

THE INLAND WETLANDS COMMISSION OF THE TOWN OF AVON HELD A VIRTUAL REGULAR MEETING ON TUESDAY, JUNE 6, 2023, AT 7:00 P.M., VIA GoToMeeting: by web <https://meet.goto.com/958109541>; or by phone, United States: [+1 \(571\) 317-3116](tel:+15713173116), Access Code: [958109541#](https://meet.goto.com/958109541#).

Present were Chair Michael Feldman, 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 and Attorney Joseph Szerejko, both of Murtha, Cullina LLP, attorneys for the Town of Avon.

Chair Feldman called the meeting to order at 7:01 p.m. There is a quorum of 6 Commissioners present (K. Tobin joined the meeting subsequently). Chair Feldman said Thang Tran, owner of 425 Waterville Road, would like to address the situation at 425 Waterville Road. Chair Feldman asked for a Motion to Amend the Agenda to Add 425 Waterville Road under Other Business. Vice Chair Sacks made the Motion. R. Breckinridge seconded. The Motion passed unanimously.

#### I. NEW APPLICATION:

**APPL. #786** – The Silvio Brighenti Family LLC, Owner and Applicant; request for regulated activities within the 100 foot upland review area: construction of house, driveway, utilities, and related site work on each of three (3) lots (the “Property”). Locations:

250 Northington Drive, Parcel 4910250;  
256 Northington Drive, Parcel 4910256; and  
7 Saddle Ridge Drive, Parcel 6210007.

Attorney Robert Reeve of Unionville, Connecticut represents the Owner/Applicant. David Whitney, P.E. of David F. Whitney, Consulting Engineers, LLC and Jeffrey Brighenti, Principal of the Owner/Applicant are also present. R. Reeve referenced IWC Application #781 when the Owner sought permits to build single family homes on six (6) lots. At the time of the subdivision approval in 2004, all of the proposed activity was outside of the upland review area (40’) in effect at that time, Avon’s IWC Regulations have since been amended to increase the upland review area to 100’. These lots now need wetlands permits. Last year the IWC granted approval for three of the six lots. Two were withdrawn last year (250 and 256 Northington Drive) so a vernal pool investigation could be done at the appropriate time of the year which has now been done. The third lot that is included in this Application (7 Saddle Ridge Drive) was denied last year. An appeal was taken and it is pending in CT Superior Court. The appeal will be withdrawn if this Application is approved. There are no direct wetlands impacts on this lot. The Owner is going to further reduce any indirect impacts by increasing the conservation easement area, reorienting the driveway and enhancing the vegetative buffer between the home and the wetlands. The changes are commented on in the letter from George Logan, Soil Scientist from REMA Ecological, dated May 19, 2023, and he concluded that there are no indirect adverse physical impacts on the wetlands. He is unable to be here tonight but will be available for the July, 2023 IWC meeting. The lots at 250 and 256 Northington Drive are adjacent to an open

space area that contains a vernal pool containing wood frog egg masses. G. Logan addressed that in his letter and concluded that there would be no adverse physical impact on the wetland and that the pool will continue to function after construction as it does now. Commissioner Sacks visited 250 Northington Drive and noted the presence of red back salamanders which led to the letter from G. Logan dated May 31, 2023 which indicates that the red back salamander is a very common species, is not a wetlands dependent species for any portion of its life cycle, and lays its eggs in forested areas. Chair Feldman said that the IWC denied 7 Saddle Ridge Drive last year and after a Motion to Reconsider, the IWC did not change its decision. He asked if there was any new information and R. Reeve said there were substantial additional changes including expanding the conservation area, reorienting the driveway, shifting the home on the lot, and proposing wetlands buffers.

