City of Shelton, Conservation Commission
Minutes for Regular Meeting of Wednesday April 4, 2007 at 7:00 P.M.
Minutes should be considered a draft version until approved by CC at their next meeting.

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CC minutes 2007-04-041 submitted via SheltonClerk2@snet.net email to City Clerk for legal posting requirements. Tape recording of meeting available at City Clerk’s office.
Call to Order
Present: Tom Harbinson, Chairman
Bill Dyer, Vice-Chairman
Hank Lauriat, Commissioner
Jim Tate, Commissioner
Joe Welsh, Commissioner
Ed McCreery, Commissioner

The Commission currently has 6 active members.

Also Present: Teresa Gallagher, Conservation Agent
Marianne Chaya, Clerk

Pledge of Allegiance
Chairman Harbinson called the meeting of the Conservation Commission to order at 7:06 p.m. All in attendance recited the Pledge of Allegiance.

Approval of Minutes of March 7, 2007

Vice-Chairman Dyer MOVED to approve the minutes from the March 7, 2007 regular meeting. SECONDED by Commissioner Welsh. A voice vote was taken; all were in favor, MOTION PASSED.

Presentation: Valley Council of Governments

Rick Dunne – Valley Council of Governments
David Elder – Valley Council of Governments

Commissioner McCreery had contacted VCOG regarding the interaction on a regional basis for some of the trails.

Mr. Dunne stated that they did not prepare anything for tonight but wanted to come in and talk about what is out there and what is available and to be able to answer any of the questions you may have.
Mr. Elder stated that he does have a plan prepared that does include a recreational trails program.

Commissioner Lauriat asked whom they work for and Mr. Dunne responded that they work for the 4 valley towns and are paid by the federal government out of your gas tax to do transportation planning. Trails are one of the enhancement alternatives for transportation. There are a couple of ways these are funded by the government. First, the trails you are most familiar with such as the Shelton Riverwalk, the Derby trail, and the newly funded trail in Ansonia, and the extension of the Derby trail going towards Orange, are funded through the transportation enhancement portion of federal highway funding. I think 1% of the urban money that comes into the region has to be spent on enhancements. We focused on bicycle and pedestrian work. Kevin O’Meara initiated it in 1996. The trail section in Derby took from 1996 to almost 2006 to get it built. By way of example, the Derby one was different because of a couple unique features. It shared an active rail line. To our knowledge it is the only one that shares an active rail line in the country. Secondly, we were working in the stream channel of the river and the in the flood zones and flood lane. The permitting took better than 2 years and the design took a year on that project. We had to wait 5-6 years for them to award the funds for the project. We have learned so much from that project that we now have sort of institutional knowledge for other valley projects.

Shelton’s Riverwalk was part of an economic development project that was funded differently. The newest phases are being funded out of federal highway funds.

Commissioner Welsh asked how the Shelton Riverwalk extension would go. Mr. Elder said they would go as far up as they can with the amount of money they have. Within the development that is proposed there will be a park and a trail will go up to at least the locks area. Mr. Dunne stated that they wanted to see the trail go along the riverside of the buildings.

Commissioner McCreery said that trail would have to come inland by the Botti building.

Mr. Dunne added that we are involved in the Brownfield’s program regarding the asphalt plant site. Part of that is the land that will be quitclaimed to the City. We are going to grant the funds for the environmental cleanup on the portion that goes to the City so that the City does not encounter any liability for sub-soil contamination. I believe the trail comes out of that parcel to Canal Street and then continues.

Chairman Harbinson asked if there are still plans to take the trail all the way to Indian Well State Park?

Mr. Dunne responded that it is always possible. If I recall at the time there was some opposition from homeowners in the Maples area. You have a privately owned railroad owned by the Housatonic Railroad. We were dealing with
ConnDOT and Metro North. As a matter of fact they just dumped a bunch of fill to prevent people from getting to “Who Land”.

Mr. Dunne reported that today they published the long-range transportation draft plan for the next 28 years that we do every four years. In this plan is a schedule of projects. These are recreational trail projects, which is the second piece of it. The first piece is highway enhancement funds that are used primarily for multi-mobile connections, although it is not always a requirement. It is intended to move people from place to place for business, pleasure or commuting. We also have a recreational trails program that is funded from federal highway funds but administered by DEP. With that money I believe there is a $50,000 cap on those trail funds that could be for motorized and non-motorized trails. We can help our communities to access these funds. The recreational one is very competitive and there is not a lot of money available per project. What makes this different and less expensive is that you don’t have to meet all the ADA compliance standards that you have to meet for these trails where you get federal highway enhancement funds.

Mr. Elder added that for this Board there are two ways to think about this. There are two types of trails: biking, pedestrian trails that incorporate a transportation aspect, which means you can move people from point A to point B. The second type of trail is purely recreational. I have a list of those that you can review. There are multiple programs for funding and earmark funding that Rick Dunne can help you with. The biggest obstacle is finding out about the areas from the towns and we have a lot of success with Shelton. In order to put the project in the plan is to have the property owner to have prior knowledge that you do have intentions of doing this. Commissioner McCreery indicated that for the most part we already own the land. Mr. Elder said that all he would need is to identify the parcel and if there are plans or someone has it on a GIS. The other hard part is a cost estimate but I see some people here know how to give good cost estimates for projects. It sounds like you could do that too.

Commissioner Lauriat asked are you acquainted with the Blue Dot Trail? Mr. Elder said yes. Is that the kind of trail that you think of as a trail, or is it the Derby trail? Mr. Elder answered I think of both. Commissioner Lauriat said that you said earlier about trails that lead to nowhere. I am thinking of some of the Land Trust property that has some, which are sometimes just marks on trees. There’s no room for baby carriages to be pushed or anything like that – it’s kind of rugged stuff.

Chairman Harbinson speculated that those might be the recreational trails that don’t have to meet the ADA standards entirely.

Commissioner Lauriat asked, if we needed assistance would you be averse to looking at it?

