

**TOWN OF SALEM
PLANNING & ZONING COMMISSION
REGULAR MEETING MINUTES
TUESDAY, JULY 28, 2020 – 7:00 P.M.
SALEM TOWN HALL – VIRTUAL MEETING VIA ZOOM**

Per State of Connecticut, Governor Lamont Executive Order Number 7B, the Town of Salem Planning and Zoning Commission Meeting on July 28, 2020 will be following the suspension of in-person open meeting requirements. Please click the link below to join the webinar:

<https://zoom.us/j/96852306518?pwd=bGpTQXNJSkNWdGh3alh6eUNpSVp6UT0>

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PRESENT

Vernon Smith, Chair
John Gadbois, Vice Chairman
Thomas Reith
Walter Volberg
Carl S. Fontneau, Alternate (*seated*)
Diba Khan-Bureau, Alternate (*seated*)
Jon Walsh, Alternate (*seated*)

ABSENT

Margaret Caron, Secretary
Ruth Savalle
Eric Wenzel

ALSO PRESENT

Town Planner Justin LaFountain

1. CALL TO ORDER

Chairman Smith called the meeting to order at 7:03 p.m.

2. PLEDGE OF ALLEGIANCE

SEATING OF ALTERNATE(S):

Alternate Commissioners Fontneau, Khan-Bureau, and Walsh were seated for Commissioners Caron, Savalle, and Gadbois, respectively.

3. PUBLIC COMMENT: *none*

4. PUBLIC HEARING: *none*

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

a) Regular Meeting Minutes: July 21, 2020

M/S/C: Walsh/Fontneau, to approve the Regular Meeting Minutes of July 21, 2020.

Discussion: None. Roll Call vote, 6-0-1, all in favor. Voting in Favor:

**Commissioners Fontneau, Khan-Bureau, Reith, Volberg, Walsh, and Smith.
Voting in Opposition: None. Voting in Abstention: Commissioner Gadbois.**

6. OLD BUSINESS

- a) Continued Riparian Corridor Overlay Zone (RCOZ) Discussion – Presentation from Pat Young, Program Director, Eightmile River Wild and Scenic Watershed

Town Planner LaFountain welcomed and introduced Eightmile River Wild & Scenic Coordinating Committee (ERWSCC) Program Director Patricia Young and Chairman Anthony Irving.

ERWSCC Chairman Irving provided a brief background of the Eightmile River, its Federal designation as a Wild & Scenic River, and the creation and importance of protecting the riparian corridor. A study of watersheds has determined that the most effective way to preserve the environmental and ecological functions and values of river systems is by protecting the riparian corridor. These studies led to the creation of the Riparian Corridor Overlay Zone. After following the Commission's discussions and consulting with their Land Use Attorney, the Committee recognizes and agrees with the need to review and revise the regulation for clarity and ease of implementation.

Wild & Scenic River designation – In 2002, the Committee agreed that new strategies were needed to provide long-term protection to the River. They concluded that a Federally-recognized Wild & Scenic designation would provide them with the resources to further review the watershed's attributes, implement strategies for mitigation and protection, and promote and educate the public. To qualify for the designation, the River fulfilled the following requirements:

- (1) Scientific Criteria as a free-flowing river, meeting at least one Outstanding Resource Value (ORV) – The Committee found and identified that the river met the following six Outstanding Resource Values (ORVs): a diverse and complex faultline geology, intact cultural landscape, exceptional water quality, unimpaired surface and groundwater hydrology, unique species and natural communities, and an integrated watershed ecosystem;
- (2) A publicly supported Watershed Management Plan protecting the identified ORVs
- (3) Community Support and Commitment to protect the watershed's ORVs – The plan and Wild & Scenic designation were endorsed by the Selectmen, land use commissions, and unanimous town votes were received from each of the three towns. Having met all three criteria, Congress voted in favor of the designation and, in 2008, President George W. Bush signed authorization of the Eightmile River Watershed to be included as one of the nation's Wild & Scenic River system. The Town of Salem adopted the RCOZ regulation in 2007 and included a reference to the watershed in its 2012 Plan of Conservation and Development (POCD).

