

Statement in Support of Raised Bill Number 343

Diane W. Whitney, Pullman & Comley LLC

March 9, 2012

I am Diane W. Whitney. I am a partner with Pullman & Comley LLC, and the head of the firm's environmental law department. My practice includes the representation of both private developers and municipalities in environmental and land use matters; I have been in practice for 27 years.

I have frequently represented clients where interventions were filed under Conn. Gen. Stat. §22a-19, and am very familiar with the difficulty such interventions cause. In my experience, interventions under this statute are almost always used for purposes of defeating competitive applications and not truly for the protection of the environment. And unfortunately, the statute is written in such a way that such misuse is very possible. A quick reading of the statute shows that anyone can make such an intervention. Unlike traditional intervention in zoning and wetland matters, the environmental intervenor need not own property within a certain distance of the land in question and, in fact, need not even be a Connecticut resident.

But the two most serious problems with the statute as it stands now are that it holds the intervenor to essentially no standard whatsoever and permits intervention at any time. Most petitions asking for intervenor status simply mirror the language in the statute, saying that the application in question "involves conduct which has, or which is reasonably likely to have, the effect of unreasonably polluting, impairing or destroying the public trust in the air, water or other natural resources of the state." That does nothing to tell the applicant or the agency what the issue is, and there is no requirement that the intervenor come forward with evidence at any given time. Intervenors routinely slow down the application process, making it orders of magnitude more expensive than would otherwise be the case, and they confuse the local agency, encouraging it to deny an application in order to take the safer route and protect the environment from a danger that is only vaguely presented. Though it sounds unbelievable, applications have gone through years and years of agency action and then the inevitable legal appeals, only, in the end, to have it revealed that there was no reliable evidence of possible environmental harm.

Every developer I have represented wants to make the best possible application. If they are made aware of an environmental issue, they will do their very best to solve it to everyone's satisfaction. But too many intervenors do not want the issue solved; they want the application denied, and they can achieve that goal by, in Justice Borden's words, "Winning by losing slowly." An application with which I was involved eventually won its legal appeal brought by an intervenor, but by that time, years into the process, the development had become too expensive to pursue; the land remains vacant today.

The proposed legislation will do nothing to impede responsible environmental intervention. What it will, hopefully, do is eliminate those interventions where there is no credible evidence of the environmental harm alleged. It will simply make the process more fair, and as it stands today, it is anything but fair.

Diane W. Whitney