

**TOWN OF SALEM
PLANNING & ZONING COMMISSION
REGULAR MEETING MINUTES
TUESDAY, JUNE 27, 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
Diba Khan-Bureau
Jennifer Lindo
Martin Stoken
Walter Volberg
James Jorgensen, Alternate (*seated*)

ABSENT

Gary Closius, Alternate
Steven Shelley, Alternate

ALSO PRESENT

Town Planner Nicole Haggerty

1. CALL TO ORDER

Chairman Smith called the meeting to order at 7:02 p.m.

2. PLEDGE OF ALLEGIANCE

Alternate Commissioner Jorgensen was seated for the vacant position.

3. PUBLIC COMMENT:

Sue Coffee, 10 Saunders Hollow Road, Old Lyme, reported that she has spoken with the First Selectman regarding the need to invest in additional hours for the Land Use Office. The First Selectman informed her that none of the Commissioners have brought the matter to his attention.

Commissioner Khan-Bureau stated that has spoken with the First Selectman regarding the need for additional hours in the past. Chairman Smith added that he has also spoken with the Zoning/Wetlands Officer regarding the same.

Deputy Fire Marshal John Cunningham stated that, in reviewing numerous site plans for the Town of Salem, he often encounters situations in which the town's regulations are not in sync with the state fire and building codes. For example, a warehouse might be defined as a storage facility in the Zoning Regulations, which entails different requirements. He recommended that the Commission review its regulations with the Fire Marshal and Building Departments to ensure that their definitions coincide and the proper requirements are applied.

4. APPROVAL OF MINUTES OF PREVIOUS MEETING(S):

a. Regular Meeting Minutes of Tuesday, June 13, 2023

M/S/C: Lindo/Volberg, to approve the Tuesday, June 13, 2023 Planning & Zoning Commission Regular Meeting Minutes, as amended:

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

Discussion: None. Voice vote, 7-0, all in favor.

5. NEW BUSINESS:

- a) **SP 23-03 Alex Alevras** – Site plan modification application to convert existing second-floor office space to three one-bedroom apartments at 20 Hartford Road (*Acceptance of application*).

M/S/C: Khan-Bureau/Volberg, to accept Application SP 23-03 Alex Alevras – Site plan modification application to convert existing second-floor office space to three one-bedroom apartments at 20 Hartford Road. Discussion: None. Voice vote, 7-0, all in favor.

- b) **SP 23-04 Ben Dow** – Site plan modification application to allow a food truck at 428 Hartford Road (*Acceptance of application*).

M/S/C: Gadbois/Stoken, to accept Application SP 23-04 Ben Dow – Site plan modification application to allow a food truck at 428 Hartford Road. Discussion: None. Voice vote, 7-0, all in favor.

6. PUBLIC HEARING:

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

M/S/C: Khan-Bureau/Lindo, 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.

Town Planner Haggerty stated that the application is for the Re-subdivision of 343 Old Colchester Road; the accompanying Site Plan Application will not be discussed this evening.

Ellen Bartlett, P.E., Principal, CLA Engineers, Inc., representing the Applicant, provided a brief recap of the application for the re-subdivision of a 2.67-acre lot located on Old Colchester Road. Their previous discussions included the placement of wetlands flags on the adjacent, western side of the property to confirm the existence of wetlands.

Because the Property Owner's Wetland/Soil Scientist George T. Logan of REMA Ecological Services, LLC, was out of the country and unable to visit the site with the Applicant's Wetlands/Soil Scientist, the meeting did not take place as originally planned. As a result, the Applicant's Soil Scientist/Environmental Scientist, Robert Russo, C.S.S., CLA Engineers, Inc., investigated the site based on the information he was able to access.

