

The Shelton Planning & Zoning Commission held a Special Meeting on August 23, 2005 at 7:00 P.M. in the Shelton City Hall, Auditorium and Room 303, 54 Hill Street, Shelton, CT.

Members present: Vice Chairman Patrick Lopera
Comm. Jason Perillo
Comm. Anthony Pogoda
Staff present: Anthony Panico, Planning Consultant
Thomas Dingle, Zoning Enforcement Officer
Pat Garguillo, Court Stenographer
Diana Barry, Clerk
Members absent: Chairman Alan Cribbins
Comm. Daniel Oraziotti
Comm. William Papale
Comm. Leon Sylvester (arrived late)
Comm. Karen Tomko-McGovern (arrived late)

TAPE (1) IS ON FILE IN THE CITY/TOWN CLERK'S OFFICE.

Vice-Chairman Lopera stated I wish to apologize. I thought that we would have a quorum. Chairman Cribbins had a medical emergency and is on his way to the hospital. I do apologize and since there is no quorum there will be no public hearing. The applicant is here and people are here in the audience so I encourage you to spend sometime with each other. The Commission will go upstairs to have an informal discussion. That is all we can do.

The Pledge of Allegiance was said by all.

Vice-Chairman Lopera was asked if he was going to set another date? Attorney Thomas stated that Attorney White made a good point and I agree with him. You should reset the public hearing date stated Attorney Thomas. We will renotece stated Vice-Chairman Lopera. There is no quorum so there is no business. The Public Hearing will be rescheduled to the 13th and if you would like to stay here or go upstairs where we are going to have informal discussions. There will be no business conducted tonight, he added.

- I. Public Hearing
 - A. **Application # 05-35, Dominick Thomas for Special Exception Approval (high traffic generator: addition to restaurant), 66 Huntington Street (Map 74, Lot 28) CA-2 District – accept and schedule public hearing**
- II. Old Business
 - A. **AVALON BAY COMMUNITIES, INC. SHELTON 1**
 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 (public hearing closed on 7/21/05) discussion only**
 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) (public hearing closed on 7/21/05) discussion only**
 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) (public hearing closed on 7/21/05) discussion only**

Recess and reconvene in Room 303.

Anthony Panico stated that he has pieced together a map from the composites. There were a lot of exhibits from the interveners and the applicants. I went through my notes to get as much information as I could and to get some of the legal aspects of what we need to come up at a decision that will hold up.

Despite the fact that I sense that the Commissioners are not happy creating a new zone in a conventional situation that would be sufficient without getting into the project itself. With an affordable housing project you have to go beyond the simple zoning decision.

We have a summary sheet that shows the existing parcel, developers, existing zones and the numbers we would use, stated Anthony Panico. I made myself some notes as to what you need to build your case on. The applicant has stated for the record that this is an affordable housing project and that comes under the 8-30 of the Statues. Regardless of the Commissions position on the zoning mechanism if the project is denied and an appeal ensues the burden goes to the City to convince the Court that they had to reject the proposal. Initially in a traditional appeal the burden is on the applicant to proof to the Judge that the City should have approved it but in the affordable projects they turned the tables and the burden is on the City.

There are only three areas of thoughts or reasons that will carry any weight in this decision. The first is that the project will seriously harm public health and safety, like by creating a serious traffic issue.

The second area that you can hang your hat on is dealing with the potential harm that might come about in the Community being greater than the need for the affordable housing. If you are weighing you have to say these are a potential harmful effects of this development, you have to build a case that those harmful effects far out weight the need for affordable housing.

The third area is that the City through negotiations and meetings with the applicant cannot come up with reasonable changes to alleviate some of these adverse impacts. So those are three areas of concerns, stated Anthony Panico.

The last one is a very important because you can't just get to the point where you say that there are 10% to many units. You have the obligation of saying can we get this thing down by 10%. My feeling is that they are so far apart that the negotiations won't produce a viable project.

I tried to categorize my comments in terms of the areas of concerns. The first one would be traffic. As you know the City entered into the record their own traffic study and by everything that we can see it is consistent with the applicant's traffic study. They both conclude that with the improvements there would be no adverse impact on the capacity or operation on the effected roadways. The nature of recommendations that came out strongly in the applicants report was for widening and realignment of Armstrong Road along the site frontage. Secondly they recommended adjustment of the driveway connection.

