

The Shelton Planning & Zoning Commission held a Special Meeting on July 21, 2005 at 7:00 P.M. in the new Shelton Intermediate School Auditorium, 675 Constitution Boulevard North, Shelton, CT.

Members present: Chairman Alan Cribbins
Comm. Patrick Lapera
Comm. William Papale
Comm. Jason Perillo
Comm. Anthony Pogoda

Staff present: Richard Schultz, Planning Administrator
Anthony Panico, Planning Consultant
Pat Garguillo, Court Stenographer
Diana Barry, Clerk

Also attending this evening Assistant Corporation Counsel Raymond Sous

Tapes (2) and correspondence are on file in the City/Town Clerk's Office and the Planning & Zoning Office. Documents and letters read into the record were dated and received at the time of hearing are part of the Planning & Zoning file. Attachments are not available on the website.

Public Hearing

AVALON BAY COMMUNITIES, INC. (SHELTON I)

1. **Application # 05-20**, Joseph Williams on behalf of Avalon Bay Communities, Inc. to amend the Zoning Regulations by establishing a new district entitled HOD (Housing Opportunity District) and related standards –(continued from 7/19/05)
2. **Application # 05-21**, Joseph Williams on behalf of Avalon Bay Communities, Inc. to amend the Building Zone Map by changing from R-1 to HOD, Armstrong Road/Daybreak Lane (Map 19, Lots 2, 3, 4, 5) – (continued from 7/19/05)
3. **Application # 05-22**, Joseph Williams on behalf of Avalon Bay Communities, Inc. for Site Plan Approval (302 Apartment units) Armstrong Road/Daybreak Lane (Map 19, Lots 2, 3, 4, 5) – (continued from 7/19/05)

Chairman Cribbins opened with the Pledge of Allegiance and Roll Call. He stated that we would like to close these hearings and begin deliberations. And the reason I think that we could it is if you look in back of where Richard Schultz is sitting you will see that there's a stack of paper roughly 2 feet high and we probably have 10 hours of correspondence that our Secretary has recorded for us, along with traffic studies and data that we have from the Community and the applicant. So we certainly have enough data. I think we understand fully, understand the position of the applicant, we also fully understand the position of the residents.

So our goal tonight would be two things, we will allow Mr. Trautman because he is an Intervener living in the general area, we would hope he doesn't spend a whole lot time summarizing all that we have heard and we hope that he gives us something new to this application. He has documents to present other than what we have heard, we will receive them, and he won't read them all because we will review those as we try to reach our resolution. After Mr. Trautman is finished and we will receive additional data from one more person, the applicant gets to have a closing statement and we will then close the hearing to move on to our deliberations. So thank you for your cooperation and we don't want to repeat any of the testimony that we have heard including traffic, blasting, home values, multi-housing, safety, etc., we have heard a lot of information during the course of these hearings.

A gentlemen in the audience questions Chairman Cribbins asking if he could comment on something that he has experienced personally with regard to the over crowding in the schools in this area. I think it is pertinent and I ask that I be given that opportunity to speak. That is O.K., stated Chairman Cribbins.

Comm. Pogoda read a letter from the Homestead Suites in opposition of these applications. The letter states they feel there will be negative impact to the hotels in Shelton. We have temporary short-term and long-term housing. Avalon is a direct competitor and can only have a negative impact on our business, which will then affect our tax revenues to the City.

Richard Jager, 2 Copel Lane, addressed the Commission. He read a letter from **Joseph Kubic, an Attorney with Harlow, Adams & Friedman, representing T. Tucker Properties, LLC, an adjacent landowner. This letter was read, received and is part of the Planning & Zoning file on these applications.** Further I would ask that the minutes of the Public record from not only the Avalon Shelton I Inland/Wetlands Application and the Cranberry Hill Estates previous application be included by entrance into the Public Record this includes dates, included but not limited to, Inland/Wetlands Commission meeting dates on July 10, 2003, August 14, 2003, September 11, 2003, January 27, 2005, February 3, 2005, March 2, 2005, April 14, 2005 and April 28, 2005, stated Richard Jager.

Attorney Williams asked the Chairman if he could respond to Attorney Joseph Kubic's letter and Chairman Cribbins asked if he could just take these two people and then he would allow Attorney Williams to respond.

John McFadden, 126 Armstrong Road, addressed the Commission.

John McFadden stated I want to start by saying I will be brief and I promise I will. This is something that is difficult for me to talk about and it is something that my wife and I have discussed at great length before sharing this with you tonight.

In September of 2002, my daughter was 6 years old, I am sorry she was 4 years old, she was borne in November which meant she would be entering kindergarten at an early age. We believe she would be able to do that.

The reason we want to share this with you is my concern is with increase in housing to the area and the infrastructure. Not only with the school system but also with the busing involved, stated John McFadden. I will share this with you briefly.

So the first day of school, notification in the newspaper, bus stop 126 Armstrong Road, perfect right at the base of the driveway. Perfect take the day off, put the daughter on the bus, love you, see you, bye. Pictures the whole thing. This was a practice day this was not the first actual day. Off my daughter goes on the school bus. A couple of hours later school bus pulls up, cameras, my mom, grand mom, my wife and my daughter gets off the bus. Great, beautiful.

The next day, first real day, the bus pulls up, I didn't take the day off because I had seen it, done it, got the pictures, so off they go. She was going to school late in the morning and would return late in the afternoon with the rest of the children. So my wife walks down, we have a 360-foot driveway, here comes the bus, there goes the bus. It didn't stop. There was no notification that that practice run, that the real run would drop her off at the intersection of James Farm Road. So she ran up the hill and chased down the school bus. She finally caught up with my daughter who was standing on Bridgeport Avenue at the trailer park. Because by the time my wife got to the car, and Mr. Sylvester is well aware of this, and we had a brief discussion and we are concerned that repercussions against my daughter and my three year old son. We didn't run to the news because we got her and everything was O.K., stated John McFadden.

At that point, my wife was uncomfortable putting her on bus until we could get the bus stop changed. There is a lot of red tape involved with that. The school system has no control over the bussing it is an outside firm. They told us it would take a few days to iron it out but we will get it ironed out. My wife said that in the meantime I would prefer to pick up my daughter in the evening. It is not a problem, you go ahead.

