City of Shelton Conservation Commission
Meeting Minutes for
October 4, 2017

Members Present: Tom Harbinson, Bill Dyer, Ed McCreery, Joe Welsh, Jim Tate, Sheri Dutkanicz

Also present: Teresa Gallagher, Natural Resource Manager;

The meeting was called to order at 7:10 pm by Chairman Harbinson.

1. Meeting Minutes: Tom Harbinson made a motion to approve the September 6, 2017 meeting minutes. Seconded by Joe Welsh. All were in favor.

2. 2018 Meeting Dates: Tom Harbinson made a motion to meet on the following dates in 2018 (all meetings are the first Wednesday of the month at 7:00 p.m. in Room 303 of City Hall, except for the July meeting, which will be the second Wednesday due to the 4th of July holiday): Jan. 3, Feb 7, March 7, April 4, May 2, June 6, July 11, August 1, September 5, October 3, November 7, and December 5. Seconded by Bill Dyer with amendment to include the same dates for the Trails Committee at 5:30 pm. All in favor.

3. Public Portion: Kevin Kosty, 137 Howe Ave. Mr Kosty expressed concerns about the Shelter Ridge project with regard to the natural resources there.

4. Trails Committee Report. Bill Dyer summarized the Trails Committee meeting held immediately before the Conservation Commission meeting. See the Trails Committee meeting minutes for more information.

5. Communications:

   a 8-24 Referral: Bristol Drive/Old Kings Highway. The Conservation Commission received a copy of the Planning and Zoning Commission’s response to an 8-24 referral request from John Bashar “to authorize the Mayor to negotiate the sale, lease and/or license of property owned/controlled by the City of Shelton for the purpose of creating a buffer zone at the rear of each property owners’ property and the City property.” A portion of Tax Assessor Map #104 was attached with a paper street known as “Old Kings Highway” highlighted. This abuts the Mas property the City acquired for economic
development.

Sheri Dutkanicz asked if this was the same Old Kings Highway as that discussed when the Shelter Ridge project was proposed. Teresa Gallagher said this was a different location but was probably part of the same road at one point in time. She previously looked at the area on a satellite photo and there appeared to be some backyard encroachments onto the paper street.

**Tom Harbinson made a motion to have Teresa Gallagher walk the area and check to see if there are any historic walls or other features that should be preserved, and send a letter to the Board of Aldermen with her recommendations. Seconded by Sheri Dutkanicz. All were in favor.**

b  **Article “Violation of Conservation Easement Ordered to Pay $650,000” received anonymously.** The Lyme Land Conservation Trust filed a lawsuit under the Connecticut Encroachment Act against a landowner who expanded a lawn onto a conservation easement area. The landowner claimed that mowing was a “maintenance” activity that was permitted. The State Supreme Court ruled in favor of the Land Trust and awarded the Trust $350,000 in fines/restoration costs plus another $300,000 for reimbursement of attorney’s fees.

c  **Payment in Lieu of Open Space:** A fractional payment of $3,666.66 was received from Country Home Builders for 185 Estates – 185 Nichols Avenue.

d  **Letter from W. P. Loman of Orange, CT regarding Two Mile Island:** Chairman Harbinson read the entire letter into the record per the author’s request (letter attached to minutes). Attached to the letter was a bound document entitled “Response to Shelton Conservation Commission Letter dated October 14, 2016 By: W.P. Loman 2017.” This document, containing numerous aerials, maps, and historical records of Two Mile Island, was passed around the room for commissioners to review.

The letter stated that the Conservation Commission was formed in 1969 and had failed to provide comment in 1974 when Beard, Inc. applied for a CT DEP permit to build a causeway to the island, effectively converting the island into a peninsula and eliminating the western channel of the Housatonic River. Mr. Loman wrote that the Conservation Commission had “dropped the ball” and “missed the boat” but now has a “good chance at redemption” if it were to “initiate corrective measures with the State.”

Teresa Gallagher had drafted a response, which Chairman Harbinson read to the Commission: “Dear Mr. Loman: The Shelton Conservation Commission discussed your latest letter dated September 12, 2017 and at its October meeting. As previous stated, the island was converted into a peninsula prior to the formation of the Shelton Conservation Commission. You have referenced
a state permit dating 1974, five years after the Commission was formed. However, an aerial dated 1965 shows the peninsula already well-established. It appears that the permit was issued retroactively. Because the 1974 permit was granted over forty years ago, we do not have any records on the subject and do not know whether the Conservation Commission discussed the topic or sent any letters at that time. The river channel that was filled in by a local business to create the peninsula appears to be owned by the State of Connecticut. The Conservation Commission has no regulatory authority over such matters and defers to the State. Your efforts to have the channel restored are therefore best directed to the State of Connecticut.”

