

THE INLAND WETLANDS COMMISSION OF THE TOWN OF AVON HELD A SPECIAL MEETING ON WEDNESDAY, APRIL 17, 2019.

Present were Clifford Thier, Chair, and Michael Beauchamp, Vice-chair; and Commissioners Bob Breckinridge, Martha Dean, Michael Feldman, and Dean Applefield. Absent was Commissioner Usich. A quorum was present. Also present was John McCahill, Planning and Community Development Specialist/Wetlands Agent.

Present on behalf of the application were Don Cardwell, Cardwell Homes, LLC; Gary Giordano, Professional Engineer & Land Surveyor, LLC; Ian T. Cole, Professional Registered Soil Scientist/Professional Wetland Scientist #2006.

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

NEW APPLICATION

APPL. #760 - Estate of William F. Grunewald Jr. and Virginia M. Grunewald Trust, owners; Cardwell Homes, LLC, applicant: Requests for regulated activities as follows: 1) Construction of house, related clearing and grading, install footing/roof leader drains, and install underground propane tank; within 100-foot upland review area. Location 256 Lovely Street, Parcel 3060256. 2) Clearing and grading, and install footing/roof leader drains; within 100-foot upland review area. Location 260 Lovely Street, Parcel 3060260.

Mr. Giordano explained the layout of the previously approved two-lot subdivision along with the location of Roaring Brook, the wetlands delineations of 2006, and the former regulated setback distances of 40 feet for the wetlands and 80 feet for the watercourse. The current 100-foot setback from wetlands/watercourses was highlighted on the map for the Commission. The previous site development plan was briefly reviewed, including the common driveway and the septic systems, all existing outside of the regulated area approved in 2006. An overview of the map for the current plan of the two-lot development was then presented; highlighted were the wetlands delineation completed in 2019, and the current 100-foot regulated setback line. The total permanent disturbance for both lots, including the driveways, clearing of the lots, and a buffer around the house from trees, is just over an acre. The silt fence encompasses the limited disturbance. There will be no watercourse or wetlands disturbance for this project. There is a total of 11,780 square feet of upland review area (URA) within the 100-foot setback. At 260 Lovely Street, there is a total of 5,260 square feet of URA disturbance, and no wetlands or watercourse disturbance. At the 256 Lovely Street lot, there is a total of 6,520 square feet of URA disturbance, and no wetlands or watercourse disturbance. The existing topography and proposed septic systems were the determinants for the layouts. Relative to 260 Lovely Street, the septic system is aligned with the land contours and a 25-foot setback is required. The footing drain will be the only activity beyond the silt fence and is included in the total disturbance calculation. The Farmington Valley Health District (FVHD) has reviewed and approved the septic system details, and the approvals have been submitted for the record. The lots will have public water access. Scott D. Stevens, Registered Soil Scientist, had done the initial wetlands delineation. Ian Cole, Registered Soil Scientist, was then introduced. Mr. Cole conducted a review of Mr. Stevens' work.

Mr. Cole was hired to review the wetland boundaries and review the development in terms of identifying any potential environmental impacts on natural resources. The current circumstances are fairly the same as in 2006, when Michael Klein had determined the wetland boundaries and the project was approved. The wetland boundaries are very well defined on the properties. Mr. Cole pointed out that, if entering the properties from Lovely Street, a white pine forest transitions into a mixed hardwood forest and the property drops off steeply toward Roaring Brook. There is no direct wetland impact, however as a result of the regulation changes in 2007, there are now activities within the 100-foot URA. An application was sent to the Connecticut Department of Energy and Environmental Protection (CT DEEP) for review and it was flagged for the habitat of the eastern box turtle, a species of special concern in CT. CT DEEP requires four best management practices to mitigate the potential for the presence of the eastern box turtle. It does not mean that the eastern box turtle will be found on the site; it is, however, historically noted in the area. The eastern box turtle is active from April 1st through to the end of October. The proposed silt fencing will act as an exclusionary barrier and there will be contractor training for the proper turtle handling protocol. The site is flat until it drops off to the wetlands. It is Mr. Cole's finding that there will not be any impacts to the wetlands.

Commissioner Applefield requested clarification on the clearing area within the URA, and the makeup of natural elements.

Mr. Giordano responded that the clearing area was the white pine forested section. The clearing limit is approximately a 50-foot area beyond the proposed houses to avoid trees from falling on the houses.

Commissioner Applefield inquired about potential erosion during the clearing process.

Mr. Giordano clarified that the installed silt fence will serve as erosion control and also a turtle exclusionary barrier.

Mr. Cole indicated that the soils are very well drained in the flat portions of the properties. He categorized the site as low-erosion.

Commissioner Applefield requested clarification regarding the septic systems running along the land contours, and the propane tank installations, particularly regarding the lot at 260 Lovely Street.

