

THE INLAND WETLANDS COMMISSION OF THE TOWN OF AVON HELD A VIRTUAL REGULAR MEETING ON TUESDAY, NOVEMBER 14, 2023, AT 7:00 P.M., VIA GoToMeeting: by web <https://meet.goto.com/701203549>; or by phone, United States: +1 (646) 749-3129, Access Code: [701203549](https://meet.goto.com/701203549)#.

Present were Chair Michael Feldman, Vice Chair Michael Sacks, and Commissioners Michael Beauchamp, Gary Gianini, Carol Hauss, and Kevin Tobin. Also present was Emily Kyle, Planning and Community Development Specialist/Wetlands Agent.

Chair Feldman called the meeting to order at 7:01 p.m. There is a quorum of 5 Commissioners present (G. Gianini joined later).

Chair Feldman said that the IWC received a request from the Applicant for Application #790 to table their Application until the December meeting. He would like to reorder the Agenda to put Application #790 first and move for a continuance of Application #790. Vice Chair Sacks made a Motion to Amend the Agenda to move Application #790 to the first item on the Agenda. C. Hauss seconded. The Motion passed unanimously.

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.

Vice Chair Sacks made a Motion to Continue Application #790 to the IWC December meeting. M. Beauchamp seconded. The Motion passed unanimously.

II. CONTINUATION OF PUBLIC HEARING:

PENDING 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.

E. Kyle confirmed proper notice of the Public Hearing. Michael Ott, Professional Engineer with Summer Hill Civil Engineers & Land Surveyors, P.C. of Madison, Connecticut will speak for the Applicant. Also here are Erik Davison, Wetland Scientist with Davison Environmental, LLC, and Abigail Adams, Landscape Architect with A2 Land Consulting. M. Ott said that at the last IWC meeting the IWC asked for an exterior lighting photometric plan and a site operation and maintenance plan. He submitted both of those. The Site Lighting Plan was prepared by the

Applicant's lighting consultant, Apex. The light locations that are shown in the plan set are those reflected in the Lighting Plan. He understands that the IWC is concerned that there is no light spillage at the wetland boundary and the Lighting Plan shows zero light levels along the wetlands boundary. Detail of the light is included in the Lighting Plan – it is an LED luminaire with a low color temperature. Using the new terminology, it has a zero oblique component and using the old terminology, it would be a full cut off fixture. Around the wetland boundary the light distribution types are such that there is no light from the site leading at the wetland boundary. M. Ott said that the general site operation and maintenance plan covers the roles and responsibilities of parties. He says it is typical of others and includes examples from the Connecticut Stormwater Quality Manual. It is a draft until the IWC approves the Application and the approved site development plans would be attached to the Maintenance Plan. Any conditions of approval would be in the appendices of the Maintenance Plan, as well as the manufacturer information on the hydrodynamic separator. The Maintenance Plan is standard and outlines the purpose of this plan, why it is important, who the responsible party is, and what the approvals and permits for the project are. All the maintenance actions that will be taken will use typical best management practices and good housekeeping practices including sweeping of pavement and cleaning and inspection of the stormwater management system. M. Ott listed the seven (7) basic maintenance actions and procedures in the plan. This Owner and developer typically contract with an outside company for snow and ice control. There is a large area that they can store snow that is outside of the 100 foot upland review area. Melt waters from that area that drain back to the pavement will go through the treatment system if they do not directly infiltrate into the ground. If there is a large snow event and there is not enough capacity to store snow, then the snow would be loaded onto trucks and removed from the site. The Maintenance Plan recommends sodium chloride based anti-icing and de-icing chemicals not be used on the site. There are two areas on the site that could be used for snow storage. One is opposite the stormwater management basin to the west where there is a large area outside the parking where there are individual trees proposed. It is a large area of approximately 5,000 square feet well outside the 100 foot upland review area. The topography is such that the waters would flow toward the parking and therefore into the storm drainage inlet and through the stormwater management system. There is also an area between the parking in the northwest corner of the site and West Main Street that could be used. That area is also sloped down towards the parking lot so again the waters would go into the parking lot itself and that area is also well outside the 100 foot upland review area.

E. Kyle wanted to clarify that in her Staff Report dated November 9, 2023, she suggested conditions that required the spec of the lighting however this was in the original site drawings so the spec has been received and reviewed. The snow removal issue has also been answered. M. Beauchamp, C. Hauss, Vice Chair Sacks, G. Gianini and K. Tobin had no questions. C. Hauss made a Motion to Close the Public Hearing. G. Gianini seconded. The Motion passed unanimously. M. Beauchamp made a Motion to Approve Application #789 with the conditions set forth in E. Kyle's Staff Memo including the Site Plan being added to the Maintenance Plan, identifying the location of the snow storage on site, adding a cut shape of the lighting which shall be submitted and reviewed by Town Staff, and standard conditions of approval. C. Hauss seconded. The Motion passed unanimously.

