

**1. PLEDGE OF ALLEGIANCE**

**2. ROLL CALL**

**3. BUSINESS MEETING**

**PUBLIC HEARING (reconvening)**

1. PERMIT-APPLICATION #17-14, TOWN CENTER AT SHELTER RIDGE – BRIDGEPORT AVENUE/MILL STREET/BUDDINGTON ROAD. Proposal to create a mixed use commercial and apartment development involving a commercial subdivision with roadway construction, building construction, and grading within regulated area, upland review area, and discharge of stormwater to regulated area.

**3-A. PUBLIC COMMUNICATIONS**

**3-B. OLD BUSINESS**

**3-C. NEW BUSINESS**

1. PERMIT-APPLICATION #19-09, NICHOLS PLACE – 413 NICHOLS AVENUE. Proposal to create an 18-lot DRD residential development involving wetland fill and upland review disturbance and discharge of stormwater to a regulated area for roadway and home construction.

**3-D. MISCELLANEOUS**

**4. MINUTES**

1. December 12, 2019 Regular

**5. ADJOURNMENT**



**CITY OF SHELTON  
INLAND WETLANDS COMMISSION  
REGULAR MEETING MINUTES  
Thursday, January 9, 2020  
7:00 P.M., Room 104**

Chairman Zahornasky called the Regular Meeting of the Inland Wetlands Commission to order at 7:06 PM.

**I. PLEDGE OF ALLEGIANCE**

All in attendance recited the Pledge of Allegiance.

- II. ROLL CALL:** Robert Dunford, Commissioner  
Michele Kawalautzki, Commissioner  
Ken Nappi, Commissioner  
Charlie Wilson, Vice-Chairman  
Gary Zahornasky, Chairman

Excused: Joseph Reilly, Commissioner

Also Present: John Cook, Staff

**3. BUSINESS MEETING**

**PUBLIC HEARING (reconvening)**

1. PERMIT-APPLICATION #17-14, TOWN CENTER AT SHELTER RIDGE – BRIDGEPORT AVENUE/MILL STREET/BUDDINGTON ROAD. Proposal to create a mixed use commercial and apartment development involving a commercial subdivision with roadway construction, building construction, and grading within regulated area, upland review area, and discharge of stormwater to regulated area.

**Vice Chairman Wilson motioned to reconvene the Public Hearing for PERMIT-APPLICATION #17-14, TOWN CENTER AT SHELTER RIDGE – BRIDGEPORT AVENUE/MILL STREET/BUDDINGTON ROAD. Proposal to create a mixed use commercial and apartment development involving a commercial subdivision with roadway construction, building construction, and grading within regulated area, upland review area, and discharge of stormwater to regulated area. The purpose was to receive all written responses in regards to what was contained in the Landtech Report. Commissioner Dunford second the motion.**

**A voice vote was taken; motion passed unanimously.**

Chairman Zahornasky stated the Exhibits that were submitted at the last Public Hearing:

- EXHIBIT #55 Letter from Gregory Tetro
- EXHIBIT #56 Letter from Diane Jowdy
- EXHIBIT #57 Letter from City of Shelton Conservation Commission
- EXHIBIT #58 Letter from Trinkaus Engineering
- EXHIBIT #59 Letter from Cohen & Thomas
- EXHIBIT #60 Letter from Environmental Land Solutions
- EXHIBIT #61 Letter from James Swift

\*\*\*(all Exhibits are available for review online)

Corporation Counsel, Fran Teodosio, stated that if the intervenors as well as the applicant are prepared to have comments, then the Commission can review all pertinent information that has been submitted. There can be dialogue if both parties are prepared to answer questions.

Attorney Dominick Thomas  
315 Main Street  
Derby, CT

Attorney Thomas stated that an applicant doesn't want to find out after the hearing closed, that there was information needed at the public hearing. The whole point of this, and according to him, they have addressed a lot of the comments, but it's important that after the intervenors and after the applicant has had a chance to review the responses and go over them and respond. He believes that the Public Hearing should stay open so that there is an exchange. That cannot take place once the Public Hearing closes.

