

THE INLAND WETLANDS COMMISSION OF THE TOWN OF AVON HELD A VIRTUAL REGULAR MEETING AND PUBLIC HEARING ON TUESDAY, OCTOBER 6, 2020, AT 7:00 P.M., VIA ZOOM: <https://zoom.us/j/99770509420>; Meeting ID: 997 7050 9420, or Dial by your location, +1 646 876 9923 US (New York), Meeting ID: 997 7050 9420#.

Present were Chair Clifford Thier, and Vice-chair Michael Beauchamp; and Commissioners Bob Breckinridge, Jed Usich, and Martha Dean. Absent was Commissioner Michael Feldman, (and commissioner member vacancy). Also present was John McCahill, Planning and Community Development Specialist/Wetlands Agent, and Town of Avon Attorney Kari Olson.

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

Chair Thier welcomed those who had joined the meeting and stated that the meeting was being coordinated and recorded by a meeting consultant, hired by the Town of Avon, to assist those participating in complying with the rules and protocol regarding the virtual Zoom meeting. Chair Thier read aloud those rules. He stated that anyone wishing to comment on the application in this public hearing would have the opportunity at the appropriate time during the meeting.

#### PUBLIC HEARING:

**APPL. #768** – Blue Fox Run Golf Course, LLC, Lisa Wilson Foley, applicant; Blue Fox Run Golf Course, LLC, owner; Nod Road Properties, LLC, owner; and Corner Properties, LLC, owner: Requesting to amend the Town of Avon Inland Wetlands and Watercourses Map, per Section 15 of the Regulations, to update the map for the subject properties to depict accurate information based on detailed field mapping and soil evaluations. Locations: 65 Nod Road, Parcel 3290065; 117 Nod Road, Parcel 3290117; and 231 Nod Road, Parcel 3290231.

Present was Attorney Janet Brooks, speaking on behalf of the petitioners Blue Fox Run Golf Course, LLC, Nod Road Properties, LLC, and Corner Properties, LLC, in this proceeding to officially amend the map of Inlands Wetlands and Watercourses Town of Avon, CT. She introduced the applicant's team as Michael Cegan, ASLA and Land Planner, of Richter and Cegan, Landscape Architects and Urban Designers; Gary Guimond, ASLA, of Richter and Cegan, Landscape Architects and Urban Designers; Robert Russo, primary Certified Soil Scientist, with CLA Engineers; and Michael Klein, Certified Soil Scientist peer reviewer, with Davison Environmental. She stated her background experience for the record. She provided an overview of the application and began by stating that there was a different petitioner in 2019. The wetlands, as set out in two places in the Town's regulations, are generally shown on the Town's wetlands and watercourses map, and the map is a general location of where the wetlands are located on this map; however, in each instance in the regulations, the precise location of wetlands and watercourses shall be determined by the Commission based on the actual type of soil and character of the area, seen in 2.1. x and in 3.1 of the Town of Avon's Inland Wetlands and Watercourses Regulations; and the Town may amend its map as more accurate information becomes available. The actual field conditions are controlling. The scientific team gathered by Ms. Brooks' clients had established new data points. Ms. Brooks described the differences in data gathered by this team in this application, in comparison to the 2019 application by a different petitioner, and that details would be laid out by the applicant's soil scientists. She stated

that two highly experienced Certified Soil Scientists from the North Central Conservation District (NCCD), third-party review, met virtually with the soil scientists of the applicant's team, and received well-founded recommendations for adjustments to the proposed map amendments. The NCCD recommendations reflected that the current wetlands delineations accurately and optimally represented the wetlands boundaries and soil conditions observed during the field inspections by the applicant's soil scientists.

Mr. Cegan reintroduced himself. He described the location of the approximate 230 acre Blue Fox Run Golf Course, at East Main Street and Nod Road in Avon, and reiterated the parcels of discussion as indicated in the application. He described the land proximity of the parcels in the application. The portion of the property, described in the application, is east of the Farmington River, and the river runs through the 230 acres. He described the elements of the golf course included in the portion of the property included in the application. He described the colored areas on the plan which were delineated by the soil scientists as wetland soils and located by a surveyor; he also stated the categories of wetland soils. He stated that Blue Fox Run Golf Course has submitted the application as part of a comprehensive review of their golf course operations. This includes a need for a full understanding of the land and the opportunities and constraints, and the limits of wetlands and watercourses. He stated that there are no development plans or proposed wetland activities that are part of this application. His team was presenting before the Commission an application solely for a map amendment and not for any regulated activities. His team was aware that a future application would be required for any future proposed regulated activities on the site.