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

#### IV. OTHER BUSINESS:

##### A. Discussion of Potential Future Regulation Modifications:

Chair Feldman said that the Connecticut Department of Energy and Environmental Protection (“DEEP”) has model regulations which specifically address what the IWC is looking for. He thinks DEEP already has language that suits the IWC’s purpose. He would like to discuss this though the IWC cannot formally act on it because the procedure to adopt this is to schedule a public hearing and give the DEEP Commissioner thirty-five (35) days notice of the language of the amendment. He believes that those two requirements are all that are needed to adopt this. C. Hauss said that this language seems straightforward and simple. Chair Feldman also thinks that given that it is from DEEP, it is established language that would be acceptable to them. G. Gianini said that the towns that he reviewed early on in this process use this model which include waiver options – who might get a waiver and how an applicant gets his money back. This model is very consistent and most of the towns use the DEEP model for a lot of their regulations. He said it has been sixteen (16) years since Avon has had any revisions. Chair Feldman said that there is a consensus to have this type of regulation available for those difficult applications where the IWC needs some guidance. He said the procedure is to schedule a public hearing but December would be too soon because of notice requirements to the public and DEEP. E. Kyle said that there are two separate processes to adopt this new regulation. The first is going to the Town Council (the “TC”) because they must adopt the Town fee ordinance allowing the IWC to require applicants to pay for this. Then the IWC can modify their regulations using the process that Chair Feldman spelled out. The IWC cannot omit the first step with the TC. Chair Feldman said that Section 15.3 of the IWC regulations says that the regulations may be amended in the manner specified in Section 22a-42A of the Connecticut General Statutes which says that the IWC shall provide the Commissioner of Environmental Protection with a copy of the proposed regulation and notice of the public hearing to consider any proposed regulation or amendment at least 35 days before the public hearing. He does not see any reference to having to go to the TC for approval. E. Kyle said it is the Town’s mechanism for the IWC to require the applicant to pay. The fee ordinance would be adjusted which is separate from the IWC regulations. Chair Feldman said the model DEEP regulation said the agency shall, or the duly authorized agent shall estimate the complex application fee, which shall be paid pursuant to Section 19.1 of the regulations within 10 days. He does not see anything in the regulation or the statute that requires the IWC to take another step and go to the TC. E. Kyle said that can be discussed with the Town’s legal counsel but the process has been previously explained to the IWC. Chair Feldman asked which regulation requires the IWC to have the TC approve a fee ordinance. E. Kyle said that the Planning and Zoning Commission (“PZC”) has similar language for traffic studies and items that the PZC may need for large applications. The process for adopting that mechanism of requiring applicants to pay required an ordinance approved by TC. It is the same process that other land use boards have followed previously. G. Gianini asked the process and E. Kyle said that the IWC would present to the TC. She summarized that more description as far as definitions, payment, and the process would be helpful to the TC. Vice Chair Sacks confirmed that there are two separate things – the first is the fee ordinance that says that the IWC can charge a fee for whatever they specify. E. Kyle believes that after conversations with the Town Manager’s office, the TC will want to see specifics regarding definitions, procedures and

payment. Chair Feldman said that the language he is proposing is from Section 19.5 of the model regulations from DEEP and he asked if this language has to be adopted by the TC as well as the IWC. E. Kyle confirmed that was correct. Chair Feldman said that he did not see anywhere in the regulations or statutes that require the IWC to go to the TC for approval of this. He would like to schedule a public hearing in January and he would like to speak to Kari Olson, Attorney for the Town, so he can understand why two different bodies need to act on the same regulation. Vice Chair Sacks said that K. Olson indicated that the regulations of DEEP and other municipalities have never gone to court and she believes that they would not hold up in court and they needed more detail. Chair Feldman believes that DEEP is the Connecticut state agency charged with knowing about wetlands and is the expert in the field so presumably when they draft language for model regulations, it should pass muster with courts. He thinks that a Superior Court would give deference to what DEEP thinks is appropriate. Vice Chair Sacks looked at Granby's regulation which also has Sections 19.6, 19.7, 19.8 and 19.9 which do not appear in DEEP's model regulations - for example Section 19.9a allows a waiver when the activity applied for clearly results in substantial public benefit to the environment or the applicant would be deterred from initiating the activity solely or primarily as a result of the application fee. He believes these additions are reasonable and will hold up better legally. E. Kyle said that Granby was one of the first towns that she talked to early in this process. Granby added the subsections that Vice Chair Sacks referenced to beef up the regulation in the event that they needed to use the complex application fee (though Granby has never used this regulation). Town Staff and Town legal counsel are also looking to add those extra layers of exemptions and waivers. Chair Feldman asked if the extra subsections that Granby has are in the DEEP model regulations and E. Kyle confirmed they are not. Granby broadened the categories for town protection. C. Hauss asked if E. Kyle's second draft will work for the TC. E. Kyle said that it has a better chance of being passed than a regulation with just the language regarding a complex application. She could do a third draft that mimics the DEEP regulations but also adds the criteria that the IWC members have reviewed. She said that going to the TC is the first step, with the regulation amendment afterwards. The first part will be the hardest as the TC wants specifics. Chair Feldman would like to take a simple approach and use the DEEP model regulation with the language that Granby has added. C. Hauss said that the fee ordinance is the operational piece of this work and she understands that the TC wants to know how it is going to get done which is not unreasonable. Chair Feldman feels that the complex application fee addresses the mechanics of this – it says the agency should estimate the amount, it has to be paid within ten (10) days, and anything that is excessive gets refunded to the applicant. Vice Chair Sacks said that the IWC has not heard from the TC, only the Town Staff and he feels that it is up to the IWC when the conditions warrant an expert, when the IWC feels that they lack the expertise to make a judgment, or when the wetlands are endangered. Chair Feldman asked if the additional language in the Granby regulations was lengthy and Vice Chair Sacks read the exact language. Vice Chair Sacks feels that the language is reasonable and Chair Feldman agreed. He would like a motion to schedule a Public Hearing in January with the staff providing the required public notice of consideration of the complex application fee as adopted in the Town of Granby and also set forth in Section 19.5 of the model DEEP regulations. He would like to talk to K. Olson to understand why the TC needs to be involved in this and if so, what the IWC needs to do to get the regulation before the TC. He can make the presentation to the TC and any other IWC member can also join him. M. Beauchamp made a Motion for a Public Hearing at the regularly scheduled January IWC meeting to consider the adoption of Section 19.5 of the DEEP model regulations as modified by the