D. Whitney began by showing a map of the three (3) lots in this Application with Wetlands Area #1 which is 6.7 acres of wetlands originally delineated in 2004 when the subdivision was approved and redelineated last year by Michael Klein and Eric Davison, Soil Scientists. The map also shows (outlined in turquoise) the contiguous remaining undeveloped habitat which includes the wetlands plus the area outside the wetlands that is encumbered by an existing conservation easement and a proposed conservation easement on two (2) of the lots for a total of 13.5 acres. This is the area where the wood frogs can roam and the blue circle is where the wood frog egg masses were discovered by G. Logan. D. Whitney then compared a 40 foot upland review area and an 100 foot upland review area for 250 and 256 Northington Drive. Originally the proposed houses were outside of the upland review area. It is now impossible to develop these lots and build the houses outside of the upland review area. Due to the location of a tip of wetlands at 7 Saddle Ridge Drive in the center of the lot, it also makes it impossible to develop the lot and keep the house outside the regulated area. There are not different alternatives for the house locations at 250 and 256 Northington Drive because the lots are lower along the road (a 10-12' drop) and there must be some grading for the driveways though the area around the houses are relatively flat. The disturbed area on each of these lots is about 1/3 of an acre and about 1/3 of each lot. When the subdivision was approved in 2004, a 20 foot conservation easement was put on the lots. D. Whitney is now proposing an additional conservation easement area to provide buffers on each side of the lots and the rear of the lots. The total proposed conservation easement area for 250 Northington Drive is 37% of the lot and the total conservation easement area for 256 Northington Drive is 40% of the lot. Among the erosion and sedimentation control measures and the wetlands protection measures that he is proposing is the stormwater infiltration system. Where the rooftop drains the leaders will be connected, as will the driveway runoff, so the first flush (1" rainfall) will be infiltrated into the ground. This is a water quality measure and is also an effort to control the temperature of the water and mitigate any possible increases due to the runoff being a higher temperature from the house and driveway. Chair Feldman asked why the driveways are long and curved rather than straight directly to the road. D. Whitney said that there is an embankment with a 10-12 foot elevation difference from the road down to the lots so to have a driveway that complies with Avon's driveway regulations, you have to have a relatively flat spot on top near the garage. The maximum slope permitted is 14% so the driveway has to be a certain length in order to get the slope under that percentage. He has designed the driveways to be an 8% grade to take into consideration icing conditions. He is using either silt fence or straw wattle around the perimeter of the cleared area. In addition, he is using a double row of silt fence and straw wattle on 250 and 256 Northington Drive as an added protective measure, as well as a

row of boulders at the edge of the Conservation Easement Area as a physical barrier to stop any future homeowner from encroaching closer to the wetlands. Vice Chair Sacks asked if there was any scientific evidence that boulders in place make a difference when compared to an area where there are no boulders. D. Whitney replied that he uses his experience and common sense and referred to a project that he did on Huckleberry Hill Road years ago. No one has ever moved the boulders on that project, it is better than a row of trees or shrubs, and the boulders are a good physical barrier that works. He added that it would be difficult for a homeowner to get machinery there to remove the boulders and said it is fortunate that there are a lot of boulders on the Property that can be used to make these rows. Other erosion control measures include standard soil stockpile areas and anti-tracking pads at the driveway entrances. The total amount of disturbance on 7 Saddle Ridge Drive is 2/3 of an acre but the amount of disturbance in the regulated area is 1/3 of an acre. D. Whitney has included a boulder row along the area where the construction activities are closest to the wetlands. There are two infiltration systems – one is a yard drain that will collect runoff from the driveway and the other will collect runoff from the rooftop. They will accomplish the goal of treating the 1” water quality volume which covers 90% of the storms each year in CT. He is also proposing a double row of silt fence and silt stock and an area of enhanced wetlands plantings where the activities are closest to the wetlands. This will mitigate some of the clearing that will take place in the disturbed area. G. Logan discusses what types of plantings in his report. D. Whitney changed the side of the house driveway to keep it farther away from the wetlands. He is wrapping the boulder row around the entire north side of the Conservation Easement Area, as well as adding area to the Conservation Easement Area for a total of ½ an acre or 43% of the lot. There is a 40 foot front yard setback on the lot so the house is as close to the road as possible. The wetlands area is 1.5% of the site. G. Gianini asked why the topsoil pile was moved closer to the wetlands and D. Whitney replied that he revised the grading on the lot and tried to put it outside the construction area. G. Gianini asked why D. Whitney squared off the proposed easement area on the northwest side. D. Whitney said that he needed a place to fit the infiltration system now that the driveway was moved to the west side so he modified the plan slightly to fit in the infiltration system. The total Conservation Easement Area is now 10% more that it was. D. Whitney submitted four (4) supplemental plans. The first is the Avon GIS Vicinity Map that shows all the developed lots around the Property and the Town of Avon open space. The two (2) Northington lots are in one watershed that drains to Roaring Brook and the Saddle Ridge lot drains to the Hawley Brook watershed. This shows how much open space is adjacent to 7 Saddle Ridge Drive and how the rest of the watershed is mostly developed. The second supplemental plan is the sketch of Hawley Brook and environs and shows the Town of Avon open space, three (3) fingers which are headwaters that flow south to Hawley Brook, and approximate wetlands from the Town of Avon wetlands map, most of which has not been flagged by a soil scientist. The three (3) fingers are his estimations of the headwater wetlands based on the topography. The third supplemental map shows the CT DEEP’s map showing the Subregional Drainage Basins which he provided to help answer the question of where the water goes. Subregional Drainage Basin 4312-02 is part of the overall drainage basin of Roaring Brook which comes out of Secret Lake and flows down to the Farmington River. The water from the Northington Drive lots flows through the Bridgewater Subdivision to Roaring Brook. 7 Saddle Ridge Drive is in Subregional Drainage Basin 4300-19 and the water here drains to Hawley Brook and eventually to the Farmington River. The fourth supplemental map is the Bridgewater Estates Wetlands System. The water flows down through a relatively narrow band of wetlands as you get to the toe of the slope and then the water flows through culverts under

