

THE INLAND WETLANDS COMMISSION OF THE TOWN OF AVON HELD A VIRTUAL REGULAR MEETING ON TUESDAY, February 1, 2022, AT 7:00 P.M., VIA GOTOMEETING: by web, <https://global.gotomeeting.com/join/606569541>; or by phone, United States: [+1 \(669\) 224-3412](tel:+16692243412), Access Code: [606569541#](https://global.gotomeeting.com/join/606569541).

Present were Chair Michael Feldman, Vice-chair Michael Sacks; and Commissioners Michael Beauchamp, Gary Gianini, CJ Hauss, and Jed Usich. Also present was Emily Kyle, Planning and Community Development Specialist/Wetlands Agent.

Chair Feldman called the meeting to order at 7:02 p.m.

I. PENDING APPLICATION:

APPL. #774 – James A. LaRosa, Applicant, Mansoor Anwer Zaidi and Sheeba Nawab Zaidi, Owners; request for regulated activities within the 100 foot upland review area: relocate existing driveway and construct new driveway with associated grading and site work. Location: 10 Sky View Drive, Parcel 6060010.

David Whitney, the Applicant's engineer, noted that the following persons were present for this Application: James LaRosa, the Applicant; David and Laura Surowiec, the owners of 26 Sky View Drive; Dwight Merriam, the Attorney for the Surowiecs; and David Lord, the Soil Scientist involved with this project. D. Whitney began with an overview of the project. E. Kyle showed Presentation Plan #1 on the screen. D. Whitney explained the plan, stating that it is the 2002 approved Subdivision Plan, at the time the upland review area was 40' from a wetlands soil boundary. The subject site, 10 Sky View Drive, has two small wetlands areas on the west side of the lot and are shaded in green. The Applicant's lot has frontage on Deercliff Road but it is extremely steep and rocky so at the time of the Subdivision approval, it was determined that it was best to have access from Sky View Drive. The driveway for 20 Sky View Drive was located in a 30' wide easement across 26 Sky View Drive shown in yellow. Presentation Plan #2 shows the proposed driveway relocation and is the approved site plan for J. LaRosa's house under construction. The neighbors have worked out an arrangement where the owners of 10 Sky View Drive, Mansoor and Sheeba Zaidi, will transfer a 30' wide strip of their property on the west side to J. LaRosa and in exchange they will get some property on the north side where they have encroached on J. LaRosa's lot. This will allow the driveway to be owned in fee by J. LaRosa and not have to be shared, nor in such close proximity to the house on 26 Sky View Drive. Presentation Plan #3 identifies the proposed driveway easement in yellow which will be eliminated. There are existing underground utilities that will remain. The existing driveway easement will be terminated and the new driveway will be deeded to 20 Sky View Drive. The 100' upland review area is indicated by a green line from the two areas of wetlands. About 280 linear feet of the driveway go through the outer limits of the upland review area. Presentation Plan #4 is the second sheet at a larger scale (1" = 20') that shows the wetlands area and the driveway in greater detail. The red shaded areas contained within the green line are the portion of the upland review area that will be disturbed. This consists of about 6,817 square feet – the shaded red area that contains the driveway. The wetlands were originally delineated in 1999 at the time of the Sky View subdivision by D. Lord and he was at the site this past December. He wrote two reports – a Delineation Report and a Functions, Values and Impacts Report and

recently an Addendum regarding vernal pools. The closest limit of clearing for the new driveway will be about 65' from wetlands area 2 which is the larger area of the two and about 75' from wetlands area 1 so even with the construction of the driveway there is significant amount of upland review area remaining. D. Whitney wanted to clarify that he flagged 66 trees 3" in diameter or larger that would have to come down. 46 of those trees are within the upland review area and about 20 of those trees are dead or diseased.

D. Lord introduced himself and provided his educational and professional background. His report dated January 24, 2022 addresses some questions raised by the Commissioners at the last meeting as to whether the two wetlands areas are vernal pools. At this time of year soil scientists cannot definitely say whether an area is a functioning vernal pool or not. D. Lord gave some physical characteristics of these 2 depression areas. The subject wetlands themselves have areas that show a wetted perimeter or wetland topsoil conditions to a maximum depth of two feet. This is on the shallower side of vernal pools especially one like this where there is not true significant groundwater contact and not a significant amount of surface water running to them. Another important factor is that there is no increased organic matter content within the delineated wetlands areas. Vernal pools, because of their saturation, generally have a thick layer of partially-to-totally decomposed plant materials – mostly leaves but also branches and twigs. That is not present in this particular area. The topsoil is about 6-9" thick and that's consistent with the Wilbraham soils classified in the delineation process. It is a mineral topsoil layer that does have some organic matter but not an elevated organic content. In D. Lord's experience, this is on the very low side of potentially being a vernal pool. This site has a significant amount of upland area associated with the two pools – vernal pool species breed in the pools, they mature and develop to a land form, and move into the upland where they spend most of their adult life. There is a significant amount of habitat for those species in the presence of a vernal pool. Nothing that is proposed by this project as far as the access driveway would create any kind of physical barrier for migration of species, primarily salamanders that are found in functioning vernal pools. There is no limiting of the habitat functioning of this area by the proposed development activity.