Chairman Zahornasky thanked for the input, he stated that not sure how much the public and the Commission had to review all the information that has been submitted. He stated that he was sure the Commission needed to review all the pertinent information that has been presented and that he was sure that they had some comments and input as well. He stated that he suggest that the Commission receive all information and recess this Public Hearing and then reconvene.

Commissioner Nappi disagreed; he stated that he needed to get the input from the intervenor as well as the applicant on their response. He continued to say that the Commission can hear input tonight and then that would offer the Commission more information to go over and then be prepared to ask questions at the next Public Hearing.

Nancy Dickal

I'm a little confused here, you said that he received the letters and the pictures, why didn't the rest of your board members receive it as well. Don't you do packets?

Chairman Zahornasky responded that the Commission received all the information.

Ms. Dickal continued, I wouldn't have an issue discussing everything as long as everyone can properly hear it because it should have been in the auditorium and I realize that there is another meeting in there, right now we're in a very small room and it's a little cramped.

Adrienne Couture  
23 Great Oak Road  
Shelton, CT

I would just like to remind you that you did promise the public an opportunity to respond to this round of evidence and I want to point out that if you don't do that first it's going to necessitate a whole other loop if we're going to take into consideration if Attorney Thomas is going to go last.

John Cook stated that anyone wishing to speak please announce your name for the court stenographer.

Greg Tetro  
280 Buddington Road  
Shelton, CT

Where is the representative from LandTech? We don't have control over paying and we don't have control over the money. We're spending money as citizens for someone to speak, but who's speaking for LandTech in saying what Mr. Thomas may say is wrong because of the reason why.

\*\*Too many speaking at once.

Commissioner Dunford stated that he sees no reason why the intervenor and Dominick in making a statement and then recess the Public hearing at a later date.

Steve Trinkaus  
Licensed Engineer

I have submitted a brief letter on the 12<sup>th</sup> regarding LandTech's memo. I concur with many findings in their report, but basically the application is missing quite a bit of information and it does not allow the Commission to render a decision on the impact to wetlands and other regulated areas on the site. If I pointed out in prior letters from LandTech that followed up there is still serious concerns on whether the stormwater management system will work. One point LandTech did not bring up is that many of these underground storage systems are located in bedrock. The State's Stormwater Quality Manual does not allow you to put them in bedrock. It requires a vertical separation in soil to bedrock so that means you cannot put them in bedrock. That is a significant adverse impact of the ground water. I've pointed that out previously and that is a critical flaw. The erosion control plan is again very incomplete from day 1, this project has been a serious moving target for both LandTech and us to review it. We have not seen or know of the applicant's response, if they agree to make a bunch of changes and we still don't have revised plans for all these changes. The intervenors as well as your consultant also need an opportunity to review and comment to you. Now their testimony, because you hired them, have them come in at the end of a Public Hearing beyond that, but no one else has a say on that. So again, it's incomplete, there's a lot of missing pertinent information, they have not proven that there will be no adverse impacts to the wetland watercourse along the site and basically in summary, the application should simply be denied and a better application be submitted to this Commission if they want to continue with this project. Thank you.

Dominick Thomas  
Cohen & Thomas  
315 Main Street  
Derby, CT

One thing that I pointed out in my summary based on the attachment, I normally wouldn't have done it but I did it because I believe there are extremely serious flaws with it. This project has been subject to 2 peer reviews. A peer review, and I pointed that out in my report, there was a 900 page traffic study presented at Planning & Zoning. Maloney & McBroom was hired to do the peer review. That peer review took weeks as they went through it, they communicated directly with the traffic engineer. There were substantial disputes and it was not patting people on the back. As a result of that and what came out of it was a better offsite traffic plan and onsite traffic plan too. Concerns made about the LandTech report was very forthright is that #1, I do want to state 1 thing, when I first read the report the first thing I did was contact John, I was stunned by the report, I contacted John and said that I was willing to say things to their face, that was the whole point, because it appeared to me that they were engaged, and I'll say it to you, if you read my report and if you read Mr. Papp's report they were

engaging in a lot of stuff that belonged and was discussed at the stage of the P&Z zone change.

