

**Unapproved**

Salem Planning and Zoning Commission  
February 23, 2010

Present: Buckley, K.  
Chinatti, M. - Town Planner/ZEO  
Fogarty, G., Alt.  
McKenney, H.  
Nikirk, G. - left at 10:05 pm  
Savalle, R.  
Smith, V., Alt.  
Walter, G.

Absent: Amato, R.  
Bingham, D.

Guests: see attached

**CALL TO ORDER:**

H. McKenney, chairman:

- Called the meeting to order at 7:00 pm,
- With the Commission's consent, seated G. Fogarty for R. Amato and V. Smith for D. Bingham, and
- Introduced all members and staff present.

**ADDITIONS TO THE AGENDA:**

There were no *ADDITIONS TO THE AGENDA*.

**PUBLIC HEARING(S):**

- 1) **Kobyluck Brothers, LLC - Special Exception Renewal for an excavation operation at 209 Rattlesnake Ledge Road and possible action (con't. from 1/15/10)**

The chairman reviewed the PZC Public Hearing Procedures.

M. Chinatti, Town Planner/ZEO:

This public hearing was opened in January and was continued to this evening. There are currently twenty-nine (29) exhibits in evidence.

M. Kobyluck, partner in Kobyluck Brothers, LLC, appeared:

He is here to support the fact that they are not deviating from the approved site plan. Phase I can be closed out prior to moving on to Phase II as shown in the 2002 Reclamation Plan.

E. Bartlett, PE, CLA Engineers, appeared for the applicant:

Presented and submitted a plan of both the Kobyluck and Getty properties depicting:

- An aerial flyover done in 2009;
- Upon which is superimposed the Kobyluck 2002 approved plan, and the approved Getty Special Exception plan.

Cross sections were also included for the plan.

(M. Kobyluck stated that the Town Engineer requested the information on the Getty property. For the sake of argument, he had his engineer get the information. He believes that he did not have to do this and spend his own money because the Getty property has nothing to do with his property.)

Explanation and review of the plans submitted.

She feels that there is enough material on Phase I to restore it.

J. Dillon, PE, of Nathan Jacobson & Associates appeared (he will be working with W. Thomas, Associate, of Nathan Jacobson & Associates, the Town Engineers):

He concurs with W. Thomas that there has been over excavation on both properties, but he is not yet prepared to say if there is enough material on site for restoration. He does believe the site can be reclaimed.

Town Engineers:

W. Thomas:

The site cannot be reclaimed as per the 2002 plan. On alignments #6, #9, #10, and #11 on the plans presented this evening by CLA, there is over excavation and the rock slopes cannot be reclaimed at 1:12. They must be restored with earth and the earth slopes at 2:1 will not meet the 2002 plan.

J. Dillon:

Agrees with W. Thomas; the approved plan will have to be modified.

It was the Commission's consensus that J. Dillon would review the 2002 restoration plan and all notes.

W. Thomas :

Spoke in regard to the possibility that a new diversion permit from the DEP may be required due to the changes that have taken place on the site.

M. Kobyluck stated that they received an approved diversion permit from the DEP two (2) years ago. A diversion permit is not a piece of paper you receive, it's the plans that are submitted and approved by the DEP.

Public comments:

- N. Dytko, 279 Rattlesnake Ledge Rd.: submitted an unsigned letter of 2/23/10 from N. Wood, Salem Assessor, concerning the four (4) properties on Rattlesnake Ledge Rd. that had their assessments reduced by the Salem Board of Assessment Appeals due to the quarry at 209 Rattlesnake Ledge Rd.

M. Chinatti, Town Planner/ZEO, stated that she had had a conversation with Mr. Wood and he had stated that he could not confirm nor deny that the damage was caused by the quarry operations.

(C. Philopena stated that she had requested the letter and that she would call the Assessor to see if he would come to the meeting and sign the letter.)

Mrs. Dytko also submitted a petition (sixty [60] signatures) requesting that the PZC deny the quarry's application for permit renewal.

