

CITY OF SHELTON  
INLAND WETLANDS COMMISSION  
SPECIAL MEETING MINUTES

Thursday, November 18, 2004, Room 303, 7:00 P.M.

**I. ROLL CALL:**

Gary Zahornasky, Commissioner  
Celeste Beattie, Commissioner  
Randy Szkola, Commissioner  
Neil Hayes, Commissioner

Absent: Alvaro DaSilva, Chairman  
Norman Santa, Vice Chairman  
Charles Wilson, Commissioner  
John Cook, Wetlands Enforcement Officer

**II. BUSINESS MEETING**

**A. PUBLIC COMMUNICATIONS**

None came forward and the Public Communications portion was closed.

**B. OLD BUSINESS**

1. PERMIT-APPLICATION #04-37, SHELTON TECHNOLOGY CENTER – LOT 32 IVY BROOK LANE/ROCKY REST ROAD. Proposal to construct (2) commercial buildings of 190,000 square feet involving discharge of stormwater to a regulated area.

Jim Rotondo, Professional Engineer

Mr. Rotondo: At the last meeting we had some discussions regarding the stormwater management system and providing some retention within the system to allow cooling of stormwater runoff from the surface areas. What we are proposing and we submitted calculations to show the volumes is to modify our stormwater detention system, which are the oversized pipes to raising the orifice outlet above the pipe invert, creating a volume between the outlet invert and the bottom of the pipe. Calculations were submitted showing the required volume for 1" of runoff over the paved surfaces. The 1" of runoff, which we use for the 1st flush, creates a volume of 13,386 cu. ft. of .3 acre-feet. We modified the outlet piping by raising those to provide the .3 acre-feet for the system. The calculations were submitted to John Cook and then passed on to Bob Kulacz. I have not received a response from Bob, but I understand John Cook has had a conversation with him and they are in agreement with our proposal.

Commissioner Szkola: How many acres in the entire site?

Mr. Rotondo: The entire site is 26 acres. The disturbance is approximately 16 acres.

Commissioner Szkola: Will you end up with a zero net increase in runoff?

Mr. Rotondo: That is correct. We have 2 discharge points, one to the Butternut Hollow Brook, where we are providing the detention and we are providing a zero increase at that location in addition to the retention volume, which we are going to infiltrate into the ground. The requirement for the Ivy Brook is that we are going to tie into the existing system, was to make sure that the existing system could handle the capacity. Those calculations have been submitted and reviewed by Bob Kulacz and we received a positive letter from him.

Commissioner Zahornasky: In John's comments he states that he had conversations with the City Engineer to confirm the adequacy of the stormwater design modifications. He said he would attempt to have comments prepared for the meeting but doesn't.

Mr. Rotondo: The letter I just spoke about was received prior to the last meeting.

Commissioner Szkola: John was concerned about Butternut Hollow at the last meeting. He was concerned about the quality and so am I.

Commissioner Zahornasky read the letter from the City Engineer:

*October 14, 2004*

*Dear Mr. Cook:*

*This office has reviewed the above referenced application to develop the remaining vacant*

*property at the end of Ivy Brook Road. The stormwater management plan is sound and provides onsite subsurface detention for the runoff generated in the Butternut Hollow Brook Watershed section of the site. Best Management Practices are employed with the use of water quality enhancement structures at both stormwater outfall locations.  
I endorse the stormwater management plan for construction as submitted.*

Very truly yours,

Robert F. Kulacz, P.E.  
City Engineer

Commissioner Zahornasky: I have no problems with that. That was our main concern, right?

Commissioner Szkola: He thinks the temperature is ok also.

Mr. Rotondo: We will be retaining the 1" runoff for 1<sup>st</sup> flush.

Commissioner Beattie: Are there oil separators?

Commissioner Zahornasky: I think they are in there.

Mr. Rotondo: Yes. We are proposing one at each outlet.

Commissioner Szkola: Do we have any other conditions from the last meeting?

Commissioner Zahornasky: I think the application seems to be sound.

**Commissioner Szkola moved to approve application # 04-37as submitted pending standard review from the Wetlands Enforcement Officer (John Cook). Seconded by Commissioner Beattie. All were in favor, MOTION PASSED.**

2. PERMIT #03-19, ROCK RIDGE ESTATES LOT #2 – 16 MAPLE AVENUE. Request to address Commission regarding deviation of approved site plan.

Diane Curran, property owner

Ms. Curran: The builder's wife was supposed to be here but they are on vacation. John came to look at the property and said we put the boulders too close to the wetlands we asked if we can move them back further. We would like to keep them where they are.

Commissioner Zahornasky: In your packets you will find a drawing. This lot was originally approved with the delineated silt fence line (pointed out), but the builder came back because they changed the style of the house. Administratively John had adjusted the line to allow for some side yard. What happened is there is a line of boulders that delineates the new line. The lawn is in.

