

THE INLAND WETLANDS COMMISSION OF THE TOWN OF AVON HELD A VIRTUAL REGULAR MEETING ON TUESDAY, MAY 4, 2021, AT 7:00 P.M., VIA GOTOMEETING: by web, <https://global.gotomeeting.com/join/673130501>; or by phone, United States: +1 (571) 317-3122, Access Code: 673-130-501#.

Present were Chair Clifford Thier, and Vice-chair Michael Beauchamp; and Commissioners Bob Breckinridge, Martha Dean, Michael Feldman, and Michael Sacks. Also present was John McCahill, Planning and Community Development Specialist/Wetlands Agent.

Chair Thier called the meeting to order at 7:00 p.m.

Chair Thier read aloud guidance on the process related to the virtual meeting.

NEW APPLICATION:

**APPL. #770 – Matthew Popp, Environmental Land Solutions, LLC, applicant; Toll CT Limited Partnership, owner; request for regulated activities within the 100 foot upland review area: 1) construction of a portion of the driveway; 2) related grading for and creation of rear yard; 3) construction of a portion of the new dwelling. Location: 381 Northington Drive, Parcel 4910381.**

Present on behalf of Appl. 770 were applicant Michael Popp, and Michael Zemola, of Toll CT Limited Partnership.

John McCahill stated that he would facilitate the Town of Avon Inland Wetlands Commission (IWC) virtual hearing process. He summarized the application materials as submitted by the applicant and staff documents which were added to the application file.

Commissioner Feldman stated for disclosure that he had represented clients in litigation adverse to the Toll [Brothers] company. He did not feel it was a disqualifying factor to his participation.

Chair Thier inquired if the applicant or owner wished to object to Commissioner Feldman's participation in determining the application, based upon his disclosure. Chair Thier stated that there would still be a quorum of the Commission that evening without Commissioner Feldman's participation.

Mr. Zemola objected to Commissioner Feldman's participation in determining the application's approval or denial.

Chair Thier ruled that Commissioner Feldman would not participate in the decision on Appl. #770.

Commissioner Feldman stated that he would await notification from the Commission after Appl. #770 was decided in order to rejoin the meeting.

Mr. Popp summarized the application. He stated that some of the land had been cleared at an earlier time upon the approval of a previous application for the subject property. He explained

the sections of the color-coded map within the application, including a conservation easement, the wetland area and its functions and values, and the regulated areas where there would be disturbance. He further explained that the function of the wetlands on the subject property included groundwater discharge, sediment trapping, nutrient uptake, and food and wildlife habitat. The disturbance would be 25 feet from the wetland line. The proposed activities had been approved in a previous application approximately ten years ago. He stated that the only new element added to the current application, compared to the previously approved application, was additional erosion control measures. There remained ¼-acre of disturbance within the upland review area. He stated that the objective of the application that evening was to receive an approval by the Commission to continue the activities that had been previously approved.

Commissioner Sacks sought confirmation that the lawn would be 25 feet from the wetlands boundary. He stated his concerns regarding runoff from the lawn, intrusion to and impact on the buffer zone, and the impact on trees and the lack of shade of the cleared land. He stated that the buffer, which would be needed to absorb lawn chemicals, would be eliminated with the proposed plan. He stated that research showed the critical issue of travel time for the movement of chemicals.

Mr. Popp stated that the wetlands area will remain shaded. The trees had already been cleared since the last application approval. The buffer area will be able to trap sediments before they arrive at the wetlands area. He stated that erosion would not be an issue as a result of the construction. He stated that the proposed lawn width would be 45 feet, and this would not be significant with regard to the amount of chemicals, if an owner should choose to use them. Mr. Popp stated that there could be a small land depression created at the edge of the lawn and the wetlands to trap some of the runoff water and it would remain in the depression for a period of time before arriving in the wetlands.

Commissioner Dean stated that she had attended the 2021 Connecticut Bar Association's Connecticut Land Use Law for Municipal Land Use Agencies, Board, and Commissions webinar, and related to the Commissioners' authority in making statements regarding applications, that the Town's IWC members should present credentials if making statements presented as expertise. She was concerned about the practice of a commissioner presenting oneself as an expert on issues related to an application.

