

BOARD OF ALDERMEN
PUBLIC HEALTH & SAFETY COMMITTEE
WEDNESDAY, MARCH 1, 2006
7:00 P.M. IN ROOM 104
SHELTON CITY HALL, 54 HILL STREET, SHELTON, CT

◆ CALL OF THE MEETING/PLEDGE OF ALLEGIANCE

The Public Health and Safety Committee meeting was called to order by Alderman Papa at 7:00 P.M. in Room 104. All in attendance pledged allegiance to the flag.

IN ATTENDANCE ALDERMAN PAPA, CHAIRMAN
 ALDERMAN FINN
 ALDERMAN LANZI

ALSO IN ATTENDANCE ALDERMAN PANEK, ALDERMAN YORK
AND CHIEF JOEL HURLIMAN

Alderman Papa welcomes the new chief and wishes him luck.

◆ PUBLIC PORTION

Frank O'Neill – 69 Hickory Lane

Mr. O'Neill is here about the stop sign on Maple Ave. in front of Old Dairy Ests. He would like the new chief to revisit the reasons for the stop sign. He went through the minutes and found no request for this

stop sign. He thinks something should be said to the neighbors when a stop sign is installed.

Alderman Papa states that the Chief of Police is the Traffic Authority who is in charge of all traffic and he recommends to the committee whether it makes sense for a stop sign. Mr. O'Neill stated he spoke to Chief Voccola and that he said as long as he is Chief it will stay. Mr. O'Neill states there is now a new Chief and he is asking this stop sign to be reconsidered. He feels a new stop sign request should be posted in the paper and ask people's opinion.

Alderman Papa states the stop signs are not put up sporadically, they get requests and forward to the Chief of Police. Alderman Finn states for the record, this stop sign did not come before this committee.

Ingrid Waters – 261 Long Hill Cross Rd.

Ms. Waters states that she works in New York and cannot get to all the meetings. It is her impression that the Fire Marshal or Police are not informed on various occasions that basting has taken place. There was an incident where she called the police two Sunday mornings about blasting. Police came and stated they had various complaints from a police officer and a fireman in the area also. They could not trace it. The Fire Marshal called their home and said it appears it was the breaking of the sound barrier. She states this was right after 911. She was appalled that basting is going on and no one had an explanation – it was not registered. This happened on two

occasions and they called the police again and asked about damage to their home. They stated after the policeman left there was plaster that came down and there was a crack in the wall. She resents bitterly that the explanation was that a sound barrier was broken – this is Shelton – fighter jets do not fly over here. There was blasting and no one knew about it – no record is found.

He husband spoke to Fire Marshal again and her husband was under the impression they overcharged the load. The blasting were away about a 6-7 minute walk. She feels there is no supervision. She feels the Fire Marshal should be on site.

Alderman Papa asks when did this happen. They were in 2002.

Brian Belvin – 39 Hemlock Dr,

He states there are 2 Hemlock Drives in Shelton. On January 5 there was a home alarm that went off in the Mobile Home Park (His address), bills are sent back and credit cards cancelled because of this problem.

When he was about called about the alarm, he said it was the alarm company working on the alarm and when he called back the dispatcher stated there was an officer going up and down Hemlock Dr. and they couldn't locate his house. He told them he was in the trailer park. He states he was told he had to do something about that. He feels if it had been a real burglary, or he had a heart attack or a

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fire, they would be at the wrong address. He would like it to be address now. One hemlock is off of Ripton and the over is in the Mobile Home park.

He has had packages and refrigerators delivered to this other address.

Alderman Papa would like it distinguished for the fire and police departments.

Mr. Belvin states this also happened when he came down to register to vote.

Mayor Lauretti entered the meeting at this time.

He would like two things done – 1. One of the street names should change – not trailer park distinction. 2. It should be the first Hemlock Dr. that keeps its name.

Alderman Papa asks if he would be comfortable with Hemlock Park. Hemlock Dr. off of Ripton is #1-21 and 22-46 in the Mobile Park.

