

**TOWN OF SALEM  
PLANNING & ZONING COMMISSION  
REGULAR MEETING MINUTES  
TUESDAY, FEBRUARY 25, 2020 – 7:00 P.M.  
SALEM TOWN HALL – CONFERENCE ROOM 1**

**PRESENT**

Vernon Smith, Chair  
John Gadbois, Vice Chairman  
Margaret Caron, Secretary  
Ruth Savalle  
Thomas Reith  
Carl S. Fontneau, Alternate (*seated*)  
Diba Khan-Bureau, Alternate  
Jon Walsh, Alternate (*seated*)

**ABSENT**

Walter Volberg  
Eric Wenzel

**ALSO PRESENT**

Town Planner Justin LaFountain  
Selectwoman Liaison Terri Salas

**1. CALL TO ORDER**

Chairman Smith called the meeting to order at 7:00 p.m.

**2. PLEDGE OF ALLEGIANCE**

**SEATING OF ALTERNATE(S):**

Alternate Commissioners Fontneau and Walsh were seated for Commissioners Volberg and Wenzel, respectively.

**3. PUBLIC COMMENT:** *none*

**4. PUBLIC HEARING:** *none*

**5. APPROVAL OF MINUTES OF PREVIOUS MEETING(S):**

a) Regular Meeting Minutes: February 18, 2020

**M/S/C: Savalle/Reith, to approve the Regular Meeting Minutes of February 18, 2020.**

**Discussion: None. Voice vote, 6-0-1. Voting in Favor: Commissioners Fontneau, Gadbois, Reith, Savalle, Smith, and Walsh. Voting in Opposition: None. Voting in Abstention: Commissioner Caron.**

**6. OLD BUSINESS**

To address a comment he received following the Commission's previous meeting, Chairman Smith requested the Commissioners adhere to the following rules:

1. Those wishing to speak are asked to capture his attention and be recognized prior to speaking.
2. Each Commissioner shall have had the opportunity to speak once prior to being recognized to speak a second time.
3. Conversations shall proceed from left to right and all Commissioners will be afforded the opportunity to speak.

The goal is for the Commissioners to engage in fair and controlled discussions, ensure that no member is overlooked or overly dominant, and to hold constructive meetings during which all Commissioners are heard, no background discussions are taking place, and emotional outbursts are controlled. The Commissioners may be reminded of the rules during their meeting(s).

a) Continued Riparian Corridor Overlay Zone (RCOZ) Discussion

Commissioner Fontneau reported that he met with the Zoning/Wetlands Officer regarding the Town's available maps and mapping capabilities. In viewing the Town's Zoning Map, he recommended that the colors indicated for each of the zones be revised so as to clarify their delineations. In addition, he felt that the primary (within 50 feet) and secondary (over 50 feet) streams for the RCOZ should be more clearly defined. He noted that the RCOZ is included in all of the districts, with the exception of the Special Business A, Commercial Recreation, and Seasonal Residential Zones. He also suggested the possibility of creating and posting a large format color map on the bulletin board at Town Hall. Commissioner Khan-Bureau added the possibility of also obtaining and posting a map of the RCOZ zone from the Eightmile River Wild & Scenic Watershed. Town Planner LaFountain agreed that the colors on the map could be clarified and noted that the PDF version of the map that is available online is much clearer; he will obtain and provide better copies of the Zoning Map as well as the Eightmile River Wild & Scenic Watershed map to the Commission during their next meeting.

The Commission reviewed and discussed the amendments to the regulation as proposed and presented by Town Planner LaFountain (*see file copy*). Chairman Smith stated that the revisions include the elimination of redundancies, correction of contradictions, and changes, per Town Attorney Steven Byrne's comments. The changes include:

SECTION 25A – ~~RIPARIAN CORRIDOR OVERLAY ZONE (RCOZ)~~ EIGHTMILE RIVER OVERLAY ZONE (11/01/07)

All references to the Riparian Corridor Overlay Zone (RCOZ) will be amended to reflect the revised name.

Section 25A.2 RCOZ Defined

Section 25A.3 ~~Significant~~ Activities within the ~~RCOZ~~ Eightmile River Overlay Zone

The deletions in this section were recommended by the Town Attorney in his letter, dated December 14, 2018. This section includes such terms as 'significant adverse impact' and 'reasonably available alternative', which "closely follow standards applied in the inland wetlands regulatory scheme. Thus, an applicant would need to pass through the same regulatory process twice for the same activity."

