

SALEM PLANNING AND ZONING COMMISSION
MINUTES
May 25, 2010
7:00

Present

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

Absent

Bingham, D
Walter, G.
Vacancy
Vacancy, Alt

Guests

See attached

A. CALL TO ORDER

Chairman H. McKenney called the meeting to order at 7:03 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

Change Petitioner item 1) Woronick (SP#10-05-01)-14 Cherry Tree Road to New Business, item 1).

Add Renz Construction request for waiver of Section 14.6.d of the Zoning Regulations in regard to Excavation Permit:

Vote: Approved Unanimously

C. PETITIONERS:

- 1) **Renz Construction- 160 Witch Meadow Road-waiver request of Section 14.6.d of the Zoning Regulations concerning Excavation Permit.**

M. Chinatti stated that according to the truck slips approximately 4389 cubic yards of material has been removed from the site. From the photos and inspection of the site, there has been minor activity. Last year a plan was

submitted with spot elevations. M. Chinatti recommended approving the waiver request.

G. Fogarty asked M. Chinatti if she knew what amount was excavated last year. M. Chinatti did not have that information available. G. Fogarty reminded the Commission of the discussion the previous week in regards to tracking those amounts from year to year.

M/S/C (Buckley/Fogarty) to approve the Renz waiver request of Section 14.6.d of the Zoning Regulations in regard to Excavation Permit Renewal.

Vote: Approved Unanimously

D) NEW BUSINESS

1) Woronick-(SP#10-05-01) 14 Cherry Tree Road

M. Chinatti stated plans were submitted last week, at that time she did not have time to review. Since then a revised set of plans have been submitted. She did review them yesterday, and sent comments to the applicant, the applicants engineer, the Public Works Director and the Sanitarian. She has not received comments back from the Public Works Director or the Sanitarian. Construction of two storage buildings for equipment and building supplies is being proposed. The property is in an industrial zone and the construction will be for supporting a forestry and tree farm operation, which has not been established as far as M. Chinatti can tell.

H. McKenney asked if the applicant would like to address the Commission.

Rosalind Page, the applicants land surveyor, supplied the Commission with plans. She stated the plans were revised from the original plans submitted to M. Chinatti. She stated there would be further revisions as they receive the comments from M. Chinatti. R. Page thanked M. Chinatti for the timely comments and review. She described the site as being bordered by Route 11 on the east side, Witch Meadow Road on the south side, and Cherry Tree Road on the west, (which has been abandoned). The site is approximately 50 acres. It is totally wooded except a cleared area of about 20,000 square feet.

She used the USGS maps for the topography, which has been included at ten-foot intervals. She would like to show contours at every two feet on just the area of activity. She was advised to ask for a waiver request for this purpose.

She also discussed the need for an A2 survey. She has gone out and located monuments on Route 11 and the subdivision on West Road. R. Page did not think the A2 survey would give significantly more information than the plan that will be presented. It will be to a significant degree of accuracy to show where the buildings and other feature will go.

H. McKenney inquired about the abandoned road. He asked if the boundary markers still recognize the boundaries of Cherry Tree Road.

R. Page stated that it is her understanding that once a road has been abandoned the abutters can claim twenty-five feet of the abandoned road assuming it is fifty feet wide. She stated the boundaries on the plan do not claim the extra twenty-five feet.

She informed the Commission she received a non-declaratory ruling from the Inland Wetlands Conservation Commission.

There will be two (2), 24'X36' one story, dry storage buildings. The buildings will be on a slab with no plumbing, septic, electricity, or wells. The applicant is a builder and has bought property in another town to subdivide. There is a tree farm on the property and he wants to transplant the trees from that property to the Cherry Tree Road property. He will also be storing his construction equipment in the buildings. The area where the trees will be planted will have E & S controls. She discussed some of the other comments from M. Chinatti

H, McKenney stated any comments to the plan are usually addressed and resolved outside the meeting.

K. Buckley asked about access to the property considering the road is abandoned.

R. Page stated that if a road is abandoned the property owners abutting the road have full use of the road to access their property.

