

THE INLAND WETLANDS COMMISSION OF THE TOWN OF AVON HELD A VIRTUAL REGULAR MEETING ON TUESDAY, FEBRUARY 7, 2023, AT 7:00 P.M., VIA ZOOM: by web <https://us02web.zoom.us/j/82484110722>; or by phone, United States: [+1 \(305\) 224-1968](tel:+13052241968), Meeting ID: [824 8411 0722](https://us02web.zoom.us/j/82484110722).

Present were Chair Michael Feldman, Vice Chair Michael Sacks, and Commissioners Michael Beauchamp, Gary Gianini and Carol Hauss. 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 7:00 p.m. There is a quorum of 5 Commissioners. He indicated that the 100 Nod Road Application will not be heard tonight as there is not a quorum of Commissioners for that Application.

#### 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 (the “Property”).

David Whitney of David F. Whitney, Consulting Engineers, LLC said that this Application began in October, 2022. This lot was approved by the IWC in 2007 as part of a two lot subdivision. In 2010 the original developer, Peter Puchalski, sold the lot to the Owner. She did not realize that the wetlands permit had to be renewed. The site plan submitted in October showed the house in the same location as the approved plan from 2007 which is about 30’ closer to the wetlands than the current plan. There is a small area of wetlands on the western portion of the Property which consists of about 6,740 square feet or about 8% of the site and there is an intermittent watercourse that runs through it. He has relocated the house outside of the upland review area and further from the wetlands. The two disturbed areas include the driveway from Toll Gate Lane and construction around the house for a total disturbance of 9,754 square feet or 12% of the site. A conservation easement on the wetlands and 20’ outside the wetlands of about 12,000 square feet or 15% of the site was required in 2007. E. Kyle had recommended that the conservation restriction area be enlarged and D. Whitney agreed. The conservation restriction area was increased by 12,600 square feet so now the area which includes the wetlands, the original 20’ outside the wetlands, and the new area is about 24,500 square feet or 30.2% of the site. D. Whitney said that there are 4 soil scientist reports including George Logan’s from REMA Ecological Services, LLC from 2007 for the original two lot subdivision which set forth the lack of impact to the wetlands. G. Logan had verified the accuracy of the wetlands delineation on the Property and provided an on-site soil investigation. A second report from 2007 talked about the wide swale that exists between the cul-de-sac and the proposed driveway on the plan. In 2007 the IWC wanted to know if there was a watercourse or wetlands soils in this broad swale. G. Logan said in his report that there were no wetlands in that area. In November, 2022 the IWC wanted an updated report and G. Logan submitted a report for this Application in which he referenced his work in 2007 and said there was no material or substantial change observed in the wetlands and by moving the single-family house farther from the wetlands area, it was G. Logan’s professional

opinion that “the regulated resources would be protected both during the construction phase and long-term.” At a later IWC meeting, there was a discussion that G. Logan’s report was not as thorough as a typical report. D. Whitney said that was because it was merely to verify the previous reports from 2007. But G. Logan wrote a fourth report in January, 2023 for the Property which indicated that these wetlands have minimal functions, there are no direct impacts to the wetlands or watercourses, a sufficient buffer is provided, no impacts to the wetland hydrology or stream flow are expected, no impacts to on-site or off-site water quality of regulated areas are expected, and in his professional opinion there will not be a significant or adverse impact to the site’s regulated watercourses or wetlands or to off-site and downgradient wetlands or watercourse resources. D. Whitney said there has been no testimony or report from any other expert that contradicts or opposes G. Logan’s testimony. D. Whitney said that the Town Attorney has told the IWC many times that if there is no expert testimony in opposition to the Applicant’s expert, then the IWC must believe that expert. D. Whitney referred to E. Kyle’s two memorandums which recommended putting the house further back from the wetlands and enlarging the conservation restriction area, both of which have been done. E. Kyle indicated to D. Whitney that she had no outstanding issues, questions or recommendations. D. Whitney said the aquifer protection overlay zone map was included with the Application because Avon’s Regulations require that if a site is within this zone, the water company must be notified. He sent the original and revised plans to Jessica Demars at CT Water Company. She made a series of 10 recommendations and D. Whitney prepared 10 special notes to be added to the plans to address her concerns. She also has no opposition to the use of the Property as a residential lot. One of the recommendations was to enlarge the conservation restriction area from 20’ to 25’ and D. Whitney has exceeded that. D. Whitney received photographs from Vice Chair Sacks last Friday with 12 comments and 14 questions. In response, D. Whitney visited the site, took photographs, prepared a sketch, and wrote a detailed response to the questions with G. Logan’s input. D. Whitney again summarized the changes to the plans he made in response to the IWC, the Town staff, and CT Water Company. The IWC has not made a finding of any potential adverse impact to the wetlands and the IWC has not required a public hearing.

Chair Feldman asked about the stone wall that will be the physical boundary and barrier that sets the conservation restriction area apart. The wall is in disrepair and Chair Feldman asked if it would be restored. D. Whitney confirmed that it would. Chair Feldman feels that the changes made to the proposal are helpful. C. Hauss had no questions. M. Beauchamp said that he was not at the last meeting on this Application but he has listened to the recording and he has no questions. G. Gianini asked about the soil erosion and sedimentation controls and if the Town has guidelines for this. E. Kyle said that the proposing engineer typically follows the CT State Guidelines for Erosion and Sedimentation Control though it may depend on the site. For example, for a very flat site she would use logic and fewer erosion and sedimentation controls would be necessary. D. Whitney said that on the plan he has special soil erosion and sedimentation control notes. This is a feasibility plan so it may not be the exact house footprint but any detailed site plan that comes in for a building permit needs to substantially follow this plan. The notes on the plan (itemized by D. Whitney) address this and say that a new owner must follow this plan. A building permit would have to be approved by the Town Engineer and E. Kyle.

