

THE INLAND WETLANDS COMMISSION OF THE TOWN OF AVON HELD A VIRTUAL REGULAR MEETING ON TUESDAY, OCTOBER 3, 2023, AT 7:00 P.M., VIA GoToMeeting: by web <https://meet.goto.com/160065885>; or by phone, United States: [+1 \(571\) 317-3116](tel:+15713173116), Access Code: [160065885#](https://meet.goto.com/160065885).

Present were Chair Michael Feldman, Vice Chair Michael Sacks, and Commissioners Michael Beauchamp, Robert Breckinridge, Gary Gianini, Carol Hauss, and Kevin Tobin. Also present was Emily Kyle, Planning and Community Development Specialist/Wetlands Agent.

Chair Feldman called the meeting to order at 7:00 p.m. There is a quorum of 6 Commissioners present (K. Tobin joined later.)

Chair Feldman inquired whether any Commissioners would like to amend the Agenda to put Application #790 regarding 135 Darling Drive first for the sole purpose of consideration of a public hearing. G. Gianini indicated that members of the community have asked him about an opportunity to ask questions or express their opinions on this Application. Vice Chair Sacks made a Motion to Reorder the Agenda to move Application #790 to the first item. G. Gianini seconded and said he believes that it would be in the public interest to have a public hearing.

I. NEW APPLICATION:

APPL. #790 – A.R. Building Company, Inc., Applicant and One Thirty Five Darling Drive, LLC, Owner; request for regulated activities within the 100 foot upland review area: construction of a multi-family residential project including buildings, parking areas, utilities, stormwater drainage system and related site work. Location: 135 Darling Drive, Parcel 2030135.

G. Gianini made a Motion to Schedule a Public Hearing for Application #790. C. Hauss seconded. E. Kyle referred to Section 9.1 of the Town of Avon IWC Regulations which lists the criteria to decide whether an application should be moved to a public hearing. She said that the public interest should be as it pertains to wetlands impact and not the use of a property or other zoning criteria. Chair Feldman said that Section 9.1 is very broad and discretionary as to public interest and this is a large project. G. Gianini believes that a public hearing would allow community members to ask the Applicant directly for information.

John Schmitz of BL Companies is representing the Applicant. He said that given that the site is already developed, they are keeping the development footprint within the existing development footprint, and not pushing further into the wetlands, he does not believe that there is significant activity and therefore no direct impacts. He would like to move forward tonight and given that the site is already developed and they are making improvements, he does not know if a public hearing is warranted. Vice Chair Sacks said that many people drive by this site and are aware of activity there. Emily Mitchell, Vice President of A.R. Building Company, wanted to note that there will be other opportunities for the public to comment on this application. They will need a zone change and site plan approval and both of those processes will have opportunity for the public to speak. R. Breckinridge asked E. Kyle the reasons in the Town's Regulations to go to a public hearing. E. Kyle said there are three (3) routes: the first is that the IWC determines that the proposed activity may have a significant impact on wetlands or watercourses. R.

Breckinridge agreed that the IWC has not done that yet. E. Kyle said the catch all reason is that the IWC finds that a public hearing would be in the public interest and R. Breckinridge found that very broad. Chair Feldman asked for a vote on whether Application #790 should go to a public hearing. Five Commissioners voted in favor and one, M. Beauchamp, opposed.

