

CITY OF SHELTON  
 CONSERVATION COMMISSION  
 Minutes for the Regular Meeting on Wednesday, March 6, 2013 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 .....	1
B. Approval of Minutes.....	2
C. Public Portion (items not on agenda) .....	2
D. Open Space Encroachments .....	3
1. 49 Wesley Drive encroachment.....	3
2. Policy for pre-existing encroachments.....	7
E. Trails Committee Report.....	7
F. Open Space Trust Account Status.....	8
G. Budget – 2013/2014 FY .....	8
H. Review of PZC or IWC Applications for Subdivisions and/or Developments... 8	
1. Old Applications/Monitor/Follow-up.....	8
i. PZC 12-21, Zone change for proposed 262-unit apartment complex at 740 Bridgeport Ave (map 19, lot 56).....	8
2. New Applications.....	9
i. PZC 13-5 Hawks Ridge, Long Hill Cross Road/Beard Sawmill Rd, PDD zone change from Light Industrial for 140 residential units .....	9
H. Communications (sent or received).....	9
I. Quality of Life – Executive Session (land acquisition and security issues) .....	9
J. Comments By Members.....	10
K. Adjournment .....	10

**Call to Order**

Present: Tom Harbinson, Chairman  
 Bill Dyer, Vice-Chairman  
 Joe Welsh, Commissioner  
 Sheri Dutkanicz, Commissioner  
 Jim Tate, 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 7:05 p.m. All in attendance recited the Pledge of Allegiance.

CITY OF SHELTON  
CONSERVATION COMMISSION

Minutes for the Regular Meeting on Wednesday, March 6, 2013 at 7:00 P.M.

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## **B. Approval of Minutes**

**Commissioner Dutkanicz MOVED to approve the minutes from the February 6, 2013 Regular meeting. SECONDED by Vice Chairman Dyer. All were in favor, MOTION PASSED.**

## **C. Public Portion (items not on agenda)**

Vice-Chairman stated that the 3 scouts present are proposing trail improvement projects for their Eagle Scout service project. The scouts made their presentation at the Trails Committee meeting at which all projects were approved to be forwarded to the Conservation Commission.

Josh Kreitler, Troop 27

Josh stated that he is proposing to extend the Paugusset Trail starting at John Dominick Dr. to Buddington Rd. The trail will be 2-3' wide. The debris from the clearing will be moved off to the side of the trail. Trash will be picked up using garbage bags. There will be two bridges constructed. The smaller bridge will be built by the Trails Committee. I will coordinate having the scouts carry the materials to the site for the Trails Committee members to do the construction. The larger bridge will be 2 telephone poles spanning the length of the body of water. 5 ¼ x 6x 8' boards will be cut into 3 pieces. It will be 2 2/3' wide. The boards will span the telephone poles. The boards will be secured with 2' screws. The site will require a Wetlands Permit.

Vice-Chairman Dyer reported that they met with John Cook today regarding the permit process.

Chairman Harbinson stated that this project would accomplish the extension of the Blue Dot Trail. I have a trailer available for Josh to use to transport the telephone poles.

Josh detailed how he and the other scouts are going to get the poles on and off the trailer.

**Commissioner Welsh MOVED to approve the Eagle Scout proposed project as presented by Josh Kreitler. SECONDED by Commissioner Dutkanicz. All were in favor; MOTION PASSED.**

Agent Gallagher noted that she would be doing the blazes.

Dan Heiden, Troop 55

Dan stated that his project is to build a kiosk at the Nells Rock loop trail, across from Chordis pond, near the Abbey Wright parking area. I will model it after the one at Pine Lake. The supports will be made from pressure-treated lumber. The frame and roof would be cedar. There will be door hinges and a latch along with lexan glass. This will be two-sided with two locks.

CITY OF SHELTON  
CONSERVATION COMMISSION

Minutes for the Regular Meeting on Wednesday, March 6, 2013 at 7:00 P.M.