CLA Engineers' Soil Scientist/Environmental Scientist Russo investigated the site, as related to the proposed re-subdivision, and reviewed historic air photos of the surrounding area to determine the location of the wetlands and their proximity to the subject property. He also reviewed the items mentioned in the letter, dated June 12, 2023, from REMA Ecological Services. He stated that, in 2022 and 2023, he visited the site for soil investigation work and found that there were no wetlands on the site and deep soil test pits were conducted for septic purposes. On June 13, 2023, an inspection was conducted after being made aware that a Cease & Desist (C&D) Order was issued for Erosion & Sedimentation (E&S) Control issues on the site. Upon inspection, he noticed that some of the areas of the existing wood chip berm along Old Colchester Road and the north side of the site were no longer functioning properly. As a result, he contacted the Contractor, who immediately repaired the E&S Controls. He re-inspected the site today, after the recent rains, and found that the E&S Controls are now working properly. Per the submitted plans, additional E&S Controls will be installed. Should the application be approved, the current and additional measures should keep the sedimentation from migrating off the site. The letter dated June 12, 2023, from REMA Ecological Services, indicates that "This construction project is also in close proximity to a seasonal wetland swale on the adjacent Coffee property, which is visible from the property boundary". He stated that he was unable to view any wetlands from the edge of the property, which is understandable due to the thickness of the vegetation. He also reviewed aerial photos from the CE ECO site from 2004, 2012, 2016, and 2019 and found that the closest area that might have wetlands is located over 110' from the proposed activity. He disagreed with the concern for "the potential for dewatering the swale on Coffee land (hydrologic impacts)" as stated in the same letter, stating that the roof water on the site would be infiltrated into the ground, which will help maintain the natural hydrology of the property. Any high-level overflow for the infiltration would flow only rarely. He also noted that the proposed development is located directly upslope from a previously developed portion of the neighboring property, which includes an impervious surface (concrete pad), trailers, boxes, containers, and other debris.

Michelle Horan, 197 Witter Road, recited a letter dated, June 27, 2023, from REMA Ecological Services, in response to Wetland/Soil Scientist Russo's letter, dated June 20, 2023. The map to which the letter refers was distributed to the Commissioners.

In response to the statement, “structural back-up for woodchip berms really is needed, for durable perimeter controls”, in the recited letter, Wetland/Soil Scientist Russo stated that the E&S Controls that were submitted with the application (Sheet 7) include the necessary structural back-up and reiterated that the woodchip berms that have been installed are properly functioning and preventing sediments from leaving the site. He further explained that the blue dotted line indicating the possibility of wetlands (located approximately 110’ from the subject property) does not reflect the wetland swale, as observed by Soil/Wetland Scientist Logan. Nevertheless, the swale is located approximately 95’ from the property line. He rebuked the statement that “the proposed discharge upgradient of the swale will increase volumes and velocities conveyed by the swale.”, stating that neither of the signatories is Professional Engineers who are qualified to comment on the volumes and velocities of water leaving a site.

Commissioners Khan-Bureau and Smith expressed their surprise that the silt fence was not installed. Colchester Construction Owner Bob Gagnon stated that the silt fence was not installed due to the C&D Order that was issued and provided a brief explanation of the process to install the silt fence, which includes excavating the property — a direct violation of the Order.

Pooling of Water (Commissioner Khan-Bureau) – During a recent tour of the property, Commissioner Khan-Bureau, who has a Ph.D., specializing in Water Quality, stated that there appeared to be significant water pooling on the property following a rainstorm and felt that the issue should be reviewed more closely.

Cooperation Between Parties (Chairman Smith) – While both parties had agreed to meet on the neighboring property to review the site, Soil Scientist/Environmental Scientist Russo stated that they were not able to gain permission from Ms. Coffee to enter her property without Soil Scientist/Environmental Scientist Logan’s presence. It was noted that Ms. Coffee was aware that Soil Scientist/Environmental Scientist Logan would be out of town and unable to meet with them after their last meeting when they had agreed to schedule a meeting.

E&S Controls System and Existence of Wetlands (Commissioner Stoken) – Soil Scientist/Environmental Scientist Russo stated that the proposed E&S Controls would be more than adequate should wetlands exist downslope. CLA Engineers Principal Bartlett added that, following each rainstorm, the E&S Controls are inspected to ensure that they are functioning properly. The same process was used for the age-restricted housing complex on Route 82 and the multi-family complex on Old Colchester Road. In addition, the employment of the same method was approved by the Commission for the proposed multi-family housing complex on New London Road. Furthermore, the E&S Control, the drainage calculations, which show a very slight decrease in runoff

from the site during 2, 10, and 25-year storms, and plans were reviewed by the Town Engineer.