◆ AGENDA ITEMS

**ALDERMAN FINN MOVED TO ADD AS 2.4 UNDER NEW
BUSINESS TO THE AGENDA BRIDGEORT AVE AND NELLS**

ROCK RD. TURNING ARROWS. SECONDED BY ALDERMAN LANZI. ALL IN FAVOR. MOTION CARRIED 3-0.

◆ CORRESPONDENCE

The following letters are read into the minutes and attached at the end of the minutes.

1. Letter from John F. Anglace, Jr. Re: Blasting Ordinance
2. Letter from Margaret Keane
3. Memo from Senior Citizens Comm.
4. Letter from Chief Re: Soundview Avenue
5. Letter from Chief Re: Sign Replacement – Hilltop Dr.
6. Letter from Chief Re: Sign Replacement – Woods End Road
7. Letter from Chief Re: Signage Request – Hill St/Division Ave.

1. APPROVAL OF MINUTES

1. REGULAR MEETING January 4, 2005

ALDERMAN LANZI MOVED TO RECOMMEND TO THE FULL BOARD TO WAIVE THE READING AND APPROVE THE MINUTES OF THE PUBLIC HEALTH & SAFETY MEETING OF JANUARY 4, 2006. SECONDED BY ALDERMAN FINN. ALL IN FAVOR. MOTION CARRIED 3-0.

2. NEW BUSINESS

2.1 BLASTING ORDINANCE – REVIEW

A letter was read into the minutes from Alderman John Anglace, Jr. under correspondence relating to the blasting ordinance.

Rep. Belden forwarded copies of a Research Report – Pre Blast Ordinances. It will also be attached at the end of the minutes. Alderman Papa reads that “towns do not appear to have the authority to adopt blasting ordinances. But at least two towns, Rocky Hill and Waterbury have adopted such ordinances”.

CORPORATION COUNSEL THOMAS WELCH

Attorney Welch states that Alderman Panek sent him a proposed ordinance and knowing of the Mayor’s concerns and this board’s concerns on blasting and protecting the public, he researched the issue thoroughly. He hands out a memo with the history of the ordinance, case law, and a recommendation. He will also address bond issue.

Attorney Welch states that the Commission of Public Safety according to CSS29-349a shall have exclusive jurisdiction over storage, transportation and use. It is very specific. There is not much left after you have that. There is nothing the City can do with regulating in regards to that. It is not the end of the world, because the State is required by statutes to adopt regulations regarding blasting. The Commission has adopted over 100 regulations regarding blasting, explosives relative to storage transportation and use. Also any and all licensing requirements are performed and conducted by the Commission of Public Safety who must be satisfied that the licensee is of good moral character and of competence in the control and handling of explosives as well as a check of an applicant’s state and national criminal history record. In addition, the application process requires evidence of insurance.

The State Statutes provides in part that any license or permit issued by the Commission of Public Safety may be suspended or revoked by the Commissioner for violation by the licensee or permittee of any provision of law or regulation relating to explosives or conviction of such licensee or permittee of any felony or misdemeanor. In additional subsection (g) of said statute provides that any person who violates any provision made by the Commissioner shall be fined not more than \$10,000.00 or imprisoned not more than ten years or both.

The Connecticut Supreme and Appellate Court have on a number of occasions dealt with the issue of “exclusive jurisdiction.”

A local ordinance is pre-empted by a State Statute whenever the legislature has demonstrated an intent to occupy the entire field of regulation on the matter or

whenever the local ordinance irreconcilably conflicts with the statute. Whether an ordinance conflicts with a statute or statutes can only be determined by reviewing the policy and purposes behind the statute.

The Court looks to the words of the statute itself, to the legislative history and circumstances surrounding its enactment, to the legislative policy which was designed to implement, and to its relationship to existing legislation. Rep. Belden has given the committee some information on this.

Often we have a statute and we make it stricter. That is correct. We do that but in this case it is exclusive jurisdiction.

As an example, the Connecticut Supreme Court in **Town of Westport v Connecticut Siting Council** determined that pursuant to CSS 16-50x (a) that the Siting Council has exclusive jurisdiction over the siting of telecommunications towers and a municipality does not have the ability to regulate same.