The way it unfolds the way the City works at the end of the school day, the kindergarten children go first so they get to the proper buses, the pickups went to the cafeteria and the walkers went on their way. So my wife is waiting in the cafeteria, the bell rings and my daughter who at the time had bright red hair, no daughter, where's my daughter? Looking around, there is no one to ask, you know the hustle and bustle of everyone receiving their children. So my wife gets nervous, the bell rings, the hallways are crowded with children and she finally tracks down a faculty member. They call back the school buses and they can't find my daughter. Apparently she was put in the walkers line and a School Crossing Guide who had never seen her before because of her bright red hair, says where are you going? I am walking, she answers. Where do you live? 126 Armstrong Road, she answers.

Meantime my phone at work goes off and I hear a frantic message from my wife that they can't find our daughter. It was terrifying. I am very concerned with the increase of the amount of children that this City will have to pickup and put through the school system given the amount of seating that we have now and what my family has been through.

I am opposed to an increase, to a project of such magnitude that could possibly have 600 children, 900 children, 500 children, we don't know. I thank you for your time. I wanted to share this brief story and it was a terrifying experience. My main concern and I agree with everything that I have heard in the past year with everything that has been kicked around from 49 to 302. Thanks for your time, stated John McFadden.

Attorney Williams, addressed the Commission, in response to the letters. When the testimony is all in I will present a rebuttal to all the information that was presented. It will not be a closing statement from me but it will be a brief presentation from our team in response to the evidence presented.

In response to Attorney Kubic's letter, I object to the Commission wholesaling the record to incorporate other Commissions and other applications into this record. If someone wants to incorporate something into the record they could discuss it and specify the documents and what testimony they are talking about. Just as we did, we presented you with documents that have been on record for quiet a while. So people can look at that and decide if they want to say something about them, stated Attorney William. To come in here and say I am incorporating by entrance the entire Wetlands record and the entire record on the Cranberry Hill applications, which is a completely different development, is unfair, it ambiguous, and it is unclear to what documents are being presented into the record and you certainly can't do that on the last night of the hearing when we have no opportunity to figure out what documents are being presented to the Commission and on which you are being asked to rely on when you are making your decision and have no opportunity to respond to them, he added. So you are depriving the applicant the rights to know the evidence that is being presented and respond to it, and I object to that incorporation and it must be done rather by specific documents, presented and received tonight.

Thank you I will refer to Assistant Corporation Counsel for a ruling on that, stated Chairman Cribbins.

Richard Jager, stated I would like to comment that the Inland/Wetlands applications tried to have the original application as a continuation of the Cranberry Hill Estates so they are quiet well aware of what documents were included in the Cranberry Hill Estates Inland/Wetlands application because they requested the continuation of original. So they are very aware of what is in the documents for Avalon I, it is their application.

John R. Trautman, I am not an Attorney, I am representing the 14 signed Interveners of WER1, I am an Ecological Consultant, addressed the Commission. He presented his qualifications and gave 1 copy to the Counsel for the applicants and 11 copies for the Commission. (All of his documents are being read into the record, presented, received and date stamped in and are being made part of the Planning & Zoning file on these 3 applications – as previously stated).

Mr. Trautman read a letter addressed to the Chairman of this Commission. The interveners have engaged me and I have 25 years of experience. He is going over his qualifications. He presents the original to the clerk, a copy for Counsel of the applicant and 11 copies for the Commission.

I represent the body of people known in Shelton as WER1 and the 14 signers of an environmental intervention. I will be introducing some background prior to my discussion of the intervention. I will be dispersing two pieces of information, one is entitled Connecticut General Statutes that describe the intervention. I will be giving one copy to the Counsel for the applicant, and 12 copies (includes 1 original) to the Commission. I would like all these copies entered into as exhibits for the intervening party, stated John Trautman. Additional I will provide a background summary of intervention representations and decisions. This is all on behalf of the intervening Party WER1. I would like the record to show I gave 1 copy to Counsel for the applicant, and 12 copies (includes 1 original) to the Commission.

I will spend a little bit of time going over the Intervention Representations and Decisions, stated John Trautman. What I want you to understand is that the intervening parties have a right to provide all the evidence in the full development of their evidence into the record. It would be improper for the Commission to restrain the intervening Party or limit the intervening Parties participation in the proceedings. My involvement may take as long as 45 minutes to one hour. I have a number of exhibits to go into, I have several reports that have to be filed, I have several reports to discuss and given the fact that the applicants presentation took nearly two hours I think it would be (inaudible) upon the Commission to allow me at least that 45-60 minutes of their time.

Now granted on this representations and decisions information it talks about the burden of proof. Typically on an application the burden of proof falls on the applicant. Once the Intervention has been filed there is a 2nd procedure that comes to play. At that point the intervening Party must sustain the allegations. So subsequently there is a burden on the applicant to support his application and there is burden of the proof on the Intervener. As the applicant can rebut the information so the law states that the Intervener also can rebut. I request that the Interveners have that opportunity and I request that any new information that came in this evening or new as rebuttal that this hearing be left opened so that the interveners can review and assess any new information that comes in.

John Trautman stated my client, WER1, has asked that the entire IWW record for 04-54, that would have been the Avalon I Wetlands proceedings be incorporated in its entirety into these proceedings.

I have supplied you with some legal information on the intervention and given you some background information on the intervention so now I am going to take it out of the legal arena because I am not an Attorney, I also would like to add that I am not a Licensed Professional Engineer, I am not a Soil Scientist, and I am not a Wetlands Scientist. I am an ecologists and the reason why I am here tonight functioning as an Ecological Consultant are with regard to the natural resources to be impacted by this proposal.

What an Ecologist does is he studies, understands, evaluates and forms an assessment on the interaction of the living and nonliving natural resources contained in the subject proposal. So tonight I will be speaking not as, once again, a Professional Engineer, not a Soil Scientist, not a Geologist, not a Hydrologists, and not as a Wetlands Scientist but as an Ecologist. My testimony as an Expert Ecologist will be provided this evening.