Chair Thier noted that Commissioners could state their opinions regarding issues related to an application. Commissioners would be free to ignore or agree with other members. He agreed that the Commissioners should be careful when giving their opinions.

In response to Commissioner Breckinridge's inquiry regarding the nearest watercourse to the subject property, Mr. Popp responded that it was far to the southwest, and more offsite than what was shown on the site map. He stated that one of the functions of the wetlands was to filter water prior to arriving to a watercourse. He confirmed that the watercourse was nowhere near the site. Mr. Popp confirmed that there would not be any measureable impact on wetlands or to watercourses from the development of the subject property.

In response to Chair Thier's question regarding the possibility of moving the location of the proposed house closer to Northington Drive, Mr. Popp stated that the house was already drawn on the map at the front yard setback line.

John McCahill confirmed that Northing Drive is a collector road. He stated that the house was drawn on the map according to the zoning regulations for the required 60-foot front yard setback line.

In response to Chair Thier's question, Mr. Popp stated that the land should not be sloped toward the house in order to avoid water damage issues to the house. He stated that the subject property land naturally sloped toward the wetlands. He stated that they could include a swale depression created to catch rain water, at the edge of the wetlands, which could be 4 feet wide by the length of the house and approximately eight inches deep.

Mr. Zemola stated that they would look to avoid a point flow into the wetlands that could create problems, and the swale depression would alleviate any problems. In response to Chair Thier's question, he stated his agreement to make the creation of a swale depression a part of the approval conditions, if the application were to be approved.

Commissioner Dean motioned to approve Appl. 770, with the five standard conditions and an additional sixth condition for an eight to ten-inch depression approximately four feet in width, or an elongated rain garden which shall be incorporated into the grading plan adjacent to the edge of the disturbance. Commissioner Breckinridge seconded the motion. The following members voted in favor of the motion: Chair Thier, Vice-chair Beauchamp, and Commissioners Dean and Breckinridge. The following member voted to deny the motion: Commissioner Sacks. The motion to approve the application carried, by a majority of 4-1.

Commissioner Feldman rejoined the meeting.

#### COMMUNICATIONS FROM THE PUBLIC:

There was no communication from the public.

#### OTHER BUSINESS:

Enforcement Hearing: Mr. Thang Tran - 425 Waterville Road (Assessor's Map #026, Lot #4500425); removal of mature trees/saplings along, and adjacent to, the banks of a watercourse and/or near wetlands associated with the property.

Thang Tran, owner of 425 Waterville Road, was present for the enforcement hearing via telephone.

John McCahill summarized the relevant materials for the hearing, including the following: a Notice of Violation with attachments, dated April, 13, 2021; the attachment of a map of the Town of Avon GIS screenshot of the subject property, with colored areas showing wetlands, a floodplain, and alluvial soils on the property, potentially within the regulated area of

approximately 100 feet x 100 feet of area where trees were cleared; photographs of the watercourse on the property, partially covered with debris, taken by Town staff; a copy of the Town of Avon Assessor's record verifying ownership; a colored map showing the regulated setback areas along the watercourse which runs through the property, and the 100-foot distances from the wetlands and watercourses per the Town wetlands map and 1984 Avon topo map, prepared by Town staff at the request of the IWC Chair; and a copy of definitions for wetlands and watercourses. John McCahill summarized the written response with attachments from Thang Tran, received by the Town May 3, 2021, which had been distributed to the IWC for review prior to the meeting on May 4, 2021.

Chair Thier stated that the motives pointed out in Mr. Tran's letter were irrelevant to the IWC's regulatory authority. The IWC's charge was to determine whether or not the Town's regulations, with regard to wetlands, watercourses, and regulated upland review areas, were violated; if they were, to determine what the Town's recourse and the steps Mr. Tran would need to enact.

Mr. Tran stated that he would need to speak to a lawyer and requested a postponement of the enforcement hearing to the June 1, 2021 IWC regularly scheduled meeting.