There is no reason, when you are looking for a wetlands application you all know this, you all have been doing this. This application is for a permit for a regulated area. There is no reason why they should have been referring to or citing the POCD or the updated plan, that has no relevance, but when you do that and then you misrepresent what's in it, it's a red flag. In fact as I said in my report by doing it that way, by approaching it that way it covered over some of his suggestions that were made. We got through that and you could go through that report and for instance we answered all the questions.

Mr. Trinkaus claims there are things missing but I want to point out that nothing in any report challenges the wetlands crossings. For instance, underneath the power lines where it crosses, nobody mentions that. The focus is twofold, stormwater discharge and related things to that and then the other report where he's spending all his time writing about vernal pools and we addressed it substantially. He made some misrepresentation concerning Matt Papp's analysis of the vernal pool and I think his response it, and again it's not my judgement to go through it, but his responses were quite substantial. One of the examples that I could show you is for instance the request in Mr. Riker's report for the migratory analysis, why didn't we do over the years a migratory analysis of salamanders. Well there are certain standards within the wetlands biological community as Mr. Papp mentions that they tend to flow with the wetlands corridors, one thing you have to realize is that the wetlands, as I said in there, he never once mentioned that the wetlands is in the 25 acre and the vernal pool is in the 25 acre of open space and connects with the very valuable wetlands corridor.

But because of his comment it forced me to do some more research and I went back to the Planning & Zoning and discovered that the Conservation Commission, the Conservation agent had actually identified the migratory patterns of salamanders and wood bogs as well, as we suspected of the report, that they had to go up the corridor which means the real problem and if there is any problem is when they have to cross by the road and attached her report, the complete report so that you can read it.

The other thing that really shocked me and you can see that in Mr. Swift's response to it, I think Mr. Swift has 14 or 16 agreements with the engineer, Mr. Bartos but I ask you to please look at Mr. Swift's report and the number of times that there is a comment of Mr. Bartos and the response from Mr. Swift is sheet 16, they are all in there. I'm not sure I was told that they picked what they wanted, I'm not sure if they had correct plans or not and not sure what they read.

Chairman Zahornasky interjected, let me stop you right there, see that in your words are shocking and surprising to me yet after I've told you and staff told you and everyone in this Commission has told you time and time again, and I take that as an insult from you, that all of the information that we had was provided to LandTech and they took what they wanted. No one told them what to take, no one hid anything from them and yet you are continuing with your response that LandTech was not provided with. These are your words, I am surprised that LandTech was not provided with, they were provided with everything we had and I don't want to hear that again.

Mr. Thomas responded if you look at the next page I said that I was informed with what they wanted. Chairman Zahornasky interjected I'm surprised they were not provided, its right there. That's right there. I'm reading that and I'm not happy. Mr. Thomas responded ok, that's what I initially thought and was told, as it says on the next page, that they chose what they wanted as I said in the next page that subsequently I was told that they chose what they wanted.

Chairman Zahornasky responded; let me continue further down, if as I was told that LandTech chose. So you're still insinuating that the information was not there. That's the way I read it. Mr. Thomas stated I asked questions about it. Chairman Zahornasky responded and you were told time and time again they

had everything. Mr. Thomas stated then that's even more of a problem than if they chose what they wanted then why didn't they take everything. Chairman Zahornasky stated not sure but don't insinuate that they weren't given everything. Mr. Thomas replied once I was told that they chose everything then I knew what the situation was, that's what I was told, that they picked out what they wanted.

Chairman Nappi asked what was the alternative; they were the consultants, they had a scope of service to do, they were asked to do that and they said this is the information data we have available. It's up to the consultants to say this is what I want to look at and not the Commission to say look at everything. I just wanted to straighten that out. Mr. Thomas responded the normal circumstances would have been in my opinion to have someone from LandTech to have picked up the phone and to contact Mr. Swift and say we have some issues and concerns. They could have found it as I say in there, simply by looking at the transcript but the point is we went through one of these things and it's an easy way to communicate with a person and say I don't find the answer but if you look at Mr. Swift's response there is no worse time in which what was pointed out is responded to. There is numerous times in which it is, at the very first time, the way the initial letter of the introductory paragraph is written, it's written in such a way that left an implication and that was the point. If you look at Mr. Swift's report and even at Mr. Papp's report there are answers to every single area. My only situation is that I wanted to get a response from the Commission that, with respect to those things that they said were not provided, we believe we did provide them in all of the reports, in all of the maps, in all of the things.