In terms of the intervention I will take it out of the legal arena and put my own interpretation on it. What does Section 22.8.19 allow? Number 1 and foremost it provides the public or the intervening Party a chance to stand up to bare witness on behalf of environment. Where this comes into play, is something like a vernal pool, something like a cranberry bog, something like an aquatic resource doesn't have vocal chords, doesn't have a voice of its own, stated John Trautman. What the intervention allows is the intervening Party provides the voice for the natural resources that don't have a voice of their own. So number 1 we're baring witness and number 2 we are providing a voice for those natural resources that will be threatened by this proposal.

My comments tonight about natural resources because the intervention involves the natural resources for the City of Shelton and the State of Connecticut. There are three primary natural resources that include biological, hydrological and geological. There is a common denominator, they are all linked together so I will go through this and provide that linkage for you. That linkage, that common denominator is something as simply as every day as water.

Mr. Trautman continued by stating that when we first met on June 21, 2005 I presented the verified petition to intervene. It is lengthy and it is important to get some of this directly into the record because if this goes to an appeal perhaps the Superior Court Judge will wade through several feet of documents and he may (inaudible) so it is important that I get some of this stuff into the record verbatim because if there is a transcript requested it would be provided and if this should go to the next level I think it is very important to build a very solid and a very comprehensive record.

On the first page of the invention we talk about the subject property, its location and what the intention of the applicant is here. It is a 3-part proceeding. They are looking for Application # 05-20 to amend the zoning regulations to create a new district called the Housing Opportunity District. They are also looking for Application # 05-21 to amend the current building zone map by adding this new district (HOD). And finally they are looking #05-22 for special exception approval of the site plan.

Item # 2 contains a brief description of the property that includes woodlands, uplands, bedrock out crops, ledges, inland/wetlands, water course, a vernal pool, an underlying aquifer, it is part of separate water sheds, and it contains numerous wildlife habitats.

Number 3, Avalon Bay Communities has submitted applications to Shelton Planning & Zoning Commission for approval of activities that will negatively impact natural resources on the subject property, the Cranberry Pond Basin and the Far Mill and Pumpkin Brown Brook watersheds.

Number 4, the Cranberry Bog and associated wetlands of the Cranberry Pond are significant natural resources located in the Town of Stratford within 500 feet of the proposed Avalon Shelton development project.

Number 5, the Cranberry Bog is a unique, precious and non-renewable natural resource of the State of Connecticut. It is the only bog located in the Town of Stratford and it is one of a very small number of natural bogs existing in the State of Connecticut. The uniqueness of its plant life and ecosystems makes the Cranberry Bog environmentally critical and necessarily threatened.

Number 6, Cemetery Pond Brook is a Class A stream that flows from the Cranberry Bog to Pumpkin Brown Brook and ultimately the Housatonic River.

Item 7, storm water run off from an area of the subject property that lies within the Pumpkin Brown Brook water shed will be diverted and discharged into the Far Mill River water shed via Black Brook.

Item 8, storm water run off from a significant portion of the development will drain into a corridor known as Cemetery Pond Brook and through a wetlands that discharges directly into the Cranberry Bog.

Number 9, this administrative proceedings involves conduct that has or which is reasonably likely to have the effect of unreasonably polluting, impairing or destroying the Public trust in the air, water and other natural resources of the State in the following ways

9A. The proposal will result in the significant destruction of the existing woodlands, which currently provides valuable (inaudible) filtration, run off remediation, nutrient cycling, storage conversion, ground water recharge and water quality renovations and improvements.

9B. The proposal includes the extension, cutting and removal of trees, stated John Trautman.

End of Side 1A of 2B, Tape 1 of 2 at 7:53 P.M.

John Trautman continued abundance and distribution (inaudible) and destabilize the ecological integrity of the subject properties and adjacent areas of accompanying watersheds.

9C. The proposed development will alter the grade in the uplands area adjacent to the location of the vernal pool, which is ecologically necessary to provide a buffer to ensure successful reproduction, and corridors for save movement and distribution of vernal pool species.

9D. The plan of development will require the excavation, disturbance and modification of a significant amount of soil and replacement of same with (inaudible) surfaces such as driveways, parking areas, sidewalks, decks, roofs and lawns. All of which will alter the existing drainage patterns, reduce ground water infiltration and recharge, degrade wetlands and water course, compromise the vernal pool, impair (inaudible) resources and processes, and adversely impact the underlying glacier til aquifer.

9E. The proposed plan of development will require blasting or heavy excavation to remove a significant (inaudible) of ledge of a rock typed known as a pumpkin brown member of Harrison nice. This type of rock underlies 70% of the water shed including the entirety of the proposed housing development. This rock is of special concern because it can contain relatively reactive (inaudible) whose weathering can release very high acidity and heavy metals. Weathering is accelerated when bedrock is exposed during blasting or disturbed during heavy construction. Additional (inaudible) resulting in service run off can alter water chemistry by reducing the PH.

Plant life in the bog is unique and dependent upon the water chemistry because of its location at the head of the water shed the plant life and ecosystems within the Cranberry Bog are especially vulnerable to changes in water chemistry and presentation, stated John Trautman.

9F. The proposed plan of development will irretrievably and irrevocably disrupt and degrade existing hydrological and ecological resources that process through the significant alterations of the existing landscape, topography, and service drainage patterns and the significant diversion of existing service drainage patterns from one separate (inaudible) water shed to another. This will adversely impact ground water infiltration and recharge, ground water movement and distribution, aquifer recharge and storage, wetlands screen flow maintenance and the maintenance of ground water characteristics within the Cranberry Pond Basin and the Far Mill River and Pumpkin Brown Brook water sheds.

9G. The plan of development will introduce the run off of harmful pesticides, vermicides, fungicides, household and (inaudible) chemicals, snow removal and deicing agents, and other contaminants and pollutants into the ground water, service drainage and associated water sheds, water courses, and regulated areas on and adjacent to the subject property and into the Far Mill River water shed.

9H. The plan of development will introduce the run off of harmful pesticides, vermicides, fungicides, household and (inaudible) chemicals, snow removal and deicing agents, and other contaminants and pollutants into the ground water, service drainage and associated wetlands and water sheds, water courses, and regulated areas on and adjacent to subject property and into the Pumpkin Brown Brook water shed.

9I. The cumulative effect of this proposal in conjunction with the other developments in the area and conditions nearby will result in the degradation of the (inaudible) quality in and around the subject area.

