

**TOWN OF SALEM
PLANNING & ZONING COMMISSION
REGULAR MEETING MINUTES
TUESDAY, SEPTEMBER 15, 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 Meeting on August 25th, 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/93053508868?pwd=NVRlQUpOc2RqNjNtV2VSMEFnUDdiUT09>

Password: 280014

Or Via Telephone:

(312) 626 6799, (646) 558 8656, (346) 248 7799, (669) 900 9128, (253) 215 8782, or (301) 715 8592

Webinar ID: 930 5350 8868 | **Password:** 280014

PRESENT

Vernon Smith, Chair
John Gadbois, Vice Chairman
Thomas Reith
Walter Volberg
Carl S. Fontneau, Alternate (*seated*)
Diba Khan-Bureau, Alternate (7:43 p.m.)(*seated*)

ABSENT

Margaret Caron, Secretary
Ruth Savalle
Eric Wenzel
Jon Walsh, Alternate

ALSO PRESENT

Town Planner Justin LaFountain

1. CALL TO ORDER

Chairman Smith called the meeting to order at 7:04 p.m.

2. PLEDGE OF ALLEGIANCE

SEATING OF ALTERNATE(S):

Alternate Commissioners Fontneau was seated for Commissioner Wenzel.

3. PUBLIC COMMENT: *none*

4. PUBLIC HEARING: *none*

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

a) Regular Meeting Minutes: August 25, 2020

M/S/C: Volberg/Fontneau, to approve the Regular Meeting Minutes of August 25, 2020.

Discussion: Commissioner Reith responded to Commissioner Caron's comment under Item 12, Plus Deltas, regarding the inappropriateness of his comment

during their Affordable Housing Survey discussion and clarified that he was simply stating that he has both a diversified family and neighborhood. Roll Call vote, 5-0, all in favor. Voting in Favor: Commissioners Fontneau, Gadbois, Reith, Volberg, and Smith. Voting in Opposition: None.

AMENDMENTS TO THE AGENDA

M/S/C: Gadbois/Volberg, to make the following adjustments to the Agenda:

Addition, under Item 7, New Business:

a. Salem Zoning Regulations Text Amendment Application

Move:

Item 7(a) to precede Item 6, Old Business, and renumber the succeeding items accordingly.

Discussion: None. Roll Call vote, 5-0, all in favor. Voting in Favor: Commissioners Fontneau, Gadbois, Reith, Volberg, and Smith. Voting in Opposition: None.

6. NEW BUSINESS

a. Salem Zoning Regulations Text Amendment Application

Town Planner LaFountain introduced Attorney Harry Heller, *Heller, Heller & McCoy*, who is representing the property owners. The applicants are proposing an addition to the regulations for a floating zone entitled “Special Events and Limited Accommodation Zone”. The new zone would address the issues at the property located at 45 Forest Drive. The application is before the Commission for the purpose of setting a Public Hearing date of Tuesday, November 17.

Atty. Heller, representing 45 Forest Drive, LLC, concurred with Town Planner LaFountain’s overview of the application and their agreement to propose a Public Hearing date of November 17. The full amended text will be provided to the Commission prior to their October Regular Meeting and will be made available to the public.

In response to Commissioner Gadbois, Town Planner LaFountain explained that any resident or representative may apply for a text amendment. Similar to a regulation text amendment drafted by the Commission, the proposed amendment would require the proper Public Notices, notifications to the Councils of Government, and a Public Hearing.

M/S/C: Gadbois/Volberg, to accept the Text Amendment Application from 45 Forest Drive, LLC, and set the date for a Public Hearing for Tuesday, November 17, 2020 at 7:00 p.m. The Public Hearing will be held virtually via Zoom.

Discussion: None. Roll Call vote, 5-0, all in favor. Voting in Favor: Commissioners Fontneau, Gadbois, Reith, Volberg, and Smith. Voting in Opposition: None.

7. OLD BUSINESS

a. Riparian Corridor Overlay Zone (RCOZ) – Review of Draft

Town Planner LaFountain provided an overview of the draft of the RCOZ Regulation. Eightmile River Wild & Scenic Coordinating Committee (ERWSCC) Program Director Patricia Young was also present and available to answer any questions. Their goal is to make the Regulation legal, understandable, easy to follow, and enforceable.

Section 25A.1 Purpose and Intent

Edits include minor word changes and an additional paragraph stating that the “section does not replace any obligation of the applicant to have a determination made by the Salem Inland Wetlands and Watercourses Commission or any other regulatory agency as to whether additional reviews and permits are necessary.”