The Connecticut Supreme Court in **Commission on Human Rights and Opportunities v the Board of Education of the Town of Cheshire**, identified a series of statutes in which the legislature has made clear by explicit legislative language its intention to confer exclusive jurisdiction in various contexts.

The Commission of Transportation has exclusive jurisdiction over all highways.
The Commission of Environmental Protection shall have exclusive jurisdiction over all waters of the state.

The Department of Public Utility Control shall have exclusive jurisdiction over all construction of utility properties.

The Connecticut Siting Council shall have exclusive jurisdiction over the siting of facilities.

The Commission of Public Safety shall have exclusive jurisdiction in the talks about preparation of explosive and blasting agents.

There were two cases, one in Ansonia and one in Seymour. In Ansonia, the Court determined the statute did not pre-empt local zoning boards from deciding whether, or where, to permit the use and storage of explosives. In Seymour, the Fire Marshal didn't issue a permit because he was going to investigate the issue. The Court found the delay by the Fire Marshal was too long and mandated that the town give the permit out.

In the case of **Toffolon v Zoning Board of Appeals**, the statutes control the use of explosive but the town determines by zoning regulations the areas of a town within which the manufacturer of explosives may be prohibited.

The ordinance that was proposed the majority of items are currently itemized in the Connecticut State Regulations and are within the jurisdiction of the Commissioner of Public Safety in that same deal with the storage, transportation and use of explosives and blasting agents. There is an interest to contact Attorney General's Office. He had the opportunity to discuss this issue with him and he indicated that the Commission of Public Safety has exclusive jurisdiction as provided for in CSS 29-349 and that local ordinances regulating same were in all likelihood unenforceable.

In the proposed ordinance a few issues appear not be within the confines of the Commission of Public Safety. Specifically, those proposals that require action by the Fire Marshal which are intended to insure compliance with the State regulations. The issue of the Fire Marshall and the enforcement of the regulations can be done.

Alderman Papa asks if an ordinance is needed for that. No, Attorney Welch states.

The last issue is with the bond. The towns don't have the authority to bond. We can't force someone who is putting in a septic system to put up a bond first. But we do have the power under 8-26 & 8-3 P & Z Commission for improvement bonds, maintenance bonds they have. It could be put in the zoning regulations.

Mayor Lauretti asks Attorney Welch to explain what public improvements are. Attorney Welch states the roads and reads the subdivision regulations.

Mayor Lauretti states the bond is general in nature for all improvements and the bond is to everything in general not for the blasting.

Attorney Welch states on a blasting permit it requires the permittee have blasting insurance.

Alderman Papa explains if the road is done correctly you would get your bond back.

Mayor Lauretti asks about supervision. Attorney Welch states you have the regulations and the only recourse is for the Fire Marshal to see they are met.

Mayor Lauretti invites Fire Marshall Tortora to join the meeting.

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Alderman Panek agrees with Attorney Welch's points. The other points are about the Fire Marshal's presence. There are two towns that have ordinances but they are unenforceable. Attorney Welch states they are unchallenged.

Alderman Lanzi states everything in place right now is okay. We can't do anything. Attorney Welch states we can't have any regulations.

Alderman Panek asks why a blasting company can't give 7 days notice to neighbors.

Attorney Welch states that is use. The state has made the laws. You are overstepping your bounds.

Example- if you need approval for \$2,000,000.00 you need approval for \$2,000.00.

Alderman Papa asks about a builder finding ledge. It holds up the project if they have to blast.

Alderman Finn asks about protecting home in the areas of blasting. Attorney Welch states they have to comply with rules and regulations.

Mayor Lauretti asks about how you protect areas' wells. The Fire Marshal went through this issue with Wal-Mart. There were victims of blasting. Attorney Welch states they went after the blasting in court. Alderman Finn states you can ask for a pre-blast survey. Fire Marshal states you can make it part of the permit.

Fire Marshal Tortora states if they get a notice of damage we will notify the blaster and the blaster needs to contact the homeowner. We tell the homeowner that if they have a problem with the blaster to contract the Fire Marshal's office and they will push the issue to get it settled. They will look at all reports. How many people receive training? Fire Marshal Tortora states they all received the same training. Alderman Finn states a problem and the Fire Marshall states no one contacted him.

