

**DRAFT****THE INLAND WETLANDS COMMISSION OF THE TOWN OF AVON HELD A MEETING ON TUESDAY, JULY 10, 2018.**

Present were Clifford Thier, Chair; Commissioners: Bob Breckinridge, Jed Usich, Michael Feldman and Dean Applefield. Absent: Michael Beauchamp, Vice Chair and Commissioner Martha Dean. Also present were John McCahill, Planning and Community Development Specialist/Wetlands Agent and Christine Campasano, IWC Clerk.

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

**PUBLIC HEARING:**

**APPL. #756** – Carpionato Group, LLC; Avon Town Center, LLC; Avon Town Center II LLC; Avon Town Center III LLC; and the Town of Avon as owners/applicants: Requests for regulated activities as follows: 1.) Clear, grub, grade, construction of roadway, driveways, utilities, stormwater management system, landscape, and hardscape within the 100' upland review area 2.) Clear, grub, grade, construction of building, roadway, filling, selective clearing within limits of the wetlands; *and* clear, grub, grade, construction of roadway, driveways, parking, utilities, stormwater management system, landscape, wetlands mitigation, and hardscape within the 100' upland review area 3.) Clear, grub, grade, fill, construction of retaining wall within the limits of wetlands; *and* clear, grub, grade, construction of roadway, driveways, walking trails, pedestrian bridge, utilities, stormwater management system, landscape, and hardscape within the 100' upland review area. Locations: 21 Ensign Drive, Parcel 2210021; 30 Ensign Drive, Parcel 2210030; 65 Ensign Drive, Parcel 2210065; 70 Ensign Drive, Parcel 2210070; 60 West Main Street, Parcel 4540060; 65 Simsbury Road, Parcel 3970065; 71 Simsbury Road, Parcel 3970071; 93 Simsbury Road, Parcel 3970093; 55 Bickford Drive, Parcel 1300055; 75 Bickford Drive, Parcel 1300075.

A PowerPoint presentation titled “Avon Village Center, Inland Wetlands and Watercourse Commission Public Hearing, July 10, 2018” was provided by Richter and Cegan, Carpionato Group and Fuss and O’Neill.

Michael Cegan, landscape architect and planner for Richter and Cegan, addressed the Commission’s concerns stemming from the last IWC meeting held on June 19, 2018. Mr. Cegan stated the Commission walked the three (3) wetland activity areas prior to the last meeting; Area 1, the Nod Brook enhancement, Area 2, the wetland enhancement/mitigation area and Area 3 the Park and the Boulevard. The Commission had previously voiced their concerns with the proposed activities in Area 3. He referenced Map GI-101 and described the proposed revised activities in that area. The referenced plans compare the previously proposed changes with the current proposed changes. The plans show the Bickford Boulevard realignment; the reverse curve is now outside of the upland review area (URA) and there is no impact on the wetlands. The 116 square feet of fill which was a direct wetland impact has been eliminated, along with the proposed retaining walls (reference presentation pages 4-6). The revisions include significant changes in the proposed grading and reduces the disturbance to existing vegetation.

Mr. Cegan noted a tremendous amount of effort was made by the team to respond to the Commission's concerns and requests for changes. Mr. Cegan provided a mitigation summary of the isolated wetland. There will be 3,150 square feet of wetland creation along with 6,340 square feet of habitat enhancement and invasive management. The replacement of the culvert with a pedestrian bridge is still proposed and there is interpretative signage that will be installed (reference presentation page 7).

Ron Bomengen, P.E. for Fuss and O'Neill addressed the Commission. He provided an overview of the Park area showing the realigned Bickford Boulevard. He referenced a map which showed the new impervious surface within the URA, with a little bit of widening along the new Bickford Boulevard which is required by the CT DOT (reference presentation pages 8-11). He described the stormwater management and the locations of the existing and proposed discharge outlets were discussed (reference presentation pages 12-14).

Mr. Bomengen stated Town Staff had requested Stage 1 of the construction sequence be broken up a little, shortened and separated. Town Staff has asked them to keep traffic circulation open through Fisher, Ensign, and Bickford to Climax during construction (reference presentation page 16). Stage 2 of the construction sequence has changed to include temporary road access for Climax Road residents down to Bickford; and Stage 3 adds a temporary access driveway; Stages 4 and 5 remain the same (reference presentation pages 17-19).

Mr. Bomengen added that Fuss & O'Neill received comments from Weston & Sampson's which was the third party review. They are confident they can address all of the items and satisfy all of their concerns. Mr. Bomengen suggested that one condition of approval be that all of the items mentioned in the third party review will be addressed satisfactorily.

