

SALEM PLANNING AND ZONING COMMISSION
MINUTES
May 18, 2010
7:00

Present

Amato, R
Bingham, D.
Buckley, K
Fogarty, G., Alt
Chinatti, M.-Town Planner/ZEO
McKenney, H.
Savalle, R.
Smith, V., Alt
.

Absent

Walter, G.
Vacancy
Vacancy, Alt

Guests

See attached

A. CALL TO ORDER

Chairman H. McKenney called the meeting to order at 7:05 pm and introduced the members and staff present.

B. ADDITIONS TO THE AGENDA

M/S/C (McKenney/Buckley) to make the following changes to the agenda

Before Public Hearings add:

1. Rescind vote to appoint G. Fogarty as replacement for G. Nikirk
2. Elect replacement for G. Nikirk

Add to Petitioners as item 5;

Woronick-# SP10-05-01, 14 Cherry Tree Road,
proposed construction

Vote: Approved Unanimously

Planning and Zoning Commission Appointment

H. McKenney stated that the Commission needs to revisit the appointment of the full member to the Commission. He reminded members that at the April 20, 2010 meeting the Commission accepted G. Nikirk's resignation.

At the April 27, 2010 meeting, the Commission voted to replace G. Nikirk with G. Fogarty as a full member. The Commission has

since been informed that because of minority representation rules, the appointment of G. Fogarty will have to be rescinded. H. McKenney explained to members that the Commission is required to have a minimum of 2 members from the minority party. G. Fogarty stated she did not take the oath of office.

D. Bingham explained the process of reconsidering a vote.

M/S/C(Bingham/Buckley) to reconsider vote to appoint Gloria Fogarty.

Vote: Approved Unanimously

M/S/F (Bingham/McKenney) to nominate and appoint G. Fogarty as a Regular Member to fill the vacancy on the Salem Planning and Zoning Commission. Vote: Failed Unanimously

H. McKenney asked V. Smith if he would consider becoming a full member of the Planning and Zoning Commission. V. Smith replied that he would consider it, but that he would not accept until speaking with the Republican Town Committee. H. McKenney explained that should the appointment not be made at this Planning and Zoning meeting, it would have to be made by the Board of Selectman, as per Town Charter

C. Public Hearing(s)

- 1) Thomas-Resubdivision application (RS#10-02-02) for a four(4)-lot resubdivision at 81 Skyline Drive and possible action. Continued from 4/27/2010**

- 2) Thomas-Special Exception application (SE#10-02-01) for a common driveway for the proposed four (4) lot resubdivision at 81 Skyline Drive and possible action. Continued from 4/27/2010**

M. Chinatti reported that all concerns have been met regarding both applications. She received a letter from John and Rosemary O'Brien rescinding their letter of opposition. She informed the Commission, the Route 11 Greenway Commission would not act on ownership of open space in the near future. She stated that any concerns Attorney Butts may have with the common driveway could be a condition of approval. She suggested the members

think about the Town owning the open space and possibly combining it in the future if Route 11 goes through. M. Chinatti pointed out that, if the Commission recommended the Town acquire the open space, it could affect lot 4 and the placement of a house but, placement would be possible.

Steve Marien, engineer for the applicant explained the changes to the plan. He stated that land along the common driveway and frontage; approximately 4121 sq. feet will be given to the Baukas's in exchange for a triangle of land approximately 1627 sq feet in area. Both parties have agreed to this exchange.

He stated there is a 40' wide strip along the proposed Route 11 Greenway designated as an open space easement. He told the members that the applicant and the neighbors would prefer a conservation easement, as this will provide privacy in the event the greenway goes through.

Charles Baukus informed the Commission that he and the applicant have worked hard to reach an agreement and he gives full approval for the application.

Steve Swan, 117 Skyline Drive-would like the strip of land abutting the proposed greenway to be a conservation easement.

M. Chinatti recommended the approval of the applications.

M/S/C (Buckley/Amato) to close public hearings on applications RS#10-02-02 and SE#10-02-01 for 81 Skyline Drive. Vote: Approved Unanimously

M/S/W (McKenney/Buckley) to approve RS # 10-02-02, four (4) lot resubdivision at 81 Skyline Drive and SE#10-02-01 Special Exception for a common driveway to serve the resubdivision with the following conditions:

- 1. The final common driveway agreement must be approved as to form by the Town's attorney**
- 2. Plans shall be revised to shall show a conservation easement on lot three (3) and four (4) with conservation easement markers placed every fifty (50) feet**
- 3. Executed easements/deeds, and a digital copy of the final approved plan shall be**

**submitted prior to the plans being signed
by the Chairman of the Commission**

D. Bingham spoke about the difficulties of the Town accepting easements for open space. He stated that there is no mechanism for checking on the properties to make sure there has been no encroachment, and no time for officials to perform those duties. He stated that a positive reason for the Town to accept the properties is that one day there may be a greenway, which will be able to connect to other trails in town. He stated that many times access to these trails enhances property values and acts as a unifying element in neighborhoods. He said that this is the “planning” function of the Commission.

