

SALEM PLANNING AND ZONING COMMISSION  
MINUTES  
November 16, 2010  
7:00

Present

Amato, R  
Bingham, D (arrived at 7:05)  
Buckley, K  
Burr, E.  
Fogarty, G., Alt  
Chinatti, M.-Town Planner/ZEO  
Savalle, R.  
Smith, V., Alt  
Walter, G.

Absent

Vacancy, Alt  
Vacancy, Alt

Guests

See attached

**A. CALL TO ORDER**

Vice Chairman K Buckley called the meeting to order at 7:00 pm.  
**Vice Chairman K. Buckley introduced all members and staff.**

Alternate G. Fogarty was seated for the full member opening.  
Alternate V. Smith was seated for D. Bingham

**B. ADDITIONS TO THE AGENDA**

Three new additions to the agenda:

**New Business, Item 3-Pledge of Allegiance discussion  
Item 4-Carvallo resubdivision, curbing  
installation**

**Executive Session-pending litigation-Kobyluck.**

**C. PUBLIC HEARING**

- 1) **Proposed amendments (Substantive and Clerical) to the Salem Zoning Regulations to the following Sections: 3.5a), 3.14.7, 4.1.7, 9.1.22 (with renumbering of remaining sections), 9.1.30, 9.1.31, 9.4a., 9.4a.1., 9.4b., 11A.2.6, 11A.5.7, 14.1 DEFINITIONS**

(Excavation shall not include:), 14.3.1b), 14.3.1e), 25A.6.1(d)(1), Section 2 DEFINITIONS (Passive Recreation and Recreation, Passive), 3.25C., 5.2.12, 5.2.12a, 6.2.7, 6.2.8, 7.1.10, 7.1A.9, 7A.2.9, 7B.2.8, 7B.2.11, 7B.2.12, 7B.2.13, 7B.2.15, 7B.2.16, 7B.5, 7B.7, 8A.2.5, 8A.2A, 11A.5.5.,14.1 DEFINITIONS (Excavation shall not include), 14.1 DEFINITIONS (Surplus Material), 14.6f), 15.2.10, 15.2.11, 17.2.3, and 17.2.4.

K. Buckley clarified the agenda and stated there is no public hearing scheduled for this meeting. She informed the Commission the Public Hearing was held at the last meeting and closed at that meeting. The Commission did not act on the Public Hearing and postponed any decision on the proposed amendments until this meeting, (November, 16, 2010). Most of the proposed amendments received no comments from the Commission. There were two proposed amendments that generated a lot of discussion. K. Buckley proposed going over those two proposed amendments, 14.1a, and 14.3.1 b, both in the excavation regulations.

(D. Bingham is seated as a regular member)

#### **Amendment-Section 14.1**

M. Chinatti spoke to the Commission on 14.1a and stated that if the regulation were changed from 100 cubic yards to 300 cubic yards it would make her job much easier and be less onerous on property owners. Most construction projects will generate more than 100 cubic yards. As it stands now, If the approved construction site plan generates more than 100 cubic yards of materials and it is taken off site they would have to apply for a special exception under the excavation regulations. She stated that 100 cubic yards is not a lot of material.

D. Bingham stated that section b solves the problem with construction sites. But, he stated that section a, allowing 300 cubic yards instead of 100 cubic yards of earth materials to be taken off premises from a landscaping or agricultural operation has never been a problem in the past and he does not see any reason to change it. He explained that it is an invitation to people to remove topsoil and sell it. D. Bingham gave an example of someone he spoke to that planned to sell off topsoil to make money and then when the economy gets better he will build houses on the property.

E. Burr agreed with D. Bingham and stated other considerations. He cited regulations from Weston, CT which call out drainage, aquifers, or degradation of the natural beauty of the land.

G. Fogarty stated that it could be very expensive for someone to go through the process of an A-2 survey to remove topsoil or stonewalls from their property. She reminded the Commission that the regulations that E. Burr read were not part of Salem's Zoning regulations.

G. Walters stated that to address the kind of changes E. Burr was talking about, many changes to the zoning regulations needed to be changed.

**M/S/F (Bingham/Burr) the amendment 14.1a stay at: the removal off premises of:**

**a. Less than one hundred (100) cubic yards of earth materials from a landscaping or agricultural operation, or**

**b. Removal off premises of surplus material resulting from a bona fide construction project for which a site plan or subdivision plan has been approved by the Planning and Zoning Commission, or for which a Zoning Permit has been issued by the Zoning Enforcement Officer.**

R. Amato stated that people need to work their land, three hundred (300) cubic yards is not a bad number and he has no fear that a bunch of people will abuse their land by scraping off topsoil and selling it.

R. Savalle agreed that the amount should be three hundred (300) cubic yards.

G. Fogarty reminded the Commission she wrote the change and researched other towns and Salem is very conservative, she stated even Old Lyme has a limit of three hundred (300) cubic yards.