G. Gianini referenced the January 24 letter and asked about what might have been addressed if D. Lord had visited in springtime. D. Lord answered that one thing would have been the presence of standing water which the adjacent landowners indicated that they had not observed themselves in the springtime. D. Lord compared the physical characteristics of these two depression areas compared to his experience with true vernal pool areas. G. Gianini asked for a percentage amount as to whether these were vernal pools and D. Lord replied that these areas are on the very low range of probability for being vernal pools because of the depth available of water. At two foot maximum depth one could readily see around the perimeter of these two wetland areas and water would need to rise higher before it ever flowed out of depth. This is an indication to D. Lord that consistently this area stays saturated.

C. Hauss indicated that she had looked at the official Avon Wetlands Map as shown on the Town of Avon website. There are two wetlands spots on the map for this Application. E. Kyle showed the Town's Wetlands Map and C. Hauss referenced the Sky View Drive area. She questioned why the two maps do not match. D. Lord replied that it is not uncommon for the Town Wetlands Map to be different than what a site specific onsite delineation establishes or identifies. The soil survey map was published in 1955 and only identified areas of two to three acres or larger. It was

not done on a scale that would be identifiable as site specific information. The difference between a map based on that soil survey and today's site specific delineation are always going to be different – in some cases, totally different. D. Lord is very confident that what is shown is what actually, physically exists on the ground and the cartographic representation is the issue for the difference in their depiction and not a map. E. Kyle added that that is the great value to requiring the soil survey map for applications because there often are discrepancies. D. Lord added that it was a federal agency, the Conservation Service, which did the original mapping.

J. Usich had no questions. M. Beauchamp had no questions. Vice Chair Sacks asked D. Lord when he goes out to determine the character of the topsoil and the wetness of it, how many samples does he take and where are they taken from? D. Lord replied that they are taken in a range above and below what ultimately becomes the wetland boundary. The investigation is done with a soil auger which takes a 2-1/2" diameter core sample in which you find certain colors, primarily a bright rust color. A dominance of two colors within roughly 20" down from the soil surface determines that the area is a wetland. Those colors not until a depth of 21 or more inches become non wetland. For every third or fourth flag, D. Lord will dig holes that are on both sides of where he ultimately puts the wetland boundary flag. Vice Chair Sacks asked how much this area may be an area in transition. What is the probability that the water that is going into this area is changing or possibly increasing due to things like compacting of the soil around it that has occurred as you put a driveway in and the building of the houses on both sides? D. Lord answered that the wetlands that are found there have been forming since the last glaciation, 10,000-15,000 years ago. Wetlands soils are not created very quickly – they are very slow to form and very slow to change. The amount of development surrounding these wetland areas would not have altered their characteristics or identifying factors for how far he would put the wetland boundary markers on the site. Wetlands can be made wetter by the introduction of surface water runoff that is collected in a storm drainage system but it is not going to change a non-wetland to a wetland in character by the addition of that hydrology. There is no effect on the extent of the wetlands especially in this type of situation where the soils are generally very tight, there is a lot of silt loam, and the character of the soils do not allow for a lot of rapid downward movement of storm water runoff. This is a slowly permeable bowl that collects water from its drainage area and then slowly releasing it to the underlying areas. Vice Chair Sacks stated that he was not asking about the extent of the wetlands boundaries but about whether the amount of water is being transformed because of the land around it due to past work that has been done here. D. Lord stated that there is enough connection to underground potential sources for water and there is the storm drainage system from Sky View Drive which empties to the south of these wetlands that is providing additional hydrology. D. Lord saw no evidence of any transition to this area being larger or smaller based on the surrounding development. That level of impact would not occur from this type of development that surrounds the subject wetlands. Vice Chair Sacks asked if D. Lord would be able to see if more water was flowing into this area. D. Lord answered that if this area is for instance a pool that holds water at any time of the year and you were adding additional water from surface sources to this, you would see signs that the level of saturated soil conditions – the topsoil layers - would be further up the slope. These are very similar to almost identical from what they were when he originally looked at the site when it wasn't developed at all in 1999. He does not see any change occurring in this type of a system because of the tightness of the soils and the contributing surface hydrology and subsurface hydrology.