Motion Withdrawn

H. McKenney stated that he was remiss in seating alternate members for vacated or absent members. It was with the consensus of the Commission that V. Smith and G. Fogarty were seated.

H. McKenney stated he did not review the tape of the first meeting of the public hearings on applications RS#10-02-02 and SE#10-02-01, therefore, he should not have made the motion to approve and will recuse himself from the vote.

M/S/C (Amato/Fogarty) to amend the motion to approve RS # 10-02-02 four (4) lot resubdivision at 81 Skyline Drive and SE#10-02-01 Special Exception for a common driveway to serve the resubdivision with the following conditions:

- 1. The final common driveway agreement must be approved as to form by the Town’s attorney**
- 2. Plans shall be revised out of respect of the wishes of the neighbors to show a conservation easement on lot three (3) and four (4) with conservation easement markers placed every fifty (50) feet**
- 3. Executed easements/deeds, and a digital copy of the final approved plan shall be submitted**

**prior to the plans being signed by the
Chairman of the Commission**

R. Amato stated he listened to the neighbors who had safety and privacy concerns. If you have a public trail or the greenway going through your back yard, how do you really know people are bird watching and not looking in your window?

K. Buckley stated the Commission needs to come up with a rationale on how to deal with conservation easements and open space

G. Fogarty understands D. Bingham's concerns about access to trails. She would like to see the Commission enact the fee in lieu of, which would be much more effective in acquiring open space and trails instead of the little pieces of land scattered around the town.

M. Chinatti stated that there is always language in the conservation agreements; the problem is the time to enforce, not the lack of direction or right to enforce.

D. Bingham stated the Commission should have made it a habit to ask for fee in lieu of and think about the Commission's responsibility to the future generations.

Vote: Approved, In favor-Fogarty, Buckley, Amato, Smith. Opposed-Bingham, Abstaining-McKenney

D. PETITIONERS

M/S/C (McKenney/Fogarty) to move item one (1) Recreation Commission Site Plan Modification (SPM#10-05-01) after Old Business. Vote: Approved Unanimously

2) Getty, G. - Request for waiver of Section 14.6.k of the Zoning Regulations in regard to Excavation Permit Renewal

M. Chinatti stated that less than 2200 cubic yards of material has been removed. She recommends approval of the waiver. It was pointed out the letter from Getty stated 5000 cubic feet have been removed. M. Chinatti stated that according to the data it is 2200 cubic yards.

M/S/C (Bingham/Buckley) approve G. Getty's request for waivers of Section 14.6.k of the Zoning Regulations in regard to Excavation Permit Renewal

H. McKenney stated there should be a "tripwire" so that the intent of the regulation is being met. If someone comes

in year after year with 4999 cubic yards, that is not meeting the spirit of the regulation.

Vote: Approved Unanimously

3) Getty, L.- Request for waiver of Section 14.6.k of the Zoning Regulations in regard to Excavation Permit Renewal

M. Chinatti stated that Getty Granite has removed approximately 962 cubic yards of materials. It was pointed out the letter stated 400 cubic yards. M. Chinatti reviewed the truck slips and calculated 962 cubic yards. She has also taken pictures of all sites and there was little change to this site.

Vote: Approved Unanimously

M/S/C (Buckley/Savalle) approve L. Getty's request for the waiver of Section 14.6.k of the Zoning Regulations in regard to Excavation Permit Renewal

3) Henrici. - Request for waiver of Section 14.6.k of the Zoning Regulations concerning Excavation Permit Renewal

M. Chinatti stated that the site was almost identical to the previous year. There were about two (2) to three (3) truckloads of materials taken off site. There were no truck slips and the materials are not weighed. The operation is very small, approximately one quarter acre.

M/S/C (Fogarty/Buckley) approve Henrici's request for waivers of Section 14.6 . d & g of the Zoning Regulations in regard to Excavation Permit Renewal

G. Fogarty pointed out that the way she interprets Section 14.6.k that the Commission is requesting a waiver for a waiver. It made more sense to request a waiver for Sections d & g.

The Commission agreed.

