THE INLAND WETLANDS COMMISSION OF THE TOWN OF AVON HELD A VIRTUAL REGULAR MEETING ON TUESDAY, July 6, 2021, AT 7:00 P.M., VIA GOTOMEETING: by web, <https://global.gotomeeting.com/join/786764941>; or by phone, United States: +1 (786) 535-3211, Access Code: 786-764-941#.

Present were Chair Clifford Thier and Vice-chair Michael Beauchamp; and Commissioners Bob Breckinridge, Martha Dean, Louis Usich III, and Michael Sacks. Also present was John McCahill, Planning and Community Development Specialist/Wetlands Agent.

Chair Thier called the meeting to order at 7:00 p.m.

John McCahill conducted roll call.

John McCahill introduced Janet Stokesbury, new administrative Clerk to the Inland Wetlands Commission. Susan Guimaraes is also assisting tonight.

PENDING APPLICATIONS:

**APPL. #764M** – Karin S. and Martin J. Comer, owners/applicants; request for 1) proposed modification to Appl. #764, and regulated activities within wetlands and/or within the 100 foot upland review area: 1) additional clearing within the 100-foot upland review area; 2) addition of proposed accessory building (barn) and driveway within previously-approved limits of clearing; 3) construction of a larger house and related site grading partially within new limits of clearing. Location: 72 Sunrise Drive, Parcel 4190072.

Present and speaking on behalf of Application #764M was David F. Whitney, of David F. Whitney Consulting Engineers, LLC. Also present was Robert Comer. Mr. Whitney began with the Site Walk Map that he prepared. The surveyor set about 20 stakes on the property. The pink area is the additional area to be cleared that is the subject of this modified Application. The Owners would like to build the house in a different location and build an accessory building. In order to make the grading work so all the water drains to the south, more area of the parcel needs to be cleared as shown by stakes 1-5 and 5-11. The house now has a more creative footprint and shape. In addition, the Applicants want to put a 1,500 foot barn that is allowed by zoning regulations and shown by stakes 14-17. The other three stakes (18-20) show the eastern most limit of clearing which is the area where the septic system is proposed.

At the June 1, 2021 IWC meeting, additional supplemental material was requested. One item was a copy of the partial driveway as-built survey. The existing driveway was built by the original Applicant, Bill Cole, and the permit was transferred to the Comers. The driveway has been built up to the site where the house is proposed. Part of what was done was to excavate an area on the right side of the driveway to remove some additional material below the flood elevation to compensate for the fill that had to be placed in the wetlands and flood plain.

The second supplemental item was a comparison plan. The pink areas show the additional area of clearing. The original proposed location of the house is shown. The blue line is the original watershed line. The site is a knoll – some of the water flows north towards Big Brook and Haynes Road. Some of the water flows south toward the driveway. It was a condition of approval that all the runoff flows south so there is no additional runoff towards Big Brook. The area will be regraded to honor that commitment. The non wetlands soil is very well drained and the runoff is very minimal. Mr. Whitney has guaranteed that the water will now flow south but additional grading will be needed (in the additional clearing area). The house and barn have roof drains that will discharge via pipes through the stone wall into the water course that flows into the pond. Mr. McCahill pointed out the location of Big Brook.

The third supplemental item submitted was an environmental report from Eric Davison of Davison Environmental (not attending). The report shows little to no impact to the wetlands as a result of the proposed changes. A large stone wall runs along the southern limit of the area to be cleared which is a natural barrier to any runoff. The letter also mentions some invasive species he is worried about and it points out that there is a conservation restriction on the site so there would be no further development. The work is not anticipated to adversely affect the wetlands function and values.

The last supplemental item submitted is a letter from the Applicants dated June 24, 2021 addressing the use of the proposed barn. Attached are some pictures of antique farm tractors to be stored in the barn, as well as woodworking items. The items to be stored in the barn have nothing to do with the Applicants commercial paving business. There will not be a large amount of oil or fuel in these vehicles. Also, there will be no pesticides, flammable materials, livestock, or the repair or maintenance of combustible engines.