Joshua Wilson, registered soil scientist with Fuss & O'Neill, spoke to the Commission regarding the wetland assessment. He stated that work that has been done to realign the road eliminates 116 square feet of direct wetland impact and that reduces URA impacts around Areas 3, 4 and 5. He explained that the Weston & Sampson review comments are straightforward and they can be satisfactorily addressed. Particularly, Weston & Sampson's comments 5 and 6 can be satisfied by referencing the environmental report for additional detail; or the report can be included on the plans.

This concluded the applicants' presentation. Chairman Thier asked the Commission to discuss the application by wetland activity. Mr. McCahill requested that the slide depicting Wetland Activity 1 be shown during the discussion. Mr. Thier requested an enlargement of map GI-102 be displayed.

Mr. McCahill clarified that Wetland Activity 1 relates to the bridge crossing over the brook. Mr. Bomengen noted there was no slide showing an enlargement of Wetland Activity 1 as there are no direct impacts in that area. Mr. McCahill elaborated on the Wetland Activity 1, stating that in the upper right hand corner there is the bridge crossing and below that there are improvements and enhancements along Nod Brook down to the proposed building and sitting area. There will actually be a reduction in the existing crossing since the current vehicular bridge will become a pedestrian bridge/walkway.

Mr. Thier asked where the dam will be removed and what the impact of the removal will be. Mr. Bomengen stated a hydraulic analysis of Nod Brook was completed and provided to Town Staff for review. There will be no impact upstream or downstream.

Dean Applefield asked Mr. McCahill if the removal of the dam is covered within the Wetland Activity 1 description. Mr. McCahill said it was a comprehensive description of the activities. Mr. Applefield then referenced the third item of the Weston & Sampson comments regarding temporary water handling. Mr. Bomengen explained that this was referring to the type of bridge construction. The Main Street bridge will be constructed on piles and there will be no impact or activities within the watercourse or floodway.

Mr. Breckinridge thanked Mr. McCahill for walking the site with him since he was unable to attend the scheduled site walk on June 19, 2018. He asked if the removal of the dam will result in any change in velocity after a storm event. Mr. Bomengen replied that it would not; a hydraulic study was performed and there were no negative effects up or down stream.

Mr. Thier questioned how they will prevent debris from restaurant patrons from going into the brook from the dining terrace associated with Building 10. Mr. Cegan explained that the distance was a little deceptive. The outdoor dining is actually set back quite a distance from the brook and the restaurant will be sure to prevent this from occurring.

Mr. Thier asked, especially when discussing feasible and prudent alternatives, why does the R10 Building have to be in the URA. He questioned why Mr. Cegan stated that the building was critical to the overall plan for the intersection and why it was a result of the peer review process and consensus plan. Mr. Cegan stated that the proposed building actually has less of a building footprint than what currently exists in the URA.

Mr. Cegan stressed that this is unique, it is the Village Center and not an isolated individual project. Mr. Thier asked if they explored feasible and prudent alternatives. Mr. Cegan explained they never look at feasible or prudent alternatives if there were no direct wetland impacts. Mr. Thier said, for this Commission, it is their job to examine any activities in the URA. He asked did the applicant ever consider not building in the URA. Mr. Cegan responded no, this is the Village Center and he never had to justify activities in the URA before this. Attorney Meyers stated the building is there because it has no effects on the wetlands. Mr. Cegan walked the Commission through the activities listed in Wetland Activity 1.

Mr. McCahill noted the Commission has approved activities in the regulated areas (URA) in the past.

Mr. Thier asked if there was anyone from the public who wanted to speak. Mr. Frank Zigman was present and inquired about the impact to Climax Road during the construction. He was instructed to direct those questions to the Planning Commission.

Mr. Thier asked if there was a motion for Wetland Activity 1. Mr. Usich questioned if the Commission was voting on each activity individually. Mr. Thier replied yes. Mr. McCahill said that it would be difficult to prepare conditions of approval if each activity were looked at individually. Mr. Thier felt in fairness to the applicant it was better to review the activities

individually. Attorney Meyers appreciated that but was willing to move forward with voting on all three (3) activities at once.

Mr. Applefield inquired if this area was in or out of the Natural Diversity Database (NDDDB) area. Mr. Bomengen stated that it is within the NDDDB area and that they received the NDDDB response letter today. Mr. Applefield stated he would not be able to vote unless he knew the NDDDB response. He stated he would need to consider the potential impact on the threatened or endangered species in the area.

Mr. Wilson summarized the NDDDB response letter for the record. He stated it was a standard letter from the CT DEEP. The letter recommended that if a state listed species were found, field surveys of the site should be performed and they should identify what species are on site. A conservation or protection plan would be designed to minimize adverse effects on the species. These items also need to be addressed for the stormwater permit.

In response to a question, Mr. Wilson explained that dwarf wedgemussels exist in slower moving water and a determination needs to be made if they exist in Nod Brook. Mr. Wilson continued to read and explain the species list of concern (reference DEEP letter dated July 10, 2018) for invertebrate animals, vascular plants and vertebrate animals.

