

THE INLAND WETLANDS COMMISSION OF THE TOWN OF AVON HELD A REGULAR MEETING AND PUBLIC HEARING ON TUESDAY, OCTOBER 1, 2019, IN THE TOWN OF AVON SELECTMEN'S CHAMBER.

Present were Chair Clifford Thier, and Vice-chair Michael Beauchamp; and Commissioners Bob Breckinridge, Michael Feldman, Jed Usich, and Dean Applefield. Absent was Commissioner Martha Dean. Also present was John McCahill, Planning and Community Development Specialist/Wetlands Agent.

Chairman Thier called the meeting to order at 7:01 p.m.

PUBLIC HEARING:

**APPL. #764** – The Estate of Donald L. Cole c/o William K. Cole, owner/applicant: Requests for regulated activities within wetlands and/or within the 100 foot upland review area: 1) Wetlands crossing #1, proposed driveway (approximately 1551 linear feet) with culverts and fill. 2) Wetlands Crossing #2, proposed driveway (40 linear feet) with culverts and fill. 3) Construction of driveway (470 linear feet), house, septic system, well, utilities, and related grading within 100 foot upland review area. 4) Excavation in upland review area to provide compensatory flood storage volume for driveway fill. Location 70 Sunrise Drive, Parcel 4190070.

Present on behalf of the applicant were William K. Cole, owner/applicant; David F. Whitney, of David F. Whitney Consulting Engineers, LLC; and Michael Klein, biologist and Registered Soil Scientist, of Davison Environmental, LLC.

Mr. Whitney summarized the application based upon previous meeting presentations. The site is 12 acres at the end of a cul-de-sac and includes the existing house at 70 Sunrise Drive. The property extends to the west. A map showing the wetlands in green ink has been created to easily distinguish those areas from the non-wetland areas. The pond, on the eastern portion of the site, is .8 of an acre and extends onto the neighbor's property. Haynes Road is to the north of the site and there are several single-family homes in that area. Big Brook flows along the northern portion of the site. There are intermittent watercourses that flow into the pond. The proposed house will sit on 2.5 acres of non-wetlands. The site is approximately 50% wetlands and 50% non-wetlands. The proposal is for one new house on a newly created nine-acre lot, and 3.4 acres will remain for the lot of the existing house.

Chairman Thier requested that Mr. Whitney physically point out where the dividing line is on the map.

Mr. Whitney responded by pointing out the thick black line on the map.

Commissioner Applefield inquired if the entire site is within the 100' upland review area (URA).

Mr. Whitney responded that on the current presentation map, the 100' URA area is shown in magenta. The only non-regulated area on the site is an odd-shaped portion at the front of the property, adjacent to the cul-de-sac. All proposed activities, including the construction of the