Town Engineer Responses (Commissioner Lindo) – Town Planner Haggerty reported that a request, along with the pertinent information were sent to the Town Engineer, who did not feel comfortable commenting on a hypothetical situation and had no comment on the bond amount. Commissioner Lindo felt that, should wetlands exist on the property, the bond amount, which is currently set at \$6,160.00, should be increased. CLA Engineers Principal Bartlett was agreeable to adding a contingency to the bond amount.

Cease & Desist (C&D) Order (Commissioner Khan-Bureau) – Colchester Construction Owner Gagnon stated that there are currently two (2) C&D Orders associated with the property. Immediately following the receipt of the latter order, work on the property was immediately stopped; the previous C&D Order is unrelated to the application. He reminded the Commissioners that the work was related to a state-approved driveway sightline permit and explained that he had consulted with the ZWEO before moving the earth and was informed to "proceed at his own risk". As such, the earth was excavated and placed on the property. It is not common practice for the state to notify the town when such permits are issued, resulting in a lack of communication. Commissioner Khan-Bureau stated she had witnessed excavation work being conducted on the site during a rainstorm in May 2023, after the C&D Order was issued.

State Permit Date (Commissioner Lindo) – Aware of the time that it takes for state permits, Colchester Construction Contractor Gagnon stated that the permit, which is dated August 1, 2022, was applied for and received well before the work was to begin. He reiterated that the work was discussed with the ZWEO before the start of work and was informed to "proceed at his own risk".

Hydrology Concerns (Chairman Smith) – To address any hydrology concerns, CLA Engineers Principal Bartlett stated that an infiltration system in which the roof water will feed back into the soil will be installed. The site design was created such that there would be no increase in volumes, quantities, and velocities. She added that the system was reviewed by the Town Engineer and it was determined that the roof water runoff would not have an adverse impact on the wetlands located on Ms. Coffee's property.

John Hummel, Orchard Drive, Uncasville, questioned whether the system would be adequate to handle the 5,000-6,000 gallons of water that is estimated to be generated from a 10,000 SF building during a 1" rainstorm. He reported that Ms. Coffee and himself measured the location of the swale to be 65' to 70' from the property line. He noted that before the work was conducted to improve the sightline, piles of dirt were stored on the property and have since been spread out and distributed. He also stated

that the site plan includes no indication of the existence of a building on the site. He added that he was pleased with the improvement to the sightline.

In response, Colchester Construction Owner Gagnon concurred that dirt from the construction at 116 Old Colchester Road was temporarily stockpiled on the property. The dirt was returned to the property approximately 18 months ago. The ZWEO was informed of the activity. Commissioner Lindo stated that such activity requires a permit. Colchester Construction Owner Gagnon also clarified that the building on the site is a 10' x 15' temporary, moveable shed to store their tools during construction; the shed may be placed on a trailer, if necessary.

Sue Coffee, 10 Saunders Hollow Road, Old Lyme, presented photographs indicating that the shed resided on the property in August of 2022 and reported that it is not recorded in the Assessor's office. She felt that the building is larger than 10' x 15' and would not sit very easily on a trailer. She also stated that she did not receive any calls or messages from CLA Engineers regarding the meeting. She plans to meet with the Inland Wetlands Commission to discuss the runoff from both 343 and 343-R Old Colchester Road onto her property.

In response to Commissioner Stoken who questioned whether the proposed E&S Controls are satisfactory, Ms. Coffee questioned why the runoff could not be diverted to the other side of the subject property.

It was reiterated and further clarified that the property is currently one parcel of land with two (2) C&D Orders. The re-subdivision application would, potentially, address the C&D Order for the front portion of the property. The C&D Order is issued for a specific activity and not the property, itself.

Location of Wetlands (Commissioner Volberg) – Because a Soil Scientist has not yet delineated and flagged the wetlands, they are not depicted on the site plan. The proposed E&S Controls would sufficiently cover any runoff to either wetlands location.

The Public Hearing opened on June 13, 2023, and, per state statutes, must close on or before July 18. A decision must be rendered within 65 days of its closing. The Applicant may request that the deadline be extended by one meeting. If approved, the Applicant would also need to submit a request for an extension to the associated site plan application.