- S. Philopena, 309 Rattlesnake Ledge Rd.: Will the berm on the Rattlesnake Ledge Rd. side of the quarry remain or be used as restoration material? (a six [6] ft. berm will be left.)
- E. Lane, 39 Cockle Hill Rd.: even though she doesn't live on either Round Hill or Rattlesnake Ledge Rds., she does get the sounds from the quarry; homes on Cockle Hill Rd. have cracks also; can they get their assessments reduced?
- C. Philopena, 309 Rattlesnake Ledge Rd.: her dishes rattle when a blast occurs; she is called when Kobyluck blasts.
- T. J. Butcher, 248 Norwich Rd.: has sat through two (2) hearings on this matter; the requirements for renewal have not been satisfied; Kobyluck should have to prove to the PZC that he has satisfied the requirements, not just say that he does not agree with the requirements.

N. Wood, Salem Assessor, arrived at the meeting:

He signed the copy of his unsigned 2/23/10 letter submitted to the Commission by N. Dytko.

H. McKenney reread the letter into the record.

Mr. Wood stated that he could not testify as to how the buildings came into their condition.

The Board of Assessment Appeals (BAA), at their 4/19/07 meeting, reduced the assessments of the buildings by ~30% and the land assessments by ~30% for the four (4) properties. He does not know the BAA reasons for the reductions.

Now that the quarry operation has slowed, and after inspection of the properties, it was his opinion that the assessments should be reduced by only 5% on the buildings and 10% on the land.

The Commission requested, for additional clarification, that the Assessor write down his responses for the PZC.

The Commission also wants to review the minutes of the Board of Assessment Appeals meeting when the assessments were reduced.

M. Kobyluck stated that the Assessor's letter and his testimony are different and they should be withdrawn.

The Commission stated he does have the right to rebut the letter.

At this time, the Commission took a ten (10) minute recess.

Mr. Kobyluck submitted a request for a thirty-five (35) extension in which to close the public hearing so as to enable further information to be submitted.

M/S/C (McKenney/Fogarty) to extend the close of the public hearing for the Kobyluck Brothers, LLC Special Exception Renewal for an excavation operation at 209 Rattlesnake Ledge Road by an additional thirty-five (35) days so that further information may be submitted. Vote: approved unanimously.

M. Chinatti, Town Planner/ZEO:

In 2008, the Town Engineer submitted a revised bond estimate for the Kobyluck quarry. The estimate is considerably higher (~1.3 million) than the present bond (\$37,000) that is on file in the Town Office Building.

A copy of the letter will be sent to all members for review and to M. Kobyluck.

The Commission:

- Requested J. Dillon, PE, to review the notes on the restoration plan for the quarry;
- Will ask D. Bourdeau, Jr., Fire Marshal, to appear before the Commission on the next Kobyluck hearing date to clarify questions in regard to blasting; and

- Requested M. Chinatti, Town Planner/ZEO, to review truck slips/Traffic Study.

Further public comments:

- C. Philopena, 309 Rattlesnake Ledge Rd.: preblast surveys were done after blasting had begun.
- D. Alphonso, 295 Rattlesnake Ledge Rd.: had a seismometer at her house and the blast was not a typical blast.
- W. Fifield, 334 Round Hill Rd.: his house on Round Hill Road shakes when there is a blast; the garage floor is cracked; he has lived there since 2001 and has had to have his well replaced.
- T. J. Butcher, 248 Norwich Rd.: Is it not up to Kobyluck to prove that the damages were not from his blasting?
- N. Dytko, 279 Rattlesnake Ledge Rd.: every time a seismometer was placed on her property, the blast was also never a typical blast; though she had requested the seismometer readings, she never received any except for one; how many cease & desist orders had to be issued when he was working the site; we don't want to walk down that path again.