II. PENDING APPLICATIONS:

APPL. #786 – The Silvio Brighenti Family LLC, Owner and Applicant; request for regulated activities within the 100-foot upland review area: construction of house, driveway, utilities, and related site work on each of three (3) lots. Locations:

250 Northington Drive, Parcel 4910250;
256 Northington Drive, Parcel 4910256; and
7 Saddle Ridge Drive, Parcel 6210007.

Attorney Robert Reeve of Unionville, Connecticut represents the Owner/Applicant. Jeffrey Brighenti, Principal of the Owner/Applicant, David Whitney, P.E. of David F. Whitney, Consulting Engineers, LLC, and George Logan, Soil Scientist of REMA Ecological Services, LLC are also present. R. Reeve said that at the last IWC meeting there was an extensive presentation from D. Whitney and G. Logan and they had just received a written report from the North Central Conservation District (the “NCCD”). Since then the IWC has received written reports from D. Whitney and G. Logan dated August 28, as well as an additional letter from D. Whitney dated September 26 and additional revisions to the plans. There have also been additional comments from E. Kyle dated August 31 and Matthew Brown, Assistant Town Engineer, dated August 30. R. Reeve stated that E. Kyle confirmed that G. Logan has answered all her questions and concerns at this time and the Engineering Department has stated that the development will not have any adverse impacts on the wetlands. Chair Feldman said that the IWC is very familiar with this Application and R. Reeve said that they will just focus on what has changed in this Application in response to comments received.

D. Whitney referred to his letter dated August 28 and said that with the change in 2007 of the upland review area from 40’ to 100’, it is impossible to build houses and develop these lots without some encroachment into the 100-foot upland review area. He said that the area on each lot that could be developed without the need to apply to the IWC is very small, there is a relatively small area of wetlands on each of the lots, there will be no activity within the wetlands, and there are no direct impacts on the wetlands. He also said that the conservation easement areas (the “CEA”) on each lot have been greatly increased so a significant amount of these lots will be protected and limited from any sort of development including tree clearing. He responded to the comments by the NCCD and revised the houses on Northington Drive to have front entrance garages which allowed him to push the houses closer together (each is now located on the 25-foot minimum side yard) and to increase the CEA as recommended by the NCCD. He has also reduced the driveway lengths and raised the houses to shift the grading away from the wetlands on either side. He had previously proposed boulder rows at the locations where the disturbed area came closest to the wetlands as this is an effective way to provide a physical barrier to prevent the encroachment of the lawn. He added boulders around the edge of the CEA as a way for the homeowners to know where the lawn area should stop. D. Whitney proposed

adding aluminum disc plaques to the trees to let the homeowners know where the CEA is. As a response to the NCCD letter, he added some additional shrubs and vegetation between the boulders to further provide a buffer and delineation of the limit of disturbance. He did not feel there was a need for permeable pavers for the driveways because the stormwater runoff from the driveways will be directed to stormwater infiltration systems on each lot which accomplishes the same thing as the pavers. All the stormwater runoff from the houses and the driveways (the first flush i.e. the first 1" of rain) will be discharged into subsurface infiltration systems. The NCCD asked for alternatives for the proposal and D. Whitney said that one alternative would be the original 2004 plans which are closer to the wetlands than the current plans. A second alternative would be the plans he proposed in June, 2022 where he pulled the houses back from the wetlands but there was no additional CEA and the driveways were longer to make them less steep. A third alternative would be his plans dated July 1, 2023 where he proposed smaller houses than the 2022 plans, added the boulder rows, added the significant CEA, and added the stormwater infiltration systems. The fourth alternative are the August, 2023 plans. He believes that measures have been taken to mitigate any possible impact to the wetlands. He said that R. Breckinridge has asked why D. Whitney did not also put a front load garage on 7 Saddle Ridge Drive and he said that the wetlands are behind that house and he already had the house as close to the road as possible – the minimum 40-foot front yard setback. It makes no difference here whether it is a front or side entrance garage – you cannot move the house farther from the wetlands. He also provided calculations of the volume of stormwater runoff from the lots to answer a question from Vice Chair Sacks. D. Whitney used the Rational Method from the new 2023 Town of Avon Engineering Department Design Standards Manual for these calculations. He referenced a watershed map to show that the development of a single-family residential lot with an average sized house and a modest driveway results in very little increased runoff. Any increased runoff is due to changes in the ground surface when you go from woods to grass or impervious surface. Running the calculations for a 100-year storm (1" of precipitation in 24 hours) results in increased runoff of less than one CFS which is a very small amount. He also referenced the subregional watershed drainage basin map and said that 7 Saddle Ridge Drive is in a subregional drainage basin of 746 acres that drains to Hawley Brook and eventually the Farmington River. He said the Town of Avon Engineering Department concurs with his calculations.

