CALL TO ORDER/PLEDGE OF ALLEGIANCE

Aldermanic President John Anglace opened the Public Hearing at approximately 7:05 p.m. All those present pledged allegiance to the flag.

ROLL CALL

Aldermanic President John F. Anglace, Jr. – present
Alderman Lynne Farrell – present
Alderman John “Jack” Finn – present
Alderman Stanley Kudej – present
Alderman Eric McPherson – present
Alderman Kenneth Olin – present
Alderman John P. Papa – present
Alderman Anthony Simonetti – present

LEGAL NOTICE - CITY OF SHELTON

NOTICE IS HEREBY GIVEN THAT THE BOARD OF ALDERMEN WILL CONDUCT A PUBLIC HEARING ON THE FOLLOWING:

- Sale of City Property known as the portion of Middle Avenue abandoned on October 11, 2001, (15,000 square feet, more or less), bounded and described as follows:

  Northerly by Birch Street, 50 feet more or less;
  Westerly by land designated 15 Birch Street, 300 feet more or less;
  Southerly by land designated 20 Ridge Lane, 50 feet more or less;
  Easterly by land designated Lot 51, Assessors Map 92, 50 feet more or less;
  Easterly by land designated Lot 50, Assessors Map 92, 50 feet more or less;
  Easterly by land designated 33 Birch Street, 50 feet more or less;
  Easterly by land designated 25 Birch Street, 150 feet more or less.

Said public hearing shall be conducted on Tuesday October 27, 2009 at 7 p.m.; in the auditorium at City Hall, 54 Hill Street, Shelton. All persons who have an interest therein may appear and be heard in relation thereto.
Alderman Anglance stated, by Statute, the notice for this public hearing was different than normal. In this case we had to put up signs, we had to advertise in the paper twice at intervals designated by Statute. I believe all that was done. We’re here to hold a public hearing on the potential sale of property referenced as a portion of Middle Avenue. This is one more step in the procedure to sell City property.

Alderman Anglance asked if any member of the public wished to speak.

Attorney Dominick Thomas, Cohen & Thomas, 315 Main Street, Derby

I represent two of the five property owners that border Middle Avenue. I represent John and Nancy Todice who are the sole owners of the property along the easterly side of Middle Avenue, if you’re standing looking at the property it would be on the right-hand side, and they own it in the name of T and T, LLC. Then I represent Michael Salemme who owns a parcel of property on the other side, which is comprised of two lots, which are the farthest lots down this Middle Avenue portion of property.

In the early 1990s Mr. Bargas developed property off of Constitution Boulevard which was converted into an R-3 subdivision. As part of his approval, he was asked to deed to the City certain areas of the land that he had purchased on which were paper streets. I believe in addition to Middle, there was Forest and East.

Subsequent to that time, and you have before you some papers that I handed up earlier, a compilation of papers – a memo to the Board of Aldermen from Mr. Kulacz, the 8-24 referral, the Street Committee meeting and the report of Mr. Kulacz concerning the abandonment or discontinuance of this portion of Middle Avenue which was done by the Board of Aldermen in 2001.

At that time, it stated in the recommendation which this Board of Aldermen adopted, that the owners of 33, 50 and 51 shall not be opposed to the abandonment. Those are Assessor’s lot numbers. Those properties mentioned in his letter, 50 and 51 are the two small Salemme lots and 33 is the large parcel of property owned by Mr. Todice. I don’t know, under your regulations, you have a requirement to hold a public hearing if the property is valued over $10,000. I don't know who valued this over $10,000 - the only value it may have may be to the abutters, but even with that it has little value. On the Todice side it basically is a slope like this. On the other side, which there are four property owners, it is relatively flat, but there is some wetlands.

Under Connecticut General Statutes when you abandon or discontinue a public right of way as you did in 2001, all the abutting property owners receive a right of way to the nearest public road.