Section 25A.4.1 Standards and Permitted Activities within the RCOZ

In response to Commissioner Khan-Bureau who expressed her concerns regarding the deletion of invasive species in this section, Town Planner LaFountain stated that the topic is also included in Section 25A.4.2(h) and was removed to eliminate the redundancy. Commissioner Fontneau recommended the inclusion of aerial photographs

of the state of the land when the regulation was created in 2007 for comparison purposes; doing so would help make the section legal and easier to enforce. Town Planner LaFountain agreed, adding that the photograph could be used as a reference tool to determine and gauge the impact that any proposed activity would have within a given area. Because most aerial views are taken during the winter season, Commissioner Khan-Bureau will investigate the possibility of obtaining aerial photographs indicating the actual tree canopy from that period from Audubon Connecticut.

Section 25A.4.2 Permitted as-of-right activities within the RCOZ

- (a) Town Planner LaFountain recommended consulting with the Town Attorney regarding this particular subsection as the question might arise as to the allowance of the specifically listed activities in other zones within the regulations.
- (c) The Commission agreed to the following amendment to maintain consistency:  
The footpath(s) shall be designed in a way so as not to create a channel of surface runoff into the waterbody.
- (g) Items that are recommendations or encouragements were deleted as they are not enforceable. The possibility of creating an informational pamphlet that includes the eliminated recommendations/encouragements was proposed. Commissioner Khan-Bureau reported that the Inland Wetlands Commission has discussed and received funding from the Eightmile River Wild and Scenic Watershed to create and produce an informational brochure/pamphlet. A website link referring residents to an existing list of invasive species may be included in the publication.
- (k) Town Planner LaFountain will consult with the Uncas Health District regarding whether this item is under the purview of the Commission.

Section 25A.5.1(a) Activities Requiring Commission-Issued Zoning Permit

- (2) This subsection was recommended for removal by the Town Attorney as it conflicts with an as-of-right activity for a residential or farming property under both the zoning and wetlands regulations. Chairman Smith noted that this section is also similar to the suggested addition to Section 25A.4.2(b) regarding the ability to selectively thin a given area.
- (4) Chairman Smith suggested the possibility of deleting this item as it is also stated in the third sentence of subsection (1). In which case, Commissioner Khan-Bureau wished to include and not delete the words “full and” in subsection (1), as proposed, due to the importance of maintaining an adequate amount of tree canopy. Town Planner LaFountain explained that the term “full” was deleted due its subjective nature. Commissioner Savalle proposed the possibility of making reference to the aforementioned aerial map to determine the natural tree cover, thereby defining the term.
- (5) Town Planner LaFountain felt that the 25% figure would be difficult to determine if based upon the tree canopy of the entire town or, if based upon a given area, the

removal of 25% of the tree canopy would result in a significantly adverse impact in that area. The revision would provide the Commission with the discretion to determine the impact of the proposed removal. Commissioner Fontneau stated the possibility of requiring that any removal of trees be accompanied by the replacement/replanting of trees such that the area may be restored.

Section 25A.5.1(c)(1) and (2)

This subsection was deleted, as recommended by Atty. Byrne, as farming is a protected use; it is also in accordance to new case law.

Section 25A.5.1(f)

Due to its subjective nature, the term “insignificant impact” was removed. Such language is utilized by wetlands agencies and, in some cases, are overseen by the Inland Wetlands Commission. Town Planner LaFountain proposed the possibility of consulting with the Town Attorney for further clarification regarding the terminology and its use in the regulations.

*Commissioners Khan-Bureau and Reith departed from the meeting at 8:01 p.m. due to conflicting commitments/engagements.*

Section 25A.5.2(b) Planning & Zoning Commission Permit Process

While the Town has a schedule of adopted fees, there is no such fee for this particular activity. Town Planner LaFountain recommended that it be the same as the Site Plan fee, as both require the publication of a notice, the Applicant to come before the Commission, and results in the same financial impact to the Town.

Section 25A.5.3 Specific Standards for Zoning Permit in the RCOZ

Per the recommendation of Atty. Byrne, because Zoning Enabling Statutes require land uses to be treated uniformly, the Commission does not have the discretion to determine whether a Special Exception may or may not be provided within a particular zone.