G. Logan said that he agrees with the revisions that D. Whitney did and believes that they further reduce any potential physical impacts to the wetlands which he said were already minimal and not adverse. His August 28 letter responded to the NCCD report. Regarding headwater wetlands, he referenced the article that Vice Chair Sacks put into the record previously called the Scientific Basis for Wetlands and Watercourse Zones prepared by REMA and last revised in 2011. There are a range of headwater wetlands and some are more sensitive than others. The one on 7 Saddle Ridge Drive differs substantially with Wetlands #1 on 250 and 256 Northington Drive. The one on Northington Drive is a headwaters basin wetland while the one on Saddle Ridge Drive is more of a headwater seepage wetland. Wetlands #1 is resilient because it is surrounded by development and has both cross drainage and treated drainage but has held its functionality very well. Typically, a headwaters wetland, such as the one on Saddle Ridge Drive, is more sensitive but in this particular case, he said that care has been taken to minimize any potential indirect impacts as mentioned in his May 19 report. He referenced potential thermal impacts and said that the wetlands that are thermally sensitive are the ones that have sensitive aquatic habitats. On Saddle Ridge Drive, this is not the case. The headwater wetlands that are considered sensitive are

the ones that are nutrient sensitive like bogs, fens, or headwater seeps like perennial seeps. On 7 Saddle Ridge Drive, about 45% of the lot is CEA and the property has soft drainage which provides protection for the seasonal wetlands seep. The wetland is 759 square feet but is surrounded by 27,000 square feet of development and feeds into an extensive wetland. His professional opinion is that there is no discernible adverse impacts to any of these headwater wetlands whether thermal or from nutrients. He said that the NCCD report stated that they were not experts in vernal pool surveys but through 2016, G. Logan has done surveys and analysis of over 230 vernal pools throughout Connecticut including some multi-season and since then has done another 35-40 more. He has expertise in vernal pools and in his professional opinion, there is not going to be a physical impact – direct or indirect – to vulnerable habitat which is embedded in Wetlands #1 which is hundreds of feet away from the edge of the Northington Drive lots. He said that they have done everything they possibly can to minimize the development envelope and answer all the questions that the IWC has had.

M. Beauchamp is satisfied with the revisions made to the initial plans and has had his questions answered. C. Hauss and G. Gianini had no further questions. Vice Chair Sacks is concerned because while there is no question that G. Logan is an expert in vernal pools, the NCCD recommends an independent, qualified third-party expert which the Town of Avon was unwilling to pay for. It is his fundamental view that when he looks at this Application, the IWC is lacking sufficient evidence needed to evaluate it – an independent, third-party expert is needed – and therefore he cannot support this Application. He said that there are differences between G. Logan's report and his earlier article – there is a difference when you are making an argument from the perspective of a land trust vs. a developer. He also is concerned with the removal of large trees on the property and the importance of the wetland and where it is located. He said that D. Whitney is basing his projections on Atlas 14 which is many years out of date and not accurate. He also believes that it is a feasible and prudent alternative for one house be put on 250 and 256 Northington Drive instead of two – it would be further away from the wetlands and allow for a necessary buffer. He also believes it would be a feasible and prudent alternative to have no house on 7 Saddle Ridge Drive because of the headwaters. For those reasons, Vice Chair Sacks will vote no on this Application. R. Breckinridge said that the IWC has to use the information and the experts before us – we will not have another expert witness. He is uncomfortable with the Application and agrees that he would like just one lot at 250 and 256 Northington Drive. He will vote in favor because the law compels him to. K. Tobin asked if the latest plans currently encroach on any protected area and D. Whitney answered no. Chair Feldman said that there has been extensive discussion about this Application and the IWC owes it to the Applicant to vote. M. Beauchamp made a Motion to Approve Application #786 with standard Town conditions and including the most recent revisions made to the plans. E. Kyle would like to include one of her original suggested conditions of approval which requires that plants within the understory wooded planting area be monitored by Town staff for two years. R. Breckinridge seconded. The Motion passed 6-1 with Vice Chair Sacks voting no.