Mr. Elder said that is what we would like you to come forward with. The 28-year plan we have is a living document that we know that these are not the only projects we are going to do in the next 28 years. If it were up to me we would have more trails on this list, which we can still do. There is a comment period
right now. The plan has been available since March 1 and there is a meeting on the 17th at our office at 5:30 PM in Derby. That is a good time to come forward with any possible trails. Most likely we can identify some program that could likely get funded. You could also submit it in writing; you don’t have to appear. Chairman Harbinson said we could get our trails maps and networks to you. Mr. Elder said we are primarily interested in new potential trails. Commissioner McCreery said that the proposed walk is going to go from downtown traversing diagonally right across the town up past the corporate towers. We call it our Shelton Lakes Rec Path. Bits and pieces are done. Mr. Elder said that he not even heard of it.

Vice-Chairman Dyer said that it has to be ADA compliant. We have all the bridges in. Chairman Harbinson said to basically think of this as a rails to trails type programs but following through the woods through old BHC woods roads and access roads, and atop a dam.

Mr. Dunne said that they would come over and talk to you about grants. Commissioner McCreery said that they would like to coordinate the riverfront to the Derby trail.

Chairman Harbinson said talking about inter-modal; when you have the population going to the new residences along Canal Street and we have the Riverwalk there and the Derby train station so close. If there could be some way to connect, because your walkway in Derby the way it is now you can’t get to the train station from the walkway.

Mr. Dunne commented that the connection is not built but it’s already budgeted and paid for in that phase I. There are some issues with Derby’s final project. That project is funded but not complete. We have a bicycle and pedestrian plan for the region that was started in 1996. We’ve spent the time from about ’98 really building up some of the projects that were initially envisioned. We are now at a point where we are going to spend staff time doing a new major update of the bike and pedestrian plan. One of the things is Outreach. We will be going to the town’s Conservation Commissions, Land Trusts and to the City Engineer’s office and trying to get concepts we can build into this plan. We want to see a real network everywhere. I ideal was to connect all the downtown trails; Derby, Shelton and Ansonia, for pedestrians without ever having to cross a city street. We are hopeful to have enough money to be able to have the Derby trail dip under the Division Street bridge to connect to the Ansonia trail. In Derby we avoided all at grade crossings except potentially one, which is that connection to get you to the train station.

Mr. Dunne stated that when we talk about priorities in the recreational trails schedule, we get about $4.9M/year for transportation projects split with Bridgeport. The 4 valley towns generally get about $900,000. We generally take more than our fair share. That money we get has to be split up between every eligible transportation activity the towns want. We do local roads, arterial and collector roads out of that and we do recreational trails projects out of that. The priorities start with the 4 towns coming in and saying something like we want the
interchange of Birdseye/Beardsley/Route 110 rebuilt. Our plan is to work with you guys, take your ideas and try and incorporate them within our funding. I told you about programmatic funds. Now I'll tell you about earmarks. Earmarks are wonderful things. In this region of CT we need earmarks because we don't get our fair share through the formula programs. Southwestern states that build highways that no one drives on get more money. They have the power in Congress. But we are able to get earmarks from time to time. The Ansonia trail that is going in this year got an earmark. Shelton Phase II Riverwalk is earmark money. Derby ended up getting the formula money for their Phase III trail that they wouldn't have because Ansonia and Shelton were ranked ahead of them in the regional process for that. Earmarks are a political issue. You need your chief elected official to be supportive of that. If you get earmark money then we can go right to work, coordinating with the town and state to get the projects off and running.

The draft plan is on the VCOG website: www.valleycog.org

Review of P&Z Applications for Subdivisions and/or Development

Old Applications

Aspen Ridge - PZC #07-05 PDD Phase II Detailed Site Plan.
Chairman Harbinson stated that he understood that the first phase of this was the basic development plan and now we were asked to comment on Phase II. We got a memo from the BOA wanting our comment on accepting the open space dedication.
Commissioners Welsh, McCreery, Lauriat recused themselves from the discussion.
Commissioner Tate asked for informational purposes, where do we sit with this legally.
Commissioner McCreery said that the Land Trust took an appeal of the approval of the basic development plans. The hearing is scheduled for April 16.
P&Z approved step 1 and 2 and this is here for approval for step 3.
Chairman Harbinson reported that the BOA has to approve acceptance of open space dedication from a subdivision. We have a memo here from John Anglace asking for our opinion on accepting the open space that is shown in the memo from Rick Schultz to John Anglace. The open space dedication that is shown on the map, which is only an 11"x17" blowup is .61 acres. From this I can’t tell what was changed from what we talked about and reviewed when this was a basic development plans.
Commissioner Tate asked how much time do we have to look at it?
Chairman Harbinson said they want the commentary now, in anticipation of their April 12 BOA meeting. Commissioner Tate asked, what if we don’t accept the open space? Chairman Harbinson answered, I don’t know. The memo from Rick Schultz to the BOA asked for this to be assigned at their regular meeting and forward your recommendation to the P&Z department. Chairman Harbinson said that he thought the detailed development plans had not been approved but what I read in the Huntington Herald says it was. As a reminder, in terms of this parcel we were asked by a couple of Aldermen a number of months back about a possibility of acquiring it as open space and we commented on that. We gave that commentary to the BOA and I have not heard any action from the BOA on that concept yea or nay. Commissioner Tate said that he does not understand what we are supposed to be doing. Chairman Harbinson said the only thing we are asked here is from John Anglace to give our opinion about accepting open space as shown in the memo and document that Rick Schultz forwarded to the BOA. I can’t tell anything from an 11”x17” blowup that is copied off a 24”x36” in pieces that has no title block on it, yet again, I have to complain about it. Commissioner Tate suggested getting some legal input. Chairman Harbinson said that we would table it until our next meeting. In the meantime they could just refer to our previous letter.

Bishop Development, 865 River Road - PZC #06-41. Location of proposed walking trail to the Far Mill River

Vice-Chairman Dyer said that they are doing the site preparation and said the building is precariously hanging over a cliff at this point. I talked with Jim Swift, the engineer, and we discussed the trail. Unfortunately the other members of the Trails Committee did not get to see it and they are reserving judgment. It was determined that the Trails Committee’s purview would be to just make comment. It would be this Commission to decide what to do, or to make the recommendation to P&Z. Chairman Harbinson asked Vice-Chairman Dyer if the recommendations the Commission made previously, which was to incorporate some public access for fishing to the area where the old mill and bridge abutments, after talking with Jim Swift something they would provide? Vice-Chairman Dyer said yes. Right now there is a trail where the property owner had been dumping wood chips and there is a trail that could be made for fishermen. Commissioner Tate suggested saying that for now it is under observation by the Conservation Commission and Trails Committee. Agent Gallagher said that at this point they just want to know where we want the trail to go.
Chairman Harbinson said that at this point we would be keeping the dialog open with them. 
Vice-Chairman Dyer noted that the plans say the proposed trail location to be reviewed by the Conservation Commission. 
Commissioner Tate suggested Agent Gallagher keep an eye on the project and keep John Cook advised as necessary.
Agent Gallagher reported that she contacted Stratford Parks and Rec Dept. to notify them we were working on this trail.

