

THE INLAND WETLANDS COMMISSION OF THE TOWN OF AVON HELD A VIRTUAL REGULAR MEETING ON TUESDAY, DECEMBER 5, 2023, AT 7:00 P.M., VIA GoToMeeting: by web <https://meet.goto.com/584371813>; or by phone, United States: [+1 \(646\) 749-3129](tel:+16467493129), Access Code: [584371813#](https://meet.goto.com/584371813).

Present were Chair Michael Feldman, Vice Chair Michael Sacks, and Commissioners Michael Beauchamp, Robert Breckinridge, Gary Gianini, and Carol Hauss. Also present was Emily Kyle, Planning and Community Development Specialist/Wetlands Agent, John McCahill, former Planning and Community Development Specialist/Wetlands Agent, and Attorney Kari Olson and Attorney Joe Szerejko, Town Attorneys.

Chair Feldman called the meeting to order at 7:00 p.m. There is a quorum of 6 Commissioners present. Chair Feldman thanked M. Beauchamp for his service on the IWC.

I. PUBLIC HEARING:

PENDING APPLICATION:

**APPL. #790** – A.R. Building Company, Inc., Applicant and One Thirty Five Darling Drive, LLC, Owner; request for regulated activities within the 100 foot upland review area: construction of a multi-family residential project including buildings, parking areas, utilities, stormwater drainage system and related site work. Location: 135 Darling Drive, Parcel 2030135.

On November 28, 2023 via email, the Applicant asked to withdraw this Application. They are not pursuing this project at this time. Chair Feldman asked if this was permanent and E. Kyle advised that we have no information regarding that. M. Beauchamp made a Motion to Accept the Withdrawal of Application #790 for 135 Darling Drive. R. Breckinridge seconded. The Motion passed unanimously.

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

III. OTHER BUSINESS:

A. Discussion of Potential Future Regulation Modifications:

Chair Feldman said that the complex application fee regulation has been circulating for quite some time and the most recent third draft was a compilation of the DEEP model regulation and the Town of Granby ordinance. There were comments from the Town Counsel that he agreed with and he proposes replacing the current first sentence with the first sentence from Section 19.5 of the DEEP model regulation which says “the inland wetland agency may charge an additional fee sufficient to cover the cost of reviewing and acting on complex applications.” He said then it would be consistent with the model regulation and will have addressed the concerns that K. Olson raised. She is still concerned about the preamble that applies to complex applications. E. Kyle said she structured this to be another tab in the fee section in our existing regulations but she may have to re-order the numbers within that fee section but she thinks it is in the correct location. Chair Feldman agreed and said this would start as Section 19.5 and it is also

consistent with the model regulations. K. Olson said that her concern is that the area that she highlighted is not a correct statement of the law. She understands that the IWC wants this model but she does not believe that you should put out a statement that is contrary to what the statute actually says. Chair Feldman said that reference was eliminated. Chair Feldman explained that it now follows the model regulation verbatim. K. Olson did not want to opine on whether she would support this regulation but she did say that this eliminates her concern about what she sees as a complete misstatement of the law. G. Gianini said that the word “exemptions” should be in Section 19.8 and the word “waivers” should be in Section 19.9. E. Kyle explained that she took those words out to be consistent with other sections. G. Gianini prefers the words to be put back in to be more specific and he asked K. Olson about the waiver provision in Section 19.9. Chair Feldman asked K. Olson if she was concerned that subsection c. about good cause is arbitrary or ambiguous. K. Olson said that if just showing “good cause” was a stand-alone criteria, then you might have an issue as it is totally discretionary. Chair Feldman asked if it would address K. Olson’s concern if subsection c. was eliminated and K. Olson agreed that it would. R. Breckinridge asked for clarification on Section 19.8 and E. Kyle answered that it means general application requirements. She copied it from Granby though currently if the Town of Avon applies for a proposal they do not pay a fee. She believes this language is redundant because the language is already in Section 19. K. Olson said that it made no sense to have the Town pay as you were just taking money from one account and putting it into another. R. Breckinridge asked what would happen if the IWC wanted an independent review on an application from the Town. K. Olson said that the IWC would argue that they did not have to pay for the consultant. R. Breckinridge asked what kind of limitations that would create for the IWC. K. Olson would eliminate this section as the goals and objectives for a Town Department would be in the best interests of the Town. It would pit you against the Town if you said that you do not trust the Town Engineer and you need a third party consultant. K. Olson said that even if you eliminated Section 19.8 you could always seek permission to get a consultant paid for by the Town. E. Kyle clarified that currently we do not have a section that addresses the Town’s exemption for paying application fees so if it is eliminated entirely then it will not be in the regulations but currently the Town does not paying processing fees for submitting an application. K. Olson said that the circumstances where you charge the Town for any type of consultant fee would be fairly unique – possibly where your own Town Engineer or consultant felt that a third set of eyes would be appropriate. Chair Feldman asked if the IWC was comfortable with deleting this exemption. Vice Chair Sacks agreed it was acceptable.