The other thing is this is that in making a determination whether or not there is an adverse impact on the wetlands is not potential adverse impact. There is for instance one of the comments that Mr. Trinkaus agrees with is the soil erosion sediment control. The soil erosion sediment control there are about 3 or 4 items in there that I want to point out that Mr. Swift identified on each and every map site and know that on the map that identified the question that Mr. Bardos says that is missing. I'm not saying in any way shape or form that the Commission didn't give him the stuff, but if he chose it then why didn't he read it and we'd be glad to have LandTech present to address it. We'd be glad to address it right to their face and I actually requested that at the beginning. I was told that was not going to happen. But I'm used to the type of peer review which took place prior where there was an exchange back and forth, where there was questioning and where there were answers back and forth. As you can see in both Matt Papp's report and in Mr. Swift's report there are several things, about a dozen items or 2 dozen items or more, that we can agree with, that we can change, so there is a benefit from that. The problem is there are so many misrepresentations or misunderstanding in the LandTech report that is difficult to understand even though we responded.

Commissioner Nappi stated the question that I have is that in good faith I don't know how this Commission after engaging with a consultant will be able to use that consultant's report when throughout the report is states that the data has not been submitted. I can't make a determination. I think we need to do something to fill in those areas. We're expected to make a decision based on the consultant's report that the data wasn't supplied. I don't know how we can do that, that's my personal opinion unless someone else has some comments.

Jim Swift  
Professional Engineer

I think the track got off and we left the track a little bit. The issue is not whether LandTech was or was not given the information. I concur with John and with the Chairman and the Commission that everything was submitted, it was available, it was present, it was there for the taking for LandTech to read, to digest, to use on their opinion. I think what you will see if you read my response to their report was my pointing out in many, many instances that LandTech had commented, this doesn't seem right, and then my report in detail that the information was there. Either LandTech chose not to read the information that was being

provided by staff or they weren't aware that they didn't read it in detail. So I think the issue here is not that the information wasn't available to LandTech, the issue here is that LandTech disregarded it or didn't read it.

John Cook stated isn't it possible that they did not concur that what was in the exhibits was in fact complete or accurate and hence that's how they drew the conclusion that the record was incomplete. I'm trying to equate both sides.

Mr. Swift replied and again in reading my report in detail you'll find that I have some very specific responses, I even break them down just for myself that in certain issues in the Landtech report that clarifications might be needed, additions that we think should be made to the plans, corrections they found several errors and if the Commission reads the last 2 pages of my report you're going to see 2 paragraphs, on page 14 you're going to see in my conclusions I list several issues that I feel that LandTech either found an error in the plans that needed to be addressed. I say for the record right now that none of those issues are in any substance going to affect the wetlands. They are typos and things of that nature and they should be addressed. Too be fair I acknowledge that LandTech found those issues and they needed to be addressed. The next page is modifications of design as recommended by LandTech and there happen to be several of those that again as it happened with the Trinkaus report, when another engineer or another reviewer finds something that can improve the plan, we have continuously volunteered to agree to those modifications. One statement that Mr. Trinkaus made tonight which is that he hasn't seen those is completely incorrect. If you go back and read the list of exhibits you'll find in that list of exhibits, all the changes that were made to the plans at either his suggestions or with what came up in discussion with the Commission. And the new plans that were submitted I believe in April of 2018 so that statement is completely incorrect. If you read my response, you'll find in several areas where I say in direct response to LandTech, that they did not read the submitted data or ignored the submitted data. So it's specifically addressed in my report. I encourage the Commission to read it.

Mr. Thomas interjected and stated that the report does not say they didn't read the data, he would say where the data was, so the comment of Mr. Bartos is complacent to interpretation, the comment is at specific pages and the response is page whatever. So he's not saying that something is missing, why that occurred I don't know and again I want to make it clear that one of my first response is to sit down with them as it happened with Malloney & McBroom.

