

**DRAFT****THE INLAND WETLANDS COMMISSION OF THE TOWN OF AVON HELD A SPECIAL MEETING ON TUESDAY, JULY 24, 2018.**

Present were Clifford Thier, Chair; Michael Beauchamp, Vice-Chair; Commissioners: Bob Breckinridge, Jed Usich, Michael Feldman and Dean Applefield. Absent: 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 24, 2018” was provided by Richter and Cegan, Carpionato Group and Fuss and O’Neill.

Attorney Robert Meyers updated the Commission the status of the application with Planning and Zoning Commission. He stated the Planning and Zoning Commission closed its public hearing last Tuesday, July 17 and scheduled a special meeting on Tuesday, July 31.

Michael Cegan, landscape architect and planner for Richter and Cegan, addressed the Commission. He stated he wanted to quickly summarize the major changes since the last meeting particularly the alignment of the Boulevard and the impact on the wetlands. He referenced the Bickford Boulevard Realignment presentation slide. This slide showed that the proposed road and adjacent trail were outside of the URA; also the following were eliminated: 116 sf of fill (direct wetland impact), retaining walls, and grading and vegetation removal. He stated the slide depicts the new location of Bickford Boulevard with the reverse curve and the new fill slope moved out of the regulated area. Mr. Cegan clarified that the blue dashed line represented the URA, the red line was the old Bickford Boulevard location and the red dashed line represented the Phase 1 area on the Bickford

Boulevard Realignment Overlay slide. Mr. Cegan noted that green area is not all wetlands. Mr. McCahill noted that the slides are received as part of the public record.

Mr. Cegan discussed Wetland Activity Area #2 where there will be 6,340 sf of habitat enhancement and invasive management; and 3,150 sf of wetland creation with 3,530 sf of wetland buffer plantings.

Mr. Thier questioned how much impervious surface there was. Mr. Bomengen replied that percentage was not immediately available. Mr. Thier asked what is currently in the location of R7/O7 to which Mr. Cegan replied, it was undeveloped and the proposed North Main Street currently is called Red Stone Lane.

Joshua Wilson, registered soil scientist with Fuss & O'Neill, spoke to the Commission regarding the Natural Diversity Database (NDDDB) list of endangered species. Mr. Wilson stated at the last meeting they had just received the preliminary determination from CT DEEP dated July 10, 2018 regarding the NDDDB list of endangered species. The applicant was able to hire an aquatic biologist, Steve Johnson to investigate the potential existence of three (3) mussel species identified in the area. In order to conduct the study, a scientific collector's permit from the CT DEEP was required to remove or handle any type of wildlife. This permit was received in three (3) – four (4) days. Mr. Wilson stated they performed investigations specifically for the eighteen (18) species listed. He noted the Commission received an updated report at tonight's meeting. This report was updated with a new section; Section 2.6 Federal and State Listed Endangered, Threatened and Special Concern Plant and Animal Species and three (3) appendices B, C and D. Senior Ecologist, Steve Johnson conducted field work on July 19-20, 2018 and confirmed that none of the (3) mussels existed between the stretch of Nod Brook from Route 10 to Route 44.

They also performed surveys on a detailed list of plant species collected in Wetland 1 where the proposed project will result in filling a portion of the wetland. Mr. Wilson summarized the finding as detailed in Section 2.6 of Environmental Report – Avon Village Center. The detailed plant list also included those species observed in Wetland 2-3-4 where the proposed trail at grade is located. In both cases, none of the plant species observed where in proposed activity in Wetlands 1-2-3-4. Therefore, the plants listed will not be affected by the proposed activity. The eye brown butterfly species breeds in open sedge marshes and woodland/fen habitats. Wetlands 1-2-3-4 do not provide the necessary breeding and developmental habitat for the eye browns and therefore it will not be affected by the proposed activity. In Wetlands 1-2-3-4 the habitat was not consistent for the alder flycatcher. None of the species were identified on this site and there is no need to put extra precaution in this. There is not adverse impact on the physical characteristic of the Wetland 2-3-4, where the trail at grade.

Michael Feldman clarified with Mr. Wilson that these species on the NDDDB list either do not exist, the area is not a suitable habitat, or they were not observed. He asked if this is what would be similarly prepared for the CT DEEP. Mr. Wilson replied yes.