Vote: Approved Unanimously

M/S/C (Bingham/Buckley) approve L. Getty and G. Getty's waivers of Section 14.6 . d & g of the Zoning Regulations in regard to Excavating Permit Renewal

Vote: Approved Unanimously

E. PUBLIC COMMENT

None

F. OLD BUSINESS

(D. Bingham recused himself at 8:10)

- 1) **Kobyluck Brothers, LLC-Special Exception Renewal for an excavation operation a 209 Rattlesnake Ledge Road (deliberations and possible action)**

M. Chinatti stated members had received the entire file of the Public Hearing. They were instructed to review and come prepared with questions and concerns.

H. McKenney reminded the Commission that item five (5) under petitioners was skipped and the Commission needed to go back and discuss that agenda item before going on to Old Business

PETITIONERS (CONTINUED)

SP # 10-05-01- Woronick, 14 Cherry Tree Road

M. Chinatti stated that this item is on the agenda for receipt of the application. There is minor work proposed. She stated that she was going to schedule the Commission discussion for the May 25 meeting but, after initial review of the plans she realized they are significantly lacking and it was doubtful any revisions could be reviewed and plans modified in time for next weeks meeting. She suggests this item be putt on the agenda for June 15

M/S/F (McKenney/Fogarty) to place Woronick SP #10-05-01 on the June 15, 2010 agenda.

R. Amato asked if the plans were available and if the Woronicks were in attendance. They were present at the meeting. M. Chinatti stated the plans were dropped off on Monday and she did not have time to do a review. R. Amato asked if the process was explained to them, they answered that it was not. H. McKenney explained the time issues to the Woronicks. The applicant's engineer, Rosalind Page was in attendance and asked to address the Commission. She asked the Commission's approval to present the plans at the May 25, 2010 meeting. She would like to give an overview and hear any comments or concerns by the members of the Commission. H. McKenney informed the Commission he would be voting against the motion in light of the request by the applicant.

Vote: Failed Unanimously

M/S/C (McKenney/Fogarty) to add application Woronik-SP#10-05-01 at the May 25 Meeting. Vote: Approved Unanimously

(The Commission took at break and proceeded with the agenda at 8:25)

(The Commission picked up discussion of the Kobyluck Special Exception)

M. Chinatti reminded the Commission that R. Amato was absent for the February 23, 2010 Planning and Zoning meeting, R. Amato stated he did watch the tape. Also, V. Smith was absent for the April 20, 2010 meeting and he would have to review the tape before any vote, he replied that he would watch the tape. The copy of the injunction has been provided for all the members.

H. McKenney asked all the members for their opinion.

G. Fogarty stated one of the issues that bothered her was the testimony of the neighbors and the devaluation of their properties. She stated that Mr. Kobyluck did not refute the charge or supply any experts to refute the neighbors charges.

R. Savalle stated she read the information provided on aggregates and the "Quarry Story." She stated the top of the line machinery was brought in to double the production. In the "Quarry Story" it stated what a good neighbor is, this seemed to go along with what the neighbors have been saying. She read over the 2002 map, on page 8 and noted if some of the requirements had been followed, we may not be in this situation today. If topsoil had been seeded and vegetation had been established on the graded slopes as the applicant went along and not at the end, it would have been a better situation. The section on erosion discusses wind blown sediments and specifies that it should be controlled at all times and not be allowed to leave the site. This was a common complaint from many of the neighbors. The written instructions on page 8 are very specific.

H. McKenney stated the section on hay bales and silt fences will be important during discussion of the bonding estimate. He reminded the members that the applicant stated there was nothing in the plan that mentioned silt fences and hay bales.

R. Amato stated that the first thing he had to ask himself is, what happened in the beginning, and how did we proceed to the end?

One of the regulations asks, “is it proceeding according to the plan”? He read Mr. Asafaylo’s submission and concluded that from beginning to end, the operation did not go according to plan. He is skeptical about the truck receipts and some of the other claims by the applicant.

K. Buckley gave a hand out to all the members (See File Copy) of her thoughts. She seconded what R. Savalle stated, she had the same reaction to page 8 instructions.

Exhibit B is the DEP permit, on page 3 there are erosion and sedimentation details and instructions. She noted there were instructions for Phase II and III but not Phase I.

She looked at the blasting reports and was surprised to see that only 44 reports of blasting from June of 2002 to January 2010. That is an average of 5 ½ times a year. She got the impression from testimony of neighbors that blasting went on all the time. Is that all the reports?

M. Chinatti stated that according to the Fire Marshall there is a blasting report submitted by the blaster. There is a seismology report with each blast.

H. McKenney stated the Commission has no authority to regulate the intensity of the blast or the amount of the blasting, but the Commission does have the authority to regulate the time of allowed blasting.