Commissioner Szkola: What happened to our thing, with the building inspection, remember the footing?

Commissioner Zahornasky read the WCEO Comments\*:

Upon review of the as-built submitted the week of November 5, 2004, staff discovered that site work was not consistent as specified on the approved site-plan associated with this permit or as authorized by staff. The area of discussion ranges from 6'-18' in width over a distance of about 90'. Several options exist and copies of the site plan overlay are in the Commission packets.

1. Require the relocation of the line of boulders and protection signs to the adjusted silt fence line and restore the area as a buffer.
2. Require a revision-application, after-the-fact, for the additional work and grading and require a revised as-built delineating those changes to keep as lawn.
3. Require a revision-application after the fact for the additional work and grading and require a revised as-built delineating those changes to keep the boulders but move the signs to the setback and restore the area as a buffer with shrub plantings.

Any of staff recommendations are feasible and prudent.

However, we point out for the record:

- The as-built is dated 8.19.04
- Staff requested the as-built of permit holder 8.30.04, but did not receive it until the week of 11.05.04, after all the grass had grown and shortly before the scheduled closing.
- In August once the as-built showed encroachment beyond the setback the permit holder should have contacted the Commission office to resolve.

Effective this week staff implemented the requirement of sign posting at the time of footing installation and that the sign location is to be plotted on the footing as-built. Too many times the

identification of a discrepancy has occurred at the final hour before a closing and has created the image that if the agency does not concede the encroachment it is in fact the "heavy" in the issue.

Commissioner Szkola: I blame the City for this. We went over this in White Hills two years ago. You are not supposed to get a "CO", you're not even supposed to get a footing permit.

Commissioner Zahornasky: This is something we have been hammering on and now that we got it settled on the footing issue.

Commissioner Szkola: Don't take it personally, but you have the CO, right?

Mrs. Curran: No, I think they pulled it.

Commissioner Szkola: This is more the fault of the City, and here the homeowner suffers as result.

Commissioner Zahornasky: I think that was John's comment, now, the Commission, if we refuse, end up looking like the bad guy.

Commissioner Hayes made a comment about the boulder line to not go beyond.

Commissioner Szkola: They approved one silt line. I would like to see the builder get fined, so that the homeowner doesn't suffer. This is ridiculous.

Commissioner Zahornasky: If our new fee schedule and regulations were in effect, we would have it in there that we could require an after-the-fact, and the fees would be three times higher. Well, at least it is not in the wetlands, it's in the buffer.

Commissioner Szkola: How many times do we let this happen, and then they say, gee, they got away with it there, no problem here.

Commissioner Zahornasky: Maybe we should have a letter sent or have staff contact the building dept. when they go out to do the footing inspection and that they make sure it's ok. John requested the as-built as of 8/30 but wasn't given it until 11/5.

Commissioner Szkola: Who is the builder?

Mrs. Curran: Wes Blakeman.

Commissioner Szkola: Wes Blakeman has building in town a long time; he knows better.

Commissioner Zahornasky: The only other thing is, if the as-built is not submitted as of a certain date, then we put in a cease-and desist order on the construction of the home. Because in this case, we don't know he's in violation until the very end.

Commissioner Beattie: John is the one who adjusted the silt fence once. They defied what he put down.

Commissioner Zahornasky: When staff requested the as-built from the permit holder as of 8/30, but did not receive it until 11/5 – that's 2 ½ months.

Commissioner Szkola: There's supposed to be coordination. You're supposed to go in with a check list, the building dept. He's not supposed to be allowed to proceed without John signing off on it. Obviously something happened and they were allowed to proceed. It's an internal problem. I'm not placing the fault on John, I'm placing it on the system where they went ahead without John's initial.

Commissioner Zahornasky: Have you seen the boulders?

Commissioner Szkola: I know where the site is.

Commissioner Zahornasky: I don't have a problem with it staying the way it is. I think we are lucky in the sense that it is not in the wetlands. Now we have a head's up to make sure that something like this doesn't happen again and we have a worse situation.

Commissioner Beattie: This is what we say every time. Next time, next time. Move the boulders. So what if there is a loss of grass?

Commissioner Zahornasky: That certainly is the Commissioner's prerogative. Staff has left you with 3 options or you can come up with one of your own. (The 3 options were stated again).

Commissioner Szkola: The minimum we require is an as-built and a revised application. We will need that for our records.

Commissioner Beattie: Why? Why not relocate the line?

Commissioner Szkola: You have to have it for the records. If we make them relocate the line we still need an as-built to where the line has been relocated.

Commissioner Zahornasky: Options 2 or 3 is good.

Commissioner Szkola: Maybe the homeowner should go after the builder as a misrepresentation also.

