

THE INLAND WETLANDS COMMISSION OF THE TOWN OF AVON HELD A VIRTUAL REGULAR MEETING ON TUESDAY, NOVEMBER 1, 2022, AT 7:00 P.M., VIA GO TO MEETING: by web <https://global.gotomeeting.com/join/205285141>; or by phone, United States: +1 (646) 749-3129, Access Code: [205285141#](https://global.gotomeeting.com/join/205285141).

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 7:00 p.m. There is a quorum of 6 Commissioners.

I. PENDING APPLICATION:

**APPL. #784** – Brenda J. Sullivan, Trustee, Owner and Applicant; request for regulated activities within the 100 foot upland review area: construction of house, driveway, utilities, and related site work. Location: 34 Terrace Drive, Parcel 4310034.

David Whitney, Engineer, said that this was a two lot subdivision of 5 acres on Terrace Drive. In 2007, the previous owner, Peter Puchalski, subdivided the parcel and took down the old house on the property and the garage which was in disrepair. The owner also proposed a common driveway for the 2 lots which was required to be 12' wide. This plan was approved by the IWC and the Planning and Zoning Commission. At that time the wetlands were delineated by a soil scientist. There was a section of wetlands on Lot 1, 32 Terrace Drive, and a smaller section of wetlands on Lot 2, 34 Terrace Drive. These wetlands were bifurcated by the existing driveway. That Application #680 was submitted to the IWC in 2007 after the upland review area had been increased from 40' to 100', unlike other applications which were approved before the upland review area increased. Part of the approval included cleaning up the garbage dumping and miscellaneous debris on the property and reseeding and restoring the ground. Also, P. Puchalski agreed to place a conservation restriction on the property as part of the subdivision approval which was never done. One of the items that E. Kyle has suggested in her Staff memo is that this conservation restriction be formally filed on the Land Records. P. Puchalski subsequently decided to build a house for himself on 32 Terrace Drive and he did not want to share a driveway. He decided to move the access way for 34 Terrace Drive to the cul-de-sac at the end of Toll Gate Lane. Chair Feldman asked if the house on 32 Terrace Drive was built and D. Whitney confirmed that it was and P. Puchalski currently lives there. D. Whitney said that one of the benefits of two driveways is that they would only have to be 10' wide and he could reduce the amount of fill required to build the driveway. There is also a small culvert with a 15" pipe that is inadequate in size. Part of the original subdivision application was to install two larger culverts in addition to widening the driveway and providing proper side slopes and shoulders on the driveway. The original application had some fill on either side of the driveway and he was able to reduce this by 2' on each side because of shrinking the driveway to 10' and therefore reduce the impact on the wetlands. The original plan had a portion of the driveway, a portion of the house, and some grading in the upland review area. P. Puchalski wanted a decent amount of backyard for Lot 2 and buffer from the house on Lot 1. In 2007, the IWC felt the driveway could act as a dam for stormwater runoff so D. Whitney put a small culvert there. The IWC questioned