**New Applications**

**Avalon Bay Shelton II - PZC #07-16 PDD zone change, Bridgeport Avenue for a 99-unit multi-family. Request to shift location of existing conservation easement per Inland Wetlands conditions from the southern property line to northern property line along Huntington Street.**

Joe Williams, Attorney with Shipman & Goodwin, 1 Constitution Plaza, Hartford, representing Avalon Bay Communities
Tom Shiel, Licensed Landscape Architect, Milone & MacBroom

Mr. Williams stated that they are here tonight to forward a request to you that the Wetlands Commission made of us when it granted us a permit. They asked us to try to obtain permission to relocate a conservation easement.
Mr. Williams presented a drawing showing the layout of the proposal located at 917 Bridgeport Ave. In May 2005 the IWC approved a wetlands permit for a 171-unit apartment development. The area of the existing conservation easement was pointed out. This easement was granted about 10 years ago when the Homestead Suites Hotel was built. The primary purpose of the easement was to provide a buffer and separation and screening between the hotel use and a portion of the property. The site is zoned part R1 and part OPD. The thinking of the easement was to provide a buffer and screening between potential single-family residential homes and the hotel use. When we came before the Wetlands Commission one of the Commissioners said if we are inclined to approve the permit would you consider moving the conservation easement to still implement the original purpose of it, which was to screen single-family uses from somewhat different uses. They asked us to move it up to along Huntington Street because the property would be developed as multi-family and somewhat taller buildings.
Commissioner Lauriat asked what is across Huntington Street?
It was noted it is the Bridgeport Hydraulic Co.
Commissioner Lauriat pointed out that there are not single-family homes right across the street but on either side.
Commissioner Welsh pointed out that there is potential significant stream flow coming down the spillway.
Mr. Williams commented that the Wetlands Commission looked at all that when they analyzed the site plan. I don’t remember the numbers.
Commissioner Welsh said he doesn’t know if they are going to increase the green strip along the stream corridor.
Mr. Williams stated that we said to the Wetlands Commission we would be happy to seek approval of it but we were not in control of it; the City would have to approve the moving of an easement. One of the conditions attached to the wetlands approval was for us to work in good faith with City boards to seek your consent to that. We sent a request to the Board of Aldermen and I don’t believe it was referred to you for input. The reason we are here two years later is because wetlands commission approved the wetlands permit for that development but the zoning commission denied a rezoning to a multi-family housing district. We appealed that and have now reached an agreement in principal with the PZC to pursue a smaller reduced plan that we are now proposing to the IWC and PZC. It is going before the IWC on April 12 and before PZC on April 24.
Commissioner Lauriat asked, if moving the easement to Huntington Street, which is across the street from no houses, why not have it to the left and right of both sides? Chairman Harbinson suggested looking at the site plan.

Mr. Tom Shiel pointed out the conservation easement. The plan is to take a piece of the conservation easement and relocate it to the frontage along Huntington Street. The proposed easement area is 20,353 sq. ft. 50’ wide. The existing area is 20,466 sq. ft. with an average of 72’ wide. A portion of the easement would stay. (Mr. Shiel detailed the layout)
Chairman Harbinson asked about the vegetation along the stream corridor.
Mr. Shiel pointed out the easement for a water line along the west side of the brook and noted it was lightly wooded. On the opposite side is an easement for a sanitary sewer line. The utility companies have a right to clear the area but it is lightly wooded.
Mr. Shiel discussed the emergency access area and Chairman Harbinson asked if it could be moved to the upper right corner to not violate the conservation easement, which is to try and provide a buffer along the streetscape. Mr. Shiel said they would work with the Commissions on that. Chairman Harbinson pointed out that it may be an engineering issue but from the Conservation Commission perspective if we can keep the conservation easement un-violated by an opening it would be more productive.
Commissioner Welsh asked if the square footage shouldn’t be included in the easement?
Mr. Shiel said it depends on the language of the easement. The language right now is framed to allow for drainage and to allow for access.
Commissioner Tate asked if we are reviewing the language of the easement as well?
Mr. Williams answered that the request that was put to us and that we are making to you is to just relocate that area. The request was from the IWC and not formally from the PZC. Mr. Panico indicated their strong preference that we do this as well.

