

THE INLAND WETLANDS COMMISSION OF THE TOWN OF AVON HELD A PUBLIC HEARING ON TUESDAY, JANUARY 8, 2019.

Present were Clifford Thier, Chair; Michael Beauchamp, Vice-Chair; and Commissioners Bob Breckinridge and Michael Feldman. Absent were Commissioners Jed Usich, Dean Applefield, and Martha Dean. Also present were John McCahill, Planning and Community Development Specialist/Wetlands Agent; Hiram Peck, Director of Planning and Community Development; Kari Olson and Joseph Szerejko, of Murtha Cullina, Town Attorneys.

Present on behalf of the application were David Ziaks, PE and President of F. A. Hesketh & Associates, Inc.; William Richter, AIA, ASLA, of Richter & Cegan Inc.; Tony Giorgio of the Keystone Companies LLC; Bill Ferrigno of Sunlight Construction, Inc.; Certified Soil Scientist Robert Russo, of CLA Engineers, Inc.; Certified Soil Scientist Michael Klein, of Davison Environmental; and Attorneys Thomas Fahey and Carl Landolina, of Fahey & Landolina, Attorneys LLC. Present on behalf of Nod Road Preservation, Inc. was Attorney Evan Seeman, of Robinson & Cole.

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

NEW APPLICATION

APPL. #759 – Blue Fox Run Golf Course, LLC; Nod Road Properties, LLC; Cornor Properties, LLC, owners/applicants: Requesting a map amendment to depict accurate information based on detailed field mapping and soil evaluations on subject properties. Locations: 65 Nod Road, Parcel 3290065; 117 Nod Road, Parcel 3290117; and 231 Nod Road, Parcel 3290231.

John McCahill remarked that legal notices were published in the Hartford Courant on December 27, 2018 and January 5, 2019 as required by CT State statutes. Copies of the legal notices were provided to the applicant. They were instructed to provide legal notice to the abutters and owners on the opposite side of the street. The applicant will be providing proof of notification to the Commission this evening. Maps were filed in the Town Clerk's Office on December 28, 2018. This is an application for a map amendment. There are currently no proposed regulated activities and they are not looking for the Town to endorse any development at this time. The Commission had received a full set of information that was provided by the applicant, but in addition to that information, recently received and provided tonight was a Petition for Intervention from Attorney Evan Seeman, of Robinson & Cole, and an additional letter from Dr. Michael Clemens. Also provided was correspondence from Francoise Miller at 164 Woodford Hills Drive in Avon; Kirsten Ek of 12 Henderson Drive in Avon; James Fanelli of 29 South Main Street in West Hartford; and a letter dated January 6, 2019 from Brian and Lisa Foley authorizing their consultants to represent them this evening and in the future. Mr. McCahill made note that in addition to himself and the Commission clerk, also present were Town Attorney Kari Olson of Murtha Cullina, LLP, and associate Joe Szerejko of that office. Also present, in the audience, was Hiram Peck, Director of Planning and Community Development. Following the applicant's presentation, the Commission will ask questions and then the public will be allowed to comment.

Mr. Ziaks presented documentation and certificates of mailing for the record. Over 300 letters were sent to all of the immediate abutters, to owners across the street, and to owners of units at Hunter's Run in Avon. Also submitted for the record, was a letter prepared by the firm Fahey & Landolina, Attorneys LLC, challenging the Petition for Intervention prepared by Robinson & Cole. He asked the Chairman if he would allow Atty. Carl Landolina to explain the contents of the letter at this point or to hold off until later in the meeting.

Chairman Thier stated he should hold off until later in the meeting.

Mr. Ziaks submitted the challenge letter for the record. His team believes that the application before the Commission this evening is complete. It includes plans in the various sizes as requested by the Commission. Reports are also included: a wetlands report prepared by Mr. Russo, of CLA Engineers, and a wetlands report by Mr. Klein, of Davison Environmental. Mr. Klein was added to the team as the second soil scientist for additional review. Mr. Klein has extensive experience on this property, dating back two decades; he was involved with the various applications proposed on this site for the golf course and for the medical buildings located at the site. Mr. Russo, who completed all of actual wetlands flagging on the site and Mr. Klein, who assisted with the review, will both be presenting findings this evening. As pointed out in Mr. Ziak's cover letter to the Commission, his team believes that the application is straight forward; it is an application to update and modify the Town's official map through Town regulations Sections 3 and 15. He pointed out that the application does not include any proposed regulated wetland activities. This is an application to update and amend the current Town map for this property, which is over two hundred acres in size. It also does not propose any revisions related to the 100-year or 500-year base flood limits that exists on the property. Flood limits are based on the current FEMA mapping and there were no plans to make any modifications. He noted that the current Town wetlands map, does not depict the flagged wetland and watercourses associated with the actual watercourses on the property, nor the four ponds existing on the property. The Town wetlands map also does not include the miscellaneous wetland areas that had been included in the team's wetland mapping. The Town wetlands map does indicate flood plain and alluvial soils as has been determined over the years by electronic graphic coordinates from various mapping resources through various agencies. The team believes that the Town wetlands map was not currently consistent with previous determinations that have been made by this Commission for this property in past applications.

Chairman Thier requested that Mr. Ziaks clarify the map of reference.

