

**Janet P. Brooks**  
Attorney at Law, LLC  
1224 Mill St., Bldg. B, Suite 212  
East Berlin, Connecticut 06023

October 28, 2020

Clifford S. Thier, Chairman  
Town of Avon Inland Wetlands Commission  
Town Hall, 60 West Main Street  
Avon, Connecticut 06001

Dear Chairman Thier and Members of the Avon Inland Wetlands Commission:

I submit these comments in response to:

- 1) the legal arguments of counsel, in his October 23, 2020 letter, for Nod Road Preservation, Inc. ("NRP") seeking intervention in this map amendment proceeding;
- 2) oral comments made by Dr. Michael Klemens during the public hearing on October 6, 2020; and
- 3) written comments submitted into the public hearing by members of the public.

1. Statements by counsel for Nod Road Preservation, Inc. that this Commission should be bound by a ruling of the Superior Court in an appeal which has been withdrawn from the court docket is unsupported by law.

A Superior Court judge is not bound to follow the ruling of another Superior Court judge *even within the same case*:

‘A judge is not bound to follow the decisions of another judge made at an earlier stage of the proceedings, and, if the same point is again raised, he has the same right to reconsider the question as if he had himself made the original decision.’ Santoro v. Kleinberger, 115 Conn. 631, 638, 163 A. 107, 109.

*Levay v. Levay*, 137 Conn. 92, 96, 75 A.2d 400, 402 (Conn. 1950), quoted in *Connecticut National Bank v. Great Neck Dev. Co.*, 215 Conn. 143, 146, 574 A.2d 1298, 1299 (1990). If a coordinate Superior Court judge is not bound by a previous judge’s ruling, similarly the Avon wetlands commission is not bound *by a ruling in a withdrawn wetlands appeal*.

Thus, we return to the crux of the matter: is the Avon wetlands commission approving conduct that permits Blue Fox Run Golf Course to impair, pollute or destroy wetlands or a watercourse? No, because Blue Fox has not sought a permit to undertake regulated activities in this proceeding; rather, it seeks to revise the general town wetlands map to make it accurate based on the consensus of four soil scientists. Therefore, we urge the Commission to deny intervenor status to Nod Road Preservation, Inc.

2. Dr. Klemens should take his novel approach to delineating wetlands to the state legislature, not to a municipal wetlands agency which implements current state law.

Dr. Klemens is not a certified soil scientist who may properly delineate wetlands in the state of Connecticut. He has urged the Commission to use the 500 year flood elevation to determine wetlands boundaries at this site. The Inland Wetlands and Watercourses Act (Act) does not currently incorporate such a regulatory scheme. Dr. Klemens is entitled to make those policy arguments to the General Assembly in pursuit of an amendment to the Act. Until such time as the Act has been amended, the best professional opinions of certified soil scientists remain the bedrock of wetlands delineations in map amendment proceedings.

Dr. Klemens opined that this map amendment proceeding is pro-applicant and wondered where the benefit is to the public. In our state wetlands regulatory system which is underlain by soil science, the public is always benefitted by amending a map from one which “delineates the general location and boundaries of inland wetlands,” to a map which indicates “the actual character of the land.” Regulation 3.1.

3. Written comments from the public:

Andrew Rothstein, letter dated September 29, 2020: **“In the past, the Commission has wisely and appropriately declined to alter the wetlands map to accommodate development interests.”**

**RESPONSE:** The purpose of a map amendment proceeding is to revise the general wetlands map for the town to reflect accurate and actual site conditions. This is reflected throughout the Avon wetlands regulations. See §§ 2.1.x, 3.1, 15.1. It is a science-driven proceeding at the end of which accurate information of the actual site conditions is incorporated into the maps. Everyone benefits from science-driven improvements to the general map, whether one wants to develop the property, protect it or do both.

Bruce Badner, email dated October 6, 2020: 1) **“I understand that this is a hearing just to reclassify 5 building sites on Nod Road currently classified as wetland. Does this reclassification reopen the door to a massive development / condo / apartment complex in this area? Or is it confined to 5 new houses along Nod Road?”**

**RESPONSE:** This is a proceeding solely to amend the wetlands map from one of “general location of wetlands” to reflect the “actual character of the land.” Regulations § 3.1. This proceeding does not reclassify anything. There is no application to undertake regulated activities associated with this map amendment. No approval will be issued regarding activities associated with development.

(con’t. from Mr. Badner): **“(2) What guarantees are in place to limit the future development planning of this property?”**

**RESPONSE:** The property is subject to the state zoning laws and town zoning regulations, as well as the town inland wetlands regulations regarding permits for regulated activities, all of which is outside the scope of this hearing on amendments to the wetlands map.

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(con't. from Mr. Badner): 3) . . . **“If the petition is asking for reduction of the current wetlands because of past development . . .”**

**RESPONSE:** The petitioners are seeking an accurate delineation of the inland wetlands on their property. They are seeking a correction from the general map which only “generally” shows the location of wetlands to an accurate map which identifies actual site conditions. The petitioners are not seeking any reduction based on past development.

Thank you for your consideration of these comments.

Sincerely,

*Janet P. Brooks*

Janet P. Brooks

Cc: Lisa Wilson-Foley  
Attorney Kari L. Olson  
Attorney Brian Smith