

**TOWN OF SALEM  
PLANNING & ZONING COMMISSION  
REGULAR MEETING MINUTES  
TUESDAY, JUNE 13, 2023 – 7:00 P.M.  
SALEM TOWN HALL – CONFERENCE ROOM 1**

**The minutes submitted below have been filed in accordance with  
Section 1-225 of the CT General Statutes. They are subject to final approval  
with or without amendments by a vote of the Planning & Zoning Commission.  
Approval and any such amendments will be detailed in subsequent minutes.**

**PRESENT**

Vernon Smith, Chair  
John Gadbois, Vice Chairman  
Jennifer Lindo  
Martin Stoken  
Walter Volberg  
Gary Closius, Alternate (*seated*)  
James Jorgensen, Alternate (*seated*)

**ABSENT**

Diba Khan-Bureau  
Steven Shelley, Alternate

**ALSO PRESENT**

Town Planner Nicole Haggerty  
Zoning/Wetlands Officer Matt Allen

**1. CALL TO ORDER**

Chairman Smith called the meeting to order at 7:09 p.m.

**2. PLEDGE OF ALLEGIANCE**

*Alternate Commissioners Jorgensen and Stoken were seated for the Full Commissioners Khan-Bureau and the vacant position, respectively.*

**3. PUBLIC COMMENT:**

Chairman Smith recited the withdrawal letter, dated June 13, 2023, from CLA Engineers, Inc., for Site Plan, Special Exception, and 3-Lot Subdivision Applications (SD23-02 and SE 23-02) for American Property Group Salem, Inc., 496 New London Road.

**4. PUBLIC HEARING:**

- a) **SE 23-02 American Property Group Salem, Inc.** Application for a Special Exception and Associated Site Plan at 496 New London Road for a multi-family residential development proposing 24 – two-bedroom, residential units. Each unit has one garage.  
*Application withdrawn.*
- b) **SD 23-03 Colchester Construction.** Re-Subdivision application for 343 Old Colchester Road for the creation of one new lot.

**M/S/C: Lindo/Stoken, to open the Public Hearing for Application SD 23-03  
Colchester Construction. Re-Subdivision application for 343 Old  
Colchester Road for the creation of one new lot. Discussion: None. Voice  
vote, 7-0, all in favor.**

Ellen Bartlett, P.E., Principal, CLA Engineers, Inc., representing the Applicant, presented the Application for the re-subdivision of 343 Old Colchester Road. The re-subdivision, which is located in the General Business Zone, would create one 2.67-acre lot. The current driveway onto the proposed lot also serves two other residences on the property through an easement. Due to the poor sightlines, a Driveway Sightline Permit was submitted to and issued by CTDOT (Connecticut Department of Transportation). A second application was submitted to CTDOT for the Site Plan, which was approved, pending the town's approval. In the process of improving the sightline, significant material was removed along Old Colchester Road and stockpiled on the property with the intention of distributing the material throughout the property. At this time, the Zoning & Wetlands Enforcement Officer (ZWEO) issued a Cease & Desist Order and a woodchip berm was installed to avoid erosion prior to stopping all work. In light of two letters, dated June 8, 2023, and June 12, 2023, that were received from REMA Ecological Services, LLC, regarding the impact of the activities which took place at 343 and 343-R Old Colchester Road on the property owned by Sue Coffee, Principal Bartlett requested Robert Russo, C.S.S., Soil Scientist/Environmental Scientist, CLA Engineers, Inc., to review the property. At the recommendation of Soil/Environmental Scientist Russo, the woodchip berms were extended. In addition, two (2) Erosion/Sediment (E&S) Control Plans have been submitted as part of the Re-subdivision (sheet 4) and Site Plan Applications. Upon approval, Colchester Construction will own and build on the lot. She noted that the Contractor, Bob Gagnon, who owns Colchester Construction, has a history of successful projects in the Town of Salem, including the three (3) multi-family housing project on Old Colchester Road and the 48-unit Age-Restricted Housing Development on Norwich Road.