Discussion ensued regarding the initial sense of urgency, the resulting lack of urgency, the adequacy of the proposed E&S Controls, and the installation of the silt fence to ensure that the wetlands are protected should another heavy storm occur. CLA Engineers' Soil Scientist/Environmental Scientist Russo agreed with REMA Ecological Services' Wetland/Soil Scientist George T. Logan's earlier recommendation to install a silt fence to protect against any further potential issues. Ms. Coffee was agreeable to the

installation of a silt fence. Colchester Construction Owner Gagnon stated that he was not comfortable with pursuing any additional activity on the property while the order is in place.

Inland Wetlands & Conservation Commission (IWCC) Review (Commissioner Khan-Bureau) – Town Planner Haggerty stated that, because there are no wetlands on the subject property, it was not required that it be reviewed and approved by the IWCC.

M/S/C: Khan-Bureau/Lindo, 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 July 11, 2023, 7:00 p.m., at Salem Town Hall. Discussion: Following the meeting between Soil/Environmental Scientists Russo and Logan, the Town Engineer will be requested to review and comment on the application based on their findings. The Town Engineer will also be contacted regarding a third-party Soil Scientist for a third-party review. Chairman Smith will consult with the ZWEO regarding the C&D Order and installation of the silt fence. Voice vote, 7-0, all in favor.

7. OLD 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.

Town Planner Haggerty reported that the Applicant has submitted a request for a 30-day extension.

8. ZONING ENFORCEMENT OFFICER’S REPORT/INLAND WETLANDS AND CONSERVATION COMMISSION REPORT – none

The next Inland Wetlands and Conservation Commission (IWCC) Meeting will be held on Monday, July 10.

9. TOWN PLANNER REPORT

The application for 496 New London Road, which was withdrawn, will be resubmitted and presented to IWCC for review and approval before it is presented to the Commission.

An Executive Session is planned for their next regular meeting for an updated status of the 45 Forest Drive litigation.

Due to the limited number of training classes being offered, the Connecticut Council of Governments (CCOG) is expected to offer free training sessions to ensure that all Commissioners receive their required four (4) hours of training in a timely manner. The possibility of inviting an individual to provide training could also be investigated.

10. CORRESPONDENCE

- a. Referral from the Town of Colchester regarding potential regulation amendments.

The Commissioners were requested to review the proposed amendments and provide their input to the Town Planner.

- b. Memo from the Southeastern Connecticut Council of Governments (SCCOG) reminding the Commissioners of the upcoming Regional Planning Committee meeting on Monday, July 24, 2023.

A Commissioner who is interested in representing the town and serving on the Committee was requested.

11. PUBLIC COMMENT

Wade Turner, Old Colchester Road, questioned whether the Cease & Desist Order for the activities conducted by Colchester Construction would be for the entire property since its re-subdivision application has not yet been approved.

Sue Coffee, 10 Saunders Hollow Road, Old Lyme, questioned whether the Cease & Desist Order would remain active should the re-subdivision application be approved.

Chairman Smith confirmed that the C&D Order would remain active.

12. PLUS DELTAS

Chairman Smith thanked the Commissioners for a good meeting.

Commissioner Stoken questioned whether the ZWEO conducts regular inspections of the site of the motocross track on Old Colchester Road to ensure that additional work was not being conducted, citing the letters received by REMA Ecological Services. Town Planner Haggerty stated that a C&D Order was issued in 2022 and any additional enforcement actions would require the First Selectman, in coordination with Town Counsel, to file suit. ZWEO Allen has received the complaints and photographs regarding the continuance of work on the property and, while the Commission could request regular inspections, any additional enforcement actions would be under the jurisdiction of the courts. The complaints and associated photographs would be included as part of the litigation. Any additional questions regarding the issue should be directed to the ZWEO. Commissioner Stoken felt that the Commission, at the very least, should be informed that the C&D Order is ongoing. Chairman Smith will consult with the ZWEO and First Selectman regarding moving the matter forward.

Commissioner Jorgensen proposed the Commission explore the food truck regulations of neighboring towns in preparation for including them in their regulations.

13. ADJOURNMENT

M/S/C: Lindo/Volberg, to adjourn the meeting at 8:50 p.m. Discussion: None. Voice vote, 7-0, 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**