Bridgewater Drive to another large wetlands area and eventually to Roaring Brook. G. Logan wrote three letters which said that there are no direct impacts to the wetlands and no filling in of any wetlands or activities in the wetlands themselves – all the activities are in the upland review area which are indirect impacts. He concluded that there will be no significant impact to the wetlands as a result of the development of these three lots.

Chair Feldman said that any questions about vernal pools or frogs, salamanders or other amphibians should be deferred to G. Logan. D. Whitney agreed. R. Breckinridge asked if G. Logan went to the site and looked for egg masses after April 17, the date listed in his report and D. Whitney said that he was not aware of a later visit. R. Breckinridge said he would like more information about the breeding cycle of salamanders and whether they come in earlier than wood frogs. He said that he is very familiar with conservation easements through his work with the Avon Land Trust and they are very difficult to enforce and are constantly violated. He would like to know why the boulders are not used more extensively around the entire periphery of the easement area. He knows that landowners will get rid of grass clippings and other waste products and there is no barrier that is going to prevent anyone from dumping in or encroaching on the easement. He is unsure what mechanism the Town has to enforce easements. D. Whitney said that often it is a neighbor that notifies the Town. R. Breckinridge said that there is no neighbor here and you are already in the 100 foot upland review area so he would like to know if there is a way to create more of a barrier there. D. Whitney said the boulder row could be extended. R. Breckinridge reiterated that enforcement of a conservation easement is difficult and asked if any trees were being removed in that easement area. R. Reeve confirmed that no trees would be removed from the conservation area. R. Breckinridge asked if there was a concern for organisms in the wetlands because of light pollution (the backyards will have patios with lights). R. Reeve said that he would defer to G. Logan. R. Breckinridge said that there are lights that do can be focused down and will block light pollution in the easement area and the wetlands.

C. Hauss' questions were for G. Logan. Vice Chair Sacks asked why the IWC was not going to a public hearing for this Application. The IWC found enough significance in the Saddle Ridge Drive site to reject that application and there was concern that there was potential for significant damage to the wetlands. He believes that if you are building near a vernal pond, there is a potential for damage. E. Kyle said that the IWC can schedule a public hearing for the following IWC meeting. There are a number of criteria to make that determination including whether the IWC found that there is significant impact activity or whether there is public interest. For this Application, the IWC should look to the definition of significant impact activity and cite the reasoning to determine that. Chair Feldman asked if this fell in the mandatory requirements for holding a public hearing. E. Kyle said that there is a catchall for holding public hearings if the IWC finds that a public hearing would be in the public interest. She added that there are other routes to get to a public hearing. Chair Feldman does not believe that any of the mandatory criteria for a public hearing exist. E. Kyle said that it is the IWC's determination to make based on the definition of significant impact and there are seven standards in the definition. K. Olson added that the statutes say that the IWC shall not hold a public hearing on an application unless they determine that the proposed activity may have a significant impact on wetlands or watercourses which has been deemed a negative impact. Chair Feldman suggested listening to the Commissioners comments before a motion for a public hearing. K. Olson said that unless you have an expert opinion that said there would be a significant impact, listening to the Applicant