Mr. Ziaks referred to map 3.1. At a 1":200' scale, the property fits on one sheet. The survey map 1.0 shows the entire site, however blow-ups at 1":200' in series A, B, C, D were created for readability. He referred to the official Town wetlands map, and stated that the map does not depict the accurate wetland resources that his team has identified. The Town wetlands map also does not depict the limits of the alluvial soils that the team believes are correctly identified. The fluvial and alluvial soils shown on the Town wetlands map also do not accurately reflect mapping that was part of previous applications, and determinations by the Commission, and the current findings by the two soil scientists. This application is focused on the portion of property on the easterly side of the Farmington River. His team was not proposing any modifications to the Town wetlands map on the west side of the river. He then referred to map 1.0, the perimeter

survey that was prepared by his office. The topographical information shown on map 1.0 is a composite of recent aerial photographs and a detailed field survey that had been completed by his crew. He then referred to map 3.1 which had all of the flagged wetlands that have been identified and stated that they were shaded a blue color. He identified the three watercourses flowing from Nod Road toward the Farmington River, and identified the Farmington River as it flows through the site. His team accepts the Town's wetlands mapping on the westerly side of the river. He then stated that the 100-yr flood plain is shown on map 3.1. It is the 162.5 contour that is based on the flood elevation in the current FEMA mapping.

Mr. Ziaks again, referring to the map identified the blue color as wetlands, and the tan colored portions as alluvial soils; they are the regulated areas in question. His team also labeled the watercourses A, B, and C, all four ponds are labeled P1-P4, and each of the wetland areas have a number series. He introduced Robert Russo to present his findings.

Mr. Russo submitted a copy of his résumé for the record. He stated that the site and existing Town wetlands map would be discussed first, before he talked about the delineation of the site. He stated that the existing Town wetlands map was prepared from a very general Soil Conservation Service survey, aerial photography, and limited field work. He stated that the standard practice now is for a soil scientist to sample the soils in the field and that a licensed surveyor then surveys the land for an accurate depiction of the actual site resources that are on the site. The results of this practice will be presented this evening. Referring to map 3.1 A-C, regarding the east side of the river, he stated the land had been extensively altered in the past. It had been cultivated as farmland and then later soils were extensively altered for the golf course features. Soils originally deposited there, pre-development, have been re-worked; the hydrology and drainage of the soils have also been altered. During the industrialization of the Farmington River, numerous dams have also been created upstream of this site. The flow regime has been altered and there are no longer natural events that would create alluvial soils on the site. Mr. Russo restated the definitions of the soils delineated on the site and he cited the CT General Statute definitions. Wetland soils are defined as poorly drained and very poorly drained, alluvial and flood plain. Watercourses are defined as: rivers, streams, brooks, waterways, lakes, marshes, swamps, ponds, and bogs; they include natural or artificial, vernal or intermittent, and public or private. The job of the soil scientist is to determine the types of soils that exist. The identifications shown on map 3.1 were a result of applying these definitions. He investigated soil samples of the poorly drained and very poorly drained soils with a hand-held auger to determine boundary lines on the site. Surveyors from F. A. Hesketh & Associates, Inc., surveyed the flag markings and depicted them on the map. He pointed out the 100-yr flood plain line used to determine the boundary of alluvial soils. The Commission has historically used the same criteria to define the limit of flood plain and alluvial soils on this site. This delineation of flood plain soils is conservative as alluvial soils are located quite close to the Farmington River. He believed that map 3.1 showed a thoroughly field-based delineation of wetland soils according to the State of Connecticut definition. He then introduced Michael Klein to speak next.

Mr. Klein stated that he has been practicing in the State of CT since 1977 and that he has presented before this Commission numerous times. A copy of his credentials was submitted for the record. He has been retained to provide a peer review of the methodology and results of the soils delineation work executed by Mr. Russo. He had worked on this site since the 1990s. The

site alterations that have occurred over decades require a conservative professional judgement. If the situation were such that the soils had not been altered, the vegetation had not been altered, and the hydrology had not been altered, then the scientists would base determinations strictly according to the statutory definition. The statute requires that determinations made by a soil scientist are sometimes based on professional judgement. Mr. Klein reiterated the Connecticut statutory and Town regulations for wetlands and watercourses definitions. These soil definitions are easily identifiable based on the characteristics of the soil. The wetland boundary that Mr. Russo established in the field was consistent with what Mr. Klein had identified in past reports, with the exception of recent work done to modify the golf course and work around the club house, which the Commission approved, which are now reflected on the survey. Regarding the second part of the definition, alluvial and flood plain soils were more difficult to determine in the field. Alluvial and flood plain soils require characteristics in the field to indicate frequent flooding. The Town map reflects soil surveys that were done decades prior to the alterations of this site for golf use. Mr. Klein had consulted with the DEEP and the State Soil Scientists' Office in the 1990s to receive guidance on how to determine these soils which flood once within a 100-year period. Mr. Klein checked for alluvial soil limits throughout the site, and did not find alluvial soils. In order to see evidence of alluvial soil, one would need to be immediately adjacent to the river. Soils were examined in numerous locations in late November of 2018. On the map, the area shown in blue is accurate and the tan color is conservative; the boundary shown on the survey by F. A. Hesketh & Associates, Inc. – map 1.1 A, B, and C, and as flagged by Mr. Russo, is substantially correct; it is generally the same boundary Mr. Klein presented to this Commission over the past 20-25 years. It was Mr. Klein's determination that the delineation was conducted within the definitions of the State of Connecticut statutes and the Town of Avon regulations.

