

*CITY OF SHELTON
INLAND WETLANDS COMMISSION
SPECIAL MEETING MINUTES
Thursday April 28, 2005, Room 303, 700 P.M.*

Vice-Chairman Santa called the meeting to order at 7:00 P.M.

I. ROLL CALL:

Norman Santa, Vice-Chairman
Gary Zahornasky, Commissioner
Celeste Beattie, Commissioner
Neil Hayes, Commissioner
Randy Szkola, Commissioner

Absent: Alvaro DaSilva, Chairman
Charles Wilson, Commissioner

Also Present: John Cook, Wetlands Enforcement Officer
Marianne Chaya, Clerk, Inland Wetlands Commission

II. PLEDGE OF ALLEGIANCE

All in attendance recited the Pledge of Allegiance.

III. BUSINESS MEETING

1. PERMIT – APPLICATION #04-54, AVALON SHELTON – ARMSTRONG ROAD. Proposal to create a 302-unit affordable housing development involving discharge to stormwater to a regulated area.

Mr. Cook: I prepared some summary comments relative to some of the earlier discussion. This is not to be meant as an exhibit since the Public Hearing has been closed. This also is a summary recognizing some of the things that are in the files of the record.

Mr. Cook's summary comments that he read into the record are as follows:

1. Regulated watercourse with no inlet or outlet on west side of parcel not plotted on map or discussed. Regulated flagging still evident. It apparently missed being plotted during the Cranberry Hill review as well.
2. Applicant was unable to respond to staff question as to the determination of total site disturbance of 03-21 versus 04-54. This information is critical in helping determining overall impacts to regulated area due to the change of intensity of site work.
3. Applicant's efforts are admirable in incorporation of best management practices. However, as with any engineered document presented before the Commission there is not a guarantee of success. With this in mind a less intense development, while having greater buffer disturbance may or could have less potential negative impacts to the regulated areas.
4. The Commission voted for additional studies. The applicant is unable to provide the requested information within the time frame possible. ,— Therefore the application is incomplete.
5. Fundamentally, is Commission convinced that protection of the regulated areas, wetlands, watercourse, vernal pools defined or cryptic, and the Cranberry Bog System is better served by an existing less intensive approved project versus a development with significantly greater site work? It is not a question of density as it is intensity and potential impacts even with the best management practices.

The Commission has as its record for this application;

1. The complete record of 03-21, Cranberry Hill Estates. Approved application.
2. Avalon Shelton I application materials via initial submittal, January 27, March 2, 2005 public hearing with response materials and their particular experts.
3. The testimony of the Town of Stratford as intervener and their expert witness Mr. Steve Danzer PhD.
4. The testimony of the Intervener for WeR-1, including their particular experts.
5. The testimony of the Intervener for T.Tucker Properties.
6. The minutes of all IWC meetings pertaining to Cranberry Hill and Avalon Bay I.

Commissioner Szkola: I went out and walked the parcel on Sunday.

Mr. Cook pointed out the area that was not plotted on the map.

Commissioner Szkola: I would guess that this is a marginal vernal pool because there was no inlet or outlet. I also noticed on the south side of the property that there was a wetland. It was right off the dirt road entrance off of Armstrong Rd. It was evident because of the plant materials

and soil types. It wasn't marked on the map that I saw. I took pictures. I did this because I wanted to be fair on this. I had voted for it on the original application I have to admit I was remiss on not doing a field walk on the Cranberry Hill Estates application. I don't know legally if I could share the pictures or not. The way I see it, as this is an extension of my field walk and my observations. I won't show them so it is not doing anything wrong.

Commissioner Szkola pointed out various areas and his observations. He pointed out the two existing catch basins that go directly in the bog. There is a culvert pipe under the road that is probably 60-70% clogged. He said he could now see where they are going to take the runoff and divert it towards the pond. He noted that the amount of rock work and blasting that needs to be done is going to compare or even make Split Rock pale by comparison, in his opinion. I don't know how that's not going to affect the runoff with the amount of fractures in the rock that is going to feed into this. Even Dr. Beniot had a concern. Commissioner Zahornasky even made a motion for the subsurface drainage study. They were remiss in not providing the study.

Commissioner Zahornasky: What did Dr. Beniot say about the last one; he was ok with it.

Commissioner Szkola: He had a concern and I think I put in the motion that we do test holes for whatever was in the rock.

Commissioner Zahornasky: They did say that they would go by all of the 27 conditions from Cranberry Hill approval. (He read the conditions).

Commissioner Szkola: That's where you have to rely on the experts like Dr. Danzer and Dr. Beniot.