Eightmile River – Following its Federal designation as a Wild & Scenic River, the Overlay Zone was created to protect the watershed. The watershed is approximately 62 square miles or 40,000 acres and mainly travels through the towns of Lyme, East Haddam, and Salem. Entering the Connecticut River eight miles from the mouth, the Eightmile River system is one of the last remaining near coastal forested ecosystems between Washington D.C. and Boston. The River and its tributaries represent over 150 miles of pristine, mostly free-flowing forested waters. Between the efforts of Land Trusts, National Conservation groups, and town and state support, over 38% or more than 15,400 acres are in permanent protection. The watershed is home to approximately 160 rare, threatened and endangered plant and animal species, 54 of which are listed as rare plant occurrences and 11 of which are rare in New England. The population density within the watershed is quite low at approximately 87 people per square mile compared to the state average of 700 people per square mile.

ERWSCC – The ERWSCC, which is staffed by two part-time employees, is comprised of representatives from each of the main watershed towns, representatives from each of the main watershed towns' Land Trusts, a representative from CT DEEP (Connecticut Department of Energy and Environmental Protection), The Nature Conservancy, and the National Park Service. The members representing the Town of Salem include David Bingham, Ed Natoli, Tony Griggs, Kim Barber-Bradley, and Rich Chyinski.

Riparian Corridor Protection – Without the protection of the riparian corridor, the health of the ORVs would be adversely impacted as the water entering the river determines its quality. The Overlay Zone is one of the best tools for protecting the River's ORVs and, based upon their discussions, they recognize that the regulation requires greater clarity and understanding in order to be successfully administered.

ERWSCC Program Director Young reviewed the main parts of the Management Plan (2005), which includes both short- and long-term goals, as it relates to the Riparian Overlay Zone. The Plan identifies and established standards to preserve the riparian corridor as a key strategy in ensuring the protection of four of the six ORVs. A recommendation was made to the associated local municipal Planning & Zoning Commissions to adopt "a River Protection Overlay Area for all perennial streams and rivers in the Eightmile River Watershed that provides a 50 feet protection area from the edge of small headwater streams, and a 100 feet protection area from the edge of larger streams."

In developing the Riparian Overlay Zone, several planning meetings, summits, presentations, and events were held and public outreach media was distributed. The Committee utilized the services of the Yale School of Forestry and Environmental Studies to create a report entitled, "Riparian Buffer Zones: Functions and Recommended Widths" in April 2005. The report includes the functions of riparian buffers, recommended buffer widths to maintain those functions, buffer types (fixed vs. variable), the factors that influence the buffer widths, and the order streams to protect. Such documents as the Massachusetts River Protection Act,

Farmington River Protection Zoning Overlay Districts, CT River Gateway Standards for Lower CT River were also reviewed. She noted that the Salem's RCOZ regulation includes similar components to that of the Farmington River Protection Zoning Overlay Districts. A two-page summary forming the basis of the Overlay Zone Standards, covering the purpose, definition, significant activities, permitted as-of-right standards and activities, was created in July 2005. The summary also included the recommendation to establish a 50 feet distance from the stream edge for first-order streams and 100 feet for second-order streams and above. First-order or perennial streams are the smallest streams and tributaries that meet to form second-order streams, which converge to form third-order streams, which connect to form fourth-order streams. Being in the upper part of the watershed, the Town of Salem is primarily home to first-order streams.

In 2007, each town adopted its version of the River Protection Overlay Zone with the same 50/100 feet protection setback and rules of allowance. In 2012, the Town of Salem added a reference to the Eightmile River Watershed Management Plan in its POCD as an additional area demanding attention (page 6).

Prior to the pandemic, the Committee organized a meeting with all of the towns' zoning and planning representatives to review and compare their respective regulations and hired Attorney Mike Ziska to review the regulations. Recognizing the need to amend the regulations for the sake of clarity and enforceability, ERWSCC Program Director Young offered to resume their resources and review the regulations together. She noted that the Committee has no authority to mandate any specific regulations. Rather, they view the process as a partnership with the ultimate goal of protecting the river.