Mr. Ziaks concluded the technical presentation of findings.

Chairman Thier then allowed the Commission members to ask any technical questions.

Commissioner Breckinridge commented that the site's soils have changed many times over the years and inquired regarding the 100-year flood level, whether the elevation of the site has changed.

Mr. Ziaks responded that the last few applications had shown the accepted flood plains and elevations allowed in past permits by the Planning and Zoning and Inland Wetlands Commissions. The 100-year flood plain has been fairly consistent.

Commissioner Breckinridge inquired when the flood plains were established.

Mr. Ziaks responded that the current FEMA map on which the Town's map is based, was updated in the later 2000s. Due to different elevation markings on the map, he used his best judgement to combine various elevations, to achieve an elevation number of 162.5 to be a little more conservative. They used very detailed topographical maps to indicate that contour line. His team is not disputing the delineations of the 100-year and 500-year flood plain boundaries.

Commissioner Breckinridge inquired whether these elevations were established fairly recently.

Mr. Ziaks answered in the affirmative.

Commissioner Feldman inquired as to what prompted the map amendment and the motivation behind the amendment.

Mr. Ziaks responded that the site is well over 200 acres. There are inconsistencies in the Town map compared to the initial flagging and feedback received from his firm's soil scientists that had examined the property. It has been a past practice that the Town has accepted the amendment of the map as part of an overall application.

Commissioner Feldman inquired why there was a need to question the validity of the existing map.

Mr. Ziaks responded that he believes that the existing map is wrong. This parcel of land is large and they decided it is best to follow the regulations in a multiple step process. Planning a project on this property requires a significant amount of work. There is no point in drawing plans if the mapped information is wrong. Due to the inconsistencies between the Town map and the study's, it was appropriate to bring the amendment issue to the Commission before applying for further applications on the property.

Commissioner Feldman inquired whether the effect of his firm's map was therefore to remove certain areas designated as wetlands.

Mr. Ziaks responded that his firm's map actually added areas that were not shown on the Town's map. All of the flagged wetlands that were shown on map 3.1 are areas where Mr. Russo flagged wetlands that are not shown well on the Town's map. These flagged areas also included multiple watercourses not depicted on the Town's map.

Commissioner Feldman stated that the firm's map did not depict the wetlands that would be removed from the property. He inquired about the color coding on the firm's map.

Mr. Ziaks affirmed Commissioner Feldman's comments and confirmed that the blue areas on his firm's map indicated all flagged wetlands, watercourses, and ponded areas. The tan areas depict flood plain and alluvial soils.

Commissioner Feldman requested clarification of the blue areas indicated on the map.

Mr. Russo indicated that the Town's wetland map was based originally on a Soil Conservation Service's map. He referred to map 3.0.

An inquiry as to which maps were part of the Commission members' packets of information ensued.

John McCahill responded that the Commission already had the composite map, the Town's wetlands map as a separate map, and the firm's mapping of the soils, as well as an overlay of the two together. He stated the last of which is complicated to interpret.

Commissioner Feldman indicated that map 3.3 would have the overlay.

Chairman Thier inquired whether the firm's large versions of the map could be put on both easels for the Commission and the public.

Mr. Russo indicated that map 3.2 will be discussed. The delineation lines found on the Soil Conservation Service's map are still shown on the Town's map for the subject site. Lines were created based on aerial photography and topography maps and they drew in the various boundaries of the soil types. In the soil survey, for each description of those units, there was a certain margin for error to include other types of soils. There may have been up to one-third of a soil unit that was not represented. Based on Mr. Russo's conversations with soil scientists who had prepared the original map, separate soil units under two acres in size had not been separated. He noted that the Town's map was not accurate enough for site-specific project work and it was intended to be a broad-based planning document. This is the reason that boundaries need to be determined by a soil scientist according to the regulations. It has been a very common practice that when a soil scientist delineates the soils and a licensed surveyor locates the flags, and compares the findings to the Town map, the wetland boundaries are typically very different. That has been generally the outcome of this type of work.

Commissioner Feldman directed Mr. Russo's attention to map 3.2. The bottom middle portion indicated a cross-hatched brown area. He inquired whether under the existing current Town's map, that area would be considered protected, regulated wetland soils. He asked whether his party was proposing that the area be deleted. He inquired as to the size of the area.

Mr. Russo affirmed that the proposal was to delete the delineation, the brown colored area on an amended map. He did not know the size of the area but they conducted extensive shovel and auger testing in the field. They were able to determine that the soils were not poorly drained or very poorly drained soils and they lacked the characteristics of a floodplain or alluvial soil.

Commissioner Feldman inquired whether the blue part of the brown area would be retained as the existing designation. He asked where the alluvial soils were located. He also noted that there was considerable flooding throughout this golf course.

Mr. Russo affirmed that the blue-colored areas would remain as their existing designations. He indicated that the alluvial soils were right along the edge of the Farmington River. He affirmed his understanding that the site does flood on a predictable basis as mapped by FEMA.