if there were any wetlands or a watercourse at this location so George Logan, Soil Scientist at REMA Ecological Services, generated the report of October 2, 2007 which was also submitted with the current Application. G. Logan concluded that there was no wetlands or watercourse there so the driveway here is the only activity in the upland review area, but it is not in the wetlands. D. Whitney referred to the site plan submitted with the current Application dated September 17, 2022 which shows that everything on this plan including the proposed driveway, the house footprint, the grading and the activity within the upland review area is exactly the same as the plan approved in 2007. There will be a pump chamber behind the house for sewage and it will have a force main that will go along the existing driveway and tie into a manhole at the end of Terrace Drive. The water line will also come in from Terrace Drive – exactly the same as the two previously approved plans which is the most cost effective way to bring utilities to the site. The activity within the upland review area is the same as the original plan. He has shown a little additional grading to provide a flat backyard area but that is outside the 100 foot upland review area. There is no watercourse but he felt it was prudent when you have an area sloping down that discharges stormwater runoff to provide a culvert. The closest point of disturbance is about 40' from an intermittent watercourse. D. Whitney visited the site last week after a day and a half of rain and the site was bone dry. Water flows through it but it is not a perennial brook. G. Logan's report said there are no wetlands where our proposed driveway is located, said the impact to the wetlands would be reduced by reducing the width of the common driveway, and in his professional opinion, the proposed moderation will have lower intensity impacts on the regulated resources than the already permitted combined driveway. He has also determined through field investigations that the driveway will not be crossing any regulated resources. The original permit and the modified permit were approved in 2007 and the Applicant who purchased the property from P. Puchalski was not aware that wetland permits had to be renewed. D. Whitney referred to the IWC Meeting Minutes from April 26, 2022 when Kari Olson, Attorney for the Town of Avon, said that all permits shall be renewed upon request absent a finding of a substantial change in circumstances. K. Olson also reiterated that if somebody has made an application to the IWC that has been approved or denied, and there was no substantial change to what is now coming before the IWC, there is not sufficient grounds for the IWC to change that decision. D. Whitney said he is seeking reapproval of the exact same plan that was previously approved.

Chair Feldman said that this is not actually a renewal which would be asking for something before it expires. D. Whitney said that this is an approved building lot of record and the Applicant is asking for exactly what was approved before and there has been no change in circumstances. This is different from the Bridgewater lots where the upland review area was increased to 100'.

C. Hauss asked about the Aquifer Protection Area map. D. Whitney said that it is part of the Avon Town Regulations that when a property is in the aquifer protection area that the Applicant has to notify the relevant water company. C. Hauss asked about what types of protections the water company is concerned with. D. Whitney said that when there are commercial buildings the water company is concerned about chemicals, solvents and other items that could pollute the water table. The water company is less concerned about single family residential housing though the water company can offer recommendations if they feel that it is necessary. C. Hauss asked if the water company raised any issues. D. Whitney said that the water company has not responded (they usually do not). C. Hauss understands that this is the preferred location for the house based

on aesthetics but asked if the house be moved further out of the upland review area. D. Whitney said that it is possible – the idea is to find a balance as whoever builds here would like a backyard. C. Hauss asked the same question about the utilities. D. Whitney said that the public sewer is farther down Toll Gate Lane so it would be more expensive to connect sewer to Toll Gate Lane. The utility line is a 1" water line and a 1-1/4" sewer force main so these are not big pipes and there is an existing shoulder in the driveway now where the existing utility lines for the house in back connect. He feels that it makes sense to follow the original utility plan. C. Hauss is concerned that the 2007 soil report does not include some of the things that are now required by the IWC and there is now a house on the property and fill in the wetlands. C. Hauss said the peripheral changes that happened around this property could have an impact and there may be something that is different from 15 years ago. She would feel more comfortable if she had a current and more thorough soil survey. D. Whitney said that he is trying not to have the Applicant spend more money than necessary. The wetlands here do not exhibit many functions and values of wetlands. It is a burden on the property owner here to spend more money – there is no vernal pool, the soil is fairly sandy, after a heavy rain there was no water flow, the wetlands are just a small narrow band, the Applicant is not doing anything different than was approved before, and there is a soil report by a soil scientist.

M. Beauchamp said he walked the site and has a couple of concerns. There seems to be a drop off from the proposed house site to the intermittent watercourse. D. Whitney said that the property does slope down. M. Beauchamp said that there was a severe slope when you reach the wetlands. D. Whitney said there is a drop of about 4-5' where the contour lines are very close together on the map. From the corner of the house down to the wetlands is 10'. M. Beauchamp said that if the house has a side yard, you could get runoff into the wetlands. D. Whitney said that the entire site drains to the wetlands. First, M. Beauchamp would like to see some mitigation of the runoff. Second, he thinks the proposed house can be moved more to the right in the map which would get the house away from the water and minimize the upland review area affected.