Mayor Lauretti asks what provisions are in place to document the activity – seismographs and pre-blast survey. Fire Marshal Tortora states he can not see underground what will happen. He can not predict rock formation. Alderman Finn states he did this years ago and someone had to be there before the blasts were set off. We did this 30 years ago. Why not now. Alderman Panek asks do you know where and how much they are using that day. Fire Marshal Tortora states no. There are about 12 permits a month that are out – sometimes 5.

Attorney Welch states you can not ask for a bond on a pool.

Mayor Lauretti asks what would you do if you are on site. Fire Marshal Tortora states he would look at the logs of dynamite uses, how deep holes are, stemming but he cannot predict what would happen underground.

Mayor Lauretti questions the overseeing of the blasting. For example, when Brennan did the blasting at Lafayette school. Fire Marshal Tortora states they had a consultant there. Mayor Lauretti states our people were there too. Again he asks what is your official function on the site. Fire Marshal Tortora can't prevent anything.

Attorney Welch states that is where the negligence in blasting comes in. That is a perfect example, you could all be standing there and the blaster is doing everything he is suppose to and it occur to 10 people to the back of the site. It is a cause and effect. The Fire Marshal could see that 100-235 regulations are followed and if there is an effect the blaster is responsible for blast damage.

Alderman Finn asks how can we be sure to protect the wells and the homes from blasting.

Mayor Lauretti thinks the question is how does the City or the Fire Marshal assure us of that.

Alderman Papa states he can't. Everything can be done perfect and they don't know how rock will split.

Mayor Lauretti states then what would be the point of City personnel being on site. He states this is very frustrating to him – there has got to be an answer to this. How does City personnel insure the public's interest?

Alderman Papa proposes a resolution to the State about the blasting. He reads:
"Suggest that Corporation Counsel prepare a resolution for adoption by the Board of Aldermen asking through our State Representatives and Senator that the State amend the law to further protect residents from blasting damage and that the Connecticut Conference of Municipalities be notified of this action."

Alderman Papa suggests that we add something to what the State has and make it more difficult and expend the process and curtail the blasting – weaker blast.

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Mayor Lauretti states we can ask the State legislature to enact laws. He is asking what the City can do.

Mayor Lauretti asks the Fire Marshal what he would do to protect the public's interest if he was on site. Fire Marshal Tortora states the only thing he can do is make sure the seismograph is there and if they did a pre-blast survey.

Ms. Waters speaks from the audience and feels the blasting should be supervised closely. These are after the fact and it shouldn't come to that. There is so much blasting in Shelton the Fire Marshal can not be at all sites.

Alderman Panek suggests the mere presence of the Fire Marshall may help.

Alderman Papa is suggesting less of a charge at one time over a longer period of time. The State must amend their statutes to make it easier for the towns.

Fire Marshal Tortora states when they get complaints from the neighborhood, they lesser charge and it seems to do it.

Attorney Welch states other towns are having issues also – 169 towns. The nature of blasting is why the State has exclusive jurisdiction. One bill brought before the Senate – the one that died in committee – all it was to provide homeowners in an "X" area more notice. If they have more notice it is still going to happen. There are people being affected and we have to protect the people and the areas. This should be before the State in amending their regulations.

Alderman Finn asks about the areas not in the State Statutes, could we have an ordinance about these areas. No is the reply from Attorney Welch because they have jurisdiction. All we have is the supervisory roles. They set the law.

Alderman Papa is questions sending a resolution letting them know of our concerns.

Attorney Welch states but get back to the Mayor's point of what we can do now.

Mayor Lauretti is concerned about the impact now. The resolution can be sent that is okay. It will take awhile

Alderman York asks how home inspection fall under use. Homes in area of blasting that are inspected. The burden of proof is on residents. If the City

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conducts those inspections and then the blaster would be more likely to do things carefully because they will be sued. Are we touching on use?

Mayor Lauretti asks about a certain distance.

Fire Marshal Tortora states they use explosives in accordance with their insurance.