Commissioner Feldman stated that there has been flooding due to the rise in the Farmington River, as well as the tributaries that come down the mountain, across Nod Road, and across the golf course. He asked for confirmation regarding the resultant flooding in the spring that affects the entire area.

Mr. Russo believed that was correct.

Commissioner Feldman inquired whether given the regular springtime flooding as seen throughout the property from the river and tributaries, it would indicate a flood plain process that would affect the soils.

Mr. Russo responded in the negative. There were specific definitions as to the constitution of a flood plain process and how flood plain and alluvial soils have been generated. There would have to be evidence established in the fields that those processes were taking place. In order for soils to meet the definition of flood plain, there needed to be buried soil horizons with evidence ongoing, throughout history, that a sufficient amount of new soil material had been deposited due to major flood events. Overall, the very specific criteria would include a top soil horizon (dark brown or black in color) with a sub-soil horizon below it (medium brown color that would fade to pale beyond); the same sequence would be buried underneath the first and perhaps one more of the same sequence further beneath. Based on the digging, there were no such soil sequences present and therefore no indication of flood plain or alluvial soils.

Commissioner Feldman inquired how alluvial soils would then be defined.

Mr. Russo responded that the primary mode of deposition of the parent material for flood plain and alluvial soils was due to the flowing water of a stream depositing those materials. When the flowing water deposits its materials, it would bury the existing soil and create the next soil sequence.

Commissioner Feldman questioned whether the entire area could be described in that way.

Mr. Russo responded in the negative since the soil profiles were not evidenced.

Commissioner Feldman continued further to state that the area has flooded constantly and the river has been flowing there for millions of years. It has deposited soils and other materials over the years throughout this area and it has washed them away through erosion.

Mr. Klein responded that the hydrologic process on the site after a heavy rain storm has nothing to do with the classification of the soils on the site. There appears to be confusion between a hydrologic event and the soil event. Flood plain soils and alluvial soils are fluvents, a technical classification that has very specific diagnostic criteria. The diagnostic criteria for soil taxonomy were not met on most of the site according to the various study areas. He stated that just as the presence of water, at times, on the surface of the land does not indicate poorly drained soil, just as the presence of flooding does not make the definition of alluvial soils.

Commissioner Feldman inquired about land flooding and the soil-building of the area.

Mr. Klein indicated that it would drain back to the river.

Commissioner Feldman stated that long after a rain event is over, the water does not drain immediately. He questioned whether a plain language definition of alluvial soils would be the following: soils deposited over flood plains and riverbeds.

Mr. Klein questioned if Commissioner Feldman believed that would be an appropriate definition, when registered soil scientists, with credentials established by the professional institution, were required to use established definitions. The legislature created the definitions and they did not include plain language definitions and scientists were constrained to adhere to those established definitions.

Commissioner Feldman restated Mr. Klein's assertion that he had presented about this site before this Commission many times in the past, and questioned why there had not been a map amendment application previously submitted. He further stated that members of the Commission did not make an application to amend the map, however interested parties could make the recommendations. He indicated that Mr. Klein was speaking on behalf of an interested party asking for a permit with respect to the development of the golf course.

Mr. Klein responded in the affirmative.

Commissioner Feldman further inquired why the soils were not delineated at a time in the past and why a map amendment was not requested.

Mr. Klein stated that the procedure previously followed had occurred across the state and that they had conformed with the process which the Commission typically executed. The Commission had not asked for a boundary amendment in past applications. The Town's map indicates that its function is for planning purposes only, that being the Town's inland wetland watercourses map, Town of Avon, CT, revised through 2010. The question of why the Town has not updated the Town's map based on the number of applications that soil scientists have provided, he could not answer.

Commissioner Feldman inquired about map 3.2 and the cross-hatched area. He wondered if they were not alluvial soils, how they were identified.

Mr. Klein responded that they were outwash soils. He explained the definition to mean those soils that were deposited by flowing water but did not show any evidence of recent deposition due to flooding events.

Commissioner Feldman requested to reexamine map 3.3. He sought clarification in his understanding that the blue areas were wetlands and watercourses.

Mr. Klein responded that the blue area was watercourses and areas of poorly drained and very poorly drained soils. They met the traditional definitions that commissions in the state, and the State of CT, use to regulate soils.

Commissioner Feldman commented that he had walked the property and the blue areas looked like watercourses with the exception of P2 which had evidenced a dry pond, otherwise these were watercourses. He questioned whether his belief was correct.

Mr. Klein responded in the negative, however that is generally correct. There are areas beyond the limits of the water, P3 included, and the W100 and W10 series; other areas did not have standing water, such as areas to the south. There were also areas outside of P1 that did not include standing water.

Commissioner Feldman asked Mr. Klein to discuss the stream coming across from Nod Road, that it was a flowing area and not dry. He expected there would be significant wetlands on either side.

Mr. Klein affirmed that this area is watercourse B, and clarified that there are three watercourses that flow from Nod Road westerly toward the river. He questioned why Commissioner Feldman would expect wetlands to be in those locations.

Commissioner Feldman indicated his reasoning given the nature of the vegetation and the proximity to the water.

Mr. Klein stated that the nature of the vegetation and its proximity to water do not define the characteristics of wetlands according to the statute. He also stated that much of the area immediately adjacent to this location is manicured fairway.