On the two maps that I gave you, first we’ll talk about Mr. Todice’s side, which is the map with the writing on it. Mr. Todice has already gone to the Zoning Board of Appeals and obtained a variance to have his existing two-family house in the front and to build a
The variances were granted based on a hardship that was caused by the discontinuance of the road, and he has applied, he was prepared to use a common driveway. What I represented to the Zoning Board of Appeals, was that if the Board of Aldermen gave him this strip of land which he has absolutely no use for to use for anything because it’s a cliff, it’s a hill, it would add square footage and would allow him to have only one variance. It would make the rear lot totally conforming, which is in the R-3 zone. The front of the property is in the R-4 zone. That side, Mr. Todice, T and T would like, he really has no reason to buy it because he has the variance, it just would make this property more conforming to the Zoning regulations by giving him the extra square footage. The other question I would ask the Board of Aldermen is, what do you need the side of this hill for? Are you going to maintain it, clean it up if it gets covered with litter, and pay for injuries if somebody falls on it? That’s your decision as to what you want to do with it.

The other side presents a much more complex problem. There are, I believe, four property owners. Three of them have driveways out to public roads. Two of them to Birch Street and one of them to, the name of the street escapes me, in the newer subdivision. Mr. Salemme’s only access is over the discontinued or abandoned portion of Middle Avenue.

City of Shelton has an ordinance that says that no one can get a building permit in the City unless they own 20 feet on a public road. Now, I have dealt with this ordinance on several matters. It is a blatantly confiscatory ordinance, for confiscating someone’s property. Probably the classic example is Mr. Salemme’s property. This is actually a portion of a map that Mr. Salemme submitted after the property was discontinued, for him to have a driveway to Birch Street and build one house on his two lots. He was told, “Sorry, can’t do it, you don’t own 20 feet.” So here is the conundrum. The City discontinued Middle Avenue, on which he had frontage. Decided not to build the road. By Statute it says Mr. Salemme has a right of way of access over all the pieces because normally when a road is discontinued, if the City doesn’t own fee, each of the land owners get half of that right of way that abuts their property. But it’s subject to everybody having a right of way to travel to the nearest City street – Birch Street. So after you’re told the good news, that you have the right of way, that the State giveth, that the City taketh away by saying, “Sorry, you can’t build anything on it because we have this ordinance. Now, it’s not a zoning ordinance. If it was a zoning ordinance, the property owner would go to Zoning Board of Appeals. It’s an ordinance. It confiscates. So Mr. Salemme has a couple of choices. First of all, I don’t know how you could just – you can’t give all the property to Mr. Salemme, all the way out, he has a right of way. I think that through this public hearing what I’m saying to you is you have to address the issue of what this ordinance does. It confiscates his property. So Mr. Salemme’s procedure might be to go to the Engineering and Building Department and say, “Give me a building permit, I’m going to put a driveway in. I’m going to go to Wetlands because I’m going to have to, and I’m going to try to put a driveway to build one house.” They’re going to say, “No, you can’t,” because you have an ordinance. At that point he has two choices. One, he could try to challenge the ordinance in court, but I don’t see where, you have the right to make an ordinance.
The next step would be to do an inverse condemnation case and say to the City, if you’re going to confiscate my property, you might as well own it, so you’ve got to buy it.

So, the conundrum that you have on the other side is that you have, I believe three property owners, two of which have access. I’m sure that they might appreciate larger yards. Each of them would have a subject to right of way. Understand this – under the Statute, it doesn’t make any difference if you have another access to a City street. When a road is discontinued, you still get that access over it. So, the situation exists with respect to his side that the City needs to make a decision on its ordinance, which is not before you today. Even if you decide at that point, which I believe the City should do, which is basically listen. There is no reason imaginable for the City to want this property, it has no value whatsoever, it has only value to the abutters. The City should deed the property to each of the abutters - split it down the middle – it’s very easy in this case because it’s a 50 foot right of way. Draw a line, have somebody draw a map, record it, and it’s the same thing when I was town counsel in Oxford. We did it when we abandoned a portion of Riggs Street. We had the surveyor do it and give it the half way. Deed it away – there is no value to it. Then the City is going to have to address the issue of those property owners on that side who have the public right of way to Birch Street. Mostly it would relate to Mr. Salemme. Now, if the City wants to keep the ordinance in place, then maybe the City should consider purchasing Mr. Salemme’s lots. Why you would want it, I have no idea. Those are the concerns representing property owners on both sides. I would hope with respect to Mr. Todice and his wife that you would, again, it has no impact. He already has his two lots. But to make the lots more conforming deed him that property. On the other side, certainly I’d be willing after the public hearing to sit down and go over with you the issues that relate to the ordinance and the other side. I thank you for your time. I’m here to answer any questions that you have.