Mr. Wilson informed the Commission that if these species were identified in the wetland areas a protection plan would be developed specifically for these species; by either avoiding them or transplanting them. This effort would be in coordination with DEEP prior to the application for the stormwater permit. He said if any species were to be found in Nod Brook enhanced erosion and sedimentation controls would also be implemented. The worst case scenario would be that they find the dwarf wedgemussel since that would effect permitting at the federal level and extend the approval process. Mr. Thier asked how this would impact construction plans, if found. Mr. Wilson replied that it would probably lengthen it by three (3) – six (6) months. He believed that whatever portion of the construction it effects, it would delay that portion as it relates to the Army Corps jurisdiction.

Mr. Applefield inquired if all of the surveys for the species on this list could be conducted at this time, and if so, how long would the surveys take. Mr. Wilson replied that yes all the species can be surveyed for at this time and it would take approximately two (2) - three (3) days of field research, followed by the writing of the reports; so within two (2) – three (3) weeks.

Mr. Usich directed his question to Mr. McCahill as to whether, or not, the application can be approved pending the outcome of these reports or surveys. Mr. McCahill replied it could as it is a very comprehensive process to receive approval for the project from the State. He stated that more importantly what needs to be considered is whether or not any of these species are critical to the wetlands; or if anything will change the wetlands; or its functions and damage one of these species.

Mr. Wilson responded no that because wetland activity 2 is not a complete loss of that wetland and there is a significant amount of invasives in that that wetland; no regarding the mussels because there is no change to the brook itself so it is unlikely to have any impact on the mussels; and if plants species or turtles found there would be preventive measures such as fencing. Mr. Wilson felt in his opinion there would be no significant impact over the long term on the species; however, CT

DEEP requires that that they know if the species are present or not before they grant final approval.

Mr. Thier asked the Commission if there was any additional information they needed and if anyone objected to voting on the application at tonight's meeting. Mr. Applefield said unfortunately he needs the surveys because you cannot protect the species without knowing if they are there or not. He stated if the species exist it would effect the construction methodology. He replied if he were to vote tonight, unfortunately, it would be for denial since there is not sufficient information on whether they are negatively impacting threatened or endangered species in the wetlands and regulated areas.

Mr. Bomengen sought clarification on what Mr. Applefield meant by methodology - did he mean the way something was constructed or changes to the plan. Mr. Bomengen said whether or not these species exist, we still plan on building according to plan but we will be required to comply with whatever CT DEEP requires during construction.

Mr. Applefield acknowledged that he understands the applicant has an additional State obligation to comply with but, the Commission has a responsibility separate and independent from the State to protect endangered and threatened species within their jurisdiction. Mr. Bomengen responded that the Commission's recommendations for protecting these species may be different from the State's recommendations. Mr. Applefield replied absolutely.

The applicant was asked, by Mr. Their, when they will have this information or what additional information anyone would need. Mr. Applefield stated needs the survey information based on what Mr. Wilson recommends. Mr. Bomengen added they will also need to find a consultant/mussels specialist. Mr. Applefield stated, "that it is in the watercourse how can I vote okay if I don't know if a federally endangered species in is the watercourse?" Mr. Thier inquired when the applicant thought this information would be available. Mr. Wilson responded that he could not say since they would need to secure a mussel specialist.

Mr. Feldman posed a hypothetical question. He wanted to know if these species did exist on site, how would development plans be effected. Mr. Wilson responded that it would add a layer of additional protection, awareness, consideration to the project. He mentioned one can simply say, or conservatively assume, all these species exist and then they can develop a very specific monitoring or pre-construction inspection plan.

Mr. Feldman inquired if a condition of approval could be added stating that if any of the species were found that the applicant would come back to the Commission. Mr. Applefield was not in agreement or comfortable with this. He felt that he had an independent obligation to determine for himself how to protect the wetlands and watercourse.

Mr. Bomengen stressed that they need to get a third party specialist for the mussel survey. Attorney Meyers told the Commission that the Planning and Zoning Commission plans on voting on this application on Tuesday, July 31. Mr. Thier stated that the Planning & Zoning Commission voted first on applications before. Attorney Meyers asserted that this was not the case, the Inland Wetlands Commission must vote first according to State Statutes.

The applicants stated they would make every effort to provide the Commission with necessary information within two (2) weeks. Mr. Thier suggested that the Commission meet again on July 24. He then once again asked the Commission if they needed any more information beyond what Mr. Applefield requested.

Mr. Applefield wanted clarification on the maintenance of the drainage system. He was unclear who will take responsibility of the maintenance. Mr. McCahill replied that they would not know until they determined which systems were designated public or private. He noted that normally the Town would require a maintenance and operations plan be submitted prior to the start of construction, along with the posting of a bond. Mr. Applefield responded whether or not they should make an assumption that the applicant would be responsible for the maintenance.

