

City of Shelton, Conservation Commission
Minutes for the Regular Meeting on Wednesday November 5, 2008 at 7:00 P.M.
Minutes should be considered a draft version until approved by CC at their next meeting.

Call to Order	1
A. Call to Order/Pledge of Allegiance.....	2
B. Approval of Minutes.....	2
C. Public Portion	2
D. Shelton Lakes Recreation Path	2
1. <i>Phase I Construction - surfacing from Pine Lake trailhead to Shelton Ave/Nells Rock Road intersection. Bid awarded to Sound Construction for \$153,000. Aldermen approved additional \$6400 for state bonding requirement.</i>	2
2. <i>Phase III Section 3 Construction – grading and surfacing from Land Trust meadow to Lane Street.</i>	3
3. <i>Granite Signs</i>	3
E. Trails Committee Report.....	3
1. <i>Planned Projects for 2008.....</i>	3
a. <i>Rec Path – Phase I</i>	3
b. <i>Fun events for committee/workers</i>	4
c. <i>Fishing Platform</i>	4
2. <i>Expenses for Reimbursement.....</i>	4
F. Request for sewer easement through OS 62.02 Maggie Lane to service 97 Mill Street.....	4
G. Open Space Rules Ordinance – Specification of additional penalties for encroachments	6
H. Bylaws revision.....	6
I. Open Space Plan of 2008.....	7
J. Review of P&Z Applications for Subdivisions and/or Developments	7
K. Communications.....	8
L. Conservation Agent Report.....	9
M. Quality of Life - Executive Session.....	9
N. Comments By Members.....	9
1. <i>Aspen Ridge Condominium construction – Inland Wetlands Commission – Revision application #08-28, proposal to construct retaining wall and add fill within regulated upland adjacent to the Far Mill River.</i>	10
O. Adjournment.....	12

Call to Order

Present: Tom Harbinson, Chairman
Bill Dyer, Vice-Chairman
Hank Lauriat, Commissioner
Jim Tate, Commissioner
Joe Welsh, Commissioner
Ed McCreery, Commissioner

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

A. Call to Order/Pledge of Allegiance

Chairman Harbinson called the meeting of the Conservation Commission to order at 7:00 p.m. All in attendance recited the Pledge of Allegiance.

B. Approval of Minutes

Commissioner Lauriat MOVED to approve the minutes from the October 1, 2008 Regular meeting. SECONDED by Vice-Chairman Dyer. All were in favor, MOTION PASSED.

C. Public Portion

None

D. Shelton Lakes Recreation Path

1. Phase I Construction - surfacing from Pine Lake trailhead to Shelton Ave/Nells Rock Road intersection. Bid awarded to Sound Construction for \$153,000. Aldermen approved additional \$6400 for state bonding requirement.

Vice-Chairman Dyer reported that phase I-A is completed from the bridge (Pine Lake) down to Meadow Street. They brought in a load of topsoil to plant grass at where the path intersects at Meadow Street. They are doing a lot more than I ever expected. In order to reduce the grade they put at least 2' of processed material at the lowest point to build it up. They put in the drainage where we had asked them to, which was where a woman fell and broke her wrist on black ice last year. They are pretty close to finishing up the area between the intermediate and high school. In the area above the paved area they put in drainage pipe plus trenches along the side to funnel into the drains. They put the filter fabric down plus 6" of material on top and found it was so squishy; they put another layer of filter fabric and another 6" of process. They are doing a heck of a good job. Chairman Harbinson and Commissioner Tate said they went out to look at the area and were impressed with the quality of the work.

At the intersection with Constitution is where we think two of the pillars could be used. I received a letter from the Board of Ed approving the work as long as we follow the existing path. I assured them that during the construction phase we would be careful to block the area so that no cars can drive on either the Rec Path or the sidewalk after the construction is done. The BOE requested I send them a letter back stating we would follow the existing path. The letter has been sent.

Very soon they will be moving onto the Turkey Trot portion.

