

THE INLAND WETLANDS COMMISSION OF THE TOWN OF AVON HELD A VIRTUAL REGULAR MEETING ON TUESDAY, DECEMBER 6, 2022, AT 7:00 P.M., VIA GO TO MEETING: by web <https://global.gotomeeting.com/join/431763213>; or by phone, United States: +1 (646) 749-3129, Access Code: [431763213#](https://global.gotomeeting.com/join/431763213).

Present were Chair Michael Feldman, Vice Chair Michael Sacks, and Commissioners Michael Beauchamp, Robert Breckinridge, 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 7:03 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.

E. Kyle read an email from David Whitney, Engineer, on behalf of Brenda J. Sullivan, Trustee, Owner and Applicant, “I would like to request that discussion of Application #784 be tabled at tonight’s meeting, December 6<sup>th</sup> and be continued to the next regularly scheduled meeting of the Avon IWC on January 3, 2023. The reason for this is to allow time for the Commission to review the report dated December 5, 2022 from REMA Ecological Services, LLC, which is the soil report that we required at our last meeting.” One of the items that was required at our last meeting was a new or updated soil report which was received in our office today which obviously did not meet our meeting requirements to be heard tonight. For that reason the Applicant and D. Whitney are not in attendance tonight and they requested to be heard next month. Statutorily, they are fine until January 5, 2023, and the next meeting of the IWC is January 3, 2023. If there is any quorum concern for our January 3<sup>rd</sup> meeting, then the Applicant would grant an extension of time for us to be able to hear them at our next regular meeting or a special meeting, if needed. E. Kyle asked if we would have a quorum at our next meeting. Several IWC members will be there but to be on the safe side, Chair Feldman would like E. Kyle to confirm with the Applicant that they are consenting to an extension. E. Kyle said it would just be a 30 day extension.

R. Breckinridge made a Motion to Continue Application #784 until January. G. Gianini seconded.

II. NEW APPLICATION:

**APPL. #785** - 100 Nod Way, LLC, Owner and Applicant; request for regulated activities within the 100 foot upland review area: construction of thirteen (13) single-family houses and eight (8) buildings containing forty-two (42) townhouse common interest units, driveways, utilities, and related site work. Location: 100 Nod Road, Parcel 3290100.

Chair Feldman recused himself from this Application. He does not believe that he has any actual bias or predisposition but he is concerned about the possible appearance of bias and it is important for all the parties appearing before the IWC to know that they are being treated fairly and that the IWC's decisions are without any taint or appearance of bias. Vice Chair Sacks will act as Chairperson. G. Gianini is recusing himself as well.

Attorney for the Applicant, Tim Hollister of Hinckley Allen, said that he had an email exchange with Town Staff about the meeting tonight. It was Staff's recommendation, and he concurred, that there will not be a presentation tonight (even a preliminary presentation) because this is likely to be put over until next month when the IWC may decide on a public hearing. He did not want to proceed with the presentation although his team can answer any preliminary questions. He would like to schedule his presentation – either for the next regular meeting, January 3, 2023, or the next available date for a special meeting, whatever the IWC decides is appropriate.

Acting Chair Sacks asked E. Kyle if it is appropriate to schedule a public hearing. E. Kyle referred to Section 9.1 of Avon's Inland Wetlands and Watercourses Regulations. There are criteria listed that address when there should be a public hearing. Section 9.1 has three different parameters for holding a public hearing and #3 is that the IWC finds that a public hearing regarding any application would be in the public interest. It is a catchall in the Town's regulations which are based on Connecticut DEEP model regulations for wetlands. Based on the fact that there are 85 people at this meeting, it seems apparent that there would be public interest in this. She recommends a public hearing where the presentation would occur and that allows the public the opportunity to speak, ask questions, or pose any concerns that they may have. The IWC needs to find that this Application meets a criteria of Section 9.1. E. Kyle recommends that we hold an in person public hearing or at a minimum a hybrid meeting to allow all people in the public to participate understanding that there is such large public interest. We do not have a location yet. The next regularly scheduled IWC meeting is January 3, 2023, and the quorum for this Board is 4. C. Hauss is unavailable on that date so we would only have 4 members present. Those 4 members would have to be available or we could have a special meeting just for this public hearing. Acting Chair Sacks asked if he would have to be there in person. E. Kyle said that would be recommended and it is typical that in any hybrid meeting the Commission is in person while the public is in person or virtual. Acting Chair Sacks said he would not be able to be there in person. C. Hauss said she would be available by January 5, 2023. Vice Chair Sacks asked about the procedure and E. Kyle said that the IWC could make a motion at the end of this discussion.

