

Town of Cheswold
Planning Commission Meeting Minutes (*Corrected*)
(Corrections Italicized)
December 12, 2013
Cheswold Fire Hall Conference Room

- I. **Chairperson Coker called the meeting to order at 7:10 pm**
- II. **Pledge to the Flag**
- III. **Observed Moment of Silence**
- IV. **Confirmed Proper Meeting Notice was Posted**
- V. **Roll Call**

Present

Martha Scott

Alan Roth

Dennis Coker

Absent

Barry Jones

Albert Lambertson

Chairperson Coker acknowledged the presence of Mayor Tinari and Mrs. Callender, Cheswold's Land Use Administrator. Mr. Coker thanked RuthAnn Purchase for volunteering to take meeting minutes.

VI. Motion to Accept Agenda

Commissioner Roth made a motion to accept the agenda as presented; seconded by Commissioner Scott. Motion unanimously carried.

VII. Reviewed Minutes of Previous Meeting

Commissioner Scott made a motion to accept the November 11, 2013 meeting minutes as corrected; seconded by Commissioner *Roth*. Corrections: 1.) under Roll Call change 'Allen' to 'Alan' 2.) under Roll Call delete partial sentence at end of last paragraph.

VIII. Review Land use Ordinance Revision Log

a. Re-zoning process:

Chairperson Coker began this discussion by stating the Comprehensive Plan informs the zoning process. The question arose, 'do we need to consider a comprehensive plan amendment prior to re-zoning?'. Several examples were discussed i.e. the request to re-zone the Wonder Bread property fronting Rt. 13 and the possible request to re-zone the Saratoga property by the new owners.

b. Commissioner Roth asked, 'Do we re-zone when an applicant asks or do we re-zone because we want to?'. *Commissioner Roth clarified that his comment was looking for consistency in the way the rezoning process works in the comprehensive plan.*

Mrs. Callender stated she felt there may be two different processes; one where we (the Town) request the re-zoning and one where an applicant requests the re-zoning. Mrs. Callender stated some felt the Town should never have to re-zone.

Mr. Coker mentioned our last attempt to re-zone the business park was met with a legal challenge claiming 'infringement on vested rights' and 'loss of profit potential'. Mr. Coker also stated the Town may have prevailed if it had pushed hard enough. The Town was in a difficult situation at the time and did not have the ability to fight the legal challenge. He stated it may have been a failure to communicate.

Mr. Coker said if the Town initiates an action of re-zoning that brings a new applicant or property into compliance there is not a whole lot an applicant can say. The Town has a strategy that we need to put in place the next time we update our comprehensive plan. We are on sound legal footing as long as we stay in compliance with the comp plan, which is our bible for planning issues. To permit a rezoning is good as long as it is in compliance with our current comprehensive land use plan.

Commissioner Roth stated he thinks the non-conforming use law applies in this case.

Mr. Coker stated once a property changes ownership, it must comply. For instance, you cannot replace a trailer that is non-conforming. It must be replaced with a conforming use. That is basically a grandfathering mechanism to identify a non-conforming use, which must be disclosed at the time of sale. I do not believe we can legally permit a non-conforming use. For instance, we are trying to preserve the character of the R1 district.

Mrs. Callender brought up the example of Culligan Water. Mrs. Callender said when Culligan Water took down the roadside sign they either had to put the exact sign back up or get a permit for a new sign. The old sign was grandfathered as a non-conforming use; a new sign must comply. She asks, 'should there have been a site plan review when a property changes hands?'

Mr. Coker commented when someone comes in for a business license, they should be asked if they are going to make changes to the site. If yes, we need a site plan review. Just like the Atlantis Homes property, if they change zoning to C-2, the existing business is not in compliance. At that time, we need the applicant to submit for a site plan review.

Mayor Tinari asks, 'shouldn't the real estate sales person who brought them in have been able to say if *their* business is in compliance?'