Comm. Tomko-McGovern arrived at 8:00 P.M.

Third, improvements of driveway.

Four is improvements of grading along Armstrong Road.

Five a widening of Old Stratford, Armstrong Road and Warner Hill Road intersection to 2 lanes for the Southbound approach. Even under today's traffic flows are operating under a level of service of E. With the improvements the level of service will improve.

Traffic is doable, stated Anthony Panico.

Some of the studies the findings were inconsistent with what we know, one report stated that an intersection actually improved. This intersection shows we had too many cars running through this intersection with this project then prior too, stated Comm. Perillo. 2% increases annually stated Comm. Perillo. DOT tracked this for years.

We are bound by accepted practices. I didn't see any circumstances where the traffic was less stated Anthony Panico. I would like to see that to try to figure out why.

The area of the environmental issues and concerns is the one that carries the most weight. By way of fact we all know that Wetlands denied certain activities and their denial was based on incomplete application, inadequate mapping information and the inability to provide additional information. There was a previous approval on this property and they are saying that is the feasible alternative. The denial is being appealed in the Courts.

We did have petitions of interveners filed by residents and members of WER1 as well as the owner of the Cranberry Bog and Pond. The Commission is required to determine the likelihood of causing unreasonable pollution to the natural resources. Despite the fact we rely on Wetlands we have our own obligation to address those issues. There are natural resources like the pond and the brook that is part of the watershed on the parcel. Those are natural resources that we need to be concerned with, stated Anthony Panico. The brook leads down to the pond to the bog and down to the Housatonic River.

In our discussions there was a debate that there is a veneral pool on the site and we have no additional information to support or not support that. We need additional information. That is an answer we need to get.

Environmental there is underlying ledge that will be removed will disturb a kind of rock that has materials that can contaminate the bog. That is a significant issue that we need answers to. A detailed geological study should have been provided but it was not. The applicant testified that a mile from the site it was not that type of rock. This is New England so that what is happening across is not necessarily happening here. They didn't provide us with any on site-specific information. If this is going to continue they are going to need to come up with that information.

#6 A well qualified Ecological Consultant testified on behalf of the interveners that after conducting an assessment he found the proposal can't be reviewed without additional studies to show the adverse impacts. He sited the facts that a hydrological study and analysis is needed to evaluate the ground water impacts.

He wants to arrive at a hydrological budget and none of that was done, stated Anthony Panico. There was some investigation done by the Wetlands Comm. but that was not responded too, also. A subsurface survey should be addressed and to the best of my knowledge it has not been addressed.

We suggested a bio-diversity survey with special attention to the vernal pool habitat. We need to have some guidelines if there is a vernal pool.

The soil scientist had correspondence with regard to the interveners. There is no impact to the bog and there was no additional survey. The vegetation survey and wildlife survey both were not available. It didn't conclude if there was a viable population of box turtles.

I think this is a deficiency in the material that you have in order to make an intelligent decision.

There were several concerns with regard to the loss of vegetation and wildlife habitat. The drawings showing a coverage of 40% and regarding needed for the development that approaches a site disturbance of 75%-80%. The only areas being preserved are the Wetlands area on the Easterly side and the Wetlands area on the Westerly side, stated Anthony Panico. Those are the major environmental issues that I see.

I think we still a lot of information for us to make a fair decision on this project, stated Comm. Pogoda. The Wetlands has requested more information to make them more knowledgeable as we have. As far as I know no one has received any information from Wetlands and they have not received anything. That to me is very critical. If we deny the project because of what we see can happen to the bog and this far surpasses the first application. More information has to be brought to us for us to make a fair decision on this project, he stated.

It isn't as though we don't have reason to raise our eyebrows, we do have testimony, stated Comm. Perillo. The scientist and experts, he added. You have to have a third person to help us arrive at decisions, stated Anthony Panico. I know we didn't arrive at the decision on the first one lightly, stated Comm. Pogoda. We worked at great lengths to minimize the impacts of this slope because of concerns that the Commission had about the Wetlands system and the bog, stated Anthony Panico. This is 6-7 times more intrusive then the other one was, stated Comm. Pogoda. We need a lot more information, he added.