Terry Gallagher, Trails Committee, commented that he is very pleasantly surprised with the progress Sound Construction has made on the trail. They are banging through the job at a rapid pace and we are getting good performance from the contractor and a good value for our money. Commissioner Tate asked if Vice-Chairman Dyer and Terry Gallagher is worried about the erosion control? There is one area that is of concern and he suggested alerting the contractor.

Terry Gallagher suggested at this point we might only need some silt fence at the culvert outfalls. Commissioner Tate suggested maybe just haying the area. Terry Gallagher said his impression was that they were in and out of the area so quickly and that they stabilized it.

2. **Phase III Section 3 Construction – grading and surfacing from Land Trust meadow to Lane Street.**

Vice-Chairman Dyer reported that nothing has happened on this area yet. We have the millings and Parks & Rec have the equipment to spread it. The staff is still working on cleaning up the leaves.

3. **Granite Signs**

The Commissioners discussed they still have to determine where all the granite posts are going and the details of the installation and the cost.

E. Trails Committee Report

Vice-Chairman Dyer reported as follows:

The Commissioners discussed the culvert issue at Constitution Blvd near by where the crossing is, opposite of the kiosk. There is a sidewalk that connects the intermediate and high school campus and that is where it is going to cross down. Right now the water sheets off the curvature in the road and it goes into a little pond area. It is eroding the slope. We would like either the City or the contractor (Sound Construction) to do this and add on to the contract to put in some curbing, put in a drain and pipe it. Vice-Chairman Dyer said he did bring it up to Sandy Nesteriak today and she said she would remind the Mayor.

1. **Planned Projects for 2008**

a. **Rec Path – Phase I**

The Commissioners discussed the culvert issue at Constitution Blvd near by where the crossing is, opposite of the kiosk. There is a sidewalk that connects the intermediate and high school campus and that is where it is going to cross down. Right now the water sheets off

the curvature in the road and it goes into a little pond area. It is eroding the slope. We would like either the City or the contractor (Sound Construction) to do this and add on to the contract to put in some curbing, put in a drain and pipe it. Vice-Chairman Dyer said he did bring it up to Sandy Nesteriak today and she said she would remind the Mayor, but it may take the Chairman to press the issue.

b. Fun events for committee/workers

We are going to sponsor a Thanksgiving and Christmas guided hike on Saturday, November 22 at Nicholdale and December 13. We are going to ask for people to bring some non-perishable food donations for the Spooner House.

c. Fishing Platform

The fishing platform at Hope Lake has been completed.

2. Expenses for Reimbursement

Vice-Chairman MOVED to reimburse Trails Committee member Lynn Reid for 5 handcrafted birdhouses in the amount of \$60.00 from our Land Improvement line item. SECONDED by Commissioner Lauriat. All were in favor; MOTION PASSED.

Terry Gallagher, Trails Committee, reported that they had a very successful Shelton Day. We got a number of people who signed up as a trail volunteer and two did come to the next work party. We had two work parties in October and a hike. We also had a lot of work done at Ecklund Garden. Vice-Chairman Dyer commented that he was able to save a truckload of boulders that was going to be shipped out of Shelton and can be used in some of the locations we need them.

F. Request for sewer easement through OS 62.02 Maggie Lane to service 97 Mill Street

The property owners, Matt and Kelly Calandro presented photos and a map of their property of the area in question. He commented that he has lived at that house his whole life and purchased the house from his father 10 years ago. I am having problems with my septic. He detailed the area and noted that the contractor for a nearby development, Barry Mucci, left a "T" at the intersection of the pedestrian easement and the utility easement adjacent Mr. DaSilva's property. I would in turn is leave a "T" at the bottom of my property for any future access needs.

Agent Gallagher said she heard from a real estate agent that some of the houses on Mill Street along the river really don't have functioning septic systems and

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they can't hook up to the sewers. Chairman Harbinson said that it would be something the City Engineer would need to be involved in.

Commissioner Tate asked if there would be any tree clearing and Mr. Calandro showed an area in open space where there might be the need. Commissioner Tate said he would like any of the affected area to be replanted to try and get it back to the same state.