Commissioner Feldman questioned whether the Commission was supposed to be looking at the actual character of the land when determining which areas were to be considered regulated wetlands.

Mr. Klein affirmed this notion and clarified that the character of the land is the soil.

Commissioner Feldman inquired further regarding considerations in addition to the soil. He questioned whether the Commission was supposed to look at vegetation and habitat.

Mr. Klein responded in the negative. He reiterated that the statute does not allow for that consideration, with the exception of certain watercourses that could also be defined by certain vegetation types. These areas do not represent these types of watercourses.

Commissioner Feldman pointed out that Section 3.1 of the regulations seems to contradict what Mr. Klein has been saying. It requires that the watercourses and wetlands are to be defined by the characteristics of the land as well as the wetland soils.

Mr. Klein stated that the existing character of the land has influenced their studies and they did rely on the map, instead they used the actual character of the land. The character of the land requires them to delineate wetlands as poorly drained or very poorly drained soils, alluvial soils, or to determine if they constitute a watercourse, vernal or intermittent, permanent, natural, ponds, lakes, and streams; and also there is a vague definition of watercourses that includes marshes,

bogs, and swamps. None of the areas outside of the blue or tan areas shown on the map met those definitions.

Commissioner Feldman stated that within the definition of bogs and swamps, a certain type of vegetation can exist.

Mr. Klein stated that the areas in question did not meet the definition.

Commissioner Feldman asked Mr. Klein to reference map 3.3. He stated that, if the cross-hatched brown area is removed from the regulated wetlands, which has been proposed, more room would be made essentially available for the development.

Mr. Klein stated that this is a boundary amendment and the issue is about where the wetland soils are, and it is not about any future development.

Commissioner Feldman thought they were not completely separated.

Mr. Klein stated that they were completely separate.

Commissioner Feldman questioned: If the amendment is granted, and the area in question is removed from the regulated wetlands, would it be easier for the applicant to have its proposed development; to make the argument that it would not encroach on wetlands.

Mr. Klein stated that it would make it appropriate to use that area for development if the applicant desired. However, that is not a subject of this hearing.

Commissioner Feldman was not certain that is the case. He thought they were entitled to discuss the intended use.

Chairman Thier ruled that this is out of their charge, and when there is an application to the Commission regarding whether to permit certain activities within regulated areas, or not permit them in regulated areas, the Commission could discuss the subject. However at this point, that is simply not the purpose of the meeting this evening and it is outside the Commission's purview. He asked of the public, that when given the chance to speak, they focus on the issue which is determining the new boundaries as shown on the map.

Commissioner Feldman took exception to the Chair's ruling on the grounds that the applicant requesting the map amendment has a burden of proof, and the Commission is entitled to look at the applicant's bias, motivation, and vested interest in the map amendment.

Mr. Klein stated for the record that he had no vested interest in this determination and that he is not the applicant.

Chairman Thier inquired about the largest map with the existing wetlands, map 3.2. He asked Mr. Klein to point out all of the areas of the wetlands proposed to be removed.

Mr. Klein stated he was happy to oblige and also wanted to point out the areas that the applicant will add.

Chairman Thier stated that the areas to add were not problematic and that the basis for the Commission's decision will be based on which areas were to be removed as wetlands, and requested that they be identified for the record this evening. He requested that, at the next meeting, the representatives present a map to more clearly identify the areas of wetlands removal.

Mr. Klein stated the area in questions is not a flood plain or an alluvial soil. A large portion of this area was not wetlands and wants the record to reflect this finding.

Commissioner Thier and Mr. Klein concurred, for the record, they were discussing the area around W4.

Mr. Klein also indicated a portion of the area that is between Nod Road and the W100 and W10 wetland series.

Commissioner Thier questioned whether there were any other areas that would lose the wetlands identification.

Mr. Klein stated there was also some in the extreme northeast corner of the site, and there is a narrow band along the area labeled as the 500-year flood elevation 166'. There is a small area southwest of W1, it is triangular in shape, and a small area northwest of the existing clubhouse

Commissioner Thier confirmed, from Mr. Klein, that there were four areas of the site for ruling on wetlands removal.

Commissioner Thier requested, of the applicant, to identify the areas that were in doubt, specifically whether they were wetlands or not. He requested that they mark those areas with flags so that before the next meeting the commissioners could walk those areas and actually stand in the areas that were proposed to lose protection, they could then inspect the areas for themselves. That information needs to be presented at the next meeting. He requested a large walking map showing flags around those questionable wetlands areas.

Mr. Klein stated that the existing flags are shown on the survey and numbered. The line in question could be approximated but not precisely determined in the field, other than by the survey.

Commissioner Thier questioned why the line could only be approximated.

Mr. Klein stated that the line in question came from the official Town map which was created by a soil scientist looking at aerial photographs in the 1950s. He stated that he had tested a number of holes at the site.

Commissioner Thier stated that Mr. Klein had determined the area was not wetlands. He requested the marking of the area for the walking tour.

Mr. Ziaks indicated that that line would be marked very precisely in the field by a surveyor, and not a soil scientist, in order for the Commission to walk the area. The area would be named "Questionable Wetland 1." As Mr. Klein pointed out, all of the flagging had been installed initially. When walking the site, the flagged areas would be clearly apparent.

Commissioner Thier confirmed that these measures would be helpful for members to walk the site.