Questions

Energy Conservation (Chairman Smith) – The presentation quoted the following sentence from the town's POCD (page 6), "Protecting water quality, adopting low impact development principles, encouraging energy conservation, and fulfilling Salem's commitment to the Eightmile River Watershed Management Plan have surfaced as additional areas demanding attention." While the subject of energy conservation is not included in the ERWSCC's Management Plan, the Committee supports all of the areas listed in the statement.

Past/existing RCOZ violation(s) in other towns and concerns regarding the resulting expenses to the town for violations, depending upon the cooperation of the property owner(s) (Commissioner Fontneau) – In the past, the Town of Lyme has had fairly minor RCOZ violations that were quickly rectified. To the best of her knowledge, the property owner(s) of the current case in Salem are cooperating and, due to the extent of the violation, the Army Corps of Engineers is currently involved in the remediation process. The State and Federal involvement in the case would have occurred regardless of the violation's occurrence within the RCOZ.

Recommendation variations for the first and second order streams within the protection zone (Commissioner Volberg) – First-order streams, such as Frazier Brook, Little Brook, and parts of Witch Meadow Brook, which are located in the upper part of the watershed, are protected up to 50'. She has had discussions with the Town Planner regarding the possibility of creating an interactive map that clarifies the streams and its related protection zone.

75' vs. 50' and 100' setbacks (Commissioner Reith) – There are two jurisdictions in discussion: the Salem Wetlands Regulations, which designates a 75' Upland Review Area, and the Zoning Regulations, which includes the RCOZ. Any activity within that Upland Review Area that is not exempt requires a wetlands permit. The Overlay Zone is a set zone with standards. The Inland Wetlands Commission cannot adopt standards or policies to deem a resource important and in need of protection.

Activities that "lay lightly upon the land" that would allow property owners to expand the use of their property within the RCOZ without degrading the health of the area, per their discussion with Soil Scientist Bob Russo – The primary goal is to keep the areas undisturbed and vegetated in their natural state. Prior to making any determinations, it would be necessary to review the area and its features, e.g. whether it is sloping, well-vegetated, a lawn, pervious, or impervious. Whether any activities would be presented to the Wetlands Commission for review and approval is dependent upon the town's regulations. The Inland Wetlands Commissions cannot set zones and place conditions upon them. She reiterated that the regulation does not eliminate the Inland Wetlands Commission's jurisdiction. Rather, it allows the Planning & Zoning Commission to focus on the resource and set the standards to protect that resource, similar to Aquifer Protection Zones.

The possibility of drafting the regulation enabling the applicant to apply for a variance based upon the characteristics of the property (Commissioner Volberg) – While a variance is under the jurisdiction of the Zoning Board of Appeals, it is possible for applicants to apply for a special permit or qualify for exclusions within the regulations.

ERWSCC Program Director Young stated that the ultimate goal of the RCOZ regulation is to maintain the protection of the corridor, using the 50' and 100' as the baseline. It should be clear, fair, understandable, and enforceable. She proposed the possibility of engaging in a conversation with the other towns to draft a cohesive RCOZ regulation, with variations for each of the towns, creating a regulation that would stand the test of time.

Commissioner Reith expressed the urgency with which the regulation should be reviewed and rewritten, citing the expected influx of new residents to Salem due to the recent \$1.95 billion contract that was received by Pfizer due to COVID-19. The influx could increase construction activities resulting in RCOZ-related zoning issues. Chairman Smith concurred, adding that the Commission has been reviewing the RCOZ for two years. As such, he was not in favor of meeting with the other towns to discuss the regulation.

Town Planner LaFountain expressed his appreciation to ERWSCC Program Director Young and Chairman Irving for providing the presentation. He suggested and the Commissioners agreed to review both the original and previously drafted regulation for further discussion at their next scheduled meeting. He, too, will plan to meet with ERWSCC Program Director Young to review both documents.

Given the possible effect of Pfizer's new contract, ERWSCC Chairman Irving agreed with drafting the Salem RCOZ regulation first and, perhaps, utilizing it as the model regulation for the other towns.

The Commission thanked ERWSCC Program Director Young and Chairman Irving for joining their meeting and providing the presentation.