CTDOT Driveway Permit and Site Plan Approval (Commissioner Lindo) – CTDOT does not traditionally forward a copy of the Sightline Permit to the town. The town would, on the other hand, receive a copy of the CTDOT's approval for the Site Plan. The work conducted to improve the sightline would not include any part of the property that is outside of the state right-of-way. Chairman Smith noted that it would have been helpful to receive a copy of the Sightline Permit given the property's recent history.

Right-of-Way Distance (Commissioner Jorgensen) – The distance from the edge of the paved road to the property line is approximately 20'.

Parameters of CTDOT Sightline Permit (Commissioner Stoken) – CTDOT does not provide approvals for the clearing and/or stockpiling of material on the property.

Inspections (Commissioner Lindo) – CLA Engineers Principal Bartlett confirmed that the state conducts regular inspections of the work. The state does not provide copies of the reports. Once finalized, the state will release the bond. It was noted that the state also re-inspected the property following the receipt of complaints.

### **Public Comments**

Michelle Horan, 197 Witter Road, recited the letter, dated June 8, 2023, addressed to Town Planner Haggerty and ZWEO Allen from Ecologist, Professional Wetland Scientist, and Registered Soil Scientist Sigrun N. Gadwa, MS, PWS, and Professional Wetland Scientist Registered Soil Scientist, and Certified Senior Ecologist George T. Logan, MS, PWS, CSE, of REMA Ecological Services, LLC. The letter addresses the damage caused by the work conducted at 343 and 343-R Old Colchester Road on Ms. Coffee's property, based on a preliminary review of the property. She also recited an additional letter, dated June 12, 2023, submitted by Ecologist and Soil/Wetlands Scientist Gadwa and Logan regarding the impact of the activities on Ms. Coffee's property. Lastly, she recited a letter addressed to the Planning & Zoning (PZC) and Inland Wetlands & Conservation Commissions (IWCC), Town Planner Haggerty, and ZWEO Allen from John Hummel and Ms. Coffee regarding the Re-subdivision and Site Plan Applications.

Town Planner Haggerty reminded the Commission that they shall not consider the comments related to the Site Plan Application as it is not the subject of the Public Hearing.

Chairman Smith asked if there were any additional comments from the public regarding the application. There being none, he requested ZWEO Allen to provide a brief history of the property.

ZWEO Allen stated that the property, owned by John Diamantini, first came to his attention during the Summer of 2022 when several complaints were received regarding the construction of and public invitation to a dirt bike track located at the rear of the property. Upon investigating the complaints, a Notice of Violation was issued on August 22, 2022, per Section 17 of the Zoning Regulations. On September 22, 2022, he issued a Cease & Desist Order due to non-compliance with the previous Notice of Violation following an additional public event at the property. Per state statutes, any further violations would be considered willful and would be under the jurisdiction of the Superior Court. This Spring, complaints regarding unpermitted site work on another location of the same property were received. While the site work conducted in the

right-of-way was approved by CTDOT, the site work conducted outside of the right-of-way was not. The site work, which included excavation and grading, requires Zoning approval. Following the site work, Chairman Smith and himself reviewed the property and a Cease & Desist Order was issued on April 27, 2023. The First Selectman, Board of Selectmen, Town Attorney, and Planning & Zoning Commission have been made aware of the situation.

Chairman Smith expressed the Commission's dismay with the work that was conducted without the Commission's review and approval.

Conversations with the Property Owner (Commissioner Stoken) – ZWEO Allen stated that he spoke with Mr. Diamantini when the Notice of Violation and Cease & Desist Order were issued regarding the dirt bike track. He also spoke with Contractor Gagnon during the spring regarding the need to obtain approvals prior to any work being conducted on the property. It appears that the site work was, nevertheless, conducted and, due to a heavy rain event(s), the issues were augmented, instigating the Cease & Desist Order.

In response, Contractor Gagnon stated that a Permit was issued by CTDOT to conduct work in the state right-of-way. He clarified that, during his meeting with the ZWEO, he was instructed that any work on the property would be at his own risk. After being informed of the issues, he attempted to remedy the situation. The damage, he stated, was not intentional. He expressed his willingness to address and place additional erosion and sediment controls.