APPL. #787 – AMCO Development, LLC, Applicant, and Virginia B. Shaw Trust, Owner; request for regulated activities within the 100-foot upland review area: construction of house, driveway, utilities, and related site work. Location: 68 Scoville Road, Parcel 3880068.

Jim Jones of Jones Engineering, LLC in Southington, Connecticut said that at the last meeting the IWC made recommendations. His new proposal flips the house and pushes it all the way to the right away from the wetlands while still maintaining a side entry garage. He also added some boulder rows along the clearing limit and showed the wetlands marked in the field and the upland review area on the plan. Lastly, he added the easement access to 60 Scoville Road. Jim McManus, Soil Scientist of JJM Wetland Consulting Services, LLC of Newtown, Connecticut said that moving the garage to the eastern side of the lot adds distance to the wetlands. The distances also increase behind the house and to the north of the house. He believes that after making these revisions as suggested by the IWC, the Applicant now has a very good plan.

Vice Chair Sacks had no questions. R. Breckinridge thanked the Applicant for making these adjustments and asked who owned the 15 foot Right of Way. J. Jones said that it was in favor of the lot to the rear and he doubts it will be developed as the wetlands runs directly through it. R. Breckinridge asked E. Kyle if there was any issue with the ROW. E. Kyle said that she did some preliminary research in the Avon Land Records and the ROW was old, very vague, and did not have any vegetation clearing limitations or any restriction regarding leaving the ROW untouched. It is the property owner's responsibility to ensure that it is not violated in any way and does not have any restrictions that prohibit the Owner from doing what is proposed here. Chair Feldman asked where the ROW was and if 66 Scoville Road had other access so that property would not need this ROW. E. Kyle pointed out the ROW on the plan and said that 66 Scoville Road did have other access. G. Gianini asked about the slope of the lot and J. Jones replied that the lot slopes from east to west towards the wetlands approximately 10'. G. Gianini asked if the silt fence is enough with the increased frequency of heavy rainfalls once the building site is cleared. Also, he would like to know how you could avoid an overflow at the lowest point and the possibility of sediment being carried towards the wetlands and who would monitor that during construction. J. McManus said that once the lot has been cleared and ready for construction, he could put 12" wattles which help with infiltration and heavy slugs which can be moved around easier than hay bales. He will use wattles or silt socks – whichever the IWC prefers. E. Kyle said that once construction activity begins on an active wetlands site, she monitors it on a weekly basis to ensure that erosion control meets the approved plan. C. Hauss, M. Beauchamp and K. Tobin had no questions.

R. Breckinridge made a Motion to Approve Application #787 with standard conditions. C. Hauss seconded. The Motion passed 6-0 with K. Tobin abstaining.

III. PUBLIC HEARING:

APPL. #789 – Atlas Construction Services, LLC, Applicant and 275 West Main Avon LLC and 279 West Main Avon LLC, Owners; request for regulated activities within the 100 foot upland review area: construction of buildings, driveway and parking areas, utilities, stormwater drainage system and related site work. Locations: 275 and 279 West Main Street, Parcels 4540275 and 4540279.

E. Kyle read the Legal Notice of Public Hearing and confirmed that proper notice has been published. She said that no written submissions were received and that proper notice has also been sent to abutting landowners.

