

THE INLAND WETLANDS COMMISSION OF THE TOWN OF AVON HELD A VIRTUAL SPECIAL MEETING ON Monday, June 13, 2022, AT 7:00 P.M., VIA GOTOMEETING: by web, <https://global.gotomeeting.com/join/440673301>; or by phone, United States: [+1 \(571\) 317-3116](tel:+15713173116), Access Code: [440673301#](https://global.gotomeeting.com/join/440673301).

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

Chair Feldman called the meeting to order at 7:01 p.m. There is a quorum of 5 Commissioners.

I. PUBLIC HEARING:

Chair Feldman opened the Public Hearing to hear the Appeal of Virginia Brown, Owner of 86 Woodford Hills Drive, regarding Authorized Agent's determination on application for wall construction at 94 Woodford Hills Drive, Parcel 4680094.

Present for the Applicant is Virginia Brown. Present for the Town of Avon is Hiram Peck, Director of Planning and Community Development. V. Brown stated that she is the owner and resident of 86 Woodford Hills Drive and the abutting neighbor of Joseph J. Farraye, Thomas T. Gresh and Nicole M. Gresh (the "Owners") who are the owners of 94 Woodford Hills Drive, which is the property subject to this Appeal. V. Brown believes that the issue to be decided by the IWC is whether the Owners' proposed improvement plan which consists of a driveway extension and retaining wall, which wall is 6' high and made of 3' by 5' concrete bunker blocks and runs approximately 180' along her side boundary line and comes within 100' of a watercourse which is located on the subject property, requires that the Owners obtain a permit in accordance with the Avon Inland Wetlands and Watercourse Regulations (the "IWWR"). The proposed retaining wall that will support that driveway is a structure commonly constructed in commercial areas, not residential. The blocks to construct the wall weigh more than 4,400 lbs. per block and they need to be lifted by a crane. V. Brown continued that the driveway extension and retaining wall are within 100' of a watercourse and when the Owners submitted their application for a building permit, they did not seek a permit from the IWC. The building permit was approved by the building official based on his reliance of the zoning officer's assurance that the project conforms to all relevant zoning regulations and inland wetlands regulations. On the building permit it appears to be marked N/A by the authorized wetlands agent. The stream that runs through the Owners' property is noted on the Development Survey in the Farmington Valley Health District searchable database. It is also shown on the Owners' Improvement Plan Survey that was submitted with their application for a building permit and shown on the Town of Avon Wetlands Map. In March, 2022, the Owners cut a line of healthy, mature trees directly on V. Brown's side boundary line, some of which were located within 100' of the watercourse. She stated that H. Peck's letter to the IWC dated May 23, 2022 is correct that there are no wetlands on the Owners' property but there is a watercourse. It is on the wetlands map as an intermittent stream and the IWWR make clear that these kinds of streams are within the definition of a watercourse in Section 2.1 gg. The work that is to be performed: clear cutting up to the boundary line, constructing a 6 foot retaining wall, and then backfilling and grading with gravel process qualifies as a regulated activity (see Section 2.1 x). Section 6.1 of the IWWR requires that in

case of regulated activities, a person shall first obtain a permit from the IWC which the Owners did not do. Section 7.5 of the IWWR says that an administrative approval has certain requirements and those requirements were not met.

Chair Feldman asked if V. Brown could describe the nature of the watercourse. She said that it is a stream that runs in the front half of the Owners' property and is marked on Avon's Inland Wetlands and Watercourse Map and on the Owners' Improvement Plan Survey that was submitted to the Town. Chair Feldman stated that if it is an intermittent watercourse, then there are certain requirements that need to be met for it to be considered a watercourse. She says that it is showing as a stream on the map of Avon. Chair Feldman says that Section 12.1 of the IWWR allows the agent some authority and discretion to approve certain activities. V. Brown said that Section 12.1 refers to very limited work that is minimal in scale covering an area of less than 400 square feet. This work is about 6,500 square feet. Chair Feldman asked V. Brown if she had submitted any evidence that the wall will have more than a minimal impact on the wetlands or watercourse. V. Brown believes that the impact of the wall on the watercourse is something that the agent could decide with certain information or the IWC should be deciding with a permit. V. Brown stated that the only thing produced by the Owners is the Improvement Plan from T. Gresh to the building official which gives two details about the wall and there was no mention of a watercourse in that proposed plan. V. Brown closed by requesting that the IWC reject the wetlands agent's decision which was not an administrative approval because it did not follow the requirements and require the Owners to submit a formal application to the IWC.