Chair Feldman asked about vernal pools and D. Lord confirmed that there is a low probability of vernal pools but they cannot be ruled out for providing some functioning. Only in the springtime is he able to definitely say yes or no. Chair Feldman recognizes this but whether it is a vernal pool, a watercourse, or a wetlands, the analysis does not change because the disturbed area is the upland review area and this plan does disturb the designated wetlands area. D. Lord agrees with that and any activity in the upland area would have no effect on these wetlands even if they do provide some level of vernal pool functioning. The surrounding uplands provide a complete lifecycle habitat and nothing that is proposed will diminish that functioning or alter it. D. Lord then referred to the Functions and Values Assessment dated January 3. He used the protocol which is accepted and preferred on State of Connecticut projects and federal Army Corps of Engineers projects. It does not generate a low, medium, high qualitative assessment of the wetland resource – it is a descriptive approach. In the report, D. Lord gives all of the evaluation criteria and his opinion whether or not those particular criteria are present or not in a particular resource area. D. Lord determined that two of the functions and values that they look for are present as primary functions but at a very low functioning level because of their size and the lack of complexity of their vegetative cover. Those are sediment toxicant removal - contaminated water from surface water sources goes into these pools and resides there and is biologically and chemically acted upon and removed from the storm water column as it passes generally through the soil into the surrounding areas. The other value is nutrient removal – similar in scope and function but it acts on any contaminates in the nutrient family that reaches the wetlands area. Because it is a bowl with no obvious outlet or inlet function, the storm water that collects there stays there and is acted upon by those processes and slowly filters into the ground. D. Lord commented that these two functions are not going to be in any way altered or adversely affected by the proposed development as they are not being directly impacted and are not even in close proximity to being impacted by the proposed access driveway.

D. Lord then continued with the Planting Plan dated January 31. The cover page of the Planting Plan is an onsite photo looking to the northwest. In the photo, you can see a building that is on the property to the west. It gives an existing character extending from the wetlands through the upland review zone and into the property to west. D. Lord explained the photo shows in the foreground a wetland delineation flag on the left and looking through the trees and the understory, a building on the lot to the west of the subject property. This gives you a view of the density of the vegetation and the character of that upland review zone that extends westerly of the delineated wetlands on the property where the access drive is going. On page 2 of the Planting Plan is a Purpose Statement which in general is to reintroduce woody shrubs and trees, and strengthen and increase the diversity and density of the existing upland review zone between the eastern edge of the proposed driveway access and the closest wetlands edge. The construction sequence is a detailed, step by step on how the vegetative work will be done. The first step is a preconstruction meeting with Town staff. We will meet on site and go over where the plantings are to occur, how the plant locations will be marked, and how the planting is to proceed once we get to that point. Then it goes through the planting, the seeding and vegetative stabilization of any bare soils associated with any of the work on the site, the notification of Town staff of the completion of the plantings, and most importantly the post completion monitoring of the plantings will be done to warrant to the Commission that what they are proposing to do there will be growing in and successfully establishing themselves in the

proposed planting area for that three year period. A three year period is a significant duration of time. The first year is the most critical year – most of the plants die off from transplant shock that can occur in the first year. Sometimes some die off in the second year. By the third year, the soil scientist is counting plant species and measuring height and width of the canopy. There is very little die off during the third year period and beyond. Page 3 of the Planting Plan is a plant materials specification – on the left column is a number for each of the three tree species and six shrub species which will be planted along the proposed access drive and extending down to the wetland area immediately adjacent to the wetland boundaries. These are native species that are either on site at the present time or will be able to grow into the particular soil conditions that are found on site. They are low maintenance and do not require any amendments after they are planted. They will grow on their own in the existing soil characteristics on site. Page 4 of the Planting Plan is an earlier rendition of the planting areas showing the location. Page 5 of the Planting Plan shows spacing and fertilization recommendations. Vegetative stabilizations have their purpose and are taken right from the Connecticut Soil Erosion and Sedimentation Handbook. There is a specification for New England Conservation Wildlife seed mix – this is a long term, no maintenance, ground stabilization and wildlife beneficial seed mix that D. Lord has used for years. It establishes very quickly and provides some diversity in groundcover vegetation during development activity. Page 6 of the Planting Plan shows mulching specifications – each of the trees and shrubs will have a 4” layer of mulch, either wood chips or bark mulch, surrounding them to control any weed encroachment. Lastly, the Maintenance and Monitoring Program – once all the plant materials are in place and D. Lord certifies that they are complete, on a schedule of 30 days, 6 months and annually for one to three years, he will go out to the site to observe that the plants are doing well and if they are not, they will be replaced on a one for one basis. An 80% threshold is generally used meaning that if you put in 10 plants, 8 of those plants must survive for three years or additional plantings will be done. There are also some additional notations that in the event any invasive species become established on this site, they will be controlled during the post completion monitoring period. Until we get native vegetation and bare soil covered with native vegetation, the potential is there for invasives and he will monitor that on a regular basis to make sure those invasives do not establish themselves.