Mr. Applefield thanked Mr. Wilson for preparing the report; however, since he just received he did not have the opportunity to read it. Mr. Applefield was unclear regarding what the logic which was used. He asked Mr. Wilson, who performed the plant review in Wetland Areas 2, 3 and 4. Mr. Wilson replied himself along with a co-worker. Mr. Applefield asked what credentials/qualifications they have. Mr. Wilson identified himself as a wetland soil scientist who

looks at not only soils but plant assemblages and performs investigations. His undergraduate studies were in biology with a lot of botany; and in his master's degree he specialized in wetlands and watershed science.

Mr. Applefield noted that these plants are not specific to wetlands. Mr. Wilson pointed out that he determines wetlands boundaries so he is also familiar with upland species as well. Mr. Applefield restated that Mr. Wilson was not a botanist that he did and not have a degree in botany. Mr. Wilson replied no, he did not have a botany degree but considered himself a plant expert. Mr. Applefield wanted clarification to what it meant that Mr. Wilson looked "in areas of direct impact." Mr. Wilson indicated that the focus of the field work was to identify those areas that were in wetlands or watercourses where the physical characteristics would change and therefore adversely affect the species there. Mr. Applefield asked what this meant for Wetlands Areas 2-3-4. Mr. Wilson stated these were non-wetlands areas and those areas would have adequate sediment and erosion controls to prevent any physical alterations to the wetlands. Due to this, Mr. Wilson did not feel it was necessary to look in those areas, largely because he felt they would not be affected.

Mr. Applefield questioned if they looked into the area where storm water was going to discharge into the wetlands in areas 2-3-4; there are two (2) – three (3) discharges from stormwater. He questioned why these areas weren't looked at to see if there was any impact or not. Mr. Wilson replied that they looked at areas where they thought there was direct impact to the species, the area largely along Nod Brook. Mr. Applefield asked why the area along the trail was not part of the review. Mr. Wilson stated it was not since best management practices and sedimentation and erosion control measures would be implemented to protect the wetlands. Mr. Applefield stressed that this was not the point; it was a question of whether a plant species would be wiped out because the trail went over a wetlands area. Mr. Wilson pointed out this was not a wetlands area but an upland review area.

Mr. Thier asked the applicant to point out Wetland Area 4. Mr. McCahill noted that there were separate numbering sequences for the areas and the activities. Mr. Wilson apologized for the confusion and clarified the numbering and activities as detailed on the slide labeled Wetland Activities.

Mr. Applefield expressed he was unsatisfied and stated that they looked at a small sliver of the area instead of the entire area; and based upon that, concluded no endangered species exist in the entire area. Mr. Applefield said he did not feel that was right, the idea is to identify if an activity such as the construction of the trail would have any impact on species in the wetlands area or URA. Mr. Applefield felt strongly he should know the answer to that. Mr. Wilson indicated that they did not look at areas with no significant alterations or physical changes of the characteristics to the wetland areas. Mr. Applefield believed their jurisdiction is not limited to just the areas where there is physical change. He wanted to know what animals and plants exist in the entire area so he can decide if the activities will have an impact. He did not feel that sediment and erosions controls were going to protect the species.

Mr. Wilson stated the proposed erosion and sedimentation controls measures that are provided are sufficient and there will not be in any change in the physical characteristics of the wetlands. He went on to say if you want to assume all of those species exist there, you can, but ultimately the decision point based upon the regulations that you are addressing is whether there is a change in the physical characteristics of the wetlands.

Mr. Applefield appreciated Mr. Wilson's statement but did not agree with it. He believed he was entitled to know whether or not there were any endangered or threatened species in the wetlands or upland review area; that was his interpretation of the regulations. He said that this is how he determines if the activities will have an environmental impact and that should be the intention of the survey. The survey should not be limited to the one area in which something is being done in the wetland. Mr. Applefield said this was not the case in wetland area 1, this area was not going to be disturbed. Mr. Wilson stated this was not the case; they are working fully in wetland area 1 as they will be removing invasive species, and grading. Mr. Wilson noted that along the upland trail the activity will not affect the wetlands. Mr. Applefield refuted this statement stating they do not even know if there are any species there.

Mr. Applefield summed up his and Mr. Wilson's viewpoints. It is his belief that he is entitled to know what species are there in order to determine if the erosion and sedimentation control plan is adequate. Mr. Wilson's viewpoint is that the erosion and sedimentation control plan is adequate and therefore one does not have to be concerned about anything. Mr. Applefield stated he could not make any assessment until he knows what species exist, in order to determine if the erosion and sedimentation plan is adequate.