M. Chinatti had no other comments.
This application will be put on the agenda for the next meeting of the Planning and Zoning Commission.

M. Chinatti suggested not revising the plan until comments have been received from the Public Works Director and the Sanitarian. The waivers should come in sooner than later.

M/S/C (McKenney/Fogarty) to continue discussion on application-Woronick (SP# 10-05-01), 14 Cherry Tree Road until the June 15, 2010 meeting. Vote: Approved Unanimously

D. PUBLIC COMMENT

None

E. OLD BUSINESS

1) Kobyluck Brothers, LLC-Special Exception Renewal for an excavation operation at 209 Rattlesnake Ledge Road

M. Chinatti informed the Commission that she spoke to the attorney and he stated that the bond estimate and restoration plan information from the Town Engineer would be clarification, not new evidence. She then spoke to the Town Engineer and he emailed the answers (See File Copy) to the Commission's questions concerning those two issues, he has not gotten back to her on the bid package questions. .

G. Fogarty asked if the check for the application has been submitted, M. Chinatti stated that it was received on May 19, 2010.

G. Fogarty asked if the restoration bond included the cost of labor. M. Chinatti stated the costs included the buying of materials and cost of labor.

The Town Engineer informed M. Chinatti, the bond estimate is a draft, when the revised restoration is completed he will be able to give a more accurate estimate.

The Commission asked who would be responsible for the bid package and administering the restoration. H. McKenney thought it would be the Public Works Director. M. Chinatti stated that a town employee's time cannot be charged to the property owner.

M. Chinatti was directed to ask the Public Works Director and the Town Engineer who would put together a bid package and administer that work.

a) Devaluation of Neighboring Properties

H. McKenney called out exhibits HHH, III, JJJ, LL, MM, EE, & GG, as well as verbal testimony from the Town Assessor, Norm Wood.

It was pointed out there were inadequate minutes from the Board of Assessment Appeals, (BAA)

H. McKenney explained the difference of functional obsolescence and external obsolescence. He referenced the exhibits submitted by C. Philomena detailing the assessment information which showed no reduction for external obsolescence in 2007. One month later after a BAA appeal there was an external obsolescence of 20% applied to the property. He noted in the packet there was a letter from C. Philomena explaining the difference between the 20% vs. the 5% the following year. She goes on to state; sections 11.4 of the findings are not met. She offers a compromise of limiting truck traffic that may help meet some of the findings.

K. Buckley originally thought it would be difficult to prove that the devaluation was directly related to the quarry. However, once receiving the information from the neighbors showing a devaluation of the property as decided by the BAA as well as the Town Assessor she could see there was a direct correlation. The letter from BAA makes direct reference to other properties where the value of the property has been devalued. There is a fair amount of evidence that the quarry had a negative effect on the value of the properties.

R. Savalle agrees with K. Buckley. She noted that if the operation goes back to full force even though

some of the value has been added back to the properties the residents would be back for a decrease in their assessments.

V. Smith referenced Exhibit KKK and pointed out D. Asafaylo,s comment, that even though there is no evidence the quarry has caused the problems and damage to the properties, the testimony of the neighbors constitute a reason to believe the quarry operation may have done enough damage to cause a reduction in their value. V. Smith asked the members what they thought of D. Asafaylo's opinion. H. McKenney reminded the members that it was one person's opinion, just the same as much of the evidence in the application process is. It is up to every member to assess those opinions for themselves.

G. Fogarty found the evidence compelling but much of the complaints came at time of intense operation. There has been a quarry there for many years, the neighbors have known this. There is also another quarry operating in the neighborhood. She felt putting restrictions in place could control some of the intensity. She feels a strong responsibility to protect the neighborhood, and believes they have suffered greatly over the years.

R. Amato stated as a ten-year resident of the town he has seen a lot of change in that area. He agrees with the other members. Town officials have acknowledged there is a problem as stated by the BAA.