G. Gianini agreed with the concerns already raised such as the house location and the slope. He asked if the proposed house is the minimum size required for the lot. D. Whitney assumes it is larger than the minimum size. G. Gianini asked about the conservation easement that should have been done but was not. D. Whitney assumes the Applicant could not sell the Lot unless she has a wetlands permit with the conservation easement. D. Whitney concurred with E. Kyle's suggestion that the conservation restriction be filed on the Land Records as part of this Application. G. Gianini would like the soil scientist to verify that everything is the same. D. Whitney will try to get G. Logan out to the site before the next IWC meeting.

Vice Chair Sacks has concerns about the waterway itself after visiting the site. He saw water in the culvert near Terrace Drive well after the Saturday rains so this is not an insignificant waterway. Also, this feeds to a large pond off Hollister and eventually to Farmington Woods. There was a lot of silt in the waterway so he presumes that it may have come from the construction in the area over many years. He feels that the IWC needs to understand the significance of any changes to the area because it affects, possibly a great deal, more areas downstream from this. There was erosion along the waterway that indicates that there were times when there was a very heavy flow. He thinks the IWC should know more about this waterway – where it goes, what is important to protect, and how far out the wetlands go. He is also

concerned about the slope which had several very large trees which would probably be destroyed. He asked if the lawn would run right up the area of the wetlands. D. Whitney said the lawn would end at the pink line on the map – the limit of disturbance. Vice Chair Sacks asked if everything closer to the wetlands would be left alone. D. Whitney confirmed that was the proposal but if he moved the house back, he may use the stone wall similar to how he has used a boulder row. The stonewall could be a demarcation between the lawn and the area to remain undisturbed. That would accomplish several goals – it would pull back the disturbance and create a line to demarcate the end of the lawn. Vice Chair Sacks is concerned that the area from the pink line to the wetlands is not conserved in any way. D. Whitney said they would be violating the site plan. E. Kyle said that if someone cleared trees that were not part of an approved site plan because there are wetlands on the property, that would lead to an immediate enforcement action. If there is any record of wetlands or upland review area on any property, a property owner would have to apply to the IWC. If anyone did not get a permit or did not understand the rules, it may lead to enforcement and then remediation. Vice Chair Sacks asked if someone could plant lawn in this spread out area. E. Kyle said that the only restrictions are to fall back on the Town's regulations such as material removal of vegetation. There are maintenance items that are not required to come before the IWC such as planting vegetation or seeding for grass but once you need any machinery to grade or for example remove a stump, a permit is required. Vice Chair Sacks is concerned about the area sparsely populated by large trees and the potential for someone to be able to put in grass and use fertilizer close to the wetlands. He then asked if the common driveway would be a feasible and prudent alternative because it would mean less disturbance to an area that is close to the wetlands. D. Whitney said the Applicant and the owner of the other property do not want to share a driveway. Vice Chair Sacks said the plan for a common driveway would be less disturbing to the wetlands. D. Whitney said that the Applicant wants to sell this Lot so D. Whitney will recommend to her to move the house back on this Lot and she will probably move the house back and keep the stone wall as a barrier between the disturbed and undisturbed portions of the site but D. Whitney does not know legally if P. Puchalski could even share the driveway because he had a second application approved by the Town. D. Whitney will get G. Logan to answer the IWC's questions about the watercourse and wetlands. D. Whitney would like E. Kyle to talk to K. Olson about whether this Application which is the same as before with no substantial change, should be approved. E. Kyle said that applied to a renewal or a transfer of permit – this is a new Application. Chair Feldman said that G. Logan's report said that the proposed modification will have even lower intensity impacts on regulated resources than the already combined driveway.

