

**TOWN OF SALEM
PLANNING & ZONING COMMISSION
REGULAR MEETING MINUTES
TUESDAY, NOVEMBER 27, 2018 – 7:00 P.M.
SALEM TOWN HALL – CONFERENCE ROOM 1**

PRESENT

Joseph Duncan, Chair
Vernon Smith, Vice Chair
John Gadbois, Secretary
Margaret Caron
David Miller
Ruth Savalle
Diba Khan-Bureau, Alternate
Ray Gionet, Alternate (*seated*)
Terri Salas, Alternate

ABSENT

Eric Wenzel

ALSO PRESENT

Town Planner Justin LaFountain
Town Land Use Attorney Steve Byrne
Selectman Liaison Dave Kennedy

1. CALL TO ORDER

Chairman Duncan called the meeting to order at 7:00 p.m.

PLEDGE OF ALLEGIANCE

SEATING OF ALTERNATE(S):

Alternate Member Gionet was seated for Commissioner Wenzel.

ALTERATIONS TO THE AGENDA:

M/S/C: Duncan/Smith, to move item 6(a) to 4(b) on the Agenda. Discussion: None. Voice vote, 7-0, all in favor.

2. PUBLIC COMMENT: *none*

3. PUBLIC HEARING: *none*

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

a. Regular Meeting Minutes: October 23, 2018

M/S/C: Smith/Caron, to approve the Regular Meeting Minutes of October 23, 2018.

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

b. Commissioner Training – Provided by Attorney Steve Byrne

Land Use Atty. Byrne introduced himself to the Commissioners and reviewed a folder of items, which included the latest newsletter, his resumé, a Handbook for Planning & Zoning Commissions and a Good Governance booklet.

He briefly reviewed and discussed the Good Governance booklet, which provides guidelines regarding how to run a meeting and a public hearing, site visits, concerns regarding the Freedom of Information Act (FOIA), disqualifications, and conflict of interest issues. Related references to the CT State Statutes are cited throughout the booklet. Also discussed was the importance of maintaining the public's confidence by listening to all of the comments made by the applicant and all of the members of the public thereby ensuring that a sense of fairness and due process exists in all cases. The Commissioners should do their due diligence and their decisions should clearly cite the requirements that have or have not been met. The importance of considering the public's perception as well as that of addressing any possible conflict of interest issues that are raised was briefly discussed, including the ability of a Commissioner to serve on more than one related commission, e.g. the Planning & Zoning and Inland Wetlands and Watercourses Commissions.

The Handbook for Planning & Zoning Commissions was also reviewed and discussed by Atty. Byrne and the Commissioners. The Handbook includes the Commission's powers and duties, which are, again, dictated by CT State Statutes. The Town's Regulations should be revised as the State's Statutes are updated. The Commission is not held liable for the discussions and comments made during informal pre-application meetings. The Executive Session process and the ability to continue Public Hearings that occur during times of inclement weather without a quorum present was discussed. Atty. Byrne also reviewed the cross-examination process; the importance of properly publishing public notices in the local newspaper; time requirements for decisions; extension approvals; site plan vs. special permit applications; the renewal and replication of special permits, e.g. quarry or excavation use; zone change applications; enforcement actions, and; stopples, which are unenforceable once a zoning permit has been issued and the project has begun. Public hearings for zone change applications that are initiated by the Commission may be continued for an indefinite period of time. Atty. Byrne also informed the Commission of a change that was made to the Plan of Development in that the Commission obligated to review and consider any written requests to amend the Plan. Subdivisions and re-subdivisions; open space; Inland Wetlands and Watercourses (IWCC) referrals, municipal improvements and the required §8-24 review process; non-conforming uses; limitations on zoning power, including Federal Government limitations; interveners who intervene in any administrative proceeding to raise environmental issues were also reviewed and discussed.

5. OLD BUSINESS

a. Regulation Re-write Discussion:

1) Section 25-A – Riparian Corridor Overlay Zone (RCOZ)

Chairman Duncan requested Atty. Byrne's thoughts regarding the interplay between the Planning & Zoning and Inland Wetlands & Watercourses Commissions and, possibly, State Statutes regarding the Town's Riparian Corridor Overlay Zone (RCOZ) Regulation. The Zone, which was established in Salem approximately 11 years ago, directly relates to the Town's wetlands and watercourses, but, as he interprets it, the

Planning & Zoning Commission (PZC) is the lead agency within the RCOZ because it is included in its Regulations. In addition, the Town's regulation regarding agricultural practices within the wetlands and watercourse areas is much more restrictive than that of the State Statute as well as the IWWC Regulations.

IWWC Member Kim Bradley provided a brief background of the RCOZ, which was established as the result of the Federal designation of the Eightmile River Wild and Scenic Watershed. Both the National Park Service and Coordination Committee are required to maintain the quality and conditions of the watershed and regulations were adopted at a local level to ensure that the watershed is protected. The regulation attempts to prevent new agricultural uses that would impede upon the waterway from being established; any previously adopted agricultural uses are grandfathered in. She acknowledged the existence of some confusion regarding the RCOZ in the P&Z Regulations.

