

THE INLAND WETLANDS COMMISSION OF THE TOWN OF AVON HELD A VIRTUAL REGULAR MEETING ON TUESDAY, April 5, 2022, AT 7:00 P.M., VIA GOTOMEETING: by web, <https://global.gotomeeting.com/join/688189157>; or by phone, United States: [+1 \(866\) 899-4679](tel:+18668994679), Access Code: [688189157#](https://global.gotomeeting.com/join/688189157).

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

Chair Feldman called the meeting to order at 7:00 p.m. There is a quorum of 6 Commissioners.

I. PENDING APPLICATION:

**APPL. #776** – Douglas DiVesta, PE, Applicant, Brandon and Chelsea Olson, Owners; request for regulated activities within the 100 foot upland review area: construction of house, driveway, pool and retaining wall and related grading and site work, and construction of storm water management system. Location: 381 Northington Drive, Parcel 4910381.

Douglas DiVesta, civil engineer represents the Owners, together with Jim McManus, soil scientist with JJM Wetland Consulting Services in Newtown, CT. At the last IWC meeting on March 1, 2022, the discussions about the application included locating the wetlands line, adding a pool patch on the patio along with drains, and providing a wetlands buffer. The revised plan now includes a patio area and a channel drain around the pool. They will be connected to the roof leaders which will connect to the drainage system in the north end or the south end. Matt Popp, landscape architect that was at the last meeting, provided buffer plantings on the north end and the south end of the retaining wall with sunken boulders as a demarcation line. J. McManus verified that the wetlands line is substantially correct and provided a written report. D. DiVesta worked with E. Kyle and came up with nine conditions of approval. He believes that they have addressed all the comments of the IWC from the last meeting.

M. Beauchamp asked how far the proposed house location is from the wetlands area. D. DiVesta replied that it was between 70' - 75' from the house to the closest point of the wetlands and approximately 40' from the pool to the wetlands. M. Beauchamp asked if there was any alternate site for the pool and the location of the home. D. DiVesta answered that at the last meeting moving the house forward was talked about but it was restricted by the building line setback which would require a zoning variance and given that it is new construction, it would be unlikely to get approval to move the house closer to the road than it is. M. Beauchamp asked if the garage could be switched to the other side. D. DiVesta replied that it is steeper on the north side than the south side. They also have a retaining wall that is going to limit any further encroachment towards the wetlands area. The location of the house is very similar to what was approved last year for Toll Brothers.

R. Breckinridge had no questions. Vice Chair Sacks asked 1) when the wetlands boundary was delineated previously, 2) what does back surveying entail, and 3) what does substantially correct mean especially given that the wall at one point is within 23' of the wetlands. D. DiVesta does not know the exact date of the wetlands delineation but it was probably when the subdivision

was approved. Back survey means that D. DiVesta and the surveyor located the flags from previous years and if a flag was missing, they replaced it. The surveyor field located the survey points for the flags so he put them “back” to where they were relative to the original approval and flagging of the wetlands. J. McManus said that the original boundary was refreshed and new flags were hung showing where the soil scientist delineated the boundary previously. When he is saying “substantially correct” he means that he did not see any problem with the line, he did not see any additional wetlands, and he didn’t see that any corrections are necessary. Vice Chair Sacks asked if the original flagging was in 2007 because that is when the subdivision was originally laid out. E. Kyle believes that for the 2021 IWC approval, the wetlands were re-verified at that time. Vice Chair Sacks asked if samples are taken by going down and seeing what the soil is beneath. J. McManus replied that is exactly what they do. He verifies where the previous delineation was marked and he did not see any areas that needed a correction. Vice Chair Sacks asked about the trimming of the tree overhanging the pool because he is concerned that the pool is very close to the wetlands and the conservation area. E. Kyle suggested number 5 on the conditions of approval in her staff report be written as tree canopy over the pool area is only allowed to be trimmed and no trees can be removed. Contractors will also meet with staff for pre-construction meetings where they review all conditions. Vice Chair Sacks is concerned that the leaf cover which is falling into the wetlands has some significance. It is blocking the light which would dry out the wetlands and promote invasive species. He also feels that the roots of the trees going underneath the ground and feeding into a wetland are very important for promoting the growth of plants in that zone. He is concerned that may encourage people to use an excessive amount of insecticide and that a pool is inviting the kind of changes and transformations that appear very threatening to that wetland. G. Gianini stated that in some towns they address the issue of falling leaves by requiring for so many months out of the year that the pool is covered. Vice Chair Sacks asked that once the pool is in place, how can we be certain that the people will adhere to the regulations. He asked how often staff goes back to the site to look at what is constructed. E. Kyle explained that inspections are conducted regularly to ongoing construction activities, which is when potential damage to the wetlands is most likely to occur. Erosion control is regularly inspected as well. Completed projects that are fully stabilized typically do not pose much threat to wetlands.