R. Breckinridge said that typically the IWC has some soil testing to go by – is this a watercourse or is it just a drainage area that occasionally gets water after a storm. C. Hauss wanted to note that she is a neighbor to both parties and is an acquaintance to all of them. She is comfortable that that will not impact her decision making and the decision also will not impact her property. She does think that there is some data missing that would have been available with an application. Chair Feldman asked if V. Brown and H. Peck had any objection to C. Hauss participating in this proceeding. V. Brown and H. Peck as staff had no objection.

H. Peck referred to his Memo dated May 23, 2022 where he outlined nine points that he thought were important for this particular issue. The decision to pass this application on to the Building Department was made by the authorized agent at that time. John McCahill had many years of experience and had been to the site to observe the drainage ditch that is on the Owners' property. A very small portion of this construction is in the upland review area and at that point in time the authorized agent made a determination that a very small portion of the wall and a very small portion of the filling that is proposed behind the wall are within the upland review area and it would be a very small impact. It is also separated by an existing driveway so it is not directly abutting the watercourse in that area. H. Peck continued that there is no impact on the wetland based upon his examination of the site nor were any other impacts noted as outlined in his memo. Chair Feldman noted that under Section 12.1 which is what authorizes the agent to approve activities, it requires that information under Section 7.5 be submitted and the appellant says that was not done. H. Peck answered that there was a lot of discussion between the Owners and the authorized agent with regard to what exactly was being proposed and there is no indication on the Town wetlands map that there is a watercourse on this property. Chair Feldman stated that it sounds like the required information was not submitted to the Town at least in written form and

H. Peck agreed. The IWC could sustain the authorized agent's action, it could alter that action by requiring some information that it thinks is essential, or it could reject the action and require a full application. Chair Feldman asked H. Peck if there was a watercourse on the Owners' property. H. Peck answered that he visited the property after a substantial rain fall and he would call it a drainage ditch. It was about a foot wide and there is a culvert under the road that allows a significant amount of water to flow. Chair Feldman asked if H. Peck was familiar with the fact that the Owners took down a group of trees in the upland review area. H. Peck thinks there were trees cut down adjacent to the property line but he did not see any trees that were cut down in the upland review area. R. Breckinridge commented that there is a driveway that runs right next to a watercourse. E. Kyle displayed the Survey and pointed out the brook or the drainage easement on behalf of the Town of Avon. It is about 70' to the closest point of the proposed wall.

Vice Chair Sacks asked E. Kyle her opinion on the site. She answered that she has relied on her predecessor with his 30 year tenure in his decision making and she does not have enough information to agree or disagree with his decision here. C. Hauss also feels that we do not have enough information so the IWC needs to review this. Chair Feldman thinks there was a failure to comply with Section 7.5 which might have given the IWC a sufficient record to address whether the Agent's decision was a proper exercise of his discretion. H. Peck said that there are four different choices that the IWC has and he asked if the IWC wants information with regard to Section 7.5 or a full application. Chair Feldman thinks it may be more efficient to just have the Owners submit an application and have a hearing on it.

Chair Feldman asked if any Commissioner had any further comment. He also asked if any member of the public had a comment. There were none. C. Hauss made a Motion to Close the Public Hearing. M. Beauchamp seconded the Motion. The Motion passed unanimously. R. Breckinridge then made a Motion that the Appeal of Virginia Brown, the owner of 86 Woodford Hills Drive, regarding the Authorized Agent's determination on application for wall construction at 94 Woodford Hills Drive be upheld with the condition that the Owners submit a full application to the IWC for this construction. Vice Chair Sacks seconded the Motion. The Motion passed unanimously.