Pond Remediation (Commissioner Closius) – Contractor Gagnon stated that he is in possession of videos that were taken on April 2023 that depict a backhoe digging in the pond for two consecutive weekends. In addition, plantings were planted around the pond and the woodchips that were placed along the grassy area are depositing into the pond further exacerbating the issues. As such, he did not feel that all of the erosion issues are a direct result of the work that was being conducted on the neighboring property.

ZWEO Allen concurred that, once the Cease & Desist Order was issued, all work on the property ceased. He clarified that, while the activity occurred on the same property as the dirt racetrack, it is some distance away and Contractor Gagnon was not involved with the previous activity.

Rain event (Commissioner Closius) – The rain event occurred around April 2, 2023.

Placement of Dirt (Chairman Smith) – Following the removal of approximately 5,000 yards of dirt from the work conducted along the state right-of-way, Contractor Gagnon met with and explained the need to place the dirt on the property to the ZWEO and

proceeded to do so, at his own risk. Though erosion control was in place, it was not sufficient to sustain the unexpected rainstorm.

ZWEO Allen stated that the work was typical of a sightline excavation. The issue was exacerbated by the previous issues that arose from the dirt bike track. The situation is unusual and its controversial nature called additional attention to the matter.

Current Condition of the Erosion Control (Chairman Smith) – The Erosion Control has been reviewed by CLA Engineers and is currently in stable condition. Additional woodchips were placed in one area, as recommended by the Soil Scientist, and the grass is growing along the right-of-way. Plans are in place to reinforce the area by placing hay bales and a silt fence. CLA Engineers Principal Bartlett concurred, recommending that a silt fence be installed behind the woodchips prior to any additional disturbances on the land.

Sue Coffee, 10 Saunders Hollow Road, Old Lyme, agreed that the sightline did need improvement. Nevertheless, she stated that, by removing the bank, the area is now pitched and no longer level, resulting in the traveling of the runoff to her property. In response to Contractor Gagnon, she stated that the backhoe was not in the pond nor were woodchips placed in the pond; the area continues to serve as a habitat for the frogs.

Planting of Trees (Chairman Smith) – She stated that she has planted a row of arborvitaes to block the noise of the dirt bike track and in preparation to establish the Sue Coffee/Ray Snarski Preserve.

Fire Marshal's Comments (Chairman Smith) – The Fire Marshal's report is pending.

Inland Wetlands & Conservation Commission Approval (Commissioner Lindo) – ZWEO Allen stated that there are no wetlands present on the subject property. As such, the Application does not require approval from the IWCC. ZWEO Allen advised the Commission to consider placing conditions of approval, i.e., requiring site improvements or site design improvements, to mitigate future issues. Town Planner Haggerty added that it is for this reason that an Erosion & Sediment (E&S) Control Plan is included as part of the Application. It would be under the Commission's jurisdiction to determine whether the Plan is robust enough. Principal Bartlett offered to submit a letter from the Soil Scientist stating that there are no wetlands located within 100' of the proposed activity, i.e., the Upland Review Area. In response, ZWEO Allen stated that the Subdivision Regulations do not discuss the Upland Review Area.

Direct Impact of Wetlands Located on Adjoining Property (Chairman Smith) – The Regulations of many towns, including Salem, stipulate that any area that is deemed to be wetlands and located beyond the Upland Review Area falls within their jurisdiction.

However, current case law from the State Appellate Court has clearly rejected and placed a hard spatial boundary for wetlands jurisdiction within the Upland Review Area. Wetlands jurisdiction is established by (1) an area within 100' of a delineated wetland, as delineated by a Certified Soil Scientist and (2) the activity must be found to have a significant impact on the wetlands. Should the IWCC find that the wetlands have been degraded, they may order the owner to restore the wetlands regardless of who or how the degradation occurred. Should the owner claim that the neighboring property caused the damage, the issue would become a civil matter. Commissioner Lindo concurred, citing a recent case in the Town of East Lyme.