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**Commissioner Welsh MOVED to approve the Eagle Scout project as proposed by Dan Heiden. SECONDED by Vice-Chairman Dyer. All were in favor; MOTION PASSED.**

Agent Gallagher asked the scouts to provide pictures of the construction progress and she will post them on the Trails blog and Facebook.

Matt Vittori, Troop 27

Matt stated that his proposed project is constructing a kiosk at the Birchbank trail head, at Indian Well park near where the train tracks cross the road. I will replicate the kiosk that is at Lane Street. He presented drawings done by his grandfather. I also plan on building a bench at one of the scenic points on the trail, either made out of logs or a bench frame. I also plan on cleaning up the litter at the trail head. It will be constructed out of pressure-treated wood and cedar shingles on the roof. The hinges will be stainless steel.

Agent Gallagher said that the kiosk doesn't need to be very big because we don't put much stuff in it.

**Commissioner Tate MOVED to approve the Eagle Scout project as proposed by Matt Vittori. SECONDED by Commissioner Welsh. All were in favor; MOTION PASSED.**

Guy Beardsley, Shelton Farmers Market

Mr. Beardsley congratulated the Trails Committee on the award.

He presented the agenda for the annual spring market meeting that will be held on March 21. The agenda is also posted on the board by the Town Clerk's office.

The winter market that was held in Monroe was extremely successful. We will make an effort to get the Shelton vendors to plan for a winter market.

## **D. Open Space Encroachments**

### **1. 49 Wesley Drive encroachment**

Michael & Terry Miressi, 49 Wesley Dr  
Ken Klauser, 109 Wesley

Chairman Harbinson commented that the Wesley Dr. properties are part of the Huntington Woods subdivision and we had some discussions in previous meetings regarding some encroachments into the open space. One of the lots had requested at the Zoning Board of Appeals for a pool installation. There was some indication of what would be done during the installation.

Mr. Klauser stated that he is Terry Miressi's father. I have been a resident of Shelton for about 39 years. I raised three children. My son is Ken, who currently owns the house he was raised in and my other child is Jeffrey, who is an orthopedic surgeon who returned from medical school and came back to Shelton.

CITY OF SHELTON  
CONSERVATION COMMISSION

Minutes for the Regular Meeting on Wednesday, March 6, 2013 at 7:00 P.M.

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He talked about the success of his children and how proud he is.

Chairman Harbinson pointed out that we have discovered encroachment into the City property and we need to look into how to mediate that. This property had some site disturbance during the construction of the house therefore the open space was not allowed to revert to its natural intent. When the pool was constructed there was fencing installed that is significantly into the City property. Chairman Harbinson asked the Miressi's to talk about what has occurred on their property in relation to the City's interest.

Mr. Miressi said that when the pool was installed our original intent was to put a fence around the pool. If you see the property, there is a very steep drop-off. The fence was installed further away from the pool to serve two purposes. One, is to prevent people to get to the pool and two, to prevent my small children from falling down that steep incline.

Just to be clear, when we moved in, that property was cleared out. We didn't disturb the open space.

Commissioner Tate asked them to show him where the steep slope is on the picture.

Agent Gallagher stated that it's not that steep.

Agent Gallagher had a copy of the minutes from the Zoning Board of Appeals meeting back in 2007.

Commissioner Tate stated that this Commission's charge is to protect the open space and to make sure that all City residents have access to every inch of the open space that they have purchased or have rights to. Given the alignment of where the fence is currently, that open space is not usable by the public. We understand that when you went for the pool permits there was an understanding by either you or someone that represented you that this fence would be very tight to the edge of the pool. The pool itself was very tight to the setback lines. We, as this Commission, cannot accept the fence just being left there. It's considered a taking. Don't take it the wrong way; you just have to consider our point of view. The second dilemma we have is, once someone, and we have several other instances in the City right now, decides that that line is not held firm, that's it's usable for a shed, parking, dumping, etc. We have to be diligent, in our point of view, to enforce that line and that the property remains in what we consider its natural state. The reality is, we have come to is, in past situations is to be hard and fast. I don't want that to be misinterpreted by you that we don't respect the fact that the property may not work the way you want it to work and the property isn't suitable for children and pools and other activities. It may not. Our responsibility is to make sure that line is held in some form or another. What we decide to do with it I'm not really sure considering you've invested some considerable money in doing that. Right now our position is we want the property back and the fence removed and the forested area to be able revert back to woodlands. Everyone here may have a different opinion, but this is my opinion. We have made some allowances in the past and it has not worked out at all. We are held responsible for those issues.