Whatever your decision is that needs to be conveyed onto the applicant because I doubt that regardless of your decision that the process will stop right now. Undoubtedly there will be an attempt to file some sort of amended and revised application, petition whatever and you need to be upfront cautioning them that if they are going to continue these are unanswered questions that need to be addressed, stated Anthony Panico.

The next I got into a little bit is Public Health and Safety concerns. Staff has had at least two or three discussion with Public Safety officials in the Community including Police, Fire and Emergency Services. We got a lot of information out of that. It is obvious that a project like this requires sanitary sewer service. An application to the Water Pollution Control Authority was denied on November 10, 2004. Based on material that was submitted this decision is being appealed in Court. Correspondence entered into the record on behalf of the applicant shows they will address inflow and infiltration concerns in an amount that is greater to or equal to the flow that they will put into the system. To this date I don't know if they have filed a new application with WPCA or not. We will try to find that information out and they might have seen another way that another developer went and they may feel they should be treated the same.

Staff has meet with the Police, Fire and Emergency Officials to discuss potential issues and the site plan. There were several concerns including turning radius. We were told that from Fire Officials that you might need a ladder truck to respond for fire rescue purposes. You need to be able to turn it to get it out and some of the radius needs some additional information, stated Anthony Panico. Not only getting it out but getting it in, stated Comm. Perillo. There is no guarantee that the tower curb to curb rating will be able to make this turn to get down to Building 7 and 8, he added. They seem to indicate that they could, stated Anthony Panico.

With wood frame buildings they are concerned that if a fire got started it would have to be controlled and additional apparatus might be needed. If they came in and parked here with the outriggers out there is not sufficient room for another apparatus to go down here. This stretch of driveway is insufficient and needs to be widened. This isles have parking on both sides and if they don't park carefully there won't be width you need.

The buildings will have sprinklers, they are wooded and they are 55 feet tall. Fire safety must be addressed. The buildings contain as much as 42 units in a single structure. These modulares have 42 units. The Fire Safety people are concerned with the manpower that have to send in 3 people crews that have to be sent in twice roughly in one hour. Time and personnel are of the essence with every unit and building.

From an Emergency Medical perspective one of the jobs of the EMS and ambulance cares is not only simple care but emergency medical assessment to the rescuers. You got three guys running into every building and EMS if Building 2 goes up just for the rehab operation only there will be 4 ambulances and 10-20 additional EMT's just to do rehab and medical assessments of the rescuers. That is not including transporting patients, treating burn victims on the scene, that is just to take care of the rescuers, stated Comm. Perillo.

In the area of rescue, one of the purposes of having the ladder available if they have to get someone out of the 5th floor they need to get to that person. They can't send rescue people in if they don't ventilate. They have to have access. There are some corners that are questionable to park and reach, stated Anthony Panico. In this corner they might not have full accessibility.

These 8 or 9 buildings may have access just from one side, stated Comm. Perillo. Building 6 is the only building that you can access from both sides. Avalon in Trumbull lost a whole building less than 6 months ago, stated Comm. Perillo. Any fire up here would require multi-town assistance, stated Anthony Panico. There are 3 buildings that have inadequate rear access space for men and equipment. That is these 3 that the closest point is 20 feet. You have low wires and some of others have 30-35 feet. 20-25 is unacceptable.

Being wood frame buildings we didn't want them as close as these two that are 25 feet apart. That has to be addressed. That is a potential hazard. The same thing happens up here also.

Emergency Medical Services we talked about 5 levels habitable. We call this carry downs these stairwells. It is difficult and poses additional life threatening circumstances, stated Anthony Panico. I can't fathom that they don't have (inaudible) this is 2005; this is not 1880, stated Comm. Perillo.

It is less than 18 acres the first time that is build able stated Comm. Pogoda. When we get through this area and make this intensity work there is no vegetation left, stated Anthony Panico. Everything will have to be graded and regarded.

Does this proposal if we adopt does it do harm to Public Health & Safety? It is up to the applicant to put a proposal forward that addresses those issues and it is deficient, stated Comm. Lapera. One thing that we talked about was if there was safety people dealing here and they need to go somewhere else those safety people will take additional time just to get out of here, stated Anthony Panico.