driveway, two wetlands crossings with culverts, the construction of the house and the septic system, and the clearing for a yard are within the 100' URA. There were some revisions to the plans since the last meeting. The revised plan titled, "Site Development Plan Sheet #1," is revised through September 20, 2019. It is essentially the same plan, with the inclusion of the portion of Big Brook to the north; and the Federal Emergency Management Agency (FEMA) floodplain lines and elevations of the cross sections from the FEMA map, drawn in at the elevations of 300', 294', 290'. The floodplain drops as Big Brook flows to the east; the flood elevation drops by four feet on the site. The contours for the proposed house and driveway are based on the recent and accurate field survey. Therefore, the contours are not based upon approximate photogrammetry. The FEMA floodplain map shows where the storm water will back up in a 100-year storm, with eight inches of rain within 24 hours. The flood line to the south is even farther south than what the FEMA map shows due to the exact elevations of the recent survey. There is a small amount of fill in the 100-year floodplain involved with Wetlands Crossing #1. Compensatory excavation is required to balance the cuts and fills to avoid a net loss of flood storage. If this wetlands application is approved, then an application will be filed with the Town of Avon Planning and Zoning Commission for activities within the floodplain. There will be further discussion of floodplains at the presentation before the Town of Avon Planning and Zoning Commission. There was concern among the neighbors regarding the water flow from the subject site in the direction to the north. To address those concerns, a dark red watershed line was drawn on the revised plans. The dividing line is basically a ridge at a high point, as shown on the map. The storm water runoff north of this line will flow to the north, and the storm water runoff south of the line will flow to the south. A letter to the Inland Wetlands Commission, dated September 20, 2019, addresses this Commission's concerns raised at the last meeting. Item #1 states that the applicant has agreed to a conservation restriction on the wetlands in accordance with Appendix E of the *Inland Wetlands and Watercourses Regulations, Town of Avon, Connecticut*. A map was submitted showing the red-colored areas proposed for the conservation restriction areas. The proposed conservation restriction includes all of the wetlands and the portion of the pond on the site. At the back portion of the property, the conservation restriction area extends 20' outside of the wetlands and into the 100' URA. This 20' measurement is standard according to this Commission's requests over the years. The proposed driveway and the earthen spillway at the dam have been shown as areas exempt from the conservation restriction due to the activities and maintenance of those areas. In front of the existing house, where the lawn meets the pond, the applicant would like to have the conservation restriction at the edge of the pond and at the edge of the wetlands in this area. This will allow them to maintain the current aesthetics of the lawn. In item #2, the watershed dividing line is described. Water runoff from 1.46 acres, which is approximately 12% of the site, will drain toward Haynes Road, and the remaining portion of water would drain down to the pond. In Item #3, the proposed house on proposed lot #2, is located within the watershed that drains onto the subject property and not onto the portion of the site that drains toward Haynes Road. The foundation drain outlet pipes and the roof drain outlet pipes will discharge to the south, so that any increased runoff from the impervious surfaces of the house will discharge into the wetlands and into the pond, and not directly into the Big Brook watershed. There will be a small area that will be cleared for a yard and a small paved turnaround for the driveway. Theoretically, there may be an increase in runoff and the peak flow will be slightly increased, but under .5 cubic square feet (csf) for a 100-year storm, which is negligible. This area is relatively flat and the soil is very well drained, as evidenced by the results of the deep pit tests and percolation tests. The increased runoff to the

north from the proposed construction is negligible. Item #5, on page 2 of the letter, outlines the possibility of the half-acre knoll of non-wetlands as a potential site for the proposed house. An attachment to the letter titled, "Sketch of Alternate House Location," illustrates a possible layout showing the house, a septic system, and a turnaround area. As stated previously, there is not enough area to fit a house and a satisfactory yard. To construct a house with a septic system close to the wetlands is not advisable. If a house were built in this alternate area, construction of the proposed Wetlands Crossing #1 would still be necessary. The only disturbance to the wetlands that could be avoided is to Wetlands Crossing #2, which is only 40 feet long. Item #6, explains the possible alternatives of the construction for crossing Big Brook, and the purchase of adjacent neighboring properties. The alternatives were not realistic as they would prove too costly and also the neighbors were not agreeable to selling the parcels. In item #7, the concerns of the Haynes Road residents were explained. Any of the proposed activities would not affect additional water backup or the collection of water on the Haynes Road properties. Item #8, contains miscellaneous corrections and revisions to the plans; including a correction to the pond's water elevation, an added construction sequence, and the addition of an extra layer of permeable gravel below the base of the driveway at Wetlands Crossing #1, to allow unimpeded ground water flow. The Town of Avon Engineering Department has issued a memorandum indicating that it finds the plans to be substantially complete.

John McCahill stated that the Town of Avon Engineering Department reviews the plans for technical completion from an engineering point of view but not from a wetlands perspective. He stated that nothing on the plans was missing from the engineering standpoint.

Mr. Klein had reviewed the attachment titled, "Sketch of Alternate House Location," and found that the alternative did not provide any advantages in terms of substantially affecting the wetlands. The recommendations that were made to minimize and mitigate any potential impacts have all been incorporated into the plan. He agreed that an increase in storm water flow of .5 csf for a 100-year storm, at the watershed dividing line toward the north, would be negligible. The wetlands and watercourses on the site would not be adversely affected.

Mr. Whitney stated that the storm water flow of Big Brook in a 100-year storm is approximately 146 csf, and therefore a .5 csf increase would be an approximate difference of less than one percent. Another revision made to the plan included moving the driveway over on the knoll, farther away from the compensatory storage area. Boulders have been shown on the plan for use as an aesthetic barrier on the site, and to protect the compensatory storage area as it will become wetlands.