Tape 1, Side B

Chairman Harbinson pointed out that the original intent of the existing conservation easement was to buffer any future contrasting type of development, R1 versus the hotel type thing. With the nature of this area where the area the conservation easement is being proposed to relocate to the vegetation is lightly wooded that provides a screened enhanced streetscape so you don’t see the full impact of this type of development.
Mr. Shiel commented that this is a little nicer. The plan that was approved by the IWC is more aggressive relative to its appearance along Huntington St. The buildings along the easement are 3 stories.
Chairman Harbinson asked if they could continue the conservation easement along the entire length of Huntington Street. Mr. Shiel said he didn’t see why they couldn’t. Chairman Harbinson pointed out that the intent of the easement was to buffer the development scale versus the residential nature of that neighborhood.
Commissioner Lauriat asked what the zoning is east and west of the proposed development? (They answered R1). If the reason for the buffer was to buffer the hotel from potential R1 development, why isn't there a buffer now between the existing R1 development and these buildings?
Mr. Shiel said I can only explain the existing condition or what is being proposed in the graphics. There is a 20’ strip of property that separates the existing landowner from the Avalon Bay piece. Then there is a 15’ proposed yard. There is a 35’ landscape area.
They asked about the strip of land next to the parcel and it was speculated it might be a utility situation because there is a Tennessee Gas Pipeline near there. Mr. Shiel showed the area that will be graded on the right side of the property and said the other Commissions may require some additional landscaping on the hillside.
They discussed the old plan as approved and there would have been some trees removed. Chairman Harbinson said that it is not an issue now with the new plan. Mr. Williams said that would be so providing the settlement plan is approved and the relocation of the conservation easement as we have shown is essential to this layout.
Commissioner Tate stated that he understood that the site plan could still be revised, correct?
Mr. Williams asked what he meant.
Commissioner Tate said that there is no approved site plan. I don’t personally care if IWC approved it or not, that is you’re situation. It hasn’t come before P&Z for an approval, am I right?
Mr. Williams said that they have approved a settlement process that has a minimum number of units.
Commissioner Tate asked what does a settlement process mean?
Mr. Williams responded that it means that we agreed to come back before the Commission with a revised application so that there could be a public hearing in front of the Commission.
Commissioner Tate said that in that directive you would not pursue legal action.
Mr. Williams answered that if it were approved we would withdraw all pending litigation.
Commissioner Tate asked if you are still in negotiation with the site plan? Mr. Williams answered, to an extent, yes. The point I wanted to say was, the settlement agreement by which Avalon Bay offered to pursue a reduced site plan for 99 units does contain that minimum number. If the easement were not relocated we don’t think we could lay the site out the same way and actually be able to effectuate that settlement plan and it would jeopardize the overall approach.
Commissioner Tate asked who gave Mr. Williams the information that it wouldn’t work any other way?
Mr. Williams stated it was from our engineers.
Vice-Chairman Dyer asked, you don’t show the easement going away but the easement where the road (by the stream corridor) is goes away, right?
The other drawing showed that area in green as a conservation easement. How can it be a conservation easement with a road upon it?
Mr. Williams answered that the easement language itself allows for underground stormwater structures and allows for access roads crossing the brook. What we are proposing is consistent with the existing language on the land records that the City accepted 10 years ago.
Commissioner Lauriat asked where the emergency access was on the prior plan?
Mr. Shiel responded that in the previous plan we were allowing the cars to loop around and exit.
Commissioner Lauriat asked why you needed one now?
Mr. Shiel answered that we offered it on the site plan and felt it was good planning.
Commissioner Tate commented that it out of our purview to talk about it and probably someone suggested it.
Commissioner Tate stated that we are here to look at why is this site plan any better than the old site plan in respect to the conservation easement. I see that we are going to get less conservation easement than what you are proposing. The direction I would like to see is aligning it to be more beneficial. I hear from you that you are here to move the conservation easement so we can get
approval and we are trying to make the best site plan. I think you got it pretty clear that the town and the public had problems with this project. We are trying to make it the best we can and we’re kind of getting it jammed down our throats legally, the way I look at it, so whatever we can do as a town and in these Commissions to make it a better site plan we’d like to try to do that. Commissioner McCreery said that he doesn’t know if they’d reached a “deal” on 90 some units. I made a list of some of the issues and it doesn’t involve saying no.

Mr. Williams said that I hear very clearly and respect your position on that. I think if you want to see a greater square footage area on the easement, I don't think it would be a problem to add some additional areas consistent with the way we have proposed it. I think we could possibly add some area to the right and get at some of the concerns we’ve heard about insuring the buffer. We only showed it up in that corner because that is what the IWC asked us to do. It wasn’t our idea but it was put to us as a condition of approval we thought it made sense in a lot of ways to further the original purpose.

Commissioner Tate commented that he felt it is a better site plan with the conservation easement along Huntington Street. Our position is to make the best site plan.

Commissioner McCreery asked how far the nearest houses are at either end? Mr. Williams said that they are immediately abutting.

Vice-Chairman Dyer asked why they were going so far up on the crossing? Mr. Shiel said that that was the area that was approved by wetlands and would be the least impact on the stream corridor on the original application.

Mr. Williams said that the revised plan still shows that area and our engineer Ted Hart calculated that the wetlands disturbance in this plan is reduced. With the arched culverts instead of the box culverts would result in less impact to the stream corridor.

Chairman Harbinson commented that the new site plan is improved from the first one but there is still room for improvement regarding the streetscape on Huntington Street having the conservation easement expanded to be the whole frontage, even in the area where you are going to do some site preparation work. After the development work is done that a conservation easement be put in place with appropriate plantings that match the natural vegetation.

Commissioner McCreery MOVED to recommend to the Board of Aldermen to accept the proposed easement swap based on the following conditions:

1) If the PZC deems emergency access as shown on the map be absolutely required that it not be paved that it be minimal clearance with grass pavers.

2) The applicant is to revise the site plan to extend the conservation easement across the entire length of Huntington Street in a north, northeast direction recognizing that from the stream crossing to the northerly boundary to the property line there is going to be site disturbance but there should be a condition of post-site disturbance plantings and an
conservation easement with a mixture of hardwoods and evergreen plantings.

3) On the northerly northeast boundary of the line that the City require a conservation easement down to the 272 proposed contour line with appropriate grading to support vegetation and be similarly planted with a combination of evergreens, hardwoods and deciduous trees but that there be a guarantee of the life of the trees imposed (performance bond).

4) The applicant to be required to plantings of more than shrubs along the extreme property line on the south against the residential properties.

5) The City and the Commissions require a residential lighting plan to minimize light pollution on the residential zones.

6) The Conservation Commission requests the right to review the language of the easement.

7) Except for the northerly portion and the northeasterly boundary line the conservation easement area is a NON-DISTURBANCE AREA.

SECONDED by Commissioner Tate.

Commissioner Lauriat commented that if the reason for the easement was initially to protect the possibility of R1 folks from being disturbed by the hotel why isn’t the easement located so that this new structure doesn’t upset the folks in the R1 homes? Why isn’t that easement along the southern border of this development to provide masking to the advantage of the folks that live to the south of this?

Commissioner Tate suggested that question be asked in a letter.

Commissioner McCreery suggested sending this to everyone. Has the BOA and the PZC considered whether the buffer easements would be more advantageous to buffer the residents to the north and south as opposed to buffering the street. I don’t live there and I might feel differently if I did, but I know driving down that road it is going to break my heart to see the apartment buildings right up against the road.

There was discussion of grading and the easement area.

Chairman Harbinson commented that it is his understanding that the IWC’s intent of moving the easement is that they wanted to buffer this development from people driving along Huntington Street.

Commissioner Tate commented that there is a character along Huntington Street that would be lost. This would help mitigate that; it won’t solve it.

