

THE INLAND WETLANDS COMMISSION OF THE TOWN OF AVON HELD A VIRTUAL REGULAR MEETING ON TUESDAY, SEPTEMBER 5, 2023, AT 7:00 P.M., VIA GoToMeeting: by web <https://meet.goto.com/186082461>; or by phone, United States: [+1 \(571\) 317-3116](tel:+13173116), Access Code: [186082461#](https://meet.goto.com/186082461#).

Present were Vice Chair Michael Sacks, and Commissioners 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.

Acting Chair Sacks called the meeting to order at 7:00 p.m. There is a quorum of 4 Commissioners present (K. Tobin joined later.)

Acting Chair Sacks would like to reorder the Agenda to move up Application #789 to consider a Public Hearing. He made a Motion to Move Application #789 to the first item on the Agenda. G. Gianini seconded. The Motion passed unanimously.

I. NEW APPLICATION:

APPL. #789 – Atlas Construction Services, LLC, Applicant and 275 West Main Avon LLC and 279 West Main Avon LLC, Owners; request for regulated activities within the 100 foot upland review area: construction of buildings, driveway and parking areas, utilities, stormwater drainage system and related site work. Locations: 275 and 279 West Main Street, Parcels 4540275 and 4540279.

Acting Chair Sacks believes this Application warrants a Public Hearing because there is a likely impact on a wetland and there is proximity to a vernal pond. He also believes there is likely to be considerable public interest. E. Kyle said that Acting Chair Sacks' criteria for a public hearing is from Section 9.1 of the Town's Wetlands Regulations. The timetable for the Application is referenced in her Staff Report. She said that Chair Feldman contacted her regarding a site walk and she believes that the site is staked per the site walk map. If the IWC wants a site walk meeting, she would like to schedule it prior to the public hearing. G. Gianini believes that we need evidence of an impact prior to scheduling a public hearing, though the IWC could schedule a public hearing due to the public interest. K. Olson agreed. Acting Chair Sacks made a Motion to Schedule a Public Hearing for Application #789. G. Gianini seconded. The Motion passed unanimously. Acting Chair Sacks thinks that due to the complexity of the site he believes a group site walk would be valuable – which would be an official meeting. K. Olson agreed and said the meeting would have to be noticed in accordance with the statutory requirement. She said that there should be no substantive discussions about the Application at that site walk. K. Olson said that the public would be allowed to attend this meeting and the property owners would need to allow members of the public onto the property. R. Breckinridge said this site was the subject of an IWC application previously so some of the IWC has walked the site extensively. He is concerned with having the public at a site walk meeting due to safety issues. K. Olson said that another option is not to do the site walk with a quorum of the IWC. R. Breckinridge asked about liability issues and K. Olson said the IWC would not have liability issues but the property owner

may be concerned. R. Breckinridge is concerned because of the large interest from adjacent property owners for the last application on this site. K. Olson clarified the law regarding meeting quorums – 2 or 3 Commissioners is not a quorum. C. Hauss said that a site walk meeting does not seem like a good option but possibly the Applicant could meet individuals at the site and E. Kyle said she could meet with Commissioners individually at the site. The IWC agreed not to hold a site walk meeting. Michael Ott, a professional engineer and land surveyor from Summerhill Civil Engineers and Land Surveyors in Madison, Connecticut, is here on behalf of the Applicant and he offered to walk the site with small groups.