Commissioner Breckinridge inquired whether or not a dam registration permit was required, as the issue was raised at a previous meeting, and if information had been researched regarding an inspection of the dam.

Mr. Whitney responded that he reviewed the CT Department of Energy and Environmental Protection (CT DEEP) website, and also telephoned CT DEEP staff who indicated that all dams must be registered. If the dam is less than five feet high, there is no fee to register the dam. Every registered dam is assigned a hazard value by a classification system. The lowest classification AA dam represents a negligible hazard; an A dam has a low hazard potential; a BB dam has a

moderate hazard potential; a B dam has a significant hazard potential; and a C dam has a high hazard potential. The classification system is based upon the premise of damage severity if a dam were theoretically to fail. The classifications represent damage to agricultural land, to roadways, to economics, and to human loss of life. In order to classify a dam, the situation downstream would be evaluated. This dam is not believed to be registered with the CT DEEP. Two neighbors own the dam, and therefore the dam would need to be co-registered. An attachment to the letter of September 20, 2019, a Town of Avon geographic information system (GIS) map of 70 Sunrise Drive, shows the pond and the floodplain elevations which orient toward West Avon Road. The pond is approximately .8 of an acre, with an approximate average depth of four feet, which provides a volume of 166 csf. The flood zone going down to West Avon Road is eight acres, and presumably there are culverts under West Avon Road. If the dam were to be breached in a 25-year storm, the amount of accumulated water would be equal to approximately five inches. With this information, the CT DEEP staff thought the classification for this dam would most likely be AA, and the hazard would be considered negligible. If it were an A classification, the hazard would still be low.

Commissioner Breckinridge restated that the dam has not been registered, and thought that a registration was required.

Mr. Whitney believed that there was a Connecticut General Statute (CGS) that registration is required for the dam.

Commissioner Breckinridge inquired of Chairman Thier if the Commission could make the dam registration a condition of approval.

Chairman Thier thought that the dam registration could be required by the Inland Wetlands Commission.

Mr. Klein did not believe that the registration of the dam was an issue for the Commission. There is a specific section of the CGS which indicates that activities associated with the dam safety program are within the exclusive jurisdiction of the CT DEEP Commissioner.

Vice-chairman Beauchamp requested that Mr. Whitney explain a particular area not designated within the outlines of the red-colored conservation restriction areas on the map.

Mr. Whitney responded that the space in question outside of the conservation restriction area is the existing dam outlet structure for the pond.

Vice-chairman Beauchamp inquired about the electrical power line to the proposed house, and whether or not it would run underneath the ground along the proposed driveway.

Mr. Whitney responded that there would be conduits directly next to the driveway.

Commissioner Feldman stated that at the last meeting, he raised concerns over a theoretical decision by a future property owner to clear cut an area of the forested wetlands and install a lawn. He inquired whether or not the conservation restriction would alleviate those concerns. He

requested that Mr. Whitney explain the intended effects of a conservation restriction, and how the restriction would be documented and enforced.

Mr. Whitney responded in the affirmative with regard to the alleviation of concerns about clear cutting in the restricted area.

Mr. Klein stated that there is an appendix in the Town's inland wetland and watercourses regulations that specifies the form and content of a conservation restriction. That format would be utilized as the document for submission.

John McCahill responded that a key part of the conservation restriction template states that, "There shall be no construction of any kind, no filling, no tree cutting, no moving of living trees, or any other activity which would harm the existing natural vegetation, wildlife, and hydrological functions of the 'Conservation Area.'" The conservation restriction would be recorded on the land records, and hopefully it would raise a red flag to the prospective property owner.

Commissioner Feldman stated that there have been previous applications presented before this Commission with minor encroachments, for example, where only the corner of a house was infringing upon the URA. He struggled with the extensive amount of proposed activities in the wetlands on this property. He appreciated the efforts made to help mitigate the effects. He inquired whether or not there was a point in which the wetlands needed to be left in their natural state.

Mr. Whitney responded that all matters should involve a balance with reasonable development and conservation. It is the reason why the construction of one house on a 2.5 acre knoll of non-wetlands, within a total of nine acres, has been emphasized as a reasonable balance in this application.

Commissioner Feldman inquired about the site plan, which shows the areas of proposed construction and the neighboring properties on Haynes Road; and that it appeared as though the proposed lot was a leftover piece of land from the original development. It did not seem that it was intended to be as a buildable lot due to the wetlands and lack of access to the proposed house.