and what they are planning to do would be your only way to make an informed decision about a significant impact. Vice Chair Sacks commented that if there is an IWC application with scientific input that is complex, you would need an expert before a motion for a public hearing. The IWC may want a herpetologist that would verify the movement of frogs in this area. Vice Chair Sacks feels that you need to have independent expertise to make a judgment about these applications due to the complexity of the scientific inquiry that is required. He has questions about what is happening on the Property and feels that they should be addressed by an independent scientist. He also does not think that the IWC has adequate evidence about the existence of the salamanders. He shared a quote from an article in Spring 2022 issue of The Habitat, a newsletter of the CT Association of Conservation & Inland Wetlands Commissions, Inc.. The article was written by Michael Klemens, an Associate in Herpetology at the American Museum of Natural History, and cited by G. Logan, which said that it can be difficult to find salamanders. Vice Chair Sacks said that there are other issues that he would ask G. Logan about including looking at the function of buffer zones in general and what happens when the buffer zone is eliminated. G. Logan wrote on this topic in a different case and seemed to make a strong case for the importance of buffers with trees and shade which will be eliminated through large parts of this area. Also, the importance of the headwater located on 7 Saddle Ridge was dismissed by G. Logan who said that there is a large amount of water coming in from other areas. Vice Chair Sacks visited the site and could see the stream and the wetlands and would like to know the quantity of water that is being discussed. He believes it is important because the stream goes directly into a public area. K. Olson recommended that the article referenced by Vice Chair Sacks be put into the public record so the Applicant can read and respond to them.

M. Beauchamp asked what was feeding the wetlands around 250 and 256 Northington Drive. D. Whitney lost audio and was not able to respond to M. Beauchamp. He also asked about the blue dot on the Plan which was the location of the wood frog egg masses. Lastly, M. Beauchamp asked about snow removal given the slope of the driveways. He believes that the only place to put the snow is toward the house. He is uncomfortable with how the two proposed houses encroach on the upland review area and he would be more comfortable with one lot with a house further away from the vernal pool. Chair Feldman suggested that the Commissioners can set forth comments or questions which can be answered by D. Whitney at the next meeting. G. Gianini is concerned that a new owner would not have to abide by what the IWC approves. E. Kyle explained that when someone applies for a building permit, the Planning Department makes sure that the site work and the footprint of the house generally match what was approved by the IWC. There could be slight modifications but not anything substantial - otherwise the owner would need a new permit from the IWC. Chair Feldman asked if this would be part of the deed recorded in the Land Records and E. Kyle said that the Conservation Easement and the map that shows the area of the Conservation Easement would be filed in the Land Records and the approval is filed in this office. She checks approvals for every building permit. Chair Feldman asked if someone doing a title search would see the Conservation Easement and E. Kyle replied yes and if they did their due diligence on the Property, they would know there were wetlands here. G. Gianini would like to know what goes into an easement and how specific they are. E. Kyle said that there is specific language that prohibits any changes to an easement area. She would also require a final inspection of the Property to be certain that the house meets the approved plan and if not, the owner would not be able to get a certificate of occupancy. K. Tobin

agrees that it would be prudent to retain an independent expert and it seems reasonable to be certain that the IWC is treating all applications fairly.