Mr. Russo reintroduced himself. He reiterated some comments made by Attorney Brooks and Mr. Cegan. He stated there was a letter of report in the file, dated August 7, 2020, that describes the data in support of the wetland boundary amendment for this property and the Town map. He referenced map 2.1, heavily marked with soil sample locations, well over 100, conducted by himself and soil scientist Mr. Klein in conjunction with other certified professionals over the course of several months; multiple additional auger hole samples were also conducted. He described the information in his letter, and referenced materials such as test pit data and Connecticut soil types; he indicated his research methodology and resource materials. He described the property as altered through past agriculture and construction of the golf course; the site includes a complex mosaic of disturbed and undisturbed soils and alluvial and glacial outwash soils. He referenced that a NCCD third-party review was engaged for this application, and the reviewers walked the site and conducted some tests of their own. They noted observations and recommendations regarding the land. He referenced their findings as stated in the letter to the Town regarding their review; and discussed the ensuing virtual meeting with the applicant's soil scientists, soil scientists from the NCCD, and Town staff. It was his belief that his team's findings were a technically correct depiction. He read aloud an excerpt from the NCCD letter of review regarding its findings related to the applicant's soils scientists' delineation on this property.

Mr. Klein reintroduced himself. He stated that he was enlisted by the applicant to conduct a peer review of the soils delineation conducted by Mr. Russo. He had delineated the property several times since 1995, and subsequently worked on maps as part of applications submitted to the Commission in the past. He stated that his observations and historical research were consistent

with Mr. Russo's work on this site. He reiterated the complexity of the site due to its long history of disturbed soils and varied characteristics. He summarized his work involvement in the peer review process. He indicated that the site had been altered since 2003. Regarding this application, he tested multiple areas with an auger and a spade, and examined testing that had been done since 2018, and the test pits and deep shovel pits conducted in 2019. He reviewed the methodology which Mr. Russo used to delineate the alluvial soils at the site, those defined as wetlands in the State of Connecticut, regardless of drainage class. Where soils have been disturbed, elevation is frequently used as a criterion, since the soil profile no longer has the characteristics in the field to identify alluvial processes. He reiterated his involvement in the virtual meeting with the third-party review soils scientists. He had concurred with the input from the third-party and its findings. It was his professional opinion as a Certified Soil Scientist that the delineation submitted by Mr. Russo was substantially correct. It accurately delineated the limits of the wetlands on the site according to the standards of practice utilized by professional soil scientists in the State of Connecticut and according to the regulations of the state.

Chair Thier called on Commissioners for their questions and comments.

In response to Vice-chair Beauchamp's question about the maps, Attorney Brooks stated that the applicant's team has a comparison map, of their scientists' soils delineation and the Town's map, but that it was not part of the application.

Mr. Cegan presented comparison Map 3.4 on the shared virtual screen, a map that had been submitted in a previous application for the site. He described the differences in the two maps. The team did not have an electronic copy of the official Town of Avon wetlands map at the time. He summarized the meaning of the color combination coding of Map 3.4, as a way to explain the differences between their mapping and the Town's official wetlands and watercourses map.

Chair Thier sought clarification regarding what areas were proposed to be added or removed from the Town's official wetlands and watercourses map.

Mr. Cegan explained that the team's mapping was based upon the current mapping and field delineations done by the soil scientists and clarified the differences between the two maps.

Vice-chair Beauchamp stated the he would like to see the applicant team's soil test results as a visual overlay onto the current Town's official wetlands and watercourses map. He inquired regarding the Town's position on the proposed map amendment.

John McCahill responded that the decision would be made by the Inland Wetlands Commission. At the request of the Commission, the Town sought a third-party review, and after review of the reports provided, any decision would be made by the Commission. The Town would not steer the decision.

In response to Commissioner Breckinridge's question about soil testing, Mr. Russo stated that six feet of depth was examined with backhoe equipment; and that depth was sufficiently deep for examining the soils.

In response to John McCahill's request related to the so named "blob" of land referenced in the recent previous application, Mr. Russo presented a graphic to explain the map reference, as seen in Map 3.4. He explained the soil components of this area of land on the site and affirmed that they had dug several test pits down deep enough, and also in undisturbed locations in this area, in order to establish accurate soil profiles.

In response to Commissioner Dean's question regarding three top weaknesses or concerns regarding the delineations on the site, Mr. Russo stated that he did not believe there were weaknesses in this delineation. He stated that the findings were based on an extremely high amount of data from the field, and based on the opinions of four highly experienced soil scientists.

Mr. Klein stated that he agreed with Mr. Russo and that the precise methodology was consistent with the State of Connecticut's guidance document. He stated that the delineation was an accurate and optimal representation of the wetland boundary; he believed it was substantially correct.