The discussion is about distance and they will find out about this.
The pre-blast survey does not protect wells.

Alderman Papa asks about P & Z making things under condition of approval.

Mayor Lauretti asks if a pre-blast survey can be made a condition of approval from P & Z. Attorney Welch states there are regulations they must follow from the State Statutes.

The Mayor states Hemlock Dr. issue has been addressed many years ago.

Alderman Panek asks if any permits have been revoked. Fire Marshal Tortora states there are some – Wal-Mart is one.

Fire Marshal Tortora goes out at 5:30 a.m. Not much damage goes on out there – Wal-Mart was one – the Lane Street issue is not solved yet. He calls the State Fire Marshal and they send someone down if he needs help. We have a good handle on blasting – State Statute wise.

Mayor Lauretti states it is so beyond our reach at this junction. If a State Statute doesn't speak to the issue of pre-blast survey's and post-blast survey's – where are we going.

Alderman Papa states we can send a list to the State.

Mayor Lauretti states a cease and desist order was issued at Lafayette. P & Z required an outside consultant to monitor the blasting. Fire Marshal Tortora states that was done through P & Z. He had nothing to do with that. Mayor Lauretti states that became a condition to continue the work.

Attorney Welch states we can't do that. Lafayette was a mining operation and zoning approval for a structure. Attorney Welch will go back and look at that.

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Mayor Lauretti states in the case of Wal-mart we stepped in and took control. We had some heated meetings with Wal-Mart, neighbors and blasters. We got conditions agreed to.

Attorney Welch states you see a problem is occurring and you address the issue. Just because you are following the regulations – you still have a problem.

Mayor Lauretti states we were regulating what they were doing and when they were doing it. How were we able to do this? Fire Marshal Tortora states we called the State Fire Marshal and he has authority to do that.

Out of the audience it is said they can't believe the State has to be called in.

Alderman Panek states when someone calls and says their house just shook, the Fire Marshal goes out there – can you stop blasting. Fire Marshal Tortora says sometimes they say their house shook and it is a helicopter going over their house because he just left the site and they weren't blasting.

On Long Hill Cross Road, it was breaking the sound barrier. They do not blast on Sundays. He has a document from Sikorsky about this matter in his office.

Alderman Papa states when he got the calls about Wal-Mart, he called the Fire Marshal and he revoked their permit. It was challenged by their attorney and the Fire Marshal called in the State Fire Marshal.

Mayor Lauretti states there were clear violations there. Alderman Papa asks about who paid for the consultant at Lafayette. Mayor Lauretti states you have to ask P & Z.

Mayor Lauretti states the City had a school there and that was his interest.

Mr. Steiner states P & Z had an incident. The Neighbor at Split Rock had sensitive instruments and only blasting occurred during certain times. He feels the local Fire Marshal should have the approval.

Fire Marshal Tortora can not schedule blasting – it is use.

Alderman Panek asks can you ask them to call you when they are going to blast. Fire Marshal Tortora states what good is it. They may not blast for hours or sometimes in a few minutes. He can't wait out there.

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Mayor Lauretti asks about personnel on site for blasting. What could you do? Is there any point to having personnel there? If you can't effect any change by being on site – then why have your supervision. Fire Marshal Tortora states no – I can check regulations.

Mayor Lauretti asks if there is a benefit to having City personnel on site. Fire Marshal Tortora states no.

Alderman Papa asks about a layout of the blasting. Fire Marshal Tortora states they have to have good practice.

JANE DANIELS –

In 1983 she built a brand new house and Greenwich Workshop on Bridgeport Ave. (was a quarry) they blasted her one year old house to pieces. She had the Fire Marshal, State Fire Marshal, seismographs. She went through all the channels. They did a pre survey before they blasted. They still blasted and she had all kinds of Foundation Cracks. She sued and got \$1,500.00. She stayed home while this happened.

Attorney Welch states that the statute says from sunrise to sunset – six days a week.

Alderman York states she spoke to the State Fire Marshal's office and basically they are very aware of these situations happening all over the state. He said their seismographic parameters are so old they need to be revised. Can we circumvent this some how and use geological information to designate high risk blasting areas. Maybe through our Conservation Plan. Maybe on the box on the permit the Fire Marshal issues.