Chair Feldman asked if the Planting Plan will enhance the existing wetlands areas. D. Lord replied that they will be significantly enhanced because of the shrubs primarily which are all berry producing. They are all generally utilized by wildlife so that function will be enhanced by the plantings. The wetlands themselves will have a much denser vegetative zone between the edge of the wetland and the areas to the west of the wetlands based on these plantings which again will be beneficial in providing a thicker protection layer to the onsite wetlands. D. Lord concluded that based on all of the studies, evaluations and assessments he had done, there is no reason to believe that there will be any adverse impact to the functions and values of these two wetlands area from the proposed driveway access that is part of the Application.

D. Whitney referenced the Planting Plan Sketch which illustrates what D. Lord was proposing in his report. The yellow line shows the upland review area. The trees and the shrubs that D. Lord proposes are also shown. The plan also shows that the existing driveway will be eliminated. The first 250 feet (shaded in green) will revert to grass and lawn similar to the existing lawn on 26 Sky View Drive. The rear portion of the existing driveway which is shown as proposed additional plantings is not discussed in D. Lord’s report but it is the owner’s intention to restore

that rear portion of the driveway to woods. He is also proposing plantings on each side of the driveway. The Applicant intends to put additional plantings between the two driveways and then on the downhill side of the new driveway but outside the upland review area, as well as the plantings within the upland review area. Chair Feldman asked if the easement area which was the originally intended location for the driveway is the shaded green area. D. Whitney replied that the easement is actually 30 feet wide but the shaded green area is the existing driveway which is about 10-12 feet wide. Chair Feldman clarified that the existing driveway is an unpaved area. D. Whitney confirmed. Chair Feldman clarified that there would be plantings on both sides of the new driveway as well as around the wetland areas. He asked if the 45 shrubs and bushes and 55 trees are just on the wetlands side of the driveway. D. Whitney replied that those are just the plantings within the upland review area. Chair Feldman asked if the dirt driveway would now revert to nature and would not be paved. D. Whitney confirmed that.

C. Hauss asked if there would only be one driveway and not the two parallel driveways that was originally proposed. D. Whitney confirmed that was correct. G. Gianini asked where any rainwater running off the bituminous concrete driveway would go. D. Whitney replied that the new driveway will be cross pitched so the water will flow towards the wetlands, which is an easterly direction. He would not want to send the water out into a Town road. It will follow the pitch of the land. The water will drain off the driveway, through the non-wetlands area in a direction towards the wetlands. G. Gianini asked if the surface was permeable. D. Whitney replied that the proposed driveway would be considered impervious if it was paved. G. Gianini asked about ecofriendly parking lots or driveways which allow for the water to percolate down and naturally get filtered. D. Whitney said that is often done on very large projects and this is a very small project in scale. About 280 feet of the driveway goes through the upland review area and assuming the driveway is 11 feet wide, which is typical, that is about 3,000 square feet of pavement which is discharging water in an easterly direction. There is about 70 feet on average between the edge of the driveway and the wetlands which results in about one-half an acre of non-wetlands soil for that water to infiltrate into the ground before it even gets to the wetlands. A significant area of upland review area is remaining. The first flush is the water quality volume based on the Connecticut DEEP – 90% of the storms annually in Connecticut are 1” or less of rainfall so that is the water quality volume that typically the State wants to see treated. If you were to spread that 1” out from the driveway onto the non-wetlands area above the two wetlands locations, the average depth of that water will be less than 1/8”. It will soak into the ground before it gets to the wetlands except perhaps for the very, very large storms though any rainfall after the first 1/2” is relatively clean runoff because the pollutants have already been washed off with the first flush.

D. Merriam introduced himself as the attorney for the owners of 26 Sky View Drive. D. Merriam stated that he had reviewed the record and the minutes. Shared driveways never seem to be a good idea and this application is to make an exclusive driveway to avoid problems in the future, such as new owners. D. Merriam stated that there is no adverse impact on the resource from this activity. The removal of the invasive species from the two wetlands areas and the planting of additional native shrubs and bushes in the area are going to enhance those wetlands. There are trees that will be removed because of the minimal grading required to flatten the driveway out but there will be a mixture of species that will be put in. The Planting Plan is a product of recent discussions to address the issue of two driveways – there will be one driveway. D. Merriam