9J. Feasible and prudent alternatives exist for post site development which is consistent with reasonable requirements for public health, safety and welfare and requirements to protect air, water and other natural resources associated with the subject property that include reducing the proposed number of housing units to 11 additional house lots, reduce the number of housing units to 22 units located on abbreviated lots along the (inaudible) corridor, avoid unnecessary site disturbance and landscape modification so as to maintain existing (inaudible) patterns and preserve the ecological and hydrological integrity of the water shed, increase undisturbed buffers of the associated wetlands, woodland, and water course, set aside additional land for conservation easements, replace some or all of the (inaudible) with passive recreation or ecological (inaudible). These alternatives will decrease site disturbance, preserve a greater amount of buffer and habitat area, and enhance the ecological and hydrological entirety, (inaudible) benefits and values of the drainage basin and associated wetlands and water sheds.

That is the intervention, stated John Trautman. As I stated before the 3 primary reasons are biological issues, hydrological issues and geological issues. There is a common thread, a common denominator that binds all three issues that is something as simply as water. Be it service water, ground water, we have a great deal of concern with the water as it effects the biological resources on and off the site and the interaction of the geological resources on and off the site and the actual impact of water within the hydrological site both on site and off site. At this point I would like to distribute to the Commission a schematic showing the hydrological site, a lot of my presentation tonight will be focusing on the hydrological reaction with resources on and off the site. He is presented one copy to Counsel for the applicant, one original and 11 copies to the Commission.

First I would like to go over what is on site. There is a vernal pool on the site. How do I know it is a vernal pool? During the wetlands process the applicants Expert Michael Kline testified that there is in fact a vernal pool on the property that is not distributed. He presented pictures of the vernal pool.(3) The date of the picture in April 19, 2005. This is a vernal pool John Trautman stated as he showed picture number 2. These pictures were taken from the Spear property. The picture shows the features that are not yearlong features. The black stains on the leave shows that there was more rain. There are some buffers and you can see the tree trunks. This vernal pool is probably, it is the most important, biological feature on this property.

There has been a learning curb as to the value of the vernal pools. Numerous (inaudible) have recognized the importance of these vernal pool habitants primarily because of the importance they play both in the breeding cycles and life cycles of reptiles. They may be present in the early spring, they may disappear in the hot months, and they may reemerge in the early fall. These are very important biological features.

These vernal pools are not feed by surface water, they are not linked to a stream corridor or a stream system. These are primarily, they are linked to hydrological cycles through ground water discharge and as ground water amounts fluctuate during seasons the actual vernal pool on the surface goes through a period of alteration. During the wet months when there is high ground water recharge, these pools are robust. As ground water recharge diminishes, as ground water table fluctuates these features disappear but they are linked to the property and the proposal. They are dependent on ground water. What is being proposed on the subject property doesn't take into effect anything associated with a hydrological budget. Sure they did run off calculations with surface run off. Mr. Williams submitted, just the other night, a report prepared by Millone & McBroom, where they are trying to gauge the water shed diversion, trying to determine how much of the site run off would be diverted? That doesn't really answer the question with regard to the concern for the vernal pools.

John Trautman continued. The only way that you can fully understand the hydrology associated with the vernal pool is by conducting a detailed hydrological budget survey. That is why I gave you that hand out about hydrological cycle, he added. Everything has to be factored into including precipitation, the immediate run off, infiltration, deep percolation, ground water recharge, ground water storage, ground water movement, ground water distribution, ground water discharge, evaporation, and evapotranspiration. All of these things are incorporated as part of the hydrological cycle to be qualified and quantified to show what is the hydrological budget on this property. Without that budget in hand, there is no way that the applicant or any of his experts can predict that this vernal pool will remain and remain as a viable vernal pool. You must know the ground water recharge amounts, the ground water duration, and movement of the ground water. This is essential in protecting this vernal pool. Without they can't make predictions with the proper preservation and protection and management of this very critical aquatic resource.

Other places where the hydrological budget comes into play, is this will hit home, property owners on Daybreak Lane and Partridge Lane, because they are on wells. Without the determination of the hydrological budget how can we look at ground water recharge. There is an aquifer. They are on wells. Between site alterations and putting some of into drainage, surface drainage, some of the roof water will go into ground infiltrators. That is all guesswork. The real benefit of a hydrological survey is that they will qualify and quantify how much will be needed for recharge and specifically will go to recharge the shallow wells in this area.

I can talk about the aquifer. It is not a drip aquifer. It is a shallow til aquifer. It is not substantial. It could be substantial enough to provide enough recharge for independent use on that property. Any reduction due to site activities, where they are diverting and doing all these activities that will have an adverse impact on ground water recharge conditions this will result adversely to the aquifer and the people on Daybreak and Partridge Lane rely on.

I want to talk about natural resources off site that still can be linked by hydrological (inaudible). Cranberry Bog and Cranberry Pond as to where they sit on the Pumpkin Brown Brook water shed, Cemetery Pond Brook, there are some screens. What hasn't been determined is how much of Cranberry Pond and Cranberry Bog is driven by ground water discharges? The applicant can't tell you that and I can't tell you that. As an Ecologist for 26 years I can tell you that it is likely that the surface water hydrology and ground water hydrology is the driving force behind this critical system. There is a ground water link and it is having an impact on the water levels, quantity and quality in the Cranberry Bog and Pond.

The applicant is proposing a number of activities, which will alter ground water tables. He is paving, he is putting in roofs, on top of this he is putting (inaudible) infiltrators, some of this he will put in detentions, there will also be a diversion. The applicant has acknowledged and the smoking gun is right there, the fact that they don't want to put any direct service discharges in to the Cranberry Pond acknowledges that they have a concern with the quantity and quality of the run off coming off the site post development, stated John Trautman.

All those things I mentioned in the intervention, everything that comes off the lawns, everything that comes off the paved surfaces, and sure they have some practices in place. There are separators and that is fine for the surfaces but that has no barring for the chemicals that get incorporated into the actual water. That will be diverted eventually off of the site, the rest will be diverted past the pond.

There is another diversion, and it is my opinion that the secondary diversion rain fall that falls on part of the property would empty via the pond and part of the brook as part of the water shed, some of that will be diverted to the Far Mill River water shed via the Black Brook. The applicants Engineer has not eluded to that, stated John Trautman. The concern with the pond and bog is a distraction and not look at the site impact to the other watersheds.