John McCahill concurred that the propane tank was unnecessarily listed in the application description for this particular lot, and the description would be amended to remove that verbiage.

Mr. Giordano responded that septic systems are designed to run the length of the land contours. In this case, due to the flat nature of the land, land elevation variations were used to guide the design. He indicated that a house cannot be within 50 feet if it is downgrade from a septic system. He chose areas on both lots that were lower than the proposed house sites due to system requirements. He described the septic system areas on the presentation maps, and explained the restrictions due to the existing ground elevations and required zoning setbacks.

Commissioner Applefield inquired about the reasons why either the septic systems or the house locations could not be moved to avoid the URA. He felt there was plenty of workable space. He also indicated that the maps submitted to the Commission incorrectly referenced the soil scientist as Kenneth Stevens instead of Scott D. Stevens.

Mr. Giordano indicated that if the septic systems were moved, then fill would need to be brought in to level the land and change the topography, and the systems would be too close to property lines. He mentioned the need for transpiration and evaporation on the tops of the systems in relation to system underground depth, i.e., nine inches. FVHD approvals were based on these system design factors. The placements for the houses and septic systems were done by specific field-tested spot elevations, not based on generalized aerial footage maps. If the proposed houses were rotated a specific way, then the driveway would go over the septic systems, which would be unacceptable due to the H-20 weight load bearing restrictions on the proposed systems. If the northwest corner of the house were moved, then it would be too close to the septic system. The reserve area is 25 feet away from the house. The allowable distance from the property line is also 25 feet. The septic system is an Eljen brand, which is buried less deep in the ground, and is shorter in length by half, than using a septic system of concrete galleys. Regarding the soil scientist's name, the maps will be amended to correctly reference the soil scientist as Scott D. Stevens.

Commissioner Feldman requested clarification on the orientation of the maps, and the wetlands area in relation to Roaring Brook. He inquired what the dashed line on the map represented, and the lines of the other areas on the map. He also inquired about details of the houses.

Mr. Giordano responded that the dashed lines represented the land contours, and he highlighted a steep embankment on the property map. He explained that the pink-shaded areas represent the URA that would be disturbed. The area will be disturbed by cutting trees to make a lawn and for usable space around the houses; and to reduce the potential for future fallen tree damage to the houses. The silt fencing is represented by an x-marked line. The leaders for roof water and footing drains for ground water will head in the direction of the wetlands; the footing drains around the foundation will discharge onto the bank at an elevation low enough for a 1% pitch. A mini excavator will be utilized to minimize the disturbance. The drains are actual pipes.

Mr. Cole indicated that the soil test pits did not result in any evidence of a high water table. The soils are excessively well-drained and he would not characterize the property as a wet soil site. The drainage pipes are standard for homes.

Mr. Cardwell spoke to clarify that whenever possible, he prefers to run roof leader pipes onto the lawn as opposed to a driveway, for instance, where water can freeze. He confirmed that footing drains will be installed to avoid any future basement water issues. He indicated that it is not a requirement to install roof leader pipes and they can be omitted from the plans, if that is what the Commission requests.

Mr. Giordano replied, in response to additional questions regarding the plan, that the total parcels' URA disturbance is .27 acres.

Commissioner Feldman sought clarification that the septic systems need to be a certain distance from the property line and from the house, and that this factor dictates the location of the house on the plan for 256 Lovely Street. Are there alternatives, such as a smaller house or smaller septic system?

Mr. Giordano responded that there are variables, however he is limited on the number of square feet for a septic system for a four-bedroom house. He confirmed that the size of the septic system is dictated by the number of bedrooms.

Mr. Cardwell responded that the proposed house size at 256 Lovely Street is 2,300 square feet. It is considered the lowest amount of square footage in new houses that will sell in Avon.

Commissioner Dean inquired how the house location has changed since the 2006 application approval. She also sought clarification on the amount of disturbance in each of the lots. She inquired further regarding the issues related to the eastern box turtle.

Mr. Giordano responded that the plans approved in 2006 represented 3,000 square foot houses. In terms of house locations on the lots, they are basically the same, and also facing the same directions.

Mr. Cole indicated that eastern box turtles are not typically found in shady interior areas such as a white pine forest; however, they like to over-winter at the edge of the forest boundary. The turtles prefer sunnier areas in the active season. The highest likelihood of encountering a turtle would be along the embankments, which faces the sun, as well as within the wetlands area which also allows for more sun. These areas are outside of the limits of disturbance. They are generally most at risk from a vehicle strike. The forest edge is not really distinct. However, it should be considered to align with the wetland boundary, at the transition point where the forested canopy meets with scrub shrub, specifically at the embankment. The eastern box turtle is not an aquatic turtle, and prefers the URAs.

Commissioner Dean inquired whether any forest edge would be removed. She inquired regarding the trees that would be cut to allow for a lawn installation, and whether or not this would be an area where a turtle might be present.