Mr. Whitney then went through the 9 items listed on the Memo from John McCahill dated May 26, 2021 which was generated after the initial Application submission. The permit was transferred from Bill Cole to the current owners. The driveway as-built plan has been submitted. The conservation restriction is now filed on the land records and is shown on the current plans. Mr. Whitney submitted a comparison plan and a site walk map. The report from Eric Davison was submitted. Mr. Whitney spoke to Diane Harding of the FVHD and she agrees that the proposed septic system is adequate for the property as revised. Mr. Whitney has shown the revised watershed line on the comparison plan. All materials were submitted 7 days prior to this meeting.

Mr. Whitney concluded his presentation and Chair Thier opened the meeting up to questions from the Commissioners.

Commissioner Sacks stated that he had visited the property. He feels that the flow of water on the property is now completely changed. Mr. Whitney stated that a very small area of runoff that will now flow south used to flow north and he feels that there will be no additional impact to Big Brook. Mr. Sacks also stated that he feels the additional trees to be cleared will have a high impact on the property. Mr. Whitney again stated that he thinks there are about 6 large trees and several smaller ones. He is relying on Mr. Davison’s report to show little impact to the wetlands.

Vice Chair Beauchamp visited the site before the markers were placed. He asked whether the house can be moved to the right and turned. Mr. Whitney said that this is the desired location of the house and the owners have given a lot of thought to it.

Commissioner Breckinridge noted that we are dramatically changing the location of the house. The original plan was to center the house. Also, he still has concerns about the barn and the proposed items to be stored there. Mr. Comer stated that the antique farm equipment is a hobby and these items are for pleasure and not business. Also, the woodworking is for pleasure. Commissioner Breckinridge is concerned with those items being in an environmentally sensitive site. Mr. Comer will not be using them in a restricted conservation area. Mr. Whitney addressed Commissioner Breckinridge’s concern about moving the house closer to wetlands. Mr. Whitney listed the distances to wetlands areas and the closest point to wetlands would be 65 feet and under the original plan it was 85 feet. He feels that it is not a major change.

Commissioner Usich asked about potential fuel storage intentions for the barn. He then asked about the new watershed line which shows an increase in the watershed that flows south and a decrease in the watershed that flows north. Mr. Whitney feels that it is a small watershed change. Mr. Comer stated that there will be no bulk storage of fuel of any kind on the property. The house being built is a passive house that will be heated by an electric heat pump so the risk of petrochemicals going into the soil is very low.

Commissioner Dean noted that we approved this lot and the issue is whether there is an adverse impact to the wetlands and Mr. Davison’s report indicates that there is not. She has no questions and finds the new plan acceptable.

Chair Thier entertained additional questions from the Commissioners. Commissioner Sacks feels that the impact of taking the additional trees down is very significant. Commissioner Usich agrees with Commissioner Dean in looking to Mr. Davison’s report which states there will not be an impact to the wetlands.

Commissioner Usich made a Motion to approval Application #764M with the conditions in the approval letter dated October 4, 2019 as updated by Town staff.

Vice Chair Beauchamp seconded the Motion.

The following members voted in favor of the Motion: Chair Thier, Vice Chair Beauchamp, and Commissioners Breckinridge, Dean, and Usich. Commissioner Sacks opposed. The Motion carried.

COMMUNICATIONS FROM THE PUBLIC:

There was no communication from the public.

OTHER BUSINESS:

Continued Enforcement Hearing: Mr. Thang Tran - 425 Waterville Road (Assessor’s Map #026, Lot #4500425); removal of mature trees/saplings along, and adjacent to, the banks of a watercourse and/or near wetlands associated with the property.

Thang Tran, owner of 425 Waterville Road, was present via telephone.