Mr. Klein stated that the house was built in the 1960's, long before there were any restrictions or recognition of wetlands. The criterion is whether or not there is a clear negative impact on the wetlands and watercourses on the site. In this case, there is none with the exception of the proposed fill under the driveway within the wetlands. The preamble to the CGS indicates the promotion and the preservation of the important values and functions of wetlands and watercourses, while allowing for reasonable economic development. The feasible and prudent alternative test, required under the statute, indicates that the feasible test relates to the technical aspect and the prudent test is defined by the social costs relative to the social benefits. This is a balancing test, and it was attempted in this application.

Commissioner Feldman inquired whether or not all of the wetland values have been addressed in the application.

Mr. Klein responded in the affirmative.

Commissioner Usich inquired about the measure of .5 csf, classified as having a negligible impact. He inquired how a large measure of impact would be defined.

Mr. Klein responded that this figure represented an increase in a significant flood event such as a 100-year storm, in a situation where the wetlands and streams were already flooded. A four or five percent csf increase during a major storm event would not have an adverse impact on the wetlands. If there were to be a five or ten percent increase in a two-year storm event, that might rise to the level of significance depending upon the type of wetland. In this case, for the 100-year storm, the amount is negligible.

Commissioner Usich inquired about work done to the proposed driveway by a potential future owner. He asked if the owner would need to seek additional permits from the Commission for driveway maintenance, such as sealing, since the activity would be within the 100' URA.

John McCahill responded in the negative. The category of general maintenance of existing structures and landscape is included in the Town's regulations and provided for residential property owners in the following: "Section 4 – Permitted Uses as of Right & Nonregulated Uses c. uses incidental to the enjoyment and maintenance of residential property..." A property owner would not have to apply for permits for general maintenance.

Commissioner Applefield sought clarification of Mr. Klein's earlier statement that the dam was outside of the jurisdiction of the Commission.

Mr. Klein noted that there is a section in the CGS that clearly states an exemption regarding a commission's jurisdiction.

John McCahill stated that the issue is analogous to the Commission's position on a permit from the United States Army Corps of Engineers (USACE). This agency believes that if a USACE permit were to be required, the applicant should go through the permitting process. The Commission has an advisement in its approval letter that a USACE permit should be obtained. However, it is not within the Commission's purview to enforce the permitting process.

Mr. Klein stated that the verbiage is under the *Connecticut Department of Environmental Protection Inland Wetlands and Watercourses Model Municipal Regulations*, "Section 5, Activities Regulated Exclusively by the Commissioner of Environmental Protection."

Commissioner Applefield requested that Mr. Klein read aloud the sections.

Mr. Klein read the applicable verbiage in the following: "Section 5, 5.1 The Commissioner of Environmental Protection shall have exclusive jurisdiction over regulated activities in or affecting wetlands or watercourses, undertaken by any department, agency or instrumentality of

the State of Connecticut ...;” “5.2 The Commissioner of Environmental Protection shall have exclusive jurisdiction over tidal wetlands designated and regulated pursuant to sections 22a-28 through 22a-35 of the Connecticut General Statutes, as amended;” “5.3 The Commissioner of Environmental Protection shall have exclusive jurisdiction over activities authorized under a dam repair or removal order issued by the Commissioner of Environmental Protection under section 22a-402 of the Connecticut General Statutes or a permit issued by the Commissioner of Environmental Protection under sections 22a-403 of the Connecticut General Statutes. Any person receiving such dam repair or removal order or permit shall not be required to obtain a permit from a municipal wetlands agency for any action necessary to comply with said dam order or to carry out the activities authorized by said permit.”

Commissioner Applefield respectfully disagreed with the interpretation of the sections, and stated he did not believe that requiring a registration of a dam was beyond the jurisdiction of this Commission. He believed that if the Commissioner of CT DEEP had issued an order or a permit to this land owner, no permit would be required from this Commission.

Mr. Klein stated that in his experience there is clearly determined case law, in that a commission cannot condition a permit upon the action of another agency over which it has no jurisdiction.

Commissioner Applefield stated that since he is an attorney, he needs to see the case law. He identified that Mr. Klein is not an attorney and not necessarily qualified to speak about the case law being clear or unclear. He had not seen clearly established case law and would need a specific case reference from Mr. Klein. He could not agree or disagree without a specific case.

