

THE INLAND WETLANDS COMMISSION OF THE TOWN OF AVON HELD A VIRTUAL REGULAR MEETING ON TUESDAY, JANUARY 3, 2023, AT 7:00 P.M., VIA GO TO MEETING: by web <https://global.gotomeeting.com/join/327315773>; or by phone, United States: +1 (571) 317-3116, Access Code: [327315773#](https://global.gotomeeting.com/join/327315773).

Present were Chair Michael Feldman, Vice Chair Michael Sacks, and Commissioners Robert Breckinridge, and Gary Gianini. Also present was Emily Kyle, Planning and Community Development Specialist/Wetlands Agent, and Attorneys Kari Olson and Joseph Szerejko of Murtha Cullina LLP, attorneys for the Town of Avon.

Chair Feldman called the meeting to order at 7:02 p.m. There is a quorum of 4 Commissioners.

I. PENDING APPLICATION:

APPL. #784 – Brenda J. Sullivan, Trustee, Owner and Applicant; request for regulated activities within the 100 foot upland review area: construction of house, driveway, utilities, and related site work. Location: 34 Terrace Drive, Parcel 4310034.

David Whitney, Consulting Engineers, LLC, submitted this Application for the Owner for an existing single-family residential lot at 34 Terrace Drive. There is an intermittent watercourse and wetlands on the property. The original site plan for this property was approved by the IWC and Avon Planning and Zoning in 2007. An intermittent watercourse runs through the site on the northeast side and there are some associated wetlands that George Logan, Soil Scientist, delineated in 2007. This application was approved after the upland review area was increased from 40' to 100'. The permit expired and the Owner was not aware that the permit had to be renewed. The lot was sold by the original developer, Peter Puchalski, to the current Owner. D. Whitney submitted a new Application with the exact same plan that was approved in 2007. The first couple of hundred feet of the driveway off Toll Gate Lane was within the upland review area. Some of the activity would include grading and construction of the house within the 100 foot upland review area. There were several items in E. Kyle's memo that the IWC discussed at the November 1, 2022 meeting. The first item was the functions and values, and impact report that G. Logan prepared in 2007. The IWC wanted an updated soil scientist's report which has been done. The second item was the Conservation Restriction Area from 2007 when the subdivision was approved. The wetlands area including the intermittent stream and 20' outside the wetlands line were encumbered with a proposed Conservation Restriction Area. However, the document was never filed in the Avon Land Records. E. Kyle said in her Memo that if this Application is approved, this step needs to occur prior to any construction. The third item was that it appeared that the house location could be pushed back further uphill to the east to move it farther away from the wetlands and therefore reduce the amount of activity within the upland review area. D. Whitney has done that and submitted revised plans. E. Kyle's Memo also mentioned a discussion of the history of the site which D. Whitney provided, as well as a site walk map showing the stakes he put on the site marking the proposed location of the house and driveway (he believes most IWC commissioners have visited the site). At the November 1, 2022 IWC meeting, there was no finding of potential significant impact and the IWC did not schedule a public hearing. D. Whitney submitted revised plans dated November 6, 2022 showing the

original house location and the new house location which has been moved to the east and completely outside of the upland review area. He also added a note that the existing stone wall on the property is to remain to provide a physical barrier at the edge of the disturbed area between the construction area for the house and the wetlands down below. Chair Feldman believes that the stone barrier is key and asked how the IWC will know that it is maintained and not taken apart in the future. E. Kyle said that if you wanted to insure that the stone wall is untouched, it would have to be part of a conservation easement which she recommended in her second Staff Report. She said that last month there was concern that future property owners would clear all the trees up to the stone wall. If the IWC is concerned about that, they can expand the conservation easement. E. Kyle suggested that the stone wall should not be in the conservation easement area for the purpose of maintenance. You would not want to be in the situation where a property owner was abiding by the rules but unable to maintain the wall because it was too close or in the conservation easement. D. Whitney said the stone wall has fallen down and if it could be rebuilt it would be more aesthetically pleasing and therefore more valuable to a homeowner. He hopes a homeowner would be able to repair the wall and use the stone wall as the limit of the disturbed area – a physical barrier. Due to moving the house back and in order to provide some type of reasonable back yard, he has pushed the grading of the property a bit more to the east. All of this grading is outside of the upland review area. On the existing driveway to 32 Terrace Drive, there is a 30 foot utilities easement where 34 Terrace Drive can run the utilities, the sewer force main and the water line so D. Whitney has added a silt fence on either side of the driveway. The utilities would be installed in the shoulder of the driveway - the water line on the north side and the sewer pressure main on the south side. He has shown silt fence to be installed on each side of the driveway between the new utilities and the wetlands. The changes made by D. Whitney include moving the house back and requiring the stone wall to remain though allowing it to be repaired. In addition, G. Logan (who did the original wetlands delineation and the functions and values report) submitted a revised report from REMA Ecological Services dated December 5, 2022 which references his previous visits to the site and his previous reports and added, “during our recent site investigation, we observed both the wetlands and uplands including the location of the proposed single family dwelling, photos 1 through 4 attached. While the composition and density of the vegetative cover types have changed somewhat over the years, especially within and adjacent to the regulated resources, no material or substantial changes were observed. The delineation of these resources as appeared on the aforementioned plan are substantially accurate and no adjustments or additions are required. Moreover, in reviewing the recently revised plan which now proposes the single-family dwelling further away to the east of the regulated areas, that is easterly of the stone wall, it is our professional opinion that the regulated resources would be protected both during the construction phase and in the long term.” G. Logan has said that there is really no change at the site – the change in vegetative cover he referred to is the presence of some additional invasive species in the wetlands. D. Whitney said that at the November 1, 2022 IWC meeting, there was a question regarding the Aquifer Protection Map he provided. Regulations require that when an IWC application is within an aquifer protection area for any wells of the Connecticut Water Company (the “CWC”), wetlands applications must be sent to the CWC for their review because they are concerned about watershed areas. He sent both the original and the revised plans to Jessica Demar of CWC. She responded with comments and suggestions so D. Whitney has drafted some notes to add to the plans. Her letter said the property is located within an aquifer recharge area of well #6 and therefore CWC is concerned with potential impacts to the water quality. She

