

THE INLAND WETLANDS COMMISSION OF THE TOWN OF AVON HELD A VIRTUAL REGULAR MEETING ON TUESDAY, JUNE 1, 2021, AT 7:00 P.M., VIA GOTOMEETING: by web, <https://global.gotomeeting.com/join/739867965>; or by phone, United States: +1 (224) 501-3412, Access Code: 739-867-965#.

Present were Chair Clifford Thier and Vice-chair Beauchamp (audio disconnected and unable to vote); 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.

John McCahill conducted roll call.

NEW APPLICATION:

**APPL. #764** - The Estate of Donald L. Cole c/o William K. Cole, owner/applicant: requests for regulated activities within wetlands and/or within the 100 foot upland review area: 1) Wetlands crossing #1, proposed driveway (approximately 1551 linear feet) with culverts and fill (**work completed**). 2) Wetlands Crossing #2, proposed driveway (40 linear feet) with culverts and fill (**work completed**). 3) Construction of driveway (470 linear feet), house, septic system, well, utilities, and related grading within 100 foot upland review area. 4) Excavation in upland review area to provide compensatory flood storage volume for driveway fill (**work completed**). Location 70 Sunrise Drive, Parcel 4190070 - Transfer of existing IWC permit to Karin S. and **Martin J. Comer** – Letter dated May 10, 2021. Property now identified as: 72 Sunrise Drive, Parcel 4190072.

Present and speaking on behalf of Appl. 764 transfer of existing Inland Wetlands Commission (IWC) permit was David F. Whitney, of David F. Whitney Consulting Engineers, LLC. He briefly summarized the application previously approved with conditions, including the work that had already been completed. The rear lot, 72 Sunrise Drive, had been sold to the Comers. The Comers have requested the transfer of the existing IWC permit to them from William K. Cole; Mr. Whitney had written the letter for the transfer request, dated May 10, 2021.

In response to Commissioner Dean's inquiry, John McCahill stated that the period of the permit would remain unchanged and Mr. Whitney stated that the permit period was five years, specifically from October 4, 2019 through October 4, 2024.

In response to Commissioner Feldman's inquiry regarding the transfer of the permit, John McCahill responded that the transfer was an administrative procedure under the Town of Avon Inland Wetlands and Watercourses Regulations and there were no other regulatory or statutory requirements.

Commissioner Feldman motioned to approve the transfer of the Appl. 764 permit from the estate of Donald L. Cole c/o William K. Cole to Karin S. and Martin J. Comer, pursuant to the

application and subject to the conditions. Commissioner Sacks seconded the motion. The following members voted unanimously in favor: Chair Thier, and Commissioners Dean, Breckinridge, Feldman, and Sacks. The motion carried.

**APPL. #764M – Karin S. and Martin J. Comer, owners/applicants; request for 1) proposed modification to Appl. #764, and regulated activities within wetlands and/or within the 100 foot upland review area: 1) additional clearing within the 100-foot upland review area; 2) addition of proposed accessory building (barn) and driveway within previously-approved limits of clearing; 3) construction of a larger house and related site grading partially within new limits of clearing. Location: 72 Sunrise Drive, Parcel 4190072.**

Present and speaking on behalf of Appl. 764M, proposed modifications to Appl. 764, and regulated activities within wetlands and/or within the 100-foot upland review area, was David F. Whitney, of David F. Whitney Consulting Engineers, LLC. He stated that on the map, as part of his visual presentation, there was an orange shaded area of disturbance/clearing approximately 37,365 square feet that had been approved in 2019. The new owners, the Comers, were requesting modifications to the previously approved application by moving the house location, enlarging the footprint of the house, constructing an accessory building, and enlarging the area for additional clearing. He stated that there was a previously approved conservation restriction area plus a standard 20-foot buffer area from the wetlands, and explained the conservation restriction boundary delineation. The proposed enlarged area for clearing would not encroach into any of the previously approved restricted areas.

In response to Chair Thier's question, Mr. Whitney confirmed that a comparison plan showing the proposed new construction, in an overlay of the previously approved house plan, would be submitted to the IWC. Mr. Whitney confirmed that the applicant would not request a vote on Appl. 764M that evening. He stated that the area requested in the permit modification would comprise an additional approximate 13,000 square feet; a net increase of 7,795 square feet would be the requested additional area of clearing. He described the condition of the requested area of clearing and stated that it was not a heavily wooded site. He noted that the proposed barn would be on the west side of the property and all of the drainage would flow to the south. Mr. Whitney addressed comments from John McCahill's memorandum regarding the application. He stated that the conservation restriction area would remain unchanged and that the new owners were aware of what a conservation restriction would entail. He stated that any additional items not already completed would be on his list for completion. He stated that stakes would be placed in the field for the site walk map at the soils delineation and a soil scientist would provide a functions, values, and impact report. He stated that he would overlay the watershed line onto the current site plan map.

