

THE INLAND WETLANDS COMMISSION OF THE TOWN OF AVON HELD A VIRTUAL REGULAR MEETING ON TUESDAY, APRIL 4, 2023, AT 7:00 P.M., VIA GoToMeeting: by web <https://meet.goto.com/613639333>; or by phone, United States: [+1 \(571\) 317-3116](tel:+15713173116), Access Code: [613639333#](https://meet.goto.com/613639333#).

Present were Vice Chair Michael Sacks, and Commissioners Michael Beauchamp, Robert Breckinridge, Gary Gianini, Carol Hauss, and Kevin Tobin. Also present was Emily Kyle, Planning and Community Development Specialist/Wetlands Agent and Attorney Kari Olson of Murtha, Cullina LLP, attorneys for the Town of Avon.

Acting Chair Sacks called the meeting to order at 6:58 p.m. There is a quorum of 6 present.

I. ENFORCEMENT HEARING:

Amco Development, LLC, 28 Richard Street (Assessor's Map #013, Lot #3710028); removal of trees/saplings within the 100 foot upland review area.

E. Kyle said that she advised Andrew Morse, a principal of the property owner, that he did not have to attend tonight. She issued a Cease and Desist Order for 28 Richard Street last month. The Enforcement Hearing held at last month's IWC meeting was due to the removal of trees within the upland review area with no prior approval. At that meeting, a lengthy discussion ensued regarding what to do. A. Morse proposed planting five trees to substitute for the mature and immature trees that were removed. The IWC decided that A. Morse could submit an Authorized Agent application which is processed by E. Kyle and A. Morse submitted that application shortly thereafter. The application included a revised plan to plant 3 red oaks and 2 sugar maples to replace the trees that were removed without authorization. E. Kyle approved the application with the condition that she would need to inspect the new trees and confirm their location prior to the issuance of the Certificate of Occupancy for the house. E. Kyle recommends that the Cease and Desist Order be lifted so the building permit for the proposed house can be issued.

M. Beauchamp made a Motion to Lift the Cease and Desist Order for 28 Richard Street. C. Hauss seconded. The Motion passed unanimously though K. Tobin's vote could not be heard or determined so he has technically abstained.

II. INFORMAL DISCUSSION:

The Secret Lake Association, Incorporated, Owner; possible request for regulated activities within the 100 foot upland review area: landscaping and general site work to prevent beach erosion. Location: 107 Secret Lake Road, Parcel 3890107 (the "Property").

E. Kyle said this was an informal presentation tonight so no vote tonight will be required. She suggested this after talking to Susan Anderson of The Secret Lake Association, Incorporated (the "Owner"). There have been ongoing erosion issues (as far back as the 1980's) at the beach on the Property. A number of actions have been taken by the Town of Avon Wetlands Agent (E. Kyle's predecessor) to fix some of those erosion issues, most recently in 2008. The Town sent a letter to

the Owner in 2021 regarding the need for repair of new erosion issues. This proposal is the Owner's response to these new issues. E. Kyle thinks that the new proposal is an upgrade and is thorough and well thought out. The Town of Avon IWW Regulations allow for an Authorized Agent application but anything very close to a watercourse should not be approved unless the IWC agrees. This work would be on the beach so E. Kyle needs authorization from the IWC to process an Authorized Agent application - this can be determined by this informal presentation.

Lisa Turoczi of Earth Tones Native Plants of Woodbury, CT, is a designer focused on native plants, habitat and water quality. Her husband is a soil scientist and wetlands ecologist. Their business includes a nursery which grows native plants. She noted erosion issues on the Property in a few different areas. She would like to route the water that is coming off the road and put it back into the ground. A very simple strategy for this is to use rain gardens which are depressions in the ground with plantings in them which allow water to go into the depression, the water slows down and silt is captured, and then the water is allowed to percolate into the ground. The ground will cleanse the water before it gets into the ground. She has divided the amount of water (approximately 3,000 square feet of surface runoff) into two rain gardens near the road so there is a lot of surface area for the water to percolate into the ground. She will capture the water coming down the driveway (which is a huge cause for erosion) with a curtain drain that goes across the driveway (a trench drain) and then pipe it to an area than now houses canoes. She proposes to take away the canoe rack and dig down about 2'. She created a splash pad which causes a reduction in energy so the water can flow into the first rain garden and be held there, then flow into the second, and then percolate through the stone base. The rain gardens also have vegetation that the water flows through. This proposal stops erosion and also cleans the water to get rid of pollutants before the water goes into the lake. There is an existing stonewall which is currently sloped and she would like to lift the wall up, as well as the area near it and balance it so it is more level. A level area will also slow down any water flow. The new dry laid stonewall will use the stone that is currently around the playset and it will be expanded to the current storage area. L. Turoczi is improving safety by picking up the rubble that is there and using it as a backfill for the wall. She will bring in some stone for the wall and compost for the rain garden (the compost will break down pollutants) but the material from the excavation of the rain gardens and canoe rack will be used to backfill behind the stonewall. No other fill will be brought in for the area. The Section Views on the plans show where the following are: the road, the first rain garden, the slope, the wall and the fill (the fill will come from the excavation of the rain garden), and the second rain garden. The area where the picnic tables are will be more level and will slow the flow of any surface water coming from the sitting area. She will be digging 2' down for the pad, it will be filled with crushed stone, and it will create an envelope with fabric that you put under roads so it allows the water to flow but will not allow siltation in the crushed stone pad. After the work is done, they will put the canoe racks back on top of this. Also, the pipe comes out into the splash pad which slows the energy of the water. The rain gardens have their own high level overflow pipes and they will have clean outs at the elbows. The water will flow into the canoe rack/stormwater capture area and then through native plantings. These plantings will be good for pollinators and she hopes it will be educational for the community – maybe other people will use techniques such as rain gardens in their own backyards.