Chairman Harbinson asked if any of the Commissioners recalled when the pedestrian easement was created on Grace Lane how it would connect to the open space or Mill Street.

Commissioner McCreery asked Mr. Calandro if he has asked Mr. DaSilva for an easement. Mr. Calandro said he has had discussions with Mr. DaSilva and he was open but this project is already becoming a very costly project and if he had to get that easement it would be considerably more. When I started this project, about 2 ½ years ago, I hired an engineering firm to look into re-doing the septic system. Where I would have to place it would not work out well because it is so wet.

Chairman Harbinson commented that we already have some pedestrian easement existing and there would be access to the open space and the sewer easement were to be in that area, if some trees were removed and replacements planted, it could allow some accessibility to public enjoyment of the open space. In terms of where it routes, it is really up to the City Engineer. If he feels that this is more appropriate for the potential use as City infrastructure for the rest of the parcels in that area since it was noted that there some other parcels on Mill Street that need to tie in to a sewer system infrastructure is really up to the City Engineer to decide the routing.

Commissioner Lauriat asked if what Mr. Calandro needs from the Conservation Commission is a letter to the City Engineer saying that we don't have a problem running a sewer line in the open space?

Commissioner Welsh asked if the current septic system is failing and Mr. Calandro said yes. Doing this work would improve the water quality to the Far Mill River.

Commissioner McCreery said he would vote for this one because of the potential need for other houses to access this as well, but he opposes use of the open space for things like sewer lines. Once you have a sewer line installed in a wooded area you are going to have to clear the trees and keep a certain distance away from the sewer line so the tree roots don't invade it. I don't like handing out easements across open space that involve clear-cutting of trees. That is not what open space is for.

The Commissioners and Mr. Calandro discussed the potential of getting the easement from Mr. DaSilva and who he talked with in the City regarding his project.

The Commissioners discussed the issue of using this area.

It was noted there are stonewalls in the area that would be disturbed.

Commissioner Lauriat MOVED to write a letter to the City Engineer saying that the Conservation Commission was amenable to using the City Open space(OS 62.02) for the purposes of an approximate 2” PVC forced main sewer easement line for use by the Calandro parcel (97 Mill Street) with notations of where there would need to be replanting with similar type species and the stonewalls would have to be replaced to the original condition. The Conservation Commission looks at this request in light of a failed septic system’s potential to adversely impact the downstream watercourse of the Far Mill River. SECONDED by Vice-Chairman Dyer. A voice vote was taken, all were in favor; MOTION PASSED.

G. Open Space Rules Ordinance – Specification of additional penalties for encroachments

Agent Gallagher said she spoke with Attorney Tom Welch who thought the open space rules ordinance should be modified and updated so that it is like the Conservation easement ordinance. In particular, section 3:

“In addition to the foregoing penalty described in paragraph 2, any person who removes trees and/or vegetation from a conservation easement shall pay the City of Shelton the cost to replace said trees. The cost shall be determined by valuing the cost to replace the identical tree that was removed, i.e., age, height and width.”

The Commissioners discussed the difficulty in determining the value of a tree. Agent Gallagher said this came up regarding encroachments and she was asking if we can have the property owner survey the property line and Atty Welch said yes, we can request them to do it and suggested we change the ordinance so it specifically says that. He suggested putting anything we might ever want as far as mitigation spelled out in the ordinance.

Tape 1, Side B

Atty Welch offered to write it up with any modifications the Commission wanted in the ordinance.

Commissioner McCreery commented that the statutes authorize towns to impose fines for non-compliance. There is nothing that he is aware of that says you can impose such conditions that you deem reasonably appropriate. It may sound and look good, but it would be difficult to try and enforce this.

The Commissioners continued to discuss this and determined at this time they would table it.

H. Bylaws revision

Commissioner McCreery reviewed the existing bylaws and asked we had copies of other Commission’s bylaws so that we have some continuity? No one has seen any other.

Chairman Harbinson asked if we really need the bylaws since the Charter already covers some of this.