M. Kobyluck stated that he had no further comments.

M. Chinatti, Town Planner/ZEO, reviewed the now current thirty-four (34) exhibits for the public hearing.

M/S/C (Fogarty/Buckley) to continue the public hearing for the Kobyluck Brothers, LLC Special Exception Renewal for an excavation operation at 209 Rattlesnake Ledge Road to the March 16, 2010 Regular Meeting of the Salem Planning and Zoning Commission. Vote: approved unanimously.

**PETITIONERS:**

There were no *PETITIONERS* this evening.

**PUBLIC COMMENTS:**

There were no *PUBLIC COMMENTS*.

**OLD BUSINESS:**

There was no *OLD BUSINESS* this evening.

**NEW BUSINESS:** (Tabled from 2/16/10)

- 1) **Discussion - written policy(ies)**

M/S/C (McKenney/Savalle) to table this item to the April 27, 2010 Planning and Zoning Commission Regular Meeting agenda. Vote: approved unanimously.

**2) Public meeting date for revised FEMA maps**

M/S/C (McKenney/Buckley) to set a public meeting date for the revised FEMA maps for Tuesday, May 25, 2010. Vote: approved unanimously.

G. Nikirk left the meeting at 10:05 pm.

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

**APPROVAL OF MINUTES OF PREVIOUS MEETING(S): (Tabled from 2/16/10)**

- 1) **January 19, 2010 - Regular Meeting**
- 2) **January 26, 2010 - Regular Meeting**
- 3) **January 30, 2010 - Special Meeting Site Walk**
- 4) **February 6, 2010 - Special Meeting Site Walk**

M/S/C (McKenney/Buckley) to approve the Salem Planning and Zoning Commission Regular Meeting minutes of January 26, 2010, and the minutes of the January 30, 2010 and February 6, 2010 Special Meeting Site Walks as presented and the minutes of the January 19, 2010 Regular Meeting amended as follows:

Page 5 - under 4) *Kobyluck ..... change .....but due to the lack of notification to abutters ..... to "..... but due to a lack of proper notification to abutters ....*

**Votes:**

January 19, 2010 - Regular Meeting: Approved unanimously.

January 26, 2010 - Regular Meeting: Approved unanimously.

January 30, 2010 - Special Meeting Site Walk: For approval - Buckley, McKenney, Savalle, Smith, and Walter. For denial - no one. Abstaining - Fogarty.

**MOTION CARRIED**

February 6, 2010 - Special Meeting Site Walk: For approval - Buckley, McKenney, Savalle, Smith, and Walter. For denial - no one. Abstaining - Fogarty.

**MOTION CARRIED**

**EXECUTIVE SESSION (IF NEEDED):**

- 1) **Pending litigation - 160 Old Colchester Road**
- 2) **Pending litigation - Kobyluck**

There was no need for an *EXECUTIVE SESSION* this evening for 2) *Pending litigation - Kobyluck*.

M/S/C (Buckley/Fogarty) to go into Executive Session at 10:10 pm to discuss item 1) *Pending litigation - 160 Old Colchester Road* and to include M. Chinatti, Town Planner/ZEO/WEO and D. McTigue, Administrative Assistant Land Use/ Commissions. Vote: approved unanimously.

**1) Pending Litigation - 160 Old Colchester Road**

Present at Executive Session:

K. Buckley, G. Fogarty, H. McKenney, R. Savalle, V. Smith, and G. Walter.

Present at the Commission's pleasure:

M. Chinatti, Town Planner/ZEO/WEO and D. McTigue, Administrative Assistant Land Use/ Commissions.

NO ACTION TAKEN.

M/S/C (McKenney/Buckley) to come out of Executive Session at 10:13 pm. Vote: approved unanimously.

**PLUS DELTAS:**

Commission review of the positive aspects and areas for improvement in regard to the conduct of tonight's meeting.

**CORRESPONDENCE:**

- Conference information.
- Workshop information regarding stream crossings.
- CT Federation of Planning & Zoning Agencies - information on annual conference.

**ADJOURNMENT:**

M/S/C (Buckley/Walter) to adjourn the meeting at 10:25 pm. Vote: approved unanimously.

Doris McTigue, Administrative Assistant/Recording Secretary