Mr. Klein responded for the record that he had been a wetlands commissioner for 10 years, a chairman of a wetlands commission for a year, and a zoning commission member for five to six years in the Town of New Hartford. The town attorney had often instructed the Commission on such matters. One does not have to be an attorney to be on a wetlands commission.

Commissioner Applefield responded that the Commission would not be conditioning actions on the conditions of another agency. There is a legal obligation that needs to be met by the applicant. He also did not agree with the balance which Mr. Klein addressed earlier. He would want to see the preamble of the legislation for the wetlands requirements. He asked John McCahill about the conservation restriction, and whether or not it was an interest in land that would be shifted to the Town.

John McCahill responded in the negative.

Commissioner Applefield did not believe the conservation restriction was enforceable. He thought it was an issue for the Commission to discuss.

John McCahill responded that the current conservation restriction has been used over the last 25 years of his tenure. The Town has no interest in the restriction. It is not an easement. He has brought violations before this Commission in the past, and the Commission has treated them as such. If he were aware of a violation, he would issue a Notice of Violation to the property owner

and possibly a Cease and Desist Order, and would go through the process of enforcing either the regulations or the conservation restriction in place.

Commissioner Applefield inquired as to what would constitute a violation of the conservation restriction.

John McCahill responded with an example of someone engaged in regulated activities without a permit, for instance the cutting of trees within the conservation restriction area. This activity would be a violation of the Town regulations and of the conservation restriction. The restriction reiterates the Town's authority. The conservation restriction has been an appendix to the regulations and it is the one that has been in use for over 25 years.

Commissioner Applefield stated that he did not believe the Town could enforce a restriction that did not serve the Town and that the restriction would not be binding; with unity of title, the restriction disappears. The permit would be issued to this property owner, but the property likely will be sold. There is also the question as to what extent the permit this Commission issues is enforceable for the next property owner.

John McCahill requested that the Commission review the language of "Other Permits" in the Town's regulations which might provide relevant insight. He read aloud, "Section 8 – Other Permits, 18.1 Nothing in these regulations shall obviate any requirements for the applicant to obtain any other assents, permits or licenses required by law or regulation by the Town of Avon, the State of Connecticut or the Government of the United States including any approval required by the Connecticut Department of Environmental Protection and the U.S. Army Corps of Engineers. Obtaining such assents, permits or licenses is the sole responsibility of the applicant." It is already stated in the regulations that the applicant is required to obtain those permits. These permit requirements are also stated in the letter of approval to an applicant.

Commissioner Feldman inquired of John McCahill whether or not he had experience with the issues surrounding the conservation restriction, regarding its standing and enforceability. He inquired whether or not people respect the restrictions.

John McCahill stated that he did not believe there has been a violation within the conservation restriction in the past. However, he had noticed minor encroachments into the conservation restriction area. In one instance, a couple of trees had been removed and the owner was required to replace the trees. People either respect a conservation restriction or they do not get caught in a violation.

Chairman Thier inquired whether or not a conservation restriction was coterminous with a URA, and if it would give the Town any more authority than which already exists. For instance, if an owner wishes to conduct activity in a URA, the owner would need to present an application to the Commission anyway. Therefore, placing a conservation restriction area on wetlands really would not add any authority of the Town. A conservation restriction on a non-URA or non-wetlands area would extend the authority of the Town. There is value in those circumstances. However, it is uncertain as to the value of a conservation restriction in areas where the Town already has authority.

Commissioner Feldman stated that the benefit of the conservation restriction is that one would not be able to apply to do anything in the areas of the restriction, and this restriction would be in perpetuity. However, if the activities were to fall within a URA, an owner would have the right to request a permit for those activities.

Chairman Thier raised the example of an owner, with a conservation restriction on the property, who would look to the Town to apply for an approval of activities, but the Town would notify the owner that a permit would not be approved. The activities would not be permissible according to the restriction.

John McCahill stated that the Town's conservation restriction language could be modified to indicate that scenario if the Commission deemed it necessary.

Mr. Whitney stated that the modification would raise the bar on the conservation restriction.