Commissioner Beattie: (Asked a question regarding the dates)

Commissioner Szkola: I'm going to go with Celeste and require that the boulders be moved in and I will leave it up to John as to the prudent time and location, plus requiring an as-built.

**Commissioner Szkola moved to require a revised application, an after-the-fact application, and issue a violation. The boulders are to be moved to a prudent location and at a prudent time as required by the Wetlands Enforcement Officer, under his supervision. The area is to be restored to its original condition, at the builder's expense. The wetlands protection signs should be in place. Seconded by Commissioner Beattie. All were in favor, MOTION PASSED.**

3. PERMIT #03-06, APPLICATION #04-21, PHOENIX HOUSING/BERKSHIRE COMMONS – 2 MURPHY'S LANE. Request to address Commission regarding options.

Jonathan Zuckerman, applicant

Mr. Zuckerman: I spoke with John Cook and gave him the revised plans. I originally had a permit for a single-family house issued in 2003. Because of the development and the possibility of Tanglewood and their problems with sewage, and I know this isn't P&Z, that there would be some beneficial affects to developing this and bringing the line down instead of doing a septic system. I came in here under #04-21 and was turned down.

Commissioner Zahornasky: That was denied because of the additional encroachment and widening the crossing.

Mr. Zuckerman: You granted the crossing for the single-family house.

Commissioner Zahornasky: You were granted the crossing for the single-family home but were denied because you were going to have to change the crossing.

Mr. Zuckerman: I have to change the crossing because now I have the letter from the fire marshal the requirement of the bridge.

Commissioner Szkola: The initial one, if I recall was for a single family and also city water, right?

Mr. Zuckerman: Also septic.

Commissioner Zahornasky: We have a letter to Richard Schultz, Planning & Zoning Administrator:

*July 22, 2004*

*RE: Berkshire Commons  
Murphy Lane*

*Dear Mr. Schultz,*

*The width of the driveway entrance and bridge is a minimum of (24) twenty-four feet. This should be maintained. Also, the bridge must be able to support the weight of Aerial Apparatus, which is 75,000 lbs. The hydrant location is to be determined at a later date.*

*I remain yours in service,  
Chief John V. Millo*

Mr. Zuckerman: When I was turned down for the second application, I went back to Artel and asked them if we could stay in the parameters of what originally approved. (Letter submitted)

November 16, 2004

Mr. Alvaro DaSilva, Chairman  
Inland Wetlands Commission

Re: Berkshire Commons, 2 Murphy's Lane

Dear Mr. DaSilva:

The above referenced development is a modification of the original plans and application #04-21, submitted to the Commission earlier this year. Modifications have been made to the plans based on Staff and Commission suggestions including 1) a reduction of the number of residential living units, 2) limiting impacts (i.e. no impacts beyond the previously approved fill limit line) to wetlands and regulated areas to be no greater than previously approved and, 3) installation of a storm water treatment and detention system that is designed for a 25-year storm and will limit the storm water rate of runoff to pre-development conditions.

As proposed, direct impacts to wetlands and regulated areas are limited to the areas previously approved by the Commission and the rate of storm water runoff from the site during a 25-year storm will be no greater than under existing conditions.

Please feel free to call with any questions.

Sincerely,

Artel Engineering Group, LLC  
Dainius Virbickas, P.E.  
Professional Engineering Manager

Mr. Zuckerman: I submitted a set of plans to John on his way out the door, so he has not had the chance to review them.

Commissioner Zahornasky: So what you are saying now, is you are coming in here with your multi-unit and are you going to use your existing crossing or existing limits?

Mr. Zuckerman: Yes. Staying within the existing limits.

Commissioner Zahornasky: Have the walls been installed?

Mr. Zuckerman: Yes, there was an as-built. (Showed the walls installed and where it is back-filled).

Commissioner Zahornasky: So basically your piers are in, you just don't have a crossing structure on top of it.

Mr. Zuckerman: Correct. (Showed the as-built profile of the crossing). It is a little higher than what we designed. The structures are all done.

Commissioner Szkola: I recommend receipt for review.

Commissioner Zahornasky: Ok. So, you are not going to be encroaching on any wetlands? I know previously we talked about being closer.

Mr. Zuckerman: I had 5 units and needed a retaining wall. That wall is not there. (Showed the limits of previous approval).

The application was received for review.

### **C. NEW BUSINESS**

1. PERMIT-APPLICATION #04-50, KIMAN PROPERTY – 4 OAK VALLEY ROAD. Proposal to fill a pond for yard space.

Steve Kinman, Homeowner

Commissioner Zahornasky: In conversations with John Cook & Chairman DaSilva, this pond is a man-made pond used for irrigation. (Reference points were made). The WCEO Report comments are: The application proposes to fill a small pond on the subject property. The pond was identified on the record subdivision map, the developer's engineer designed the lot to provide for the pond's continued existence and the pond was there before the present owner purchased the parcel.