Commissioner Fontneau stated, and Town Planner LaFountain and ERWSCC Program Director Young concurred, that, unlike the Inland Wetlands Commission, the Commission, provides protection over agricultural activities. As such, he proposed the inclusion of an introductory section clearly stating that the RCOZ Regulation also protects against existing or new agricultural activities that are not under the umbrella of the Inland Wetlands Commission. ERWSCC Program Director Young added that their primary concern is to protect the clearing along the banks and maintain the continuous vegetative buffer area. The Planning & Zoning Commission, unlike The Inland Wetlands Commission, can designate areas that require protection, thereby reducing the burden of the Inland Wetlands Commission for these specific areas and, hopefully, reducing any possible legal issues.

Section 25A.2 Eightmile River Watershed Overlay District – Defined

The brooks and streams that are located within the District are named, making it easier for residents to identify whether the watercourse on their property is located within the RCOZ. The naming of the watercourses does not expand the District.

Section 25A.3 Zoning District Overlap

This section states that the more restrictive regulation would take precedence should the District overlap other zoning districts and federally, state, or municipally regulated areas.

Section 25A.4 Allowed Activities in the Eightmile River Overlay District

Sections that did not make much sense or were difficult to enforce were eliminated, including the percentage figures. ERWSCC Program Director Young added that, in an effort to eliminate redundancies, item number 10 in this Section exempts the requirement for an individual to receive approval from the Planning & Zoning Commission for an activity that was already permitted by the Inland Wetlands Commission. Town Planner LaFountain added that the item would also alleviate any confusion should one Commission approve and the other deny the same proposed activity.

Section 25A.5 Prohibited Uses in the Eightmile River Overlay District

This section is basically the same as in the original regulation.

Section 25A.6 Activities and Uses Permitted by Zoning Permit

This section is new and transfers the issuance of a permit for certain activities to the Zoning Enforcement Officer (ZEO). The activities include:

1. Minor activities or structures in the Overlay District of not more than 100 square feet of land disturbance provided certain criteria are met.
2. Minor stream crossings for footpaths and trails for the purpose of recreation and non-motorized property access provided certain criteria are met.

The original regulation included a section listing the activities “allowed only by a Zoning Permit issued by the Planning & Zoning Commission” (Section 25A.5.1), which is not in place nor included in any other part of the regulations. As such, there is no system in place to handle such applications.

Per Commissioner Gadbois and Smith, the following line will be amended as follows:

- 1(b) The disturbance is located no ~~more~~ *closer* than 25 feet from the stream edge for Overlay Districts that are 50 feet and no ~~more~~ *closer* than 50 feet from the stream edge for Overlay Districts that are 100 feet.

In response to Commissioner Gadbois, item 1(c), which states that “No previous approvals have already been granted by the ZEO under this section”, refers to the property. Should an individual wish to apply for an additional activity, he/she may opt to apply for a Special Exception Review (Section 25A.7).

Town Planner LaFountain recommended the Commission carefully review the section and consider the ability for the ZEO to sign off and issue/deny permit(s), rather than the Commission.

Commissioner Reith recommended that the Commissioners review Connecticut General Statutes Section 8-30g, regarding Affordable Housing, and H.B.-5132, An Act Concerning the Reorganization of the Zoning Enabling Act and the Promotion of Municipal Compliance, which could completely negate the regulation. He specifically referred to an article published in *The Mirror* on September 4, 2020, entitled “Connecticut’s Affordable Housing Law has Unintended Consequences”.

With respect to Sections 25A.5 and 25A.6, Commissioner Fontneau felt that including both prohibited and permitted uses is awkward and legally confusing. The Zoning Regulations are a permissive set of regulations and, as such, Section 25A.5 should be eliminated to avoid confusion. He proposed adding a sentence to the beginning of Section 25A.6, stating that “land-disturbing activity will not be permitted, but minor activities would be permitted by the ZEO.” ERWSCC Program Director Young concurred. She added that Section 25A.7 should also be reviewed and incorporated into the section as both refer to activities that would be allowed by separate types of permitting. Town Planner LaFountain agreed and added that they might also like to also consider placing Section 25A.4 prior to Section 25A.5.

Commissioner Khan-Bureau entered the meeting at 7:43 p.m.