Mr. Applefield appreciated the effort that has been made but he said it was difficult to digest this information without having an opportunity to review it beforehand and because of this he did not know how he would vote.

Mr. Thier asked if there were any more questions for the applicant. Mr. Beauchamp, Mr. Usich, Mr. Feldman, Mr. McCahill had no further questions.

Mr. Breckenridge wanted to reconfirm with Mr. Wilson if in his opinion, in the areas that were not surveyed, there will not be any impact on the wetlands or the species. Mr. Wilson confirmed there will be no direct impact to the wetlands or species.

Mr. Thier asked if regulated activity 2 is wetlands 1; and regulated activity 1 is the brook. Mr. Wilson confirmed they were. Mr. Thier stated the proposed activity is to construct buildings in the URA and both will have restaurants with outdoor dining. In regards to the operational activity of patrons eating outside, Mr. Thier wanted to know how the wetlands would be protected. Mr. Cegan answered that there is quite a distance between the seating and the wetlands. He pointed out there is a pedestrian walkway and buffer plantings which are detailed on the landscape plan. Mr. Breckenridge asked if there would be any impact on the wetlands by paper napkins. Mr. Wilson replied they would decompose and have very minimal impact.

There were no further questions from the Commissioners.

Mr. McCahill noted that today ended the thirty-five (35) days permitted to conduct the public hearing. He suggested that if the public hearing should be kept open in order to facilitate a dialogue between the Commission and the applicant regarding draft approval conditions. Mr. Thier felt it be wise to keep the public hearing open. Mr. McCahill asked if the Commission would like to share the draft conditions with the applicant in order to discuss them.

Attorney Meyers told the Commission if they wanted the applicant to participate in reviewing the draft conditions they would need some time to review them. Mr. Thier agreed the applicant should have a copy of the draft conditions to review, and they adjourned the meeting for five (5) minutes.

Attorney Meyers addressed the Commission and stated they were fine with conditions with some changes. In condition one in the very first line, add the word activity so it reads “regulated activity area #3.”

In regards to condition 5, it should read “prohibit only wetlands activity”. Mr. Bomengen then spoke to this condition. He explained that there is an existing sanitary sewer line that comes down Fisher, and there is a chamber that turns into a siphon which goes below grade and comes out on the east side. His point being that there is an existing chamber in the URA, so they have to do some trenching and digging to install that pipe and new chamber in URA which is part of the site plan; and from that chamber to the east side will be a siphon which will be installed by directional drill or pipe bursting. Mr. Bomengen said because of these activities, to say that we have no sewer construction in the URA is false.

Mr. McCahill asked if they were suggesting to take out “and regulated setback areas.” Attorney Meyers concurred but added to leave the prohibition of activities in the wetlands. Mr. Thier asked what is being deleted from condition 5. Mr. McCahill read the first sentence: “The proposed sewer upgrades, southerly of Fisher Drive and easterly of Simsbury Road, are to be done via pipe bursting or horizontal boring through the wetlands.”

Mr. Applefield did not feel this was adequate as it did not reflect what is happening. He suggested Mr. Bomengen write a sentence or two explaining what they were going to do. Mr. Bomengen suggested “the siphon section of the sanitary sewer line will be done by pipe bursting or directional drilling.” He explained that this way anything upstream of that chamber will have to be excavated; but anything between that chamber and the east side of Route 10 will have to be done by directional drilling or pipe bursting.

Mr. McCahill was unsure how they were stating this. Mr. Bomengen said “portions of the sanitary sewer system siphon will be constructed via pipe bursting or directional drilling.”

Mr. Thier posed a hypothetical question, what happens if these two (2) methods are not possible, what happens then. Mr. Applefield suggested striking sentence two (2) from the condition. Mr. Thier asked the applicant and Mr. McCahill if they were agreement with striking sentence two (2) from condition 5. They both replied they were. As for the first sentence of the condition 5, Mr. Applefield proposed noting the plan sheet referencing the activity. Mr. Thier asked to cite plan and date. Mr. Bomengen located the plan, CU106 dated 5/16.18. Mr. Applefield asked for clarification of the plan CU106. Mr. Bomengen referenced the existing and proposed locations of the chamber and siphon.