H. McKenney stated he wrestles with this issue. He appreciates the evidence that has been provided. He also agrees with G. Fogarty that there are mechanisms to meet the special findings that would mitigate the effects on the neighbors. He read the letter from C. Philopena that states there is still a 5% depreciation on her and others properties. The 15% reduction was taken away and is now under appeal with the BAA to be decided in April (2010). H. McKenney noted that there is no new information as to that decision; he asked M. Chinatti if it would be new evidence to ask the BAA

what the determination was. She replied that it would be new evidence but, she would ask the Town Attorney.

K. Buckley stated that it is her understanding that the reductions to assessments are made for one year and then you have to comeback to continue the same reduction. She asked if that is how the BAA works.

H. McKenney asked if it was clarification to get information on how the BAA operates. Is the assessment only for a year, or is it a continuation until the next assessment? M. Chinatti stated she would discuss with the Town Attorney if asking officials would be clarification or new evidence.

M. Chinatti clarified that the Assessor was the official that took off the 15% reduction because the conditions in the area had changed, not the BAA.

G. Fogarty noted that when the Cease and Desist was issued it was legal for the operation to continue while it went through the legal process. She asked if they are denied on this application can they still operate while the legal process worked its way through the system. If we were to approve a plan with restrictions to make a more acceptable operation in the area and the applicant says yes that is fine, but, if we deny, then he goes to court and operates the way he wants for the two to three years while it is court.

H. McKenney pointed to the injunction that controls the level of operation. He stated that it is not appropriate to try to anticipate what the applicant will do if the Commission takes certain actions.

H. McKenney asked members if they thought restrictions could be crafted that would not further depreciate the properties.

K. Buckley noted there were no residents who came before the Commission and said things were better even though the operation is not what is once was.

R. Amato thought the residents did not come forward to say the operation was better for fear it could go back to what it was at its peak.

R. Savalle thought it was possible to put restrictions such as time of operation, number of trucks, reducing dust and filter the water that leaves the site.

V. Smith stated the Commission needs to find a way to make it work.

H. McKenney stated he was leaning towards limiting the hours of operation from 8 am to 4 pm, no weekends, & no holidays. He has looked at truck slips and thought 50-70 trucks per day is not in compliance with the findings section.

H. McKenney pointed out member G. Walters letter to the Commission (See File Copy) where he discussed limiting hours of operation and limiting truck traffic.

H. McKenney stated that at the rate of 60 trucks per day that is one truck every 10 minutes. He suggested limiting trucks to 20 per day.

K. Buckley remarked that limiting the hours of operation and truck traffic will make the life of the quarry last longer.

G. Fogarty asked how do you police the number of trucks going to the operation, H, McKenney stated that the truck slips will provide information as to how many times a day they go to the operation.

R. Amato stated the Town needs to be more vigilant and on guard. H. McKenney stated that the issue of enforcement is up to the ZEO who is the agent of the Town. He reminded R. Amato that the Planning and Zoning Commission is not the enforcement agency of the Town.

It was the consensus of the Commission that it is too early to decide on restrictions that have been discussed.

B. TOPSOIL

H. McKenney stated there is evidence from a number of sources, GGG, letter from Kobyluck to M. Chinatti, May 13 letter from Attorney Byrne, & exhibit CCC discussing the topsoil.

G. Fogarty agrees with G. Walter's letter in referencing Exhibit PP. She stated the attorney is clear; topsoil from Phase II cannot be used for Phase I

K. Buckley agreed it was clearly stated that no topsoil from Phase II on to Phase I. She referenced exhibit U from E. Bartlett to M. Chinatti in which it stated that the topsoil was previously stockpiled on Phase II, this material was used as required to re-grade the slopes to a more natural terrain. K. Buckley questioned the fact that Phase I is seven acres and five acres will have to be restored before any excavation on Phase II can begin. Phase II is only two aces, the numbers do not add up, how can there be enough material from Phase II to cover Phase I.

H. McKenney pointed out the May 13th letter, Exhibit I, third paragraph, refers to the injunction that prohibits any and all activity at the quarry except for those activities needed to restore the site so it is in compliance, thus, stockpiles can only be moved for the purpose of restoring Phase II completely or of restoring five acres of Phase I. A restoration plan is needed. While Kobyluck claimed to operate under 2002 zoning regulations, its submission of an application in 2005 and 2009 placed it under the authority of the currant regulations. H. McKenney is having a difficult time reconciling the attorney's opinion to his thoughts on the stockpile straddling Phase I and Phase II. He stated he cannot see the linkage the attorney is making and the notes in 2002 site plan where it talks about topsoil in both phases.