I would like to speak now as an Ecologist with over 20 years of teaching, research and field experience. When it rains, precipitation, rain and snow, where that snowflake melts, where that rain drop hits, is part of the watershed. Everything is water shed. The watershed it enters is the watershed it needs to remain part of. It is contradictory and contrary to all the (inaudible) ecology to take drainage from one watershed to another. Of course the applicant and his engineer are going to say we do it all the time. You know what every time they do it it's wrong. This raindrop that hits the ground in this water shed needs to stay in that water shed that is part of the natural cycle. The engineer says he does it all the time and that doesn't make it right. As an ecologist I find it offensive.

I would like to introduce into the record now a separate study done by Miss Penny Sharp, she is a consultant who did a study on behalf of the Town of Stratford. He presented one copy for additional tagging and that will be incorporated into the record along with an aerial photo with a red cross with the lay of the land between the proposed activities in relation to the bog and the pond. I have a secondary report prepared by Gaboury Benoit from Yale. I will use that to substantiate my concerns with regard to some of the geological issues on the property, stated John Trautman.

He states that site development for the project will necessitate a significant amount of earth removing activities. Once vegetation is removed then soil can be removed with heavy equipment. If you walked the property there are numerous exposed ledges and bedrock out crops. There will be a tremendous amount of heavy excavation used to remove this rock, recontour, regrade and make the site compatible for what they are proposing.

It is a concern. They are not going to be out there with a heavy machine that they call ripping, they won't be out there with a heavy machine (a hydraulic hammer) just banging and banging, they would be out there hammering for 6 months. It will require blasting. Because of the types of rock, that is the whole bowl of wax with Professor Benoit's letter, because this type of rock that underlies the entire property as well as 70% of the water shed.

The rock in question is a type of bedrock that is a type of nice. What it does it has a major composition of pie right. Beneath the ground pie right is inactive. When it is exposed during excavation, two things happen, an oxidation takes place along with a chemical process that allows the oxygen in the pie right to release the sulfur content in the rock. That also happens when it comes in contact with water. The H₂O is additional interaction even more so with the air. Surface water or drainage the sulfur is very acidic and well impact the PH with more acid. You will have high acid surface run off. There will be a chemical change in regard to ground water once it is exposed. Some will run off and there will be a deduction in the PH and this will degrade ground water quality and surface water quality.

I would like to enter into the record this is called a mapping from the DEP and it is a three page document here, but unfortunately I only have one copy of it here, stated John Trautman. It is a water quality, surface water and ground water quality, the Connecticut River and South Central Coastal Basins it was adopted in 1993. It talks about water quality classes both ground water and surface water. It is a 3-page document and it has been updated. It was updated in 2002. It is very important. I spent a lot of time at the Natural Resource Data Bank. It is smack right in the middle of the proposed project site is a soft fuzzy red dot. It is a hot spot as picked up by the Connecticut DEP. What that means is the determination has been made that ground water quality has been impaired there and it is subject to more of an impairment because of the release of the sulfites from the pie right. There is degradation and it will be magnified. I want to enter this into the record and this cement the argument that any disturbance especially the heavy blasting, the heavy earth removal, and the heavy excavation that is going to expose all that rock, it is a done deal as far as additional degradation to the ground water quality.

We have wells and we have numerous residents along Partridge and Daybreak Lane that depend upon those wells for their water supply. This is something that is far to risky and in the absence that the applicant can't tell you much about this. They haven't done the hydrological budget, they haven't done a detailed geological survey. They can't tell you how much rock is there. They can't tell you the chemical (inaudible) of that rock. These are all the things, that burden of proof are on the applicant, he has not provided that information.

On March 2, 2005 at the conclusion of IWW process here in Shelton, the Wetlands Commission asked the applicant for detailed studies, they asked for 3 studies. They asked for a detailed subsurface geological survey, they asked for a detailed hydrologic budget to be developed, and they asked for a detailed (inaudible) study. That was back on the 2nd of March. The applicant refused and denied the request. He didn't agree with the request. Those studies have not been performed, stated John Trautman.

I would like to get this incorporated into the record. It is an intervenor exhibit prepared by me. At the same time I would like to enter into the record Professor Benoit's from 8/292/003. This is a 5-page report with a table at the end. He would also like to enter into the record a letter from himself dated July 19, 2005. I would like the record to indicate he had a copy for the applicant's counsel, and there are 11 copies for the Commission. (These exhibits and letter, were received dated stamped in and made part of the Planning & Zoning file).

It is important that I read some of this into the record. I won't read all of it, stated John Trautman.

The letter is addressed to the Planning & Zoning Commission and it states he has been engaged by the intervenors to render a professional opinion as to the proposals impact to the natural resources of the City of Shelton and the State of Connecticut.

The next part of the letter goes through all the materials, application materials that I reviewed. Many of these were available through the Planning & Zoning Office and many were available through different State agencies, and such. I have also listed who I consulted with including Greg Cowell, Yale's research, and more importantly why I asked for the entire IWW's record be incorporated into these proceedings, because it was important for the oral and written testimony from that hearing. As well as the June 21, 2005 Planning & Zoning hearing and I ask that all the testimony from the public be added from July 19, 2005, stated John Trautman.

Here is my evaluation. Having completed a comprehensive assessment of the post (inaudible) development, application materials, biological and hydrological sources it is my findings that a proposal of this scale suggested can't be conclusively reviewed without the assistance and benefit of additional scientific investigation and studies.

These scientific investigations are absolutely necessary to determine the character and magnitude of the adverse impacts to the hydrological and ecological functions and processes on subject property and associated watersheds and drainage basins.

The (inaudible) detailed subsurface hydrological study and analysis. This is necessary to develop a comprehensive hydrological budget.

Adverse impacts to ground water recharge and storage, ground water movement and distribution, aquifer recharge, water quality, wetlands, water course, and vernal pool characteristics and maintenance must be evaluated within the perimeters of the budget, stated John Trautman.

Adverse impacts associated with storm water management practices and water shed diversions must be carefully analyzed within the framework of the hydrological budget.