M. Beauchamp asked where the trees are located and what the diameter is. D. DiVesta stated that the trees are below the retaining wall. J. McManus answered that most are between 8-12” in diameter and it is definitely a canopy forest. M. Beauchamp asked how far down you have to go to put this pool in. D. DiVesta stated that there are no trees in the pool area now so there would be no tree cutting – it has already been done. He continued that in this area near the retaining wall they are filling the area and not digging down into original soils. The pool will go into the fill area. M. Beauchamp is concerned whether you will destroy any trees’ roots. D. DiVesta stated that the retaining wall construction could damage some trees’ roots. M. Beauchamp continued that if you affect some of the trees’ roots, then over time those trees may die and you will affect some of the wetlands. J. McManus stated that it would not affect those wetlands because you have an entire forest behind the retaining wall. D. DiVesta added that when you are talking about trees blowing into the pool you are talking about fall and usually the pools are closed up by Labor Day. J. McManus stated that you will get leaves in the pool from not just the wetlands, but also from the upland review area and even neighbors. Also if you actually remove vegetation from a wetlands and get sunlight in, you don’t dry it up – it actually gets wetter

because for example, a red maple swamp can actually drop the water table 10' during the summertime.

Vice Chair Sacks asked about the impact on invasive species by removing the trees and letting light in. J. McManus stated that it is an issue on every site in Connecticut. Vice Chair Sacks stated that there are substantial trees there that would be affected by the retaining wall by cutting through the trees' roots. Also the leaf drop is not only in the fall but other times of each season.

C. Hauss is concerned that there is only 40' between the pool and the wetland and she asked if the IWC had ever approved a pool this close to the wetlands. R. Breckinridge stated that they had approved a number of different projects and structures well within that distance. He continued that other than overflow, a pool is a structure like any structure, and he believes they have done something to mediate that concern. He said that this is something the IWC deals with all the time in terms of allowing construction to occur inside the 100' foot upland review zone which is done routinely. C. Hauss stated that her concern is the overflow and also many of the issues that Vice Chair Sacks has raised. R. Breckinridge stated that on a number of projects tree cutting in the wetlands zone is allowed because there is not any other option. He believes that you need to look for whether it will have a catastrophic effect on the wetlands or is it going to be a relatively minor effect. Also the IWC tends to want to protect certain types of wetlands. This site is a wetland primarily based on soil type but there does not appear to be any standing water there, nor is there a brook or a stream. In this neighborhood, you would see other pools that are close to the wetlands area and throughout Avon there are swimming pools that are within that 100' distance.

G. Gianini stated that there are some things the applicant can do to mitigate. In terms of the overflow, having a cover does help if you know when a massive storm is coming. And having a pool not filled up to the edge but about 5-6" below the edge of the pool also helps. He is looking to E. Kyle and the more seasoned people on the IWC.

Chair Feldman asked D. DiVesta and J. McManus if they could comment generally on the effect of pools of this nature on wetlands and upland review areas. J. McManus replied that the IWC's job is to review a project to see if it has a direct significant adverse impact to wetlands. This project does not. Avon has a lot of pools and some of those are right on top of those wetland boundaries, especially older ones, and this does not meet the concern that some of the Commissioners are raising. This is a wooded swamp which are very common in Avon and in Connecticut. The houses around this site and especially the neighbor to the south are right on top of the wetlands. The concern to him is unwarranted in this situation – we do have a vegetated buffer so while a tree could be damaged during construction, there are plenty of trees behind it. This wetland itself is not sensitive to nutrients. He describes a wetland as the liver and kidneys of the Earth – they are really large sumps and they take the runoff from the uplands to clean it so by the time it hits our lakes, rivers, ponds, and oceans, it is back to background levels if you will. It keeps our water quality, our drinking water, our oceans, ponds, lakes and rivers functioning as they should be. The wetlands here function as a discharge/recharge area and they suck up nutrients and runoff and utilize those into the soils and into the plants. This wetland will function the same pre- and post-development. Chair Feldman asked for confirmation that if they are careful, this pool is not going to have any effect on the wetlands. J. McManus confirmed that it should not. D. DiVesta added that with the grading on the property, the runoff goes across the

lawn area into the buffer area where you'll get some pretreatment and then it will run down through the conservation easement into the wetlands. So they are protecting the wetlands in terms of runoff from the site, as well as the retaining wall so you do not get any "creeping" – the retaining wall will act as a demarcation line to keep any human activity to the east of that and not to the west. Therefore D. DiVesta does not see any kind of adverse effects to the wetlands relative to the proposed site plan. E. Kyle confirmed that the cutting of trees in the conservation easement is prohibited regardless of this proposal. The retaining wall is actually very helpful because it is a demarcation that separates the space visually and physically because of the grade change. J. McManus added that the conservation easement will be in the homeowner's deed to the property. Chair Feldman asked if the boundary of the conservation easement is approximately the retaining wall. D. DiVesta answered that yes - the easement is only a few feet off the face of the retaining wall. J. McManus added that the stone wall is going to be a demarcation between developable land and land that should be left alone.