Acting Chair Sacks thinks it is important that there will be a soil scientist independent of the Applicant that can comment on the matters in the Application. E. Kyle said that she reached out to the North Central Conservation District (the "NCCD") about being a third party review for towns and municipalities. The NCCD do have soil scientists on their staff that are available to review wetland delineations. They basically will verify wetland boundaries in the field but they will not fully re-delineate wetland boundaries. They will not complete an independent functions and values assessment but they will review all the materials submitted by the soil and wetlands scientists and identify areas that require additional study. They would also indicate items on the plan that could be improved to better protect wetland resources. Generally speaking, they provide a robust review of all the materials that are submitted with an application and they

provide a written review, but they do not attend meetings to provide verbal testimony. NCCD is an unbiased third party – they are looking at the facts and our application requirements. E. Kyle said she believes Avon is a membership town of NCCD and therefore there would be no charge to us for these review services. Acting Chair Sacks asked if there was any limit on this and could we use this on every application. E. Kyle said that typically the NCCD is brought in for very large applications that are potentially contentious and where there are questions about impacts and soil reports so it would not be something we would utilize for every application. Acting Chair Sacks asked about the functions and values. E. Kyle said the NCCD will not complete an independent functions and values assessment and they also will not complete an independent wetland boundary review so it is more of a verification of the information that we already received. Acting Chair Sacks asked what it would entail if the IWC wanted someone to independently look at the functions and values – to go beyond what the NCCD would do. E. Kyle said she can ask the NCCD exactly how they come to their conclusions but she believes that it would be good to have the information from the NCCD before we get to the Applicant's presentation. Acting Chair Sacks asked other IWC members if they wanted to proceed with this and C. Hauss, R. Breckinridge, and M. Beauchamp agreed. R. Breckinridge said that he does not see the value of having someone come in and do all the work again as this is a small area of wetlands. Acting Chair Sacks would like to leave open the option of needing more information from other experts in the future. He then asked if it would be worthwhile to have alternate members of the IWC in place in case we have a situation where we do not have a quorum and what are the options available. Attorney Kari Olson, counsel for the Town, strongly recommends that going forward, the IWC does seek alternates to replace the members that have recused themselves so you do not end up in a situation where the IWC does not have a quorum. The statute does recognize that if there is a personal or financial conflict of interest that requires a disqualification, the alternates can and should be seated instead. Acting Chair Sacks asked if there is a process for this now. K. Olson said the alternates should be seated at the start of the public hearing. E. Kyle said that our IWC does not have alternate members. K. Olson said that in the absence of appointed alternates, the Town Council would name alternate members though she did not know if that was possible by January 3, 2023. If there are no alternates to seat, the IWC will have to proceed with a quorum to the best of their ability. Acting Chair Sacks would like to determine as soon as possible if it is possible to find alternate members though there is a quorum for the January meeting. K. Olson said that the IWC should consider a special meeting so that C. Hauss could participate (she will be away on January 3, 2023) to give the IWC five members. T. Hollister agrees and added that if the NCCD needs more information from the Applicant, he can provide that. The IWC agreed to schedule a Special Meeting on Monday, January 9, 2023. Acting Chair Sacks made a Motion to schedule a Public Hearing on Application #785 for Monday, January 9, 2023, after finding that it is in the public interest to hold a Public Hearing. C. Hauss seconded. The Motion passed unanimously.

