

## **Testimony of Committee to Save Guilford Shoreline Before the Planning & Development Committee**

*Regarding*

**RAISED BILL 343, AN ACT CONCERNING INTERVENTION IN PERMIT PROCEEDINGS  
PURSUANT TO THE ENVIRONMENTAL PROTECTION ACT OF 1971**

*Submitted by*

Linda S. Anderson, Treasurer

March 9, 2012

Senator Cassano, Representative Gentile, and members of the Committee,

Thank you for the opportunity to comment on Raised Bill 343, AAC Intervention in Permit Proceedings Pursuant to the Environmental Protection Act of 1971.

Committee to Save Guilford Shoreline respectfully opposes this bill, which unfairly targets citizens who wish to intervene in permit applications that they believe would damage Connecticut's environment and natural resources. The bill imposes new, inequitable, and potentially expensive requirements on environmental interveners, which will have a chilling effect on the willingness of citizens and nonprofits to take legal action to protect our environment.

Proponents of this bill have said that it is necessary to protect developers from lawsuits by competitors and from numerous baseless environmental suits, but this is not so. There are already remedies in place to protect developers from frivolous suits by competitors, and a study by DEEP showed that only 2 out of 1,000 suits brought against applicants are environmental in nature—hardly the tide of suits that has been alleged.

Committee to Save Guilford Shoreline, an environmental advocacy group, has been involved in a large number of hearings over the last 14 years. Without CEPA, our ability to be heard would have been seriously compromised and we would have had virtually no chance of being successful. It is difficult enough for a citizen's group to raise its own funds to pay legal fees and other costs involved in protecting the environment much less having to raise funds to pay developers legal fees.

The new requirements that would unfairly burden environmental interveners include:

- Requiring that the intervener identify all participants and funders. This goes far beyond current requirements and would allow defendants to harass nonprofits, citizen groups, and individuals seeking to assert their rights. As written the bill would require this only of the environmental interveners, not of all parties involved.
- Requiring a pleading to demonstrate rather than assert a claim. This changes the purpose of a pleading. Demonstrating the claim is a burden reserved for an actual trial.
- Mini-hearing requirement. The bill sets up a mini-hearing, which is unnecessary and a waste of resources as the regular hearing will have to proceed regardless. Also, because in a land use proceeding the burden of proof lies on the applicant and because a claim

can be based upon a failure of the applicant to meet that burden, an agency often won't be able to rule on an intervener's petition until after the applicant has put on its evidence.

- Attorneys' fees for vexatious litigation. If it is determined that the suit was filed in bad faith, the intervener would have to pay additional damages to the applicant. There should not be inconsistent or more stringent requirements enforced against environmental interveners than on other interveners. This provision would do nothing to address the real issue of unfair competition, and would instead discourage citizens from bringing legitimate suits for fear of having to pay exorbitant amounts of money.

- Limiting the right to appeal. Limiting rights of appeal of environmental interveners but not the right of applicants unfairly tips the scales in an applicant's advantage. There is no legitimate public policy reason to have one set of standards for environmental interveners and a separate, more lenient one, for applicants. In actuality, most appeals of land use decisions are filed by applicants, not interveners; if the goal is to prevent frivolous suits, then frivolous suits by applicants should be prevented as well.

Please oppose this bill. The problems it claims to solve are best addressed through other routes, and it threatens to intimidate citizens into keeping silent about legitimate threats to Connecticut's open space and natural resources.

Thank you for your consideration.

Sincerely,

Linda S. Anderson  
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