Section 25A.7 Activities and Uses which Special Exception Review can be applied for

Item a in this Section was copied, almost verbatim, from the East Haddam Regulations and provides the Commission with some discretion for lots that “prevent the placement, expansion, or alteration of a structure” due to its size and the Eightmile River Watershed Overlay District. Items b and c were included in the original regulation.

Section 25A.8 Permitting Process

This section explains the application process and the standards or criteria upon which the applications will be considered.

In response to Chairman Smith regarding the permitting process, Town Planner LaFountain stated that applications are submitted and reviewed for any structures being placed on a property and is not usually a time-consuming process. To obtain approval, the homeowner must submit the completed application forms and plot plans indicating the location of the proposed structure in relation to the property lines and well and septic systems. The applications are reviewed and approved by the Zoning Department, Uncas Health District, and Building Official prior to the issuance of a permit.

General Discussion regarding the regulation

ERWSCC Program Director Young reiterated that the suggestions, recommendations, and ambiguous language were eliminated from the Regulation. Salient points, which would allow the applicant to explain and respond to those items during their presentation and as part of the review process, were maintained. She reminded the Commission that the regulation is included in the Zoning, and not Wetlands, Regulations because the Commission is able to determine whether a proposed activity can and/or cannot occur within a said area while the Inland Wetlands Commission can only review the proposed activity(ies) for permitting purposes.

In response to Commissioner Gadbois, Town Planner LaFountain stated that some of the feedback that was initially received by the Town Attorney was incorporated into the draft. The final draft will be sent to the Town Attorney for a final review before it is released and presented to the public. ERWSCC Program Director Young added that Land Use Attorney Michael Ziska has also reviewed the Regulations and will also review the final draft to ensure its legality and enforceability.

Commissioner Reith questioned whether the regulation should include a reference to the respective 50’, 75’, and 100’ buffer areas to clarify them for the residents. Town Planner LaFountain explained that the 75’ buffer zone refers to the Upland Review Area. Any proposed activity within 75’ of any wetlands must be reviewed and approved by either the ZEO and/or the Inland Wetlands Commission. He added that the Inland Wetlands Commission is considering changing the Upland Review Area to 100’ for consistency and to align the town with the State’s recommendation(s). ERWSCC Program Director Young further added that

some towns have or are considering larger Upland Review Areas and suggested that the Commission, in conjunction with the Inland Wetlands & Conservation Commission, create and distribute an informational/educational brochure reflecting and explaining the protected areas, including the RCOZ, so as to familiarize the residents with the terms and clarifying the activities that would require permitting. To this end, the ERWSCC would be interested in working with the Commissions and, possibly, help fund the production and mailing of the brochure. Town Planner LaFountain and Commissioner Khan-Bureau concurred. Commissioner Fontneau expanded upon their comments, stating the importance of educating homeowners regarding the RCOZ to not only help protect the area from damage, but also to avoid the need to expend the time and funds to restore the damaged area.

The Commissioners agreed that the amended RCOZ Regulation is an improvement upon the previous version and eliminates the prior confusions and is comparably understandable. Commissioner Khan-Bureau commended the teamwork between ERWSCC Program Director Young, Town Planner, and Zoning and Wetlands Enforcement Officer Matt Allen.

Commissioner Reith departed from the meeting at 8:08 p.m.

Alternate Commissioner Khan-Bureau was seated for Commissioner Caron.

ERWSCC Program Director Young responded to one of the questions from the Commission received via the Town Planner regarding how the ERWSCC directs their research funds. The ERWSCC is a federally-funded organization, which also seeks grants. The Committee's role not only includes research projects, but also infrastructure improvements, mapping, professional development, education, and habitat restoration. Once the Committee's overhead costs are covered, the remaining funds are directed towards grants to, primarily, communities seeking funds for projects linked to their Watershed Management Plan. Funding for projects outside the Plan are sought through other, non-federal resources. They also seek partnerships with the State, academic institutions, and other non-profit organizations.

In response to Commissioner Fontneau who inquired as to the determination process and the equitability of the distribution of grants, ERWSCC Program Director Young stated that the Committee's priority goals and decision-making factors are available on the website. Those grant requests which fulfill their Tier One Tools and/or have not received previous funding would receive priority. Funds are allocated to groups or organizations, not individuals. Partial or full funding is available, depending upon the project and/or the amount of available funds.