And I would like to add this without the benefit of this budget there is simply no way that the applicant or his experts can guarantee the outcome of this proposal. And more important there is no way that this Commission either quantitatively and qualitatively review what they are proposing in terms of the projected adverse environmental impacts to the natural resources of the City of Shelton and the State of Connecticut.

Reading on, stated John Trautman. A subsurface geological survey the applicant would be required to perform test borings and analysis of bedrock material across the site to determine the (inaudible) of material present in the Pumpkin Ground Nice. This is essential in determining the adverse impacts associated with the heavy excavation and blasting on the ground water resources against surface runoff. All the ground water linkage, how it effects the aquifer, how it effects the ground water, and how it effects the water quality and quantity on all site aquatic resources.

Also requested was a (inaudible) survey. This will allow the applicant to delineate all ecological habitats on the subject property with special attention to the identification of vernal pool habitat and those adjacent upland areas that are required for the continuing productive, preservation and protection.

It is one thing to conduct a vernal pool survey but what many progressive towns have done is that they relooked at the buffer areas that are necessary to protect the ecological integrity of these vernal pools. The vernal pool organisms need these adjacent areas for transportation corridors. They are only spending part of their life cycles in the pool. When they reach a certain level of maturity they leave the pool and go into the upland areas, stated John Trautman. Some Communities have adopted buffer distances of 100, 200, 400 and even as much as 600 feet are critically necessary to protect the movement and life cycles of the vernal pool organisms, he added.

My conclusion, it is my professional opinion that the application as presented doesn't provide the Commission with such information that is necessary for a fair and informed determination of the issues and is inconsistent with Section 31 of the Zoning Regulations of the City of Shelton. As such, an application with incomplete or insufficient information may and should be denied under Section 31.2.4 of the above referenced regulations. Without the analysis and results of additional scientific studies the Commission cannot conscientiously evaluate the proposal and render a fully informed decision. I would urge the Commission to take the only responsible course of action and deny the application for lack of critical information. Respectfully submitted, John R. Trautman.

That will conclude my presentation, that won't conclude my presentation I would like to add something. I touched on this at the tail end of the intervention document and I would like to advise the Commission that should the Commission sustain only one of the allegations pertaining to the intervention document then it forces the applicant and the Commission to evaluate the feasible and prudent alternatives.

I mentioned two of these, one of these would be the traditional subdivision on the subject property. The property is a little over 22 acre and not all of that is buildable because of steep slopes, wetlands and regulated areas. As a feasible and prudent alternative one option might be perhaps 11 maybe 12 one-acre building lots on that buildable portion that is consistent with the R1 zone. It is properly located and because of the soils on the property but according to the mapping, with the assistance of on site septic systems there could be 11-12 traditional one-acre lots on the site. This would not necessitate a sewer line to the property, stated John Trautman. In some cases they might get away with a traditional system but an engineer system could fit most of those lots.

A second prudent and feasible alternative would be a zone change to a CRD. Where you could use an abbreviated lot size, ½ acre lots and squeeze as much as 22 units, which would be consistent with the R1 zone. It is about 22 acre and it is apportioned to the size of the property. All the property would not be used and that would be below the ledge along the Black Brook. Once again with engineered septic systems this would be accomplished without sewers. This could be done without heavy blasting, this would protect the vernal pool on the site, this would not require any watershed diversions, this would protect the water quality, the water volumes and the water quantities reaching Cranberry Bog and Pond. There are a lot of environmental benefits to this suggestion. They get a portioned amount of units to the property, they avoid the blasting, they avoid the release of the contaminants, they preserve the water quality, they leave much of the site untouched, it provides protection and preservation for the vernal pool, it provides for buffers and there is no need for water shed diversion past the Cemetery Pond, there is no need for diversion from the Far Mill River water shed Pumpkin Brook via Black Brook. There are a lot of pluses to that. If the interveners could think outside the box it would be available to the applicant and his experts to think outside the box and come up with a feasible and prudent alternative. Both of those would have less adverse ecological impacts.

That does conclude my presentation, stated John Trautman. If there are any questions from Staff or members of the Commission, I would be happy to answer them.

Thank you very much for that and there are no questions at this time, stated Chairman Cribbins.

End of Side 1B of 2B, Tape 1 of 2 at 8:40 P.M.

Attorney Joseph Williams, addressed the Commission. Can I request that we get access to the letters that were submitted tonight for some members of our team. There were some things that we didn't get copies of, he added.

Chairman Cribbins you can take them right now but they are stamped so please just return them.

I will give a very brief summary at the end but what I would like to do know is give you expert testimony in response to the opposition testimony that you heard. I would ask Michael Klein to start.

Michael Klein, a Biologist, Soil Scientist and Certified Professional Wetlands Scientist, with an office in West Hartford, addressed the Commission. I apologize for not being present at the other meetings but this is a busy time for those of us in this field.

I would like to give the Commission a revised letter. (Said letter was received, date stamped in and made part of the Planning & Zoning file on these application.)

This letter was revised because of additional information stated Michael Klein. He went over the letter and in regard to the wetland delineation. The Wetlands Commission will make the final decision on this. The area that Mr. Jager is questioning is definitely not a wetlands area. There is absolutely no question about that. It does show some evidence of standing water on an occasional basis, but it doesn't meet the watercourse criteria and it is not a vernal pool.

Second, the reports of Penny Sharp and Gaboury Benoit that were entered into the record. The Bog and Pond is on private property and we don't have access to that area, stated Michael Klein. I have known Penny for years and I have every confidence in her ability to explain that environment successfully.

I want to quote her briefly from her letter, "the applicant should demonstrate that there would be no degradation water quality (inaudible) the development site." She talks about doing testing. She talks about redirecting water away from the Cranberry Pond and that is what we have done. It is appropriate and now that we have done what the Town of Stratford wanted they find fault with the proposal to deal with the storm water.

There were other things that were in the Wetlands permit with regard to the Bog and the Pond. The Wetlands asked that we use nitrogen fertilizer. It is feasible to use slow release or extended release nitrogen, stated Michael Klein.

The Town of Stratford asked us to bypass the Bog but Wetlands said that is a good idea but make sure it doesn't have an adverse impact. The Town of Shelton and the Town of Stratford agree that the storm water plan is adequate and balances the flow bypassing the pond. Takes the clean water back into the pond.