In response to Commissioner Dean's question regarding the meaning and usage of the word *optimal* relative to the scientists' terminology, Mr. Russo stated that the word optimal was used by the NCCD in its review letter. He could not explain the use of this terminology by the soil scientists from the NCCD.

Mr. Klein stated that it was not appropriate to directly inquire with the NCCD when its review letter was submitted to the Town. He explained his understanding of the NCCD process as it related to the NCCD's review letter, and standard terminology used by soil scientists related to scientific findings based upon work in the field.

Commissioner Usich inquired about when the FEMA flood mapping lines were created and if there were any known intentions by FEMA to remap the flood lines in the near future. He noted that the alluvial soils seem to follow very closely to the FEMA flood line. He inquired regarding the X-zone on the map and the topographical elevation line in that area. He inquired whether any of the proposed removed wetland areas, as seen in Map 3.4, were mapped as part of any previous permit application.

John McCahill responded that David Ziaks, Professional Engineer of the applicant's team, had reviewed this information related to the flood mapping lines in the past.

Mr. Klein stated that it was not unusual since the FEMA 100-year flood elevation line was the criterion which the four soil scientists arrived at as the appropriate soil boundary to use at this site. He referenced the NCCD review letter further. He believed that FEMA had remapped the site recently, however, he did not have the precise date. Mr. Klein stated that since 2003, the map was substantially the same with the exceptions of ponds and new watercourses that were created as a result of that approval.

Mr. Guimond stated that the 162.5-foot elevation represents the alluvial boundary line.

Mr. Russo stated that there was no disagreement among the four soil scientists and they concurred that the map before the Commission is a substantially correct representation of the regulated resources on the site. He stated that the regulations require a soil scientist to flag the soils on the land and a surveyor then represents those flags on a map.

Mr. Klein stated that there was no proposal for removal of wetlands from the map. The applicant's proposed map accurately represents the present soils delineated on the site. The Town's inland wetlands map is a general map and it is subject to the actual soils represented in the field. The Town's official map is from the 1950's or 1960's and executed by methods that were not conducted in the field, but by methods such as aerial photography, and the Town map is used only for planning purposes.

Commissioner Usich sought confirmation of the statements made by the soil scientists for clarification and for his understanding; Mr. Russo and Mr. Klein confirmed their statements.

John McCahill clarified for the record and summarized the process for this application. The team submitted documents relative to the NCCD review. In clarification, he stated that the NCCD reviewed the team's current materials, however, no information was changed by the applicant's team based on the existing NCCD review. There were no wetland boundary lines adjusted after the applicant's team received the NCCD letter of review.

Chair Thier confirmed that the Commission did not have further questions at that time.

Chair Thier called on members of the public who wished to ask questions or provide commentary.

Kristen Ek, a member of the public, inquired if the State of Connecticut has provided any updated guidance on considering the issues of climate change when discussing applications.

Chair Thier confirmed that the Commission had not received any updated guidance from the State of Connecticut.

Attorney Evan Seeman, of Robinson and Cole LLP, and speaking on behalf of his client Nod Road Preservation, Inc. (NRP), introduced Attorney Brian Smith, also of Robinson and Cole LLP, and representing NRP.

Attorney Smith stated that NRP had submitted a Petition to Intervene, under Connecticut General Statutes (CGS) 22a-19. He requested that the Commission consider his client's Petition to Intervene. He requested that this be resolved before his party continued with questions and their presentation. His party will have a Certified Soil Scientist and Dr. Klemens, an ecological scientist, who will have questions and comments for the applicant's team.

Chair Thier stated that the Commission would wait for Town Attorney Olson to provide an opinion on the Petition to Intervene.

Attorney Olson stated that Attorney Brooks had submitted a letter of objection to the Petition to Intervene, and Attorneys Smith and Seeman had submitted a letter in response to the applicant's objection. Attorney Olson will submit a memorandum updated as necessary, from the last application in 2019, on this property, to address the issues raised in this application; that will state it would be advisable to postpone any decision on the Petition to Intervene until the next hearing. She stated that Attorney Smith was also aware that his party had every right to participate whether or not NRP is recognized as an intervenor. In this public forum, NRP was encouraged to make its presentation.

Attorney Smith noted that his party's soil scientist Timothy Welling, certified in Connecticut and New York, was unavailable to participate in the meeting at that particular moment, however, Dr. Klemens would speak. He stated that one of their concerns was regarding whether or not it was appropriate to use the FEMA flood line and whether the 100-year or 500-year flood elevation line should be used in determining a wetlands map delineation on this site.

