



BOARD OF ALDERMEN
SHELTON, CONNECTICUT
SPECIAL MEETING
THURSDAY, MAY 7, 2009

Call to Order

Aldermanic President John Anglace called the meeting of the Board of Aldermen to order at 7:15 p.m. All those present rose and pledged allegiance to the Flag of the United States of America. The Pledge of Allegiance was led by Troop 55 Boy Scouts Gabriel Brown, Daniel Heiden, David Jaekle, Joseph Silvestro, and Louis Silvestro.

Roll Call

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

Others present:

City Engineer Bob Kulacz
Tom Dingle, Zoning Enforcement Officer

There was a quorum present.

Lynne Farrell is in Washington DC representing the State Board of Education, and Stan Kudej is with his grandson, who underwent surgery today. Both are excused from the meeting.

1. CONTINUATION OF APPEALS HEARING REGARDING SPECIFICATIONS OF WALL AND LOCATION OF DRIVEWAY AT 44 LISA DRIVE

Alderman Anglace referenced the minutes from the meeting of Thursday, November 6, 2008, where the Board initially met with Mr. Lichvar. He asked if there is any further information Mr. Lichvar wished to present in reference to his appeal to the City Engineer.

Mr. Lichvar explained that he had stated all the facts and relevant information at the previous meeting in November, 2008.

Alderman Anglace then asked if the City Engineer had any comments to add.

Mr. Kulacz stated, there were a number of pictures submitted in regard to locations throughout the City where there are walls. Our office measured and checked them out. Either the walls were 36” or less or they did not apply. Out of about a dozen locations either the walls were old established walls that were there in the early part of the century or they did not apply. One was at the corner of the Nike Site driveway and Mohegan Road - that does not constitute an intersection and is not subject to the ordinance or regulations of that ordinance. There was one wall measured to be 41” tall at Thompson and Gray Streets – that wall does not conform at that location, but we had no knowledge of that wall nor did we have any complaints on file about that wall.

Regarding the driveway relocation – if that driveway is to remain, we would recommend that Corporation Counsel has the homeowner execute a hold harmless agreement so the City would not be liable due to the fact the driveway is so close to the intersection. We try to stay 25 feet from an intersection and this is less than that. There is not enough

sightline, plus with the wall being 4" tall at the intersection somebody exiting the driveway has the potential of being hit. If the driveway is going to remain in that location, I recommend a hold harmless agreement be executed by Mr. Lichvar and be recorded in the Land Records so the City would not be liable for any future claims. That's all I have to add.

Alderman Anglace asked the City engineer to restate the offer of settlement to Mr. Lichvar.

Mr. Kulacz stated, we had recommended that the height of the wall be reduced from 4' to 3' from the intersection going 50 feet along both Frank Drive and Lisa Drive to be lowered to a height of 3' which would conform with the ordinance; and also execute the Hold Harmless Agreement for the driveway being located close to the intersection so there would be no claims against the City for allowing a driveway, though we didn't issue a permit and the permit was not applied for, for the driveway to be located within 25' of the intersection. He would have to get a homeowner permit to relocate the driveway, and again, that would have to be concurrent with the Hold Harmless Agreement and the requirement would be that the first 10' of the driveway would have to be paved, which is required by ordinance, from the curb line to the location of the wall. Since the driveway is relatively flat, the rest of the driveway does not have to be paved, according to the ordinance. Those would be the stipulations.

Alderman Anglace asked Mr. Lichvar whether or not he is willing to accept that offer of settlement. If so, please let the Board know in writing, and it will be settled on that basis. If not willing to accept that offer of settlement, then we'll both summarize our cases and the Board of Aldermen will make a decision at its June meeting.

Alderman Anglace asked Mr. Lichvar if he wished to summarize his case.

Mr. Lichvar thanked the Board for allowing him to present his case again, and expressed appreciation for the time that has been given to him at both meetings.

He stated, the reason we find ourselves here today is because eight months ago I thought I followed every procedure that was expected of me, I did my due diligence, I contacted the City of Shelton after perusing the website regarding limitations required for building stone walls on property.

I contacted the Building Department, which told me that nothing was required. They sent me over to Planning and Zoning which told me nothing was required. The young lady sent me to Engineering and I spoke to the gentleman, let him know my intentions of building a 48" stone wall on my property. He made me aware that a permit was not necessary, which is what I understood from previous phone calls to the City.