Commissioner McCreery answered no, we don't, and gave an example of the Zoning Board of Appeals who has discretion, by statutes, to create their own rules and bylaws. We don't have anyone who would or could take appeals by our decisions. We can just govern ourselves by the Roberts Rules of Order. We set our meetings at the beginning of the year. FOI governs what our regular meetings and special meetings are done. I don't see the purpose of needing officers. If we are not going to have bylaws we would need to make a motion to rescind or withdraw the bylaws and operate in accordance with the City Charter, state statutes, FOI and Roberts Rules of Order.

Commissioner McCreery MOVED to rescind the bylaws and operate in accordance with the City Charter, CT general state statutes, FOI and Roberts Rules of Order. SECONDED by Commissioner Tate. A voice vote was taken, all were in favor; MOTION PASSED.

I. Open Space Plan of 2008

Chairman Harbinson reported that P&Z has scheduled a public hearing for November 25. The Commissioners should come to the meeting with any comments.

Commissioner McCreery reviewed and discussed his comments and suggested changes.

Chairman Harbinson suggested the Commissioners pass on their comments to Rick Schultz now.

Agent Gallagher said that Rick Schultz and John Cook made their comments regarding the open space plan, which was sent to the Commissioners via the Google group. The most significant comment was regarding which types of land should be counted towards the 15% open space dedication goal. Should Land Trust and PDR's be counted? The consensus from the two is yes, they should be counted.

Commissioner Lauriat commented that he thinks they should be counted but noted what is not city open space.

Chairman Harbinson noted that once they have the P&Z public hearing, it would go on for approval from them to be sent on to the Board of Aldermen for their review and commentary and then final approval from P&Z. At that point it would become a city document.

J. Review of P&Z Applications for Subdivisions and/or Developments

1. OLD APPLICATIONS

None

2. NEW APPLICATIONS

None

K. Communications

- Well Springs Estates – dead tree leaning over one of the houses located in a conservation easement area. Agent Gallagher authorized its removal.

Chairman Harbinson commented that this brings up the point that Agent Gallagher encounters this type of issue in the field and that the Commission should give her some authority (like this) to address with some immediacy rather than waiting for the approval at a meeting. That relates to violations of conservation easements.

Agent Gallagher said she has started on a draft of this and felt it would be better if it is brought up at the next meeting.

- Memo regarding the boulders (brought up by Vice-Chairman Dyer earlier)
- Copy of communication sent to John Papa (Parks & Rec) regarding the Shelton Youth Soccer organization utilizing the city property and how they utilize it with lights and disruption to the neighborhood.
- Correspondence from Agent Gallagher to the property owner who wanted to cut trees on Fran's Way
- Thank you letter to Troop 512, helping with the Ecklund native species garden.
- Acceptance of fee in lieu of open space for the Nolan subdivision
- Violation complaint. Agent Gallagher received a call from a neighbor near Pine Lake, 4 Edwards St. (Area detailed for Commissioners) There is a large area cleared and an area where there is dumping. The neighbor was using this area to get to the open space and was harassed by the homeowner. I did forward this to the police. This homeowner recently purchased the property and I am not sure who did the clearing. The Commissioners directed Agent Gallagher to write a letter pointing out the open space and the violation of the dumping.
- Housatonic Valley Association – they are looking for membership. They have been very supportive of our Riverwalk endeavors. Agent Gallagher will look into our past membership with HVA.
- CT Conference of Municipalities workshop – Friday Dec. 5th in Orange. Planning for agriculture is the main topic.
- CT Forest and Parks Association – looking for annual fund donations. Agent Gallagher will look into when we last contributed to this group.

L. Conservation Agent Report

Agent Teresa Gallagher reported the following:

1. Ecklund native species garden – photos are available on the Google group. We have really cleared the area out. We found beds we didn't even know were there because of the forsythia. Agent Gallagher and the Commissioners talked about the history of this site.
I did come across an environmental community grant from Iroquois Company. The deadline is November 15. I am asking if I can submit something for funding for plants for next spring. Volunteers will be doing the labor and will not impact the City budget. It is high profile for Iroquois because the gas pipeline bisects the greenway where the garden is located and is a high profile for them. The grant minimum is \$2500. That is what we will be applying for. The Commissioners discussed the details of this grant.

