Planning and Zoning Meeting Minutes – June 15, 2010

Commissioners Present: Chairwoman, Cristin Rich; Dan Dwyer, Jon Higgins, Michael Klemens, Fred Schmidt, Judy Swanson and Martin Whalen. Absent: Allen Cockerline .

Also present: Tom McGowan, Salisbury P&Z Consultant Planner; Nancy Brusie, ZEO; Jocelyn Ayer, NWCRP Collaborative; Christopher Wood, NWCRP Collaborative; citizens.

The meeting was called to order at 5:35 by Chairwoman, Cristin Rich.

The Agenda was reviewed and amended to include a presentation by Jocelyn Ayer and Chris Wood from the Northwestern Connecticut Regional Planning Collaborative. **It was moved by M. Klemens, seconded by D. Dwyer, and unanimously voted to approve the Agenda as amended.**

The Minutes of the June 1st Meeting were reviewed and amended. **It was moved by D. Dwyer, seconded by M. Klemens, and unanimously voted to approve the Minutes as amended.**

Several Commissioners had conflicts with the date of June 24th for a Zoning Training Session with Steve Byrne. C. Rich will contact Mr. Byrne to re-schedule for later in the summer.

C. Rich will attend the Selectmen's Meeting, July 6th at 4:00, to discuss the responsibilities of the Aquifer Protection Agency.

C. Rich will also request that an approach to developing a Town Ordinance establishing Zoning Penalties be included on the Agenda of the Selectmen's , Meeting on July 6th. If that is not possible, she will request that the issue be put on the Agenda for the Selectmen's Meeting in August.

A bill has been received from HVA for GIS work for ten hours of work at $60 per hour for a total of $600. There was some discussion. The work described is for digitizing 104 maps, and reflects new property transfers. The Assessor's Office shares this information with P&Z, but they must maintain a paper copy of all property transactions as well. Digitization of property information will be an ongoing expense, and the data base created will ultimately be used by the Town as well. It was suggested by J. Higgins that in the future the cost of digitizing map information be included in the applicant's fees to avoid the cost being born by the Salisbury taxpayers.

It was moved by M. Klemens, seconded by D. Dwyer, and voted unanimously to approve the payment of the $600 bill to the HVA for digital parcel updates for 2010.

It was also noted that the outcome of the ruling concerning the Scott Warner litigation has not yet been recorded in the GIS data base. There was some discussion. It was decided to consult Attorney, C. Andres, as to the particulars of proceeding with updating the property information to reflect the ruling as upheld in the Connecticut Superior Court.

It was also noted that Mark Brown is leaving HVA. C. Rich requested that ZEO, N. Brusie get all the relevant data from Mark before he moves on.

Public Hearing – Extension of Moratorium on Outdoor Wood Burning Furnaces

The Public Hearing was opened at 6:10.

The proposed extension was read into the record by D. Dwyer, as follows: Add to Section 1203.1, "This moratorium is extended from June 26, 2010 for a period of six months to December 26th, 2010."

C. Rich read correspondence from the Northwestern Connecticut Council of Governments, dated May 11, 2010, re: Wood Burning Stoves, (Note: *Stoves* is the word choice used by COG).

Staff Comments: Dan McGuinness

The proposed amendment would extend the moratorium on outdoor wood burning stoves for another six months. In June 2009, the Commission imposed a one year moratorium on the stoves in order to develop an appropriate zoning regulation.

The Commission should note that, while the State statutes do not set an absolute time limit on moratoriums, a court may find that eighteen months is sufficient time to develop a zoning regulation. It would be prudent, therefore, for the Commission to complete its work on outdoor wood stoves prior to the end of the proposed moratorium extension.

Action: The proposed moratorium does not conflict with any plan or policy of the Northwestern Ct. Council of Governments.

There were no public comments. **It was then moved by D. Dwyer, seconded by M. Klemens and approved unanimously to close the Public Hearing at 6:15.**

It was moved by M. Klemens , seconded by D. Dwyer and voted unanimously to approve the extension of the moratorium on Wood Burning Furnaces to December 26th, 2010.