II. PENDING APPLICATIONS:

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. Locations:

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

Attorney Robert Reeve represents the Owner/Applicant. David Whitney, P.E. of David F. Whitney, Consulting Engineers, LLC, George Logan, Soil Scientist of REMA Ecological Services, LLC, and Jeffrey Brighenti, Principal of the Owner/Applicant are also present. R. Reeve said that this was the third IWC meeting that this Application has been discussed. Since the last IWC meeting, D. Whitney and G. Logan have both submitted written responses to the review done by the North Central Conservation District (the “NCCD”). D. Whitney has revised the plans to address many of the recommendations made by the NCCD and the IWC has also received additional Staff Reports from E. Kyle and Matt Brown, the Town of Avon Assistant Engineer. R. Reeve had hoped to finalize this Application tonight but given that Chair Feldman and Commissioner Michael Beauchamp were unable to make this meeting (having both been present for the prior two meetings where this Application was discussed), R. Reeve would like to grant an extension of time until the next IWC meeting when hopefully a fuller complement of Commissioners will be present to hear the Owner/Applicant’s final presentation comments and vote on the Application. E. Kyle said that there will not be additional statutory time left following this last extension. C. Hauss and G. Gianini said that they appreciate the time and information from D. Whitney and G. Logan provided to the IWC on this Application. C. Hauss made a Motion to Continue Application #786 until the next IWC meeting. R. Breckinridge seconded. The Motion passed unanimously. E. Kyle asked that the Owner/Applicant to send her another email to confirm the extension.

APPL. #787 – AMCO Development, LLC, Applicant, and Virginia B. Shaw Trust, Owner; request for regulated activities within the 100 foot upland review area: construction of house, driveway, utilities, and related site work. Location: 68 Scoville Road, Parcel 3880068.

Jim Jones of Jones Engineering, LLC, Savage Street, Southington, Connecticut said the applicant is requesting approval for construction on this lot with regulated activities within the upland review area. This is a one-acre parcel with a proposed 1,800 square foot house footprint

including a garage, with the septic system in the front yard approximately 12' from the property line (the minimum is 10'). The house is 27' behind the septic system (minimum is 25') so the house has been pushed to the front of the lot as much as possible. The lot is fairly flat and the grading in the back of the house only has a 3' drop. Then it slopes down into the regulated area. The proposed buyer would like to clear in the back of the house. On the left side of the house the clearing is 15' from the wetlands but for most of the rest of the lot, the clearing is 30'.

James McManus, Soil Scientist from JMM Wetland Consulting Services, LLC in Newtown, Connecticut said on June 13, 2022, he did a soil-based wetland delineation indicating the wetlands and the upland review area. One wetland was identified and delineated as a seasonally saturated wooded swamp along the western part of the site. He looked at the wetland's functions and values and listed three principal functions: groundwater recharge, discharge, and sediment toxic retention and nutrient removal. There are a few other functions that are not principal such as flood flow alteration and wildlife habitat. There are no direct impacts proposed though he looked at indirect impacts related to erosion and sedimentation (usually during the construction phase), removal of native vegetation and habitat loss, wetland hydrology and stream flow, and water quality. There are no impacts from these items mainly due to erosion controls – there is a detailed erosion and sedimentation control plan shown on the site plans. The soils on the site are gentle particularly in the development area. As to habitat loss due to vegetation removal, the plan only removes what is needed. On a previous plan, the backyard extended down in a northeasterly direction and while there is still yard area, there is more buffer area. He is not working near the wetlands flow and in this proposed residential development, the one lot subdivision will not generate significant runoff constituents that would potentially impact the water quality of these wetlands. It is his opinion that there will not be significant adverse impact to the regulated resources, both short term during construction or long term.

R. Breckinridge asked if there was an intermittent watercourse on the property because there is a drain going under the road. J. McManus said if you look at aerial photographs you can see a ponded area off site to the west but now it is more of a shallow marsh or even forested at this point. R. Breckinridge asked if J. McManus had a map that showed a larger area and J. McManus said that Figure 1 in his report dated July 11, 2023 shows the offsite wetland. He recalls more of a seasonally saturated and channeled flooded areas on the site near the northwestern edge. R. Breckinridge asked if this was an intermittent watercourse and J. McManus said it is a typical wooded swamp, seasonally flooded, found in Connecticut which gets wetter as you move west off site. R. Breckinridge asked again what the source of this water for the pond is. J. McManus said it was a groundwater driven seasonal wetland. R. Breckinridge said it looks like it is running through this site and he would like to know what will be the effects if you cut down trees – will the pond dry up? J. McManus said the pond is off site but R. Breckinridge said that the water that is filling the pond must be coming from upstream if there is an intermittent watercourse. J. McManus said there will be no significant adverse effect because when you cut trees, the water table actually rises. He said that a red maple swamp can drop a water table 10' in the summertime. When you clear vegetation it does not dry out a wetland – it does the opposite because you are removing vegetation that pumps water and takes water out of the ground. He said that the wetland extends to the north of this property and it gets wetter as you go west of the property. R. Breckinridge asked where the initial source of the water is that flows into the pond. J. McManus said it is more of a flooded area that is man-made and is filling in