Staff recommends against filling of the pond. Relative to safety concerns for small children raised by the applicant, protection can be provided with the installation of any number of attractive

fencing measures. Staff notes that throughout the area in the adjacent open space there are topographic hazards. Relative to mosquito issues there are environmentally friendly tablets that can be added to the pond by the landowner during larvae season.

Commissioner Szkola: I will go along with that too because there is swamp all around the place anyway.

Commissioner Zahornasky: It is not wetlands and doesn't serve any function as far as wetlands. I would like to receive it for review and hear what John has to say.

Commissioner Hayes: There are other areas in town that have this same situation and so that we have a consistent view on other applications. What is the down side on keeping the pond?

Mr. Kinman: In the summer it drains down and we have a lot of mosquitoes. It is a steep drop off. I have a new baby girl.

Commissioner Szkola: It is a very shallow pond.

Mr. Kinman: It's 10'. It gets nasty in the summertime.

Commissioner Beattie: However, it was there before you purchased the parcel.

Mr. Kinman: It is a man-made pond and I would just rather bring it back to its original state.

Commissioner Zahornasky: Ok, we will receive it and have Staff take a look at it and then you will have the Commission's outlook.

2. PERMIT-APPLICATION #04-51, TURKEY HILL ESTATES – BUDDINGTON ROAD. Proposal to create a 10-lot residential subdivision involving road construction and discharge to a regulated area.

Paul Valko, Licensed Land Surveyor, Shelton

Mr. Valko: What we are proposing is an 10-lot subdivision under the PRD regulations. (Reference points were shown). We are using sewers and water. All 8 lots conform as far as the slopes and wetlands. We have a minimum of at least 30,000 in each lot. The square fits the frontage. The only wetlands on the property is down at the bottom near Old Kings Hwy., which is an existing stream. (The wetlands area was pointed out). The 50' buffer line was detailed. The 10 lot grading area is a minimum of 45-50' from the buffer line. We have a detention pond at the end of the road and the outfall drainage will go through a swale with a riprap. It will have a splash pool at the end of it which will tie into the stream. The detention pond will be used as a sediment pond during construction. We will have the standard silt fence around the catch basins during construction. We propose to use water breaks on the road because we do have 10% grades out there to slow the road down for the soil erosion control measures.

Commissioner Szkola: On the outflow from the detention pond, for velocity dissipation, are you just going to use the splash pool at the bottom?

Mr. Valko: First of all, you have detention in the pond. Instead of letting out the total flow, we are releasing what would be about a 50" pipe. We are going to keep it at a bare minimum.

Commissioner Szkola: What do we have for an elevation on the end of cul-de-sac?

Mr. Valko: 255' at the cul-de-sac, the pond is 240, outlet is 240, the spill way is 245, and the splash pool is 226. That is why we are using modified riprap going down the channel. We're trying to keep it slow.

Commissioner Szkola: I would like to walk it. Maybe have a couple of more splash basins in there to slow the velocity.

Commissioner Zahornasky: That's the only item on this project, right?

Mr. Valko: Right.

Commissioner Zahornasky: Ok, we will accept it for review and have John Cook schedule this for a walk.

3. PERMIT-APPLICATION #04-52, MURTISHI PROPERTY – 80 BRIDGEPORT AVENUE. Proposal to install a paved parking lot for a small commercial operation involving grading within buffer and discharge to Burying Ground Brook.

(taken out of order while waiting for engineer)

4. CONCEPT-APPLICATION #04-53, HOUSATONIC WAY LLC – 550 RIVER ROAD. Concept application for CRD development to create a 6-lot residential development involving road construction, discharge of stormwater and grading and/or construction within regulated areas or buffers.

Earl Goven, Landscape Architect, Canal Street, Shelton

The Commissioners discussed the location and expressed concern of the status of the cleanup being done by Emhart.

Mr. Goven: This is a concept review for a 6-lot subdivision located on River Rd. We would like to develop it as a CRD. It is on 9.2 acres. The proposal includes a roadway, which is in the buffer, located in the buffer of Ivy Brook. Lot #1 is located primarily within the buffer (shown and detailed for the Commissioners). It is within the 50' setback of the tidal marsh along the Housatonic River. I believe at one time this property must have been a gravel mine and has been disturbed.

Commissioner Szkola asked about the tidal limit.

Mr. Goven: The full moon, high tide does not go beyond the wetland line. There is a piece of property adjacent to this, which I believe is Latex Foam, who has an application before you to remediate the pond. At some point in time that property may become available to this owner.

Commissioner Szkola: Do you know what the access would be to that site for remediation?