I attempted to ascertain exactly the perimeters, the diameters I would need to maintain to be able to build a conforming wall, to alleviate any concerns that the City or any agency would have with placement of such wall. I let him know the dimensions, at which time he let it be understood to me that as long as the wall was located on my property giving the City right-of-way that a permit was not needed to be taken.

I spoke to him, I let him know exactly where I was positioning the wall, which was going to be along Lisa Drive and Frank Drive, which are adjacent to my property lines, and stated to him that I wanted to put it on the corner. My biggest concern was there was a fire hydrant directly on the corner of Frank and Lisa Drive. My largest concern was that there possibly wouldn't be ample area for the firemen to perform their duties if the hydrant needed to be accessed.

Again I stated the dimensions that I wanted, and the Engineer went along and told me exactly the measurements from the curb that I needed to follow in order for it to be a conforming wall, which is exactly what I jotted down in my notebook, which is exactly what I ended up placing. Again, I let him know it was a 4' wall, I let him know it was going to be on the total perimeter of my property, and everything was in agreement.

I actually asked the gentleman if he would possibly come out to my property, I would provide him gas money to come out to my property to make sure that there were no issues with the fire hydrant and the area of the corner, because I wanted to make sure there were no issues. That was my only concern, the corner area. I asked him to come out and he said it would not be necessary as long as I was within the setbacks of the required City space, which is exactly what I followed. I would have been totally accepting of a 24 inch wall, 18 inch wall, whatever was called for in the City regulations, ordinances, I was more than happy to follow any guidelines that anyone had provided for me.

Again, the only gentleman that had any kind of information whatsoever was from the Engineering Department, and he was kind enough to take the time out to look at the maps and provide me with the setbacks. He provided me with varying setbacks from the corner to the end of my property there was a difference of two feet, so I ended up actually setting back the wall an extra three feet from what his recommended setbacks would be to 15 feet as opposed to 12 feet.

I did that just in order to make sure that there were no issues regarding this in the future. I wanted to avoid the situation that I find myself in now. Eight months of delay, frustration. The wall could have been completed on schedule last year. That is the reason I contacted City Hall, I did quite a bit of research on the computer; there wasn't anything available there. All the information that I gleaned from speaking with the officials in City Hall led me to my decision to place the wall where it is.

I was made aware that the City Engineer had no authority to give me permission to build a wall there, I feel my decision on the location of the wall was made based on the City of Shelton's recommendations, I thought I cleared it with the Engineering office.

As far as the driveway's concerned, I totally agree with the gentleman as far as offering a Hold Harmless Agreement, and I don't have any problem with that whatsoever, as well as filling a permit out.

The only issue I have with the wall, I feel that the appearance of the wall would greatly be diminished. If I knew the requirements, if you had informed the requirements before I started the wall I would have gladly accepted them and made the wall 36 inches throughout, as opposed to 48 inches. I just think that for 50 feet to disallow me to, to allow the height of the wall will greatly diminish the appearance. To force me, first of all the cost of hiring an engineer to come in, measure, to cite the line that needs to be cut, the price of cutting the wall down to size as well as the initial cost of putting a concrete wall up, labor, cost of material. This all could have been avoided if somebody in Shelton could have given me the proper guidance, or something was easily found on the computer. I went to City Hall and I asked them for a book of ordinances, regulations, etc. and none was available. They said it was out of print, or none was available to me. I had to rely on the people at City Hall. I assumed they were speaking in good faith. I assumed they were knowledgeable of their profession and I relied upon their guidance. I pretty much followed exactly the specifications that the gentleman had laid out. That summarizes my position.

Alderman Finn asked, you agreed to hold harmless on both the driveway and the wall?

Mr. Lichvar replied, yes.

Alderman Finn stated, the wall as it stands now is made of concrete, and is as thick as the foundation of a house. You will be putting on another six or seven inches of stone to cover it?

Mr. Lichvar replied, correct.

Alderman Finn stated, I backed up my car three times at the intersection. I had no sightline coming out of that side street, coming around to where your driveway is. What they've indicated tonight is there is the possibility, if somebody is backing out or pulling out of that driveway, if your neighbors are coming around that corner, they're not going to see you until halfway, or maybe three quarters of the way around that corner.