Mr. Coker commented the applicant is paying the realtor to help them through the process. The realtor should be familiar with the jurisdiction and know how to negotiate to bring a client into compliance. We miss the opportunity to bring a new business into compliance, if we do not discuss specifics with them. When we reviewed the State Line preliminary plan check list with

them, we are learning what we are supposed to do. That was for our benefit as much as their benefit.

Commissioner Roth asks, 'isn't there a practical problem when say a cat grooming spot sold to another cat grooming business is assumed to not be making any changes?'. Shouldn't something be attached to the business license application which might ask if they are making changes? This would also trigger the fire inspection.

Mrs. Callender comments, the code enforcement officer decides whether they need to come into compliance. He goes out looking for changes.

Mr. Coker states we do need to put into words what triggers a site plan review. But getting back to the topic for tonight, re-zoning; looking at the application, do we need more information or less. Is it necessary that we have the zoning district chart on this application?

Mrs. Callender states, we want the applicant to know what their choices are.

Mr. Coker states, our task is to codify this. Re-zoning is such an accepted practice, it is understood that we do it but we haven't had a process outline.

Mrs. Callender stated she wanted the commission to know that she had created the re-zoning application in response to a re-zoning request. There is a fee in our fee schedule and we need to mention that on the application so it is clear and agreed to at the time of signing.

Mr. Coker stated, the original request in the land use revision log stated 'suggesting creation of an article 4-9'. Section 4-8 on page 28 of Land Use Ordinance is the Administrative Procedures of the ordinance including application processes; the last one is for variances and appeals. The title for 4-9 would be 'Re-zoning Process' which would have under it some wording that would lead the applicant down the path of getting to the application we have just been reviewing. So we should have some reasons why a re-zoning should be considered. This application might include a reason why they want rezoning. Section 4-1B says general procedures, duties of administrator; we can spell out this process. We need to modify some of this language. The application review process on page 25 may need to be adjusted and a few bullet points added; such as Number 3 "if planning commission finds compliance and accepts the administrators report . . . pass it to the town council".

Com. Roth states, it seemed to me that a lot of this ties our hands to certain steps; rather than that, it seems that we might want to have a check list with a max and minimum time it will take. Rather than going into so much detail, which leaves us open to missteps if we do not follow it to

the letter of the law. Does the applicant need to know so much of our detailed process or have such strict time frames? We just want this to be in balance.

Mr. Coker states, the table at the end of article four, Table 4-4, Time Line for Plan Approval, would govern the time line for rezoning approval. Part of the goal of writing an ordinance is to be loose enough to be flexible but tight enough to be enforceable.

Mrs. Callender states, she would like the applicant to understand what we are taking into consideration before making a decision. She would like the process to be simple enough to be followed in her absence.

Commissioner Roth made a motion to table this discussion until further research is done; seconded by Commissioner Scott. Motion carried unanimously.

c. Sample Forms and Form Instructions

Chairperson Coker states the 'land use plan revision log' requests adding sample forms and instructions. He asks Mrs. Callender, Land Use Administrator, for clarification on this request.

Mrs. Callender states, she was getting hit with so many questions that she went into overdrive form mode. Mrs. Callender said she created a form for each of the possible scenarios. She said she is satisfied with the concept plan form but there were so many different preliminary plan formats. She decided to take the fee schedule and created a draft of a preliminary plan application with a list of all the types and the applicant could check off which one they wanted. It is a general check list. Then we can do away with a whole lot of different forms.

Mr. Coker asks, 'are you withdrawing your request for a new article about forms and instructions?'. He states it may not be wise to include forms and instructions in the land use ordinance because if there is a need to update them a public hearing may be required and Council approval obtained. Mr. Coker said he would entertain a motion to strike Number 8, B & C from our agenda.

Commissioner Scott made a motion to strike Number 8, B & C from the agenda; Commissioner Roth seconded. Motion unanimously carried.

IX. Motion to Adjourn

Commissioner *Roth* made a motion to adjourn at 9:00 pm; Commissioner Scott seconded. Motion unanimously carried.