Mr. Goven: I believe they are using this site to get to the remediation area. They would have to go through the buffer.

Commissioner Szkola: The only way they explained it was remediation in the site and they had access through this site.

Mr. Goven: There is currently an existing gravel drive (road) that comes through. I am not really privy to the information on that. (The dividing line was shown and detailed).

Commissioner Szkola: Say, this remediation process takes 2-3 years to go through DEP, and the houses get built, then what happens?

Mr. Goven: I believe they are responsible for finding a way to get down to here.

Commissioner Szkola: I am not prepared to land lock this toxic waste site.

Mr. Goven: This site does not include whatever the toxic waste is. It is not part of this proposal, it is a separate piece of property.

Commissioner Szkola: Then I have a question for the City attorney, on how we go about this. I don't want to put the cart before the horse.

Commissioner Zahornasky: I think John would be able to answer this.

Commissioner Szkola: I don't know if the City attorney should give us an answer or an independent attorney. I think it is a good question.

Mr. Goven: That is on a separate piece of property.

Commissioner Szkola: We have to look at the whole picture.

Mr. Goven: This proposal is just a demonstration that by zoning code we can get a standard 6-lot subdivision. In that scenario we would potentially have a stream crossing with an alternative that you come off River Rd. We have 2 lots, which come off River Rd. with a shared driveway. We have another that could come off River Rd. but would, in the stream-crossing situation, from a gated access to the lots that are located on the other side of Ivy Brook.

Commissioner Hayes: Is there any reason for that?

Mr. Goven: If you look at this plan.

Commissioner Szkola: Wait. We are supposed to approve this plan first and base it on this plan, not that one.

Mr. Goven: What I am saying is, ideally, we would like to have a gated entrance. We realize it may not be feasible because we have 3 lots on the other side of the brook. In the CRD we have 2 lots and access it with one drive. Here it would be a little more cumbersome to drive across in one location and access all 3 lots. We do have an exit off River Rd. for the 2 units down to the south. We would like to come across with the one unit to the north, to provide a gated entrance concept. The buffer area is the area affected. The only area of the wetland affected is the stream crossing. There is grading associated with the buildings and with the road in the buffer of the standard subdivision.

Commissioner Szkola: Do you know what the square footage is for the crossing?

Mr. Goven: It is .16 acres. It is 15' x 20'.

Commissioner Szkola: That is fairly minor.

Mr. Goven: There is some grading associated with the road but there is no disturbance with the entrance drive. Lot #1 would be located within the buffer. The area between the pump station and the lot would be open space. The area to the east of the roadway would have 4 houses as opposed to the 3 due to zoning regulations. In this plan we would provide a public access with a parking area off of River Rd. with access down either after we get this property here (shown) or before we come around the existing drive with the potential footbridge across that marsh area to get out to the barrier island.

Commissioner Szkola: Is this also a gated community?

Mr. Goven: This would be gated but with public access at the entrance to get to the waterfront. I wouldn't say it's gated. There are pillars and a private drive. There would be public access over that drive.

Commissioner Szkola: With the public access, would the footbridge be available at high tide?

Mr. Goven: Yes. City water and sewer serve the lots. They do meet the zoning criteria of contiguous non-wetland area. We would like to be able to control the access to these 2 lots from the drive so we don't have access onto River Rd. on the corner. It is not the best visibility and we would like to have one access instead of the 2. I understand there is a stream crossing involved

in that. The disturbance is grading in the wetland buffer for the driveway and the stream crossing at the closest point of Ivy Brook. The conservation easement would be granted over 150' back from the property line and the one lot closest to the pump station would be open space as well.

Commissioner Szkola: The conservation easement would be turned over to the City or privately held?

Mr. Goven: I am not quite sure of the legality of it. If it is an easement I assume they own it but the City has the rights over it. There is an existing roadway that kind of meanders down and follows the edge of the wetland. It is our intention to utilize that as the access point and way around, even though it is in the wetland. I don't know how much needs to be improved other than adding gravel or mulch.

Commissioner Szkola: This has a clean bill of health as far as the heavy metals that were on the other site?

Mr. Goven: I haven't done any investigation but I will look into that prior to any formal submission.

Commissioner Zahornasky read the WCEO Comments:

The plan presently is submitted as a 6-lot CRD concept based on a 6-lot conventional. The applicant has also indicated that at this early stage he is open to suggestions.

While under the conventional plan the layout appears workable and demonstrates an effort to respect the regulatory standards there is some concern with the anticipated grading and discharge location. It is not clear what improvements, if any, the CRD plan provides relative to the regulated activities.