Michael Ott, Professional Engineer and Land Surveyor with Summer Hill Civil Engineers & Land Surveyors, P.C. of Madison, Connecticut. Also present is Eric Davison, Soil Scientist with Davison Environmental, LLC and Sabine Graeff, Landscape Architect with A2 Land Consulting. M. Ott shared an aerial view of the property and pointed out the two parcels that make up the site of this Application as well as the neighboring parcels and their use. This site has been the subject of previous IWC applications. The site is partially developed with a building on West Main Street that was a pizza restaurant and a single-family house in the rear, as well as a garage and a shed. There is bituminous concrete pavement on the site including a paved driveway from a large parking area that goes to the house and around the back of the house. Nod Brook flows southerly along the eastern portion of the site and there is a pond at the rear of the site. There is also a drainage divide roughly through the center of the site that runs from north to south with runoff to the west draining to the Wiggin Brook local drainage basin and to the east draining to Nod Brook which is a tributary to the Farmington River. M. Ott pointed out the limit of disturbance, the perimeter erosion and sediment controls, the upland review area, the wetland boundary, and pavement and buildings to be removed. There is currently about 38,500' of impervious surface on the site. The plan is to redevelop the site after demolition with restaurants in the two buildings closest to West Main Street (the easterly building will be a Shake Shack and there is no tenant yet for the westerly building). In the rear will be a smaller retail building for Atlas Outdoor which sells sheds, fencing and other outdoor structures for mostly residential use. There will be an outdoor storage area for the outdoor structures, mostly sheds, which is at least 50' from the wetland boundary. There is very little tree removal that has to take place as there is already a large, cleared area that the previous owner mowed. Also, they will not have any disturbance (tree clearing or grading) on the slopes that surround the wetland area. The proposal is to excavate the area and surface it with a crushed stone aggregate. It will be a flat area so precipitation that falls on this area will infiltrate directly into the underlying natural soils. M. Ott has used this material on other sites where sheds were stored and it has worked well. In the front of the site he has kept the impervious surfaces – the buildings and the new parking – within the current area that has impervious surface already. The new parking area and building on the westerly side are on top of the existing parking area. The only non-paved area is a small island that is there today. The easterly building is within the footprint of the existing building and the front parking and the driveway is currently paved. The parking in the rear of that building is partially within a disturbed area and the stormwater management basin will be constructed where the house is now. He did his best to keep the new impervious surfaces where there are impervious surfaces today and graded the site so that all stormwater runoff from impervious surfaces will be collected and treated before it is discharged to the wetland to the east. Currently there is a stormwater discharge with an outlet to the ground surface and the discharge flow is overland to the wetland. That discharge is the only one on the site now – the rest sheet flows overland to the wetland - there is no formal stormwater treatment on the site today. Chair Feldman asked if the three buildings are outside the upland review area. M. Ott answered that two buildings are partially in the upland review area but the western most building is completely outside the upland review area. He pointed out an area of about 2,800 square feet pavement which is close to the wetlands boundary and Nod Brook that will be restored and replanted. Chair Feldman asked if there was a net reduction in impervious surfaces and M. Ott said that there was an increase of 10,000 square feet but they have captured all of the stormwater runoff by directing it to the low point of the site and into hydrodynamic separators, and then it will enter the stormwater infiltration system. Any

overflow will be directed to a stormwater basin with plantings in it and any stormwater that has to leave the basin will be discharged through a pipe to an outlet that is over 100' to the wetlands straight ahead and over 50' to the wetlands left or right. There are two infiltration areas to try to replicate the current geological conditions. Chair Feldman asked if any of the runoff was going into the pond on the site and M. Ott answered no and said that the pond is several hundred feet away to the south.