Non-conforming Impervious Surface Regulations in the Lake Overlay Zone

N. Brusie presented the situation concerning the current application by Dennis and Peg Card for modifications to the property at 32 Ethan Allen Street. They would like to: remove a section of driveway, replace it with gravel, and add a new deck which will be 224 square feet in size. The property is currently non-conforming as to impervious surface coverage. This modification will reduce the percentage of impervious surface coverage on the lot, therefore making it less non-conforming.

There was an extensive discussion. It was determined that the PZC has no regulatory nexus for this application, and therefore, the application may go forward.

Points made in the discussion:

- The regulations should be codified to clarify the status concerning impervious surface coverage of a non-conforming property once it has been altered, during the process of renovation.

- Changing a non-conforming property so that it is less non-conforming, makes ecological sense, is of benefit to the Town, and has been the established practice in Salisbury for 28 years.
- If "impervious surface coverage" is only defined in the regulations under storm water management, then that definition may not be applied in this case.
- The impervious qualities of a deck have not been determined. A variety of factors come into play in determining the impact of a deck on groundwater in its vicinity.

It was decided that Tom McGowan will consult with Attorney, C. Andres to draft language to codify this regulation for review by the Commission at the next meeting.

Post-meeting email correspondence on this issue is included as an attachment.

Lake Overlay Zone

T. McGowan provided a draft for discussion concerning modifications to the Lake Overlay Zone regulations. This draft was developed following the request of the Twin Lakes Association for some regulation to protect trees around the lakes. There was some discussion. Mike Haupt, of the Twin Lakes Association, and Bill Littauer, President of the Lake Wononscapomic Association, both endorse the idea of collaborating to develop some kind of regulation to provide this protection.

D. Dwyer requested that the two Lake Associations form a Joint Committee to accomplish this task so that one, unified plan may be presented to the PZC for consideration.

Points made in the discussion:

- Regulating trees larger than 2" in diameter seems excessive. Most tree regulations use 8" or 10" as the point of determination.
- The PZC must develop regulations based on ecological function only. Any regulation concerning vegetation around the lake should consider all vegetation, not just trees.
- If there were a regulation developed impacting trees around the lakes, it would have to apply to all trees, regardless of whether or not there is an application before the PZC.
- There should be a distinction made in the regulation between vegetation that is beneficial, and invasive species which are not.
- Once the regulation is drafted, there must be an inventory of all trees which fall under the regulation. Trees that are healthy and larger in diameter (older) should have higher protective measures than trees which are younger.

Northwestern Connecticut Regional Planning Collaborative

Jocelyn Ayer and Chris Wood presented on the progress of the NWCRP Collaborative concerning the development of various options for affordable housing in Salisbury. They noted that Salisbury's Affordable Housing Advisory Committee will be presenting their report this week. One of the recommendations from the AHAC is the development of an Incentive Housing Zone for Salisbury.

The Collaborative is also offering an array of services to Planning and Zoning Commissions who become members for an annual fee of $350. Services are also available on a fee-for-service basis. One of the services offered was assistance with developing a POCD. D. Dwyer had some questions about the legal status of the Collaborative. The Collaborative is a discretely funded component of the Northwestern Connecticut Council of Governments.

Commissioner, J. Higgins, left the meeting at this point, 7:00 pm.

New Haven Planning Conference **-** C. Rich reported on the New Haven Planning Conference. It was noted that the deadline for completing a Plan of Conservation and Development has been extended to 2014.

Excavation and Grading - D. Dwyer reported that Dan McGuiness will have a draft of this regulation for the Commission to review at the July 20th meeting.

Correspondence

Selectman, Jim Dresser, sent an email the members of the PZC urging them to attend the report of the Affordable Housing Advisory Committee at 7:30 on June 17th in the Town Hall.

Tom McGowan presented two drafts of Administrative Procedures, one from Westport and one from New Hartford, for the Commission to review as possible models for development of a set of procedures for Salisbury. He suggested that some time be set aside at each meeting to discuss these.

Email correspondence received post-meeting concerning the Lake Overlay Zone is included as an attachment to these Minutes.

There being no further business, it was moved by M. Klemens, seconded by M. Whalen and voted unanimously to adjourn at 7:30.