The site is at the confluence of Ivy Brook, Butternut Hollow Brook and the Housatonic River. It also maintains unique freshwater wetland characteristics due to tidal influence. Staff suggested to the applicant that besides an in-lot creation the site lends itself to concentrating the construction to a smaller physical area. This concept holds true whether the construction is single or multi-unit or non-residential development. Concentrating the work area may help reduce the overall regulated activities on this parcel by reducing or eliminating driveway or roadway concerns.

Recommend receipt.

Commissioner Szkola: You lost me on the 3<sup>rd</sup> paragraph. What did he talk to you about?

Mr. Goven: With the two different designs you're going to get into a little bit more intrusive design with the general subdivision. With the CRD we're allowed to concentrate our disturbances to the upland areas a little more.

Commissioner Zahornasky: With the in-fee lot creation because of the open space?  
(conversations going all at once)

I think it's because there is no open space associated with the property; there is a conservation easement with the CRD. With a regular, standard subdivision there should be a 10% open space dedication. I think that reflects the in-fee statement.

Mr. Goven: There is not an area designated.

Commissioner Zahornasky: So instead of no open space they are proposing an in-fee.

Commissioner Szkola: This is misleading because first of all, they don't own this yet.

Mr. Goven: We own all the way down from....(detailed the property)

Commissioner Szkola: It is misleading the way it was shown. Right now you are showing public access to a parcel you don't own. Emhart still owns it.

Mr. Goven: We could provide public access down through this way.

Commissioner Szkola: That is misleading because here you're telling us; it has nothing to do with us because it is a separate piece. It works both ways for you. Now you show us public access to this site you don't own. I don't want to see this when you come in before us for a PRD when you're showing that you can have access to that when you don't own it.

Mr. Goven: It's a CRD. There is still access to the waterfront right here.

Commissioner Szkola: Right. So show that and eliminate that thing. I don't want to see it in the next plan, ok? We are supposed to base it on what you own. It works both ways for you, but it doesn't work for me.

Commissioner Zahornasky: I am going to open it up to the public and would ask that you state your name for the record and if more than one person wants to speak try not to be redundant and try to keep your comments to wetlands issues, if at all possible.

Chris Jones, 21 Geissler Drive Chairman of the Executive Democratic Town Committee

Mr. Jones: I stood in front of the P&Z Commission and suggested that this piece of property, that they report favorably on an 8-24 referral to the Board of Aldermen for the City of Shelton to have this property, not the Mayor. The Conservation Commission reported this as an unfavorable piece of property, undesirable. This looks pretty darn desirable to me. Did they have the same opportunity to get this piece of property subdivided? That's the reason they turned it down because of the waste down there. Now he gets a second subdivision off that and gets it cleaned and then he gets it. That's my whole beef with this. He had privileged information about this piece of property.

Commissioner Zahornasky: We respect your comments but at Wetlands, we don't make those decisions.

Mr. Jones: Right, I know. I am going on record to say this at every meeting and this is a special meeting and you are not usually allowed to speak on anything on the agenda, but I grew up here.

Commissioner Szkola: This is misleading. That is not part of this proposal.

Mr. Jones: Someone told me that land was undesirable. I don't know who walked that property. I was down there last week walking the property. Don't tell me that's undesirable. For \$300,000? There's builders in here that would pay \$1-2M for that property. I just wanted to go on record to state that.

Reinhold Wilhelm, 6 Falbo Drive, Seymour. 888-4423

Mr. Wilhelm: I have been a contractor for 42 years and I own the property directly abutting the piece of this property. That is between the Matto house and Butternut Hollow brook. Butternut Hollow is my border line to the north. This property would be across the street. I have owned my property since 1967. It predates any wetlands. I can tell you in detail about this. There are

several factors that greatly disturb me. It is not solely wetlands. One is that the property was obviously offered by Emhart to the City, just like I had to do being in organization one time offered to the City first, because the City has the first right of refusal. Rather than this being placed before the City of its committees which would have the interest to say yes or no to wanting it. It appears that the Mayor decided he's going to be a builder. In my point of view, being a builder, being approached to public office many times, it is highly unethical to even conceive to do something like that.

Commissioner Szkola: You should take that up with the Ethics Commission.

Mr. Wilhelm: Subsequently, I can tell you I know this background considerably. What greatly disturbs me is the sludge pits down there. Since I've been there and have worked on my property filling, or overlaying it because my property had originally been filled with blasted rock. In the 50's Route 110 was rebuilt by a contractor from Bridgeport who blasted the rock out and with the permission of the then, owner, pushed the rock across into the property, which is mine today. It was somewhat difficult so when the sewers were installed in the City of Shelton, I went to the contractor and asked that I have the soil which was used for fill overlay in my property improving it to the point where it is a decent piece of property. I had ample opportunities to go over to that site because nothing would grow. It was open pits. I am quite familiar with plating. I have served two apprenticeships in the metal fields. I worked in that field as well as being a contractor. I worked as a tool & die maker for 20 years. I can tell you that plating is a very controversial subject, which is why we do so little in this country. (He detailed what the plating system looks like and where the waste goes).