additional language in the Granby regulation and to give proper notice to the public and DEEP. K. Tobin seconded. The Motion passed unanimously. Chair Feldman clarified that the actual vote on the complex application fee will not happen until it is properly noticed for public hearing. Vice Chair Sacks asked if the TC could give the IWC questions in writing beforehand so the IWC can address them and respond. Chair Feldman would like to hear from the Town Attorney about why this needs to go to the TC as he feels that the IWC has jurisdiction to adopt this regulation without any approval from the TC.

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

E. Kyle announced that she will be on maternity leave beginning in December. She said that her predecessor, John McCahill, will cover this position for twelve (12) weeks until E. Kyle returns. She believes that the IWC will continue to function seamlessly and she will be here for the December IWC meeting but out for January, February and March. The IWC members issued congratulations to E. Kyle.

E. Kyle said that the TC and members of the public would like to begin hybrid IWC meetings. Some members of the public said that they are having difficulty, especially with public hearings, accessing the IWC meetings and they are asking for an in-person component to these meetings. The PZC will start with hybrid meetings this month. E. Kyle recommends that IWC hybrid meetings begin once she returns from leave so J. McCahill can continue with virtual meetings. Winter (with possibly more illnesses) is also not the best time to start hybrid meetings. Chair Feldman asked if hybrid means that people can attend remotely if they desire and E. Kyle agreed but said that the expectation is that Commissioners attend in person like TC and PZC. She said that if an IWC member has unique circumstances and cannot attend in person, that can be managed but typically Commissioners are expected to be in-person and the public has the benefit of hybrid. Chair Feldman asked if Commissioners could attend remotely and E. Kyle said yes if there are unique circumstances. Chair Feldman said that would address any health considerations and E. Kyle confirmed this. C. Hauss said hybrid meetings are technologically difficult. She has done hybrid meetings and feels it is much easier to do these meetings one way - either virtual or in-person. Vice Chair Sacks feels that hybrid will eliminate the IWC's ability to function as they do and it will be difficult to have members in different places. He asked if the IWC has a choice in this or if it will be mandatory. E. Kyle said it is not yet mandatory. She has run all types of meetings and virtual is the most seamless in her opinion but she understands the public's desire to have an in-person component. Chair Feldman has done hybrid meetings and did not experience any issues. C. Hauss said that you need to know the technology so you do not lose connections and you have to manage the meeting when you have people talking online and people talking in-person. You are managing two meetings at once – one with a group of people in the room and another with a group of people online that you will have a harder time to pay attention to. Vice Chair Sacks thinks it is difficult with the Town's technology to interact if you are remote at a hybrid meeting. He does not think he can be remote at a hybrid meeting and participate and be engaged. G. Gianini would like to wait until spring to change anything. Chair Feldman asked if the TC was already doing hybrid meetings and E. Kyle confirmed that they have been since summer and PZC will have a hybrid meeting next Tuesday. Chair Feldman said that E. Kyle can convey their ambiguous position on hybrid meetings. M. Beauchamp said that

sometimes the plans that the IWC receives for applications are easier to view at an in-person meeting.

C. Approval of Minutes: October 3, 2023 – Regular Meeting. C. Hauss made a Motion to Approve the Minutes for the October 3, 2023 virtual Regular Meeting. Vice Chair Sacks seconded. The Motion passed unanimously.

I. NEXT REGULARLY SCHEDULED MEETING: December 5, 2023

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

There being no further business, the meeting adjourned at 8:05 p.m.

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