

**TOWN OF SALEM  
PLANNING & ZONING COMMISSION  
REGULAR MEETING MINUTES  
TUESDAY, JULY 11, 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  
Gary Closius, Alternate  
James Jorgensen, Alternate (*seated*)

**ABSENT**

Steven Shelley, Alternate

**ALSO PRESENT**

Town Planner Nicole Haggerty

**1. CALL TO ORDER**

Chairman Smith called the meeting to order at 7:05 p.m.

**2. PLEDGE OF ALLEGIANCE**

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

*Alternate Commissioner Jorgensen was seated for the vacant position.*

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

**a. Regular Meeting Minutes of Tuesday, June 27, 2023**

**M/S/C: Khan-Bureau/Lindo, to approve the Tuesday, June 27, 2023 Planning & Zoning Commission Regular Meeting Minutes. Discussion: None. Voice vote, 7-0, all in favor.**

**5. PUBLIC HEARING:**

**a. SD 23-03 Colchester Construction Re-subdivision application for 343 Old Colchester Road for the creation of one new lot (public hearing continued from 6/27/2023).**

**M/S/C: Khan-Bureau/Volberg, 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 (public hearing continued from 6/27/2023). Discussion: None. Voice vote, 7-0, all in favor.**

Town Planner Haggerty recited the letter, dated July 11, 2023, submitted by the Town's third-party Engineer Joseph Dillon, P.E., who reviewed the revised plans depicting the 100' Upland Review Area.

Chairman Smith informed the public that the Applicant's proposed Site Plan Application has been withdrawn and will be presented to the Inland Wetlands & Conservation Commission (IWCC) before returning to the Planning & Zoning Commission (PZC).

Ellen Bartlett, P.E., Principal, CLA Engineers, Inc., representing the Applicant, reported that, since their last meeting, the Applicant's Soil Scientist/Environmental Scientist, Robert Russo, C.S.S., CLA Engineers, Inc., met with the neighboring Property Owner's Wetland/Soil Scientist George T. Logan of REMA Ecological Services, LLC, to discuss and investigate the site.

Soil Scientist/Environmental Scientist Russo stated that Wetland/Soil Scientist Logan met at the site to review the property and flagged and delineated the wetlands along the western side of the property. The re-subdivision map reflects that the location of the Erosion & Sedimentation Control resides outside of the 100' Upland Review Area. Town Planner Haggerty added that, because the third-party soil scientist was not available, she volunteered to attend the meeting and observe their findings.

Engineer Bartlett reported that a discussion took place regarding this project during a recent IWCC meeting and it was agreed to present the Site Plan Application to the IWCC for review and approval. Due to the resulting time constraints, it was decided to withdraw the Site Plan Application, pending IWCC approval. Because the IWCC expressed their concerns regarding the proposed Erosion & Sediment (E&S) Control measures, a more robust system comprised of two (2) berms in which a silt fence with wood chips and rip rap was proposed. She reiterated their request that, though the item is not part of the Public Hearing at hand, the Cease & Desist Order be modified or lifted to allow for the installation of the system to prevent any further issues. Commissioner Khan-Bureau added that the Conservation Commission has also requested the same. Town Planner Haggerty stated that, based on the revised site plan, the original letter submitted by the Wetlands Enforcement Officer (WEO), stating that the proposed development is located outside the 100' Upland Review Area and is not considered a regulated activity, is no longer relevant and the application is now considered a regulated activity. In addition, at the request of the Commission, the Conservation Commission reviewed the plans and has submitted a statement strongly recommending the modification of the C&D Order to "expressly allow for immediate and robust erosion control." The letter was read into the record by Commissioner Khan-Bureau. Engineer Bartlett clarified that the application is for the re-subdivision of one lot and their discussion with the IWCC involved the site

plan application and the installation of the E&S Controls along lot 1 and not the entire site. Commissioner Lindo disagreed, stating that the discussion included the entire site. Commissioner Khan-Bureau stated that the IWCC reviewed the site as one lot as the re-subdivision application is not yet approved. Commissioner Stoken also recalled that, while the Contractor was agreeable to installing E&S Controls along the property line, the WEO advised against doing so. Town Planner Haggerty stated that, because new information has been introduced and the WEO is not present, it would be difficult to speak for the WEO. She reminded the Commission that the Conservation Commission acts as an advisory committee and their statement is non-binding.

The following letters were submitted:

REMA Ecological Services, dated July 6, which discusses the site plan application, does not pertain to the application at hand.

REMA Ecological Services, dated July 10, regarding the resulting sedimentation from the heavy, intense rains, was recited by Resident Michelle Horan of 197 Witter Road.