Commissioner McCreery suggested finding out who controls the ROW on the southerly side.

A voice vote was taken; all were in favor, MOTION PASSED.

Avalon Bay Shelton I - PZC #07-15, PRD Amendment & PRD Development, 40-unit cluster on Armstrong Road
Agent Gallagher stated that this application was not referred to us officially but Rick Schultz gave her the plans if you wanted to look at them.

They asked what is this Commission supposed to look at? Commissioner McCreery commented that when they give you the plans and say, well, just in case you want to look at it, but they don’t give you a referral letter the gimmick is we really don’t want your comment or input. If you want to have a say in it, then say something.

The Commissioners agreed to look at it.

Commissioner Welsh said here’s my comment – did somebody say well don’t sue us and we’ll give you 40 units, and then we have to work this magic number. No one wants to configure open space based on the best development and where to put the open space. If someone has already given their thumbs up on this, why should we waste our breath?

Commissioner Tate commented that he’s speaking to the choir – they all see it the same way.

In review of the property it is 22.94 acres. Total open space, which seems to be all wetlands, is 2.87 acres.

Commissioner Tate asked if the Chairman of the Inland Wetlands Commission a partner and/or financial interest in this and the other Avalon proposal? Some Commissioners and members of the public said yes.

They spent some time reviewing the plans to determine what is the qualified open space. It was suggested asking that question.

Tape 2, Side A

Commissioner McCreery MOVED to write a letter to Planning & Zoning Commission, IWC to be copied, stating that the Conservation Commission received the Spath, Bjorkland Associates proposed plans for Avalon Shelton 1, a PRD off Armstrong Road. The Commission would note that it has not been provided with sufficient details or information to determine whether to recommend the open space be accepted or whether a fee in lieu of would be more appropriate. In particular it appears that most of the proposed open space is non-qualifying wetlands. There seems to be no explanation as to why the ridgeline off of the proposed Green Terrace is not also being preserved as open space and the Commission respectfully requests this information (before the May 2, 2007 regular meeting) be conveyed to it for comment. SECONDED by Vice-Chairman Dyer. A voice vote was taken; all were in favor, MOTION PASSED.
Beacon Point Marina - PZC #07-11, 704-722 River Road. PDD and zone change from IA-2 and IA-3 to a Special Development Area for 300 boat slips and 24 condominiums.

Chairman Harbinson reported that this would require a change in the Future Land Use Plan due to this zone change. Any change in the Future Land Use Plan now would require approval from the Board of Aldermen in addition to the Planning & Zoning Commission.

This site is located on River Road at the site commonly referred to as Murphy’s Boat Yard.

The referral notification from Rick Schultz reads that the applicant is proposing public access but does not show pedestrian easements. There is no open space proposed or shown on the application.

Commissioner Welsh asked if they were required to give open space and Chairman Harbinson answered that they would probably have to do a coastal area management plan since it is on the tidal area of the river. There would have to be some public access. He said that he recalls from childhood that there is a road to access the river and at some point people stopped using it.

Commissioner Tate stated that there should be public access to the waterfront on this project. There should be some public understanding that there could be some use of either dock space or something else.

Commissioner McCreery pointed out according to Section 34.5.2 of the Zoning regulations of the City of Shelton under basic development plans: The basic development plans shall set forth any proposed open areas such as parks, lawn areas or recreational facilities and any existing and proposed landscaping treatment including major tree areas, water bodies and related treatment of open space areas.

It seems to be within the purview although they seldom, if ever, seem to exercise it of the PZC as a prerequisite or requirement of approving a PDD to require recreational access of open space.

Commissioner Tate agreed by saying this is a great opportunity for the City and will be forever lost if we don’t grab it here. Someone has to start designing it and see what happens.

Commissioner McCreery stated that public access rights and easements were the same and may be required by the Commission.

Commissioner Tate said that we need to make a big deal of it right now. This is a letter we want to write.

Commissioner Welsh suggested this could be a condition of the PDD. If this is going to benefit the City and our taxpayers then here is how it should be. It doesn’t always have to be the one way.

Chairman Harbinson commented that his memory was correct. If they refer to the map that doesn’t have a label on it but it’s the topographic survey map it does show that asphalt access way but it doesn’t show the ownership of it. It is on our
open space plan map as Murphy’s Lane all the way down to the river. Commissioner Lauriat said that it is shown the same on the GIS map.
Chairman Harbinson asked, is there a City ROW or a City road that comes down there that is now being assumed to be private property upon which this application is not considering that?
The Commissioners discussed the layout and discussed their comments to the PZC.

Commissioner Tate MOVED to write a letter to Planning and Zoning Commission stating the following: The Conservation Commission has reviewed the proposed site and City map for the PDD application for Beacon Point Marina. Pursuant to the referral of notification from the Shelton P&Z Commission dated April 3, 2007, the Commission would strongly urge the P&Z Commission to impose a requirement of public access, pursuant it’s authority under Section 34.5.2, subsections F,G and K, such as to require public access to the waterfront. Further, we notice the narrative regarding the application makes mention of public access of a boardwalk and gazebos and boat ramp but provides no mention of how residents would access those facilities. The Commission ought to impose such mandatory conditions as to insure such access as it deems appropriate.
There is some question as to the jurisdiction of Murphy’s Lane and it's access to the riverfront. This needs to be investigated as a potential public access route. SECONDED by Commissioner McCreery. A voice vote was taken; all were in favor, MOTION PASSED.

Golf Center of Connecticut – PZC #07-06, River Road. Expansion of existing building located within PDD#30 on the Housatonic River.

Chairman Harbinson commented that when this was just a driving range there was access to the river along the right side of the driving range and a couple of parking spaces near the landfill. When they added the ice rink and batting cages that got eliminated and they provided public access at the rear of the ice skating rink. They are looking to add on to the original building. Any change to a PDD is a chance for us to reinforce our conservation or pedestrian easement that we have.
Agent Gallagher presented the new plans along with the original ones. They discussed where the access was and where it is now.
Vice-Chairman Dyer said that he went to the site and determined it would be easier for them to build a set of stairs than a ramp because of the cliff. He pointed out where the trail is located. The stairs is not buildable by volunteers. Commissioner McCreery recalled that when this was first proposed they were going to build access down to the river alongside the golf course right down to the river – and they were going to do it.
Commissioner Lauriat and Chairman Harbinson said they did do it. It’s when the ice-skating rink and the batting cages came in the foundation for the batting cages prohibited pedestrians from going down along side the driving range. They modified the PDD to give people access from the parking lot. They never did it.