Commissioner Zahornasky: Our concern was that they missed one of the vernal pools, right?

Commissioner Szkola: Now when I went out there I found another one that they didn't even address.

Commissioner Hayes: Do you have a soil sample?

Commissioner Szkola: No, but I'll testify as an expert that the plant species that are in there speak to it. I have pictures of it. There were blue flags around it but it never showed on the map.

Mr. Cook: The one on the west side was numbered WC1-WC-8.

Commissioner Zahornasky: And they don't show up on either application?

Mr. Cook: That's correct.

Commissioner Szkola: The plant species were definitely evident.

Commissioner Hayes: You are expert on plant species, there is no doubt about it, but do we delineate wetlands that way?

Mr. Cook: Wetlands are delineated by soils and watercourses are delineated by hydrology and vegetation, in terms of swamps, marshes and bogs.

Commissioner Hayes: I think that there are a lot of wetland soils that are indigenous to CT, if you stuck them in ground they would grow, to a degree.

Commissioner Szkola: I have pictures, that I can't show, that show standing water. That is pretty indicative.

There was a discussion of the flags and the area of concern.

Commissioner Szkola: We had asked several things from the City Attorney, one of which was the feasible and prudent alternatives.

Commissioner Zahornasky: He did come back and say that we can use Cranberry Hill as a feasible and prudent alternative as it is an existing approval on the same site. So we can decide what is feasible and prudent.

The Commissioners discussed some of their options of approval or denial.

Commissioner Zahornasky: Are we to afford Avalon the time to address the two missing pieces before the 35-day clock runs out? I don't know if that is allowed. Also, Commissioner Szkola going out and doing his walk and submitting that information, is that also admissible? I would think so, but public hearings are weird things. The information you provided is very pertinent and

my vote is hinged on that. We have missing wetland areas on the application. That fact in itself makes the application incomplete.

Commissioner Szkola: I just felt I would be remiss if I didn't go out and look before voting.

Commissioner Zahornasky: I just want to make sure if we are making a motion to deny this based on wetland areas that are not addressed on the map, that's fine. We just have to make sure we obtain the information in a legal way.

Commissioner Beattie: Based on years of experience on going on these walks, you know what you're looking for.

Commissioner Szkola: I don't see the difference I went on this site walk two days ago or two months ago.

Commissioner Zahornasky: I agree with you but I think it has to be addressed. There are two other wetland areas that haven't been identified.

Commissioner Hayes: If that happened on another application, what would be the procedure?

Mr. Cook: It could be turned back or ask for extensions. The difficulty is after the hearing is closed and in going through all the testimony and evaluating that data, and there is something that comes to light, the problem is as it is brought forth or provide an opportunity for the applicant to address that item, then all the interveners also have that opportunity to discuss it and rebut. It becomes very convoluted in trying to keep the whole process clean.

Commissioner Szkola: John is also an expert who testified as well. He saw what I saw.

The Commissioners continued the discussion plus the areas in question.

Commissioner Hayes: Even if this was an approved application and we move forward they would have to come back in and address those areas.

Mr. Cook: You would want those areas addressed sooner than later because the Commission reserves the right to modify, suspend, or revoke the permit if the information otherwise proves false, incomplete or inaccurate. That is a boilerplate condition that goes with any approval. The problem is that it becomes more complicated if after something is approved and you have to re-design something substantial as a result.

Commissioner Beattie: I feel that the testimony of Dr. Steve Danzer, who has a PhD is more credible than the experts Avalon brought in.

Commissioner Hayes: To bring up one point, Super Stop and Shop. It drains into Black Brook, our crown jewel, and they don't have nearly the protection that this application's engineering that is proposed.

Mr. Cook: At Super Stop & Shop they do not even have sumps in their catch basins. This was built in the mid-late 70's. There are no oil separators and often many of them had a flow-through design. What came off the parking lot came out and went straight on downstream.

Commissioner Hayes: So here we are 30 years later with a new approach. What is the difference?

Commissioner Szkola: If Stop and Shop came before us today, we don't know what the circumstances would be under today conditions and regulations whether we would even approve it.

Mr. Cook: When I came aboard in 1984 and during the initial growth period of the City, the corporate drive was to get them to locate to Shelton. Many of the facilities by today's standards would not have nearly the impacts they would have. Impacts do occur but the measures that were implemented back then or what was considered an acceptable level of disturbance is in fact why the efforts of the applicant should be recognized because there are a number of measures in there. The question what was done 20-30 years ago, the fundamental goal was much different in terms of what was acceptable to many high value resources.