continued that the proposed use is compatible with aquifer protection however, since the area of disturbance is approximately 550' from the wellhead and this project is located on steep slopes, it is important that erosion control methods be developed, installed and maintained to protect the stream and wetlands both during and after construction. She feels that it may be prudent to delay construction until summer months when the stream bed is typically dry. D. Whitney is adding Special Notes to the plan: #1, all construction activities involving site grading shall be limited to drier times of the year, i.e. not in the springtime, #2, erosion and sedimentation measures shall be properly installed as per the approved plan and maintained in satisfactory condition throughout the construction period and inspections of erosion and sedimentation control measures shall occur on a regular basis and immediately after significant rain events greater than 1" of precipitation, and #3, conservation restriction areas should be placed on the wetlands and extended 25' outside of the wetlands soil lines and this conservation area restriction document should be based on Appendix E of the Avon IWWA (Avon's standard conservation restriction document). There are other Special Notes which are based on J. Demar's comments and the Applicant is agreeable to all recommendations, requirements, and comments. Item #9 of J. Demar's letter is that an emergency spill response plan should be developed and included on the plans. D. Whitney prepared one based on the DEEP website's materials and it says that any spill of chemicals should be reported immediately to DEEP's 24 hour Emergency Response Unit. The emergency spill response plan also sets forth the required details about the spill, that fines are imposed for failure to report incidents as required to DEEP, that copies of the report are to be sent to the Farmington Valley Health District and the CWC, and that it is the legal responsibility of the party that caused the spill to clean up the pollution. D. Whitney reminded the IWC that his site plan is actually a feasibility site plan - when this lot is sold and the owner submits a building permit application, they will be required to submit a detailed site plan which shows the actual house to be built (not the footprint shown on the feasibility plan though the house is expected to follow the conceptual design shown on the plan). D. Whitney's note says that it is understood that any significant deviations from the feasibility plan approved by the IWC would possibly require another application to the IWC prior to the issuance of a building permit. Typically E. Kyle will approve the final site plan if it is close to what the IWC approved. If a new owner wanted to move the house 10' closer to the wetlands that may trigger a return trip to the IWC. Lastly, D. Whitney will put the DEEP's Best Management Practices for Temporary Construction which are referenced in J. Demar's letter as notes on the site plan.

R. Breckinridge said that he was not at the previous IWC meeting but he has listened to the tape of the meeting. He feels that D. Whitney has addressed some of R. Breckinridge's concerns though he would like a way to ensure that any owner follows the recommendations of the IWC. He walked down the neighbor's driveway near this site and saw 3-4 vehicles parked in a dirt parking lot which looks like it extends onto 34 Terrace Drive and is well within the 100 foot delineation from the wetlands. He believes Town staff should look at that as he is certain it was not the intent of the IWC in 2007 to allow vehicles to be parked there. D. Whitney said it is not associated with this Application or Owner. D. Whitney believes it is where there was a small house and garage that were torn down and that area was supposed to be grass after the house was torn down. R. Breckinridge said it was in the area where the driveway split off as shown on the original plan.