Commissioner Dean stated that Mr. Tran could confirm that he would have additional representation at the June 1, 2021 IWC meeting. The IWC would continue the enforcement hearing at the June 1, 2021 meeting with or without additional representation or Mr. Tran's participation, if he chose not attend the meeting.

In response to Mr. Tran's request for clarification on the nature of the potential violation, and Mr. Tran's statement that he did not know why he received a Notice of Violation, Chair Thier, Commissioner Dean, and John McCahill explained the issues of the activities taken on the subject property in relation to the Town of Avon wetland regulations regarding activities that may or may not be permitted within or near wetlands and watercourses. John McCahill stated that the removal of 10,000 square feet of trees within a regulated upland review area on the subject property would be reviewed and determined regarding potential violations by the IWC. These issues were written in John McCahill's letter to Mr. Tran. Commissioner Dean explained to Mr. Tran the nature of the regulations of wetlands and watercourses in relation to the ownership of wetlands and watercourses by the people of the State of Connecticut, and not by individual land owners. Commissioner Dean further explained that wetlands were determined by soil type and not by the presence of water in the State of Connecticut. The Commissioners and John McCahill explained to Mr. Tran that a land use attorney would be best able to represent him in this matter if he should decide to contact an attorney, as well as a soil scientist in determining the nature of the soils of the subject property.

John McCahill stated, related to Mr. Tran's inquiry regarding the drainage pipe on the street-side easement of his property, that Waterville Road is a state-owned road and Mr. Tran would need to contact the State of Connecticut for that matter. John McCahill further stated that the drainage patterns and pipes are shown on a highway map dated back to 1927.

Chair Thier reiterated to Mr. Tran that the enforcement hearing regarding activities at 425 Waterville Road would take place and a decision would be made at the regularly scheduled IWC meeting of June 1, 2021, at 7:00 p.m., with or without Mr. Tran and/or his representation.

Commissioner Dean urged Mr. Tran to participate via computer in order to see the visual presentations on the screen, in order to best discuss the activities related to wetlands and watercourses and participate fully in the enforcement hearing.

Mr. Tran confirmed that he would attend the June 1, 2021, 7:00 p.m., IWC meeting, and also have additional representation at that meeting.

Commissioner Sacks motioned to postpone the enforcement hearing until the June 1, 2021, 7:00 p.m., regularly scheduled virtual IWC meeting. Commissioner Dean seconded the motion. The following members voted unanimously in favor: Chair Thier, Vice-chair Beauchamp, and Commissioners Dean, Breckinridge, Feldman, and Sacks. The motion carried.

Chair Thier requested that Mr. Tran contact John McCahill to provide the telephone number and email address for his lawyer in order for John McCahill to discuss the enforcement proceeding with the attorney.

In response to Commissioner Dean's request to walk the subject property, John McCahill stated that the property could be sufficiently viewed via roadside and the Commissioners would not need to walk the subject property at 425 Waterville Road at the time.

In response to Commissioner Dean's question regarding the Town staff photograph of the watercourse, showing brush in the watercourse, John McCahill stated that in actuality it appeared to be brush that had been cut and placed in the watercourse. He stated that this would be a potential violation, to be determined.

#### STAFF COMMENTS:

John McCahill stated that he would stay on as staff liaison to the IWC through at least the end of June 2021, as the Town of Avon did not have a replacement for his position at that time. He further stated his current working days each week to be Tuesdays through Thursdays.

#### APPROVAL OF MINUTES:

- Minutes - March 2, 2021 – Regular Meeting and Public Hearing. Vice-chair Beauchamp motioned to approve the minutes and Commissioner Breckinridge seconded the motion. The following members voted unanimously in favor: Chair Thier, Vice-chair Beauchamp, and Commissioners Dean, Breckinridge, Feldman, and Sacks. The motion carried.

#### NEXT REGULARLY SCHEDULED MEETING:

The next regularly scheduled meeting will be held on Tuesday, June 1, 2021, at 7:00 p.m., via the virtual GoToMeeting platform.

There being no further business, the meeting adjourned at 8:05 p.m.

Susan Guimaraes, Clerk  
Inland Wetlands Commission  
Town of Avon Planning and Community Development