K. Tobin had some confusion about the wetlands. D. Whitney said that this Application is about activities within the upland review area, not within the wetlands themselves. In 2007 the new driveway was going to replace the existing driveway but had to be wider and had to have shoulders to be a proper driveway per Town standards. That involved some filling of the actual wetlands themselves on either side of the driveway in 2007. G. Logan said that if the driveway can be reduced from 12 to 10', there would be less wetland fill and that is what happened. The tradeoff is to bring the driveway in from Toll Gate Lane but this is not in the wetlands, just in the upland review area. D. Whitney said if they had to share the common driveway and widen it, the Applicant would have to extend the shoulders, extend the side slopes, and do more filling in the actual wetlands themselves. Chair Feldman said that the owner of the existing house would have veto power over any request to merge the driveways – they would not have a legal obligation to

allow it. D. Whitney agreed and said that the owners of both 32 and 34 Terrace Drive do not want to do that. Vice Chair Sacks would like to see the items listed in E. Kyle's report such as functions and values impact analysis, wetland assessment, and consideration of feasible and prudent alternatives. D. Whitney said that it was his understanding that in order to be required to submit feasible and prudent alternatives analysis, there needs to be a finding of significant impact. Chair Feldman said that per the Regulations the IWC can ask an applicant to address whether or not there are feasible and prudent alternatives. D. Whitney said that they had submitted one alternative which is what was previously approved, and now he is going to submit a second alternative that shows the house in a different location and different grading. He said K. Olson stated at the training session that the IWC should focus on what can be done to allow the property owner to exercise reasonable rights.

M. Beauchamp made a Motion to Continue Application #784 to next month's regularly scheduled IWC meeting. G. Gianini seconded. The Motion passed unanimously.

## II. STAFF AND COMMISSION COMMENTS (unrelated to any Application):

G. Gianini said that in the June 27, 2022 minutes E. Kyle stated seven criteria that the Town of Avon listed as contributing to significant impact. G. Gianini wanted to know that citation. E. Kyle said that was on page 12, Section 7, under Application Requirements of the Town of Avon Inland Wetlands and Watercourse Regulations.

E. Kyle said that she sent the IWC a copy of a letter that she sent to the property owner of 425 Waterville Road, Thang Tran, regarding the remediation plan that was approved last year which required T. Tran to replant a significant amount of plantings to counteract the unapproved clearing that had occurred. This resulted in an enforcement action and was recorded on the Avon Land Records. T. Tran replied to E. Kyle and said that he was unable to fulfill the remediation plan this calendar year (which was a requirement of our enforcement) due to being away for the bulk of the year and now the planting season is over. T. Tran is requesting an extension until the spring. He has already contacted various landscapers and nurseries because a lot of the trees that were required to be planted are quite large and cannot be found at an everyday nursery. E. Kyle spoke to H. Peck, the Director of Planning and Community Development about possible options. The easiest route that the IWC could take would be to allow the extension of time until possibly April 30, 2023, which gets into the next planting season. After that, the IWC could send a notice of citation for up to \$1,000 per day and follow the process that is established by our Town ordinance understanding that any citation process or enforcement that we pursue can be appealed. Another option that the IWC could pursue is holding a public hearing on the question of whether any further harm is currently happening to the wetlands. In order for the IWC to determine that there is any current harm, we would need a professional to provide information about harm currently being done to the wetlands. At present, it does not appear that we have any language that would require the property owner to get that professional so it would be the Town having to hire the professional. E. Kyle summarized that the options include an extension through April, pursuing court through different channels, or a citation process. E. Kyle advised that H. Peck does not believe that a citation now would be a good course of action because T. Tran has the potential to appeal any fines to an Appeals Board which the Town does not currently have set up because citations are so infrequent in our enforcement proceedings.

