing or spreading natural gas waste or oil waste on any road or real property located within the Town of Westport.

**Prohibitions:**

1. The application of natural gas waste or oil waste, whether or not such waste has received Beneficial Use Determination or other approval for use by DEEP (Department of Energy & Environmental Protection) or any other regulatory body, on any road or real property located within the Town for any purpose is prohibited.
2. The introduction of natural gas waste or oil waste into any wastewater treatment facility within or operated by the Town is prohibited.
3. The introduction of natural gas waste or oil waste into any solid waste management facility within or operated by the Town is prohibited.
4. The storage, disposal, sale, acquisition, transfer, handling, treatment and/or processing of waste from natural gas or oil extraction is prohibited within the Town.

**Provision to be included in bids and contracts related to the construction or maintenance of publicly owned and/or maintained roads or real property within the Town:**

1. All bids and contracts related to the retention of services to construct or maintain any publicly owned and/or maintained road or real property within the Town shall include a provision stating that no materials containing natural gas or oil waste shall be utilized in providing such a service.
2. All bids and contracts related to the purchase or acquisition of materials to be used to construct or maintain any publicly owned and/or maintained road or real property within the Town shall include a provision stating that no materials containing natural gas or oil waste shall be provided to the Town.
3. The following statement, which shall be a sworn statement under penalty of perjury, shall be included in all bids related to the purchase or acquisition of materials to be used to construct or maintain any publicly owned and or maintained road or real property within the Town and all bids related to the retention of services to construct or maintain any publicly owned and/or maintained road or real property within the Town: “*We \_\_\_\_\_ hereby submit a bid for materials, equipment and/or labor for the Town of Westport. The bid is for bid documents titled \_\_\_\_\_. We hereby certify under penalty of perjury that no natural gas waste or oil waste will be used by the undersigned bidder or any contractor, sub-contractor, agent or vendor agent in connection with the bid; nor will the undersigned bidder or any subcontractor, agent or vendor agent thereof apply any natural gas waste or oil waste to any road or real property within the Town of Westport as a result of the submittal of this bid if selected.*”

**Penalties:**

This ordinance shall apply to any and all actions occurring on or after the effective date of this ordinance. In response to a violation of this ordinance, the Town of

Westport is empowered to a) issue “Cease and Desist” orders demanding abatement of the violation, b) seek any appropriate legal relief, including immediate injunctive relief, as a result of any violation of this ordinance; c) file a complaint with any other proper authority; and d) require remediation of any damage done to any land, road, building, aquifer, well, watercourse, air quality or other asset, be it public or private, within the Town of Westport. The Town of Westport may recoup from the offending person(s), jointly and severally, all costs, including experts, consultants and reasonable attorney’s fees, that it incurs as a result of having to prosecute or remediate any infraction of this ordinance. For any violation of this Ordinance, the Town of Westport may also impose fines in the amount of \$250 per violation per day, or such other amount as is allowed by law, and seek any other remedies allowable under the law.

#### **Enforcement**

The First Selectman of the Town of Westport, or any Town official designated by the First Selectman, are authorized to pursue penalties against any person(s) who commits violations of this ordinance. The involvement of any Westport officials will not require testing of waste products to determine chemical contents. Such officials may engage the assistance of DEEP or third party testing facilities to determine the chemical contents of any waste products suspected to violate the terms of this Ordinance.

#### **Severability**

If any clause, sentence, paragraph, subdivision, section or part of this Ordinance or the application thereof to any person, individual, corporation, firm, partnership, entity or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, effect or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this Ordinance or in its application to the person, individual, corporation, firm, partnership, entity or circumstance directly involved in the controversy in which such order or judgement shall be rendered. To further this end, the provisions of this Ordinance are hereby declared to be severable.

#### **Conflicts with other Ordinances or Codes**

In any case where a provision of this Ordinance is found to be in conflict with a provision of any other ordinance or code of the Town of Westport, the provision that establishes the higher standard for the protection of the health, safety, welfare and property of the residents of the Town of Westport shall prevail. In any case where a provision of this Ordinance is found to be in conflict with a provision of any other ordinance or code of the Town of Westport, which other ordinance or code establishes a lower standard for the protection of the health, safety, welfare and property of the residents of the Town of Westport, the provisions of this Ordinance shall be deemed to prevail, and such other ordinances or codes are hereby declared to be repealed to the extent that they may be found in conflict with this Ordinance.

#### **Transportation**

Nothing in this ordinance shall be interpreted to ban the transportation of any product or by-product described herein on any roadway or real property within the Town of Westport.

This ordinance shall take effect thirty (30) days after its legal adoption.