CITY OF SHELTON  
CONSERVATION COMMISSION

Minutes for the Regular Meeting on Wednesday, March 6, 2013 at 7:00 P.M.

Minutes should be considered a draft version until approved by CC at their next meeting.

Agent Gallagher pointed out that part of the pool patio is on the open space. If you are telling them to put the fence on the property line I don't think they can. Vice-Chairman Dyer asked if the play set is in open space and they answered yes.

Chairman Harbinson said that one thing that makes us sensitive to your particular case; we have encountered this more and more. The city has acquired a lot of open space and some in subdivisions where residents are in close proximity. When you applied for the variance from the ZBA we noted in a letter at the time, that we would be concerned with the proximity of the pool to the open space. It's something we were aware of then and now as we are encountering the after effects we have to come to some resolution to protect the City's interest in that property, as Jim stated.

Mr. Klauser said, I'm not a lawyer, but is there some consideration in regards to the steepness of the hill. I wouldn't want my grandchild anywhere near that hill. I think potentially that is a lawsuit.

Agent Gallagher said she has kids and she has a steep hill. I have an almost identical feature on my property.

Terry Miressi said it's the rocks that are there.

Vice-Chairman Dyer said since you have a pool you have to put up a fence, it's just a matter of where the fence goes.

Mr. Klauser said I don't think any Shelton resident would want to go up in that area due to the terrain. There is nothing else there except the back of their property. Is there any consideration for that at all? We would be totally open to any suggestions of mitigation. The potential use by anyone else is very small, the potential use by my family is very large. They allowed the two residents on either side to come in and play. The only deprivation is from the kids. It's not like the adults are there partying. It's just the kids playing.

Commissioner Tate said that if you move the fence to the back of the terrace line there may be a way to allow to keep the property in the current state it's in and manage that as a field of use for open space.

Commissioner Dutkanicz asked if kids are playing on it or is it a hill.

Agent Gallagher said there is kind of a flat spot and it does goes down a bit.

Commissioner Tate that it's already disturbed in that respect, whether it was your or the builder's fault. The public could use it. That is something we would consider. I don't see us fencing it off. We can't leave the fence in place.

Chairman Harbinson commented that not every open space is for the public to literally go and use. Particularly in the Huntington Woods open space where we have our Recreation path trail we tried to make that as buffered as possible from the residential lots in the design layout. We've walked that property long before your lot was cleared to determine the best route of the path with residents considered. We thought those kind of things out so the potential of keeping the grassy area open and maintained for utilization and not fenced off from the public or left to go to its natural state so the buffer of vegetation provides you, as the homeowner and resident of that particular lot, some privacy from the people who

CITY OF SHELTON  
CONSERVATION COMMISSION

Minutes for the Regular Meeting on Wednesday, March 6, 2013 at 7:00 P.M.

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might be enjoying the trail a little deeper into the woods. I think that is something to look at for this specific location to see which is the most appropriate. Certainly the fencing where it's located right now to structure off a segment of City property to be a private lot is something that would have to be addressed.

Vice-Chairman Dyer pointed out to consider the play set as well.

Chairman Harbinson stated that any structure in the open space is a hard and fast thing that has to be addressed.

Terry Miressi asked if the play set, just as the grass area is, something that could be of use to the neighbors.

Commissioner Tate responded that it's a structure in the open space and since it's on City property we would have a liability issue. We do have a gazebo that is on city property where it looks like it's on this person's property, which may be similar to yours, but there are a lot of constraints to that instance, so it's not the same situation as a play set. There are sign postings that mark it as open space area.