Upland Review Area (Commissioner Stoken) – Per the Regulations, Re-subdivision Applications must be presented and approved by the IWCC before being presented and approved by the PZC if wetlands are present on the subject property, not if the Upland Review Area is present on the subject property. Commissioner Lindo cited the June 8, 2023 letter from REMA Ecological Services, LLC, which states “that a regulated wetland area was observed on Ms. Coffee’s property, near the southern property boundary, with an upland review area (URA) which extends onto 343 Old Colchester Road.” (page 2, first paragraph, first sentence) ZWEO Allen noted that the statement refers to the rear of the property and not the subject property. In addition, the subject property is elevated and, per the information at hand, there are no wetlands on the site.

Soil Study (Commissioner Lindo) – CLA Engineers Principal Bartlett confirmed that a Soil Study was conducted and the property was not found to have any wetlands. E&S Plans were submitted as part of the Re-subdivision and Site Plan Applications and reviewed by Nathan L. Jacobson & Associates, an independent engineering firm, who found no issues.

Subdivision Plan (Commissioner Stoken) – It was clarified that while the Re-subdivision results in the creation of two lots, the Application is for the newly created lot. Contractor Gagnon expressed his willingness to place erosion control measures in the back of the property or any additional measures, modified and/or permanent, to ensure that the neighboring property is not further disturbed.

John Hummel, Orchard Drive, Uncasville, called the Commission's attention to the June 12, 2023 letter submitted by REMA Ecological Services, LLC, which states that “This construction project is also in close proximity to a seasonal wetland swale on the adjacent Cofffee property, which is visible from the property boundary (See Figure 2). The town regulations deem any activity within 75 feet of a wetland to be a regulated activity....” (Page 1, second paragraph).

Town Planner Haggerty reminded the Commission that the staff comments preceded the information presented in the letter, dated June 12, 2023, submitted by REMA

Ecological Services, LLC. In addition, the Commission's task at hand is to consider the E&S Plan associated with the Re-subdivision Application of the property, not the Site Plan Application. The Re-Subdivision Application must be approved prior to any work being conducted on the property.

Upland Review Area and the Inland Wetlands Commission (Commissioner Stoken) – The Commission was reminded that the Re-subdivision Application does not require a referral from the IWCC, per Section 4.8A of the Subdivision Regulations, which makes no mention of the Upland Review Area. That being said, the Commission may request a referral from any board, commission, or outside experts. Commissioner Lindo expressed her support for receiving a referral from the IWCC. Commissioner Closius concurred. ZWEO Allen noted that the IWCC's jurisdiction is the wetlands, themselves, and the 100' buffer around the wetlands, i.e., Upland Review Area. He added that the Commissioners may request that the IWCC act as the Conservation Commission, which has no regulatory authority, to submit an opinion.

Sue Coffee, 10 Saunders Hollow Road, Old Lyme, was agreeable to having the Applicant's Soil Scientist make observations on her property in the presence of her Soil Scientist's and herself.

Town Planner Haggerty stated that it was her understanding that their intent is to request the IWCC to review the E&S Plan rather than to determine whether any wetlands reside on the property. Contractor Gagnon noted that a third-party Licensed Engineer has already reviewed and approved the Plan. He suggested the possibility of requesting the Engineer to conduct a second review of the Plans, knowing their concerns that there may be wetlands on the neighboring property.

The Commission agreed to request the Town Engineer to re-review the E&S Plan and ensure that the bond amount is sufficient, request the Conservation Commission to review and comment on the plan, and await the receipt of the Fire Marshal's comments.

**M/S/C: Lindo/Closius, to continue the Public Hearing for Application # SD 23-03 Colchester Construction – Re-Subdivision application for 343 Old Colchester Road for the creation of one new lot – to the Planning & Zoning Commission Regular Meeting on June 27, 2023, 7:00 p.m., at Salem Town Hall, Conference Room 1. Discussion: None. Voice vote, 7-0, all in favor.**

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

**a. Regular Meeting Minutes of Tuesday, May 23, 2023**

**M/S/C: Lindo/Volberg, to approve the Tuesday, May 23, 2023 Planning & Zoning Commission Regular Meeting Minutes. Discussion: None. Voice vote, 5-0-2. Voting in Favor: Commissioners Closius, Gadbois, Jorgensen, Lindo,**

**Stoken, Volberg, and Smith. Voting in Opposition: None. Voting in  
Abstention: Commissioners Closius and Gadbois.**

**6. OLD BUSINESS:**

- a. SD 23-02 American Property Group Salem, Inc.** Subdivision Application for 496 New London Road for the creation of three lots

*Application withdrawn.*

- b. Application SE 23-02 American Property Group Salem, Inc.** Application for a special exception and associate site plan at 496 New London Road for a multi-family residential development proposing 24 – two-bedroom, residential units. Each unit has one garage.