Commissioner Nappi stated I just find it difficult to proceed without having some kind of conversation with LandTech as to the difference between what they say is missing and to both what the applicant and intervenor is saying is there, how are we going to make a determination when we don't know if the information is there and what they are basing their report on if it's not there. The applicant is saying it is there. It seems we need to have some dialogue with the consultant on that.

Chairman Zahornasky advised staff to reach out to LandTech and provide them with any information that they stated they didn't have in their report that was missing.

Mr. Thomas stated within the framework, the way it was handled prior in Planning & Zoning was that it ended off to be a meeting with staff, along with the engineer representative and they went back and forth with discussions outside the presence of the commission. They went back and forth, then after everything was done, then presentation of the issues from both sides, because a lot of the issues were able to get addressed and resolved. Then it went to Public Hearing. In this case you have the intervenor. Your choice also is to go through you and having it done directly with staff

Commissioner Nappi stated that there also can be a subcommittee that could be established to part of that. Corporation Counsel stated no because the Public Hearing is still open.

Joe Bugarchich  
92 Mill Street  
Shelton, CT

Just one thing that I think was very important with this whole situation here focusing on wetlands that I don't hear mentioned tonight is that the analysis taken is during a period of the dry season. I think it's important point that the berm won't do this or the drainage is going to do that but right now it's very dry out there and I think that there was also mention that the plans for the vernal pool isn't in shape. (very hard to hear on tape)

Jan Gerard  
11 L'Hermitage Drive  
Shelton, CT

The whole point of hiring LandTech was that it was putting an independent study. They weren't hired to side "with the applicant" and rehash back and forth and figure out the problems and do call backs and go behind closed doors and change it again. It was supposed to be an independent study, that was the whole point. We had our side; they had their side and you guys felt it was too much to handle so you hired LandTech for an independent study. You received your independent study and now we're being told, well we don't like what the independent study says but we should consult with them and work it out between us and figure out a better way of doing things. That's not the way the process is supposed to work.

Adrienne Couture  
23 Great Oak Road  
Shelton, CT

You have our expert and your own expert the data is just not there. It doesn't exist; it was never presented to you. If LandTech didn't take a good look at the data it's because they didn't see it as relevant. We're losing track of whose job is what. It's not your job to bring data from an unprepared applicant and an insufficient application, not your job. Your job is to rule on it. You hired someone to assist you in that process, they're yours, you didn't have to share the report with them or with us. The same is advise from your lawyer is yours. Advice from your hired expert is yours. Now we're getting into the applicant is disappointed that he wasn't given an opportunity to interact directly with your hired expert. We're getting into, the facts are there and why didn't they read all those pages and hours and hours of Jim Swift talking and concluding over and over again paragraph after paragraph that's my testimony. Totally fact free. Your expert looked at that and said this is not worthy of our time, bravo, it's not worthy of my tax dollars. At some point you get to say as you said, LandTech received everything that is in existence, they concurred with SOS's expert what is existence is inadequate and you rule.

Chairman Zahornasky stated that he suggest that the Public Hearing be recessed. He stated that he would like to reach out to LandTech or have staff reach out to LandTech and their claim to missing data.

(SIDE A, TAPE 1)

**Commissioner Nappi motioned to have Staff contact LandTech, making sure that they have all information in regards to their request of insufficiencies and have them present if possible for a Public Hearing so that all parties can have a chance for questions or make sure that all pertinent information is in a public setting and to have questions answered. Commission Kawalautzki second the motion.**

**A voice vote was taken; motion passed unanimously.**



**Commissioner Dunford motioned to recess the Public Hearing at 7:57 PM. Commissioner Kawalutzki second the motion.**

**A voice vote was taken; motion passed unanimously.**

### **3-C. NEW BUSINESS**

1. PERMIT-APPLICATION #19-09, NICHOLS PLACE – 413 NICHOLS AVENUE. Proposal to create an 18-lot DRD residential development involving wetland fill and upland review disturbance and discharge of stormwater to a regulated area for roadway and home construction.