Chairman Harbinson said that the consideration we have in being consistent, is even though you could let it be for the neighbors, as Jim says, there is a liability potential to the City. There is also the potential for someone else some time later to say, you did this for this person, you need to do the same for me.

Commissioner Tate said we've had that happen and it is a problem.

Vice-Chairman Dyer said we have had to have quite a few play sets moved over the years.

The fence line was discussed and Chairman Harbinson said that at the ZBA meeting in 2007 you indicated you had a survey drawing so it should be easy to establish where the fence should be located on the property line. Because of the nature of the property as viewed from our satellite imagery we are somewhat able to determine where the property line is.

Commissioner Tate said to come back to us when you figure it out and see what works and if you need a few feet to make it work we will give Agent Teresa Gallagher some guidelines and then we should be able to come to some agreement. We will write a letter explaining about the structures in the open space and then we will ask you to move the fence and remove the structures in the open space. We will also indicate that Agent Teresa Gallagher will come out once you know what you want to do.

Chairman Harbinson said we'd like the fence and play set moved before the start of the summer season. Once that is done we can review the open space grassy area as to whether it can be used for the enjoyment of the neighbors or should there be some naturalization of it, or some combination of the two. We will write a letter to that affect.

Agent Gallagher suggested copying the Board of Aldermen on the letter.

Chairman Harbinson pointed out that the Board of Aldermen is the fiduciary responsible party for all affairs of the City, whether it is purely financial or assets such as land.

CITY OF SHELTON  
CONSERVATION COMMISSION

Minutes for the Regular Meeting on Wednesday, March 6, 2013 at 7:00 P.M.

Minutes should be considered a draft version until approved by CC at their next meeting.

Commissioner Tate pointed out that you may have to sign a piece of paper saying that you take responsibility for the fence being where it is.

**Chairman Harbinson MOVED to authorize Agent Teresa Gallagher to write a letter summarizing the Commission's findings regarding the open space encroachment at 49 Wesley Drive, copying the Board of Aldermen, Zoning Board of Appeals and Planning & Zoning. SECONDED by Vice-Chairman Dyer.**

Terry Miressi said that she'd like for the Commission to take in consideration that they can't use approximately 1/3 of our frontage of our property. The front is complete rock ledge that cannot be used.

The Commissioners stated that yes, they are aware of it.

Commissioner Welsh pointed out that they do have access to the greenway and Rec Path plus new open space across from you.

Chairman Harbinson said that we just purchased 13 acres on the other side.

Commissioner Welsh said that as your kids grow up and they explore beyond the back yard there is so much to see and could appreciate. Even though you have a small back yard it does continue the length of the entire greenway.

Chairman Harbinson pointed out that as there is more and more development in Shelton you will see more and more lots that have difficult topography and non-traditional front yards as you have. I understand when you have kids you want to have a yard for them to play.

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

## 2. Policy for pre-existing encroachments

Agent Gallagher said that a couple of meetings ago the Commissioners asked me to look into the encroachment at 1000 Howe Ave. It looks like it might have been pre-existing when we acquired the open space. That opens up a question for me because normally I would send a letter to the homeowner stating the encroachment and tell them they are not supposed to do it and if they wanted to continue with the encroachment they would have to get permission from the various boards. She showed the picture of the property which includes some hardscaping. The Commissioners reviewed the pictures and discussed the issue. They determined there should be notification of the encroachment to the homeowner.

## **E. Trails Committee Report**

Vice-Chairman Dyer reported that the collapsible bollards are up and the gates and locks are installed.

The Stihl safety training program will likely be held on April 11.

There will be a hike at Nicholdale this coming Sunday 3/10, which we named the marshmallow march.

CITY OF SHELTON  
CONSERVATION COMMISSION

Minutes for the Regular Meeting on Wednesday, March 6, 2013 at 7:00 P.M.

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Tape 1, Side B

May 19<sup>th</sup>, we plan on hike at Birchbank.

After discussion of when the flowers would be best for viewing they decided to switch the April 24& May 19 hikes. April will be the trillium hike at Birchbank and the bridge to bridge hike in May.