now. The water comes from various areas – the area that was dug out, this site, and from north of this site. He believes that will not impact the flow of the wetland resource – everything will still react and flow as it is today. R. Breckinridge asked J. McManus if he did any type of endangered species evaluation. He is concerned because the pond used to be more substantial and he wonders if it has some purpose for wildlife species in the spring when water is flowing in that area. J. McManus does not know what happens in the spring in that area. He looked back at earlier aerial photographs of the pond but today even with the leaf off, it is hard to determine that there is a pond. But the pond is off site and even though the applicant is removing trees for the development, there will still be uplands and wetlands forest in and around this proposed single-family residence. So even if animals on this parcel use the pond, they can still do so and move out and live their lives in the uplands. R. Breckinridge asked Andrew Morse of AMCO Development, LLC, if the homeowner plans to put a pool on the property. A. Morse said there was no plan to put a pool on the property at this time and R. Breckinridge said that if the homeowner wanted a pool, they would have to come back to the IWC and there may be concern about that. R. Breckinridge asked why the garage is side loading and if the footprint could be reduced with a front-loading garage. J. Jones said that people prefer side loading garages. R. Breckinridge said that the IWC has required other applicants to use a front load garage and this driveway is at least 2/3rds in the upland review area – if there was a front load garage, you could probably reduce that by half. A. Morse said he would have to ask his client about that.

K. Tobin asked about the distance of 30' to the wetlands. J. Jones said that on the eastern side of the lot it is more than 30' to the wetlands though it does go to 26' at wetlands flag #7, and then back to 55' at wetlands flag #5 and eventually to 90-100'. K. Tobin asked about the septic system and J. Jones said it was in the front yard and not near the wetlands. J. McManus said that the earlier map tried to keep 30' from the wetlands on the entire lot but now there is one closer area at 26' but also more area further from the wetlands. C. Hauss would also like to see a front-loading garage. She also has concerns about the 15' buffer between the wetlands and the clearing – she would like a larger buffer with less clearing. G. Gianini would like the maps provided to the IWC to show the boundary of the house and garage. J. Jones said that the 24' at the end of the driveway is to the garage. J. Jones asked if 30' from the wetlands is a goal for the IWC – if everything is 30' would the IWC consider the side load garage. J. Jones said he could possibly pull the slope back toward the driveway after the house and still get the side load garage. He could also cut back the driveway to be 30' from the garage instead of 35' and it would still be comfortable to make the turn. J. McManus said that only two wetlands flags have changed from the prior map. He wanted to create a backyard where the homeowners would be satisfied and not try to expand the backyard. G. Gianini asked if the nitrogen and phosphorus from the septic system will go toward the wetlands area. J. McManus said the Farmington Valley Health District (the "FVHD") approved the septic system and the wetland itself is not sensitive to nitrates as the wetland acts like the liver and the kidneys of the earth – large filters. If any nitrate leaked, there is an approved septic system and quite a distance to travel before it would reach any water. J. Jones said it is 120' from the septic to the wetlands and J. McManus added that there was then a wooded swamp so there was a long way to go before any nitrate could negatively impact the wetlands or downstream wetlands support.