Commissioner Szkola MOVED to deny application #04-54, based on the fact that we have insufficient data which results in an incomplete application. Data was asked for and not received that was requested from the motion at the public hearing. There might exist a vernal pool that was not addressed. There exists a feasible and prudent alternative, which was the previous application by Cranberry Hill Estates. There are wetlands on the site that were not mapped. The intensity of the effect on the regulated areas and the bog due to the

increase in traffic and habitation on the site, considering the fact of the Cranberry bog, which is a valuable and unique resource. The witnesses (Dr. Danzer) were more credible regarding the subsurface drainage. Commissioner Beattie SECONDED the motion for discussion.

Commissioner Zahornasky read parts of the regulations. He felt that we should find out from the City Attorney of what is being presented as missing wetland areas is admissible. If we do deny it based on incomplete information, what happens? Traffic cannot be part of the motion.

Commissioner Zahornasky asked questions of what happens in various scenarios. He suggested making many things as part of the condition of approval, especially the studies, and they can't get the permit until they meet all the conditions. I don't want to deny this, have it over-turned and have them come in here and build something I don't want done.

Commissioner Szkola said he didn't want to approve with a multitude of conditions and then have the courts say they are unrealistic.

Mr. Cook: I can only share the comments made by counsel. Fundamentally the Commission is to try and render the best possible decision based on what it has. The reason why counsel do not come to these proceedings is that in any situation you could have an extensive debate amongst all the qualified attorneys. They would fight tooth and nail on their position. Don't worry about what happens afterwards based on that decision.

Commissioner Hayes asked when they could come back after the denial?

Mr. Cook read from section 11.7.

Commissioner Hayes asked about a denial without prejudice and Mr. Cook stated that you would give them the opportunity to resubmit it.

Commissioner Zahornasky read section 11.6. He also noted that he was concerned with Randy's site walk and information he brought forward.

Commissioner Szkola: This is information from within the Commission.

Commissioner Szkola AMENDED the MOTION to deny eliminating the word "traffic".

Commissioner Beattie SECONDED the AMENDMENT.

A voice vote was taken and Commissioners Szkola voted yes, and Commissioners Hayes, Zahornasky and Vice-Chairman Santa voted no. MOTION FAILED.

Commissioner Szkola MOVED to deny application #04-54, based on the fact that there is insufficient data that was provided to the Commission resulting in an incomplete application. A feasible and prudent alternative exists on this parcel, which is the previous application by Cranberry Hill Estates, the intensity of effect on the environment due to increased habitation will effect the wetlands on the site and the Cranberry Bog, more credible witnesses were provided by the intervener, the town of Stratford. Commissioner Beattie SECONDED the motion.

The Commissioners discussed the witness's testimony.

A voice vote was taken and Commissioners Szkola and Beattie voted yes. Commissioners Hayes, Zahornasky and Vice-Chairman Santa voted no. MOTION FAILED.

Mr. Cook read from a book "What's Legally Required" published by the State of CT, 2004, in regards to evaluating the evidence (section 22.A-41) regarding expert testimony.

Commissioner Szkola MOVED to deny application #04-54 based on the fact that there is insufficient data supplied to the Commission, which was requested, resulting in an incomplete application. A feasible and prudent alternative exists on this parcel, and I am relying on my personal knowledge of the site regarding wetlands on the site that were not flagged. Commissioner Beattie SECONDED the motion.

Commissioners Szkola and Beattie voted yes and Commissioners Hayes, Zahornasky and Vice-Chairman Santa voted no. MOTION FAILED.

Commissioner Zahornasky said he would like to adjourn and think about this and wait for the answer from Corporation Counsel on the two questions.

Mr. Cook: In order to protect the content of the hearing, Staff feels compelled to at least make the reaffirmation about the procedures regarding conducting outside communications. Just as a reminder, Commission members should not discuss the pending application, appeal or any other manner with anyone except at public hearing where all parties have the opportunity to participate. Communications with interested parties outside the public hearing are regarded with suspicion by

the courts and communications have allowed this Commission's decision to be successfully appealed. I bring this up as a reminder for all parties, that it is clear and discreet.

The Commissioners decided to meet again to discuss this application on Thursday, May 5, 2005 at 7 P.M.

Commissioner Beattie suggested everyone come armed with a motion in mind to present.

Commissioner Szkola MOVED to adjourn. SECONDED by Commissioner Zahornasky. All were in favor, MEETING ADJOURNED at 8:12 P.M.

Respectfully submitted,

Marianne Chaya
Clerk, Inland Wetlands Commission
1 tape is on file – City/Town Clerk's office