Chair Thier asked Mr. Tran if he had any comments before the discussion began. Mr. Tran accepted the conclusions of the Town. Mr. Tran stated that Mr. Whitney is working on a remediation plan but Mr. Tran cannot implement it until September or October, 2021 due to his continuing unemployment. He is asking for an extension of time to implement the plan.

Commissioner Sacks asked about the original plan to plant cherry trees. Mr. Tran plans to hire Davison Environmental to make a plan but it will cost about $5,000. Commissioner Sacks also expressed has concerns about the signs put up on the property. He is concerned about people going onto the property to take the wood which is for sale. Lastly, Commissioner Sacks is concerned about construction in the future.

Mr. Tran said there is no activity on the property at this time. Chair Thier asked Mr. Tran to remove the signs and Mr. Tran agreed to do so.

Commissioner Sacks asked about the debris in the waterways. It has not been removed. Mr. Tran agreed to do that shortly so the watercourse is unimpeded. Chair Thier suggested that Mr. Tran talk to Mr. McCahill to find out what exactly has to be done. Mr. Tran agreed.

Vice Chair Beauchamp expressed concern that this violation has dragged out. Mr. McCahill stated that the IWC was first notified on April 13, 2021. Vice Chair Beauchamp feels that this will drag on unless the Commission does something. Vice Chair Beauchamp wants native trees put back on the property, not cherry trees.

 Chair Thier stated that the property needs to be returned to the way the property was before, including native trees. Chair Thier stated that Mr. Tran needs to talk to someone (maybe an arborist) to come up with a plan.

Vice Chair Beauchamp asked if the Town can put a lien on the property. Mr. McCahill talked about the regulations and the process of enforcement. The Town issued a Notice of Violation. Now the Commission can take a second step which is to issue a Cease and Desist Order. A draft Cease and Desist Order lists the violations, talks about the property, and lists the history of the enforcement discussion. It states there would be a show cause hearing at the next regularly scheduled IWC meeting, September 14, 2021. The hearing has to be held within 10 days of the Cease and Desist Notice. The process forces Mr. Tran to address the issue.

Commissioner Sacks asked about the next steps. Mr. McCahill stated that if Mr. Tran fails to comply with the Cease and Desist Order, then the matter will be referred to the Town attorney and an action would be filed with the state court which can compel various remedies, including daily penalties and attorneys’ fees. Chair Thier asked if anything was on the land records to provide notice to possible buyers. Commissioner Dean asked about a Special Meeting so we are not waiting for several months. Chair Thier polled the Commissioners on their availability for a meeting on July 20, 2021. Mr. McCahill would need to issue the Cease and Desist Order on Monday, July 12, 2021. Mr. McCahill asked if the plan was to then discuss a remediation plan at the next regularly scheduled meeting on September 14, 2021. Chair Thier confirmed that it was. Items for the September 14 meeting must be received by September 3.

Commissioner Sacks made a Motion to approve the Cease and Desist Order with the appropriate dates inserted.

Vice Chair Beauchamp seconded the Motion.

The Motion passed unanimously by the Commissioners.

Chair Thier asked Mr. Tran if he understood that a Plan must be submitted to the Town by September 3. Mr. Tran stated that he believes he can do this.

COMMUNICATIONS FROM THE PUBLIC:

There were none.

STAFF COMMENTS:

There were none.

APPROVAL OF MINUTES:

* Minutes – June 1, 2021 – Regular Meeting. Vice Chair Beauchamp motioned to approve the minutes as submitted, and Commissioner Sacks seconded the motion. The following members voted in favor: Chair Thier, Vice Chair Beauchamp, and Commissioners Breckinridge, Usich and Sacks; (Commissioner Dean indicated that she had computer issues and she had not seen the minutes). The motion carried.

Commissioner Usich motioned to adjourn the meeting.

Commissioner Dean seconded the motion.

The motion passed unanimously by the Commissioners.

There being no further business, the meeting adjourned at 8:26 p.m.

Janet Stokesbury, Clerk

Inland Wetlands Commission

Town of Avon Department of Planning and Community Development