respectfully requests that the IWC find that this is not a significant impact or activity and approve this Application as proposed with the reports submitted and the representations made, particularly by D. Lord and D. Whitney that are incorporated into the record. D. Merriam proposed a list of six conditions submitted today that he recommends to answer questions left partly open ended from the last meeting. If all three neighbors enter into this together, the present right of way easement at 26 Sky View Drive providing vehicular and utility access will be amended and partially released for its entire length so it cannot be used by the LaRosas or their successors as a driveway. There are already utilities in the ground and they will continue to have the right to maintain those and remain there. That is meant to address the concern about side by side driveways. Second, the first 250' from Sky View Drive of the present right of way easement on 26 Sky View Drive (his client's property) will be landscaped to continue the lawn in that area. Further back and as shown on the Planting Plan, there will be additional plantings of shrubs, bushes and trees to create a varied landscape. Third, after the completion of the grading of the right of way at 10 Sky View Drive, the disturbed area on both sides of the approved travel surface shall be planted. That was added after discussions that it would be better to plant on both sides. Fourth, the invasive species shall be removed. Fifth, the two wetlands areas will be enhanced by the planting of native shrubs and berry bushes. Sixth, the Town has a conservation restriction in Appendix E of the Regulations and the two wetlands areas at 10 Sky View Drive will be encumbered if the Commission finds that this is not a significant activity and approves this. The property owner will convey to the Town as represented on these proposed six additional conditions that the three property owners joined in. The conditions will be preserved in perpetuity.

Chair Feldman asked what happens if the Town does not want to accept the conveyance of the conservation restriction. D. Whitney answered that the conservation restriction is not a conservation easement. A conservation easement has to be owned by someone but a conservation restriction is a deed restriction. Chair Feldman confirmed that it is not a conveyance to the Town and D. Whitney agreed and added that it restricts the property owner from ever doing anything in that area with the exception of removing diseased trees or items like that. D. Merriam stated that the interesting thing about Connecticut is that very few states have this type of statutory restriction.

M. Beauchamp, G. Gianini, C. Hauss and J. Usich had no questions. Vice Chair Sacks asked what kinds of disturbances will occur to maintain the utilities under the ground in the area. J. LaRosa answered that the only time you'd have to access the utility easement is if there is a breakage in the utility. There are multiple conduits coming from the road to the transformer, to the cable TV and to the telephone boxes. The only time they would have to go into that easement is if there was major breakage. It is rare that that would happen.

Chair Feldman complimented the Commission for raising important issues at the last meeting and the Applicant has done a good job of answering those concerns. Chair Feldman agrees that D. Lord's Planting Plan seems to enhance the wetlands. He believes that the Town Regulations do not give the Commission the authority to reject an application without some showing that the disturbance is going to have a direct, physical impact on the wetlands. It seems that the Application is in order particularly with D. Merriam's conditions and D. Lord's Planting Plan.

Vice Chair Sacks made a motion to approve Application #774 with the conditions enumerated. C. Hauss seconded the motion. The Application passed unanimously.

II. NEW APPLICATION:

APPL. #775 – Town of Avon, Owner/Applicant; request for regulated activities within the 100 foot upland review area: construction of an addition to Building 2 of the Town Hall complex with associated site work. Location: 60 West Main Street, Parcel 4540060.

E. Kyle stated that she prepared the Application and the Site Walk Map. Matt Brown of Engineering is present and prepared the Site Plan and Nick Hogan of the Town Clerk's office is present. The Town Clerk's office which is in Building 2 needs an expansion to its vault. N. Hogan stated that Connecticut General Statutes Section 7-27 requires all municipal records to be kept in fire resistant vaults or safes. This includes land records, vital statistics, veteran's information, election history, meeting minutes for the Town Council and Board of Finance. Avon also keeps the Grand List there and the space is shared with the Tax office which is required to keep records there as well. The vault is currently 400 square feet which according to the State is the size for a population of 2,000-5,000 people. Avon has 19,795 people which calls for at least a 1,000 square foot vault. On July 20, 2004, the Town was cited by the Public Records Administrator because the vault did not conform to the State's published guidelines. The Town has run out of space in the vault and exhausted all it can do to maximize the space including moving shelves closer together, using grant money to combine the old larger books into two smaller books, and having books on the tables. The Public Records Administrator could cite the Town for this and mandate a timeframe for us to do an expansion. The expansion is imminently necessary.

E. Kyle showed the Site Walk Map with the necessary activities to compile this Site Plan shown in purple. The most pertinent is activity 3, the actual addition to Building 2 which is 25' by 28' to allow the Town Clerk's office enough room to manage their files under State Statute guidelines. Also involved in this project is activity 1, which is to remove 1153 square feet of bituminous walkway. In removing that bituminous walkway area, the Town has proposed reworking this sidewalk (activity 4) which is the construction of a 5' wide concrete walk along with light bollards, and to remove the existing concrete walkway that would go through the addition (activity 2). Some of these areas of disturbance are close to Nod Brook – the closest point of disturbance as part of activity 1 which is highlighted as 12' away. The addition is 46' away. The removal area is the closest spot but it is necessary in order to accomplish this project. Eric Davison, the Soil Scientist that prepared the report, pointed out that the delineation was fairly straight forward. The boundaries of the regulated area are the ordinary high water mark because it is a channelized brook with a long history of alterations. He pointed out one location mentioned in his report which is on the north side (the opposite side of where the work is being proposed) where he observed some actual wetlands soils. The remainder of the regulated boundary is the ordinary high water mark which is his interpretation of the peak flow limit up the banks of the brook. There are no wetlands soils surrounding the brook. E. Kyle stated this is a regular application similar to the recent application where the Police Department requested an addition with other various site work including the addition of a parking lot. The proximity to the brook is the concern. Staff wants to make sure the Commission is fully comfortable with what