Mr. Cole responded in the negative. He indicated that the silt fencing is the limits of the disturbance. He responded that turtle presence at this location would be unlikely.

Vice-chair Beauchamp inquired of John McCahill why this application was considered at tonight's special meeting rather than at the next regularly scheduled commission meeting.

John McCahill responded that it had been explained to the Commission at the last regularly scheduled meeting, held on April 2, 2019, that tonight's applicant had the option of sitting through the potentially long meeting that evening or postpone presenting the application for a special meeting date. The applicant has a contract to purchase the lots and the potential to close on the purchase at the earliest possible date, and therefore a special meeting was offered.

Vice-chair Beauchamp was concerned with the activities within the 100-foot URA. If there was a way to place the house outside of the URA, he would feel more comfortable. He inquired if it were possible to wrap the driveway around the septic tank and to move the garage to the other side on the plan. He also inquired about an elevated septic system utilizing a pump, and the possibility that the applicant could seek a property line change request.

Mr. Giordano responded that the plan layout he proposed provided the least amount of disturbance. He thought that there could be an alternative, however the proposed regulated activities would still not be removed from the URA. He indicated that alternatives were considered, however there was a problem that once a septic system becomes higher than the house, the separating distances would need to double. He still sought 50 feet of tree clearance around the houses. He indicated that property line changes were not permissible since it was already an approved subdivision.

Mr. Cardwell indicated that he looked at thousands of house plans and at homes that are nationally top sellers. In order to acquire house plans that buyers seek, he considers square footage, the width and depth of houses, and then plans the layouts with minimal impact on the sites. By reducing the depth of the proposed houses, it would likely impact future potential sales.

Commissioner Thier stated that the Commission is not concerned with curb appeal, however its goal is to seek prudent and feasible alternatives in applications.

Mr. Cole stated that these plans utilize the land with meaningful considerations that are not negatively impactful.

Commissioner Breckinridge inquired whether or not the septic system could be moved to the southeastern end of the lot.

Mr. Giordano indicated that the southeastern end is closer to the wetlands and he sought to avoid that area. There are also the limitations on the building setback lines. These rear lots have 80-foot front yard setbacks.

Commissioner Thier inquired about the distance requirements relative to a septic system.

John McCahill clarified the general setback requirements of the Town of Avon: There is a 40-foot setback in the front yard on a standard street; and a 60-foot setback in the front yard for a collector road. For a rear lot, the setback distance doubles in the front yard. Therefore, in a rear lot on a collector road, the distance would double to a 120-foot setback in the front yard. The distance in relation to the location of a septic system is an entirely different issue and is driven by the health code.

Mr. Giordano responded that the septic system distance to property lines is 25 feet.

Commissioner Breckinridge inquired about the locations of the septic systems of the neighboring properties. He inquired about the regulations for the distances between the septic systems. He

questioned the pink highlighted area on the map, where the new lawn is proposed, and whether or not there would be an issue with fertilizer runoff and other chemicals typically applied to lawns.

Mr. Giordano indicated that a 50-foot separating distance is usually required between neighboring septic systems.

Mr. Cole was unaware of any precedence in the Town of Avon for preventing lawn chemicals, and thought it would be impossible to enforce.

Commissioner Thier stated that the Commission is seeking reassurance that such issues related to any chemical runoff would not present future problems for the wetlands.

Mr. Cole indicated that there is a buffer of 40-50 feet between the vegetated embankment and the wetland boundary, which is ample space to attenuate any common pollutants from a residential property.

Commissioner Breckinridge mentioned that the area does often flood.

Mr. Cole stated that the flooding on the property occurs in between the embankments. Roaring Brook might overflow its banks and flow to the immediate floodplain area. The brook will not flood out of its embankment and affect these properties.

Commissioner Breckinridge wondered whether or not physical barriers were necessary to keep people out of the wetland areas in these instances, as the Commission has required in some past applications.

Mr. Cole responded that he did not believe they would be necessary on these home sites. The boundaries here are very distinct. The water from the lawns will infiltrate down into the ground and will not cause runoff or erosion problems.

Chairman Thier discussed various alternatives and distance calculations, by degrees, associated with moving the house and septic system locations within legal parameters.

Messrs. Giordano and Cole concurred that alternatives would not be possible due to either the building setback limitations or health code restrictions. Mr. Giordano sought to confirm whether the Commission is more concerned with the house foundation installed within the URA than the lawn.

The Commission responded in the affirmative. Various members also indicated that alternatives were possible by repositioning the orientation of the houses. The houses also could be made longer and repositioned.

Commissioners Breckinridge and Dean inquired whether there was really a difference in the issues of the house and the lawn.