Jim Swift  
Professional Engineer/Landscape Architect

This is an acceptance meeting so I'll be brief. I've had some conversations with John and John has a report. I'll just give the Commission an overview. We have an existing house on the property and as it happens the rest of the property is graded and there is a very significant watercourse towards the back. So the existing conditions on the site, the existing house is here and this is wooded and here is a very significant wetland up in this portion. In looking at the wetlands and the conditions this is a viable wetland. It is been excavated and there has been machine work in there. Some of these jagged edges, it is still a high quality wetland. There is also a small wetland here which looks like from an excavation many years ago. John's comments states we should know what we're dealing with.

In short the application is for a DRD which technically doesn't have anything to do with wetlands, we're trying to provide a lot of open space down here and goes all the way down to Hidden Pond Road, there's Land Trust property and open space in this area. So AJ thought he would take the opportunity for a DRD application to give more open space. We have a road that comes in, we are asking for a small wetland incursion here and that area that was excavated, the pipe discharge and for this area here. As you can see the road comes in and as you can see they're 20,000 square foot lots. There are septic systems so we do have some restrictions on setbacks to houses, setbacks to the street and to watercourses. I mention that because one of John's comments was rearranging some septic areas.

That's the application, the pre-imposed discharge watercourse, there are 2 water sheds, 1 going here and the other there.



**City of Shelton**  
Office of Inland Wetlands Commission  
54 Hill Street  
Shelton, CT 06484-3207

John R. Cook  
Wetland Coordinator  
203-924-1555 ext. 1353  
Fax: 203-924-6980  
j.cook@cityofshelton.org

**WCEO REPORT**  
**January 9, 2019**

**PERMIT-APPLICATION #19-09, NICHOLS PLACE – 413 NICHOLS AVENUE.**

Proposal to create an 18-lot DRD residential development involving wetland fill and upland review disturbance and discharge of stormwater to a regulated area for roadway and home construction.

**STATUS:** 1. New application  
2. 65-day clock to decide action or schedule public hearing expires March 14, 2020  
3. Referred to Engineering Dept.

**PLANS: NICHOLS PLACE – 413 NICHOLS AVENUE**

Cover Sheet	Jan. 2, 2020
Subdivision Plan	"
Existing Conditions Plan	"
Grading & Utility Plan	"
Soils Testing Plan	"
Soil Erosion Control	"
Plan & Profile	"
Details	"

**COMMENTS:** Just a couple of initial thoughts:

1. Please clarify the application, as it refers to a public road and the site plan refers to a private road.
  2. The upland review limit should be plotted on all sheets including subdivision and profile plans to help verify all regulated activities.
  3. Indicate foundation and roof drain discharges for lots 1-4.
  4. Investigate a shift of the septic reserve area to the front of lot #<sup>3</sup> to create or provide additional space for flexibility of the detention basin shape with the added offset available. In addition to possibly providing greater flexibility of shape, to increase edge affect adjacent to the regulated area, it also may provide flexibility of saving any trees of significance adjacent to the basin and regulated area.
  5. Staff has not seen the pocket area of wetlands proposed for elimination. There may be a need to evaluate it as a vernal pool. Attached are two photos, one photo is of the onsite wetland pocket, the other of a dry vernal pool certified in Massachusetts.
- Overall though there this development design does limit any extensive regulated activities.

Pg. 1/1

### 3-D. MISCELLANEOUS

#### 4. MINUTES

1. December 12, 2019 Regular

**Vice Chairman Wilson motioned to approve the minutes of the Regular Meeting of December 12, 2019. Commissioner Dunford seconded the motion.**

**A voice vote was taken; motion passed unanimously.**

## **5. ADJOURNMENT**

**Commissioner Kawalautzki motioned to adjourn. Commissioner Dunford seconded the motion.**

**A voice vote was taken; motion passed unanimously.**

Chairman Zahornasky adjourned the Regular Meeting of the Inland Wetlands Commission at 8:37 P.M.

Respectfully submitted,

***Sophia V. Belade***

Sophia V. Belade

Clerk – Inland Wetlands