City of Shelton Conservation Commission
Meeting Minutes for
September 6, 2017

Members Present: Tom Harbinson (arrived at 7:21 p.m.), Bill Dyer, Ed McCreery, Joe Welsh, Jim Tate, Sheri Dutkanicz

Also present: Teresa Gallagher, Natural Resource Manager; Terrance Gallagher, Trails Committee.

The meeting was called to order at 7:14 pm by Bill Dyer.

1. Meeting Minutes: Sheri Dutkanicz made a motion to approve the August 2, 2017 meeting minutes. Seconded by Jim Tate. All were in favor.

2. Trails Committee Report. (Tom Harbinson arrived at 7:21 pm). Bill Dyer summarized the Trails Committee meeting held immediately before the Conservation Commission meeting. See the Trails Committee meeting minutes for more information.

Bill Dyer noted that Trails Committee passed a motion to recommend to the Conservation Commission that evergreen trees be planted in the open space north of Thoreau Drive to delineate the Paugussett Trail from the neighbor’s yard. Commission members reviewed a map and photos showing a lawn area extending into the open space from the east. Teresa Gallagher said she would plant mostly native spruce as opposed to pine because they are narrower and will not branch out across the abutting property. She would also stay about 7 feet off of the property line so the trees will not grow into the neighboring lawn and drive.

Ed McCreery made a motion to approve planting evergreens in the open space north of Thoreau Drive to screen the trail, with expenditures not to exceed $750, contingent on the abutting property owner being notified in writing. Seconded by Bill Dyer. All were in favor.

Jim Tate said he spoke with the Mayor about hiring a contractor to replace portions of the Rec Path safety fence at Silent Waters. The Mayor directed him to hire one of the contractors that had been used previously. Bill Dyer said he took a closer look at the posts and fewer needed to replaced than he initially thought.
3. Applications for Development.
   a. Pearmain Estates, PZC #17-09, 6-lot subdivision on 10.6 acres. Tom Harbinson reported that the Planning and Zoning Commission was expected to approve the subdivision, but negotiations for the city to purchase all but two of the lots was ongoing.

4. Communications:
   a. Wesley Drive Encroachments: Tom Harbinson obtained a copy of an 8-24 referral letter from the Mayor’s Assistant Jack Bashar to the Planning and Zoning Commission dated August 1, 2017 “to authorize the mayor to negotiate the sale, lease, and/or license of property owned by the City at #45, 49, 53 and 57 Wesley Drive from the City of Shelton for the purpose of resolving encroachment issues at the rear of each property owners’ lots.” The letter does not describe the encroachment issues, but there is a map attached showing three of the properties.

   Tom Harbinson noted the attached map was misleading and did not show the swimming pool at house #49 over the property line, or the playset. Also, the map was not appear to be to scale. House #45 is 14’ away from the rear property line according to the GIS map that is online. How was that house built so close to the rear property line?

   Teresa Gallagher refreshed the Commission about the background. Several years ago, she saw a Christmas tree dumped at the edge of the Rec Path and followed footsteps through the snow from the tree to #49 Wesley Drive. At that time, she saw a chain link fence, lawn area, and playset that were in the open space, as well as the edge of a swimming pool. The fence was about 70 feet over the property line.

   The owners, Michael and Kerry Miressi, had previously come before the Zoning Board of Appeals to build the swimming pool within six feet of the open space property line. The Conservation Commission reviewed the proposal at that time and sent a letter to the Zoning Board with a number of concerns (attached). According to the transcript of the public hearing, the owners stated they had had the property surveyed, knew where the property line was located, and that the fence would be located one foot from the property line. The Notice of Variance from the Shelton Board of Zoning Appeals dated Sept. 26, 2007 stipulates that the applicant must “follow and agree with the recommendations of the Conservation Commission as outlined in their letter dated 9/13/2007.”

   Teresa Gallagher noted that the two abutting properties have lesser lawn encroachments, possibly originating from the time the development was created, which were swept into the enforcement action out of a sense of
fairness. The action was referred to the Mayor’s office and Corporate Counsel a few years ago and she was not sure why the issue was being addressed at this time.

Sheri Dutkanicz looked up the property at #49 Wesley and said it was listed for sale by owner. The encroachment issue could potentially hold up the sale of the property.

Joe Welsh said that the Conservation Commission fought for that open space as a buffer for the Rec Path and now it’s not being taken seriously.

Tom Harbinson wanted to know what practices does the City need to improve to prevent this sort of thing from occurring in the first place? First you had the buildings constructed closer to the rear line than they should have been, resulting in very small back yards as well as possible clearing of the open space by the developer. Then, when the pool was installed, it was built over the property line.