K. Buckley referred to exhibits QQ and SS which are correspondence between Attorney Byrne and M. Chinatti, he seems to be saying the Commission cannot require a modified site plan. However, the applicant can request to submit a new one. Is a site plan the same thing as a restoration, sometimes it sounds like they are and sometimes not? Can there be a restoration plan without a site plan modification?

K. Buckley went over her larger concerns about using materials that were put on Phase II from Phase I and can it be used to restore Phase I , this goes to the restoration plan. She also thought a storm water quality basin could be addressed in a restoration plan. She discussed enforcement and pointed out the detailed instructions previously mentioned on page 8. She would like to see as a condition of approval, which states access to the site by any town official, any time, should be on the plan.

H. McKenney stated there are many open issues, some of which have been touched on. He listed the issues he would like to see discussed as follows:

- 1) Bond issue
There is a dispute between the town engineer and the applicant. The bond estimate is now \$270,000.00, which needs to be resolved.
- 2) Control of blasting activities.
A number of people have spoken to the issue of blasting. By controlling the hours of the blasting activities, it may minimize the impact on the neighbors
- 3) Devaluation of surrounding homes.
There is conflicting evidence, and some compelling evidence, may need further clarification
- 4) The Commission needs to make sure the applicant meets all of section 11.4
- 5) Need for site restoration plan
Final grades per site plan, Attorney Byrne stated they need to use final grades per site plan. Applicant points to specific notes that allow variations on the grades. The Commission needs to resolve the conflicts on this issue
- 6) Topsoil from Phase I to restore Phase II
Need to utilize injunction for clarification.
The judge predicted this argument from Kobyluck occurring. Restoration plan and new site plan could be required so Kobyluck could demonstrate why the moving of stockpiles furthers this process of restoration.
- 7) Check for inspection and monitoring fees.
The application is not complete until the check is submitted.
Mr. Kobyluck was asked when the town could expect the check to complete the application.

He stated he was waiting to get a check back from the town. He stated he just found out tonight how much the fee was. H. McKenney reiterated that the application is not complete until the check is submitted to the town. He assured Mr. Kobyluck that whatever monies the Town owed Mr. Kobyluck they would be paid, but, he needed to get a check to the Town for the application to be complete. The amount was set at a previous meeting. There was much discussion on how much the amount should be. An amount was determined significantly earlier.

- 8) Amount of truck traffic
Evidence shows that there is significant traffic on the road, approximately 30-40 trucks a day. This is data from late 2008, and January 2009 to April 2009.
- 9) Petition of local neighbors.
Approximately 59 signatures are significant. The neighbors are telling us something. This tells us the quarry has been operating in disharmony with the neighbors. The issue has been somewhat resolved because the processing has halted due to the legal actions. Is the disharmony due to the quarry or to the intensity of the quarry?
- 10) Hours of operation
Setting hours of operation may help us determine if this is an acceptable land use. Neighbors say the quarry operating on Saturdays and holidays are difficult for them.
- 11) 14.3.3 appropriateness of locations of RU A and RU B in industrial zones dealing with excavation.
The Commission can require compliance with 14.3.3, however since the special use permit was approved, any denial based on 14.3.3 would need to be based on significant changes in operation of the quarry and also reasonable conditions can be applied to the quarry so that it could comply. Where the

special exception process is applied, the Commission has great deal of latitude. The Commission can construct what would fit and work.

Revised restoration plan can be made a condition of the special exception renewal approval and could include hours of operation.

The 2002 maps show the restoration plan., page 8 speaks to the E & S control. There is nothing stopping the Commission from adding as a condition of approval, that page 7 would have to be modified. The town engineers have said the applicant cannot meet this grade, therefore, the Commission can require a modified the restoration during the special exception process.

Yearly permit renewal should be in harmony with surrounding uses. This applies to the special findings, of 11.4'the purpose of which is to make sure the plan is moving ahead as planned.

- 12) Need for storm water quality basin needs to be discussed

H. McKenney talked about the process the Commission will go through to come to a decision. The Commission needs to make a decision by July 1, 2010. He stated there might have to be special meetings to get the work done.

G. Fogarty stated that if the check is not submitted there should be no special meetings.

K. Buckley –can we get an opinion from the engineer as to what he thinks the restoration should look like. She would like to see all the phases of the plan in harmony with one another for restoration.

H. McKenney cited from the DEP plan a section that requires the applicant to meet with town staff before going on to another phase.

The Commission members felt there needs to be a new restoration plan.

H. McKenney understands that over excavation can happen within a few feet but, 40 feet of extra excavation is significant. For that reason he felt a new restoration plan is needed, as long as this is not new evidence being introduced and just clarification of already introduced evidence. Need to speak to attorney about this issue.

