

TOWN OF SALEM
PLANNING AND ZONING COMMISSION
Meeting Date: Tuesday, March 27, 2012

MINUTES

PRESENT:	R. Savalle, Vice-Chair	ABSENT:	K. Buckley, Chair
	D. Bingham		R. Amato
	G. Fogarty, Alt.		G. Walter
	H. Green, Alt.		V. Smith
:	S. Spang, Recording Secretary		W. Volberg
			M. Darling, Alt.
			M. Chinatti, Town Planner/ ZEOWEO

CALL TO ORDER:

The meeting was called to order at _____ by R. Savalle, acting Chair, who then introduced Commission members and staff present.

ADDITIONS TO THE AGENDA:

By consensus of members present, the following items were added to the agenda:

1. Discuss and act on rescinding the March 20th, 2012 actions regarding the updated Plan of Conservation and Development.
2. Action on adoption of the updated Plan of Conservation and Development.
3. Action on revising the effective date of the updated Plan of Conservation and Development from April 1 to May, 2012.

R. Savalle then seated alternates Henryka Green and Gloria Fogarty in place of absent members.

R. Savalle stated there would be a change as far as petitioners, noting that four members are required for a quorum. She continued, noting that when D. Bingham steps down, as he will be recusing himself from the application, there will be three members left and no business can be conducted as a quorum would not be present unless another member shows up. She then apologized to the audience, noting that so many are in attendance for the item. She continued, stating that the matter would have to be postponed to the next meeting unless another member comes in.

PUBLIC HEARING(S): Regulation amendments to the Salem Zoning Regulations and the Subdivision Regulations regarding bonding.

R. Savalle opened the public hearing at 7:20PM. She then read the legal notice.

The following correspondence was then read into the record:

- R. Savalle: Letter from Windham Regional Council of Governments, Regional Planning Commission dated March 7, 2012 to Salem Planning and Zoning Commission/Mary Ann Chinatti Town Planner/ZEO/WEO regarding the updated POCD. The letter stated there would be no intermunicipal impacts.
- G. Fogarty: Letter dated March 12, 2012 from Midstate Regional Planning Agency to Karen Buckley, Chairman. G. Fogarty questioned the reference to certificates of occupancy, and D. Bingham stated that, as long as the agencies were correctly notified, if they erred in their correspondence it still becomes part of the record.

G. Fogarty then reviewed public hearing procedure, noting that the Commission is the applicant for this item and would be presenting.

Members noted they had no further questions on the proposed amendments.

There were no comments from the public on the proposed amendments.

R. Savalle twice more asked if there were any questions/comments, to which there was no response.

(M/S/C Fogarty/Bingham) to close the public hearing. Motion carried unanimously.

(M/S/C Fogarty/Bingham) to approve the proposed amendments to the Subdivision Regulations Sections 3.1.1, 3.3.1, 4.10 and 6.10.4 as proposed, and to delete Sections 5.8.2 and 5.8.3 in their entirety, and to the Zoning Regulations Sections 11A.3.5 and 15.7 as proposed, and to delete Section 11A.6 in its entirety, effective April 6, 2012.

D. Bingham reviewed the reason for the proposed amendments, explaining PA 11-79 and bonding, and how bonding would be changed with the adoption of the proposed amendments. He continued, stating he was in favor of the amendments.

(VOTE ON THE MOTION) Carried unanimously.

G. Fogarty noted for audience members that there is currently a moratorium in place on subdivisions and site plans, and that moratorium expires on April 1. She continued, stating the moratorium was put in place to allow time for the Commission to review/revise its regulations in response to the current legislation.

D. Bingham noted that he could be present through the Public Comments section of the agenda since many members of the public are present, should the Commission vote to amend the agenda to hear the next item, Petitioners, following Public Comment. He continued, expressing his dismay that in his 40 years this was one of the very few times there was no quorum present.

The agenda was not amended.

PETITIONERS – T. Bingham for property at 20 Darling Road. #SPM-12-03-01.

G. Fogarty shared D. Bingham's dismay.

A member of the audience questioned when the matter would be re-scheduled to, to which G. Fogarty stated the very next meeting; R. Savalle agreed.

(M/S/C Fogarty/Green) to add the item to the Commission's April 17 meeting agenda. Motion carried: 3 aye; 0 nay; 1 abstention (D. Bingham).