**Commissioner Tate MOVED in light of the fact that the applicant is seeking to modify the existing PDD the Commission should point out to the P&Z Commission that the original waterfront access from River Road was defeated by the installation of the batting cages, located on the south side, and was supposed to be relocated to the rear parking lot of the proposed skating facility to the riverfront and the historic existing pathway (mule path) adjacent to the river. That is now not present and along the rear of the driving range net there appears to debris, such as wire spools as noticed by our volunteer groups, all of that blocking access to any possible passage to the waterfront. Clearly, in any new proposal should be a well-defined, well-constructed public access created to the mule path or to the Housatonic River waterfront. We recommend working with the City of Shelton Trails Committee to establish an acceptable passage and usable pedestrian access to the waterfront in this location. We refer to Shelton’s Planning & Zoning Regulations, Section 34.5.2, subsection F, G & K for it’s right to require the position of public accesses. Further, due to the oversight of this original not being constructed that this trail be bonded separately. **SECONDED by Commissioner Lauriat. A voice vote was taken; all were in favor, MOTION PASSED.**

Deanwood Meadows – Re-subdivision of Lot #3, PZC #07-20, 212 Soundview Avenue, involving conservation and pedestrian easements

Agent Gallagher stated that the original plan showed a pedestrian easement that we don’t see on this plan.

Chairman Harbinson read from the referral: $18,600 was previously deposited in the Open Space Trust Account as part of the original subdivision approval and the Conservation pedestrian easement document was filed on the land records. Lot #3 is the old brick house. It looks like they are going to knock down part of the house and divide it into two lots. One lot is going to be 1.56 acres and the other is 1.09 acres.

Agent Gallagher said she now sees where the pedestrian easement is, which is not how Rick Schultz thought it was. It’s on another property. They discussed the layout and Commissioner Tate asked if this was “as of right”? They agreed it was.

Agent Gallagher said that technically they can require open space but Rick Schultz said they don’t on a re-subdivision because they consider it to be double-dipping.
Chairman Harbinson thought it was ridiculous. What if in 15 years from now they come back and say it’s a re-subdivision?
Commissioner McCreery said what is the problem with that thought process is, the fee-in-lieu justification that was upheld in the Supreme Court was because of the impact that the additional residents are putting the burden on the community facilities. Our Planning & Zoning Commission has lost track with the concept of when you put in a new house with kids and more family, you are putting more burden on the facilities, which was not contemplated when it was done as a 4-lot subdivision, now it’s a 5-lot subdivision.
The Commissioners agreed that just the term “double-dipping” is showing ignorance.
The Commissioners discussed whether they should ask for open space or fee-in-lieu of.
Commissioner McCreery MOVED that the Conservation Commission would like to point out to the Planning & Zoning Commission that the concept of open space or fees in lieu of open space, which were upheld by the Aunt Hack Ridge decision was based upon the added burden that the new development places on municipal facilities. The open space that was accepted when this subdivision was originally approved was based on a 4-lot subdivision. It is now going to be a 5-lot subdivision. The Commission feels that the Planning & Zoning Commission is fully within its rights to require an additional fee-in-lieu in light of this re-subdivision and due to the purposes of open space or fees in lieu of open space to provide benefits to the entire community of the added burden due to the increased development. SECONDED by Commissioner Lauriat. A voice vote was taken; all were in favor, MOTION PASSED.

Caswell Cove
Deposition of dredged material from Caswell Cove, Milford, into the Housatonic River in Shelton.
Chairman Harbinson brought up the article that was emailed to the Commissioners from an expert.
Agent Gallagher pointed out that this author of the article didn’t have any data from Shelton, which she has. She passed out the flyer she distributed to everyone in City Hall regarding a meeting Thursday night to raise funds for the legal battle.
Commissioner Lauriat asked Agent Gallagher about what she brought up last month regarding the person in DEP was only paid to worry about what is in Long Island Sound. I sent you an email asking why isn’t there a DEP person worrying about rivers. I think that’s a valid question. If I were the DEP person who was paid to worry about rivers, I would be all bent out of shape that no one asked me to worry.
Commissioner Tate said he believed they all work within one department called Long Island Sound program.
Commissioner Lauriat asked if it included rivers?
Agent Gallagher said the focus is Long Island Sound.
Commissioner Lauriat said he felt there was a “not in my backyard” attitude that comes from this guy. That is what got my attention.
Chairman Harbinson asked if there was anything we could do as a Commission that would be supportive now that the City has joined in this lawsuit?
Commissioner Welsh stated that it’s like when you’re right and everything justifies it the outlook is going to be wrong. They should have said perception is going to be so bad and I think it’s a big impact on DEP that all these people that look for the DEP to protect these resources, and whether they did all the tests, monitored the water quality and had all the data, and even if filling in the holes might have been a good idea, they should have said you know what, public perception here is going to be so negative, let’s not do it that way. They could have saved all this aggravation and still be held in high regard with a lot of people.
Agent Gallagher speculated that is why it went through so quickly; because they knew it would happen if it went public.
Vice-Chairman Dyer said the funny thing about it is if the tugboat captain had kept his mouth shut we would have never heard about it.
Commissioner Welsh said that they keep quoting from a research paper some college kid did in 1991. They didn’t have any baseline data to go on.
The Commissioners agreed that the best thing to do at this point is support the legal battle financially.

Tape 2, Side B

**Clear Cutting of Parcels**
Commissioner McCreery reported that there are a lot of sections that need revising within the regulations to modify the language.