Vice Chair Sacks is concerned that the wetlands boundaries delineated 15 years ago for this Property will have to be accepted for the next 15 years. He feels that G. Logan does not believe

that the boundaries needed to be reevaluated but Vice Chair Sacks believes that the boundaries could have changed. He observed a pool of water which was not on the Property but the pool was substantial and extended in the direction of the wide swale. He is concerned with this area. The intermittent watercourse on this Property empties into Roaring Brook. An area that at one time had a large open pond is now a very small channel. It appears to have a lot of sedimentation and the flow is very restricted. The definition of significant impact in Avon's Regulations include any activity that has "the potential to cause substantial turbidity, siltation or sedimentation in a wetland or watercourse." It is not the outcome but the potential. Vice Chair Sacks asked about the slope of the area and the fact that it will be flatter after construction. He asked if the water will flow down from the elevated area behind the house (now there is impervious surface there). He is concerned about removing trees in the area including white pine saplings, putting in a lawn, having a steep incline, and having a "wall" which is simply stones on the ground. Also salt will be used along the driveway and he asked where it will flow as it looks like the flow is in the direction of the wetlands. D. Whitney said there was a wide, broad swale that is higher on both sides and for that reason he put a culvert in the driveway so he would not create a dam. The wet spot on 51 Buckboard Lane is created by the fill used to build the cul-de-sac of Tollgate Lane so D. Whitney wanted to allow any water that is sheet flowing through the woods to go under the driveway. G. Logan determined that there were no wetlands there and the area of the wide swale is not a regulated area. There is no evidence of any water coming out of the wet spot on 51 Buckboard Lane – it is an isolated pocket of water and does not flow down the swale. Chair Feldman asked if it was a watercourse and D. Whitney said it was not on the Property, it is 100' away from the closest activity on the Property, and it is in a different watershed. D. Whitney is unsure about flow to Roaring Brook but the watershed on Hollister Drive is 4,100 acres (1/6<sup>th</sup> the size of Avon). It is a vast amount of water flowing to that point and Hollister Drive has not been overtopped so the road is not an impediment to the flow. The slope on the lot will be cut to create a flat area for the house – there is no fill. The steep embankment created to make the flat area for the house is outside of the regulated area. D. Whitney said it is impossible to develop a wooded lot without cutting trees and trees should be cut around a house for safety. The conservation restriction covers 1/3 of the lot and you cannot clear trees there. The stone wall is broken down but can be rebuilt to act as a physical barrier. Regarding the possible salt in the driveway, G. Logan's report said that "stormwater runoff from impervious surfaces is quite limited and will be allowed to sheet flow off the driveway and be treated through permeable upland soils before reaching the wetlands or watercourse. Also, roof runoff is piped to a stone pad which will then have to flow nearly 95' before reaching the wetland boundary – an unlikely scenario since it will have infiltrated into the ground within a relatively short distance from its discharge. Therefore, impacts to on-site or off-site water quality of regulated areas is not expected." Vice Chair Sacks asked how salt will be removed by passing through the ground and D. Whitney said it is diluted. That is why there is an upland review area and why an IWC provides buffers between lawns and driveways and the wetlands. C. Hauss said that she was not at the January 3, 2023 IWC meeting but she listened to the recording.

M. Beauchamp made a Motion to Approve Application #784 with standard conditions and the conditions suggested by E. Kyle. C. Hauss seconded. The Motion passed unanimously.

II. CONTINUATION OF PUBLIC HEARING: None due to lack of a quorum.

PENDING APPLICATION:

**APPL. #785** – 100 Nod Way, LLC, Owner and Applicant; request for regulated activities within the 100 foot upland review area: construction of thirteen (13) single-family houses and eight (8) buildings containing forty-two (42) townhouse common interest units, driveways, utilities, and related site work. Location: 100 Nod Road, Parcel 3290100.

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

IV. OTHER BUSINESS:

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

G. Gianini asked about corrections to the Minutes. E. Kyle said that any revisions should be brought to a meeting so the IWC can approve them with a motion and a vote.

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

M. Beauchamp made a Motion to Approve the Minutes for the September 6, 2022 Regular Meeting. C. Hauss seconded. The Motion passed unanimously.

CJ Hauss made a Motion to Approve the Minutes for the October 11, 2022 Regular Meeting. M. Beauchamp seconded. The Motion passed unanimously.

Vice Chair Sacks made a Motion to Approve the Minutes for the November 1, 2022 Regular Meeting. M. Beauchamp seconded. The Motion passed unanimously.

M. Beauchamp made a Motion to go into Executive Session and allow E. Kyle, K. Olson, J. Szerejko, Janet Stokesbury, and Rachael Burstein of Tyche Planning & Policy Group into the Executive Session. Vice Chair Sacks seconded. The Motion passed unanimously.

V. EXECUTIVE SESSION:

Discussion of Existing and Potential Litigation

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

M. Beauchamp made a Motion to Adjourn. Vice Chair Sacks seconded. The Motion passed unanimously.

There being no further business, the meeting adjourned at 8:27 p.m.

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