Acting Chair Sacks asked about the wetlands flags – he saw wetland flag #12 but not #13 and further. He asked what the distance was between wetland flag #13 and the clearing. J. McManus

said he hung 21 flags but did not know where the property boundary was. Acting Chair Sacks said the wetlands run along that side and he would like to know the distances by looking at the flags (wetland flag #13 appeared closer to the wetlands than #12 as shown on the map). He would also like to see marked on the property where the house will be. He pointed out that the environmental report referenced a 30' buffer from the disturbance area to the wetlands but there is a 15' buffer that is shown here and referenced in E. Kyle's Staff Report. Acting Chair Sacks is not reassured that the removal of trees will mean more water in the wetland since that can interfere with the functioning of the wetland as excess water would begin to flow into that area. He feels this is too close to the wetland and thinks the movement to a front-loading garage would be a prudent and feasible alternative. R. Breckinridge said it was hard to visualize where the wetland actually is by looking at the map and Acting Chair Sacks agreed. They would like to know that before considering any approval. R. Breckinridge said that in other cases where the disturbance is 15-25' from the wetlands, the IWC likes to have boulders placed along the property where the lawn ends to remind the homeowner that that is as far as they can extend the lawn. R. Breckinridge also asked why the lawn needs to extend within 15' of the wetlands and why can it not be 30'. He feels that there is still a large lawn on the eastern side of the property. J. Jones will review that and will get all 21 wetlands flags on the site plan. R. Breckinridge also would like to see a plan with a front-loading garage showing what could be gained in terms of distance from the wetlands. J. Jones said you would gain approximately 30' though the driveway cannot go over the septic system. R. Breckinridge asked if the septic system could go on the northeast border of the property and J. Jones replied that the contours are not conducive to that - typically the system should run parallel to the contours. The septic system is currently 120' from the wetlands but in the northeast corner of the property it would only be 30'. Acting Chair Sacks asked if there was a way to make the site more accessible and E. Kyle referred J. Jones to the IWC's Site Walk Checklist. E. Kyle then referred to the 15' Right of Way (mentioned in her Staff Report) that runs north/south on the eastern side of the property almost adjacent to the property line. She searched the Land Records to see if this Right of Way prohibits anything such as tree clearing which would affect this plan. She did not find any information but this Right of Way should be on the finished site plan and the applicant needs to research this for any restrictive language. Acting Chair Sacks asked about a continuation and E. Kyle checked the statutory time frame. She said the applicant would need to grant an extension of time and she recommends an extension through October 4, the day after the next IWC meeting. A. Morse granted the extension and will follow up with an email to E. Kyle.

R. Breckinridge made a Motion to Continue Application #787 to the next IWC Regular Meeting. K. Tobin seconded. The Motion passed unanimously.

III. NEW APPLICATION:

APPL. #788 – Town of Avon, Applicant and Owner; request for regulated activities within wetlands or watercourses and within the 100 foot upland review area: general maintenance of drainage areas, trails, and other Town infrastructure and related site work. Locations: Town wide.

Bruce Williams, Director of Public Works for the Town of Avon (the "DPW"), is requesting IWC permission to conduct maintenance for Town drainage systems, trails, and other