Mayor Lauretti states some people will cooperate. You know who they are. That doesn't always happen. About eight years ago, we brought on a Part-time person to do inspections on the weekends. A lot of violations were occurring on the weekends in the new subdivisions – not blasting per say.

Alderman Panek states it is frustrating on a local level.

Alderman Papa states we will work on a resolution and also work with the Fire Marshal and Corporation Counsel.

Attorney Welch states he will work with Fire Marshal Tortora and look back into what occurred in the 90's in terms of what happened and investigate something on the other two ordinances (other towns). They will also work with State Fire Marshal.

Alderman Papa states this will be tabled until next month.

Attorney Welch states you can invite your representatives. Fire Marshal Tortora states he will also invite State Fire Marshal.

Mayor Lauretti asks if the representatives could send us the legislative history on this issue. This topic is relative to other towns also. If the seismograph standards have to change why can't they just change them?

2.2 REQUEST FOR GUARD RAILS

Mayor Lauretti states that this is under state control now. We couldn't implement anything there. That is route 108.

ALDERMAN LANZI MOVED TO FORWARD TO THE CHIEF OF POLICE FOR REVIEW AND RECOMMENDATION. SECONDED BY ALDERMAN FINN. ALL IN FAVOR. MOTION CARRIED 3-0

2.3 502-504 HUNTINGTON STREET ACCIDENTS

Mrs. Daniels is here to speak to the committee. Alderman Papa asks if she received the information from the Mayor's Office. She has this information. The evaluation states they are going to fast, loose control, dips in the road. The design of the road is a problem after the culvert. They are going to put up more signs, 35 MPH signs. There are recommendations to straighten the road. In 2005 they had 3 accidents listed – one the little boy had been killed. There have been three accidents since then. A car flipped over last week.

Chief Hurliman states the signage and chevrons will be installed.

Alderman Papa states there has to be work on the road.

This report should be sent to the Street Committee. The report was commissioned by Bob Kulacz. The City Engineer can address these road changes.

Alderman Lanzi states it should be sent to Mrs. Nesteriak. Alderman Papa states this report came from her office.

Alderman Lanzi asks about the trees being cut down. The report states major tree trimming.

Chief Hurliman states there is increased enforcement up there.

Alderman Finn states there should have been traffic lights there when the improvements on Trap Falls Road was done.

2.4 BRIDGEPORT AVENUE AND NELLS ROCK ROAD TURNING ARROWS.

ALDERMAN FINN MOVED TO FORWARD TO THE CHIEF OF POLICE FOR REVIEW AND RECOMMENDATION. SECONDED BY ALDERMAN LANZI. ALL IN FAVOR. MOTION CARRIED 3-0.

3. OLD BUSINESS

3.1 ALARM ORDINANCE – REVIEW TO INCLUDE CARBON MONOXIDE DETECTORS

Attorney Welch will forward the whole ordinance to the clerk for the Public Hearing.

ALDERMAN FINN MOVED TO FORWARD THE PROPOSED AMENDMENT OF THE ALARM ORDINANCE TO THE FULL BOARD FOR THE NEXT SCHEDULED PUBLIC HEARING. SECONDED BY ALDERMAN LANZI. ALL IN FAVOR. MOTION CARRIED 3-0.

3.2 STOP SIGNS – SOUNDVIEW AVE. & MAPLE AVE.

A letter is read into the minutes that is addressed to Alderman Finn from Laidlaw Education Services. It will be attached to the minutes.

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These letters will be forwarded to Chief Hurliman.

4. REPORTS OF THE EMERGENCY SERVICES
 - A. EMERGENCY MEDICAL SERVICES
 - B. FIRE SERVICES
 - C. POLICE SERVICES

ADJOURNMENT

ALDERMAN FINN MOVED TO ADJOURN AT 9:00 P.M.
SECONDED BY ALDERMAN LANZI. ALL IN FAVOR. MOTION
CARRIED 3-0.

Respectfully submitted,

Margaret Weber,
Clerk – Public Health & Safety Committee