In response to Commissioner Breckinridge's inquiry, Mr. Whitney explained the location of the pond as shown on Sheet 1. He stated that the minimum separation distance of a water body to any portion of a septic system was 50 feet. He explained that the proposed septic system would be approximately 100 feet from the edge of the wetlands and the pond. He explained that the septic system would be placed on the side where soils would comply with the public health code; the septic system would be placed in undisturbed soil, which would be best practice. In response

to the Commissioner Breckinridge's question and concern regarding the large area of wetlands and the possible issue of contaminants from storage of commercial vehicles on the property, Mr. Whitney was unaware of that possibility for the storage of commercial vehicles and would seek information from the owner, and then provide a response to the Commission.

In response to Commissioner Breckinridge's question, Chair Thier stated that a condition on a zoning application regarding storage of commercial vehicles would be within the purview of the Town of Avon Planning and Zoning Commission.

John McCahill stated that, from a wetlands perspective, the Commission might want to explore the types of structures, such as the location of footing drains and outlets, which could be possibly utilized to assist in containing and redirecting any possible contaminants away from the wetlands.

In response to Commissioner Dean's concerns regarding the storage of commercial vehicles on the exterior property and that the concerns be addressed, Mr. Whitney confirmed that they would be addressed.

In response to Commissioner Feldman's questions regarding the square footage of the newly proposed house and barn, in comparison to the previously approved area for the house, Mr. Whitney stated that he would put those figures on the comparison plan that will be presented to the Commission at the next regularly scheduled meeting.

Vice-chair Beauchamp was present but inaudible at that moment in the meeting.

Chair Thier stated that the application would continue to be presented at the next regularly scheduled IWC meeting to be held virtually on July 6, 2021, at 7:00 p.m.

**APPL. #771** – Logan H. Do, owner/applicant; requests within the 100 foot upland review area: 1) construction of a new house foundation; 2) construction of driveway and installation of utilities; 3) grading and creation of a front and a rear yard 4) deck footing(s); 5) installation of septic system. Location: 100 Woodhaven Drive, Parcel 4690100.

Present on behalf of the application for 100 Woodhaven Drive was applicant/owner Logan H. Do.

John McCahill stated that he had presented comments #1-18 in a memorandum to the Commission, dated May 26, 2021, regarding the application. He stated that the application was incomplete and it would need a great deal of work before the Commission could entertain a decision on it. He stated that the additional information needed to complete the application would likely require time beyond the date of the next regularly scheduled IWC meeting; the application could be carried into October, if necessary, in order to complete the work and achieve a proper review by the Commission.

Mr. Do stated that when he bought the property he was mistakenly unaware of the existing wetlands on the lot.

Chair Thier requested that Mr. Do respond to John McCahill's memorandum comments prior to the next meeting in order to begin the review process. He further stated his request that Mr. Do cooperate with Mr. McCahill to continue application completion.

John McCahill stated that the Commission could make a decision on the application when it felt there was adequate application information, or a decision could be made if there were not enough information carrying forward in a timely manner, and that could be as early as the July 6, 2021 virtual meeting. He stated that there was no disturbance on the property, as no activities had been conducted yet.

In response to Commissioner Feldman's inquiry whether or not John McCahill had a sense as to the application proposal's feasibility, Mr. McCahill responded that the decision was the Commission's regarding the impact on the wetlands.

Commissioner Sacks stated that he had walked the property in-person and noted running water throughout the lot, and that the proposal seemed challenging.

Chair Thier explained to Mr. Do that the Commission's responsibility was to determine the impact of the proposed activities, usually proposed construction, or disturbance within 100 feet of a wetland or watercourse.

Commissioner Dean motioned to continue the application to the next regularly scheduled IWC meeting and Commissioner Sacks seconded the motion. The following members voted unanimously in favor: Chair Thier, and Commissioners Breckinridge, Dean, Feldman, and Sacks, (Vice-chair Beauchamp could not vote due to technical difficulties of his personal computer). The motion carried.

#### 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, and David F. Whitney, of David F. Whitney Consulting Engineers, LLC, was visually present for the enforcement hearing. Mr. Tran was present via telephone.