G. Fogarty stated, that if you take the topsoil on Phase II that has been used to restore the slopes you are “un-restoring” the site, which is going against the injunction. She would be more comfortable if it was in a stockpile and not used to restore, we have no idea how much of the topsoil is on the slopes.

M. Chinatti says that the topsoil from Phase I was used to remediate the slopes on Phase II and that is where it will stay.

K. Buckley stated the reason Phase II was remediated was because the operator went into Phase II before finishing Phase I

V. Smith stated that it makes no sense to take from Phase I, put it on Phase II, then take from Phase II, to put back onto Phase I

G. Fogarty stated the attorney said topsoil from Phase II cannot be used on Phase I .The judge gave an opinion in the injunction and the Commission should trust his opinion.

H. McKenny stated that he is more comfortable with the issue of not being able to take topsoil from Phase II to restore Phase I. He understands that as soon as you take topsoil from Phase II to restore Phase I you are in violation of the injunction.

H. McKenny said the topsoil from Phase I was a large pile of topsoil. In order to restore the slope on Phase II, which was approximately ½ acre compared to the five acres of Phase I, the topsoil laid down must be about two feet thick.

G. Fogarty stated that W. Thomas the Town’s former engineer stated he inspected the remediated area of Phase II and there was very little topsoil on the slopes. He had stated some of it looked like subsoil material and he was unsure if it would grow grass. The property owner was given until April to try to stabilize the soil with grass and vegetation. W. Thomas concluded there was over excavation in some places of up to forty feet. This was stated in Exhibit O.

The Commission took a break at 9:30 pm
The Commission resumed at 9:38

H. McKenney asked the Commission to look at Exhibit GGG, submitted by Kobyluck.

M. Chinatti reminded the members that use of the stockpile from Phase I to remediate Phase II slopes is not considered temporary. The slope was there before and was put back so it is not considered temporary.

H. McKenney stated that the 2002 plan, page 8 stated normal construction standards are to stockpile materials outside of the area under construction, for future reclamation of the area under construction.

The applicant's argument is he is still in agreement with the general notes on page 8 of the 2002 site plan. H. McKenney noted that G. Fogarty is saying that the topsoil is no longer in a stockpile it is part of the remediated slope.

Discussion of the testimony of W. Thomas report to the Commission ensued, as well as what constitutes topsoil. H. McKenney differentiated between loam and topsoil. He said that when he and M. Chinatti looked at the site it was their conclusion that a low quality topsoil was used to restore the slope in Phase II. It was G. Fogarty's recollection that the property owner had to come back in the spring because it was too late in the season to plant grass. The grass did not come back and the Commission pushed to have another seeding done, which was not done until later in the year.

M. Chinatti read from Dec 1, 2009 minutes, a motion allowing the owner to operate pending permit renewal. The motion passed unanimously to lift the injunction against Kobyluck providing certain conditions on the remediation of the slopes were met. M. Chinatti stated a letter from the applicants engineer was received stating all the conditions were met.

It was the consensus of the members that the Commission abides by the injunction and the attorney recommendations.

The Commission went over items still remaining to be discussed. K. Buckley asked for a list of topics still remaining and a summary of what has been discussed. R. Savalle volunteered to summarize the lists.

M/S/C (McKenney/Amato) to continue discussion on deliberations of the Kobyluck Brothers, LLC Special Exception Renewal for an excavation operation at 209 Rattlesnake Ledge Road until a Special Meeting on June 7, 2010 at 7:00 pm. Vote: Approved Unanimously

F. NEW BUSINESS

Full member vacancy

The Board of Selectman will fill the vacancy.

G. ADJOURNMENT

M/S/C (Fogarty/Savalle) to adjourn at 10:18 pm. Vote: Approved Unanimously

Respectfully Submitted

**Sue Spang
Recording Secretary**