Commissioner Zahornasky: You say the sludge pits on this property, where would you estimate they are?

Mr. Wilhelm: (Showed the Commissioners on the map)

Commissioner Zahornasky: We have a permit issued to them for the remediation of that site.

Mr. Wilhelm: Subsequently we would fill the pit with sludge and dig another pit next to it and put the soil in there to cover. What is in there is the highest grade of poison available today. As to the environment, which is copper sulfate.

Commissioner Zahornasky: Those are being addressed.

Mr. Wilhelm: I know, I want to say for the people who might not understand that since this all preceded any kind of environmental controls, this was done at that time. Not that I ever approved of it on my part; I can tell you I grew up as a son of a forest game warden. I have been a member of the land improvement contractors of America for 20 years. I am fully aware of remediation and environmental subjects, and what it all means. I have been to seminars, work sessions, and kept my monthly publication on it and I read them. I am quite familiar with it. I don't like to get involved and don't like the controversy that surrounds it. I have a great admiration for the Board to sit and listen to this and various applications and have to come up with what is right or not as it applies to the regulations. What I am saying is, this area down there is highly toxic. EPA did the right thing by covering it over because any disturbance of it, you would have no more oysters in the Sound or fish in the river. The fish only came in after this was covered. Before the river was dead; it was an open sewer.

Commissioner Zahornasky: As a matter of fact, Commissioner Szkola asked the applicant from Emhart to get us written confirmation from the EPA and DEP as to why the materials needed to be removed and not just capped over.

Commissioner Szkola: Actually I have researched it since then. Heavy metals are better left alone.

Mr. Wilhelm: The toxicity is so high in concentration. Since you have tidal influence, you first would have to put a coffin. The coffin(?) is not tight, no matter how you do it, you would have water because it goes underneath. You would have such an amount of contaminated water. The figure is so totally out of site to remediate that. With all the disturbance, you would have to remove that material but yet, all that leaching has gone beyond. You would have to go out and take the riverbank, because it has leached out. This is why that area that you walked it at that time was clean. You always had a State fence around it so no one would walk in it because it was like quick sand. I am not trying to over-emphasize this. These are facts. This is not my opinion. Subsequently I see the disturbance of that area would influence considerably what is there and I am talking about the remediate site. That ground out there is principally gravel down

to the ledge. Gravel will not only let water flow through, but it will move. You start excavating and putting houses there and you can influence that site from a 100' away with no problem at all.

Commissioner Szkola: Since you have so many concerns, I might suggest you look into an intervener status with this since you are the neighbor. You have the right to be an intervener and the right to all matters regarding this and have the right to be informed and would be a participant legally what is involved.

Mr. Wilhelm: It is not only that with the plan itself, but I see one other minor problem. Developing my property down below the State said there is not sufficient oversight. You have to move the driveway to the left hand side. You cannot go into the bend. We wanted to have a road access to the right of the property, which is minimal compared to what I see here.

Commissioner Zahornasky: It might be something the Commission should ask of the folks doing the remediation on Emhart's part that what would be the effect of construction of this type of plan based on the remediation they are doing out there. In order to justify what you're saying is, we would require them to say, even if you build this house it will have no impact on this because, and these are the reasons why.

Commissioner Szkola: Legally, the two are separated. I think that one is going to impact the other. They are inter-twined in my opinion.

Mr. Wilhelm: I believe, if I could advise the Commission that EPA should give you an opinion on this. Before anything is done, a hydrologist should survey that whole area and give a feasibility study to what is planned here. Those are the absolute minimums that I would require being on the Board.

Commissioner Szkola: That should be to the cost of Emhart.

Commissioner Zahornasky: Thank you for your input, anything else?

Mr. Wilhelm: Yes, also, I applied for many different applications over the past on my property. One even preceding wetlands board. They were all denied in work sessions. They said sorry, it's unacceptable. I was denied even a two-house subdivision. Finally, I think it was 3 years ago or so I said to Mr. Schultz, since I have been denied everything, what will you allow me? He said,

well, it's R1, you can build a house, but, we want to see road access and want to see a house that represents itself of the area. We are talking about a bigger house. Ok. We came up with plans, brought them in, and my engineer put the plans together and did not realize he had gone a foot by 1 1/2 into the 50' setback from the wetlands. I said ok, can we just cut the corners of the deck off on the 45 and we're out. No, the house was moved 3 times to satisfy the wetlands. Considering those factors, I'll leave it up to you in your own judgment how I feel about it. I have talked with counsel and I've told him, if this will go, I'll go into litigation over it. And there we'll open up some nasty doors. I still have sketches and plans.