Commissioner Feldman asked whether the wetlands could be delineated separately from the watercourses.

John McCahill commented on the last update of the official Town map. The last time a fairly large-scale revision was made to the map was in 2004. At that time, the Town had embarked on the extensive process of digitizing all of the applications to date and showed everything the department had on file as flagged wetlands. The remaining layer on the map was from the Connecticut Maps Information Center for Soils and it was completed in 2004-2005. The department has digitized all of the approvals received since that time and has scanned a number of those maps, but it has not had a formal update to our official map. The official wetlands maps come from site plans and approvals granted by the Commission, which are typically done as part of the site development plan and an application or request for a regulated activity. Plans are on file for this project based on actions in the past. They have not been reflected on our maps since 2004.

Attorney Landolina stated his credentials and background history, practicing law for over thirty-two years, particularly representing municipal land use boards and commissions and giving advice to inland wetlands and zoning commissions on Connecticut General Statute §22a-19. He has been hired by the applicant and spoke regarding his firm's response to the opposition's Petition to Intervene filed by legal firm Robinson & Cole, hired by members of the public known as Nod Road Preservation, Inc. With regard to the State Statute, he discussed the wording of *conduct* as a threshold issue in all petitions. In order for the Commission to entertain a §22a-19 petition, evidence would be needed that the applicant proposed conduct. He submitted to the Commission that there was no conduct being proposed by the applicant. This was not a common sense interpretation but wording as defined by the Connecticut statute.

Chairman Thier stated that it was not on the Commission's agenda to set the petition. If both Attorney Landolina's firm and Nod Road Preservation, Inc. wished to submit legal arguments to the Commission for their consideration, before voting on whether to accept the Petition to Intervene, that would be the best use of the parties' time; since the commission will not make the decision this evening. He noted that the opposing counsel would also wish to be heard this evening.

Attorney Landolina noted that there is a threshold issue for the Commission to decide. If legal arguments are made at the next hearing, that might dictate what kind of evidence the Commission would be allowed to entertain.

Chairman Thier indicated that before the decision is made, the Commission will consult with the Town's legal counsel. He requested that the objections by legal counsel, on both sides, be put in writing.

Attorney Landolina noted he had submitted a brief memorandum on the issue.

John McCahill asked the Commission if it was important to hear some perspective on the process from the Town's attorney, Kari Olson, at that point in time.

Attorney Olson stated that it was important for the public to be heard and that the Commission provide guidance as to the direction of public comment.

Chairman Thier reminded the public and interested parties of the limits of the Commission's authority. It could only determine whether or not a proposed use or activity would impact wetlands; that was the Commission's only authority. The issue of whether or not to amend the boundaries of the wetlands map with regard to the applicant's property was the issue at hand. He asked speakers not to discuss a potential plan for housing or development on the property, or traffic, or the character of the Town. The Commission could only decide based on a scientific basis whether or not the areas of discussion were wetlands as defined by the State of Connecticut and the Town's regulations. He opened the floor to the public for commentary.

Kirsten Ek, of 12 Henderson Drive in Avon, commented. A physician, she spoke in relation to patients that when one organ system fails, the entire body becomes affected. Likewise in relation to the environment, when one part was removed, the whole system was affected. She mentioned climate change in relation to public health. She mentioned that the climate was in trouble and extreme weather events would result. Wetlands were an important way to mitigate climate change and also help communities adapt and prepare. It was the duty of the Town and Commission to think with foresight in order to protect future interests- thirty to fifty years in the future. Regarding Nod Road, she was aware of the flow of the river toward the largest tree in Connecticut and related park. She noted that the park remained closed due to flooding. Recently, on both sides of the area, the water had risen to almost road-level. If the applicant proposed paving and the permeability of the soil at this end, the area would not help protect against extreme weather events. If an area was taken away, one meant to absorb water and clean up major events, the capacity to secure the area would be affected and possibly lead to huge flood damage.

Attorney Evan Seeman, of Robinson & Cole in Hartford, CT, spoke on behalf of Nod Road Preservation, Inc., which has filed a Petition for Intervention under CGS Section 22a-19. Nod Road Preservation, Inc.'s mission was to protect the natural beauty, country peacefulness, and authentic charm associated with Nod Road and the greater Farmington Valley through responsible land management. Its goals included permanent land preservation, protection of wild life, and expanding open space areas. Nod Road Preservation, Inc.'s supporters included