infrastructure such as the boat launch area that was recently created in connection with the bridge project (Old Farms Road). E. Kyle advised B. Williams that these activities should be permitted by the IWC. B. Williams said this was for items such as rebuilding catch basins, cleaning out discharges for the stormwater sewers, sweeping the streets, and repairing bridges that wash away on trails. R. Breckinridge asked if any attempt is made to do the work seasonally i.e. at certain times of the year when there is no effect on wildlife breeding populations. B. Williams said they would attempt to do that except when it is an emergency situation such as a blockage that is causing further deterioration of the infrastructure. He asked if R. Breckinridge was thinking of a particular species and R. Breckinridge gave the example of Cider Brook Road when a species was living in an old culvert and the DPW had to wait until a certain time of year to do the work. E. Kyle said that this application began when DPW needed to work on a couple of specific projects like maintenance of Nod Brook which runs through the Town Hall complex. DEEP notified the Town that a permit was needed. E. Kyle said there are also emergency projects such as a road blockage on a Sunday that needs to be immediately addressed for health and safety reasons. She needs to be certain that the Town is compliant with State Statutes so she will work hand in hand with B. Williams, especially on long range projects to review details of the project. If it is significant enough, E. Kyle will report to the IWC on the project. Work orders are ever changing so she is trying to be realistic but also compliant. The goal is to make the Town more compliant than in the past as the direction of the State is to require permitting for everything. This permit not only follows the general regulations of DEEP but also complies with the Town's regulations. The standard five (5) year IWC approval would apply and E. Kyle would work with B. Williams to ensure that whatever project they are working on meets the Town's regulations. Emergency repairs would also fall under this permit. R. Breckinridge asked if DPW does an evaluation regarding wildlife on a general project. B. Williams said that they have had situations such as dealing with turtles at Fisher Meadows at a certain time of year where DPW put up a silt fence around the perimeter of the work site to keep the turtles from going into that area. R. Breckinridge asked who would evaluate a situation like that. B. Williams meets with the Town Engineering Department, Hiram Peck of the Department of Planning and Conservation, and E. Kyle to talk about upcoming projects so there is a good system of communication between these departments.

C. Hauss made a Motion to Approve Application #788. R. Breckinridge seconded. The Motion passed unanimously.

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

V. OTHER BUSINESS:

A. Approval of 2024 Meeting Calendar. R. Breckinridge made a Motion to Approve the 2024 Meeting Calendar. C. Hauss seconded. The Motion passed unanimously.

B. Discussion of 425 Waterville Road. E. Kyle said there was a long-standing effort to get this property into compliance with the remediation plan required by the IWC a couple of years ago. She inspected the site on August 1 which was slightly after the required deadline. Requirements included ceasing mowing, relocating some red maples, adding additional plants because the plants there were undersized, and finishing the required plantings. She believes the

site is now compliant with the remediation plan because Thang Tran, the property owner, replaced the undersized birches, moved the red maples (which have now grown to a compliant size), finished the plantings, and stopped mowing. T. Tran knows that E. Kyle will continue inspections annually for two (2) years to ensure that the plantings are healthy, continue to grow, and will be replaced if any die. E. Kyle believes that now the Cease and Desist Order (the "C & D") can be released on the Land Records. R. Breckinridge asked if T. Tran is planning on building on that lot and E. Kyle does not know. R. Breckinridge asked if a new owner would be aware of what has transpired if the C & D is removed from the Land Records. K. Olson thinks the C & D should stay in place until the two years have passed because that is the only way that a potential buyer will be aware of these circumstances. Acting Chair Sacks and R. Breckinridge agreed. K. Olson asked if the C & D mentioned the inspections for two years. E. Kyle clarified that the C & D was done two years ago and it does not reference the remediation plan. K. Olson suggested that E. Kyle send T. Tran a letter confirming the progress on the remediation plan and the two years of annual inspections, and after the two years and continued compliance, the C & D will be removed. J. Szerejko agrees with K. Olson's suggestion. Once the C & D is released, a future buyer will know it was in effect but it has been satisfied.