G. Fogarty apologized on behalf of the Commission to audience members who took the time to come to the meeting that the item could not be addressed, noting that it was an important issue that matters to the Town and matters to the people present.

R. Savalle noted that there are also other questions regarding the application, and the postponement will give the Town Planner an opportunity to check with other municipal officials and legal counsel.

The commission recessed at 8:37PM.

The Commission reconvened at 8:47PM.

PUBLIC COMMENTS: NONE

OLD BUSINESS:

1. Discuss and act on rescinding the March 20th, 2012 actions regarding the updated Plan of Conservation and Development.

R. Savalle stated there was a question as to who seconded the motion made last week.

(M/S/C Savalle/Fogarty) to rescind the vote taken on March 20, 2012 to adopt the updated POCD with an effective date of April 1, 2012.

D. Bingham stated he disagreed with the interpretation that last week's motion wasn't seconded. He stated there was a motion made by R. Savalle which he seconded. He continued, stating his belief that everyone understood that was the case.

He then stated there was a subsequent decision to remove some wording from that motion, which R. Savalle and he agreed to accept, which was deletion of the section on the municipal plan and the open space plan. He stated there was then a consensus of all members present that the final motion would not include the words "cluster".

He continued, stating that subsequently there was a final addition of some wording by a motion that in his opinion was properly made, though that could be questioned, to add some language regarding the overlay zone. He stated the Chair then said it was moved, and she then read the question that members were about to vote on; however, she missed the last two lines. He stated he then stopped her, and she then "moved, such-and-such"; he stated that it was not a new motion that needed to be seconded, but that it was a motion that had been on the floor since the beginning of the discussion. He stated the Chair read the motion, with all of the changes, to make sure everyone

understood what it was that members would be voting on. He stated his understanding was that everyone agreed and that that motion properly passed.

G. Fogarty noted that the minutes of that meeting were not yet ready.

S. Spang stated that the minutes were posted, and that if members listen to the tape the discussion is very ambiguous, at best, on how the final motion was approached, noting there was much discussion.

D. Bingham stated it wasn't a final motion, but an original motion that was changed three (3) times – twice by consensus of the maker/seconded of the motion and all members present, and once by a motion that was an amendment on a 4-3 vote.

S. Spang stated that, if the tape were reviewed re the discussion leading up to the last motion as stated, and the way it was presented, it's very ambiguous whether the person stating that motion was making a motion or if she was referring to the original motion made and adding the amendments.

D. Bingham stated he did not think it was ambiguous to anyone voting.

S. Spang agreed that members all understood what they were voting on, but that the motion itself was ambiguous.

D. Bingham stated the Chair, in leading up to the reading of the motion, said "moved", and his understanding was that the Town Planner interpreted that to mean that the Chair was moving it, when in fact what she was reading was what was moved by the original maker of the motion, and that is what the Commission moved on. He continued, stating that if the Chair had prefaced with that she was re-stating the motion, it may not have been so unclear to the Town Planner and to the Recording Secretary. He further stated that he thought it was very clear to all members.

G. Fogarty questioned the harm in re-doing the action, so that it is absolutely, crystal clear, as to what the motion is.

D. Bingham stated that one member present at this meeting was not present at the meeting in question, and three (3) who were. He noted the member not present for the initial vote would not be voting, and questioned whether a vote of the remaining 3 members would be a proper vote.

G. Fogarty then suggested waiting until the April 17 meeting, noting that by that meeting all would have copies of the minutes, and all who voted previously would have had the opportunity to confirm or disagree with whatever was done. The Town Planner says that there can be no determination, and a totally valid individual who was there and seconded stating the vote was proper.

D. Bingham asked members if they were of the opinion that the Chair was making a new motion, or a new amendment, that needed to be seconded. He stated he did not think so.

G. Fogarty stated she lost track because there were so many amendments and changes, and off-line discussions, framing/re-framing of motions, and very poor

description, in her opinion, of the final motion that was put on the table. She stated there was never a clear reading of the final version that was then re-stated as the motion on the table. She stated the Commission's choices that there is no further action required because it had already been done, or the full Commission could be afforded the opportunity to act on it.

D. Bingham stated action to rescind could be postponed to the following meeting, and that he was not ready to vote to do that at this meeting. He also stated his opinion that it would be a good opportunity for members to learn a bit about the rules of order, and that one shouldn't try to stop someone from trying to amend language they don't think is proper and that they don't like. He continued, stating that when a motion is on the floor it is not proper to "railroad" that motion by requiring a vote of yea or nay. He noted that it is always possible to amend the language, that an amendment must be voted on or the makers of the original motion must change the motion, and at that point, whatever the motion/amended motion is either gets amended or it doesn't.