E. Davison said that he delineated the wetlands in July and did a functions and values report with graphs, photographs and descriptions of the wetlands, reviews the plans and the impact of the project on the wetlands, and reviews the mitigation measures employed. This site has had a number of applications over the years and he was the biologist in 2012 that was hired by the applicant then to address amphibian and reptile issues. He reflagged the wetlands in July and found that there are more wetlands than in the previous delineation – he said that his most recent delineation is more conservative than the one done in 2012. There are four wetlands areas on the site. The eastern part of the site (Wetlands #1) contains Nod Brook and it borders wetlands – those wetlands were historically excavated. That area including the wetlands and the pond are not natural. His best guess is it is material extracted to construct Route 202 which was not uncommon at the time. There are also two isolated wetlands (Wetlands #3 and 4) which include the wetland that has the vernal pond. These three wetlands are all former historic excavations which are all naturalized and forested now and completely reestablished as wetlands. Wetlands #2 borders Wiggin Brook on the western side of the property. Wetlands #3 is closest to the existing and proposed development in the center of the site and Wetlands #4 is between the pond and Wetlands #3 and has the vernal pool in it. There will be no new activity within 200' from the vernal pool which is a significant setback. The goal of this development is to try to mimic the existing development and not push that development encroachment any further to the south where there is undisturbed forest. He said there are no direct impacts to any wetlands on the site. There is 47,000 square feet of activity in the upland review area with a slight increase of impervious surface of about 9,000 square feet. Currently this is a commercial development with no water quality treatment - after the proposed development it will have modernized state-of-the-art water quality treatment. Also, the parking lot in the northeast corner of the site will be removed which is significant because the wetlands are within 25' of that parking lot. Currently there is a large impervious area with a steep slope with no treatment so any water drains right into Nod Brook. When there is heavy rain, highly heated water discharges right into Nod Brook with no treatment. He believes that removing the parking lot, adding vegetation, and routing all the impervious surface drainage into stormwater treatment basins will be a significant improvement. His report contains the details of the type of vegetation, the hydrology, and the functions and values of each of the wetlands.

S. Graeff has been working in conjunction with the engineer and environmental scientist on this project and the goals were to provide a planting plan to enhance the design and address wetlands sensitivity issues on the site. Along the northern portion of the site where there is access she designed a 10 foot wide undulating planting bed which contains a wide array of attractive plant material with intense fall color and four season interest. A backdrop of wildfire sour gum trees will impart functional shade to the parking area and intense fall color as well. Pink flowering horse chestnuts accent the foreground and add additional shade. The interior of the site has been designed to complement each structure and work together to complete a harmonious design. A

combination of evergreen and flowering shrubs accented by grasses and perennials has been utilized in each individual bed adequate grassy area for snow storage in winter. The parking lot has been provided with adequate shade contributing material to reduce radiant heat. A tall dense evergreen screen has been planted along the western portion of the property line to provide variety, height, color and texture. The stormwater basin in this area has been layered and wetland plantings containing a multitude of select material will support the basin function, as well as the natural surrounding wetland. She provided a full list of the plantings on the plans. This material will provide both food and habitat sources for wildlife. M. Ott asked if S. Graeff could describe the plantings where the pavement will be removed to the east of the restaurant building. She said there would be dogwoods, sweet gum, black gum, and a viburnum row.