Attorney Meyers told the Commission the applicant will maintain it. Town Council will decide which roads are public and private, until an agreement is in place it will be the applicant's responsibility. Attorney Meyers confirmed the applicant would aim for the July 24 special meeting for all information to be complete.

Mr. McCahill told the Commission that he did draft conditions of approval and he wanted to see if it closed the gap on the Commission's concerns. Mr. McCahill read the proposed condition: a request for NDDDB State Listed Species Review has been submitted to the CT DEEP; should the CT DEEP require any additional studies and/or protective measures, the applicant shall fulfill those requirements and coordinate with the Town. If there are confirmed endangered or threatened species associated with the property, the Town Staff shall review the findings and specific protective measures. At the direction of Town Staff, the applicant may have to return to the Commission for further review of the specific protective measures, prior to proceeding with the regulated activities associated with the project.

Mr. McCahill stated that the NDDDB review was talked about and with this proposed condition he tried to close the gap, the Commission has imposed conditions like this in the past. Mr. Breckenridge inquired if the condition could read "will" have to return to the Commission instead of "may."

Mr. McCahill replied that he thought the Town Staff could review be the first step and if only one or two species were found and protective measures could be taken, it would not warrant the return to the Commission.

Mr. Usich suggested the condition note that the applicant come back if the federally endangered mussels were found. Attorney Meyers anticipated a condition like this would be proposed. Mr. McCahill added that the idea was to capture the timing of the survey now since the timing of the survey is directly related to when the applicant can start their project. Mr. Applefield said the problem he has with that is that he does not know how it will effect the construction activity. He did not see why it matters if the CT DEEP letter is only valid for the year.

Attorney Meyers told the Commission he will make his best effort to have all the information requested by the Commission available to them by July 24. Mr. Usich wanted to know if the mussels were found what will happen next. Mr. Applefield stated he would want to know what the federal government wants them to do. Mr. Breckenridge questioned what the Commission would

do differently from what would be recommended by the CT DEEP. Mr. Applefield stated he could not speculate on what would be done; there is an entire list of species to consider.

Mr. Thier felt that the best alternative was to meet in two (2) weeks with the additional information. Attorney Meyers asked the Commission if there was any other additional information needed. Mr. Thier said the Commission could contact Mr. McCahill with any additional requests.

Mr. Wilson briefly went through Wetland Activity Area 2 and there were no further questions from the Commissioners. Mr. Applefield had stormwater questions pertaining to Wetland Activity 3. Mr. Bomengen replied that the drainage work is within the URA nothing was directly in the wetlands. The locations of the existing and proposed outfalls were shown. Mr. Applefield asked if the construction activity to lay drainage pipe would be within the regulated area. Mr. Bomengen responded it would be and that the activity was accounted for on page two (2) of the application.

Mr. Applefield was under the impression most of the stormwater was going to end up in Nod Brook; and was wondering how it gets there. Mr. Bomengen replied through overland flow; there are only two (2) direct discharges into Nod Brook; all pipes underground discharge above ground.

Mr. Applefield requested Mr. Bomengen's opinion on items #5 and 6 of the Weston and Sampson Stormwater Report comments. Mr. Bomengen clarified that they received the permeability test results which showed infiltration rate at 17"/hour versus the 1"/hour and reported because of this they may possibly reduce the size of the chambers they will use; what they proposed is bigger than what they actually need.

As for item #6, Mr. Bomengen said it is in relation to Item #5 and it would be part of re-doing the calculations with the new infiltration rate. There is no net increase in any storm event. Mr. Applefield followed up by asking if the system they designed might be smaller. Mr. Bomengen said, if anything, that it may be slightly smaller.

#### **COMMUNICATIONS FROM THE PUBLIC:**

Mr. Frank Zigman was present inquire about the impact to Climax Road during the construction. He was instructed to direct those questions to the Planning Commission at their meeting being held on Tuesday, July 17.

#### **DECISION:**

Jed Usich made the motion to continue the public hearing to a special meeting to be scheduled meeting on Tuesday, July 24, 2018. Bob Breckenridge seconded the motion.

Motion to vote. All were in favor. The motion passed unanimously.

#### **APPROVAL OF MINUTES:**

Site Walk Minutes June 19, 2018

Motion to approve the minutes by Jed Usich second by Michael Feldman. Minutes were approved unanimously.

Public Hearing Minutes      June 19, 2018

Motion to approve the minutes by Dean Applefield second by Robert Breckenridge. The minutes will reflect the one page of submitted corrections. Minutes were approved unanimously.

**NEXT MEETING:**

There is no regularly scheduled meeting for August, 2018. The next scheduled meeting is Tuesday, September 4, 2018.

Meeting adjourned at 8:45 p.m.