7. NEW BUSINESS – none

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

The Commission reviewed the report of the recent zoning/wetlands enforcement actions. The unpermitted activity which took place on Shingle Mill Road along the RCOZ has resulted in numerous violations, involving not only the Planning & Zoning and Inland Wetlands & Conservation Commissions (IWCC) but also, the Army Corps of Engineers and CT DEEP.

In response to Commissioner Fontneau regarding the stabilization of the site, Commissioner Khan-Bureau stated that, per the IWCC, the property owner(s) have stabilized the area with hay and other methods.

Commissioner Reith exited from the meeting at 8:02 p.m.

9. TOWN PLANNER REPORT

Town Planner LaFountain reported that a special exception public hearing for a property located on East Haddam Road is expected in the near future. The applicant will be utilizing the property, which was previously home to *Panfili's Farm Stand*, to store large equipment and vehicles.

10. CORRESPONDENCE: none

11. PUBLIC COMMENT:

David Bingham, 50 White Birch Road, whose family has resided along the Eightmile River for many generations, surmised that many who live along the River are not aware of the effects their low-impact activities have/has had on the existing wildlife. He expressed the importance of being aware of and recognizing the special and unique place we are living and the activities and their resulting impact. He is proud of the protections that are currently in place. Nevertheless, there is a real risk to our threatened and endangered species and it is important to maintain the riparian corridor as a natural protection zone. As a former member of the Commission, he supports the

need to amend the RCOZ regulation for clarity and enforceability and felt that the Commission is lucky to have ERWSCC Program Director Young and Town Planner LaFountain to help them accomplish their task; he would not be supportive of any reductions to the protected zone.

Commissioner Reith exited from the meeting at 8:07 p.m.

12. PLUS DELTAS:

Chairman Smith expressed his appreciation to ERWSCC Program Director Young and Chairman Irving, who, like CLA Engineers Soil Scientist Bob Russo, provided a very informative and concise presentation.

13. ADJOURNMENT

M/S/C: Volberg/Reith, to adjourn the meeting at 8:10 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

MEMORANDUM

TO: Planning & Zoning Commission

FROM: M. Allen, ZO

DATE: July 23, 2020

SUBJECT: Zoning enforcement report

Recent zoning enforcement actions have included the following:

1. 76 Shingle Mill Rd.

Unpermitted activity including removal of vegetation and soil took place along the western bank of Shingle Mill Brook at 76 Shingle Mill Rd. As Shingle Mill Brook is part of the federally-designated Wild & Scenic Eightmile Watershed, the subject activity took place within the Riparian Corridor Overlay Zone constituting a violation of Section 25A. As the subject activity also constitutes a violation of the Inland Wetlands & Watercourses Regulations, the violator was summoned before the Wetlands Commission and a Restoration Order was issued.

The Army Corps of Engineers has issued their own notice of violation ordering a restoration of wetlands at the subject property. The property owner has retained the services of George Logan of REMA Ecological Services, LLC to design and implement a restoration plan. Any proposed restoration work entailing any activity regulated by the RCOZ will require PZC approval.

2. 45 Forest Dr.

An unpermitted, nonconforming use has been ongoing at the subject property. Dubbed “Salem Woods,” the property is being advertised as a resort and special event venue—a use not permitted in the Rural A zoning district. Notice of Violation and Cease and Desist Order were issued per Section 17.4.2 to no response nor effort to comply. Notice of Violation was then recorded on Land Records per Section 17.4.3. The matter has been referred to the Town’s attorney.

3. 551 New London Rd.

Violation of Section 13 concerning unpermitted and nonconforming signs was cited. After continued noncompliance, a Cease and Desist Order was issued and Notice of Violation was recorded on Land Records per Sections 17.4.2 and 17.4.3 respectively. The subject violation currently persists.

4. 1 New London Rd.

Numerous zoning violations and site plan noncompliance persist at the subject property. The enforcement process per Sec. 17 has been exhausted to little avail, and the matter was forwarded to the Town's attorney. Health and Building violations have also been cited. The owners of Statewide Pawn located at the subject property have requested a certification of compliance apparently necessary for the renewal of state permitting related to their business. As the property is in fact egregiously out of compliance as aforementioned, the requested certification has been withheld and will not be issued until any and all violations and noncompliance are addressed to the satisfaction of applicable officials.