Discussion of bond estimate

Number of estimates, 1.3 million, 1.1 million, 600,000.00 and then an estimate from town engineer Joe Dillon, exhibit FFF.

Phase I

Modifying amounts on exhibit FFF. Items one (1) and two (2), the fill, and sub grading should be combined. Instead of the original amount of \$3.71 per cubic yard for both items, it will be 2.50 for a total of \$65,000.00 instead of \$86,000.00.

Item three (3) the applicant said he could use topsoils from phase II for phase I.

No comments or issues on items four (4), five (5), six (6).

The topsoil for item three (3) will tie into the topsoil that was removed from phase I and put into phase II

G. Fogarty would not adjust the topsoil amount. When companies are in trouble that is the first item they sell to make money. The bond reflects what it would cost the Town to restore if the applicant went bankrupt or leaves the site. She would be comfortable with a figure of \$230,000.00

H. McKenney reminded the Commission that Mr. Kobyluck had stated that anyone would do the job for \$250,000.00. There is plenty of subsoil at the site for restoration purposes. He then asked if there were any additional costs the members could think of.

R. Amato asked if the price of the contractor was included. Does it include the administration of the restoration, or the engineering cost for putting together the bid package. H. McKenney stated D. Bourdeau would be responsible for administering the project. They may need an evaluation from the engineers depending on where in the process the applicant is if the project is abandoned.

H. McKenney asked M. Chinatti to clarify with the attorney if we can get information from the town engineer on what other additional cost may be involved if the town has to finish the restoration, would this be new evidence or clarification/?

M/S/C (McKenney/Amato) to table the continuation of the Kobyluck Special Exception Renewal to May 25, 2010. Vote: Approved Unanimously

H. McKenney stated the items to be discussed and placed on the agenda for the following week will be:

- a. Devaluation of the surrounding homes
- b. Topsoil from phase II to restore phase I
- c. Truck traffic
- d. Storm water quality basin
- e. Hours of operation
- f. Bonding
- g. Clarification from town attorneys on the two previously mentioned issues concerning the restoration plan

PETITIONERS (continued)

1. Recreation Commission (Spang)-Site Plan Modification (SPM #10-05-01) for a fence for the driveway of the Multi-Purpose Path at 10 Music Vale Road

M. Chinatti explained the application, she stated there were minor modifications proposed. She urged the Commission to approve the application and waivers. G. Fogarty asked why this application had to come before the Commission for something so minor. M. Chinatti referred to Section 11 A. 2.1., and Section 11A .2.5

M/S/C (McKenney/Savalle) approve waiver requests, 11A.4.2, 11A 4.3, 11A4.4, 11A4.5,11A 4.7. Also approve requested waivers 11A.4.9-11, 11A.4.13-14, and 11A.4.16. Vote: Approved Unanimously

M/S/C (McKenney/Buckley) to approve application SPM#10-05-01, Site Plan Modification for a fence. Vote: Approved Unanimously.

G. NEW BUSINESS

None

H. ENFORCEMENT OFFICER'S REPORT/INLAND WETLANDS AND CONSERVATION COMMISSION REPORT

Addressed under each agenda item

I. APPROVAL OF MINUTES OF PREVIOUS MEETINGS:

M/S/C (McKenney/Savalle) to approve the amended minutes of April 20, 2010 and April 27, 2010.

April 20, 2010 minutes are amended as follows:

Page 1, Additions to the Agenda, item 3) replace Lexington *Hills* with Lexington **Trails**

Page 4, Petitioners, item 1, modify to:

The addition, proposed at the rear of the engine bay on the southwest section of the building, will align with the building's northwest section. The addition will not, however, connect the sections.

April 27, 2010 minutes are amended as follows:

Page 2, Public Hearings, Item 2, change, *The applicant granted a twenty-one (21) day extension of time (to the 5:18/10 Regular PZC Meeting) in order for the Commission to ~~make a decision~~ - insert, **close the public hearing.***

Vote: Approved Unanimously

J. PLUS/DELTAS

The Commission reviewed the positive aspects and areas for improvement concerning the conduct of tonight's meeting.

K. CORRESPONDENCE

Montville sent the Commission a copy of their newly completed POC&D Reminder about the June 2, 2010 Municipal Officials workshop on Riparian Corridors.
CCM convention notice

L. ADJOURNMENT

M/S/C (Buckley/Savalle) to adjourn the meeting at 10:28 pm. Vote: Approved Unanimously

Respectfully Submitted

**Sue Spang
Recording Secretary**