*Town Planner Haggerty reminded the Commission that the Applicant requested permission to begin repairing and installing E&S measures during the PZC's June 27 meeting and, due to the existing C&D Order, the Commissioners did not feel comfortable approving the activity without an approved E&S Plan.*

John Hummel, Uncasville, submitted photographs, including evidence of the excavation work that took place in May 2022. He questioned whether the determination of adequate controls to handle 25-, 50- and 100-year storms is based on the amount of predicted rainfall over a 24-hour period, stating that the town has witnessed three (3) storms measuring over 3" over the past three (3) months and the possible need to adjust the existing determinations.

Commissioner Closius recited his letter which stated his witnessing of the runoff from the property in question during a recent heavy rainstorm and the inadequacy of the E&S Controls that are currently in place. He also noted that no inspections took place following the storm, as promised by the applicant. The letter includes photographs taken during his review of the activity.

*Town Planner Haggerty reminded the Commission that there are no E&S Control measures in place at this time due to the C&D Order.*

Soil Scientist/Environmental Scientist Russo added that, in his 30 years of experience, he has found that there are very few measures that are robust enough to hold up to the downpour of rain that was experienced during the recent storm. In addition, operating heavy equipment and moving earth and materials to correct an E&S system during a rainstorm and/or in rain-saturated soil is not prudent. He stated that he inspected the property following the storm and concurred that there were breaches in the system due to the storm, as would be expected. Any possible repairs that can be made will be made.

That being said, he urged the Commission to modify the existing C&D Order to allow for the installation of more robust E&S Control measures, adding that the Contractor has also agreed to install E&S Control measures beyond the property in question. Commissioner Khan-Bureau concurred, reiterating the Conservation Commission's recommendation.

Sue Coffee, Old Lyme, spoke with respect to the issues that have arisen from the properties located at 343 and 343-R Old Colchester Road and the town's actions and reactions. While the town appears to be addressing the issue(s), she expressed her concerns regarding the ZWEO's limited working hours, which, she felt, are insufficient to accommodate the growing town and do not adequately serve the town. She felt that the issues that arose from the properties could have been better dealt with and controlled should the ZWEO have had the time to address the issues.

Town Planner Haggerty recited the staff memo, dated July 11, regarding the pending applications, the wetlands, the E&S concerns that have been raised, and an outline of the decision-making process for the proposed Re-Subdivision application. She added that the Commission does not have the authority to release the C&D Order. However, the Commission may impose conditions related to the E&S control measures.

Upland Review Area (Commissioner Stoken) – The IWCC amended their regulations, changing the Upland Review Area from 75' to 100'.

Uncas Health District Review (Commissioners Stoken and Jorgensen) – The modified site plan, which includes the moving of the septic system, will be resubmitted to the Uncas Health District for review and approval. The Commission may also approve the application, pending the approval of the revised site plan by the Uncas Health District.

Application of the Cease & Desist Orders (Commissioner Gadbois) – Due to the date of issuance, Town Planner Haggerty believed that the C&D Order would apply to both properties, i.e., the property prior to its re-subdivision. Therefore, the Commission may require that E&S Control measures be installed on both lots.

Sufficiency of Proposed Erosion & Sediment Control Measures (Commissioner Stoken) – Commissioner Khan-Bureau reiterated that the Conservation Commission recommended that the E&S Plan be more robust and, after discussing it with the Applicant's Engineer, it was agreed to add the riprap. Engineer Bartlett also noted that the addition of the riprap goes beyond the recommendations of REMA Ecological Services.

**M/S/C: Lindo/Volberg, to close 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: Town Planner Haggerty reminded the Commissioners that no additional evidence related to the application can be submitted following the closure of the Public Hearing. Voice vote, 7-0, all in favor.**

- b. ZRA 23-01 Salem Planning and Zoning Commission** Application requesting to amend the Salem Zoning Regulations, adding new section 3.26 to establish a temporary (180-day) moratorium on cannabis establishments.

**M/S/C: Gadbois/Jorgensen, to open the Public Hearing for Application ZRA 23-01 Salem Planning and Zoning Commission Application requesting to amend the Salem Zoning Regulations, adding new section 3.26 to establish a temporary (180-day) moratorium on cannabis establishments.**

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

Town Planner Haggerty recited the proposed text amendment. Letters were received from the Lower Connecticut River Valley Council of Governments (RiverCOG) and Southeastern Connecticut Council of Governments (SCCOG), stating that, after reviewing the proposed regulations, there would be no significant inter-municipal impacts. The Commissioners were also provided with an updated list of the decisions that have been made by the surrounding towns.