residents throughout Avon and neighboring towns and not just the Nod Road vicinity. He was joined that evening by Dr. Michael Clemmons, an ecologist and conservation biologist, and a climate change and resiliency planning expert. Nod Road Preservation, Inc. opposed this application before the Commission as it did not use current conservative standards to delineate wetlands resources. Attorney Seeman would provide a letter in this respect according to the Chairman's request. He had received Attorney Landolina's letter before the meeting that evening. He wanted to stress that Nod Road Preservation, Inc. had every right to be heard that evening. Even though the application did not ask the Commission for its permission on a specific development, it was still a very important application. It asked permission to determine whether or not there were wetlands resources in the exact area proposed for a development project, shown on plans 3.3 submitted with the application. The application sought to remove significant acreage now regulated by the Town for flood plain and alluvial soils, and characterize it as a developable area. He believed that the application deserved very close scrutiny and believed that the Commission would provide that. It was not about a minor map amendment but significant changes proposed to this large piece of land. He mentioned that the applicants were able to identify wetlands on the property by walking it, by conducting soil samples and using the 100-year flood plain boundary. The applicant said it was appropriate in the application because the Commission accepted that measure in 1997 and 2004 in the context of the golf course development. He respectfully disagreed with the applicant's use of the 100-year boundary line. To rely solely on this boundary would result in harm against the wetlands because the applicant had used an outdated standard to delineate wetlands. Just because the Commission in 1997 and 2004 accepted the 100-year boundary to delineate these flood plain and alluvial soils, it was within a very different time period context. A more conservative methodology to delineate alluvial and wetland soils would be to also include the 500-year flood plain boundary to include more of the soils regulated by the Town. Two reasons for using the 500-year boundary was that first, it was the applicant's burden of proof to establish that it had accurately delineated the wetlands- Section 3.2 of the regulations. The applicant was not able to use the more traditional walking of the site, taking soil tests to determine alluvial and flood plain soils, so it used the 100-year boundary delineation. The use of best professional judgement to identify wetlands should benefit the public, it should not benefit a private developer. The wetlands regulations should be regulated and applied strictly to protect wetlands. If the applicant wanted to be excused from the more precise standards of walking the site, and identify flood plain and alluvial soils, then it should use the more conservative approach, and he believed that approach was the 500-year flood plain boundary line. While the applicant had adopted a less conservative standard which risks removing wetlands currently regulated by the Town, especially when it was the applicant's 1997 and 2004 development of this site -in the extension of the number of golf holes and related and related features to the golf site- that caused or contributed to this issue in the first place. The second reason that this Commission should accept the 500-year flood plain boundary lines to delineate alluvial and flood plain soils, was because there have been new significant developments in climate change and resiliency planning. The applicant's reliance on this agency's acceptance in 1997 and 2004 of the 100-year boundary line was based in a very different time. The 100-year storm had been occurring now with greater frequency, as well as the 500-year storm. Dr. Klemens had submitted a letter which has been submitted for the record along with Nod Road Preservation, Inc.'s Petition for Intervention. It addressed this very issue.

Dr. Michael Klemens- ecologist and conservation biologist, commented. He has done much work on climate change and resiliency planning as it pertained to development, as it pertained to planning for the future. He used the data that soil scientists produced to figure out its meaning. He stated he was not representing the counsel that evening. It was recent practice for many to use the 500-year boundary as precautionary practice for resiliency planning. It should not be underestimated along large rivers such as the Farmington River. He referenced map 3.3, and that the Town had cross-hatched an area of flood plain and alluvial soils. This was a complicated composite map, however while part of it could be delineated by a soil scientist, after the soil had been disturbed over the years, the other considerations were where the water went, where would it flood, and how extensively. The cross-hatched area basically corresponded to the 166' contour which was in fact the 500-year flood plain boundary. One could say that that the line drawn by the Town some time ago, was precautionary. The map was a good one and valuable in today's climate change scenario. It would be extremely helpful to clearly delineate where the 500-year flood plain boundary existed. His professional opinion was that the applicant's proposal would take the Town map backward as a precautionary map, and the present time was not the same as in 1997 and 2004, and not in the best interest of the Town. He would oppose the Town removing a large area of delineation considered alluvial or flood plain. There was a huge difference between placing a hardscape in a flood plain that had been used for agricultural or golf course practices. He stated that the 500-year flood plain was the boundary that state agencies were taking back housing and infrastructure. It was a public trust concern if areas were removed that were considered to be of important flood plain function.

Chairman Thier asked Dr. Klemens to consider submitting, in written format, any comments from this evening that are not already included in his letter already submitted for the record. The Commission would welcome all comments from the public, and as much information as possible, to make its determination.

Attorney Evan Seeman spoke, in conclusion, on behalf of his client, of the right to challenge the methodology in compliance with regulatory activity to delineate these wetland resources. Nod Road Preservation, Inc. believed that the wrong standard was used to delineate these wetlands, and that the alluvial and flood plain soils proposed in the amendment did not accurately capture all alluvial and flood plain soils. If the applicant wishes to proceed, Attorney Seeman requested that the Commission deny the application, and that the applicant return to the Commission with the appropriate, accepted, and more conservative standards to delineate those wetlands. Remapping, as the applicant had proposed, would violate every tenant of the precautionary measure that should accurately guide the delineation of the wetlands especially within flood-prone areas in question.

Commissioner Thier stated that, before the next meeting, it would be helpful to the Commission, for the applicant to address the comments that everyone had just heard, in writing, as part of the application. He clarified that the Commission would not vote this evening and that this evening was a fact-finding meeting to gather as much information from all concerned parties. The vote would probably occur at the next meeting. Also clarified, was that the vote would only be concerned with whether to move the boundaries of the protected areas. If the applicant, at a later point, desired to make another application for actual activity within what was termed the 100' upland review area- the distance of 100 feet outside of wetlands and watercourses that would be

another procedure with some other criteria not taken into account at present. The question of activity would apply then. He asked for any other speakers to come forward.