Commissioner McCreery MOVED to authorize Agent Teresa Gallagher to submit a grant application to the Iroquois grant program to enhance and expand the native species garden on the Ecklund parcel off Oak Valley Rd. The girl scouts will be doing the plantings in the Spring of 2009. SECONDED by Vice-Chairman Dyer. All were in favor, MOTION PASSED.

M. Quality of Life - Executive Session

Commissioner McCreery MOVED to go into Executive Session for the purposes of discussing land acquisition issues and inviting Marianne Chaya at 8:38 P.M. SECONDED by Commissioner Lauriat. All were in favor, MOTION PASSED.

Tape 2, Side A

Vice-Chairman Dyer MOVED to return to regular session at 8:58 P.M. SECONDED by Commissioner Lauriat. All were in favor, MOTION PASSED.

Chairman Harbinson said regarding our discussion in Executive Session I will communicate to the Mayor regarding properties that are in negotiation as to what our opinion is of the aspects of that negotiation.

N. Comments By Members

Commissioner McCreery MOVED to add the Aspen Ridge wetlands application to the agenda. SECONDED by Vice-Chairman Dyer. All were in favor, MOTION PASSED.

1. Aspen Ridge Condominium construction – Inland Wetlands Commission – Revision application #08-28, proposal to construct retaining wall and add fill within regulated upland adjacent to the Far Mill River.

Chairman Harbinson said that he emailed John Cook regarding this agenda item and he responded that the application was tabled to allow the members of the Commission to visit the site. What they want to do is to eliminate the landscape slope, construct a retaining wall at the original toe of the approved fill and place the landscape stock between the wall and the river with the same number of plants as before but above the wall is proposed as grass. Chairman Harbinson commented that this is a pretty valued area with that buffer strip and what it was intended to accomplish along the Far Mill River between that and the development.

Commissioner Tate said that would eliminate adequate passage along the river or a buffer. It would decrease the usable space between the edge of the river and the planted buffer of the parking lot area.

Chairman Harbinson said he recalled that buffer strip was to be not only a conservation easement but also pedestrian easement. This structured wall, rather than a natural slope would impact the pedestrian passage on that area. Commissioner Tate commented that it would impact the visual from Mill Street and the adjacent area. That was a large objection in our initial discussions of this project. I believe the lines were encroaching into the flood zone as well, correct?

Chairman Harbinson said correct. The City Engineer did not agree with the application because of its infringement into the 100-year flood zone.

Commissioner Tate commented that because of all the items involved I think the plan should stay as originally designed.

Commissioner McCreery MOVED to send a letter to the Inland Wetlands Commission, copy to P&Z Commission, that the Conservation Commission strenuously objects to the effort of the developer to revise the approved plans, which provided for a 50' planted buffer. The reasons we object to it is because 1) it is a degradation of the proposed public access way along the Far Mill River that was promised as part of the development. 2)That it converts into a manicured lawn area that was supposed to have been a natural buffer to the river for visual aspects from both Mill Street and for water quality to the river, and retaining as much as possible the vegetative buffer between the river and the development and the houses across the river. 3)The development was overly aggressive to begin with and the City Engineer did not approve of this intrusion into the 100-year flood zone. This is just adding insult to injury to the overall development site. SECONDED by Commissioner Lauriat. All were in favor, MOTION PASSED.

Chairman Harbinson commented that this particular development generated a lot of discussion about being purchased as open space rather than have to deal with it as a development. I think we should also send a copy to each P&Z

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Commissioner and to each BOA member. We should let them know that we are watching and this a parcel that they had an opportunity to do something with, and this is what happens. We then have to deal with these residuals. I think it's important that each individual member of those two bodies receive this letter.