G. Gianini asked if there was a turf management plan in place to reduce fertilizer lawn chemicals. S. Graeff has made no recommendations to fertilize and said that general maintenance during installation to ensure that the plantings establish is part of her notes in the plan set. The general maintenance plan for the trees is in effect but for the grasses, she just supplies the seed and recommends that the area be watered and protected during the established period. G. Gianini asked where the snow would be stockpiled on the property. S. Graeff said there are islands towards the interior of the site behind the restaurant buildings which are grassy and the islands towards the outdoor storage area are left free of high or tall plantings. M. Ott said that on other projects that this developer owns and maintains he hires someone to load and remove the snow from a site during a significant snowfall event. C. Hauss, M. Beauchamp and Vice Chair Sacks had no questions. R. Breckinridge asked about snow removal because previously there was concern that the snow would be pushed down the steep slope into the wetlands. He would like to know more details about how the snow will be removed and M. Ott said he could provide a written detailed plan. R. Breckinridge then asked about lighting in the parking areas. He said that light has an effect on wetlands organisms and he did not see anything in the plans about this. A previous application was going to use down focused lighting to prevent any lighting spread into the wetland areas. M. Ott said the lighting locations and lighting details are on the plans. They use LED luminaires which meet all the current bug ratings for backup light and glare so they are full cutoff fixtures – also called dark sky compliant – which are low color temperature. He can show the way the lights are positioned, the types of luminaires, and the way the light does not go towards the wetlands but is limited to the site itself. R. Breckinridge would like to see this plan as there are two wetlands systems pretty close to each side of this property. He then asked about the existing point discharge towards the east side of the lot and assumes that that will be incorporated into the new system. M. Ott confirmed that that pipe will be removed and added that all manmade existing improvements on that site will be removed prior to construction of the new development. R. Breckinridge asked E. Davison if there were two vernal pools on the site. E. Davison said that Wetlands #3 has a saturated hydrology and this summer it has looked wetter than prior years but it does not have enough standing water to support amphibian breeding. It is a very flat wetlands that does not have the concavity to develop hydrology for the weeks and months that you need for amphibian breeding. He saw the same exact conditions of amphibian habitat that he saw in 2014. The vernal pool in Wetlands #4 is the only vernal pool on the property. K. Tobin had no questions.

Chair Feldman said that the IWC would like follow-up regarding snow removal, a lighting plan, and a long-term landscape maintenance plan showing the use of fertilizer and insecticides. He

asked if anyone from the public would like to be heard and there was no one. Vice Chair Sacks made a Motion to Continue the Public Hearing for Application #789 to the next IWC regular meeting on November 14, 2023. R. Breckinridge seconded. The Motion passed unanimously.

IV. COMMUNICATIONS FROM THE PUBLIC (unrelated to any Application): None.

V. OTHER BUSINESS:

A. Discussion of Potential Future Regulation Modifications. E. Kyle met with Hiram Peck, Director of Planning and Community Development, Kari Olson of Murtha Cullina LLP, Attorney for the Town, and Brandon Robertson, Town Manager, to discuss the draft resolution that E. Kyle prepared. In order for this regulation to go to the Town Council for approval, it needed tighter regulatory language that would help it stand up better in court. E. Kyle sent the proposal that the Town Manager's office recommended to the IWC. Chair Feldman said that this does not accomplish the objectives that the IWC wanted. He believes that it is so narrow that it is not really useful – for example, the definition of complex application is one that has work proposed in a mapped wetland and which presents unusual and intricate wetlands issues. He does not remember an IWC application with development directly in a wetland so you are talking about a situation that never arises. He believes that the IWC needs to have more discretion when determining when this procedure can be used. H. Peck said he could look at the definitions if the IWC has comments about them and said that K. Olson wanted to come up with a defensible ordinance that has some clarity to it. H. Peck could not recommend to the Town Council or the IWC an ordinance that allows the IWC to do whatever it wants. He knows from experience what will stand up in court so he suggested that if the IWC members have specific questions or comments, they should let him or E. Kyle know. He does think it is important that what is presented to the Town Council is recommended by Town staff and the Town Attorney so the Council knows that the ordinance will support the IWC's decisions and any judicial review. He looked at many ordinances across the state and found that many communities have never used their ordinance because they were able to get any needed information from an applicant, a conservation district, or some other party. C. Hauss believes that the proposed ordinance does nothing and H. Peck said that it sets out a specific process for selecting a third party consultant and sets up some definitions. C. Hauss said that this does not give the IWC any opportunity to utilize this ordinance – no one has come to the IWC to build directly in a wetland. H. Peck indicated that it does happen and he would try to find compromise wording that can satisfy the Town Attorney, Town Council and Town staff so the ordinance can be defended. Vice Chair Sacks said this proposal requires the applicant and the IWC to agree on a third-party consultant. He finds the proposal very problematic and differs from other towns. He is also troubled by waiting on others and would like the IWC to take this into their own hands and come up with a proposal that they find acceptable. He said that the IWC wants to be able to have a third-party review when there is development in the upland review area and anything that excludes that is unacceptable. He also thinks it is unacceptable to have a third-party review that needs to be agreed upon by the developer. Vice Chair Sacks feels that there are many viable proposals from other towns and complexity can be defined as beyond the IWC's expertise and where there is a need for an expert third-party to evaluate an application with complex issues. It will not be written in such a way that it is needed every single time. Chair Feldman asked H. Peck if this draft is based on other towns' ordinances or an original work and H. Peck replied that it was