Alderman Papa asked, with respect to Mr. Salemme’s property, he cannot build on that property because he has no way to get onto a City street?

Attorney Thomas replied, he has the way to get on. Technically speaking under 13a-55 he has a right of way to Birch Street. The problem is when he goes to ask for a building permit, the answer is, “No, you don’t have 20 feet in fee on a public road.”

Alderman Papa stated, so you’re saying this ordinance that we have now hinders a lot of people that have properties on abandoned streets, is that what you’re saying?

Attorney Thomas replied, if there’s any street which is discontinued, and even if it’s one in which you do not own a fee, where you’ve discontinued it or abandoned it and it goes 50/50, those people that are on it will not be able to get a building permit to build anything because they don’t own, once you discontinue it, they don’t own on a public highway 20 feet in fee. It’s a conundrum.

Alderman Anglace stated, do you want to make a recommendation on behalf of the two property owners you represent with respect to how the Board should handle this issue, I mean, what is your recommendation on it?
Attorney Thomas stated, you’ve already discontinued the road. You have this strip, this rectangle. First, speaking to Mr. Todice, that’s easy. He borders it entirely. His proposal is, just give it to me and I will do what I promised to Zoning Board of Appeals. I will go back, withdraw my variances, and now have only one variance, and have a conforming lot in the back and a lot that’s conforming in all but one matter in the front. That’s what I will have and I will still do what I promised to do to Planning and Zoning which is to use a common driveway so you still have only one curb cut on Birch Street.

Flipping to the other side, the normal procedure would be to take each of these property owners, I believe you said three, and give them the property from their boundary to the, you know, 25 feet on their side. That property, and for the sake the argument I’m going to use property 1, property 2, property 3, Salemme being property 3. All of them, 1, 2 and 3 have a right of way over that 25 feet to Birch Street. That’s by State statute. The other two, I believe, already have houses on them and already have driveways to a public street. What you would be giving to them is a little larger back yard. Mr. Salemme has a right of way by statute to develop a driveway to Birch Street. The problem is, even if you do give it to him, he can’t get a building permit because of your ordinance. So he would love to have it, but with respect to him, we have another step that we have to sit down and decide, “What do you do in a situation like this?” Not just with Mr. Salemme specifically, but in general for those people who are going to be stuck with a right of way to, I don’t know, pitch a tent, which is really about all that they could do. Or put a sand trap and a green, you know, a practice range. You have to look at the ordinance.

Alderman Papa stated, we have to look at the ordinance.

Alderman Kudej stated, you are recommending that they split the street. One takes half. Three take the other half.

One side belongs to Todice, the other side belongs to Salemme, Taramelli and Belden.

Attorney Thomas explained, as to Mr. Todice, he owns the whole thing on one side. On the other side would be Salemme, Taramelli and Belden. They would each get it right opposite their property.

Alderman Kudej stated, so Mr. Salemme has to depend on the right of way that goes through other people’s property to Birch Street?

Alderman Simonetti stated, you mentioned that one side has quite a bit of a slope.

Attorney Thomas replied, yes, that’s the Todice property. If you’re standing on Birch Street looking at it, it goes level like this, then it goes up. This 25 feet that’s along Todice goes way up.
Alderman Simonetti stated, since you represent Mr. Salemme, would you say that if the property was divided as you had asked, would Mr. Salemme be able to build a driveway...