V. Smith stated that the three hundred (300) cubic yards makes it less onerous on the property owner.

D. Bingham stated the one hundred (100) cubic yards has never been onerous in the past.

G. Fogarty stated the change in the regulation was proposed because of problems with the municipal path construction. The path will be over a mile long and ten feet wide which will generate a

large amount of soil. The soil creates large piles of soil which become a nuisance and an eyesore.

D. Bingham stated that section b, solves that problem.

G. Walter asked if “earth products” are identified in the regulations

M. Chinatti stated that they were identified and tree stumps are not included in the definitions.

**Vote: Failed. Voting for approval, Bingham, Burr, Buckley. Voting against, Fogarty, Savalle, Amato, Walter.**

**M/S/C (Amato/Fogarty) the removal off premises of:**

**a. Less than three hundred (300) cubic yards of earth materials from a landscaping or agricultural operation, or**

**b. Removal off premises of surplus material resulting from a bona fide construction project for which a site plan or subdivision plan has been approved by the Planning and Zoning Commission, or for which a Zoning Permit has been issued by the Zoning Enforcement Officer.**

**Vote: Approved. Voting for approval, Fogarty, Savalle, Amato, Walter. Vote against, Bingham, Burr, Buckley**

#### **Amendment 14.3.1**

K. Buckley explained the discussion at the public hearing concerning the proposed amendment 14.3.1b. She asked M. Chinatti to provide any insights into the issues raised at the public hearing.

M. Chinatti explained there were fourteen properties in an industrial zone, eleven of them are entirely in an industrial zone and three of them have a portion in a residential zone. The acreage for the largest piece is a little over one hundred acres. There is no way that a two thousand foot distance can be accomplished with the properties the town has in an industrial zone. She recommends changing the two thousand feet to five hundred feet and leave section c as proposed- *no processing operation in an Industrial Zone shall be conducted on a lot that is less than forty (40) acres in size.*

She suggested revisiting the regulation and incorporating regulations that would require sound proof buildings.

G. Walter suggested identifying noise levels which would be validated by the stone processor.

M. Chinatti stated the processing area could possibly be movable.

D. Bingham stated the reason most towns have outlawed crushing operations is not only the sound but the vibration the operation generates. He stated the containment building is a good idea and has the benefit of containing the particles that are generated by a crushing operation.

**M/S/C (Amato/Savalle) to amend Section 14.3.1 Procedures as follows:**

**b)....of an abutting residential property unless Section 14.3.1a), above, applies, and no processing equipment shall be located within five hundred feet of a Rural or Residential Zone.**

**c) No processing operation in an Industrial Zone shall be conducted on a lot that is less than forty (40) acres in size.**

M. Chinatti is charged with researching an amendment to the proposed regulation to require sound proof buildings or an additional surety that sound will not go beyond the property lines.

K. Buckley stated that as a measure of security the Commission may want to consider raising the amount to one thousand feet just in case someone came in with a proposal before the Commission has a chance to draft and accept a new regulation.

M. Chinatti reminded the Commission that there is a special exception requirement with an excavation operation and the Commission has a lot of latitude in what they can require of the applicant.

G. Walter stated that he heard during the discussion concerns about the vibration from a rock crushing operation. He asked if the town wants any rock crushing operation allowed at all.

D. Bingham stated a building would reduce the vibration. He suggested the Commission should decide weather the town should prohibit rock crushing operations.

**Vote: Approved Unanimously**

**M/S/C (Buckley/Amato) All proposed amendments that were brought to public hearing on October 26, 2010 with the exception of the two proposed amendments which were adopted on November 16, 2010, (Section 14.1 a & B and 14.3.1 a & c) be enacted.**

**Vote Approved Unanimously**

**M/S/C (Amato/Bingham) to set effective date of the amendments for December 1, 2010. Vote: Approved Unanimously**

**D. PETITIONERS**

None

**E. PUBLIC COMMENT**

None

**F. OLD BUSINESS**

None

**G. NEW BUSINESS**

**1) Eight Mile River Committee-Request for Meeting with Salem Planning and Zoning Commission.**

K. Buckley referred to a letter which was in the member's packet from the Eight Mile River Committee requesting a meeting with the Commission. M. Chinatti will coordinate with the Committee for one of the planning meetings of the Salem Planning and Zoning Commission.

**2) Fill Regular and Alternate Member Vacancies**

K. Buckley called for nominations to the Salem Planning and Zoning Commission for a full member.

**M/S/C (Bingham/Smith) to nominate G. Fogarty to the full time position. Vote: Approved Unanimously**

K. Buckley called for nominations for the alternate position on the Salem Planning and Zoning Commission.

**M/S/C (Bingham/Savalle) to nominate H. McKenney to the alternate position on the Salem Planning and Zoning Commission. Vote: Approved Unanimously.**

### **3) Pledge of Allegiance**

K. Buckley stated that at the end of the last meeting V. Smith asked if saying the Pledge of Allegiance could be recited at the beginning of the meetings. She asked V. Smith to tell the Commission his thoughts on his request.