R. Breckinridge believes this is a well thought out plan. M. Beauchamp asked if the water was coming from the road and L. Turoczi answered yes. M. Beauchamp asked if the Town

Engineering Department has ever tried to fix this problem. L. Turoczi is not aware of that but said that there is a catch basin that takes the water and dumps directly into the open body of water. She wants to stop that and capture any pollutants that are in the runoff coming from the road including gas and oils from cars. M. Beauchamp asked if the Owner is going to bear the cost of this and L. Turoczi said yes. M. Beauchamp asked if the Association had to approve this after an approval by the IWC and L. Turoczi said that the Association has already approved this and allotted monies for the cost. M. Beauchamp asked if this was the only area where road runoff affects the lake. L. Turoczi said there are other areas but her job is to focus on the beach area. C. Hauss, G. Gianini and K. Tobin had no questions.

There was a unanimous vote by the IWC for the Applicant to submit an Authorized Agent Application which will be processed by E. Kyle.

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

IV. OTHER BUSINESS:

A. Discussion of Potential Future Regulation Modifications:

G. Gianini believes it is a problem that the IWC cannot hire an independent expert for a second opinion where there is a complex application. He has examples of regulations from four towns that allow for that. CT General Statutes Section 22a-42a (e) allows a wetlands agency to charge a fee paid by the applicant to cover the cost of retaining a third-party expert which also requires a refund mechanism if that fee is not used. He would like that option for complex applications because the IWC does not have the expertise necessary. He looked at the regulations for approximately 12 towns around the State and found that the language is almost exact in each and has been approved by the State. He believes it would be a great benefit to the IWC to have a similar regulation. C. Hauss is concerned about the decision making process because the only information that the IWC receives is from a party that has a vested interest in a particular permit approval. She also thinks that the IWC receives limited information - for example, she may want someone to talk about climate change or she may want a botanist. She feels that the goal of the professionals that the IWC hears from is to get an application approved. Also in a public hearing, the IWC receives information from the public but the IWC cannot use that information unless it is coming from an expert. She feels that is an equity issue – for example, if a wealthy neighborhood has the resources to raise funds and has the capacity to organize, then their voices will be heard. So certain people will be heard and certain people will not. She questioned how to get this new regulation enacted.

E. Kyle said that Town staff reviewed all four of the town's regulations that were provided and came up with an in-depth list of 13 questions which were sent to each of those towns (Farmington, East Lyme, Granby and South Windsor). None of the four have a definition of complex application which is needed as "complex" is subjective. She hopes to receive a reply from each town as to how they are functionally using these regulations. It is important to have clear regulations so applicants understand what is required. E. Kyle will summarize the results when she receives an answer from each town. The other part of this regulation change is the fee ordinance. Any changes in our fees have to be approved by the Town Council before a public

hearing is held. It is a lengthy process and we need to have clear answers to questions the Town Council may ask. C. Hauss would to prioritize this process and asked about a timeline for this. She would like to know what the Commissioners can do to move this process along such as having an informal conversation with the Town Council.