Chairman Smith asked if any members of the public would like to speak regarding the proposed text amendment to establish a temporary moratorium on cannabis establishments. There being none, the Public Hearing was closed.

**M/S/C: Khan-Bureau/Jorgensen, to close Application ZRA 23-01 Salem Planning and Zoning Commission Application requesting to amend the Salem Zoning Regulations, adding new section 3.26 to establish a temporary (180-day) moratorium on cannabis establishments. Discussion: None. Voice vote, 7-0, all in favor.**

**6. OLD BUSINESS:**

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

Chairman Smith recommended approving the installation of the proposed E&S Control Plan measures along the entire property line, as recommended by the Conservation Commission and agreed upon by the Applicant. The Commissioners agreed to request that the Town's third-party Engineer review and inspect the E&S Control measures once they are in place and periodically and/or following any heavy rainstorms to ensure that the E&S controls are sufficiently working and submit a report to the town. The Applicant is responsible for any expenses for the Town Engineer that incur. Extensive discussion ensued regarding the C&D Order and the Commission's ability to require the Applicant to maintain the E&S control measures following the approval of the re-subdivision. A question arose as to whether the C&D Order and the requirement to maintain the E&S Control measures stays with the property or the Property Owner. Commissioner Closius felt that the ZWEO would have the authority to issue a Notice of Violation and/or issue a C&D Order should an incident occur, per §17.42 of the town's Zoning Regulations.

The Town Planner will consult with the Town Attorney for an opinion regarding whether the conditions posed on a re-subdivision application could be applied to both the newly created and remaining lots.

Town Planner Haggerty proposed the possibility of modifying the C&D Order, allowing the installation of more robust E&S Control measures.

**M/S/C: Jorgensen/Volberg, to table Application SD 23-03 Colchester Construction. Re-Subdivision application for 343 Old Colchester Road for the creation of one new lot. Discussion: Town Planner Haggerty reminded the Commission that a decision must be rendered within 65 days, per state statutes. Voice vote, 7-0, all in favor.**

**M/S/C: Smith/Lindo, to add the following item to the Agenda:**

**7(b) Amendment to the existing Cease & Desist Order issued to 343 Old Colchester Road**

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

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

*Application withdrawn.*

- c. 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.

Town Planner Haggerty stated that the Applicant was unable to attend this evening's meeting for medical reasons and presented her memo to the Commission. The property is located on a 2.88-acre lot at 20 Hartford Road in the General Business Zone. The first floor is approximately 12,552 square feet, per the Assessor Card. The proposed application consists of converting the existing second-floor office space into three one-bedroom apartments. Per Section 7.1.26 of the Salem Zoning Regulations, the proposed use is permitted in the General Business Zone and, as stated in the memo, each of the criteria has been satisfied. The Applicant is working with the Fire Marshal to ensure it complies with the fire codes.

**M/S/C: Khan-Bureau/Gadbois, to approve 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, pending Fire Marshal approval. Discussion: None. Voice vote, 7-0, all in favor.**

- d. SP 23-04 Ben Dow** Site plan modification application to allow a food truck at 428 Hartford Road.

Town Planner Haggerty stated that the Application is similar to a previous application for a mobile coffee truck on Route 82. Because the town does not have any food truck

regulations, such applications are presented to the Commission as a site plan modification. The food truck would be located at the rear corner of the property. The proposal has been approved by the Chatham Health District and Uncas Health District through an MOU (Memorandum of Understanding) between the health districts. Per an e-mail received from the Acting Fire Marshal, dated July 10, the Fire Marshal's office is in the process of reviewing the application and recommends that the contaminated soil from the gas station's recent fuel tank replacement project be removed as a condition of approval.

**M/S/C: Khan-Bureau/Jorgensen, to approve Application SP 23-04 Ben Dow. Site plan modification application to allow a food truck at 428 Hartford Road, pending the removal of the contaminated soil and Fire Marshal approval. Discussion: None. Voice vote, 7-0, all in favor.**

- e. **ZRA 23-01 Salem Planning and Zoning Commission** Application requesting to amend the Salem Zoning Regulations, adding new section 3.26 to establish a temporary (180-day) moratorium on cannabis establishments.