Dr. Michael Klemens, Ecological Land Use Planner, reintroduced himself and questioned why the applicant did not propose a development plan for regulated activities along with the amended delineated wetland line. He raised the precautionary principle of climate change relative to determining the wetland delineation in this application. He stated there is mixed data on alluvial soils, however, there is clear information that the 100-year and 500-year flood elevation lines exist. He indicated more frequent flooding events, and remapping the entire area would strip the land of its protections, as demonstrated by previous testimony. He questioned the public benefit in allowing the applicant free range of the site, and whether flooding in this situation would be exacerbated. He felt that the benefit of the application was for the applicant. Many state agencies were using the 500-year precautionary flood line as a way of forming public policy to help avoid the risks of flooding.

Chair Thier asked if there was anyone else who wished to speak about the accuracy of the proposed map boundaries.

Attorney Smith confirmed that NRP's soil scientist consultant was still not available to speak this evening. He stated that Mr. Welling had submitted a written statement to the Commission today, and that the written statement was also submitted to the applicant's attorney.

John McCahill confirmed that Mr. Welling's statement was received at 5:00 p.m., October 6, 2020.

Chair Thier stated that the Commission would have the opportunity to read any newly submitted documents prior to the next Commission meeting.

COMMUNICATIONS FROM THE PUBLIC:

Mr. Badner, a member of the public, recalled a particular flood event on the subject property within the last decade and questioned whether or not it would hold bearing regarding the determination of flood plain or alluvial soils.

Chair Thier indicated that any documentation submitted by any party would be considered.

John McCahill stated for the record that written correspondence submitted to the Commission, and received by the Town, had been posted on the Town's website. Two letters had been received on the day of the meeting and they will also be posted.

Chair Thier stated that documentary evidence would be considered and deemed most valuable.

John McCahill indicated that the next regularly scheduled virtual meeting would be Tuesday, November 3, 2020, and asked the Commission if it wanted to consider cancelling this meeting, due to Election Day, and schedule a special meeting for the public hearing continuation for a different date.

Vice-chair Beauchamp motioned to cancel the Tuesday, November 3, 2020, regularly scheduled meeting, and schedule a virtual special meeting on Thursday, November 5, 2020, at 7:00 p.m. Commissioner Usich seconded the motion. The following members voted in favor: Chair Thier, Vice-chair Beauchamp, and Commissioners Breckinridge, Usich, and Dean; with none opposed, the motion carried.

Commissioner Usich motioned to continue the public hearing at a virtual special meeting on Thursday, November 5, 2020, at 7:00 p.m. Commissioner Dean seconded the motion. The following members voted in favor: Chair Their, Vice-chair Beauchamp, and Commissioners Breckinridge, Usich, and Dean; with none opposed, the motion carried.

#### PENDING APPLICATION:

**APPL. #767** – Michelle and Anthony Angeloni, applicants; Jason L. Addison, owner: Request: 1) partial elimination and redirecting of existing intermittent watercourse (eroded drainage swale); 2) construction activities within 100' regulated area; proposed activities include construction of single family residential house, driveway, septic system, detached garage, pool, retaining wall, and related site grading. Location: 4 Vermillion Drive, Parcel 4420004. **(Scheduled for a public hearing on October 20, 2020; no discussion at this meeting.)**

#### NEW APPLICATION:

**APPL. #769** – Charles Castonguay, applicant; Susan Castonguay, owner: Request construction of a garden building and upper and lower terraced areas within the 100' upland review area. Location: 43 Sheffield Lane, Parcel 6000043. **(To be heard on October 20, 2020; no discussion at this meeting.)**

#### OTHER BUSINESS:

John McCahill noted the dates for the presentations of the pending applications on this evening's agenda. Responding to Town Attorney Olson's question, John McCahill stated that the Commission still had a quorum at this point in the meeting, after Chair Thier left the meeting at that point in time, due to a technical issue.

#### STAFF COMMENTS:

There were no other staff comments.

APPROVAL OF MINUTES:

- Minutes - September 1, 2020 – Regular Meeting: Commissioner Dean motioned to approve the minutes as submitted, and Commissioner Breckinridge seconded the motion. The following members voted in favor: Vice-chair Beauchamp, and Commissioners Breckinridge, Usich, and Dean, with none opposed; the minutes were approved.

Commissioner Usich motioned to adjourn the meeting. Commissioner Breckinridge seconded the motion. The following members voted in favor: Vice-chair Beauchamp, and Commissioners Breckinridge, Usich, and Dean; with none opposed, the motion carried.

There being no further business, the meeting adjourned at 8:32 p.m.

NEXT REGULARLY SCHEDULED MEETING:

The next regularly scheduled meeting on Tuesday, November 3, 2020, was cancelled. A virtual special meeting for the public hearing continuation, for Appl. 768, has been scheduled for November 5, 2020, at 7:00 p.m.

Susan Guimaraes, Clerk  
Inland Wetlands Commission  
Town of Avon Planning and Community Development