John McCahill stated that the language of the conservation restriction, however weakly considered, is also used by the Planning and Zoning Commission in its approvals. In the context of enforcement experience, the conservation restriction would send an alert to a potential property owner looking to purchase property from someone who has conducted an activity subject to violation. In the past, given a minor violation, the advice of the property owner's attorney has been to remedy the situation quickly. The conservation restriction has provided favorable leverage in conducting enforcement. The conservation restriction is also used in buffer zones. For example, there is an existing 100-foot conservation restriction on Arch Road which requires that the trees lining the perimeter of the industrial zone must remain in place.

Commissioner Applefield stated that no one can restrict their own property. A property owner could give a conservation restriction to the Town, and the Town could exercise a right over the area as an owner of the easement, and could have standing to enforce that easement. If a future owner were to cut down trees in the area of the conservation restriction, it would not be a violation of the restriction, it might be a violation of other restrictions. The benefit of the restriction is not the Town's to enforce.

John McCahill stated that one of the reasons why the Town has used the language of conservation restriction, instead of conservation easement, is that the land would then become an interest of the Town and it would have to be accepted by the Town Council. That practice has been avoided.

Commissioner Applefield stated that he has encountered this issue on state remediation sites. Whereas, if a land use restriction is placed on the property, pollution is allowed to remain in place; that allows for a pollution cap on a property. However, that land use restriction does come to the State. The land use tool titled, "Notice of Activity and Use Limitation," statutorily created a result that is permanent and binding even though the interest in the land is not coming to the state. It is a similar situation in that this tool was set up so that the activities within the land use restriction area would be enforceable.

Chairman Thier inquired if anyone from the public wanted to comment tonight.

Matt Shultz, of 81 Haynes Road, inquired whether or not the Commission was in receipt of the photographs attached to his e-mail, dated December 21, 2018. The photos show the conditions during a heavy rain storm and they underscore the precarious nature of the wetlands in the area. The photos show that there may be negative impacts and consequences beyond what can be measured. He inquired whether or not there would be culverts as part of the proposed driveway, and whose responsibility it would be to maintain the culverts. It would be imperative to clean the culverts regularly. He requested that the Commission consider how the maintenance of the culverts would be enforced.

Mr. Whitney responded that there are three culverts proposed for Wetlands Crossing #1, and two proposed for Wetlands Crossing #2. Each culvert will have a 15-inch diameter. The responsibility to maintain the culverts would be that of the property owner's.

Ray Griffin, of 95 Haynes Road, stated that Big Brook is not a brook but actually a drainage ditch. There were many houses with driveways developed in the area above 95 Haynes Road. When there is a heavy rain, the water follows into the road drainage and enters into Big Brook. This problem did not occur for the Haynes Road neighbors previous to the developments. There will be an increase in water from the immediate runoff flowing into the wetlands.

Mr. Whitney responded that the photographs which Mr. Shultz submitted to the Commission are accurate. There is a 70-foot wide floodway for a 100-year storm for Big Brook. It was the reason why the alternative of purchasing the adjacent property and constructing a bridge across Big Brook was not feasible. Big Brook is shallow and floods wide by a large degree, when it floods. There is approximately 256 acres worth of water runoff that travels down to the point of the alternative bridge. By comparison, there are approximately 11 acres worth of water runoff which go down to the wetland crossings.

Commissioner Feldman sought confirmation that the water would not drain northward.

Mr. Whitney responded in the affirmative.

Mr. Klein stated that the discharge from the site has no impact, regardless of how much it changes, on the flood elevations related to Big Brook.

Commissioner Feldman inquired about the rear of the house and whether or not the water runoff would drain toward Big Brook and Haynes Road.

Mr. Whitney responded that 1.46 acres from the rear of the house currently discharges into Big Brook.

Commissioner Feldman inquired if Mr. Whitney's most recent letter stated that the discharge from the rear of the house would be diverted to the pond.

Mr. Whitney responded in the negative since any water diversion would require a diversion permit. There is no water diversion in this application. There is a dividing line drawn on the map. Any runoff water to the north of the line would discharge north, and any runoff water to the

south of the line would discharge to the south. That would include water runoff from both the roof and foundation drains traveling over impervious surfaces.

Mr. Cole stated that Mr. Whitney has marked on the map the seasonal streams and wetlands areas for the nine acres, with approximately 50% wetlands and 50% non-wetlands. On site, the proposed activities do seem low-impact, as the runoff drainage is not toward the watershed of Big Brook.