**M/S/C: Jorgensen/Khan-Bureau, to approve ZRA 23-01 Salem Planning and Zoning Commission. Application requesting to amend the Salem Zoning Regulations, adding new section 3.26 to establish a temporary (180-day) moratorium on cannabis establishments, effective September 1, 2023. Discussion: Chairman Smith questioned the possibility of pushing the effective date forward. Per state statutes, the Public Notice must be published in the local paper within 15 days, which is followed by a 30-day appeal period. Should an individual or business apply before the regulation amendment is approved, the existing regulations would apply. Chairman Smith expressed his wish to shorten the period. It was agreed to maintain an effective date of September 1 to accommodate any publishing issues. Voice vote, 7-0, all in favor.**

## **7. NEW BUSINESS:**

- a. **SP 23-05 Poyant Signs** Site Plan modification application including new drive thru lane components, height detector and order point canopy with digital menu board and new sign package at 1 New London Road for Dunkin Donuts (*Acceptance of application*).

Town Planner Haggerty stated that, under normal circumstances, the ZWEO reviews and approves sign applications but, because the application contains several components that could affect the existing site plan, it is being presented to the Commission.

**M/S/C: Khan-Bureau/Volberg, to accept Application SP 23-05 Poyant Signs Site Plan modification application including new drive thru lane components, height detector and order point canopy with digital menu board and new**

**sign package at 1 New London Road for Dunkin Donuts. Discussion: None.  
Voice vote, 7-0, all in favor.**

**b. Amendment to the existing Cease & Desist Order issued to 343 Old Colchester Road**

It was clarified that the C&D Order being proposed for an amendment was issued in April 2023 and includes the entire parcel of land. Commissioner Lindo recommended that the ZWEO issue a letter to the Property Owner and Applicant stating that the PZC voted to modify the original C&D Order to allow the installation of E&S Control measures as proposed by CLA Engineers, Inc. and recommended by the Conservation Commission.

**M/S/C: Lindo/Khan-Bureau, to approve the modification of the existing Cease & Desist Order issued to 343 Old Colchester Road in April 2023 to install Erosion & Sedimentation Control Measures as proposed on the plan entitled “Sheet 4, Erosion & Sedimentation Control Plan, dated 6/8/2023, revised to 7/11/2023, of the re-subdivision plan prepared for John Diamantini” and as recommended by the Conservation Commission and discussed during the July 11, 2023, Planning & Zoning Commission Public Hearing to expressly allow for immediate and robust erosion controls in the form of canvas, stone, and chips along the property’s boundary with 365 Old Colchester Road (property of Coffee) as well as any and all downgradient areas where water may runoff from the property.  
Discussion: None. Voice vote, 7-0, all in favor.**

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

**9. TOWN PLANNER REPORT**

Town Planner Haggerty provided information regarding food truck regulations for the Commission to review and discuss at a future meeting.

**10. CORRESPONDENCE – *none***

**11. PUBLIC COMMENT**

John Hummel, 59 Orchard Drive, Uncasville, commented on the importance of monitoring the E&S Control measures, once installed, to ensure that it is properly maintained. He also questioned whether the C&D Order related to the motocross track would be eliminated as a result of the modified C&D Order.

*The Commission confirmed that the C&D Order related to the motocross track would remain in place.*



Sue Coffee, Old Lyme, noted that both of the C&D Orders cite 343 and 343-R Old Colchester Road though the violations occurred on 343-R. As such, she proposed the possibility of amending the motion to modify the C&D Order to include 343-R. She also expressed her concerns that the Property Owner (Diamantini) might not maintain the E&S Control Measures on his property following the finalization of the re-subdivision and reiterated Mr. Hummel's statement regarding the importance of monitoring the property.

## **12. PLUS DELTAS**

Commissioner Stoken questioned whether the C&D Order related to the motocross track was referred to the First Selectman for further action, as previously discussed. He also raised the possibility of increasing the ZEO's hours and questioned the status of the attorney's opinion regarding multi-family homes and density.

*Chairman Smith will speak with the First Selectman regarding taking further action on the existing C&D Order for the motocross track. With respect to the ZEO's hours, Chairman Smith stated that the position is difficult to fill and has spoken with the ZEO who is unable to increase his hours at this time. Town Planner Haggerty stated that all staffing questions and concerns should be directed to the First Selectman. She also responded to his question related to multi-family housing and density, stating that, while she has conducted some research on the matter, any further research has paused due to the withdrawal of the application. Once the application is resubmitted, she will resume her research and provide her findings to the Commission.*

Town Planner Haggerty commented, for the record, that information introduced at IWCC meetings should be communicated by the ZWEO to the Town Planner and not be requested via text by the Town Planner. Commissioner Khan-Bureau concurred.

## **13. ADJOURNMENT**

**M/S/C: Smith/Volberg, to adjourn the meeting at 9:19 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**