Teresa Gallagher noted that Mr. Loman did have a point in that the elimination of the west channel increased the flow in the east channel and likely made erosion more severe on the east bank of the river in Orange where there is an active rail line. Tom Harbinson said that was an issue for the rail company and Town of Orange and CT DEEP, and Mr. Loman should be talking to those parties rather than Shelton Conservation.

**Sheri Dutkanicz made a motion for Teresa Gallagher to send the letter to W.P. Loman as drafted. Seconded by Bill Dyer. Motion passed unanimously.**

e Rubber Piles on Independence Drive: Jim Tate asked Teresa Gallagher if she was investigating any efforts by the City or developer to remove the piles of rubber. She replied that she was trying not to interject herself into that issue. Mr. Tate responded that he thought the Conservation Commission had a duty to ensure that the rubber piles were handled properly and should be actively involved. Ms. Gallagher disagreed and said the project was being overseen by the CT DEEP, who had jurisdiction, and it would be appropriate for Conservation to defer to the CT DEEP on this issue in the same way it was deferring to the DEEP on the Two Mile Island issue. Jim Tate disagreed that the two issues were similar and said that was a cop out. The neighbors on Independence Drive were understandably upset about the rubber piles.

6. **Executive Session:** At 7:55 p.m. Joe Welsh made a motion to go into executive session for the purpose of discussing potential land acquisitions. Sheri Dutkanicz seconded. All were in favor.

The commission came out of executive session at 8:14 p.m.

The meeting was adjourned at 8:48 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.*
Dear Commission Members,

This letter, along with the accompanying materials, is a response to your letter dated October 14, 2016 and will serve to update your records pertaining to Two Mile Island located in Shelton, Connecticut. When the island was a true island surrounded by water on all sides, it was nearly 500 feet from the Shelton shore, as shown by Daniel Beard in his application to construct a bulkhead in the Housatonic River dated June 4, 1946. In his letter, Beard claimed he did not want to be “a menace to navigation.” In the following years, as Beard dredged soil from the river and deposited it on the island, the distance from the island to the Shelton shore shrunk in half to about 250 feet. He built two causeways connecting the island to the Shelton shore before seeking the appropriate permits, consequently transforming the island into a man-made peninsula, damming the river, and shifting it toward the Orange shoreline and the railroad tracks that run along its shore. All of these activities devastated the natural habitats in existence at that time. In effect, by 1974 Beard became the menace to navigation he pledged not to be in 1946.

In your letter, you stated that the Shelton Conservation Commission was formed well after the island was converted to a peninsula. However, after some footwork, I have discovered the Shelton Conservation Commission was formed in the 1969, well before the Connecticut Department of Environmental Protection (DEP) issued a permit with a number of stipulations to Beard, Inc. to keep and maintain two earthen causeways to the island in 1974. Along with a neighboring property owner, the Shelton Planning and Zoning Commission submitted a unanimous written objection to the permit process, dated September 18, 1974. Your Commission, however, took no action to preserve the island or the scenic Housatonic River watershed surrounding it, as the space provided for the Shelton Conservation Commission’s response was left blank. In effect, the Shelton Conservation Commission dropped the ball in voicing what could have been a winning argument in opposition to the issuance of the permit. The DEP sent a letter confirming the approval of the 1974 permit and conditions to the Chairman of the Conservation Commission.

While the Shelton Conservation Commission missed the boat back in 1974, it now has a good chance at redemption regarding the conservation and restoration of Two Mile Island and the Housatonic River. In 1974, the DEP issued a permit to Daniel Beard to maintain and retain two causeways connecting Two Mile Island to the Shelton shore along the Housatonic River. A single shallow non-tidal lagoon was created between the causeways. The DEP issued Beard a permit only to use the causeways to access the island, while outlining a number of
conditions to the permitted use. One of those conditions expressly stated that no conveyance of property rights or other rights were granted to Beard. Therefore, neither the causeways nor the lagoon belong to Beard. Rather, they are state owned property that belongs to all citizens. Since 1974, it appears the dimensions (width, height, and length) and configuration of the causeways as well as their usage has significantly deviated from the original parameters permitted by the DEP in 1974. Furthermore, it appears a portion of the causeways has been overgrown with large trees and vegetation, demonstrating a failure to keep them properly maintained under the conditions of the 1974 permit. One of the conditions grants the State the right to have the causeways removed if they deteriorate, cause erosion, or affect the rights of citizens to enjoy the river.