Mr. Lichvar stated, I understand. Again, my problem is with the fact that I received permission to build the wall, location, specification. I let him know exactly what I wanted to do, the height, nothing was brought to my attention. They allowed me to build the higher wall. And again, there are only two neighbors including my parents that actually pass by that area. It's a dead end location. I would assume that if there was any extension of the road, that stop sign would be located on the corner. This is a unique situation – the actual placement of the wall is in an area that pretty much isn't replicated anywhere in the City. I would imagine any other four-way intersection would have a stop sign, which I was willing to finance the construction of a stop sign there. I understand they haven't deemed it necessary until this point. That would be an issue where we could get past this situation, I'd be more than happy to finance the placement of a stop sign in that area. I do believe something like that would absolutely alleviate any concerns that the Board or anybody in the City might have regarding the potential hazard at the corner. I have lived there for 32 years this year, and I don't see anybody driving more than 12 miles per hour around that corner. I believe there is ample space and ample time for anybody to be able to react. For the eight months the wall has been located there, there hasn't been any issue – the timing, the remoteness of the area – if it were a busier intersection I'd have considerably more concern regarding a possible hazard. As we speak now I don't really see – we haven't had the opportunity to even see a car passing by – again, there are only two properties that pass that.

Alderman Finn stated, right now the wall is unsightly, without the stone work in the front.

Mr. Lichvar agreed, stating, I've been waiting for the Board's decision. This all would have been completed last year, but I don't want to go any further or spend any more money and have to correct any measures. That's why I haven't proceeded. And that is only possibly a week's more work for the outside to be finished and capped and to make it look sightly from the road.

Alderman Papa asked, do you have any information from neighbors that have sent you letters that they're having problems with the sightline?

Mr. Kulacz replied, no, I haven't had anything like that. The only question, and maybe Mr. Dingle from Planning and Zoning can answer is the lack of putting the stone facing on the adjacent property owner's side of the wall. They're very concerned that it's going to look like, some people described it as looking like a correctional facility.

Alderman Papa asked, did Mr. Dingle get any letters from neighbors about the problems they might have with the sightline?

Mr. Dingle replied, no, just the finished look of the wall. [Mr. Dingle's comments were mostly inaudible as he spoke from the audience].

Mr. Kulacz stated, the ordinance says 3 feet, whether it's a wall, whether it's shrubbery or any structure.

Alderman Simonetti asked, do you know who Mr. Lichvar talked to in the Engineering Department?

Mr. Kulacz replied no, I asked my staff and the only thing they recall is somebody asking about what the street line setbacks were for a wall, but there was no discussion that they recall in regard to any height or whether there was anything at the intersection, and they do not recall the discussion about a fire hydrant setback. None of the staff has any recollection on that.

Alderman Simonetti stated, the wall is set back five more feet than is necessary by ordinance, would that alleviate the requirement about the height of the wall?

Mr. Kulacz stated, the ordinance talks about a triangular area of 50 feet from the intersection going in both directions along each intersection and connecting. That triangle would be the area that nothing could be greater than three feet in height. It does regulate areas on private property.

Mr. Lichvar stated, I did provide the Board with a letter from the neighbor that has to pass the wall every day and he stated that he had no objections whatsoever, he had no problems seeing, no problems with the sightline, had no safety concerns. I provided the Board with a copy of that letter at our first meeting. I also provided the Zoning Enforcement Officer Mr. Dingle with a copy of the letter stating the wall would be consistent throughout and would not be over 48 inches and would be aesthetically pleasing, consistent all the way around.

Alderman Papa asked, you called on the telephone to the Engineering Department, you weren't there in person?

Mr. Lichvar stated, it is a lesson learned. If I thought I would need a written application, which I didn't think was necessary because a permit was not required for a wall under 4 feet, which is why I called, just to make sure. The information I had gleaned led me to where we are today. That is pretty much my issue. I would have been happy with a 3 foot wall on the whole property.

Mr. Kulacz stated, the only thing I can think of is there may have been confusion as regarding retaining walls, if we're talking about a retaining wall that is actually going to hold back soil from one elevation to another, permits are required when it's four feet or greater. Whether it was relayed it was going to be a stone wall fence or retaining wall, that's two different items. When it's greater than four feet and it's a retaining wall holding back soil or anything else, it's a structure and that structure is regulated by the Building Department and has to be designed by a professional engineer. A stone wall fence or wall such as Mr. Lichvar constructed is not subject to those concerns because it's not holding back anything, either water or soil, so there's no failure that we're worried about structurally.

Alderman Papa stated, so he called the wrong department; he should have called the Building Department.

Mr. Lichvar stated, I called the Building Department. I spoke with Planning and Zoning as well. He was the third department. They had no information. They had no guidelines whatsoever. They had no knowledge of any restrictions or guidelines to take. Again, the website had nothing. I asked for a booklet at the City Hall and that was not available to me.