Attorney Thomas interjected, that’s this map; that’s his engineered driveway.

Alderman Simonetti stated, then all he needs is the ordinance to be changed?

Attorney Thomas replied, yes. There are other options that Attorney Sous and I have discussed, but this isn’t the forum to do it. He has a right of way to access, ingress and egress, by State Statute. He has not to my knowledge, nor has he authorized me to, if you were to say, “Well, we’re going to do this,” to negotiate then with the other two people to purchase their property so he would have the fee and circumvent the ordinance. I’m assuming all he really wants is a driveway. And he wants to build a driveway according to this plan as far over as he can so that the other people would have the benefit of whatever – he has the right of way. Of course the town would probably prefer a driveway that was, you know, you have safety concerns and other concerns.

Alderman Finn stated, the restrictions that were set forth by the City Engineer and approved by the Board of Aldermen in 2001, would they still be in effect?

Attorney Thomas replied, there would be no problem – he would have to go to Wetlands to get a permit. The City can retain an easement for any and all public utilities to cross it. That’s a routine phrase. There’s no reason to have, in other words, if the City wanted to have a sewer line run down there, or a water line or power line, you could do it. There is really no reason because on the other side is a brand new subdivision. But yes, you could retain it, and the City should retain the right to discharge water, that would be of course from Birch Street onto it, which would probably be, if Mr. Salemme was building a driveway, that drainage would have to be incorporated into his driveway, so he would have to accept the runoff from Birch Street.

Alderman Anglace stated, this is a process. I think we were all surprised that the value came in higher than $10,000. We’re following our procedure; we have no choice. We’re holding the public hearing tonight. Then we can decide if we want to put this out for bids. That will be the next step. We’ll go out to bid, see what happens and then we’ve got to see, it’s possible, the Board does have the authority, and could resolve this in a different way other than accepting the highest bid.

Attorney Thomas stated, assuming, of course, that you get bids.

Alderman Anglace stated, yes, assuming that we get bids. Or, if we get no bids, yes, we still have to go forward with it. I think we’ve come this far, I think we would like to bring this to a conclusion. I think we would like to resolve it with all the property owners so that everybody has peace of mind going forward. Back in 2001 the City Engineer made some good points in his letter, which is on the last page, the City should retain an
Attorney Thomas stated, interestingly enough, Mr. Salemme was not opposed to it, went in with the plan – he wasn’t aware of the ordinance and he didn’t have the benefit of his counsel at that point to remind him. I was aware of it because there aren’t many people aware of it. You’re aware of it because you’re involved in litigation, which I was back then, on the Gaida property. So I was aware of the existence of this ordinance. Until that, I had no clue it existed. When he went, after he said, “sure, okay I have a right of way,” so he goes in with this plan for the driveway and he’s told, again, what the State giveth, the City taketh away. You can’t build anything on it. The good news is you have a right of way of property, the bad news is you can’t build anything.

So I have a suggestion and that is, the Board has to do whatever it has to do under its ordinance - if you want to go out bid or whatever. But other than that, I would suggest that specifically in this case, that the Board ask if all the property owners and the representatives would like to come and meet with the Street Committee and the City Engineer to address certain issues at some point, because they are the people that are most impacted. Then generically, I would suggest with respect to the ordinance, that whatever ordinance subcommittee you have, whatever, you know, combination with the Street Committee, the engineer, maybe land use and myself or other property owners that are interested, sit down and see what recourse there is to get around, and I don’t mean get around the ordinance – you have a legitimate purpose in the ordinance. The ordinance is to make sure people build properties that are accessible safely – that people build on property safely. But the way you set it up, it’s confiscatory. You can make simple changes to it. You can move it. You can allow yourselves to decide or you could move it over to Planning and Zoning. So that’s the more generic issue.

With respect to this issue you have an ordinance for the sale of property. I can’t ask you to change it. I’m just explaining to you what the property owners, what their concerns are. Two of them.