Chair Feldman said that there are two items for discussion: one is whether to go to a public hearing and the other is whether to ask the Town to retain an independent consultant to review the Application. R. Reeve said the Applicant did not have a position on either of those issues. R. Breckinridge said that prior to a public hearing someone must provide evidence that this will have a substantial effect on the wetlands. Vice Chair Sacks does not agree and said that the Regulations refer to “any activity that substantially changes the natural channel or may inhibit the natural dynamics of the watercourse system.” R. Breckinridge said that no IWC member has stated that this action will affect this watercourse in a certain manner - Commissioners have only raised questions. Chair Feldman said that the IWC needs to find a substantial impact but cannot find this without a hearing and an expert to provide that information. He said the IWC must exercise their best discretion as to whether or not there may be an impact. R. Breckinridge said that normally when the IWC has a public hearing there was extensive evidence of an issue or the public itself has requested this. He has not heard any evidence that a public hearing is needed and believes that the IWC needs a reason that is well documented. He does not believe that the IWC can have an outside expert witness for every single application. The other towns that provided IWC regulations said that they had never actually used the expert witness protocols that they set up. Chair Feldman said that a public hearing is time consuming and a burden on the Town and their staff and resources, and it is burdensome to an applicant. He believes that the IWC should exercise their discretion cautiously on this. K. Olson said that the statute is clear that you cannot hold a public hearing unless you determine that the proposed, regulated activity may have a significant impact on wetlands or watercourses. The law is clear that the impact must be negative – something that affects its functionality. She believes that the question before the IWC is what information has been provided so far and whether the IWC has enough information to determine if what is proposed may have a significant impact, or whether the IWC needs to defer that decision until the next meeting when G. Logan will be available. She said there is impact within the upland review area, the proposal is a regulated activity, and there are questions about the vernal pool and egg masses. It is in the discretion of the IWC to decide whether they believe the activity may have a significant impact. G. Logan can answer questions and then the IWC can make a decision. Chair Feldman believes that the use of the word “may” in the statute vests the IWC with considerable discretion but if the IWC must establish substantial impact through expert testimony but does not have that information, it becomes a catch 22 and the IWC could never call a public hearing. He believes it would be a slow, burdensome process if the IWC hears from G. Logan next month and then calls a public hearing. K. Olson said that the IWC does not need an expert to decide if there may be a significant activity – based on the IWC’s knowledge of wetlands and watercourses on the site and the information provided, the IWC has the right to make a determination of significant impact though there should be some foundation for it. Chair Feldman, taking into account the needs of the various parties, would like to make a decision about a public hearing now. The Applicant is entitled to a hearing and decision from the IWC in a timely manner. Chair Feldman believes that the IWC should make that decision based on the current record rather than force the Applicant to wait until fall. C. Hauss said that all the questions she has need to be answered by G. Logan including conflicting opinions in three different reports but a public hearing will draw out the process and that does not seem fair to anyone. Vice Chair Sacks said the IWC cannot vote down an application without a public

hearing. Chair Feldman disagreed and said that the IWC has voted down applications without a public hearing. K. Olson said there were two different standards: one is the standard for holding a public hearing and the other is the standard and criteria applied to approve or deny an application. She agrees with Chair Feldman that a public hearing is not required to deny an application though the applicant is entitled to an understanding of the grounds for a denial and an opportunity to address feasible and prudent alternatives. If the IWC does not hold a public hearing and denies an application, the IWC has an obligation to explain to the applicant what alternatives the IWC believes would have less of an impact or would meet the necessary criteria for approval. There can also be reasons to deny an application (such as the application is incomplete) that have nothing to do with significant activity. Chair Feldman asked if there was a second to Vice Chair Sacks Motion for a Public Hearing because there may be a significant impact. G. Gianini seconded the Motion. There was no further discussion from Commissioners regarding this Motion. The Motion failed by a vote of 5-1. K. Tobin did not vote. Chair Feldman asked for a Motion regarding whether to request the Town retain an independent consultant to review the Application. K. Tobin made a Motion to ask the Town to retain an independent consultant. G. Gianini seconded. E. Kyle asked K. Olson if any costs would be the Town's responsibility because the Town does not have a fee ordinance or a regulation right now. K. Olson agreed and said there is no guarantee that it will be approved. R. Breckinridge asked what the IWC wants the expert to do – there are basic assumptions when an Applicant's expert comes before the IWC such as the belief that expert is giving the IWC correct information. He believes that the IWC has some latitude in terms of an expert but he is concerned that the IWC will ask for an outside expert on every single application. C. Hauss said that the IWC can assume that experts act in good faith and that each Commissioner acts in good faith and will not ask for an expert for every application. She feels that for this Application, there are three reports that are conflicting and so she would like another expert to say what the impacts would be on this Property. R. Breckinridge asked E. Kyle what these experts cost and she replied that it depends on what services they provide and that has yet to be determined. Chair Feldman said that the IWC has had very capable experts with a lot of integrity come before it but that does not mean that every expert will give the correct opinion or that their opinion will not be subject to dispute. It is worth hearing from someone that is not tied to the applicant or paid by the applicant. K. Olson asked whether the IWC is asking for a peer review of G. Logan's report or an independent analysis. She is concerned that an independent analysis would cause a delay because you are past the timeframe for an analysis of the vertebrates on the Property. Chair Feldman said the IWC can only do what is feasible and whatever expert it hires would have credentials similar to G. Logan so they would be able to do an analysis based upon the information that is already part of the record. Obviously it is too late in the season to see the vernal pools so Chair Feldman believes that a peer review is more accurate as to what type of expert. Vice Chair Sacks believes the IWC needs another type of expertise such as a herpetologist who will be able to make a judgment about the behavior of wood frogs. He would like a consultant that is independent because he believes that experts have different points of view based on the points of view of the person that they are representing. He does not think that the IWC will ask for an independent expert all the time. Chair Feldman would like an expert with similar credentials to G. Logan to review his conclusions and provide the IWC with independent observations. Vice Chair Sacks said that sometimes you need multiple experts to evaluate a complex situation because the science is complex and in dispute. He would like a herpetologist but not another soil scientist examining wetlands. If the Town refuses to give the IWC the expertise they need, it will affect the way he