Alderman Papa stated, the people at the Building Department didn't give you any specifics?

Mr. Lichvar stated, they said nothing was required, as long as it was under 4 feet tall. Planning and Zoning said the exact same thing and they sent me to the Engineering Department, which is what he actually repeated to me. Setbacks were his only major concern. I followed the setbacks from what he told me.

Alderman Simonetti asked if there were any documents available to members of the public who come in asking for such information.

Mr. Kulacz replied, not specifically for walls. If someone requests an ordinance or asks a question and we know that an ordinance takes precedent or regulates something, we make that available. We do have those copies. As a general rule for someone coming in, no, there is no handout to say if you're going to build a stone wall fence or a regular PVC or wooden fence...

Mr. Dingle stated, they are in the Zoning Regulation Book, and are also online.

Alderman Papa stated, so when Mr. Lichvar called in he should have been made aware of and made available to him the specifications, regulations, pertaining to this situation.

Mr. Lichvar stated, I specifically asked for those.

Alderman Papa asked, do you know who you talked to?

Mr. Lichvar replied, I'm not sure if I talked to two people. I believe there was a book, but it was out of print.

Alderman Papa stated, when you called in, you should have been made aware that there are requirements.

Mr. Lichvar stated, that was the whole purpose of my calling – to ascertain any requirements whatsoever. I would have gladly followed any requirements provided to me. There are no requirements I wouldn't have followed.

Alderman Papa stated, you had nothing to gain by doing what you did.

Mr. Lichvar stated, of course not. If anything I had a lot to lose.

Alderman Anglace stated, the converse of that is true also. They had nothing to gain.

Mr. Lichvar stated, I know these gentlemen had nothing to gain. I love this city. I don't see why anybody would mislead anybody regarding anything here.

Alderman Papa stated, my biggest concern is safety. What do we do? I want to make sure we can prevent any accident, and I don't want to sit here and approve something, and then we have an accident. We have to find out what we have to do to rectify the sightline problem, and Mr. Kulacz did make suggestions on what we can do to improve the sightline.

Alderman Finn asked, what if he were to reduce the height of the wall five feet back on either side?

Mr. Kulacz stated, the ordinance says 50 feet. It's a 50 foot triangular section measured from the intersection of the street lines back 50 feet.

[Several conversations are going on at once at this point – inaudible]

Alderman Anglace stated, what is it going to take to settle this in a manner that is acceptable to the City, and I want to give Mr. Lichvar seven days to think about it, and if he's willing to agree to it, fine. We'll put this on the agenda for June 14th and make a decision then.

Mr. Lichvar questioned the 50 feet setback requirement – noting that at the last meeting, the Assistant City Engineer stated it was 25 feet back, 50 feet total – not 50 feet back on each side.

Alderman Finn asked Mr. Lichvar if that would be an acceptable resolution for him.

Mr. Lichvar stated, if that is the only alternative, I mean, I'd rather not to be honest with you, but to avoid the expense and the hassle of a lengthy court battle, I don't want to give any ammunition to the newspapers and TV shows that are contacting me regarding the inefficiencies of Shelton City Hall. I wouldn't want to give anybody any subject matter to write bad things about our City. I'm open to your suggestions. My appeal was that I didn't want to reduce the height of the wall. The reason I want to appeal is because I received permission at the beginning to construct a wall there. The cost of constructing the wall in the first place could have been avoided, and it runs in the thousands of dollars.

Alderman Olin stated, if you had it in writing – but now you're in a catch-22, he said, she said.

Mr. Lichvar stated, I am willing to sign the Hold Harmless Agreement and take any liability that the gentleman spoke of earlier. I can write a letter to the Corporation Counsel regarding any liability for the wall – I'd be open to that.

Alderman Anglace stated, if we can restate the City's position to compromise – would it be to reduce the size of the wall on one side only or both sides?

Mr. Kulacz stated, I just want to add that there was never any request or inquiry made about relocating the driveway. That was never brought up. I specifically asked staff about that. A driveway relocation has to be inspected personally by a representative of our office to determine if there are any sightline issues, if trees have to be removed, interact with the Tree Warden. In this case there was nothing raised about relocating the driveway. People called and questioned about constructing a wall, questions about street line locations, the distance from the edge of the pavement to the street line, but that was basically it. The Engineering Department could live with the reduction only on the Frank Drive section, or that side of the property, but we would also require that Hold Harmless Agreement – that would be recommended by Corporation Counsel and any certificate of insurance that may be required to go along with it. We also would recommend that it be recorded in the Land Records so in the event the Lichvar family sold the property in the future the subsequent owners would not be able to hold the City liable for any damages or incidents that may happen in the future.