C. Discussion of Potential Future Regulation Modifications. E. Kyle said that at the last meeting in July she provided the IWC with a plan of action itemizing the steps needed to move a new regulation forward. She drafted a fee ordinance using the Farmington and West Hartford examples which are not too detailed though she cautioned the IWC that more detail is preferred to avoid an appealable scenario. H. Peck provided comments on the draft and pointed out some issues. E. Kyle believes that K. Olson also has concerns because the proposal lacks detail and specific criteria. K. Olson said she looked at this from the legal perspective of enforcing the regulation and believes that when hiring a consultant for wetlands application there should be specific criteria that alerts property owners as to what to expect. Other towns' regulations typically have language that a property owner could look at (such as square feet of disturbance) and then know that they may have to pay for a consultant. She is concerned because she does not see that type of triggering event here. She suggested that the hiring of a consultant be tied to a decision that a public hearing is necessary either because it is a significant activity or it is in the public interest, or you try to circumscribe the magnitude of the development. She said that West Hartford made clear that the only time this regulation has been triggered was when there was a finding of a likelihood of a significant negative impact. K. Olson is also concerned because the draft regulation calls for hiring a consultant before the public hearing process but you should only be hiring a consultant if a public hearing has been triggered. Another issue that K. Olson mentioned was that the ordinance needs to specify how and when consultant fees will be paid. She does not believe that a bond is the best way to do this as it is a surety which involves a third party (and not a letter of credit that you can draw on to pay a consultant). She would like language (as in Simsbury's regulation) that says a consultant's fee needs to either be paid up front or within thirty (30) days of invoice. She believes it is reasonable to have a cap on additional costs once an estimate is given. G. Gianini hoped that this regulation would expedite the IWC application process by having two experts so the IWC is certain they get the necessary information to make an informed decision. E. Kyle said that previously the IWC did not want to go in the direction of the West Hartford regulation which tied the consultant directly to significant impact activities. She therefore looked for towns that matched the IWC's intent. Acting Chair Sacks feels that if an application's complexity is beyond the IWC's expertise, the

regulation would allow the IWC to rely on an expert to give them information. He is against having to first conclude that there is significant damage to the wetlands before the IWC is able to hire a consultant. E. Kyle said G. Gianini found dozens of towns that used the term “complex applications” in these regulations but E. Kyle is still uncomfortable with that because it is undefined. C. Hauss thinks the IWC could tie hiring a consultant to a public hearing or the amount of land involved. K. Olson explained that DEEP (who reviews wetlands regulations) is not concerned with how broad a Town’s ability to hire consultants is or if there is a due process challenge. So DEEP may approve a regulation and then another town uses the same regulation because they know it has already been approved by DEEP. Acting Chair Sacks would like to be a proposal that meets K. Olson’s approval. He would like a trigger to use the regulation before the IWC has to come to a conclusion regarding impact. K. Olson said you could have parameters such as how many square feet of disturbance there is in an upland review area. Acting Chair Sacks said it was all about significant damage to the wetlands regardless of square feet. K. Olson asked if Acting Chair Sacks wanted a consultant before the IWC makes a decision about impact and he replied that if the IWC feels that it lacks the expertise to make a judgment and it feels complex then the IWC should be able to hire a consultant. K. Olson and Acting Chair Sacks discussed the timeline for hiring a consultant. Acting Chair Sacks suggested that K. Olson write up a draft that satisfies her legally, the IWC will look at it together with other towns’ regulations, and then the IWC will proceed from there. K. Olson will try to get a draft done by the next IWC meeting.

D. Staff and Commission Comments (unrelated to any application): G. Gianini said that the Town of Windsor has a regulation that allows the town to charge an owner or person causing a violation of a wetlands regulation for the additional inspections needed by the town to ensure compliance. E. Kyle said that it is her job to enforce wetlands regulations but she has seen this charge in other towns for very large issues such as an oil spill and this regulation would have to have very specific language as to when the town could charge anyone. G. Gianini would like to see people held responsible for these types of items and a regulation for reimbursement of expenses that the Town and taxpayers may be incurring could be an incentive for compliance. He would like to discuss this at a later IWC meeting.

E. Approval of Minutes: July 11, 2023 – Regular Meeting. K. Tobin made a Motion to Approve the Minutes from the July 11, 2023 Regular Meeting. C. Hauss seconded. The Motion passed unanimously.

VI. NEXT REGULARLY SCHEDULED MEETING: October 3, 2023

K. Tobin made a Motion to Adjourn. G. Gianini seconded. The Motion passed unanimously.

There being no further business, the meeting adjourned at 9:16 p.m.

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