II. NEW APPLICATIONS:

APPL. #778 – Nod Brook Investors LLC, Owner and Applicant; request for regulated activities within the 100 foot upland review area: demolition of existing building and construction of new building and related site work. Location: 315 West Main Street, Parcel 4540315.

Paul Vitaliano, a civil engineer with VHB of Wethersfield, Connecticut, is here on behalf of Nod Brook Investors LLC, together with Eric Kelly, Director of Construction for Paramount Realty, the entity that owns Nod Brook. P. Vitaliano showed an aerial image of the plaza and pointed out that on the north of the site is West Main Street (Route 44) with a mix of commercial development, to the west is Bailey Road, to the east is a vacant restaurant and then the Walmart Plaza, and to the south which is the area focused on tonight is a wetland system associated with Wiggan Brook and a residential neighborhood called Fox Hollow. The plaza itself is about 102,000 square feet. The 100 foot upland review area comes into the parking lot but the wetlands are contained off the developed area. There is a slope between the paved areas down through the

woods where the wetland limits are. According to FEMA, part of the site is in a 500 year flood plain though that is old data from before the plaza was built because the elevation of the plaza is about 20' higher than the wetlands. The existing restaurant is about 7,500 square feet and they are proposing to take that down and replace that area with a larger addition eastward for a Home Goods retail building. This footprint is 22,000 square feet with a 1,500 mezzanine for a total of 23,500 square feet. The expansion is not beyond the existing limits of disturbance so the limits of the parking lot and the limits of the pavement are remaining the same. There will be some regrading, repaving, and utility work but it will all be within the limits of the currently paved area within the upland review area. They are basically maintaining the existing drainage pattern where everything drains to the east. It slopes back to the site towards the eastern corner and there is a catch basin and a water separator that currently exists and takes the water and treats it before it discharges to the wetlands. They will maintain that and connect to the water separator as well and also connect the roof water to it. He feels that they are improving stormwater quality because they are taking parking lot water and replacing it with roof water which is cleaner because it will not have the sediments and oils that you would find in a parking lot. P. Vitaliano said that the project is in front of Planning and Zoning tomorrow so the ability to act depends on what happens tonight. He said that the Staff Report asked for some potential screening like trees to screen neighbors and that will be discussed tomorrow. The plantings would be in the upland review area and not directly in the wetlands. They would like to handle the screening administratively with staff.

Chair Feldman began with questions from the Commissioners. C. Hauss. Vice Chair Sacks, and M. Beauchamp had no questions. R. Breckinridge asked how old the catch basins are. P. Vitaliano assumes that they are original to the plaza. R. Breckinridge asked if it should be a condition that those are cleaned out to make sure that they are still working properly because they are at least 20-30 years old with no idea of what condition they are in or if they are still fulfilling the purpose that they had originally. There is also a lot of pavement that is fairly close to those wetlands and that wetland is one of the larger ones in Avon with quite a bit of acreage. E. Kyle agreed that was a good idea and she would condition that the catch basins are cleaned out and inspected prior to silt sack installation. R. Breckinridge then asked how much activity is going to occur inside the 100 foot upland review area on the south parking area. P. Vitaliano answered that they are maintaining the curb limits so it is a matter of repaving with some minor grading. E. Kyle said that another condition could be that all machinery not be stored within the upland review area. Chair Feldman asked P. Vitaliano to confirm if he was planning to repave the back area anyway and P. Vitaliano answered that there was a grade change in the back so in essence they have to fill in to make the building flat. They are regrading in the back corner and repaving just a portion of the parking lot. Chair Feldman asked for confirmation that P. Vitaliano will clean out the catch basins and at the discretion of Town staff if necessary, upgrade and replace them. E. Kelly said that they do not have any issue with cleaning out the catch basins and Paramount has a program in place to maintain those. E. Kelly asked which regard to staging the equipment in the upland review area, if that could be a bit more flexible for them to discuss with inspectors on the site. They will be repaving and also he cannot leave equipment and machinery sitting in front of the shopping center which inhibit any activity such as a fire department or police department from being able to circulate around the site. E. Kelly said that they will be absolutely compliant but if it can be left a little flexible then they can work it out with local administrators to come up with the best practice that works for everybody.