Commissioner Applefield inquired about the runoff from roof drains and whether or not there would be a great difference if the water drainage was directed differently than Mr. Whitney had described.

Mr. Whitney responded in the negative. If there was no collection system and the water discharged and splashed to the ground, the water would soak into the ground because it is well-drained soil.

Commissioner Applefield inquired if there would be a problem if the runoff were pointed toward Big Brook.

Mr. Whitney responded that the plan has been designed for the least amount of impact. It did not matter which way the foundation drains, since the runoff drainage was designed to make sense.

Commissioner Applefield inquired about this issue in order to determine if it were important enough to include in the approval conditions; if a future owner were to move the drainage direction.

Mr. Klein responded that the property owner would know about the drainage since the drainage mechanisms will be underground. The existing plan includes the specifications for the drainage and therefore it is already a condition of the permit.

John McCahill stated it was important to note that the plan proposal for this property would have to be presented before the Planning and Zoning Commission for a subdivision and a special exception review. The applicant is trying to address all of the issues at the beginning of the plan process.

Mr. Whitney added that for every single plan submitted that shows a proposed house, the Town Engineering Department wants to see a foundation drain outlet pipe.

Vice-chairman Beauchamp motioned to close the public hearing. Commissioner Feldman seconded the motion. All were in favor, and the public hearing was closed.

Chairman Thier inquired if the Commission was ready to make a decision.

John McCahill stated that in the event the Commission decided in favor of the application, he had prepared a draft of approval conditions for the Commission's review. He stated that the beginning of the memorandum contains a preamble listing all of the relevant documents

reviewed to date. He read aloud the recommended additional approval conditions drafted in the memorandum.

Chairman Thier inquired about what would be shown on the land records of a parcel, relative to a conservation restriction, when an attorney for a future buyer were to conduct a title search.

John McCahill responded that a final copy of the fully executed conservation restriction would be filed in the land records. "APPENDIX E – CONSERVATION RESTRICTION," would be attached as the starting point and the appropriate references would be inserted into the document. The map that has been presented in color for the Commission would be filed on the land record in black-and-white. He confirmed that anyone conducting a proper title search would find these documents in the land records.

Commissioner Applefield inquired whether or not the title search would show the Town of Avon Inland Wetlands Commission permit.

John McCahill responded that the permit would not show in the land records title search.

Vice-chairman Beauchamp motioned to approve Appl. #764 with standard conditions and additional conditions as set forth in a memorandum by Planning and Community Development Specialist John McCahill, dated September 30, 2019. Commissioner Applefield seconded the motion.

Commissioner Applefield inquired why the excess earthen material, that is supposed to be removed from the site, is part of a permit condition.

John McCahill responded that typically when excavating for a basement and foundation, the foundation will be elevated and the excess material can be placed in the area around the foundation. However, in this application the house will sit at-grade and the excess material will need to be removed. That condition is unique to this application.

Commissioner Applefield asked Commissioner Breckinridge about inclusion of the property's dam registration in the motion to approve the application.

Commissioner Breckinridge responded that he believed the dam registration should be included in the motion.

Vice-chairman Beauchamp stated that he would not amend his previously stated motion to approve Appl. #764.

Commissioner Applefield proposed to amend Vice-chairman Beauchamp's motion to approve Appl. #764 to include registration of the dam on the property with CT DEEP, as condition #9 of John McCahill's memorandum, dated September 30, 2019. Commissioners Breckinridge and Feldman both seconded Commissioner Applefield's motion to amend the original motion. Chairman Thier and Vice-chairman Beauchamp, Commissioners Applefield, Feldman, and

Breckinridge voted in favor to amend the motion to approve Appl. #764; Commissioner Usich was opposed. The amendment was adopted.

Chairman Thier called for a vote on the amended motion to approve Appl. #764. Chairman Thier, Vice-chairman Beauchamp, and Commissioners Applefield, Feldman, Usich, and Breckinridge voted in favor of the amended motion; Commissioner Feldman was opposed. Appl. #764, with the amended condition, was approved.