**Conservation Agent Report**
Agent Gallagher reported on the following:

**Open Space Plan Update**
I plan on reworking the initial draft the week of April 16.

**Open Space Inventorying and Mapping**
The re-numbering and re-organizing of the open space parcels is complete. All of the parcels formerly designated as “disposable” or “no count” have been assigned new “OS” numbers (eg. “D-1” is now “OS-126”). Some open space
parcels that are contiguous with each other have also been re-assigned to a single OS number (e.g. all of the properties in the “Above the Overlook” area are now classified as OS-48.01 through OS-48.08) and re-filed accordingly. Properties acquired within the last 3-4 years has also been added to the system. An excel spreadsheet was sorted and printed out in four different ways to allow quick reference to the files even if only a map and lot number are known, or a street, or a common name (such as “Huntington Woods.”). Regis Dognin is incorporating these changes on his open space map. An online version of the Open Space spreadsheet is at http://spreadsheets.google.com/pub?key=p7eVfoW0oJhvtE24uLodnNw

Open Space Trust Account
As of March 31, 2007, the Trust Account balance is $171,553.19. A new Rec Path account was set up so that payments involving the Rec Path will not be drawn from the OSTA, and our account was credited in the amount of $41,241 for previous Rec Path checks drawn from the OSTA (the Rec Path checks will be reimbursed by the DEP).

CT Land Conservation Conference, March 31
I attended this event with Joe Welsh and Bruce Nichols. Some notes:

The new “Face of Connecticut” campaign involves an alliance of nearly all conservation-related organizations in the state. The CT Land Conservation Council is asking for people to contact their representatives and ask for the new bill to be financed to the tune of $100M over ten years. It is a holistic bill that encompasses brown fields, farmland preservation, historic preservation, open space, and so forth.

Stone Walls (presented by Robert Thorson): CT walls are under threat because the weathered stones have become valuable and are sold far from CT. The stones can be sold for significantly higher prices in California ($600 per ton vs. about $200 per ton in CT), therefore, many of the stonewalls are being packed up and sent out-of-state.

The New Encroachment Law, presenter Atty. Janet Brooks
Notes: The City could take action against any party that encroaches on a farmland easement, including activities such as ATV riding. There is a potential $5,000 penalty that was meant for activities for which damages may be small or difficult to quantify (parking trailers on the open space, some ATV activities). We do not have to prove actual damages – just an “alteration”. One option for long-term preservation of land is to grant an easement to two entities, eg, the City of Shelton and the Land Trust, because then either entity can take action under the law. It is a good idea to have clearly defined boundaries in order to show “willful” encroachment; also a good idea to have a video inventory of holdings so that after an encroachment occurs, you have documented what the land looked like.
before the activity. It is a good idea to send a letter to encroachers before taking any legal action, and let them know what potential penalties may be if they continue. Law does not apply to past encroachments. Conservation Commission members do not have authority to go on private property and are not protected from trespass laws.

**Conservation Options**
Presented by Elisabeth Moore and Linda Francois.
There is a tax advantage for people to sell land or easements at a reduced rate – the price reduction is a tax write-off that can be used to offset the income gain by the property sale. “Unilateral Restrictive Covenants” – deed restrictions held by the property owner – do not work. They can be nullified by the owner at a later date, there is no enforcement entity, and may affect taxes (City of Shelton cannot meaningfully deed restrict its own Open Space?). The deed restriction (e.g. easement) must be held by someone other than the property owner. Conservation easements must be very carefully written to ensure proper protection and maximize tax write-offs – their easement agreements are typically 15 pages long (towns frequently get away with shorter versions when subdivisions are involved). “A Dog” is land that the property wants to donate or sell, but which is not worth having. Conservation Easement donations for 2007 are deductible over 15 years instead of 5 due to an error in legislation. The ‘error’ may or may not be extended in future years.

**Establishing Native Vegetation on Conserved Lands**
Presented by Larry Weaner. During a land disturbance (clearing, fire), all the seeds involved in the coming succession of the land will be there from the beginning. The species that suddenly seem to appear after 4 or 5 years were actually there all along, just very small. This fact is utilized when planning seed mixes for stable, open meadows. A properly planted wildflower meadow can be stabilized so that very little upkeep is necessary, and it will not go into succession.

America was always intensively “managed” by Native Americans, who cleared and started many fires to change the character of the land. Elderly Indians who were given a tour of Yosemite several decades after it had been managed with a “hands-off” policy, unanimously describes the park as “unkempt”. Plants and animals adapted to this managed land over thousands of years. There is a high density of endangered species on a property used by the military for bombing practice because the land is constantly burning over. Invasive species are almost non-existent.

Tips for dealing with invasives: Start with lands in which invasives are just starting to get a foothold in order to prevent a serious infestation. Do not start with the lands already seriously infested. Try not to clear all vegetation in the area or to disturb the soil. Find a difference between the invasive species and the
desirable vegetation that is already present, and exploit that difference. Plant species that are very aggressive and able to compete with the invasive species. Plant “communities” of species, not individual species. Communities are species that have co-evolved and which are equally competitive with each other, so that one species does not dominate the others. Plant densely, so there is no room for invasives. Apply herbicide with a tube & roller set-up to avoid over-spray. Don’t let annual invasives go to seed. Japanese honeysuckle can be sprayed in November because it is growing but everything else is dormant. Tagging: Use one color of flagging for species to save and another for species to remove, then have volunteers come in to do the work. For deer problems, plant species deer like in amongst plant they don’t like. In forested areas, patches of desirable plants can be released by carefully opening up the tree canopy.

Girl Scout “Me & My Guy Hike”
The date of this major hike has been set for the afternoon of June 16, rain date June 23. Three hike lengths will be offered, following the “bridge-to-bridge” route from Pine Lake to Huntington Center. I met with Lt. Joe Kudrak to discuss road safety, traffic and crosswalk installation. The crosswalks at Meadow Street and Const. Blvd are in the works. We can expect several hundred participants.

Project Safe Trails
A Lane Street resident has shared information about a dirt bike user on the Rec Path who has ripped up the trail and created a safety hazard to hikers. I will send a letter to the homeowner. Crosswalk installation has already been discussed.

Tracking of New Development
I’ve published a spreadsheet for tracking the developments that this Commission is interested in at http://spreadsheets.google.com/pub?key=p7eVfoW0oJhuz6chQdKtjQQ. I have not had time to properly keep the spreadsheet updated. If any members would like to take on the job of updating the spreadsheet by checking meeting minutes and agendas, I can give that person online editing capabilities.

Silent Waters – research into historical remains at site of Rec Path
I have checked with Plumb Library, the Shelton Historical Society, and have spoken with Mike Picone at Aquarion, who says they do not have historical records but that he would look at the site to see if he can figure out what the remains are. If that does not work, we might consider asking for help from the press (“Can you identify this?” pictures).