### III. COMMUNICATIONS FROM THE PUBLIC (unrelated to any Application):

Chip Walters of 56 Stony Corners referred to Application #782 and said that based on his reading of the Town Regulations, clear cutting is the harvesting of timber in a fashion that removes all trees down to a 2" diameter. Per the Town Regulations, removal of trees includes but is not limited to drain, excavate, mine, dig, dredge, suck, bulldoze, dragline or blast. He would like to know why the project has not been stopped and why the neighbors had to notify the Town

that the Applicant was violating permit conditions. Chair Feldman feels that it will be best for C. Walters to address his concerns in a letter to Town Staff because this is out of context for the IWC tonight and it would be best to have something in writing to act on. C. Walters asked if the IWC could explain the State exemption that was relied on to clear the 110 acres. E. Kyle said this Application pertained to the property across from Avon Old Farms School and it was not 110 acres, nor a clear cut. She said it was a forest management project under Connecticut General Statutes Section 22a-40 which addresses permitted activities that are agriculturally based to perform within wetlands or upland review areas. CGS Section 1-1q defines all activities that the State considers farming and agriculture and one of those activities is forestry. So there is a forestry exemption from the State Wetlands and Watercourses Act. Chair Feldman said that the IWC did not have much discretion and that applicant had a statutory right to do what they were doing. The IWC had a lengthy discussion with the forester that presented the application and this project will be done responsibly in terms of forest management. E. Kyle said that the only reason that the IWC got an application rather than a request for jurisdictional determination was because one component of the project was a temporary stream crossing to get machines from one side of the stream to the other which was not covered under CGS Section 22a-40 or 1-1q. K. Olson confirmed E. Kyle's summary of the application.

#### IV. STAFF AND COMMISSIONER COMMENTS (unrelated to any application):

R. Breckinridge had a general question about protocol for a large public meeting. He has found that in some large meetings a speaker will comment on an issue that has nothing to do with wetlands. He believes that the Chair has the right to stop someone from speaking if they get off subject. K. Olson recommends that for any public hearing the IWC should set the ground rules at the beginning such as how much time anyone has to speak, not repeating what they have heard from other individuals but merely to say if they agree with someone, and limiting the time to speak to three minutes so that everyone has an opportunity to be heard. After everyone has had a chance to speak, you can allow someone more time if they have additional information to add. Chair Feldman added that the IWC may have to reiterate during the hearing that the IWC does not deal with density, traffic, noise, or any other land use issues so people must confine their remarks to issues affecting wetlands and watercourses. K. Olson agreed and said that the IWC should say what their jurisdiction covers such as regulated activities within inland wetlands and watercourses and their upland review areas. Regulated activities are activities that impact or have a potential to impact the wetlands and watercourses. The IWC can then tell anyone trying to speak on other topics that that is outside the scope of the IWC's jurisdiction. R. Breckinridge asked if Chair Feldman could stop someone mid-speech. K. Olson said that he could. If the person insists on continuing then the IWC would have to use crowd control methods such as shutting the person down or telling them that they are no longer recognized by the Chair.

Harry Captain, a resident of Avon and former member of the West Hartford Town Council, is unsure how the planning process works in Avon and he would like K. Olson to explain to the public the process from the perspective of an applicant applying to the IWC. He is unsure of how or when an applicant gets to the next Board when something is outside of the IWC's jurisdiction. Chair Feldman said that E. Kyle as Town Staff can answer any specific questions.