Acting Chair Sacks would like to see the questions that were sent to the 4 towns as the IWC may have additional questions. He would also like to talk about the strength of these proposals and what each Commissioner thinks. G. Gianini said that the CT Statutes support the Town in doing this. He believes it will be difficult to define certain terms as there are many gray areas. M. Beauchamp agrees regarding hiring an outside expert and does not think the definition of “complex” is needed. He believes that an outside expert is needed if the IWC thinks an expert is needed and the application does not have to be complex. R. Breckinridge is interested in hearing how often the other towns use this regulation and he is concerned with using this every time the IWC has an application. He would like advice from K. Olson whether a regulation is too constrictive if every applicant is asked to pay a fee for an expert witness. He would like to know how this functions in other towns because the Commissioners may want to use this much more than is advisable. K. Tobin does not think complexity needs to be defined and that may get an applicant a faster answer because the IWC would have an unbiased expert. Acting Chair Sacks believes that there are well thought out provisions in these regulations and he does not want to define “complex”. He would like to invite an inland wetlands chairperson from another town that has used this regulation to discuss this with the IWC and would like to know the next step in the process after the IWC has voted to approve a new regulation. E. Kyle said that the process for adopting new regulations would be through a public hearing noticed properly. Prior to that, this would have to be passed by the Town Council because of the fee ordinance so any proposed language would have to have sufficient backing, for example defining “complex” would be important as the Council would not want any modifications to be vague. K. Olson said that the question of consultants has been discussed at length in the past. She confirmed that the fee structure is an ordinance that would have to be adopted by the Town Council with a public hearing. Changes to actual wetlands regulations would also need to be approved by a public hearing and then DEEP. She suggested that the IWC focus on hiring outside consultants where the IWC has determined that the proposed activity is significant or where a public hearing has been called for. The IWC can call for a public hearing if they find that there is a reasonable likelihood of a significant negative impact or when it is in the public interest. Instead of trying to define what is a complex application, the IWC could tie the outside consultant to significance which the IWC must always consider. C. Hauss agrees and believes those are the applications that would be called complex. Acting Chair Sacks said that each of the four town’s regulations are similar, did not define “complex”, and were passed by DEEP so he would like to know why each town felt this was sufficient. He also believes that you may need an expert to comment before you can determine a significant impact. K. Olson said that she was suggesting an alternative to defining “complex” that still allows for an outside consultant though not when someone is doing something that has a minimum impact on an upland review area. One of the major issues in CT and a criticism is that we make it so costly and difficult for people to develop their properties. To charge someone a consultant fee for what is a minimal potential impact to the wetlands is extreme and one of R. Breckinridge’s concerns. Acting Chair Sacks asked about the terms “exemptions” and “good cause”. K. Olson said that in her experience, if a regulation is too ambiguous, the advantage will be to the applicant. She is unsure how you would define “good

cause”. The next step would be to decide what the IWC wants to propose for regulatory changes after a consensus and justification for the changes is determined. She also recommends that the changes be sent to DEEP to be sure that they do not have any concerns. Then the regulations have to be adopted by the Town like any other ordinance. She believes that all property owners should have the right to be able to look at a town’s regulations and ordinances and understand what will be required of them. If the parameters for when the IWC will charge someone for an outside consultant are not clear, the courts will construe this ambiguity in favor of the property owner. G. Gianini understands but believes that the IWC has common sense as to when to use an outside consultant. Acting Chair Sacks agrees that the IWC needs all the possible input they can get in making this decision. E. Kyle said that it will not require an IWC vote to bring a proposal to the Town Council but a proposal is not yet ready. Each of the four towns stated that the Town staff would determine what the price tag on any research was – that is just an example of items that these towns are not prepared for. C. Hauss would like this to be an agenda item each month so she can get an update. Acting Chair Sacks agrees and would like to aim to come up with proposals by the IWC’s July meeting. Other Commissioners agreed.

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

CJ Hauss asked E. Kyle about the culvert clearing on Nod Road. E. Kyle said it was determined that cleaning those culverts is the responsibility of the Town. She is unsure why that was not done after the last flooding there. The Planning Office would like that to be done on a more routine schedule but E. Kyle has learned from the Department of Public Works that no culvert in Town is cleaned out annually nor should they need to be as they do not fill up that quickly. The culverts need to be observed and checked but cleaned out only on a 5-10 year basis. If the 100 Nod Road application proceeds to the Planning & Zoning Commission, the Planning Department would ensure that the culverts would be cleaned prior to any construction. Acting Chair Sacks asked about the Waterville Road issue and E. Kyle said it would be on the IWC agenda next month.

C. Approval of Minutes: December 6, 2022 – Regular Meeting. K. Tobin made a Motion to Approve the Minutes from the December 6, 2023 Regular Meeting. R. Breckinridge seconded. The Motion passed unanimously.

January 3, 2023 – Regular Meeting. C. Hauss made a Motion to Approve the Minutes from the January 3, 2023 Regular Meeting. G. Gianini seconded. The Motion passed unanimously.

V. NEXT REGULARLY SCHEDULED MEETING: May 2, 2023

K. Tobin made a Motion to Adjourn. M. Beauchamp seconded. The Motion passed unanimously.

There being no further business, the meeting adjourned at 8:09 p.m.

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