Commissioner Fontneau proposed the possibility of studying the effects of the damage and measuring the results of the restoration process at the recent violation on Shingle Mill Brook where the canopy was significantly reduced. ERWSCC Program Director Young concurred, adding that the Committee has the means to log the temperatures and conduct other tests that can be compare to previously gathered information from the area. In response to his question regarding the existence of any new information regarding the overlay zone and buffer widths,

ERWSCC Program Director Young stated that a Yale study that was conducted that revealed similar information to that which was presented by CLA Engineers' Bob Russo. She was open to receiving any new information that Commissioner Fontneau might have and Commissioner Khan-Bureau, as a UCONN Research Scientist, offered to obtain any research papers or documents that Commissioner Fontneau recommends and forward them to ERWSCC Program Director Young.

Town Planner LaFountain stated that he will review and revise the amended RCOZ Regulation with ERWSCC Program Director Young and distribute it to the Commission for further review.

Chairman Smith thanked ERWSCC Program Director Young for her input and hard work.

b. Plan of Conservation and Development (POCD) Discussion

At the suggestion of the Commission, Town Planner LaFountain has obtained a copy of the POCD surveys that were distributed by the Towns of Bozrah and East Haddam. He reminded the Commission that the POCD must be completed by March 2022, but a draft must be sent to the State and the Regional Council of Governments at least 65 days prior to the Public Hearing, moving the deadline up by approximately two months. He explained that every municipality in the State is required to update their POCD at least once every ten years. The town's previous POCD was completed in 2012 and centered around the status and goals of the town. The idea of the updates are to encourage them to review their towns in relation to the goals they have outlined in the POCD. There are no requirements for conducting any type of outreach, e.g., surveys, but they are required to hold Public Hearings. The POCD may be completely redone or simply include updates such that it is current and meets any statutory requirements.

Chairman Smith tasked the Commissioners to review the POCD and gauge whether they felt a survey would not be necessary. He reported that he has reached out to the Economic Development Commission and Historian for the Salem First Congregational Church for any information they might have for inclusion. He also noted that Appendix 2 of the current POCD includes a checklist of tasks for various Boards and Commissions.

Commissioner Khan-Bureau stated the importance of conducting a survey since the POCD should reflect how the residents feel about the future of the town. Commissioner Gadbois agreed, adding that the more participation they receive, the more useful the information would be. Commissioner Volberg also felt that it would be prudent for them to send out a survey so as to have time to address any issues; should they wait until the Public Hearing, the Commission might not have any time to address their issues and complete the POCD in a timely manner. In terms of informing the townspeople regarding the availability of the survey, Chairman Smith recommended they Commissioners utilize Facebook, the town website, town e-blast, and Everbridge system. Commissioner Gadbois offered to create a Google Form.

Commissioner Fontneau strongly felt that one of the best uses of time and communication is to include the Boards, Commissions, and townspeople regarding their land use goals. He hopes to present a format in the very near future of how the town's Boards and Commissions might provide input and schedule an annual meeting with the Commissions to review their progress.

A copy of the East Haddam, Bozrah, and Salem surveys will be sent to the Commissioners for review.

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

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

9. TOWN PLANNER REPORT

Town Planner LaFountain reminded the Commission that their next meeting will include the Public Hearing regarding the application for 142 East Haddam Road. In addition, he foresees approximately four (4) applications that will be presented to the Commission, each of which will require a Public Hearing, in the very near future.

Chairman Smith stated that the cost of an appeal, due to the cost of the legal notices, recently came to his attention. Town Planner LaFountain stated that he has investigated his suggested options. The option to advertise the legal notice in the town's quarterly publication, *Our Town Salem*, he found, would not be possible because the Legal Notices must be noticed twice prior to the meeting and once following the meeting. The option to temporarily waive the fees due to the Governor's Executive Order allowing towns to post Legal Notices on their town website, as opposed to the local newspaper, would need to be presented and voted upon at a Town Meeting. The town would need to consult with the Town Attorney regarding the possibility for the Board of Selectmen to approve the temporary fee waiver in lieu of a Town Meeting. Chairman Smith will speak with the First Selectman regarding the possibility of waiving the process and, hence, the fee(s).

10. CORRESPONDENCE: *none*

11. PUBLIC COMMENT: *none*

12. PLUS DELTAS:

Chairman Smith expressed his appreciation to Town Planner LaFountain and ERWSCC Program Director Young for their work on the RCOZ Regulation and commended ERWSCC Program Director Young on her open and informative demeanor.

13. ADJOURNMENT

M/S/C: Fontneau/Volberg, to adjourn the meeting at 8:58 p.m. Discussion: None. Voice vote, 5-0, all in favor. Meeting adjourned.

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