

COMMITTEE ON ENVIRONMENT
RAISED BILL NO. 6345
TESTIMONY OF PETER C. HERBST
MARCH 16,2009

Cochairmen and members of the committee, my name is Peter Herbst. I am an attorney with a private practice in Torrington. For over 35 years, I've practiced law in northwestern Connecticut, in the Highlands Region.

Thank you for allowing me this opportunity to testify.

I do not believe that this Bill is good public policy. I would like to explain briefly why I say that.

I represent a client who has obtained local land use approvals for a private 18-hole golf course on a portion of a 785 acre parcel of land located in the Highlands Region towns of Norfolk and North Canaan.

My client, Yale Farm, has a water diversion permit application for over 50,000 gallons per day presently pending before the Department of Environmental Protection. A Notice of Tentative Determination to issue the permit was issued by DEP on January 13, 2009. Public hearings are to start soon.

Attorney Gregory Sharp, a member of the Hartford law firm of Murtha Cullina, who is handling the Yale Farm application presently pending at DEP, has informed me that DEP staff has determined that the Yale Farm application, which is subject to numerous DEP conditions, will protect water quality and both ground and surface flows.

If this Bill becomes law, the Commissioner of DEP would be prohibited from issuing a diversion permit, even if the Commissioner decides that the staff determination that the Yale Farm proposal will protect water quality and both ground and surface waters is correct. If this Bill becomes law, the issuance of a diversion permit would be prohibited not because the project is not protective of water quality and both ground and surface waters, but simply because this is a non municipal recreational project, it is located in the Highlands region, and it diverts water in an amount greater than 50,000 gallons per day.

This Bill is not good public policy. It creates a standard that is arbitrary and has no rational basis because it could result in terminating a project that protects water quality and both ground and surface flows.

The wetlands agencies and the planning and zoning commissions of Norfolk and North Canaan have each approved this project. They conducted over 40 public hearings over a four year period. They hired independent, objective, consultants to thoroughly review the applications.

A scientist hired by the town of Norfolk testified that my clients proposed regulated use of the land for a virtually chemical free golf course will be more protective of the environment than the current use of the land for farming, because of the impacts on water quality from the farm's runoffs of manure and nitrogen and other chemicals. She also stated that it will be a better use of the land than a housing project, with on site septic systems, which would be allowed as of right under the towns land use regulations.

Dr. Michael Klemens, a nationally recognized vernal pool expert, testified before the wetlands agency in Norfolk that

the Yale Farm application is probably the furthest any developer has gone in the protection of vernal pools in the entire State of Connecticut.

That gives you some idea of the quality of the project.

However, Scott Asen, a neighbor of the property, was involved in appealing all five of the local approvals to Superior Court. The court denied four of those appeals. Mr. Asen then appealed one court decision, to the state appellate court which sustained the lower court decision denying his appeal.

Yale Farm lost one appeal on a technical error made by an agency during its deliberations. That application has been resubmitted.

The first selectmen of the two towns in which this project is located support their agencies and commissions decisions. This is an environmentally friendly project that will enhance the tax base of both towns. It will create jobs that are sorely needed in this economy. This project will function as an economic stimulus plan for the two towns.

I have been told that the neighbor, Mr. Asen, hired a lobbyist to lobby DEP. For whatever reason, he has tried to stop this project, every step of the way.

I do not know the origin of this Bill, but it may be as a result of the last best effort by Mr. Asen to stop a project that has met all of the standards and requirements of the two towns in which it is located and has been determined by DEP staff to protect water quality and both ground and surface flows.

This bill is not reflective of good public policy.

In addition, I have been advised that application of this legislation to my clients project, with a pending DEP permit application that DEP has indicated a tentative determination to issue , may be unconstitutional.

I respectfully request that you not support this bill . That you let DEP continue to determine the merits of water diversion applications on a case-by-case basis as they presently do, that you let DEP decide whether diversion permits should be issued.

It would not be good public policy to adopt a new legislative standard that is arbitrary and is not rationally related to protecting the environment.

Thank you.

Rob C. Herbert