Mr. Whitney stated that he had agreed to execute a limited amount of work for Mr. Tran to date. He had performed an initial site walk, and then an additional site walk after a storm event. He summarized his findings of the physical elements from his time walking the site, including a State of Connecticut definition of an intermittent watercourse, and noted the evidence of specific vegetation growth related to an intermittent watercourse. He stated that the presence of such vegetation indicated that certain areas of the property would be regulated by the IWC. He stated that he had recommended to Mr. Tran the following several procedures: a certified soil scientist delineation of the limits of wetlands on the property in order to prepare a report; a professional survey to locate flags for the delineated wetlands and the preparation of a topographic map for the boundary lines of the tree/plantings clearing, wetlands, and intermittent watercourse; a site restoration and feasibility plan prepared by a professional engineer for discussion before the IWC; and a wetlands application with a site walk map. He had indicated to Mr. Tran what might be required by the IWC to resolve any possible violations; his opinions did not include commentary on any of Mr. Tran's future plans for his property. Mr. Whitney confirmed that vegetation debris had been placed in the intermittent watercourse but that there was no current crisis at the site.

Possible deadlines for obtaining the proposed professional reports were then discussed by Chair Thier and Mr. Whitney.

The Commission members discussed the best possible course for remediation or whether or not the site should be delineated for wetland boundaries, etc., on the site. Commissioner Dean stressed the need for the enforcement hearing to continue moving forward in a timely manner. She recommended that by the next meeting, either that the IWC receive a restoration plan or an agreement at the next meeting that contracts were in place with a schedule for plan completion. Commissioner Feldman inquired regarding punitive measures for failure to obtain an initial IWC permit.

John McCahill stated that punitive measures for fees or penalties were not stated in the Town of Avon's regulations to date. A formal Cease and Desist letter could be issued. A vote by the Commission for a formal court proceeding could be documented. The current penalty could be to remediate the trees by original number, type, and placement. He stated that a conservation restriction might satisfy the requirement for the restoration of the eventual mature trees.

Commissioner Feldman inquired if it were possible for the Commission to condition an approval of a plan with an additional required fee repayment plan.

John McCahill stated that the Town attorney would be consulted with regard to the issues of punitive measures in fees or penalties. He stated that compensation could be in the form of an ecological easement over other areas on the site that could be related to an application condition prohibiting certain areas for future development.

Chair Thier requested that John McCahill reach out to the Town Attorney to research the matters that were discussed. Chair Thier stated that these matters would be priority for discussion at the next several meetings.

In response to Mr. Whitney's idea that possibly a greater number of replacement trees could be planted than the number of trees removed, and that this element could be part of a proposed remediation plan, Chair Thier stated that the matter could be included in the proposed plan and such a plan could be decided upon by the IWC.

Mr. Whitney stated it appeared as though Mr. Tran understood the severity of the situation and wanted to resolve it.

In response to the comments of John McCahill, Commissioner Dean, and Commissioner Sacks, Mr. Whitney stated that the firm of Davison Environmental included experts in soils and ecological plantings, and that firm member Jim Cohen specifically could possibly provide the answers to the Commission's questions.

Commissioner Sacks motioned to continue the enforcement hearing until the next regularly scheduled IWC meeting to be held on July 6, 2021 at 7:00 p.m. Commissioner Dean seconded the motion. The following members voted in favor of the motion: Chair Thier, and Commissioners Dean, Breckinridge, Feldman, and Sacks; (Vice-chair Beauchamp was inaudible and his computer screen was frozen at that time which prevented his vote). The motion carried.

#### COMMUNICATIONS FROM THE PUBLIC:

There were none.

#### STAFF COMMENTS:

There were none.

#### APPROVAL OF MINUTES:

- Minutes - May 4, 2021 – Regular Meeting. Commissioner Breckinridge motioned to approve the minutes as submitted, and Commissioner Feldman seconded the motion. The following members voted in favor: Chair Thier, and Commissioners Dean, Breckinridge, Feldman, and Sacks; (Vice-chair Beauchamp was inaudible and his computer screen was frozen at that time). The motion carried.

#### NEXT REGULARLY SCHEDULED MEETING:

The next regularly scheduled meeting will be held on Tuesday, July 6, 2021, at 7:00 p.m., via the virtual GoToMeeting platform.

Commissioner Sacks motioned to adjourn the meeting. Commissioner Breckinridge seconded the motion. The following members voted in favor: Chair Thier, and Commissioners Dean, Breckinridge, Feldman, and Sacks; (Vice-chair Beauchamp was inaudible and his computer screen was frozen at that time which prevented his vote). The motion carried.

There being no further business, the meeting adjourned at 8:26 p.m.  
Susan Guimaraes, Clerk  
Inland Wetlands Commission  
Town of Avon Planning and Community Development