G. Fogarty stated the POCD is a very important document and she would like it very clear and above-board, with no controversy whatsoever. She continued, stating she wants the document approved in a very straight forward way, that states exactly what the Commission wants. She stated an email to R. Savalle stated, underlined emphasis, that there is no way to determine those things.

D. Bingham stated that the Commission also has a Town Planner who vociferously disagreed with the outcome of the vote, and whether or not she was looking to try to undo something she wanted changed by making that claim. It's still up to the Commission members, and what was stated was what was moved, and that was what the Commission is moving on. If the Chair had said that she was stating the motion, and then stated the motion, it may not have seemed unclear to the Town Planner and the Recording Secretary, but that he thought it was very clear to the Commission. D. Bingham stated he has no objection to rescinding the vote and restating the motion in a way that it's clear that it's not a new motion, but the motion that everyone agreed to. He suggested withdrawing the motion to rescind and let the whole group decide.

R. Savalle noted that, should the current action remain in effect, the effective date would still be April 1, and that the effective date need to be moved to May 1, or even June, because of items that are not yet included in the document.

Discussion continued regarding leaving the decision to rescind up to the full Commission at its April 17 meeting, and the fact that the April 17 meeting will occur after the currently assigned effective date of the document.

D. Bingham suggested, as opposed to rescinding the motion, someone who was in favor of the motion can move to reconsider the motion, which allows any new information to be brought to the forefront and allows those who voted to change their vote if they want, so if it is agreed to reconsider a motion, that motion can be put back on.

G. Fogarty stated, for clarification, that the pending motion could be voted down, then a new vote taken to reconsider the March 20 motion.

D. Bingham stated that, with the information the Chair has, it would be proper for her not to vote the other motion up or down, but she could agree that it is proper to reconsider

the motion. He then suggested that the motion to rescind be withdrawn, and make a motion to reconsider at the Commission's next meeting.

Savalle/Fogarty withdrew the motion to rescind.

D. Bingham then suggested adding to delay implementation until after that meeting as part of the motion.

G. Fogarty stated that part of the POCD Committee's concern was that the document isn't in its finished form – that pictures were to be included, a different title page was to be prepared, etc., and there was no discussion that evening of who will do that/how that process would happen, so the document could be available for publication. She was of the opinion that those present should rescind "reconsider" and have the effective date be June 1, which would allow adequate time to make those changes.

D. Bingham noted that if the language of the Plan isn't changed, enhancement can be done, so the document could still be approved, without the final enhancements having yet been completed.

(M/S/C Fogarty/Bingham) that the Commission reconsider the vote taken on March 20, 2012 to adopt the updated POCD, and have this reconsidered at the April 17 meeting, with an effective date of May 1, 2012.

D. Bingham recommended revising the motion to say "with an effective date not to be before May 1, 2012," to which G. Fogarty agreed.

Action on the Motion: Carried unanimously.

NEW BUSINESS: NONE

ENFORCEMENT OFFICER'S REPORT/INLAND WETLANDS AND CONSERVATION COMMISSION REPORT: N/A

APPROVAL OF MINUTES OF PREVIOUS MEETING(S): N/A

EXECUTIVE SESSION: NONE

PLUS/DELTAS:

D. Bingham stated that when members will not be at a meeting they should let someone know.

CORRESPONDENCE:

Email dated Mar. 26, 2012 from L. Schroeder to D. Bingham, S. Spang, M. Chinatti, re Municipal Recreation Lands

D. Bingham stated that a bill passed last year which gave municipalities' recreation lands the same protections as private land owners' recreation lands against liability claims, provided there

is no charge for using those lands. He then explained that proposed legislation would alter that definition for municipalities, excluding things like sidewalks, bikeways, walkways, etc. He stated he forwarded comments to the Judiciary Committee in opposition of Proposed Bill 455, noted that the public hearing is scheduled for March 29, and suggested members forward their comments.

ADJOURNMENT:

(M/S/C Bingham/Fogarty) to adjourn at 8:09PM. Motion carried unanimously.

Respectfully submitted,

Mary Ann Chinatti, CZEO
Town Planner/ZEO/WEO