Section 25A.6.1 Activities Permitted by Special Exception

- (a) Due to the vagueness and subjective quality of the statement, “maximum feasible width”, the sentence was revised and clarified to avoid any potential conflict.
- (b) While there were no proposed amendments to this subsection, Chairman Smith questioned whether such structures providing shoreline access, e.g., docks, boathouses, stairs, should require a Special Exception as they are part of the normal permitting process. Town Planner LaFountain explained that he retained the language due the varying size and scope of such structures and their resulting impact. After a brief discussion, he proposed creating a draft revising the language to include limitations.
- (c) Town Planner LaFountain reported that he sent the item to numerous town planners and received varying responses. As such, he proposed eliminating the subsection.

Section 25A.6.3 Specific Standards for Special Exception in RCOZ

- (c) & (d) Town Planner LaFountain explained that the item is not under the purview of the Commission, but under that of the Zoning Board of Appeals (ZBA), which reviews applications, called variances, in which the applicant is required to show hardship and request that a relief be granted based upon that hardship.

Commissioner Fontneau expressed his curiosity regarding the authors and adoption of the regulation; he stated the need to prevent the adoption of such regulations in the future. He also questioned the possibility of inviting someone to provide an explanation and discuss the need to maintain the 50' and 100' distances. Town Planner LaFountain stated that he could contact Eightmile River Wild & Scenic Watershed Program Director Patricia Young regarding her willingness and availability to either speak with the Commission and/or provide any relevant documentation. Upon Chairman Smith's proposal to invite a third-party professional who would present a more objective and scientific viewpoint, Town Planner LaFountain stated that he would investigate the possibility.

Commissioners Smith and Caron commended Town Planner LaFountain for his hard work and efforts.

**7. NEW BUSINESS**

a) Animal Keeping Regulations

Town Planner LaFountain provided a brief review of the regulations and the inherent conflict and difficulty in which the Zoning Enforcement Officer was presented with in enforcing these regulations. Per their request, he proposed that the following verbiage be added to Section 30.2 Special Agriculture Zone, General, of the regulation:

*The animal keeping limitations within this section shall not apply where animal raising is permitted by right in underlying zones. The application of this zone shall not be required when a Permittee Use listed in Section 30.4 is already a permitted use in a zone that permits the use.*

With regards to making any additional revisions, Town Planner LaFountain felt that, because the zone allows for other activities, it might be best to maintain the regulation as is.

The amendment will be further reviewed and discussed by the Commissioners at their next meeting.

**8. ZONING ENFORCEMENT OFFICER'S REPORT/INLAND WETLANDS AND CONSERVATION COMMISSION REPORT – no report**

**9. TOWN PLANNER REPORT**

a) MS4 Permit Clarification

Town Planner LaFountain reported that the MS4 Permit does not apply to the Town of Salem. The statewide permit applies to those towns which have at least 1,000 residents

residing in an urbanized area, as defined by the Census Bureau. Commissioner Fontneau stated that, in reviewing the regulations, he did not see any design standards for Low Impact Development with respect to the Connecticut Stormwater Manual and encouraged its inclusion in an effort to not only improve the Commission's review, modification, and approval process, but also to prepare them for any similar such State mandates that might arise in the future.

Town Planner LaFountain announced that a Niantic River Watershed Open Space Workshop will be held on Friday, February 28, 2:00 to 5:00 p.m., at Waterford Town Hall.

The Presidential Primary will be held in this Conference Room on Tuesday, April 28. As such, the Commission's meeting will be held in an alternative conference room.

Town Planner LaFountain will not be able to attend the Commission's June 16 meeting.

**10. CORRESPONDENCE:** *none*

**11. PUBLIC COMMENT:** *none*

**12. PLUS DELTAS:**

Commissioner Savalle commented on a very efficient, clear, and civil review of the RCOZ Regulation and commended both the Chair and the Town Planner.

Chairman Smith expressed his appreciation to the Commission for their cooperation and adhering to the rules. He also requested, and the Commission agreed, to provide him with the ability to cut their proposed budget increase for FY2020/21, should the Board of Finance request him to do so.

**13. ADJOURNMENT**

**M/S/C: Caron/Walsh, to adjourn the meeting at 8:36 p.m. Discussion: None. Voice vote, 7-0, all in favor. Meeting adjourned.**

Respectfully Submitted by:

Agnes T. Miyuki, Recording Secretary for the Town of Salem