the Town is proposing to do. E. Kyle felt the best way to proceed was to present this to the Commission, as has occurred in previous years.

Chair Feldman stated that the Town needs to do this. Vice Chair Sacks commented that with the addition to the building, the kind of transformation occurring in the soil is not too substantial because we are switching from pavement to a building which doesn't have strong consequences like runoff of water. M. Brown agreed and stated that there is actually a reduction of impervious coverage – 160 square feet reduction. Chair Feldman asked whether the only wetlands issue here is Nod Brook. E. Kyle agreed. Chair Feldman asked if that section of Nod Brook has artificial banks. M. Brown stated that at the closest point that E. Kyle pointed out, it is an eroded bank, a channelized bank that is all soil.

M. Beauchamp commented that the Town facilities were a hodgepodge and asked if this was a temporary fix or will the Town think bigger by building a totally new Town Hall where everyone could be in one facility. The current buildings were not designed as a Town Hall. Staff were not aware of any intent to build a new Town Hall. E. Kyle has not proposed any conditions for construction except normal erosion control. M. Brown believes the construction will be started in June. N. Hogan believes it is July 1.

J. Usich made a motion to approve Application #775. The motion was seconded by G. Gianini. The motion passed unanimously.

III. COMMUNICATIONS FROM THE PUBLIC: None.

IV. OTHER BUSINESS:

D. Whitney began the informal discussion regarding certain lots owned by the Silvio Brighenti Family LLC. Jeff Brighenti is present. D. Whitney has two goals for this discussion: to introduce the project to the Commission and then to ascertain the process to bring forth an application. The Bridgewater Subdivision is a large subdivision off Lovely Street on the west side of Town and was developed starting in the early 2000s. It was done in sections and phases; most of the lots have been built out but there are still some remaining vacant lots. At the time the subdivision was approved, the upland review area was 40' and in 2007 the upland review area was changed to 100'. There are six lots in the Bridgewater Subdivision that have varying amounts of wetlands on them. The change from 40' to 100' impacted these lots considerably. There was a meeting a while back with J. Brighenti and Town officials and it was decided that these six lots needed to come back for re-approval. The six lots are shown on Sheet 1 of the Site Plan highlighted in yellow: two lots on Stockbridge Drive, three lots on Northington Drive, and one lot on Saddle Ridge Drive. Sheet 2 and the next two sheets are the feasibility site plans that were prepared at the time of the Subdivision. For each Subdivision, the developer needs to show how the lots could be developed in accordance with the Regulations. 31 Stockbridge Drive demonstrates what the situation is: there is a small area of wetlands on the front right corner shaded in green about 570 square feet. The green line with the 40' dimension indicates the original upland review area at the time of approval. One-half of the 40' upland review area is shaded with dots (also on the adjacent lot) which represents the existing conservation easement that was put in place at the time of approval. The easement is in place now and is not supposed to be changed. The red