We have a number of letters from Greg Colwell with regard to the Wetlands and biological issues. He raised a lot of questions that are relative to the Commissions deliberations. There are a lot of errors of facts and interpretations. He mentions locating vernal pools on a topographical map sometimes you can use aerial maps.

He talks about box turtles requiring large tracts of land. That is not correct, Dr. Michael Clemens has written works on box turtles. They are sedentary and they don't move around. He characterized the box turtle as being reduced to a few breeding populations. The box turtle is classified as a species for special concern. That is not what the DEP thinks. It is not threatened or endangered.

Gregory Colwell talks about how wetland should be identified in the State of Connecticut. I am one of the soil scientist – dirt is what is on the bottom of your shoes- soil is what is between the vegetation and the underlying geological material.

He talks about 700 feet in Fairfield for setbacks of vernal pools. I practice in Fairfield on a regular basis and I can tell you that is flat not true. They (Fairfield) have established an upland review area that goes from 30 feet to 144 feet. It varies from what watershed you are in.

Colwell and Trautman talked about the lack of surveys done. The vegetation survey is done and we are writing up the report. The fieldwork is done and it will go back to the Wetlands Commission when we are ready to go back to them.

Bogs have a unique set of vegetation to them.

The wildlife survey is under completion. We were out there today and probably spend some more time out there in the next few days. You have to look at the middle of the growing season. I have identified one box turtle at the site. We don't know if we have a viable population. They are very long-lived animals.

There was a lot of discussion with regard to the birds on site. They are pheasants and there is information from the DEP and the Audubon Society.

There was talk about a hawk. We heard information in the record that is a migratory site.

With respect to wetlands respect there is no activities in the wetlands area and there is no activities within the systems or the setbacks.

I would like to comment on Mr. Trautman's discussion. I am a soil scientist and he made comments about the glacier til aquifer. I would not want the Commission to think that this was some unusual feature. It is not almost, the vast majority is under glacier til. It is not a significant feature, stated Michael Klein.

The real question with regard to the water is the diversion. It is miniscule in percentage and discharging clean water back into the watersheds mitigates it.

There was an informal discussion with regard to run off from the roof shingles. They can't guarantee that the water coming off an asphalt roof shingle would be good enough for human consumption. I don't think anybody thinks that is the case. There are a lot of people who collect rainwater and use that for drinking water. This is considered clean water and the roof water can recharge the water on the eastern side for some rerouting of water and would have no adverse impact to that water.

One thing I wanted to point out to the Commission is that this is the Pond and this is the Bog wetlands are here with the complex here. To the west is the light area that reflects the sun. Soil scientist use aerial photos and at one time fog like. It has been excavated. To suggest that this is a pristine location is not correct. I agree with Penny and Gaboury that this is the right way to handle this area.

I am confused about the intervention and the letter with regard to logic. The petition states that there is no doubt in his mind that there will be unreasonable impairment to the natural resources of the State of Connecticut but in his letter he says he has to have additional data. Logically those two statements are contradictory and they both can't be true.

The last thought I give to you is that John gave his opinion about the number of lots that can be on the site, the septic systems and that is not something I, I did mention I was trained as a biologist, that is something that I certainly would never feel qualified to make a statement like that, stated Michael Klein. I couldn't over you an opinion on that and he doesn't have any information on the record to make that suggestion.

A gentlemen in the audience voices his opinion and Chairman Cribbins states that we have to maintain order.

Ted Hart, Professional Engineer with Milone & McBroom addressed the Commission. I would like to cover a few issues that were brought up a the last hearing.

56 Armstrong Road, the gentlemen commented that the pool will be 20 feet from his house. As you can see from the plan it shows the pool here in blue and 56 is over here on the map. There is a distance of 225 feet. I would like to bring up we can do additional screening, buffering and landscaping in this area.

I wasn't sure what he was discussing when he said something about his driveway. The driveway to 56 Armstrong Road encroaches on the subject property by approximately 3 feet. We will work with him and possibly provide an easement. We will work with him to make adjustments to that property line.

Questions about the sewer – I have a hand out, a letter discussing the sewer issues. There are minutes from the WPCA. We worked with WPCA for about 8 months and their consultants the McGuire Group. The WPCA were very concerned with the deep flows that go to the pump station. There is (inaudible) I & I that goes to the pump station. We took a look at the I & I report that was done by Duberry & Goodkind. They computed a number and we calculated a number that shows an I & I of 1.3 million gallons a day. Total I & I is 3 million and the McGuire group states that there is a significant problem in the City.

Rock removal issue that Mr. Trautman and the neighbors brought up. The Fire Marshall will oversee any blasting that is done. We will hire a Blasting Consultant. At a minimum we will conduct pre and post blasting surveys and hire a company to monitor the blasting.

The Town of Stratford reviewed our plans and made no mention of the bedrock or the nice. Two miles away we did boring and pumping for another application. It was found that there were no negative impacts to ground water or surface water. It didn't have high sulfite content.

We don't plan on putting any shot rock as fill and there will be no blasting in the pond area or water shed areas. The watershed area is in the fill section.

There was a comment of taking 70-100 feet but the maximum cut anywhere will be between 23-25 feet off the hill, stated Ted Hart.

Drainage and storm water management system – The change in the surface water run off was negative but it has been addressed. The interveners have agreed with our storm water management plan. There is no adverse impacts. The City Engineer reviewed this plan and he states this plan is intensive and sound. He passed out another hand out that was a summary of the engineering report.

The other thing that I would like to state is the diversion away from the Bog. We read letters from Mrs. Sharp and in their initial approval they suggested diverting all of the water away from the Pond. There is 2 acres and we changed that to go to the pond but not impact it.

Mr. Danzers letter is concerned with road widening making additional run off. The run off will discharge back to the brook and back to the Far Mill. The road widening is minimum and there will be no negative impact from the widening.

Ted Hart stated that the storm water management plan was designed in accordance with DEP 2004 guidelines. They took into account the cycle and methods for recharging and volume and peak flow calculations. We have meet or exceeded all of those. That was something that was brought up in our engineering report.