Vice Chair Sacks asked about how the original soil report was done. The soil scientist reported that he examined the composition and density of the vegetative cover types and how they have changed but Vice Chair Sacks would like to know if there has been any assessment of the soil or the wetlands boundaries that is like the original assessment. D. Whitney referred to the December 5, 2022 report that says the delineation of these resources are substantially accurate and no adjustments or additions are required. Vice Chair Sacks would like to know how the soil scientist determines that without taking soil samples. D. Whitney said that he is not sure that the soil scientist did not take samples. D. Whitney believes that G. Logan visually inspected the wetlands that he had previously delineated and made that determination. Vice Chair Sacks is concerned that G. Logan was only looking at the property in terms of vegetation and he feels it is important to know the soil boundaries. He also wants to know where the functions and values report is in the original report. E. Kyle said that she believes that the IWC was not requiring a new delineation but was requiring that the soil scientist go back to the site, revisit his report, and make additional comments. This has happened in other applications. Vice Chair Sacks thinks that after 15 years, the wetlands boundaries should be assessed very thoroughly as there could be changes over time. He would like to see the functions and values adequately delineated here. D. Whitney said that G. Logan did go to the property, review it, and update his report. G. Logan did talk about functions and values in his 2007 report and he did look at the site again and it is his opinion that the wetlands have not changed. Vice Chair Sacks does not think that this is an insignificant wetlands – there is a stream that runs through this property, there was quite a water flow through this area, and the stream is very active. D. Whitney said that it is an intermittent watercourse though he agrees that there is a flow at certain times. Vice Chair Sacks would like to know where the water flows to because it does go into an area at Farmington Woods where there is a large pond and he feels there are issues with siltation. He is concerned about issues of sediment flowing into this area, erosion, and how to protect the area from destruction. He would also like to know if the house can be moved further east to avoid the destruction of trees – it would be a feasible alternative that would be less destructive to the area. Chair Feldman agreed that G. Logan's report could have been more clear but the CWC letter together with the DEEP Aquifer Protection guidance, and the recommendations that have now been included, addressed some concerns. Chair Feldman believes those documents provide certain safeguards and address some of the deficiencies and how to deal with them. Vice Chair Sacks agrees but the report also highlighted for him the importance of being very cautious in evaluating the water in this area and making sure the wetlands are well protected.

G. Gianini said that Section 10.2 of Avon's IWWA lists criteria for a decision by the IWC. Section 2.1 aa. lists some regulated activities that may cause significant adverse impact. He asked E. Kyle if the IWC needed to focus on those Regulations more. E. Kyle said that both of those sections are important when the IWC makes decisions on any application. She feels that some additional concerns that were raised were addressed by the CWC and adding their suggestions into our conditions would be important. She does not feel that anything else needs to be added to this Application per Regulations 10.2 and 2.1. G. Gianini agreed with allowing an owner the ability to repair the stone wall. E. Kyle said that the CWC would like 25' instead of 20' for the conservation easement and the IWC can require this if it deems it necessary. G. Gianini was also concerned about tracking follow-up on applications. E. Kyle said that when someone applies for a building permit, it is approved by multiple departments including zoning and wetlands. She would look for any old approvals by land use boards. G. Gianini asked what

are the standard conditions of approval listed on an approval letter. E. Kyle said they include things such as: the applicant must contact the Planning Office within 48 hours prior to any construction starting, a pre-construction meeting is required within 2 weeks prior to any construction starting, silt fences must be installed, and depending on the size of the project, there may be a pre-construction meeting with the Town Engineering and Building Departments.