shaded area shows the upland review area was increased to 100' in 2007 so that now encompasses a much greater portion of all six of these lots. For this particular lot, the original upland review area encumbered about 12% of the lot and now the 100' upland review area encumbers about 44% of the lot. The question is how can these lots be developed with the new Regulations. The new application will have to address the 100' upland review area. This lot is unique among the six lots because there is some flexibility – the proposed house can be moved back, maybe outside the 100' upland review area. The rear of this lot rises up so there will be some excavation involved and there is no way to build on this lot without some activity within the upland review area. The driveway will remain on the left and they will do their best to try to reduce the amount of activities in the 100' upland review area. Unfortunately, that is not the case for the other lots. 49 Stockbridge Drive has a finger of wetlands that is about 4400 square feet that comes onto the rear of the lot. When the upland review area was 40' (which is the green line), the original engineer was able to keep the proposed house and driveway outside the 40' upland review area. Now it is impossible on this lot to move the house and the driveway around and to be able to revise the site layout and keep the house outside of the upland review area. The applicant needs to come back in and request re-approval of the house within the upland review area discussing the functions and values of the wetlands and the impact if any of the development to the wetlands. Sheet 3 shows three lots on Northington Drive. On 250 Northington Drive, there is a tip of wetlands about 208 square feet of actual wetlands on this property and the original 40' upland review area encumbered about 12% of this lot. Now with the greater upland review area, 61-1/2% of this lot is encumbered. On 256 Northington Drive, the amount of the lot encumbered by the upland review area goes from 25% to 61.6%. The driveways will be out of the new upland review area but it is impossible on these lots to build the houses and stay outside of the 100' upland review area. There is no ability on these two lots like the last one to move things around to be outside of the upland review area. On 274 Stockbridge Drive, there is a similar situation – originally the house was outside the upland review area but now there is no ability to move it. The sixth lot, 7 Saddle Ridge Drive, has a small tip of wetlands consisting of about 800 square feet but with the new upland review area, it encumbers about 56% of the lot. This is the largest of the six lots but due to the configuration of the lot, you cannot move the house anywhere and stay outside of the 100' upland review area. That introduces the project and explains why the lots have to come up for re-approval. The lots were approved in 2004 and the wetlands permits have expired. There was a meeting with John McCahill (former Town staff), E. Kyle, and J. Brighenti to discuss this in the fall. D. Whitney was trying to see if there is a way to expedite this approval process – these lots were all approved by this Commission and unlike the last application where the Applicant was proposing activities closer to the wetlands than originally proposed, none of these lots would involve activities closer to the wetlands. Nothing has changed with how these lots would be developed with the exception that the regulatory line has moved farther out and now encompasses more of the lot. D. Whitney asked how to go about getting these lots reapproved, what he has to do, if he has to follow the same standard practice where the wetlands are flagged, he draws maps, the soil scientist prepares a values and functions impact report, and go through the approval process. Does the Commission want site walk maps and do the wetlands need to be flagged, or can he just submit maps using the same information from the time of original approval? This is an informal discussion and D. Whitney understands that nothing is binding on the applicant or the Commission for this discussion tonight.

Chair Feldman asked about the anticipated timing for this application. D. Whitney replied as soon as possible. He will be doing what needs to be done in the field and drawing up the plans in the next 1-3 months. It will be springtime and it will be the perfect time to look at wetlands. It is the intention to move forward after this conversation. Chair Feldman stated that the original permits are long since expired so aren't they really just starting from scratch? What is the alternative if permits have expired? The applicant may use some of the old information but the Commission needs to see the same kind of presentation as if this was an original application. D. Whitney would like to confirm this. Chair Feldman stated that there is no alternative. D. Whitney stated that this is not raw land and these are not new lots and none of the proposed activities are going to be any closer to the wetlands than previously approved. D. Whitney asked if they needed to go through the whole process of a site walk map and a visit to the site or whether he could submit new maps and have the soil scientist discuss the functions and values of the wetlands.

Vice Chair Sacks stated that he was not involved in the prior approval when it was 40' and he does not know how this differs from anything else the Commission sees. He favors going through the process exactly as it would be for any of the other proposals. He would like a site map, he would like to look at each one, study it carefully, and start from zero. He wants to fully investigate the impacts and the characteristics of the entire location.

Chair Feldman asked if there would be one application for all six lots or one lot at a time with six applications. D. Whitney replied that it would be more efficient to do one application. Chair Feldman asked that given that this would be a large scale application, would it be appropriate to have a public hearing for this. D. Whitney answered that you have to evaluate what the functions of the wetlands on each lot are and if there would be a significant impact. On some of these lots, there is a very small amount of wetlands but ultimately, it would be up to this Commission. E. Kyle referred to Section 9.1 which discusses the three routes to get to a public hearing process. The first is that the agency determines that the proposed activity may have a significant impact on wetlands or watercourses and if the Commission has questions about significant impact activity. The second route to a public hearing is via a 25 person signed petition – that is not initiated by the Commission, but by the public. Number three is a little more vague – the agency finds that a public hearing regarding such application would be in the public interest. Those are the three routes to a public hearing, two of which are determined by the Commission – one of which requires a significant impact activity determination which has its own series of regulatory processes as well. Chair Feldman stated that the third criteria is very subjective and discretionary. If the Commission feels that the public should be notified, the Commission should do it. He is not sure what kind of precedence and guidance the Commission would have. This is six lots which is different than the earlier application today with a single driveway or last month with a shed - this seems to have some public ramifications. E. Kyle stated that she has seen other wetlands commissions look at attendance at these applications. If there is a lot of public attendance, a Commission may assume there is a large public interest. The alternative to that is just a subjective determination. The Commission does have the authority to make a determination. J. Usich stated that there was no member of the public at this meeting so he does not feel that it is that significant to the Avon public. He stated that this is a well-established neighborhood and he is not sure that this would be controversial at all.