votes. G. Gianini thinks the IWC needs to be very specific and concrete with what they want the experts to accomplish and provide that information to E. Kyle. He thinks a review of the functions and values report is needed, as well as someone specializing in vernal pools and amphibians and salamanders. Chair Feldman said that the IWC cannot set the bar too high because they may not find what they are looking for in this short time frame. He thinks K. Olson should call M. Klemens who is a local authority whose work has been cited by G. Logan. Chair Feldman said that M. Klemens is a starting point and otherwise, the IWC can leave it up to the staff to find an appropriate expert. K. Olson clarified that M. Klemens is a herpetologist, not a soil scientist, so the IWC may need more than one expert. K. Olson said that if the concern is obligate species, the IWC would want M. Klemens but if the concern is whether delineations are accurate or if the characterization of the vernal pool is accurate, the IWC would want a soil scientist. Vice Chair Sacks has the same question on 7 Saddle Ridge Drive that he had originally which is whether the transformation of this property changes the water that flows off the lot and runs down into the headwaters. He does not believe that this transformation of the property leads to an equivalent hydrology of what the property was before. So he would like another soil scientist to verify that though the vernal pools are more significant. J. Brighenti believes the Town holds G. Logan and his opinions and expertise in high regard. E. Kyle said that she could reach out to the North Central Conservation District (the "NCCD") for a third-party analysis or peer review for the soil scientist part. This would be free of charge as Avon is a member town and she would not have to ask the Town Council for permission. The report would evaluate the application and the submitted materials as they relate to soil delineation functions and values and some impact analysis. Chair Feldman would like E. Kyle to do that as well as ask the Town if the IWC can hire M. Klemens. M. Beauchamp believes this will tie up the IWC and drag out the applications. Chair Feldman said there was a Motion on the table to hire a herpetologist and have E. Kyle check with the NCCD for a review of the application. The Motion passed 5-2. R. Reeve understands that the Application is tabled until the July IWC meeting and he said that G. Logan will be available then to assist the IWC in determining the movement of wood frogs.

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

III. OTHER BUSINESS: The Agenda was changed to allow T. Tran to speak about 425 Waterville Road but he is not present so it will be discussed in Executive Session.