*Application withdrawn.*

**7. NEW BUSINESS:**

- a. SD 23-03 Colchester Construction.** Re-Subdivision application for 343 Old Colchester Road for the creation of one new lot.

*Public Hearing continued.*

- b. SP 23-01 Colchester Construction.** Site plan application for a new commercial building at 343 Old Colchester Road.

- c. Annual Renewals for Campgrounds & Quarries**

- 1) Witch Meadow Campground – 139 Witch Meadow Rd., 280 sites.
- 2) Salem Farms Campground – 39 Alexander Rd., 189 sites.
- 3) Sna-Z-Spot – 310 Old Colchester Rd., 50 sites.
- 4) Indianfield Campground – 307 Old Colchester Road., 228 sites.
- 5) Renz Quarry – 160 Witch Meadow Rd., less than 5K CY excavated.
- 6) G's Ruff Stuff Quarry – 229 Rattlesnake Ledge Rd., less than 5K CY excavated.
- 7) Getty Granite – 120 East Haddam Rd., less than 5K CY excavated.
- 8) Henrici Excavating – 149 Round Hill Rd., less than 5K CY excavated.

ZWEO Allen reported that all of the town's campgrounds and quarries have submitted their renewals with no changes to their operations or layouts. He recommended the Commissioners approve the renewals.

In response to Commissioner Stoken regarding inspections, ZWEO Allen stated that inspections are generally not conducted as part of the renewals. Permitted projects may be inspected until a Certificate of Occupancy has been issued. Otherwise, an inspection might be conducted to investigate a complaint, or advertisement, or when an obvious violation is evident.



**M/S/C: Gadbois/Volberg, to approve the following Permit Renewals:**

**Excavation Permits:**

**G's Ruff Stuff Quarry  
Getty Granite  
Henrici Excavating  
Renz Quarry**

**Campground Permits:**

**Indianfield Campground  
Salem Farms Campground  
Sna-Z Spot  
Witchmeadow Campground**

**Discussion: None. Voice vote, 6-0, all in favor.**

**8. ZONING ENFORCEMENT OFFICER'S REPORT/INLAND WETLANDS AND CONSERVATION COMMISSION REPORT**

ZWEO Allen reiterated that the Application for 496 New London Road has been withdrawn. New plans for the culvert work will be submitted to the IWCC for review and approval, prior to its return to the PZC.

Relocation of Buildings (Chairman Smith) – To the best of his knowledge, ZWEO Allen stated that there has been no discussion regarding the relocation of any of the buildings.

The Flow of Traffic (Commissioner Lindo) – The office has been moderately busy in the issuing of permits for such items as pools and additions.

Route 85 Storage Units (Commissioner Lindo) – The plans for the storage units were reviewed and approved for the work currently being conducted.

**9. TOWN PLANNER REPORT – *none***

**10. CORRESPONDENCE**

**11. PUBLIC COMMENT – *none***

**12. PLUS DELTAS**

Chairman Smith thanked the Commissioners for a good meeting.

**13. ADJOURNMENT**

**M/S/C: Lindo/Volberg, to adjourn the meeting at 8:49 p.m. Discussion: None. Voice vote, 6-0, all in favor.**

Respectfully Submitted by: Agnes T. Miyuki, Recording Secretary for the Town of Salem

**A VIDEO RECORD OF THE MEETING CAN BE FOUND ON THE TOWN'S WEBSITE UNDER BOARDS & COMMISSIONS – PLANNING & ZONING COMMISSION – MEETING VIDEOS**