Chair Feldman asked if anyone would like to make a Motion to Approve Application #778 with the conditions described in the staff memo plus the inspection and clean out and if necessary at the discretion of staff, upgrade or replacement of catch basins, and that any trees that will be installed be approved by Town staff, and that the Applicant make its best efforts to store and stage machinery and equipment outside of the upland review area to the extent that it is feasible. M. Beauchamp made the Motion to Approve. R. Breckinridge seconded. The Motion passed unanimously.

APPL. #779 - The Kids of Summer Foundation, Inc., Owner and Stephen Zappone, Applicant; request for regulated activities within the 100 foot upland review area: construction of house, driveway, utilities, and related site work. Location: 43 Vermillion Drive, Parcel 4420043.

David Whitney, PE is representing the Applicant and the Owner of the property at 43 Vermillion Drive. The lot is a front lot on Vermillion Drive which consists of four acres. The western portion of the site contains wetland soils. The 2009 site plan showed the limits of wetlands delineated by Henry Moeller, Soil Scientist, in 1995. This plan was approved by the IWC in 2009. In 2010, Frank Sidoti came in with another wetlands application to extend the public sewer through the adjacent property to the west, 52 Pheasant Run. He received permission from the owner to bring the sewer line through his property through the wetlands and up to the house site at 43 Vermillion. This plan and the second wetlands application was approved by the IWC and the sewer was installed. The existing sewer has been extended to the toe of the existing fill on the site but it is not quite extended to the actual house location. After the sewer was installed, F. Sidoti placed some additional fill on the site without notifying the Town as was required per the original wetlands permit. In discussions with the Town, F. Sidoti was required to prepare a new survey to show where this fill was placed on the site. Hodge Surveyors located the existing fill in 2021 that is there to this day. F. Sidoti donated this lot to the current Owner and is no longer involved with this project. In addition, J. McCahill and E. Kyle requested that the wetlands be redelineated. S. Zappone engaged Michael Klein and Eric Davison from Davison Environmental to redelineate the wetlands. The 2022 survey shows there are two different wetlands boundaries. The green is the 1995 H. Moeller wetlands that was on the 2009 and 2010 plans and the red shows the most recent delineation of the wetlands. The wetlands boundary is almost identical in the center of the site but the new wetlands boundary is closer to Vermillion Drive on either side of the property north and south. The new delineation is more conservative and shows more wetlands. The site plan that was submitted with this application shows the proposed house on the northeast corner of the lot. The house is shaded in orange with the proposed driveway coming in from Vermillion in essentially the same location as the 2009 plan. Essentially all the activities with the exception of the sewer, will be within the footprint of the existing fill. The only activity that will go outside of the limit of the fill is where the sewer will be extended from its current terminus location up to the house. Some fill was brought to the site from the Avon Center project several years ago. D. Whitney identified two areas shaded red where there has been a bit of a washout so there are a couple of places that would need to be repaired and stabilized. The house location has been slightly modified and pulled back from the wetlands and is a bit smaller than the original house that was approved. There is no way to build on this lot without some activity within the upland review area. The 100 foot upland review area goes through a portion of the house and through part of the driveway but he has located the house as far to the east, as close to

the road, and as far to the north as possible. There is no way to develop this residential lot without some of these activities in the upland review area but all the utilities, with the exception of sewer, will be outside the upland review area.

Vice Chair Sacks asked what area will be turned into lawn. D. Whitney showed on Presentation Plan #4 that everything within the purple line which is the limited disturbance area, with the exception of the house and the driveway, will be grass. R. Breckinridge asked if the fill that was brought in was done without the Town's permission. D. Whitney replied that there was permission because there was an IWC permit granted but then the permit expired. One of the conditions for the permit was that the Town would be notified when fill was placed so they could do inspections and make sure they were placing proper fill on the site but that was not done. E. Kyle clarified that the fill was an approved part of the previous approval but because of the approval's expiration, it was no longer authorized when the activity actually occurred. It would not have flagged any issues if the fill had occurred during that period of time when the approval was still valid. D. Whitney said that the current Applicant had nothing to do with these past actions. D. Whitney said that there would be a brand new well in the upper right hand corner of the property because city water is not available at this location. The proposed well is outside of the upland review area in the front yard. The old well is feeding the wetlands and it will continue to do so but will not be used by the house. R. Breckinridge asked if the driveway had to be that long and if it could be accessed further north because most of that driveway is in the 100 foot upland review area. D. Whitney said it is too steep to have the driveway go directly in where the turnaround is but the driveway could be shortened up. R. Breckinridge is concerned about the slope and the erosion that he saw. D. Whitney replied that the way it is graded now, most of the site drains to those two locations are eroded and now the water will sheet flow off and they will have the whole site vegetated with the exception of the driveway. They will have to place topsoil to fill the slope and compact it and stake the netting.