Chair Feldman asked the end date of the original enforcement order. E. Kyle said it was first heard by the IWC on May 4, 2021. The letter was mailed on April 21, 2021. Chair Feldman asked the reason for T. Tran's delay. E. Kyle said that T. Tran said that he was travelling internationally and by the time he was back, it was too late to plant. He had allegedly contacted the nurseries and contractors but they were not able to provide the full size trees in time to make this planting season which typically ends early to mid-October. Chair Feldman asked if T. Tran was travelling internationally for an entire year. E. Kyle said that was her understanding – T. Tran even sent copies of plane tickets and itineraries to E. Kyle. Chair Feldman asked what the procedure was to issue the citation for \$1,000 fine. He assumes that any order such as this could be appealed. E. Kyle said that the Town land use boards do not currently have an Appeals Board so the Town would need to set one up. Chair Feldman said that decisions from the IWC get appealed directly to the Superior Court so he asked why the Town would need to create a new board. E. Kyle said T. Tran would not be appealing the enforcement action – he would be appealing the citation. Chair Feldman thinks that T. Tran could appeal to the superior court – there is no intermediate administrative tribunal for him to appeal to. Chair Feldman would like something more clear and specific about what the remedy is and the authority for that remedy. He feels that it is disrespectful to the IWC to ignore an outstanding order for over a year and then ask for another six months. Chair Feldman would like to make sure that we have some enforcement option available for someone that has ignored our Regulations.

Vice Chair Sacks is concerned that T. Tran has planted grass and mowed the grass which is preventing the return of this land to the natural state it was in. He was making sure that the land remained perfectly clear and flat but if he had simply left it alone, we would have seen the restoration of the land in the last year. Vice Chair Sacks is concerned with the precedent set with permitting this kind of cutting of the woods and allowing T. Tran to avoid remediation. Vice Chair Sacks feels that it is appropriate to impose a \$1,000 fine if the IWC is allowed to do this and the Town should put into place as soon as possible what is necessary for the appeals process. E. Kyle said that we were authorized to do this by Connecticut General Statute Section 22a-42g which allows the Town to utilize a fine.

C. Hauss is concerned that if action is not taken by April 30, T. Tran will not buy the trees. C. Hauss asked if the IWC could do a citation per day that is related to seeing a paid invoice that T. Tran has purchased the trees. She needs something needs to happen to get T. Tran to take action. C. Hauss asked if we could do a citation of \$1,000 and give T. Tran a certain date to present the IWC with a paid invoice for the number of trees required with a delivery date. Chair Feldman believes that T. Tran should be fined now for his delinquency – he ignored the Regulations to begin with, he was told by the IWC exactly what he needed to do, and over a year has gone by and he has not even ordered the materials. Chair Feldman thinks T. Tran should be sanctioned now and again in the spring if he does not do anything. Chair Feldman thinks the IWC needs to make sure that its orders are complied with. M. Beauchamp agrees with Chair Feldman and M. Beauchamp believes that T. Tran should be fined right now. M. Beauchamp said if the IWC does not have the power to fine, then the IWC should work with the Town Council to get this power. Chair Feldman would like E. Kyle to prepare a memo describing exactly what the IWC's authority is and how to go about what the procedures are to institute a fine. E. Kyle said that our approval letter did give T. Tran the calendar year to comply. So she assumes that we cannot start

finer until January 1, 2023. C. Hauss would like to see an invoice that shows T. Tran has taken action by January 1. Chair Feldman is not suggesting that the IWC fine T. Tran \$1,000 per day. It could be \$1,000 now and then if T. Tran has not done something in the spring, the IWC could issue more fines. Vice Chair Sacks would like to specify that T. Tran has no right to cut down brush and planting grass. T. Tran still has the sign on the property for selling wood. Vice Chair Sacks thinks the property should not be altered in any way other than the planting of trees. He believes that is stopping the growth that might restore the forest there and would like wording about not transforming the property in any other way in the communication to T. Tran.