Additionally, the permitted dredging operation that began in the 1970s has ended and a questionable, ever-growing, noisy, dusty, rock crushing, sand and gravel business has been in operation for quite some time. Rather than processing dirt dredged from the riverbed surrounding the island, it now appears the operation trucks in thousands of cubic yards of rocky dirt from outside locations, stockpiles it, and crushes it in an increasingly noisy rock crusher. The original state owned lagoon has been partially turned into two man-made sump ponds which are used for processing (washing) the crushed material. It appears the residue slurry is discharged into man-made sump ponds, which are periodically dredged out. In a 1988 Connecticut Appellate Court decision, an appellate judge questioned the legality of the operation. The judge also took note of how the creation and use of two sump ponds and the increased size of the causeways have gone well beyond the purpose and scope of the 1974 permit. Moreover, on or around 2001, a large garage was constructed on what seems to be one of the causeways, land that belongs to the State of Connecticut, not Beard.

The Shelton Conservation Commission was formed to protect Shelton and its neighboring natural resources, such as the Housatonic River. As an extension of those duties, the SCC is a paid member of the Housatonic Valley Association (HVA), an organization founded in 1941 and dedicated to protecting the entire Housatonic River watershed, one of Connecticut’s major waterways. It is important to note that the Naugatuck River empties into the Housatonic River a short distance north of Two Mile Island, greatly increasing the volume of water flowing into the area. This correspondence, along with the attached supporting documentation, provides the Shelton Conservation Commission, the HVA, and even the Rivers Alliance of Connecticut a golden opportunity to protect the scenic Housatonic River, restore Two Mile Island to its original state as a true island, and prevent future damage to these areas and neighboring shorelines. For example, the man-made blockage and diversion of the natural flow of the river seems to have caused erosion to the Orange shoreline opposite Two Mile Island. Only one active railroad line out of two original lines remains. The Metro North rail line is also designated as a National Defense Line running to Newtown and Danbury, but a future flood diverted by the man-made blockage and diversion of half of the river could have a devastating impact on this vital railway.

While it is a matter for the State of Connecticut to investigate and correct any actions beyond the purpose and scope of the 1974 permit, the Shelton Conservation Commission as a government conservation agency is empowered to initiate corrective measures with the State in the name of conservation and environmental protection. Moreover, the Shelton Conservation
Commission, in conjunction with the State, should make any and all efforts to right any wrongs of the past. Please read this letter into your record at your next meeting and file it for future reference. Also, feel free to pass this letter and supporting documentation to Shelton Planning and Zoning, Shelton Wetlands, Shelton Building Department, and any other interested party.

This area has been abused and mistreated for decades. Enough is enough. Now is the time to return this area to its original form as an island with water flowing freely on both sides of it. The causeways were designed for the sole purpose of allowing a private company access to the island, not for operating a sand and gravel operation and not for housing buildings. The DEP issued a very limited permit for the maintenance and use of the causeways to access the island. It included a number of conditions to ensure the scope of the permitted use would not be exceeded as it apparently has been over the past 40 years. As such, the causeways should be removed according to the conditions set forth by the DEP. Then Beard, Inc. could seek a permit for one new access way to the island, preferably a bridge, that would allow it to access the island while providing for a free flow of water on both sides of a true island. Now is the time to step up and help clean up this major, ever-expanding environmental mess. Now is the time to restore Two Mile Island to its natural form and conserve the Housatonic River shoreline for future generations.

Sincerely,

W.P. Loman

CC: Housatonic Valley Association
Rivers Alliance of Connecticut

Enclosures:
- aerial and satellite photographs of Two Mile Island (1934 – present)
- letter and site plan by Daniel Beard for permits to construct a bulkhead using sunken barges (dated June 4, 1946)
- permit letter from the DEP, site plan (Exhibit C), and general conditions (dated October 17, 1974)
- letter by the Shelton Planning & Zoning Commission of unanimous opposition to the permit application to retain and maintain causeways (dated September 17, 1974)
- letter by the Riverside Cemetery Association of opposition to the permit application to retain and maintain causeways (dated August 30, 1974)
- photograph of railway wash-out along the Orange shore opposite Two Mile Island following the flood of 1982
- excerpt from the Municipal Coastal Program for the Town of Orange designating the rail line along the Orange shore as a part of the National Defense route (dated October 5, 1982)
- Certificate of Wetlands Compliance issued to Beard, Inc. (dated September 12, 2000)
- many other documents