Ms. Francoise Miller, of 164 Woodford Hills Drive in Avon, commented. She mentioned a report submitted to Congress by the task force on the natural and beneficial functions of flood plains. The report expanded on policy for the protection of wetlands and flood plain management, for the preservation, restoration, and protection of designated land area functions. She mentioned that FEMA, state, and local agencies had programs to buy back houses located in those areas.

Mr. Matt Guyer, of 78 Woodford Hills Drive in Avon, commented. His questions were directed to the soil scientists with regard to testing soils to determine their functions and stratification, and the issues of land being worked and reworked for agricultural and recreational purposes. He inquired if one were to walk a tract of land such as the one of issue in the application, and test with the methodology the scientists had described that evening and the soil had been disturbed, it would seem easy to say that areas were no longer wetlands, since there seemed to be time needed for wetlands to be established. He questioned what the period of time was for nature to run its course and for the soil to show wetlands or flood plains characteristics. He inquired whether professionally tested soils, with an auger or otherwise, would take tens, hundreds, or thousands of years to be identified by the definition characteristics.

Commissioner Thier pointed out that the answer to the question did not have to be answered verbally this evening and it could also be answered to in writing. He asked if there was anyone else wanting to respond verbally.

Mr. Klein commented that in the interest of the Commission's time, he would respond in writing and he would also be happy to speak to the resident after the meeting.

Ms. Lynn Pollack, of 7 Saddle Crossing in Avon, commented. When the Simsbury Land Trust bought the developmental rights of Rosedale Farms, they had a DEEP soil expert come from Georgia after the purchase and comment about how rich the soils were at the site, and spoke about the dams from one hundred years ago that seemed to have stopped depositing the alluvial soils in Avon but still deposited them in Simsbury. That was considered an important piece in preserving that land.

Ms. Dorothy Cinti, of 4 Whitfield Heights in Avon, commented. She asked the soil scientist to submit the measured area or square footage of the wetlands area that was involved and defined as questionable.

Ms. Ruth Woodford, of 10 Cherry Tree Lane and formerly of 191 Nod Road also in Avon, commented. She described that the latter property of which was indicated on the map 3.2, was located in part of the cross-hatched area. She mentioned that 191 Nod Road was flooded in the 1955 flood, as marked in the dining room six inches from the floor. Frequently, looking out of the second floor back window facing west, after a period of very heavy rain, there was extensive flooding. She pointed out the location of the property on the map. The view from the back of the house included much of the cross-hatched area in question.

Ms. Susan Jansen, of 6 Pond Place in Avon, commented. She mentioned her friend Chris Carville's house at 215 Nod Road in Avon regarding the first floor flooding and suggested the Commission visit the homes, if permissible by the current homeowners, to see the markings. There was a flooding as recent as August 2018, not from a spring flood, but due to a sequence of rain as part of a hurricane.

Ms. Leslie Sinclair, of 191 Nod Road in Avon, commented. She invited the Commission to walk her property. She confirmed extensive flooding of the property.

Dr. Monica Giorgio, of 177 Deercliff Road in Avon, commented. She stated that if the application were to be approved, it would be a confirmation of previous decisions made by the Commission and the map would be a modification that confirmed previous actions. She was in support of confirming the application.

Chairman Thier thanked those present for attending, and also those who asked questions to identify areas where additional information was needed.

Commissioner Breckinridge motioned to continue the public hearing to the next scheduled Inland Wetlands Commission meeting on February 5, 2019, at which time a vote could be made. Commissioner Beauchamp seconded the motion. All were in favor.

Commissioner Beauchamp motioned to move to Executive Session. The motion was seconded by Commissioner Breckinridge. Those invited to join the Commission were Kari Olson, Joe Szerejko, John McCahill and Hiram Peck. All were in favor.

Commissioner Beauchamp motioned to exit Executive Session. Commissioner Breckinridge seconded the motion. All were in favor.

John McCahill stated that the applicants for APPL. #757 had requested a different date to present their application. He requested that the Commissioners consider their availability for a special meeting during the last week in January of 2019. An e-mail would be sent as a reminder.

Commissioner Thier asked Town Attorney Kari Olson about the Commission's responsibility regarding the Petition to Intervene.

Attorney Olson responded that if the application were for a regulated activity, her advice would be to allow the Intervenor. The Commission would make the decision. She agreed with Attorney Fahey that there was no regulated activity being considered in the application. The petitioners would have to make the argument that changing the boundaries alone would somehow likely cause unreasonable pollution.

Commissioner Feldman questioned the interpretation of the statute.

Attorney Olson will further study the issue.

Commissioner Feldman and Attorney Olson discussed the verbiage of the statute.

Commissioner Feldman would not want to deny anyone the ability to comment. There was agreement among the Commission that that no one would be denied comment given the nature of the public hearing.

Attorney Olson stated that some of the people of the organization might not feel statutorily aggrieved if they did not achieve Section 22a-19 status.

Chairman Thier requested further analysis from the Town Attorney after she researches the briefs and case studies.

APPROVAL OF MINUTES

Commissioner Beauchamp motioned to approve the minutes of December 4, 2018, as submitted. The motion was seconded by Commissioner Breckinridge. All were in favor.

NEXT MEETING

The next regularly scheduled meeting is Tuesday, February 5, 2019.

There being no further business the meeting adjourned at 10:12 p.m.

Susan Guimaraes
Inland Wetlands Commission Clerk
Planning and Community Development