Commissioner Dean read a passage from page 3 of Mr. Cole's report regarding his statement that there would be no significant activities within the URA, and that the development would not have a negative or adverse effect on the natural capacity of the wetlands in their provided functions and services. She noted that the URA is a review area. She does not see a negative impact in any manner. Other options have been explored by the Commission with this applicant, and the Commission oversees best management practices. She was uncertain why a URA suddenly signified a do not disturb or do not build area. She felt it was an extreme interpretation of what the URA means. She then followed up on an earlier point of whether or not it would be feasible to move the houses.

Mr. Cardwell indicated that even if pivoting the houses to remain within the required setbacks fit outside of the URA, buyers would not want to enter the property and face the backs or sides of the houses.

Mr. Giordano reiterated his belief that he tried to position the houses and septic systems with the least amount of total overall disturbance.

Commissioners indicated their acknowledgement of Mr. Giordano's intentions and commented that his job was well done.

Mr. Giordano confirmed that the house fits into what it called the *house box*, a technicality for contractor purposes. The angles of a specifically designed house will fit within the general rectangle of a house box drawn on the plan.

Mr. Cole stated that it may be feasible for the developer to tweak certain technicalities of the plan, however he wondered whether it would be prudent to do so given all of the various factors in play. He mentioned that the Town's regulations do not state that activities are disallowed in the URA.

Commissioner Thier stated that on several occasions the Commission has approved applications in the URA when a majority of the commissioners have been satisfied that there is no feasible alternative.

Commissioner Dean revisited the notion that there may always be feasible alternatives, however the Commission is supposed to balance all of the factors.

Commissioner Feldman directed his comments to Mr. Giordano regarding the two triangles of house construction jutting into the URA. He stated those were the areas with which the Commission struggled. He inquired about the approximate square footage of the two triangles. He also inquired whether or not there would be any material effect on the environmental issues of the site, if the two triangular areas were to be squeezed into an alternative plan.

Mr. Cardwell responded that they were approximately 400 square feet in total.

Mr. Cole responded that there would not be a measurable effect by moving the portions of house outside of the URA given the characteristics of the site, including the flat portion of the land and

the well-drained soils, and that the overall area of disturbance would not change in a meaningful way.

Commissioner Feldman stated that since there would not be any meaningful effects from changes to the plan, he felt the Commission did not have a strong basis to force this issue or deny the application.

Commissioner Applefield inquired about the size of the underground propane tank.

Mr. Cardwell responded that the tank is approximately 3 x 25 feet wide. If there were to be a leak from the tank, propane would evaporate and would not contaminate the soil.

Commissioner Applefield motioned to approve Application #760, with the conditions that are identified in Ian Cole's memorandum, dated April 4, 2019.

John McCahill stated that he had recommended language concerning the issue of the eastern box turtle. The language stated, *"The applicant/contractor shall comply with the general awareness and avoidance measures associated with the eastern box turtle as noted in the NDD determination #201903713 and correspondence from Jennifer Beno, dated March 18, 2009."*

Commissioner Applefield requested that the language, *"best management practices,"* be inserted to the statement. Therefore, *"The applicant/contractor shall comply with the best management practices of general awareness ..."* He inquired about John McCahill's memorandum, dated April 8, 2019, regarding the listed activities on the site. He wondered whether the modification should be included in the motion put forth. He also stated that the soil scientist noted on the applicant's plan should indicate Scott D. Stevens instead of Kenneth Stevens.

John McCahill responded that in item Number 2, the language indicating the installation of the underground propane tank would be removed, based upon Commissioner Applefield's earlier comments. He agreed that the removal of the language should be part of the motion. He confirmed that the name of the soil scientist should be amended on the plan.

Commissioner Applefield stated that, with the conditions which John McCahill noted, he motioned to approve Application #760. Vice-chair Beauchamp and Commissioner Dean seconded the motion. All members were in favor of the motion, with none opposed; the motion was approved.

OTHER BUSINESS

John McCahill stated that the Judgement by Stipulation relative to 232 Mountain Road was signed and filed with the State of Connecticut on April 16, 2019. In a separate issue, the Town of Avon received a lawsuit relative to Application #759, Blue Fox Run Golf Course. As a matter of public record, copies of the legal filing were being distributed to the Commission.

APPROVAL OF MINUTES

- Minutes, Special Meeting – January 30, 2019: Vice-chair Beauchamp motioned to approve the minutes as submitted, and Commissioner Breckinridge seconded the motion; all were in favor, with none opposed, and the minutes were approved.
- Minutes, Special Meeting Executive Session – April 2, 2019: Commissioner Beauchamp motioned to approve the minutes as submitted, and Commissioner Dean seconded the motion; all were in favor, with none opposed, and the minutes were approved.

NEXT MEETING

The next regularly scheduled meeting is Tuesday, May 7, 2019.

There being no further business, the meeting adjourned at 8:45 p.m.

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