Submitted by Garrett Richardson

6/17/2010

Attachment:

From: "Garrett Richardson" garrettrichardson@comcast.net

To: "nandi3905" nandi3905@sbcglobal.net Subject: Re: Tonight's Meeting

Date: Thursday, June 17, 2010 12:16 PM

Cristin and Michael,

I appreciate the assistance with choosing wording for the Minutes that you will accept. However, you have also been adamant in the past, that I should not edit Minutes outside of the public forum, which I assume applies to you as well as the other Commissioners. There was some difference of opinion on this topic, as you may recall, which I have tried to express. I think it would be best to include this email chain as an attachment, so that an appropriate discussion can take place.

As always, my job is to record what took place, not what we would like to think took place. Garrett

----- Original Message -----

From: nandi3905 To: Garrett Richardson

Cc: Michael Klemens ; Nancy Brusie

Sent: Wednesday, June 16, 2010 12:05 PM Subject: Fw: Tonight's Meeting

Garrett, see note below, particularly where I have added the yellow background to Michael's text. Thanks, I knew Michael was very carefully choosing the work nexus so I expect that there is some specific legal interpretation that is important here.

Cristin

----- Forwarded Message ----

From: "fenbois@aol.com" fenbois@aol.com

To: nandi3905@sbcglobal.net; tajmcgowan@yahoo.com; nbrusie@salisburyct.us

Sent: Wed, June 16, 2010 6:35:48 AM Subject: Re: Tonight's Meeting

The ZEO came to us to determine if in fact there was a regulatory nexus between the LA Zone and the creation of this deck. After much discussion it was determined that our regulations did not specify decks as impervious coverage--and while I believe there are some imperviousness issues with decks, absent clarity in the regulations, we could not reasonably require an application for an activity that we did not have a clear, defined legal ability to regulate under the LA Zone.

As we move forward we need to address the concept of swapping out and intent in the ecological goal of reducing coverage non-conformity in the LA zone and we need to address the imperviousness issues based on scientific data of the functions (and impairment of same) by decks and semi-pervious substances, gravel, compacted dirt, decks, pavers, etc.

I agree that this entire string needs to be in the public record, hence Nancy is copied on same, and if you are all comfortable with the above synopsis it may be helpful for Garrett to get this string so she can crib from the language above for the minutes of last night's meeting?

Nancy could also send this to Wendy--I believe that is the appropriate route for this inquiry from Wendy to be addressed.

-----Original Message-----

From: nandi3905 <nandi3905@sbcglobal.net>

To: Michael Klemens <fenbois@aol.com>; Tom McGowan <tajmcgowan@yahoo.com>

Sent: Tue, Jun 15, 2010 10:32 pm Subject: Fw: Tonight's Meeting

This seems that we need to enter this into the record? I don't know why I am receiving this outside a meeting, it seems to be best as a correspondence for the full commission? There is also the question of an application, should we look at this once it is an application? I believe that we don't have a public hearing on the LA zone, but that the commission needs to review applications. Both of your thoughts and advise would be appreciated.

Tom: Thanks again - what a help to have you as our consultant planner!

Cristin

----- Forwarded Message ----

From: Wendy Bailey Hamilton <dph@mohawk.net>

To: nandi3905@sbcglobal.net

Sent: Tue, June 15, 2010 9:50:39 PM, Subject: Tonight's Meeting

Hi Cristin:

I am so confused about what happened at your meeting tonight. The Agenda said that there was merely going to be a discussion by the Commission on impervious surfaces in the LA zone, but it turned out there was actually an application. It happens that this was an application that I would have had an objection to, but there was no opportunity to voice that. And, I think you may have approved the application (I'm not entirely sure, but I'm guessing since your ZEO turned around, winked at the applicants, and told them they were O.K.).

The reasons that I heard given for the approval were that you didn't have a good regulation, so you were just going to approve this and work on the regulation later. Also, you didn't want to "hold the applicants hostage".

We have lots of regulations that aren't very good, but they're what we have and I think we need to follow each one UNTIL a new regulation is written. It just seems that ruling IN SPITE of a regulation could really cause some trouble down the line. And I have to say that, while I love the idea of not holding applicants hostage, I think this should be applied more even-handedly. I've been held hostage for over a year.

I know this is small stuff in light of all that you all have to work on, but I couldn't not say something. Please know that I am full of admiration for the willingness of all of you to work so hard to improve the Commission, our regulations, and the process.

Wendy

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