Alderman Anglace stated, you’re representing two property owners, and Mr. Belden is a third property owner.

Alderman Simonetti stated, there are wetlands involved. Do Mr. Salemme and Mr. Todice realize there are wetlands? Are they willing to deal with the wetlands?

Attorney Thomas replied, Mr. Todice has no wetlands issues. Mr. Salemme is aware. In fact his plan, before he found out about the ordinance he had actually brought this to John Cook for his review.

Alderman Anglace stated, members of the Board have recently received a memo from Inland Wetlands Administrator John Cook. He tried to put it into perspective - the Inland Wetlands aspect of this. “This office was recently approached regarding the status and condition of the former Middle Avenue right of way previously abandoned by the Board of Aldermen as it relates to wetlands and watercourses. A review of the agency files
from Laurel Ledge Estates and Capiello Estates indicates the following. In 1997 the
INAUDIBLE abandonment, seven parcels were combined to make a INAUDIBLE
subdivision called Capiello Estates. One parcel known as Parcel 94 was added to Lot
#1 and used as a detention basin for the subdivision with a non-access restriction to
Middle Avenue. INAUDIBLE was combined in this general location of Middle Avenue and
go down the former right of way into the broader area of regulated wetlands. In 1992
Laurel Ledge Estates showed soil scientists flagged wetlands in the lower end of the
Middle Avenue right of way. INAUDIBLE 95 and 96, INAUDIBLE, now owned by MJS
Builders. The watercourses and wetlands are the predominant remaining natural
vegetation within open spaces of the adjacent Laurel Ledge subdivision. The resources
within and adjacent to the former Middle Avenue right of way flow to the same system.”

So in essence, I asked him today, first I started out by telling him that, “What does this
mean in everyday language?” He showed me a couple of maps of the previous
subdivision. I asked if it had any Inland Wetlands impact on the Middle Avenue right of
way. Other than the flow of water through it, over it, it would have no Inland Wetlands
impact.

Attorney Thomas stated, it would have no impact but if you were going to cross it you’d
have to get a permit. You’d have to go to wetlands to get a permit to cross it. That’s a
given. If you don’t, it’s a no-no.

Alderman Anglace stated, in other words, you get water from one side to the other.

Attorney Thomas stated, not water. He’s building a driveway. He’s got to go across a
watercourse. He’s got to go over that watercourse, he’s got to apply to wetlands for a
regulated activity because he’s going to be disturbing the area within that watercourse.
Unless, of course, he wants to spend a lot of money and build one of the new bridges
where they don’t disturb it. But you wouldn’t do that for a driveway.

Alderman Anglace asked if any other Alderman had questions for Attorney Thomas.
There were none.

John Belden, 25 Birch Street

If it goes out to bid, and someone gives you a bid, do you have to sell it? I don’t know
how all this works. That will be a bigger problem, wouldn’t it?

Alderman Anglace stated, if we went out to bid and received bids, we still wouldn’t have
to sell it. That would be a decision for the Board to make if they wanted to accept a bid.
But they can reject all bids.

Mr. Belden stated, that was my concern, somebody putting in a bid and try to sneak a
house on the front part, which I don’t think is buildable. Is it a buildable lot? I don’t
know if that’s been determined yet, either. I don’t think it could. There’s a storm drain
running through it. That’s my concern. If someone came in from the outside and tried
to purchase it thinking maybe they can build a house on it.
Alderman Papa stated, but they can’t be landlocked.

Mr. Belden stated, they can’t be landlocked. Okay. That’s good. Thank you.

Alderman Anglace asked if any other member of the public wished to speak. Being none, at 7:43 p.m., Alderman Olin MOVED to close the Public Hearing; SECONDED by Alderman Simonetti. A voice vote was taken and the MOTION PASSED 8-0.

Respectfully submitted,

Patricia M. Bruder    Date Submitted: _____________________
Clerk, Board of Aldermen

DATE APPROVED:___________________  BY:  ________________________
Mark A. Lauretti
Mayor, City of Shelton