C. Hauss would like to go through the whole, typical application process. Vice Chair Sacks believes that the potential cumulative effect of this much construction on that much land would trigger public interest. Chair Feldman stated that the Commission can address this once they see the application. Chair Feldman asked that given this would be a significant type of application would the Town want to consider retaining or appointing an independent consultant soil scientist? E. Kyle stated that typically no unless the Commission found some difficulties with the soil report submitted with the application. If there were no concerns about the soil conclusions submitted, then the Commission would typically not initiate that conversation and it would be something that the applicant would have to agree to because it is paid for by the applicant. Chair Feldman stated that D. Whitney mentioned a few times that the Regulations were changed from 40' to 100' for the upland review area. Chair Feldman believes that is not really relevant to the Commission's consideration – the Regulations are what they are now. D. Whitney agreed but he stated that he mentioned it primarily to explain why they had to come back before the Commission for these lots. J. Brighenti could still sell these lots now – they are approved building lots by Planning and Zoning. That status does not go away but anyone who wants to build on these lots would have to come to this Wetlands Commission to ask for permission because there is minimal room to build outside of the 100' upland review area. J. Brighenti does not feel that the lots can be sold unless there is an assurance that they can be built on. The difference between these lots and other lots is that these lots have already gone through the process before. The wetlands have been evaluated and the impact to the wetlands has been evaluated. D. Whitney does not see how anything would change in that regard though that is up to the soil scientist to decide. D. Whitney does not know if the wetlands have gotten more valuable and therefore that would change the outcome. He believes that the wetlands functions have probably remained the same (D. Lord talked about that tonight) so the applicant will not be coming in and asking for anything more than was already approved in 2004. D. Whitney understands that he has to follow the same process very strictly like every application.

M. Beauchamp may have been on the Commission for the original approval but he feels that we now have a new Commission and it is very important that everyone starts out clean. He would like a new application for each lot. He does not want to combine these lots into one application – he believes it is too much to combine. It is too bad the lots were not sold back in 2004 but we now have to start from scratch. G. Gianini agrees with M. Beauchamp. Vice Chair Sacks stated that there is a reason why the 100' was adopted – there was a change in appreciation of the areas that have to be examined. If you were approved at 40' but it was changed to 100', it is not that nothing has changed. There is a new appreciation and new considerations that we now know and we have to be more sensitive to the environmental consequences beyond an area of 40' and we have to examine that closely. The situation has changed appreciably and there is a lot more to look at and a lot more considerations to be made. We have to fully explore these cases.

D. Whitney asked if the Commission wants to see six different applications. It makes sense in his mind to do all six lots at the same time – perhaps like a six lot subdivision. He believes that is the more efficient way to do this. He asked if there was an objection to proceed in that way. Chair Feldman would not object. M. Beauchamp would object because of the fact that there is a big change from 40' to 100'. It is a lot of work for this Commission to do one application – he would feel more comfortable to breaking it up. Vice Chair Sacks agrees that getting this many lots all at once would be difficult unless he had more time to consider it. He agrees with M. Beauchamp's

point. D. Whitney stated that to have six public hearings or to have an expert come to a meeting six times would be a lot more expense and it is more efficient to do it all at once. That would be the applicant's preference unless there was some strong opposition. Chair Feldman agrees that there is an economy of scale – saving money for the applicant and saving time for the Commission. But it would be nice if the Commission did all six at once to have more lead time to prepare for the hearing. D. Whitney would comply with all the requirements, the Commission has very specific application requirements prior to the meeting, and there is a very specific time period spelled out in the statutes. He believes that it provides for an adequate amount of time. Chair Feldman felt that the Commission needs more time than the minimum allowed by statute if they consider six lots at one time. E. Kyle suggested that if the Commission received one application, it could be timed so that it is received and immediately continued to another month so that the Commission has a whole month to review it. It puts a tighter strain on the applicant for the ultimate statutory time towards the deadline but there are extensions available. That is an option to appeal to everyone – the applicant gets everything submitted at once but it gives the Commission a longer time to properly review it. Chair Feldman liked that plan.

V. STAFF COMMENTS:

E. Kyle indicated that next month we will modify the Staff Comments section to allow for Staff comments and Commissioner comments. The Commission will have an opportunity to talk about items that are not application items if there are points of concern.

VI. APPROVAL OF MINUTES:

Chair Feldman asked if there was motion to approve the minutes of January 11, 2022. Vice Chair Sacks made a motion to approve the minutes. G. Gianini seconded the motion. The minutes were approved unanimously.

VII. NEXT REGULARLY SCHEDULED MEETING:

The next regularly scheduled meeting is Tuesday, March 1, 2022.

M. Beauchamp made a motion to adjourn. Vice Chair Sacks voted to second the motion. The motion passed unanimously.

There being no further business, the meeting adjourned at 9:05 p.m.

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