I would like to make some comments about the water cycle diagram. A glacier til underlines the site. The diagram shows the watershed and there is usually an aquifer of gravel and sand. That is not the case here. There is a lot of run off from the glacier soils. This is not an aquatil. I don't know what the reason for handing this in would be, stated Ted Hart.

On the west side where the pond is there is a small dam and a slot with boards on it. The bog was regulated in the past for cranberry production. The water was regulated up and down. Changes that will be made from the development won't effect it like they had done in the past. The bog was regulated in the past and it still survives today, stated Ted Hart.

David Sullivan, Professional Engineer, Senior Transportation Engineer, addressed the Commission.

We had an opportunity to review the traffic study by Fuss & O'Neill. I will give a short summary. We did a comparison of their findings to ours. Their evaluation all essential are parallel to our study. They did have a conclusion that the project won't have a significant impact to the roads review. They suggested clearing the vegetation at Armstrong Road, they would regrade Armstrong Road, and the would realign Armstrong Road and all of those were in our study. All of those recommendations were implemented and incorporated into the recent Milone & McBroom plans.

They did review our analysis on Bridgeport Avenue and we use the Panera Bread recent study. Our conclusion of the review validates and suggest less mitigation measures. They suggest the levels of service be maintained. The widening of the roads are in the public right of way and there will be no private property taken, stated David Sullivan.

That concludes our response stated Attorney Williams.

Chairman Cribbins stated that when we close the hearing we will have 65 days to deliberate. If there is any one either on the applicant's team, the interveners or the public who have new data or information that is relevant they can bring it to Staff for review during our deliberations. It does continue, he added.

John Trautman, representing the Interveners, addressed the Commission. Thank you Chairman Cribbins for the opportunity to rebut. This will be brief and consume less then 5 minutes.

End of Side 2A of 2B, Tape 2 of 2 at 9:30 P.M.

In terms of the bog that Mrs. Sharp stated that one way was to direct surface flows away from the bog. I would like to suggest another way is to reduce the scale of the development, reduce the amount of site disturbance, reduce the run off and there is no need for the water shed diversion, scale back the size of the development. There is no need for diversion if you scale back.

Mr., Klein questions the 700 foot setbacks in Fairfield as soon as a vernal pool is found a red flag goes up and the nature of that activity is looked at to ascertain what the appropriate setback would be. A vernal pool specific setback for that vernal pool is then set.

The third comment had to do with is the diversion significant? Anyone can crunch the numbers to be played down or pumped up. My question is how can the applicant determine the water shed diversion without having the entire hydrological budget. They can't, they can guess. They have under taken the detailed hydrological study and only when they have budget in hand can they then determine if the diversion is significant or not.

Item 4 of Mr. Klein's comments is questioned the logic of the language of wanting additional information. The proposed activities and if they would yield adverse impacts, that burden of proof is on the applicant. They need to be able to come here to say there will be no adverse impacts. I believe my statements and my language in the intervention. The Commission, the decision makers, here need to have those results of those studies in hand to evaluate the magnitude of the adverse impacts associated with this proposal.

Going on to Mr. Hart's comments. He talks about blasting and rock removal. You can't compare a Stratford case at a site-specific case on Armstrong Road. I am familiar with the Stratford case and in some cases 200 feet make the difference. So to simply say we did borings 2 miles away that came up clean and there was no concern for the pie right. That is totally invalid. There must be on site saturation sampling across the whole site. Not in this corner and that corner. They need to really develop a matrix of geological borings to determine the volume and nature of the rock. If you are going to pay for the blasting, that excavation and removal of rock wouldn't you want to know just how much rock there was.

Mr. Trautman continued that the middle of the site is a fill site. I would like to put up the picture of the watershed. In response I would refer to the site plans water shed map. Essentially the watershed is at the high point running south-southwest and runs as a spine down the property. It is difficult for me to see how the applicant is not going to blast on this side of the property. That is just not true. There is a water shed divide and the other side of the water shed drains into the brook.

As part of the intervention, we as interveners would like to raise some alternative because it becomes the applicant's responsibility to see if there are any prudent alternatives, which would result in less impacts to the environment.

We talked about the run off. We talked about the paved areas. He didn't talk about the effects of the other chemicals on the property. There will a lawn, manicured lawn area and there is a different type of invirbious areas. The grass might go to low nitrogen fertilizer. I am concerned with the herbicides, pesticides, etc. That stuff with the first rain will be part of the run off, stated John Trautman.

The diversion was questioned with regard to the original 49 home application and I would like to say at that time for the 49 unit proposal, if there was an intervention, every time an intervention is filed so much additional information is brought out, if an intervention was filed with regard to Cranberry Hill, Cranberry Hill would not have been approved. The vernal pool was never brought to the Commission's attention on that property.

In terms of Mr. Hart's response to a letter about a run off and recharge numbers. They didn't put together a model of what the runoff would be post development. What about evaporation all these things change the numbers? Do you have the answers to tell you what the run off will be and more importantly because of the unique features we need to understand the ground water. All those things need to be evaluated.

Mr. Klein worried why I gave you that chart. At the left hand side where there are arrows. That shows shallow wells in glacier til. That is why I submitted that. The sidewalls of the valley will have a til and the bottom will have a drift. The region is depicted, stated John Trautman.

Chairman Cribbins stated I need to clarify something, typically when we start our deliberations, lets say we get some information on blasting, we get advise from the Chief about blasting, if he needs another consultant to prepare something for us, we would say that the technical process would go forward and we would receive that. I am not saying that the Public can present additional information to us.

Bob Baker, 46 Daybreak Lane, addressed the Commission. My question is that this site over here is the vernal pool. There is no flag there because that will cause a problem because that is where the building is going.

Chairman Cribbins stated that the pile of information has now gotten to the 2-foot mark. We have had three hearings and we will now close them. Can I have a motion, asked Chairman Cribbins? I will make that motion stated Comm. Pogoda and I will second that stated Comm. Lapera.

On a motion made by Anthony Pogoda seconded by Patrick Lapera it was unanimously voted to adjourn at 9:50 P.M.

I would like to make an announcement, said Chairman Cribbins, The hearings on Avalon Bay 2 for the Huntington Road/Bridgeport Avenue applications are continued to next Tuesday, July 26th at the Shelton City Hall Auditorium.

Respectfully submitted by,

Diana Barry, Clerk