M. Beauchamp had the same concern as R. Breckinridge about the erosion. He asked what is the distance from the house to the bottom of the fill and D. Whitney said that the vertical difference is 27'. M. Beauchamp asked if you get a major storm and it is all fill planted with some kind of grass, will that be sufficient. D. Whitney said that if it is done right, then it will be sufficient. There is going to be a flat area around the house that will allow infiltration and will allow the water to slow down so that we are going to be actually reducing the amount of steep slope. Between stabilizing the slope properly, the way it is proposed to be graded, and the sheet flow from the driveway so it is not concentrated at 1 or 2 locations, the site will be stabilized. Chair Feldman asked about the nature of the fill done without the Town's involvement – can we be assured that there is no pollutants, contaminants or hazardous materials in there. D. Whitney said that the Applicant addressed that in the narrative on the Application and the fill came from the Avon Center Project right behind Town Hall where they removed a good deal of gravelly, sandy material so it seems like it is a good, sandy mixture. There is no evidence of chunks of asphalt, concrete, 55 gallon drums, or anything that would look like it was garbage fill. Chair Feldman asked if we knew where the nearest watercourse is and D. Whitney pointed out on Presentation Plan #2 the two dashed lines that show the edges of the wetlands and after walking that site when they were putting in the sewer, he feels that there is no watercourse out there – this wetlands ends at 52 Pheasant Run. E. Kyle referred to the GIS topographic map which shows the drainage to the wetland area right off of Oak Bluff so you can see the pattern of drainage and as

D. Whitney explained, it is to the south. Chair Feldman asked about the nature of those wetlands and whether there would be any disturbance to that because we are dealing with fairly significant improvement. D. Whitney said that we are dealing with a site that most of the fill has already been placed. The potential impact to the wetlands would be sedimentation during construction. In addition, they will be putting a second row of silt fence on the downhill side of the driveway and around the area of the house so the only activity coming close to the wetlands is the extension of the sewer which does not involve open excavation. E. Kyle would feel more confident in that better stabilization and reparation effort. As D. Whitney said, for better or worse, the worst of the damage has already occurred and we want to make sure that we do not see any further need to adjust any of that fill that was negligently placed. The construction to follow is not as perilous or impactful to the wetlands as the fill that already occurred. Vice Chair Sacks said that land has been transformed without approval so whatever damage was going to occur has already occurred. Then the property was passed on to someone else to develop it. D. Whitney said that the IWC approved the sewer going through the wetlands, the Town inspected that project, and the temporary disturbance due to the sewer was restored so we know that the installation of the sewer did not cause any negative effects to the wetlands. D. Whitney continued that the Applicant thought if he came in with a plan that would repair the problems that are out there now, that would have no additional fill beyond what is already there, and keep the house as far away from the wetlands as possible, it is the best that can be done under the circumstances. He said that the reports submitted by H. Moeller did write a functions and value report at the time. When the original 2009 plan was approved with much more fill than is currently on the site, the IWC evaluated it at that time with H. Moeller's functions, values and impact report. Chair Feldman asked if it makes sense for someone to do some testing or borings of the fill or some kind of analysis to see what possible effect it has on the wetlands. D. Whitney said that the Applicant submitted a complete Application and it is up to the IWC to decide if there is potential for significant impact. Chair Feldman would like the Applicant to address that so they can make a more informed decision. M. Beauchamp would be more comfortable with more information regarding the erosion and the impact on the wetlands. R. Breckinridge asked for suggestions from E. Kyle. She agrees that she would go forward with those two conditions before the IWC makes a significant impact activity determination because new information may show whether or not there is a significant impact activity. She would request a functions, values and impact report and some test pits. R. Breckinridge said that the IWC was concerned about the slope and exactly what is going to run off into the wetlands. Typically there is some type of barrier, either man made or natural, that filtrates the water so here it looks like anything coming down the hill is going right into the wetlands. D. Whitney said that the steep slope will be fairly well vegetated. Any chemicals and pesticides for the lawn will be just on the upper part of the site. He said they could create a swale at the toe of the slope and lead it down to some type of infiltration base at the bottom of the site. Chair Feldman believes these ideas could help the IWC make a more informed decision. There are four ideas: the test pits, the functions, values, and impact report, the possibility of moving the driveway, and the swale that will direct water away from the wetlands. Vice Chair Sacks made a Motion to table the Application until the IWC receives further information. M. Beauchamp seconded the Motion. The Motion passed unanimously.