The hike on National Trails Day in June will be on the Paugusset trail.

We received an award for the Recreation Trail. Several members said they are available to attend the awards ceremony.

Vice-Chairman Dyer said he created a new form for scout projects which would give the scouts direction on what is involved in doing an Eagle Scout project for the City trail system. It will be posted on the web site.

The 3 boy scouts made their Eagle Scout project presentations at the meeting and they were all voted on favorably.

## F. Open Space Trust Account Status

Chairman Harbinson reported that the Board of Aldermen did modify the funding for the purchase from Basil Difkofsky to flush the money through the Open Space trust account and then expend it from there to show they met the intent of the law.

## G. Budget – 2013/2014 FY

Our budget has been submitted by Chairman Harbinson. Due to the change in the charter the budget process is about a month later than in the past. The Mayor has not compiled and submitted his full budget request to the Board of A&T.

## H. Review of PZC or IWC Applications for Subdivisions and/or Developments

### 1. Old Applications/Monitor/Follow-up

- i. PZC 12-21, Zone change for proposed 262-unit apartment complex at 740 Bridgeport Ave (map 19, lot 56).

The public hearing has been closed and Chairman Harbinson spoke at the hearing. If you read the online news articles regarding this proposal, it indicates that Planning & Zoning are leaning towards the approval.

CITY OF SHELTON  
CONSERVATION COMMISSION

Minutes for the Regular Meeting on Wednesday, March 6, 2013 at 7:00 P.M.

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## 2. New Applications

- i. PZC 13-5 Hawks Ridge, Long Hill Cross Road/Beard Sawmill Rd, PDD zone change from Light Industrial for 140 residential units

Chairman Harbinson reported that we have received a referral from Rick Schultz asking for comment on the PDD zone change for a 60-unit cluster residential development and an 80-unit multi-family development. The response is requested by April 18.

Chairman Harbinson presented the drawings for the proposed development and the Commissioners spent quite a bit of time reviewing and discussing the project as it relates to the Conservation Commission's purview.

They determined they would spend time between now and the next meeting reviewing the proposal so that comment could be made at the next meeting.

## H. Communications (sent or received)

- CACIWC newsletter
- The State has a piece of property off of Route 8 that they want to dispose of and has asked the City if we want it. The Commissioners looked at the map of the property and determined that it is not something they think we should pursue.
- Agent Gallagher got quotes for doing the survey for properties on Mayflower Lane. It is broken into two parts. One, is to install 7 pins and temporary wood stakes, and two, if the driveway at the end of Mayflower Lane is on open space to locate it and provide us with a sketch showing the encroachment is in relation to the property line. The two quotes were discussed and it was determined that they would go with Tracey Lewis due to the price and they have the maps.

**Vice Chairman Dyer MOVED to authorize Tracey Lewis to do the surveying and pinning as required based on the quote submitted. SECONDED by Commissioner Dutkanicz. All were in favor; MOTION PASSED.**

## I. Quality of Life – Executive Session (land acquisition and security issues)

**Chairman Harbinson MOVED to go into Executive Session to discussion quality of life issues @ 8:45 P.M. SECONDED by Vice Chairman Dyer. All were in favor; MOTION PASSED.**

The Commissioners returned to regular session at 8:55 P.M.

Chairman Harbinson reported that no motions were made in Executive Session.

CITY OF SHELTON  
CONSERVATION COMMISSION

Minutes for the Regular Meeting on Wednesday, March 6, 2013 at 7:00 P.M.

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## **J. Comments By Members**

Commissioner Dutkanicz said that she attended the Audubon monthly meeting and this one was on bald eagles. In 1950-1992 there was not one eagle in the state. In 1992 the first pair came in and now we have 219 fledged chicks. They talked about all the nesting areas.

## **K. Adjournment**

Meeting adjourned at 9:00 P.M.

The next regularly scheduled meeting is Wednesday, April 3, 2013.

Respectfully submitted,  
Marianne Chaya  
Clerk, Conservation Commission