original and done to try to resolve some of the following issues: the proposal needs definitions in it, it must lay out the process, and the applicants need to agree on the third-party reviewer as they will be paying for it. For example, he talked to one of the consultants that is used regularly and the consultant said that he would not be able to take any work for six months. That would put the applicant in a real bind so there needs to be a combination of criteria involving expertise, timing, cost, etc. Lastly, you need to address how the application would be processed. Chair Feldman agrees with Vice Chair Sacks that this would not be an effective ordinance if the applicant has veto power over the choice of third-party reviewer because the experts that the IWC deals with are a relatively small number of people and you would not want an applicant choosing their colleagues or friends. He wants a vigorous process where you truly have an independent third-party. H. Peck said that the applicant would not pick the third-party – there just needs to be cooperation so that timing and cost can be agreed on but Chair Feldman said that defeats the point of a third-party consultant. He proposed that a subcommittee of three commissioners work with E. Kyle to revise this and he proposed G. Gianini, R. Breckinridge and Vice Chair Sacks to be on that committee. R. Breckinridge is concerned that an application has a certain timeline and he is unsure how the IWC could hire an expert quickly enough. There are a limited number of experts so he does not know if that is feasible. He believes it would push applications out to potentially reach the limits of how much time is available for an application. He worries that the IWC is basically saying that they do not trust an expert witness for the developer. He is not sure that it is appropriate to relate to an expert that the IWC has a certain amount of doubt in what they are saying. He is also concerned that this ordinance will get used much more than it should – as in other towns, it should only be used in a very, very special case. Chair Feldman recognizes that there are practical stumbling blocks but he does not think it is a question of not trusting the integrity of the experts – it is a question of experts having different viewpoints. H. Peck said that Section 2 of the draft mentions R. Breckinridge's concern – if it is not possible that the third-party can submit the information requested for the next meeting, the application will have to be withdrawn to stop the clock. He said the application needs to be processed in a reasonable period to time which is important to save the applicant time and money but also to make the IWC's credibility solid. G. Gianini would like to think about the points presented tonight – he does feel that the intent of a new ordinance would be to help people. He thinks any comments on what has been presented should be sent to E. Kyle so it can be discussed at the next IWC meeting. Chair Feldman likes the idea of a subcommittee as it is more focused and concrete. H. Peck agrees that it is a good idea for a small group to put something together. The Commissioners agreed to contact E. Kyle if they can serve on a subcommittee.

B. Staff and Commission Comments (unrelated to any application): None.

C. Approval of Minutes: September 5, 2023 – Regular Meeting. R. Breckinridge made a Motion to Approve the Minutes from the September 5, 2023 Regular Meeting. K. Tobin seconded. The Motion passed unanimously.

VI. NEXT REGULARLY SCHEDULED MEETING: November 14, 2023

CJ Hauss made a Motion to Adjourn. Vice Chair Sacks seconded. The Motion passed unanimously.

There being no further business, the meeting adjourned at 9:40 p.m.

Janet Stokesbury
Clerk, Inland Wetlands Commission
Town of Avon Department of Planning and Community Development