Chair Feldman stated that at the last IWC meeting, he learned that the denial of the Bridgewater Application has been appealed and he has not heard anything since then. He would like to be provided with updates, status reports, copies of any pleadings or briefs that are filed in the case, and hearing dates. He would like the IWC to be kept in the loop and would like Town counsel to provide the IWC with a copy of any draft brief a week in advance so the IWC can provide input. E. Kyle will get a status update and make it part of her regular reporting to the IWC. Chair Feldman said wants the IWC members to understand that anything from Town counsel would be considered confidential and privileged and just for the IWC's benefit.

G. Gianini would like to revisit a comment he made at last month's IWC meeting regarding ending the IWC meetings at 9:00 p.m. He was not part of the initial discussion about this but he knows some suggestions were brought up to accommodate this such as starting the IWC meeting at 6:30 p.m. or taking a brief recess during the meeting. He is concerned with how this impacts applicants' time and their professionals' time. He does not want a set ending time of 9:00 p.m. and feels that the IWC will do the best they can with E. Kyle's help on managing the scheduling. He feels a responsibility to the community that the IWC make themselves available as this is the role the members have taken on. Chair Feldman likes to see applications move along and does not like to keep people waiting after they have applied. He feels that the IWC has done a good job of keeping the process moving. The IWC had two special meetings over the summer to make up time. If the IWC has a packed Agenda, maybe we can start the meeting earlier. G. Gianini agrees that making a time adjustment on the front end is an option. C. Hauss believes that having extra meetings was a good way to accommodate this and be responsive and does not think a meeting should go to 10:00-11:00 p.m. She understands G. Gianini's point that the IWC is here to serve the public.

Vice Chair Sacks understands now that if the IWC rejects an application, they need to elaborate on the reasons for doing so. Sometimes the IWC may reach a point at 9:00 p.m. when they have not covered the issues that they need to. So while he does not like to go past 9:00 p.m., there are times when it is necessary to go later. Another option would be to schedule another meeting in a short period of time. M. Beauchamp believes 9:00 p.m. should be the cutoff and would like people to recognize that the IWC are volunteers. He believes that there are ways to speed up the meetings such as limiting IWC members' time for comments or limiting the items on an agenda. E. Kyle said that it is illegal for her to push applicants away due to a full agenda though she does let applicants know that the IWC may not get to them. When someone gives the Town an application it starts a clock set by State Statutes and she cannot tell an applicant that the agenda is full. M. Beauchamp feels after an 1-1/2 hours, the IWC members are not as sharp. Vice Chair Sacks feels that the written material that the IWC gets before a meeting, should have the

information necessary and should not require a long presentation at a meeting. He would like to limit an applicant's presentation to 20 minutes and that may be a useful way of making meetings better and more effective. G. Gianini agrees with keeping a presentation condensed, having the IWC members do their homework beforehand, and making efficient use of the time for questions without repeating any. Chair Feldman does not want to cut anyone off whether it is an applicant, their representative, or a commissioner. He also believes that time limits tend to be arbitrary and some situations require something longer or shorter. G. Gianini agrees about not cutting people off so they do not feel that they are not getting a fair deal, but believes some parameters would be helpful. Vice Chair Sacks believes that part of the instructions given to an applicant could be that they should give as much detail as possible in a written report and just give a summary or highlights within a 15 minute presentation. Chair Feldman's role could then be to stop an applicant after that time and see how much more time they would need. Vice Chair Sacks understands though that an applicant could appeal and claim that they were denied a permit because they were not given enough time to air their views so the IWC needs to be aware of that. He thinks you could tell an applicant that the IWC would appreciate it if they limited their presentation to 15 minutes.

III. APPROVAL OF MINUTES: July 5, 2022 – Regular Meeting

G. Gianini made a Motion to Approve the July 5, 2022 meeting minutes. Vice Chair Sacks seconded. The Motion passed unanimously.

IV. NEXT REGULARLY SCHEDULED MEETING: December 6, 2022

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

There being no further business, the meeting adjourned at 8:45 p.m.

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