Chair Feldman asked about whether there were any changes to ordinance 55 referenced as Appendix B. E. Kyle said that everything was as is but she added a “complex application fee” section at the bottom. Chair Feldman asked if the language would be revised to what was discussed today and E. Kyle agreed that it would be. Chair Feldman said that under the regulations the IWC needs to schedule a public hearing and give notice to DEEP, as well as submitting this to the Town Council. E. Kyle said that now that the IWC has the revisions set she will send a final draft, together with a cover letter, to the Town Manager’s office. They will review it and determine if it is suitable to go to the Town Council. For the public hearing, once the January IWC meeting is set, we can then determine when to start the proceedings for this. K. Olson recommends that the Town Council weighs in first and then the IWC can adopt it, have their public hearing, and send it to DEEP. J. Szerejko said the Town Council was meeting this Thursday night. Chair Feldman asked if this could be on the Agenda for Thursday but E. Kyle

said that the Town Manager wants to review it first. K. Olson said that the Town Council Agenda may already be posted. E. Kyle said the next Town Council meeting after this week is January 4, 2024. K. Olson said that if it was approved on January 4, 2024, you would then need a couple of weeks for notice and possibly you could have a public hearing at the February IWC meeting. Chair Feldman agreed that it should be on the Town Council Agenda for January 4, 2024 and then scheduled for a public hearing at the IWC's regular meeting in February. He would like to attend the Town Council meeting and E. Kyle will update the IWC as needed. J. McCahill said that you may have to send this to the DEEP thirty-five (35) days before the public hearing. K. Olson said that you can submit it to DEEP at the same time as you submit it to the Town Manager. Chair Feldman said that it should get to DEEP by the end of December.

Chair Feldman asked for a Motion to Approve the new language, refer this to the Town Manager and the Town Council, and Schedule a Public Hearing for this new regulation. Vice Chair Sacks made that Motion. G. Gianini seconded. The Motion passed unanimously. Chair Feldman would like to see the final draft and E. Kyle agreed to forward it.

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

Emily Kyle recognized and thanked M. Beauchamp for his long term service to the IWC. On behalf of the Town, she expressed gratitude to M. Beauchamp for his many years on the IWC. E. Kyle reminded the IWC she will be on maternity leave until April.

C. Approval of Minutes: November 14, 2023 – Regular Meeting.

Gary Gianini made a Motion to Approve the Minutes for the November 14, 2023 virtual Regular Meeting. M. Beauchamp seconded. The Motion passed unanimously.

IV. NEXT REGULARLY SCHEDULED MEETING: January 2, 2024.

Chair Feldman said that a Special Meeting in January may be needed. E. Kyle said we will be down two Commissioners in January and new Commissioners will not be appointed until the January 4<sup>th</sup> Town Council meeting which is after the IWC regularly scheduled January meeting. Vice Chair Sacks made a Motion to cancel the January 2, 2024 regularly scheduled IWC meeting and hold a Special Meeting on Tuesday, January 16, 2024. R. Breckinridge seconded. The Motion passed unanimously.

M. Beauchamp made a Motion to Adjourn. R. Breckinridge seconded. The Motion passed unanimously.

There being no further business, the meeting adjourned at 7:30 p.m.

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