Agent Gallagher and Chairman Harbinson brought up the issue of the fence placed at the canal closing off public access by McCallum Enterprises. Agent Gallagher commented that the article in the Huntington Herald said that McCallum reapplied to the Army Corps for the filling in canal for the purposes of getting revenue to pay for the fish ladder.

The history of this issue is as follows:

McCallum Enterprises is the owner of a license of the dam and the hydroelectric generation had applied to FERC to fill in the canal for its development potential and sale for revenue to pay for the fish ladder. They withdrew that application, temporarily, and the public hearing the Army Corps was cancelled. They also applied to FERC to modify the license for the recreational area and they diminished that recreational area all the way down to the locks. They got that approved. We wrote our commentary letter to FERC, after the close of the hearing, but within the commentary period. We notified the P&Z Administrator, the Mayor's office, and everyone else. No one else did anything until the last moment. Nothing got accomplished.

Now, the fence is up and locked. Agent Gallagher and Rick Schultz have had people contact their offices asking why they can't go and use the fishing area. The CT Post is going to do an article in the Sunday edition about this. Chairman Harbinson met with Kate Rammuni at the locks today.

Commissioner Lauriat said he thought it was past the time we could talk to FERC about this.

Chairman Harbinson responded that they had a public portion that ended, the time to appeal it ended. The City applied for intervener status after that deadline. FERC had made their decision and it has been implemented by the application for the reduction of the recreation area (the fence installation).

Agent Gallagher commented that the filling of the canal is a separate issue and FERC gave them to permission to go back to the Army Corps.

Chairman Harbinson continued by saying it's a real loss to the community to have the ability to enjoy that space; either to just visually enjoy it or fish. The sign on the fence says that it is a Dept. of Environmental Protection recreational leased area. I never heard any commentary from the DEP as to them losing their leased area. There are two issues: 1) There should be an improvement or state issues like when they did the dredging on the Housatonic River to notify the local constituency so they can have some input or effect on the process. 2) The state agency of the DEP apparently has a recreational license to use that area, according to the sign the DEP has up. Can an outside group, such as the DEP, petition FERC to modify a license that an applicant holds? Or, can only an applicant that holds the license apply to FERC to modify their license? If that

could happen, then I would say we could write a letter to encourage the DEP to recognize this loss of recreational access area and to petition FERC to revert it back to its original state.

Commissioner Lauriat says to write the letter anyway.

Commissioner Tate says the way he sees it is we (the City) let the community down on this big time. We feel like we are the entrusted parties to the Riverwalk because we are an advisory group, or the overseers of these areas. We just lost a big benefit to the community. We followed all the right processes that we knew about at the time, filed the right letters that did nothing. I say now, all bets are off. You do what ever you have to do, call whomever you need to call. Do whatever it takes to get back into the fray. It may take contacting Jim Himes and deal directly with FERC.

The Commissioners continued discussion on their view of the situation and all agreed that this is too valuable to walk away from. They instructed the Chairman to be aggressive in his commentary when the CT Post interviews him.

Commissioner Welsh mentioned the big pile of dirt on the Wiacek property that needs to be pushed back because that land has value for field habitat. It needs to be reseeded because when it was dug up it exposed a bunch of invasives.

Agent Gallagher said that she had mentioned this last year to Sandy and Dean. It is kind of a tricky area to get to due to the mud. Chairman Harbinson suggested Agent Gallagher send a memo and Commissioner Welsh suggested requesting it be put back to its original spot, don't truck it out.

Commissioner Welsh brought up the DEP grant for invasive plant removal only offered to municipalities. The target price is \$2500-\$50,000. We talked before about cleaning up some of the perimeters of some of the open space parcels, such as the Klapik. I need someone to come along with me to walk the properties that may have more knowledge of where the invasive species are. The deadline for this grant is December 8. The Commissioners said they would coordinate the walk amongst themselves.

O. Adjournment

Next regularly scheduled meeting will be Wednesday, December 3, 2008.

Commissioner Tate MOVED to adjourn. SECONDED by Commissioner McCreery. MEETING ADJOURNED at 9:30 PM.

Respectfully submitted,

Marianne Chaya
Clerk, Conservation Commission