IWWC Chairman Ed Natoli reported that, at last evening's Eightmile River Wild & Scenic Watershed Committee meeting, a discussion regarding the RCOZ took place. One of the major issues includes the fact that the Town of Salem is located upriver from that of Lyme and East Haddam. As such, any changes to the regulations that could lower the quality of water would pose an issue. All of those who owned their property prior to November 1, 2017 are exempt from, i.e., grandfathered into, the regulation. Having discussed their regulations in comparison to the other towns, it was felt that Salem's regulations are the least restrictive as that of the other towns protect their entire watershed. IWWC Chairman Natoli suggested they engage the services of the Eightmile River Wild & Scenic Coordinating Committee Program Director Patricia Young who has volunteered to review and determine the number of property owners who are affected by the regulation as well as accepting her assistance in revising the regulations to fit the needs of the Town. He felt that, while the Town has done a very good job in protecting the Eightmile River, they have not done a very good job with exploiting it recreationally. He noted that there are financial gains to owning a property located within the zone and believes that its value is increased due to its location along a protected area. Nevertheless, those who are considering purchasing a property located within the zone should be aware of the restrictions.

Atty. Byrne, having quickly reviewed the regulation, agreed that it does pose some issues that should be addressed. He noted that the role of the PZC, as opposed to that of the IWWC, is to regulate the use of the land near water and protect the property owner. He confirmed that the Town's regulation can be more restrictive than the State Statutes. He also felt that the utilization of language that is used by the IWWC should not be used in the PZC regulations.

IWWC Member Bradley commented on the importance of educating the property owners regarding the benefits of residing within the zone and the reasoning behind the

RCOZ and protecting the waterways. She also agreed and proposed promoting the health and wellness of the community and the benefits of the trails.

In response to Commissioner Smith, only the tributaries of the Eightmile River in Salem are affected by the RCOZ. He stated his concern with restricting the rights of the property owner(s). He agreed with Commissioner Smith who was concerned with the extent of the restrictions placed on the property owners and felt that the Commission should be careful as other towns are involved.

Chairman Duncan confirmed with Atty. Byrne that the Town's regulations can override State Statutes and that the PZC is the ruling party, not the IWWC. The PZC may request the IWWC for recommendations to support their decision(s). Any revisions the Commission makes to the regulation would be to clarify the regulation and their ability to regulate and enforce it.

Atty. Byrne agreed that the regulations should be clear and should follow State Statutes and ensure that similarly situated people are treated equally and fairly. In addition, the regulation should not be subject to interpretation as that could result in an invitation to possible litigation. A simple, understandable regulation would require little to no enforcement.

IWWC Chairman Natoli suggested the possibility of allowing the IWWC to create a draft of/recommendations to the regulation that is reviewed by the Eightmile River Wild & Scenic Coordinating Committee Program Director Young. The draft/recommendations would, then, be sent to the PZC for final review and approval. Chairman Duncan agreed that the regulations are unclear and in need of revision and that it should be tailored to the Town's needs and goals. Town Planner LaFountain further added that the goal is to create an understandable and fully legal regulation.

Chairman Duncan will await the receipt of Atty. Byrne's concerns and, with the Commissioners, create an outline of those items they feel should be revised. IWWC Chairman Natoli will, meanwhile, forward the information received from the Eightmile River Wild & Scenic Coordinating Committee Program Director Young regarding the number of people, both grandfathered in and otherwise, who are affected by the regulation to the Commission. Commissioner Savalle suggested the possibility of requesting that that information be included on the property's field card. Chairman Duncan reiterated that their ultimate goal is to create a clear and balanced regulation. He thanked them for their input and expressed his gratitude to Atty. Byrne for providing the training.

b. Forestry Management Plan Update

Commissioner Khan-Bureau reported that several students are continuing to review and tag those trees that are dead with Tom Worthley, Associate Extension Professor at the University of Connecticut Cooperative Extension Service and the University of Connecticut Department of Natural Resources and the Environment.

6. NEW BUSINESS

a. Review of Proposed 2019 Commission Meeting Dates

M/S/C: Smith/Miller, to approve the Planning & Zoning Commission's Regular Meeting Dates for 2019. Discussion: It was confirmed that none of the meeting dates conflict with any holidays; there will be only one December meeting. Voice vote, 7-0, all in favor.

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

8. TOWN PLANNER REPORT:

Town Planner LaFountain informed the Commissioners that an application for a Site Plan has been submitted and will be presented to the Commission for review at their next meeting.

9. CORRESPONDENCE: *none*

10. PUBLIC COMMENT: *none*

11. PLUS DELTAS

Commissioner Smith commented on a very good meeting with the Town Attorney, adding that, having been a member of the Commission for the past several years, he has found the meetings with Atty. Byrne very informative and positive. Commissioner Salas agreed that the meeting was very helpful.

The next meeting will include the election of officers.

12. ADJOURNMENT

M/S/C: Smith/Caron, to adjourn the meeting at 9:21 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