OTHER BUSINESS:

John McCahill stated that Chairman Thier recused himself from this portion of the meeting for the Commission's discussion on The Connecticut Water Company's recently submitted letter, dated September 30, 2019. Chairman Thier requested that Vice-chairman Beauchamp actively conduct this portion of tonight's meeting.

Vice-chairman Beauchamp stated that the Commission did not have a chance to read The Connecticut Water Company's recent letter, and suggested that the matter be postponed until the next regularly scheduled meeting on November 12, 2019.

John McCahill stated that The Connecticut Water Company has made references to the CGS in the letter, which are beyond the scope of this Commission. He inquired whether or not the Commission wished for Town Attorney Kari Olson to review the letter.

Commissioner Applefield inquired about what level of commentary the Commission would be seeking from Town Attorney Olson.

John McCahill responded that the Commission would ask the Town Attorney to provide her opinion with regard to the statements in the water company's letter.

Vice-chairman Beauchamp commented that the water company had previously indicated its belief that a permit was not required for conducting repair and related work to existing water mains.

John McCahill responded in the affirmative and stated that the water company's letter, dated September 30, 2019, was received only yesterday afternoon. He and the Commission would need adequate time to review and comment on it. The water company matter will be included as an item on a future agenda.

STAFF COMMENTS:

Chairman Thier rejoined the Commission's discussion.

John McCahill provided an update regarding the pending litigation related to the Blue Fox Run Golf Course. The trial date is scheduled for May of 2020. Given the denial of the golf course owners' application for a zone change, by the Town of Avon Planning and Zoning Commission, the Town is expecting that the legal posture of the golf course group may change. The

Commission will remain in a holding pattern at this time regarding additional information from Town Attorney Olson.

Commissioner Feldman commented that he thought the appeals were decided on briefs and not on a trial.

Commissioner Applefield stated he was not sure what was meant by a trial in this instance.

John McCahill commented that the pending lawsuit may not be pursued further.

Commissioner Applefield inquired about the most recent water company letter to the Commission.

Chairman Thier recused himself from this portion of the discussion.

Commission Applefield requested that all of The Connecticut Water Company documents be provided again to the Commission and also to Town Attorney Olson.

John McCahill responded in the affirmative.

Chairman Thier rejoined the Commission's discussion after the close of comments regarding the water company. He inquired about whether or not Tim Martin had completed the landscaping requirements, as planned, at 232 Avon Mountain Road.

John McCahill responded regarding his understanding that the trees had been installed based upon a drive-by visual affirmation of supplemental plantings, although he had not been physically on the property. He indicated that Mr. Martin had confirmed in writing that the trees were planted. There had been a slight delay based upon the need to mow the area where the trees were to be planted, and that was communicated to Town Attorney Olson. The planting installation will be verified in the end.

Chairman Thier inquired how the Commission was supposed to know if the owner met the planting deadline.

Vice-chairman Beauchamp inquired about the height of the trees.

Chairman Thier and John McCahill concurred that there was a plan for planting that Mr. Martin was required to follow.

John McCahill mentioned the Connecticut Association of Conservation and Inland Wetlands Commissions, Inc. (CACIWC) invitation for the Commissioners to attend the annual meeting workshops. A deadline to respond to Town staff for event registration is October 11, 2019.

Commissioner Breckinridge received a letter from a former Commissioner regarding surveying being conducted in the area of Alsop Meadows. The letter indicated that it appears there is a large underground culvert pipe, possibly four feet across, that discharges directly in the river.

The discharge is probably from the street drains coming off of lower Reverknolls. The discharge system does not meet the Town's current code standards because there is no catch basin for sediment, and the sediment goes directly into the river. It is thought to be an old pipe set in place from the time that Reverknolls was first developed.

John McCahill stated that the former Commissioner can communicate with Town staff to help determine the specific information relevant to the situation.

APPROVAL OF MINUTES:

- Minutes - September 3, 2019 – Regular Meeting and Public Hearing: Commissioner Breckinridge motioned to approve the minutes as submitted, and Commissioner Feldman seconded the motion. All were in favor, with none opposed, and the minutes were approved.

NEXT REGULARLY SCHEDULED MEETING:

The next regularly scheduled meeting is Tuesday, November 12, 2019.

There being no further business, the meeting adjourned at 8:35 p.m.

Susan Guimaraes, Clerk  
Inland Wetlands Commission  
Town of Avon Planning and Community Development