Chair Feldman asked D. Whitney if it made sense to have G. Logan provide a more clear delineation of the wetlands and a functions and values report. He would also like to see the proposed conservation easement. D. Whitney wants to clarify that the failure to file the conservation restriction was the original developer's who sold the property to the Owner in 2010. It is not the Applicant's fault that was overlooked – she had no knowledge. D. Whitney pointed out the site on a large scale GIS map in response to a question about the overall wetland system and where the water flows. This lot is part of a very large watershed, the Roaring Brook watershed, which covers about 523 acres and extends from Canton to the Farmington River. There are many houses in the area that are developed closer to the wetlands than this proposed house. He feels that whether he moves the proposed house another 5-10' back is immaterial as the house is outside of the upland review area. The location also provides a reasonable backyard. This is already a fairly developed watershed and there will not be much more development in the area. This is an existing approved lot of record and the Owner has been paying taxes on it since 2010. He did provide an updated report from the soil scientist which may not have been as detailed as the IWC wanted but it is from a professional who states that there will be no impact to the regulated areas. Vice Chair Sacks said that we have an Application that does not have the items the IWC requires. He thinks the wetlands are not designated in the ways that soil scientists normally do so. R. Breckinridge thinks that Vice Chair Sacks has good points but this is an Application that has gone through quite a bit of evaluation by our predecessors and approved it. He does not feel that there has been much change to the wetlands and it is not a large wetlands. The Applicant has made major changes in the layout and the input from CWC is very useful. Vice Chair Sacks thinks that a past approval that has expired allows the IWC to reexamine the Application as if it was a new proposal. B. Breckinridge said that this is not a large application – it is one lot – and it is not a major watercourse and the wetlands are isolated. If the CWC's concerns have been alleviated, he does not feel that the IWC should put this Applicant through more financial burden. The only expert the IWC has heard from, the soil scientist, has said that the wetlands have not changed. K. Olson reiterated that the law does not support a do over once the IWC has approved an application even if it has expired. The impotent to reverse rule says that absent a change in circumstances, you cannot overrule a prior decision. When someone comes before the IWC to renew a permit the focus should be on what has changed. Vice Chair Sacks feels that he does not have enough information to know if anything has changed. Chair Feldman feels that the point in having expirations is that it does require another look. K. Olson referred to the CT Supreme Court decision in the Wickham case from last year which talks about the impotent to reverse rule which says that once the IWC has approved something and absent a showing of a material change in circumstances, you cannot reverse the prior IWC. The basis of that is the notion that boards and commissions cannot simply overturn each other every time a permit expires. The IWC does have a right to request whatever information they deem necessary to determine whether there has been a significant change in circumstance. Chair Feldman feels that it is prudent to have G. Logan address the IWC's concerns prior to voting on the Application. D. Whitney agreed to continue this Application and said that the Applicant grants

permission for an extension to the next IWC meeting. Chair Feldman said that the IWC needs: 1. more detail supporting G. Logan's wetlands delineation and what he has done to determine that the wetlands and the delineation have not changed; 2. a functions and value report; and 3. a draft of the conservation easement.

E. Kyle said that the Applicant needs to grant an extension tonight and D. Whitney confirmed that the Applicant grants an extension through the next IWC regular meeting. Vice Chair Sacks made a Motion to Continue Application #784 through the next regularly scheduled IWC meeting. G. Gianini seconded. The Motion passed unanimously.

II. COMMUNICATIONS FROM THE PUBLIC (unrelated to any Application): None.

III. OTHER BUSINESS:

A. Staff and Commissioner Comments (unrelated to any application):

E. Kyle reminded the Commissioners that if they ever receive a letter, an email, or any other communication from a member of the public regarding any pending or future IWC application, please forward it to the Planning Office so it can be made a part of the public record. Please do not respond substantively but let Town staff answer any questions so there is no possibility of pre-determination by any Commissioners. Chair Feldman asked if this applied to Commissioners that have recused themselves. E. Kyle said that it does not but she would always pass questions to Town Staff – a recused Commissioner may not have all the information on an application. Chair Feldman said that he sometimes gets communications regarding an application because he lives at Hunters Run. E. Kyle said that as long as it is not addressed to the IWC he does not have to forward it to staff. K. Olson said that if there is anything involving wetlands and he has recused himself, he should not participate in any discussions about it or respond at all. Vice Chair Feldman agreed.

E. Kyle said that her and G. Gianini met with Andrew Bosse, the lead forester for the Timber Harvest project at Avon Old Farms School, to look at the temporary stream crossing which was completed. She shared some photographs of the stream crossing which showed the brook was running under the crossing with undisturbed, clear water exactly as the applicant had proposed. She said the work was done perfectly and seamlessly and the project looks good. The end date is not that far off – they will be starting on the east side of the road as they have pretty much completed the large area on the west side. They are keeping the forest healthy and taking out the scrubby growth to enhance forest management and growth for decades to come. G. Gianini agreed and felt that A. Bosse was very professional and doing a good job.

B. Approval of Minutes: September 6, 2022 – Regular Meeting.

There was no Motion as the Minutes were not sent out prior to this Meeting.

G. Gianini made a Motion to go into Executive Session and allowing E. Kyle, K. Olson, J. Szerejko, and Janet Stokesbury into the Executive Session. Vice Chair Sacks seconded. The Motion passed unanimously.

IV. EXECUTIVE SESSION: 425 Waterville Road

V. NEXT SPECIAL MEETING: January 9, 2023

VI. NEXT REGULARLY SCHEDULED MEETING: February 7, 2023.

R. Breckinridge made a Motion to Adjourn. Vice Chair Sacks seconded. The Motion passed unanimously.

There being no further business, the meeting adjourned at 8:36 p.m.

Janet Stokesbury
Clerk, Inland Wetlands Commission
Town of Avon Department of Planning and Community Development