Mr. McCahill then read the proposed condition: The portion of the proposed sanitary sewer siphon line upgrades southerly of Fisher Drive and easterly of Simsbury Road, are to be done via piping bursting or horizontal boring through the wetland and regulated setback areas.

The applicant was in agreement with the condition.

Mr. Applefield noted that the revised date of the Environmental Report should read July 24, 2018, for conditions 3 and 4. Mr. Applefield noted condition 7 should read “a soil scientist” not “the soil scientist.” Mr. Applefield did not understand condition 9. Mr. McCahill explained the condition relates to the area where they are removing the culvert, the 18”- 24” pipe. Mr. Thier suggested adding to the beginning of the condition, “final details acceptable to Town Staff.” Mr. Applefield added he thought it be best to add at the end of the condition – “the boardwalk details shall be subject to review and approval by Town Staff.” Mr. McCahill then read the condition “Final details shall be provided for the boardwalk which is to be installed as part of the proposed Nod Brook trail; the existing concrete pipe is to be removed and the area is to be restored to a more “natural” condition. The boardwalk details shall be subject to review and approval by Town Staff.”

Mr. McCahill felt condition 10 should remain. He was attempting to provide the Commission language they would feel comfortable with. Mr. Applefield did not agree. Mr. Applefield and Mr. Usich suggested condition 10 be removed. The Commission was in agreement to remove this condition.

Mr. McCahill stated condition 11 was relatively standard. Mr. Applefield suggested adding language to the effect that the applicant is responsible for maintenance until an agreement is met. The condition will include the following, “The applicant has agreed to be responsible for the implementation of the Operation and Maintenance Plan until such time an agreement is entered into with the Town, shifting that responsibility.”

Mr. Applefield suggested adding at the end of the condition 12, “unless another remedy is approved by Town Staff. “The new condition reads, “The existing miscellaneous pipes along Nod Brook are to be cut and capped as they are encountered throughout construction activities in the vicinity of the brook; unless another remedy is approved by Town Staff.”

The public hearing was closed.

### **DECISION:**

Jed Usich made the motion approve Application #756 with the twelve (12) conditions discussed and modified; and to include the standard approval conditions.

Dean Applefield added that he wished he could vote in favor of the application since he thought it was a great project and will be a real addition to the Town but he is constrained by his responsibility on the Commission which is to evaluate the impact on wetlands and watercourses. He stated there is no limitation to the term regulated activity under our rules, it is not limited to the areas of direct impact in a wetland area; it is any operation within or use of a wetland or watercourse involving the removal or deposition of material, or any obstruction, construction, alteration or pollution of a wetlands or watercourse, includes the clearing, grubbing, filling, grading, paving, excavating, constructing, depositing or removing of material and discharging of storm water on any land within a 100 feet from any wetland or watercourse. Mr. Applefield felt the survey for evaluating the regulated activity was inadequate. It did not focus on the area where we have jurisdiction, the rules which contain our consideration for decisions say wetlands and watercourses include aquatic, plant or animal life and habitats in wetlands and watercourses; and habitats means areas or environments in which an organism or biological population normally lives or occurs per Section 10.5 of the IWW regulations. There is no distinction or limitation on

that being just areas where activities are occurring. Mr. Applefield went on to say he cannot, in good faith, say that this was done in respect to this application. The area where the regulated activity is occurring has not been evaluated for impacts on the species. Therefore, it is difficult for us to know if this activity is going to adversely impact those species, and for this reason; Mr. Applefield reluctantly and unhappily will vote against the motion to approve.

Mr. Thier expressed to the applicant that he was impressed by the presentation and responses to the Commission's questions; however, he also joins Mr. Applefield in voting against the motion for the same reasons. Mr. Thier stated that he would have liked to vote in favor of the project but felt he did not have enough information.

Motion to vote. Chairman Thier and Commissioner Applefield voted against. Commissioners Beauchamp, Breckenridge, Usish and Feldman voted to approve. The motion passed by majority decision (4-2).

### **APPROVAL OF MINUTES:**

Public Hearing Minutes      July 10, 2018

The minutes for the July 10, 2018 meeting were not available. Minutes were tabled to the next regularly scheduled meeting.

### **NEXT MEETING:**

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

### **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 31.

Meeting adjourned at 8:45 p.m.