E. Kyle referred to 425 Waterville Road and said that last year there was a Cease and Desist Order for the removal of trees in this wetland area with an intermittent stream on the property. The IWC approved a Remediation Plan with conditions for trees and other items to be planted in 2022. The property owner has made no attempts at planting though he has received a couple of estimates from nurseries for some of the large trees that were required. At the last meeting, the IWC discussed the possibility of a citation process because as of January 1, 2023, the property owner will not have cooperated with the remediation plan conditions. This process has not been done in Avon before but the IWC talked about how it would work with a per day fee though the IWC concluded that they would not necessarily want to charge the property owner a large sum – it would be one citation on January 1 for not meeting our criteria and requirements. Hopefully we would then get action though the planting season is not until March or April. The Avon Director of Planning and Community Development, Hiram Peck, indicated to E. Kyle that the IWC would need some concrete proof that the site is at risk of erosion now. E. Kyle said it is not because the site has been stabilized - it has been over a year since the trees were removed. K. Olson confirmed the steps that the IWC has taken to date. She said that the IWC can go through the citation process but that can sometimes be very frustrating because it requires hearing officers, liening the property, and then trying to enforce the liens. The other option available is an injunction action where you seek a court order to force the property owner to comply with the remediation plan and you can seek civil fines and penalties through that process. K. Olson said that the IWC can hold an Executive Session and then she asked if the property owner has gotten formal notice that they have not complied with the remediation plan. E. Kyle said that they had. Chair Feldman asked if there were procedural issues with the citation process as he is unsure if the Regulations allow the IWC to impose any penalties, fines or otherwise. K. Olson said she would have to look at the Regulations but if the Town has a citation process and the Regulations allow you to impose penalties and fines pursuant to that, then CGS Section 7-152c applies. In K. Olson's experience, the citation process can be very cumbersome and difficult. If what you really want is to make sure that a remediation plan gets done, then sometimes some type of injunctive relief is quicker and more efficient. E. Kyle, K. Olson and the IWC talked about having an Executive Session to discuss strategy at the next regularly schedule IWC meeting on January 3, 2023.

Chair Feldman would also like an update at that Executive Session on the status of the Appeal from the IWC's denial of the Application for 7 Saddle Ridge.

E. Kyle said that she had an update on Application #782 which is the forest management project on Old Farms Road. She has been inspecting that property and met with the forester, Andrew Bosse, for a pre-construction meeting and also after they created the staging areas, which are the two areas that you can see right off of Old Farms Road. E. Kyle has been monitoring the erosion control and the anti-tracking pads which were installed last week. The contractor is just starting now with the staging areas and the excavator is now there so the process will begin to speed up. If there are 3 or more IWC members that would like to see this, the IWC would need to schedule a public meeting for that. If members visit individually with E. Kyle, that would not constitute a public meeting. Chair Feldman said that anyone interested can contact E. Kyle.

G. Gianini said that a list of significant activity is in Appendix B of the Avon IWWA and it is on the Town of Avon website. Section 2.1aa lists some but not all activities listed as significant.

Chair Feldman referred to E. Kyle's memo regarding Nod Brook maintenance at the Avon Town Hall Complex. The Avon Department of Public Works removed some sediment and vegetation from the Nod Brook area and they did not get an IWC permit. E. Kyle has talked with the DPW to make sure that they understand the correct process for next year. The Brook dammed over time and as a result the Town Hall campus flooded pretty significantly last year and caused a lot of damage. The Town hired a consulting engineer to take a look at what would avoid that in the future. One of the suggestions was to clean out the Brook which was vastly overgrown. The process has been corrected internally between departments and the DPW understands that there is a permanent process that has to be followed. E. Kyle pointed out that IWC permits are approved for five years and then the DPW can check in with Town Staff when they are going to be conducting similar activities.

V. APPROVAL OF MINUTES: July 28, 2022 – Special Meeting

G. Gianini made a Motion to Approve the July 28, 2022 meeting minutes. Vice Chair Sacks seconded. The Motion passed unanimously.

VI. NEXT REGULARLY SCHEDULED MEETING: January 3, 2023.

There will also be a Special Meeting with a Public Hearing on Monday, January 9, 2023.

M. Beauchamp made a Motion to Adjourn. R. Breckinridge seconded. The Motion passed unanimously.

There being no further business, the meeting adjourned at 8:10 p.m.

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