APPL. # 780 – Lionel and Deborah I. Feigenbaum, Owners and Applicants; request for regulated activities within the 100 foot upland review area: construction of an addition to an existing garage and related site work. Location: 57 Breezy Knoll, Parcel 1410057.

D. Whitney began said the Owners wish to add a small, one-story addition onto their garage. D. Whitney said the proposed garage is on the eastern end of the existing garage where there is currently a turnaround. George Logan, Soil Scientist, delineated the wetlands with flags and Brian Denno from Denno Land Surveying prepared the survey map. Currently there is a double driveway coming into a turnaround area and entering the house on the east side. Presentation Plan #2 shows the proposed one-story addition which is 33' x 36' and basically will fit almost exactly where the paved turnaround is. The new garage door will face Breezy Knoll and the existing two legs of the driveway will remain the same. Photograph #1 shows the existing garage on the right hand side and the existing turnaround area, and also two stakes which will be the far corners of the addition. There will not be any net increase of impervious surface. Presentation Plan #2 shows that the 100 foot upland review area encompasses almost all of the existing house, half of the existing driveway, and the new addition will be within the upland review area. There are currently two gutter downspouts by the front door that discharge onto the driveway and create a ponding situation so he is going to combine collection pipe for the two downspouts plus the four downspouts for the garage and bring the piping around and discharge close to the wetlands. This project will involve a little bit of clearing of scrub growth but will not require any removal of any significant trees and the work will either be within the turnaround area or the existing yard area. E. Kyle's staff report contained four conditions of approval and D. Whitney said that the Applicants have no issue with any of those recommended conditions.

Chair Feldman canvassed the IWC about the length of the meeting. Vice Chair Sacks has many questions on this Application. He made a Motion to Table this Application. R. Breckinridge seconded the Motion. The Motion passed unanimously.

III. COMMUNICATIONS FROM THE PUBLIC: None.

IV. STAFF AND COMMISSIONER COMMENTS:

Chair Feldman asked to discuss a special meeting for June. There are no meetings in August in the Town of Avon. E. Kyle proposed a June meeting for continued items only and then possible new items for our next regular meeting in July. Chair Feldman agreed and E. Kyle confirmed that for that special meeting the only agenda items will be Breezy Knoll and Bridgewater. The IWC decided on a special meeting on June 27 at 6:30 p.m.

Vice Chair Sacks asked about the rules for submission of applications. E. Kyle said that the Checklist with the applications has been used a long time and it currently does not require a functions, values and impact assessment. It is only asked for if the IWC at a meeting determines that they believe that the assessment should be required, which guarantees a continuation. She agreed with Vice Chair Sacks that because the IWC typically does need an impact assessment in one way or another, the Checklist should be revised to reflect that. E. Kyle said that this modification would not require a public hearing. It would be drafted by staff and approved by the IWC.

V. APPROVAL OF MINUTES:

VI. NEXT REGULARLY SCHEDULED MEETING:

The next regularly scheduled meeting is Tuesday, July 5, 2022.

Vice Chair Sacks 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 9:29 p.m.

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