

Date: March 9, 2012

To: Senator Steve Cassano, Co-Chairman
Representative Linda M. Gentile, Co-Chairman
Members of the Planning and Development Committee

From: Greg Pinto, Capstone Builders, Inc.

Re: Senate Bill 343, AAC Intervention in Permit Proceedings Pursuant to the Environmental Protection Act of 1971

In 2005 Capstone Builders, Inc. proposed a residential subdivision comprised of 16 building lots on approximately 60 acres of land. This low-impact residential project was conservatively designed, proposed no wetlands alteration of any kind, and included no activities within any regulated upland review area. This project was designed and/or analyzed by eleven professionals, listed below:

- Three professional engineers from two firms with combined experience in excess of 70 years and specialties in hydrology, subsurface sanitary disposal system design, and stormwater management system design. Retained by Capstone at its expense.
- Two soil scientists from two firms, both having advanced degrees in soil science and one having an advanced degree in wetlands zoology, with combined experience in excess of 45 years. Retained by Capstone at its expense.
- A botanist with an advanced degree focused on wetlands botany having more than 20 years of experience. Retained by Capstone at its expense.
- The Town Engineer of Vernon, with over 25 years of experience. Employed by the town.
- Four engineers from two firms, with specialties in hydrology, stormwater management system design, and subsurface sanitary disposal system design. Retained by the town at Capstone's expense.

For our first application before the Planning and Zoning Commission (PZC), the intervenor hired one soil scientist to present evidence at the public hearings for the sixteen-lot project. This soil scientist opined on matters of hydrology, subsurface sanitary disposal, and stormwater remediation, areas in which he admitted during cross-examination that he had NO EXPERIENCE and NO EDUCATION. One of the consulting engineers retained by the town stated, for the record, that the proposed subdivision was so over-designed that he couldn't imagine any adverse environmental impact would ever occur. Despite overwhelming evidence that demonstrated no adverse environmental impact would be likely, despite the finding of the PZC that the project would not likely result in adverse environmental impact, and despite a denial of intervenor status by the PZC after the close of the public hearing, an intervention motion was filed in superior court more than one year after an appeal was taken, on the eve of a settlement between Capstone and the town. *The attorney for the intervenor indicated in court that he did not have expert testimony ready and said the intervenor viewed its role as helping the town ensure a denial of the application.*

Because the intervenor presented no evidence that indicated adverse environmental harm, and because the intervenor in fact presented no pertinent expert testimony, Capstone, with the support of the town, asked the court to bifurcate the trial to establish whether environmental harm was likely, thus enabling a settlement by way of stipulated judgment to move forward. Lacking precedent, the court declined our request. A number of months later, we learned that sewer service had been mandated for our parcel. Soon thereafter, a second application was submitted to the PZC, with the blessing of the superior court (the litigation of the first application has been postponed pending outcome of the second application). Though the addition of sewer plans could have been handled as a staff administrative function, Capstone submitted the new sewer plans in an effort to dispose of the first application without protracted litigation. For this application, the intervenor presented NO EXPERT ENVIRONMENTAL EVIDENCE OF ANY KIND, was again denied intervenor status by the PZC after the close of the public hearing, and again filed for and was granted intervenor status in superior court.

Shortly after approval of the second PZC application, knowing another 22a-19 intervention was likely in superior court, the town planner asked us to consider a cluster subdivision and offered to propose regulation changes that would allow it. Capstone agreed to the concept, at considerable expense designed a cluster subdivision and, prior to submitting a third application to the PZC, asked the Inland Wetlands Commission to modify our existing IWC permit to allow that cluster project. The intervenor again filed an intervention petition, this time before the Inland Wetlands Commission (IWC), again presented NO ENVIRONMENTAL EVIDENCE, and was again denied intervenor status at the close of the meeting. The IWC determined that because less work was proposed than on the original application, and because no regulated activities were contemplated, no permit modification would be necessary. The IWC issued a jurisdictional ruling to that effect.

So, after more than six years, after spending approximately \$450,000 in extraordinary soft costs (i.e., costs exceeding typical expenditures, and excluding land costs and any public improvements) to carefully and conservatively design, present, and defend a proposed low-impact residential subdivision, with significant unreasonable, future soft costs likely, we do not have an approval to build a project in an area of town where the Plan of Conservation and Development indicates such a project would be desirable. Capstone spent a small fortune to defend against environmental "assertions" (as opposed to specific environmental allegations), Capstone missed the real estate market, and the Town of Vernon has spent and will spend considerable funds, simply because the provisions of Section 22a-19 are so easily abused. By abusing this environmental statute and by either presenting no pertinent expert testimony or, more often, by specifying no alleged environmental harm and presenting no supporting expert testimony at all, an intervenor has unjustly delayed and possibly stopped a low-impact development deemed desired by the town, at little cost and with low probability of adverse consequence to that intervenor. Moreover, the intervenor by all indications will continue its abuse of this statute and will cause Capstone and the Town of Vernon to incur significant, unnecessary, unreasonable, and unjust future costs.

For these reasons, Capstone Builders, Inc. strongly supports Raised Bill No. 343.