V. Smith stated that he thought it would be a good idea to say the Pledge and did not know why it has not been recited. He thought it would be a good way to start the meeting and express loyalty and allegiance to the country.

D. Bingham stated he has a problem with reciting the oath. He stated there were places in the world that it is required to say an oath, and they are all dictatorships. He stated there is an assumption that if you oppose the saying of the oath then you are unpatriotic. He referenced Sen. McCarthy in the 1950's.

G. Fogarty stated that she believes her service to the town and her involvement in the community and membership on Planning and Zoning is a testament to her patriotism and commitment to her country. She stated that a vow is taken when getting sworn in to be a member of the Commission.

V. Smith stated that if adopted it is not something that everyone has to do, it is not a test. We are elected officials and serve as examples.

K. Buckley stated that she was unhappy with her government a few years back and instead of complaining she decided to get involved and volunteered to be on the Commission. She stated that this is her way of contributing to the town and the country. Being on the Commission is a belief in the rule of law.

R. Savalle agrees with D. Bingham and G. Fogarty statements. She does not feel it is something she has to do; we are here to work for the town.

E. Burr stated he says the Pledge about every place he has ever been, every group, club, & meeting. Maybe he did not pay any attention when he says it but he likes saying it.

G. Walter-no comment.

M. Chinatti stated her love of country, town, job, and people she works with. She does not need to stand up and say the Pledge of Allegiance to the flag to prove it. If it passes she would be uncomfortably sitting. She stated it would affect the way she does her job by the impression it would give the public by not participating in the Pledge.

R. Amato expressed disappointment that members would not say the Pledge. He cited examples of other countries he has been in which are dictatorships. He stated that if you can not say the pledge you should not be on the Commission. Saying the Pledge is a respect and reminds people of the freedoms' they have.

V. Smith stated that he was concerned about the message it would send to the children if the adults decided not to say the Pledge of Allegiance. He agreed that if you were not willing to say the pledge you should not serve.

**M/S/C (Bingham/Savalle) to not vote on saying Pledge of Allegiance at this time. Vote: Approved. In favor, Savalle, Buckley, Bingham, Fogarty  
Against, none. Abstaining, Burr, Walter, Amato.**

**4) Carvalho re-subdivision, 50 Buckley Road.**

M. Chinatti explained to the Commission that the Carvalho site plan, which the Commission approved, was not followed where the curbing is concerned. She explained the plans called for a Cape Cod curbing and a modified Cape Cod curbing was installed instead. M. Chinatti informed the Commission that the Chairperson of the Salem Inland Wetlands and Conservation Commission has been notified of the change and they have decided that the detail sheet be modified to show the modified Cape Cod curbing and added to the approved Mylar's. The town engineer has been consulted and he did not see a problem on the modification as there were no wetlands involved. M. Chinatti stated the only difference between a Cape Cod curb and a modified Cape Cod curb is a slight difference in slope. It was the

consensus of the Commission that a detail note added to the Mylar's would be appropriate.

## H. EXECUTIVE SESSION

**M/S/C ( Burr/Savalle) to go into Executive Session at 9:17**

**(M/S/C) Burr/Savalle to come out of Executive Session at 9:55PM. Carried Unanimously.**

**M/SC (Buckley/Burr) Approve 10/19 & 10/26/10 minutes.**

Comments:

10/19/10 Minutes – if alternates were seated, that needs to be reflected in the minutes.

10/26/10 Minutes:

- P. 1, next to last line: delete the emoticon
- Revise the footer to reflect 10/26/10 Regular Meeting
- P. 4, 15<sup>th</sup> line from bottom: September s/b September
- P. 4, 5<sup>th</sup> line from bottom: Amend s/b AMEND
- P. 5, last paragraph, last two lines: change “the whole town where it was applicable.” to would apply to all Industrial Zones in Town of Salem
- P. 6, ¶1, line 5: driveway s/b driveways
- P. 6, line 13: change “because the word” to as it appeared that
- P. 6, line 14: insert the word *inadvertently* after was and before omitted
- P. 7, line 2: add after the word *project* “or has obtained a zoning permit”
- P. 7, ¶7, line 2: change “submitted” to approved by the Commission
- P. 8, ¶5, line 3: typo – “if” s/b is
- P. 10, first full ¶, line 7: delete “a” and make swap plural
- P. 10, indent before last ¶: change “leaves” to left
- P. 10, last ¶, line 1: change “if the” to would before DEP, and delete the “would” following DEP

**KB/EB amended motion to read:** approve the minutes of the October 19, 2010 and October 26, 2010 meetings as amended. **Vote: Carried, with 2 abstentions (Amato, Walter) from voting on the 10/19/10 meeting minutes as they were not present.**

**Plus Deltas**

The Commission discussed the Plus Deltas of the meeting

**Correspondence:** None.

**Adjournment**

**(M/S/C Burr/Walter)** to adjourn at 10:10PM. **Carried unanimously.**

**Sue Spang**  
**Recording Secretary**

unapproved