Rec Path Grants Status
I have the invoice from Nagy Bros and need to submit copies of checks to the DEP (this will include everything so far except the last half of the P&C Fence
Native Species Garden at Shelton Lakes

I reviewed the plant selection submitted to us last fall by Troop 512 and sent the girls a letter. I also made a “before” video of the site which is online at http://video.google.com/videoplay?docid=-3177056218659441138. I also made a “before” video last October, which shows additional plant species. Of special concern is the invasive Black Swallowwort, which has spread throughout much of the site. Existing native species include marginal woodfern, spinulose woodfern, Christmas fern, pipsisswa, lycopodium, sassafras, sensitive fern, sweet fern (a shrub), asters, goldenrod, ragweed, spicebush, mountain laurel, sweet pepperbush, black birch, red oak, white oak, hemlock, white pine, spruce, red pine, and red cedar. Non-native species include Japanese andromeda, forsythia, pulmonaria, and sedum. Invasive species include black swallowwort and possibly autumn olive and purple loosestrife.

Office update

My work area has been significantly upgraded for greater efficiency and storage capacity, including a 2nd filing cabinet and a new set of shelves. I still have several boxes of files from Harriet Wilber that I need to file, but I now have someplace to put them.

Backlog

Several Open Space encroachments; archeology data for Shelton; beaver on the Means Brook; site visits for most open spaces (including new lands – the UI piece needs to be signed); land keeper program; tracking spreadsheet for our budget; scenic resources and Community Resource Inventory; emergency response information for water bodies; fee-in-lieu-of tracking system; inventory of conservation easements; Wiacek mound; and a variety of small issues. I sent an email out regarding the Community Resource Inventory Committee and already have two people interested, Randy York and Jason Perillo. The Commissioners delegated the duty of getting the committee members together.

Boy Scout Camporee

This will not happen in Shelton for 2007.

The Commissioners discussed the group of about 200-300 youths from the Black Rock Congregational Church that wanted to do a clean-up project in Shelton. It did happen but they were not sure what was done or where it was done but they
were going to work at the Turkey Trot Trail and Riverview Park. It ended up being under the direction of Ron Herrick from the Community Center.

**Communications**

Chairman Harbinson reported on the following:

- Invoice from Ben Meadows for trail blazing
  
  Commissioner McCreery MOVED to reimburse Agent Teresa Gallagher in the amount of $47.70 for materials purchased for trail blazing. SECONDED by Vice-Chairman Dyer. All were in favor, MOTION PASSED.

- Flyer from Nature Conservancy
- Southwestern Conservation District Newsletter
- P&Z Memo regarding the Enclave at Huntington Woods. They are going to reduce the performance bond from $390,000 to $78,000 currently being held for completion of public improvements.
- Letter from Atty Welch regarding the Dikofsky property deed
- Notice from Department of Environmental Protection – Long Island Sound Programs. This is regarding the City’s application to prepare the bank at the wastewater treatment plant.

**Trails Committee Report**

Vice-Chairman Dyer reported as follows:

**Rec Path – Phase I**

Terry Gallagher brought out the material we generated a while back regarding what the cost would be and the details. What this amounts to is the paving would be over $100/linear foot and gravel is $15/linear foot. This is assuming about a 10’ wide path. We will work on getting better numbers.

We want to go to the Board of Aldermen with our plan but wonder if it would be better to go and ask for a paved plan or would it be better to go in and seek LOCIP funds to grade and gravel the whole Phase I, from the bridge to Route 108.

Commissioner McCreery said that it would be the Conservation Commission requesting funds to the Board of Aldermen not the Trails Committee because they are an advisory committee to the Conservation Commission.

Vice-Chairman Dyer stated that the section from Pine Lake bridge to Meadow Street should be paved.

Commissioner McCreery MOVED that the Conservation Commission concludes the section from Pine Lake bridge to Meadow Street should be a paved portion of the Recreation Path.

Discussion:
Commissioner Tate said, my recollection of the path was that the area was cleared and prepared it by putting some type of base material down, so that it was walkable. But it was a drainage plan that was going to be done, which was due about a year ago, then it was going to be priced by Dean Cawthra and whether the City could put the drainage in or needing to be contracted out prior to paving. I don’t think there was anyone here to say that the ground was ready for paving. I don’t want to see the city spend the $100/ft. for paving and the base is not correct, I don’t want to see us spending the money. I think it is very critical that you want to do the paving that the drainage work and the base work is done properly to be properly paved. There are certain things that may prevent it from happening. One is that there are a lot of surface roots from some large pine trees. I am not sure you want to cut the trees down and grade that area to prepare properly for paving. What will happen is that the pavement will pop and that creates a hazardous safety condition. Some how we have to find a way to make sure that we can have secure pavement over a long period of time.

Commissioner McCreery asked, isn’t this the area the Mayor wanted paved and we decided we didn’t want to do it?

Commissioner Tate said that he suggested we only pave the parking lot but not the path.

Commissioner Lauriat asked what the $100/ft. buy? Does it buy the business to prepare the trail to be paved, or just the paving material?

Commissioner Tate said it’s all relative – a $100/ft. over a 1000’ is very different from $100/ft. with a 100’ of paving. There are now state standards by which a trail is defined and explained the State DOT Trail Performa.

Commissioner McCreery withdrew his motion.

Finish the Fence and Bridge – we did get the purchase order to build the fence on Lane Street.

Connect Blue Dot Trail to Shelton Lakes – I have tried to get in contact with the Blue Dot Trail people. This would go from the parking lot in Indian Well to Shelton Lakes.

The Commissioners discussed the trail off of Mayflower Lane.

Quality of Life – Executive Session

Commissioner Lauriat MOVED to go into Executive Session at 10:05 P.M. SECONDED by Vice-Chairman Dyer. All were in favor, MOTION PASSED.

Vice-Chairman Dyer MOVED to come out of Executive Session and return to regular session at 10:30 P.M. SECONDED by Commissioner McCreery. All were in favor, MOTION PASSED.
Adjournment

Commissioner Welsh MOVED to adjourn. SECONDED by Commissioner Tate. All were in favor, MEETING ADJOURNED at 10:32 P.M.

Respectfully submitted,

Marianne Chaya
Clerk, Conservation Commission