A. Discussion of Potential Future Regulation Modifications:

Chair Feldman said he appreciates the research regarding amendments to the Town's regulations on funding independent experts that G. Gianini and others have done with E. Kyle's assistance. G. Gianini said the CT Statutes allow a wetlands agency to establish a fee paid by the applicant to cover the cost of obtaining a third-party review to analyze reports and technical issues that require expertise. He believes the IWC is at a disadvantage in making the best decisions because it does not have this regulatory option. Courts have held that if one expert provides an opinion, an agency may not disregard that opinion without countervailing expert evidence. If two experts provide opinions then the agency may choose which to rely on when making a decision. He referred to E. Kyle's memorandum and understands the reason for a definition of "complex" but he cited Simsbury's regulation because they do not use that word. He does agree that you need some criteria. He said that Avon's regulations have a format for making a decision and when



significant impact is referenced, the word “substantial” is used. He said that if there is a regulation that requires an applicant to pay a fee for a third-party opinion, it must have a refund mechanism. Chair Feldman asked about the procedure for a new regulation though he understands that two items need to happen to amend a regulation. One is that a public hearing must be held and two is that a regulation has to be approved by DEEP. He suggested that G. Gianini work with E. Kyle to come up with a draft based on the research done, then E. Kyle can run it by DEEP to see if it is acceptable, and finally arrange a public hearing. Vice Chair Sacks asked if this needs to be approved by the Town Council first because there is a fee involved and E. Kyle agreed. K. Olson agrees with the procedure of drafting a regulation, having the IWC review the draft and make any needed modifications, submitting it to the Town Council for consideration of a fee ordinance, sending it to DEEP for approval, and then holding a public hearing. Vice Chair Sacks asked if our regulation would be very different than others already approved by DEEP. K. Olson was uncertain but said that DEEP would not be the enforcement mechanism for this, the Town would be. Vice Chair Sacks said that it is important that what triggers the input from an expert must not be that there is a significant impact activity - it could be that there is a problem determining that. He would like a way to recognize the case when the expertise of the staff or the Commissioners themselves is lacking allowing that to be the reason for more expertise. E. Kyle said that if there were no parameters and if the IWC was appealed, it would be a concern if the IWC made a decision without guidelines. She reached out to several towns that had a regulation about a third-party review and those towns did find it troubling that their regulations had no guidelines. West Hartford, however, does require a significant impact activity declaration. K. Olson agreed that criteria is critical in land use law because a property owner should be able to understand regulations and what is required of them. “Complex” has not been tested by judicial scrutiny so it is open to challenge and the concern is arbitrariness when one application requires a third-party consultant and another does not. She believes that you need some benchmark or basis that a property owner can rely on. She suggests that the criteria should be “may have a significant, negative impact” which has been extensively litigated. She is comfortable with that because it is something that allows discretion by the IWC as to what is a significant impact but also provides statutory and legal opinion and memoranda of what that means. The IWC agreed that a draft regulation will be done.

B. Staff and Commissioner Comments (unrelated to any application): None.

C. Approval of Minutes: January 9, 2023 – Special Meeting. R. Breckinridge made a Motion to Approve the Minutes from the January 9, 2023 Special Meeting. M. Beauchamp seconded. The Motion passed unanimously but Chair Feldman abstained as he was not at the Meeting.

February 7, 2023 – Regular Meeting. C. Hauss made a Motion to Approve the Minutes from the February 7, 2023 Regular Meeting. R. Breckinridge seconded. G. Gianini asked for clarification about a conservation easement v. a conservation restriction. He would like that clarified for the future. The Motion passed unanimously.

March 7, 2023 – Regular Meeting. Vice Chair Sacks made a Motion to Approve the Minutes from the March 7, 2023 Regular Meeting. R. Breckinridge seconded. The Motion passed unanimously.

April 4, 2023 – Regular Meeting. G. Gianini made a Motion to Approve the Minutes from the April 4, 2023 Regular Meeting. Vice Chair Sacks seconded. The Motion passed unanimously but Chair Feldman abstained as he was not at the Meeting.

IV. EXECUTIVE SESSION: Update on Potential Litigation

Carol Hauss made a Motion to go into Executive Session and allow E. Kyle, Janet Stokesbury, K. Olson, and J. Szerejko to join. M. Beauchamp seconded. The Motion passed unanimously.

V. NEXT REGULARLY SCHEDULED MEETING: July 11, 2023

Vice Chair Sacks made a Motion to Adjourn. C. Hauss seconded. The Motion passed unanimously.

There being no further business, the meeting adjourned at 9:35 p.m.

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