Commissioner Zahornasky: I've been on the Board for a good number of years and I don't remember ever seeing an application submitted to the Commission. You may have not gotten past the work session with P&Z, but we have not had one.

Commissioner Szkola: Didn't you have one for a boat ramp? That we gave him.

Mr. Wilhelm: Yes. Now that you mention it even my engineer said you going to have a tough nut here. Two days later I came back and I gave him all the details of what was required and how we would solve. This I knew what I was talking about. I'm fully aware of it. I'm not trying to brag about it. Considering these factors, not to mention what is outside the wetlands, I'm totally opposed to it and I would like to be an intervener.

Commissioner Szkola: You would have to talk to your counselor about that.

Commissioner Zahornasky: Any other persons wanting to address the Commission. (None came forward). Ok, we will schedule it for a walk.

Commissioner Szkola: I can't emphasize enough and it bothers me that it works for that piece that you don't own can show up on the plans. Nor should it show up on the plans on P&Z. Did you bring this to a work session like this?

Mr. Goven: No, I was not personally at a work session with this.

Commissioner Zahornasky said this would be accepted for review.

Going back to:

3. PERMIT-APPLICATION #04-52, MURTISHI PROPERTY – 80 BRIDGEPORT AVENUE.

Proposal to install a paved parking lot for a small commercial operation involving grading within buffer and discharge to Burying Ground Brook.

Joe Pereira, Pereira Engineering

Mr. Pereira: Mr. Murtishi has owned the property for the last 4 years. Previously the property was used for a 2-family house. He has renovated the property and put new decks and the inside of the house. There are no wetlands on site but we do have a watercourse. The house itself is 750 sq. ft. per floor. The curb cut was shown. The garage will remain and he is looking for commercial use of the building. We are required to have 8 spaces and we have 10. From the stormwater quality standpoint we are looking to install curbing, catch all the runoff and route it through an oil separator and run it to Burying Ground Brook. The brook flows from south to north. The runoff from the new addition will be routed to the dry well and from there run into the oil water separator. Aside from that it is a pretty straightforward application.

Commissioner Zahornasky read the WCEO Comments:

The application proposes to grade, pave and discharge stormwater to Burying Ground Brook. The application also includes an addition within the setback of the brook. A portion of the proposed work is after-the-fact. Some grading already took place on the subject property. Planning & Zoning has been reserving legal action pending the filing of a wetlands application and its outcome. The site is small and was historically an old residential dwelling within a commercial zone. The Inland Wetlands and Planning & Zoning offices waited 10-months for the site plan and application to be prepared and submitted.

As grading work took place in violation of the regulations the site plan should show three components of the work; the grades as existed prior to filling, the current grades and the proposed grades. The site plan should also show the 75' setback line from Burying Ground Brook.

The applicant is providing an oil/water separator as a best management practice for the discharge. The specification should be verified by the City Engineer's Office.

Recommend receipt for review.

Commissioner Zahornasky: I don't know if that's reflected on the plans.

Mr. Pereira: We do have existing and proposed. When I was brought onto the project I was handed the survey on the property. I can look back. I know there were previous guys involved in the project, the guys being engineers, so we can see if there is a record map and provides those grades previous to what was done.

Commissioner Szkola: John has to review it.

Commissioner Zahornasky: We will accept it for review and have Staff take a look at it. Run that by the City Engineer.

#### **D. OTHER BUSINESS**

1. BUFFER-APPLICATION #04-47, NICOLARI PROPERTY – 127 INDIAN WELL ROAD.

Proposal to construct a single family dwelling within Housatonic River setback.

Commissioner Szkola: This is an administration application. The WCEO Comments are as follows:

The new dwelling along the Housatonic River does not project closer to the river than the former home. While larger than the original structure the added length is towards the railroad tracks and upward.

Staff has no issues with this administrative application as submitted.

There is no action needed from the Board.

2. Set 2005 meeting schedule.

**Commissioner Szkola moved to set the 2005 meeting schedule for the 2<sup>nd</sup> Thursday of every month at 7PM, Room 302. Seconded by Commissioner Hayes. All were in favor, MOTION PASSED.**

#### **E. MINUTES**

1. October 14, 2004 Regular Meeting

Commissioner Szkola tabled approving the minutes of the October meeting until the December meeting.

**F. ADJOURNMENT**

**Commissioner Szkola moved to adjourn the meeting. Seconded by Commissioner Beattie. All were in favor, MEETING ADJOURNED AT 8:35 P.M.**

Respectfully submitted,

Marianne Chaya  
Clerk, Inland Wetlands Commission  
Margaret Weber attended and taped the meeting  
1 tape is on file in the City/Town Clerk's office  
A complete copy of the WCEO Report is on file in the Inland Wetlands Office.