Alderman Papa asked, he's required to cut it back 50 feet and not 25 feet?

Mr. Kulacz replied, the wall is constructed approximately on the street line, so we're talking about going back from the intersection of Lisa Drive along Frank Drive a distance of 50 feet, lowering that to a height of three feet. The other side we probably could live with, but we also want the stipulation that all exterior portions of the wall would be faced with the stone work so it conforms with Planning and Zoning. All the exterior portions should be faced so it doesn't appear to be concrete or reinforced concrete; it would be fieldstone type that would meet the requirements of the Planning and Zoning regulations.

Alderman Anglace asked, are you willing to accept the relocation of the driveway?

Mr. Kulacz stated, that would also be part of the Hold Harmless Agreement.

Alderman Anglace asked, what about permits? Have they been taken out?

Mr. Kulacz stated, no, they haven't. Mr. Lichvar can get a permit as a homeowner and the first 10 feet of the driveway would have to be paved. Asphalt, concrete, paving stones – it has to be a paved apron – bituminous concrete, poured cement concrete, paving stones, brick pavers – we'll accept any of those pavements.

Alderman Anglace asked, would it be appropriate to put an offer of compromise in writing and send it to Mr. Lichvar so that he can see it in writing?

Mr. Dingle stated, my question also would be, is it necessary to reduce the Frank Drive height 50 feet, or maybe 40 feet depending on where the curb line starts. Again, you bring a car up to the stop sign, the car is 20, 22 feet long. Bob is speaking 50 feet, but as a settlement, is 50 feet too long a distance to reduce the wall?

Mr. Kulacz stated, Tom has a point there because if you're not reducing the height of the wall along Lisa Drive, reducing it on Frank Drive is not going to be any improvement because if you look at one photograph here that could probably show it best... This is Frank Drive, this is Lisa Drive. If we reduce the height over here, you're still going to have the height along Frank Drive. We would probably want to reduce it here for a bit, but I would also recommend that the traffic authority install a stop sign and probably make it a four-way stop. We are going to have an extension of Frank Drive going in the opposite direction. There is a new approved subdivision. I would recommend that they make it a four-way stop so we don't have an issue of somebody coming around the corner.

Alderman Anglace stated, we should put our offer of settlement in writing, send it to Mr. Lichvar, send it to the Board of Aldermen, send it to Corporation Counsel. Everybody should understand that no settlement can be reached until it's approved by the Board of Aldermen. We will review it, we will approve it. If we don't approve it, it's not approved. If it's not approved, then we take action on the appeal as it stands and take it from

there. In my thinking, the reason for stating that to be sure that everybody is clear on what it is we are offering to do.

Mr. Kulacz stated, we'll put it in writing and take more pictures at the intersection. We'll try to make it to scale and show exactly what we want to reduce in height. I think we can probably compromise in regard to the 50 feet because again, we can reduce it to a point to make it more palatable.

Alderman Papa stated, you might not have to go 50 feet, maybe like Tom was saying, maybe 25 feet.

Mr. Kulacz stated, yes, I think we can make a compromise on that. I'll coordinate the stop signs with the new Traffic officer. Planning and Zoning's main concern is that the wall is comparable and meets the aesthetics with the neighborhood - the outside perimeter being stone-faced.

Mr. Lichvar stated, I would agree with that, it would be a lot better only because the sloping at 50 feet would dramatically change the appearance of the wall.

Alderman Anglace stated, you will have to come back to us with your reply seven days from the receipt of the paperwork. You're going to leave here with the understanding, but it is much better to put it in writing and give you seven days to look at it and there is no misunderstanding.

Mr. Kulacz stated, we can get this out first thing next week. The only hold up is how long it will take Corporation Counsel to come up with the document. On our part we'll take care of it quickly.

Alderman Anglace stated, it doesn't matter when you get it out. He will have seven days from the receipt of the document to reply.

ADJOURNMENT

Alderman Simonetti MOVED to adjourn; SECONDED by Alderman Olin. A voice vote was taken and the MOTION PASSED 6-0.

The meeting adjourned at approximately 7:55 p.m.

Respectfully submitted,

Patricia M. Bruder, Clerk
Board of Aldermen

Date Submitted: _____

DATE APPROVED: _____ BY: _____

Mark A. Lauretti
Mayor, City of Shelton