Chair Feldman believes that the concerns that the IWC raised last time have been reasonably addressed but he'd like number 5 of the conditions regarding the tree canopy to be more specific. The intent was to make sure the homeowners knew that the surrounding trees could not be removed, but only trimmed. E. Kyle suggested that it could be a condition that an arborist flag the trees in the conservation easement that are proposed to be trimmed and then verified by staff prior to a Certificate of Occupancy ("CO"). Proposed language for the condition could read that trees located in the conservation easement with overhangs to the pool are to be marked in the field pre-construction by an arborist verified by staff and exclusively trimmed and verified prior to the issuance of a CO. Chair Feldman asked if you could even trim trees in a conservation easement and E. Kyle replied that you could trim them if the branches hang over or a part of a tree falls onto your property. Chair Feldman believes that the fact that we have a conservation easement here gives an added layer of insurance and protection to the wetlands.

G. Gianini made a motion to approve Application #776 with the nine conditions proposed by staff. R. Breckinridge seconded. Commissioners Feldman, Beauchamp, Breckinridge, Gianini and Hauss voted in favor. Vice Chair Sacks opposed. The Motion passed.

II. COMMUNICATIONS FROM THE PUBLIC: None.

III. STAFF AND COMMISSIONER COMMENTS:

E. Kyle would like to try to schedule the second half of training with our Town Attorney, Kari Olson. After discussion, the possible dates and times are Tuesday, April 19, at 7:15 or Tuesday, April 26, at 7:00. Staff will let the Commissioners know.

G. Gianini talked about some standard conditions of approval for swimming pools from Westport, CT. He feels this would be helpful in Avon so an applicant be on notice. E. Kyle noted that this is not from Westport's Inland Wetlands Commission but from their Conservation Commission which is a non-regulatory board. It is unclear if either their IWC or Planning and Zoning Commission have adopted these conditions and if not, these are just suggestions by the Conservation Commission that they would like to see. This was also shared with K. Olson. Chair Feldman noted that this mentions a coastal flood hazard area so that may differentiate Westport

from us. He would like to address this with K. Olson at the next training session and get some input whether it's appropriate for our IWC to adopt standard conditions in the future.

Vice Chair Sacks asked whether a 20' exclusion zone for construction is in place. R. Breckinridge believes that may be informal as he has seen one or two applications where construction was closer than 20' and he stated that there have been projects that being inside that distance had no effect on the wetlands or the watercourses. He believes that we would need more information from a soil scientist or expert opinion on that. Chair Feldman commented that we are generally dealing with things on a case by case basis so it is difficult to have hard and fast rules that are applicable to everything. He would like E. Kyle to reach out to the DEEP to see if they have a more authoritative answer to that and whether there is any distance that would be an absolute cutoff for development from wetlands. R. Breckinridge would like to review wetlands regulations in some of our neighboring towns. Conditions may be different outside the Farmington Valley but it may be worth reviewing Simsbury's regulations (or Farmington's or Canton's) to see if there's something we'd like to add to ours. He continued that it is a balance between what the regulations say v. property owners' rights. Chair Feldman would like to look at some issues such as the ability to fine people who violate the regulations (which is permissible under the State Enabling Statute) or extending the upland review area beyond 100'. Vice Chair Sacks agreed and would also like to look at regulations in neighboring towns. E. Kyle stated that most towns' regulations like Canton and Avon are based off of the DEEP model regulations so most of these regulations are very similar. That is intentional because wetlands law is very specific statutorily. R. Breckinridge would like to involve K. Olson because she may know whether you can add a new regulation or if the State has mandated certain ones. Chair Feldman added that whatever discretion the IWC has to amend or add regulations is going to be limited and governed by state law to begin with and if the IWC were to adopt changes and amendments to the regulations, we have to submit them to DEEP for approval. He continued that we should look at the State's model regulations and compare them to Avon.

#### IV. APPROVAL OF MINUTES:

Chair Feldman asked if there was a motion to approve the minutes of March 1, 2022. Vice Chair Sacks made a motion to approve the minutes. C. Hauss seconded the motion. The minutes were approved unanimously.

#### V. NEXT REGULARLY SCHEDULED MEETING:

The next regularly scheduled meeting is Tuesday, May 3, 2022.

M. Beauchamp made a motion to adjourn. R. Breckinridge voted to second the motion. The motion passed unanimously.

There being no further business, the meeting adjourned at 8:15 p.m.

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