Ed McCreery said he thought it was obscene, the idea that the City would be giving them permission to use the open space.

Teresa Gallagher wondered what criteria should be used to determine if extenuating circumstances apply. Tom Harbinson said it should be done on a case by case basis. Teresa Gallagher agreed, but said there should be some stated rationale so it’s not arbitrary and doesn’t encourage future encroachments. Tom Harbinson noted that preexisting encroachments would make sense, when the city acquires property that was already encroached upon.

Bill Dyer said it was the setting of precedent that disturbed him.

**Tom Harbinson made a motion to send a letter to Jack Bashar, copied to Rich Schultz, that Conservation is aware of the 8-24 referral even though they were not copied on it. Conservation would note that the attached drawing is deficient since it does not include the swimming pool or playset. Such action would set a precedent for the numerous other encroachments on city-owned conservation areas for which the Conservation Commission, Planning and Zoning Commission, and Board of Aldermen spend a great deal of time and money acquiring and should not be treated lightly. Seconded by Sheri Dutanicz. All were in favor.**
b. **279 Soundview Avenue lease.** Conservation was copied on a response from the Planning and Zoning Commission to an 8-24 referral request from the Board of Aldermen. The P&Z Commission voted 4-2 in favor of leasing the house at 279 Soundview Avenue. This is the house located next to the Community Garden.

5. **Executive Session:** *At 8:02 p.m. Tom Harbinson made a motion to go into executive session for the purpose of discussing potential land acquisitions. Joe Welsh seconded. All were in favor.*

The commission came out of executive session at 8:30 p.m. No decisions were made. Teresa Gallagher will update the Quality of Life spreadsheet to show the status of previously listed properties and whether they have been acquired, developed, or are still vacant.

The meeting was adjourned at 8:47 pm.

*Meeting minutes were prepared by Teresa Gallagher and should be considered in draft form until adopted at the next meeting. Audio tapes of the meeting are on file in the Town Clerk’s office.*
SHELTON BOARD OF ZONING APPEALS

NOTICE OF VARIANCE

THIS IS TO CERTIFY THAT THE CITY OF SHELTON BOARD OF ZONING APPEALS
GRANTED THE FOLLOWING VARIANCE AT ITS MEETING ON:
September 18, 2007

1. DESCRIPTION OF PREMISES TO WHICH VARIANCE RELATES:

49 Wesley Drive

2. OWNER OF PREMISES:

Kerry Miressi

3. NATURE OF VARIANCE:

Variance in the setback from the rear property line from 20 ft. to 6 ft. for an 18x36 in ground pool in a PRD zone.

Stipulations: The applicant must take a building permit prior to erecting the pool and provide any necessary safety features including a fence that may be required by the building department. The applicant must follow and agree with the recommendations of the conservation commission as outlined in their letter dated 9/13/07

4. REGULATION VARIED:

Section 35.7.1

DATED AT SHELTON, CONNECTICUT, THIS 26th DAY OF September, 2007

[Signature]
Chairman/Secretary
September 13, 2007

Mr. Gerald Glover, Chairman
Zoning Board of Appeals
City of Shelton
54 Hill Street
Shelton, CT 06484

RE: ZBA Application 907-3, 49 Wesley Drive Swimming Pool
Open Space OS 27 17 Huntington Woods

Dear Mr. Schultz:

The Conservation Commission noticed the above referenced application for a swimming pool to be located six feet from City Public Open Space off of Wesley Drive, and would note the potential impacts and liability that any pool located so close to an open space property line may have:

1. Although the edge of the pool will be six feet from the property line, associated construction activities such as cutting and filling or heavy equipment operation can potentially extend beyond the property line onto City-owned Public Open Space. Such activities also have the potential to injure trees roots.

2. The location of a swimming pool only six feet from this heavily wooded open space may lead to future homeowner requests for the City to cut trees that are leaning over the pool area, at City expense.

These impacts to City property may be mitigated as follows:

1. Ensure that the property line is surveyed and delineated by orange construction fencing prior to any construction activities and maintained throughout the installation process.

2. Create a zone within the City of Shelton Public Open Space that is 20 feet wide deep along the length of the property line within which the homeowner agrees to indemnify the City for any necessary tree removal or pruning. The agreement...
should clearly state that the homeowner may not cut any such trees on City property without prior approval from the Tree Warden or Conservation Commission.

Thank you for your consideration.

Sincerely,

[Signature]

Thomas Harbinson
Chairman

Cc: Dean Cawthra, Tree Warden