Elevators, stated Comm. Perillo. Just to understand why that is an issue, the stairwells in some places are only 3 feet wide. A larger patient, a cardiac patient needs to be carried on a board that is 6 feet long and 2 feet wide, down a flight of stairs. A big patient needs to be carried by 4 people. You need to get the patient and the 4 people (2 at the head and 2 at the feet) carrying the patient downstairs with only 3 feet left. Not only is it ludicrous but it also is dangerous to the rescuers and the patient, he added.

The reason that we concluded the numbers don't work is the format they used. They might work if the buildings were made out of masonry products. There are a lot of issues with the materials they are using.

We got comments back from the Fire Chief and the Fire Marshall's. Anthony Panico then read from the Fire Chief's letter that states the plan is unacceptable. He read a brief note from the Fire Marshall.

The bottom line is there will be 13 families on an acre, that is an average, stated Anthony Panico. There will be effectively 16 families in the middle. The high intensity with regard to how close they are, and then the high density of people in the 5 buildings is a recipe for disaster. The Emergency Service people will undermined their ability to serve people in other areas of town.

Let's talk about the zoning issues. We have a lot of zoning regulations that accommodate PDD and adult housing. This proposal will allow a project approval only on site plan approval. The standards that they talk about is densities up to 20 units per acre of land with no limits on bedrooms, they talk about 5 story buildings up to 60 feet tall being allowed with up to 45 units and there plans call for 42 units, some buildings would be wood constructed frames have sprinklers, elevators won't be used, the buildings could be 25 feet apart and there are two buildings like that now, one bedroom unit require 1 and ¼ parking spaces but they might have 2 cars, there are no visitor parking areas shown and 15% of the parking needs to be covered. 70% of the units can be marketable without restraints. It is affordable to 30% of the units with the others being market rate units.

In the category of zoning, lets point out that Shelton has been successful in approving multi-family housing without the need of the generic zone. It allows the density to be appropriate to the site and location. We can react to the site and make it density appropriate. The density is excessive for a suburban site. You won't expect this in the middle of the R1 neighborhood, stated Anthony Panico.

Comm. Perillo stated that the specifics within the zone don't fit here at all.

The zone allows excessive density that poses a threat to the health, safety, welfare, convenience, and protect property values. The applicant has failed to show the intent of the affordable housing and creation of the generic zone. There is no need to designate an affordable housing zone. Despite the inability to qualify for affordable housing the Community does have qualified units and there are low rent areas in downtown with current rehab of Birmingham and the two trailer parks in the Bridgeport Avenue area.

As far as site plan comments. Plans have to be updated with regard to the public health and safety issues. There are concerns with water and wetlands system. Minor adjustments to the site plan won't address the issues changes will have to be severe and drastic. There has to be reduction of height, spacing of buildings

and reduction of intensities. These changes go beyond what might be achieved through negotiations. There are alternatives that have not been addressed, stated Anthony Panico.

P & Z COMM.

AUGUST 23, 2005

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

Anthony Panico stated parking is marginal and it is going to get worse when we start to remedy some of the geometric restraints trying to move and separate buildings.

Comm. Sylvester arrived at 8:40 P.M.

What we were doing is just to air out some of our early findings on the Avalon projects. I have made some comments with regard to the areas of concern including environmental issues. We can't come up with a consensus without the feedback from the Commissioners. There is the material that I provided for you tonight and if you need additional information we should have that before we get a resolution, stated Anthony Panico.

I can't do anything else because I adjourned the hearing downstairs, stated Vice-Chairman Lapera. All I did was to cancel the Public Hearing and I suggested anyone who is there to discuss that between themselves. We came up here to have an informal discussion with the people who are here to hear Tony's information. The hearing is rescheduled to September 13. Alan was called away tonight and we will schedule something for next week, stated Vice-Chairman Lapera.

I would like to see something scheduled so we can arrive at a consensus and formally get this on paper. We have some more time on Avalon 2 and this is more critical because of the affordable housing issue, stated Anthony Panico. The affordable is more difficult to write up, he added.

Well we have too many people now to continue to discuss this, stated Vice-Chairman Lapera. We will talk tomorrow, he added. Even if we do something at 5P.M. on night just to discuss this, stated Anthony Panico.

Thank you all, stated Vice-Chairman Lapera.

Respectfully submitted by,

Diana Barry
Clerk

THERE WAS NO QUOROM AND THE MEETING ENDED AT 8:45 P.M.