

SUBJECT TO APPROVAL

**MADISON PLANNING AND ZONING COMMISSION
REGULAR MEETING MINUTES
Jan. 16, 2020**

The regular meeting of the Madison Planning and Zoning Commission was conducted Thursday, Jan. 16, 2020, at 7 p.m., in Meeting Room A at Madison Town Campus.

MEMBERS PRESENT

Chairman Ronald Clark, Vice Chairman James Matteson, Joel Miller, Giselle Mcdowall, Elliott Hitchcock, and Brian Richardson.

MEMBERS ABSENT

Secretary Thomas Burland, Joseph Bunovsky Jr., and John K. Mathers.

ALTERNATES PRESENT

Ron Bodinson and Seonaid Hay.

OTHERS PRESENT

Director of Planning and Economic Development David Anderson. MCTV videotaped the meeting.

The regular meeting of the Madison Planning and Zoning Commission was called to order at approximately 7 p.m. by Chairman Ronald Clark.

REGULAR MEETING AGENDA ITEMS (Scheduled for 7:00 P.M.):

Election of Officers

Commissioner Giselle Mcdowall nominated Commissioner Elliott Hitchcock as secretary; there were no other nominations, and Vice Chairman James Matteson named him secretary. Chairman Clark nominated Commissioner Matteson as vice chairman; there were no other nominations, and he was named vice chairman. Vice Chairman James Matteson nominated Commissioner Clark chairman; there were no other nominations, and he was named chairman.

391 Durham Road. Informal discussion regarding a proposed solar array.

James Schwartz, of Independence Solar, and Bradley Parsons, of All-Points Technology Corporation, presented plans for a proposed solar array at the Klein's Golf Course, 391 Durham Road. It will be a ground-mounted solar array that will be placed on the golf course, mowed and flat lawn area—there are no trees in the lawn. Mr. Schwartz stated that the site is well screened from the public road and neighbors. The Connecticut Siting Council is the permitting and approval agency; it will notify the town, when it sets the public hearing on the application. Mr. Schwartz stated that plans are to become engaged in a 20-year tax agreement with the town, and there would be additional revenues with that, such as virtual net metering, which allows the town to buy energy from the system to save money. Connecticut has launched a shared community solar system for 2020, according to Mr. Schwartz. Because the solar array is an energy project greater than one megawatt, it must be reviewed and approved by the Connecticut Siting Council,

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according to Mr. Schwartz. This project will also be reviewed by the state Department of Energy and Environmental Protection (DEEP) and the Army Corps of Engineers; there is currently an agreement with Eversource, according to Mr. Schwartz. In addition, the Inland Wetlands and Watercourses Agency will be appraised of the project. Mr. Parsons stated that the site has about four acres of developed wetlands, catch basin draining running through the center of the property, and three structures on the parcel. It is classified as wetlands—developed wetlands—due to the soils underneath; the land has been filled for quite some time, according to Mr. Parsons. Existing property buffer lines will be maintained, there is screening on site, the wetlands delineation will be refreshed, there will be wetlands mitigation, and plans are to create a pollinator habitat, to have taller grasses, and to create rain gardens. Chairman Clark asked what would happen if the town wanted to have a public hearing on the application, as well as a site walk, and Mr. Parsons stated that once the Connecticut Siting Council notifies the town of the application, the town could request a public hearing and site walk. Commissioner Clark stated that at some point, the Planning and Zoning Commission should have an official presentation on the application, with minutes, to show the council what the town thinks. Mr. Parsons stated that there are a lot of pieces left to the process, and input is welcomed. The solar array will replace the golf course; however the existing structures will remain on site, at least one of which could be used to store equipment for land and lawn maintenance. There will be a seven-foot tall perimeter fence, Mr. Schwartz said. Construction would start next year, and it takes three months to finish, according to Mr. Schwartz. Director of Planning and Economic Development David Anderson stated that the town of Madison will be part of the Connecticut Siting Council process; people are just concerned about the aesthetics, particularly what the solar array will look like from the street.

Approval of Minutes: Regular Meeting—December 19, 2019

Secretary Elliott Hitchcock made the motion to table the Dec. 19, 2019 minutes; it was seconded by Commissioner Brian Richardson and unanimously approved.

Vote to table the Dec. 19, 2019 minutes passed, 6-0-0.

IN FAVOR: Chairman Clark, Vice Chairman Matteson, Secretary Hitchcock and Commissioners Joel Miller, Richardson, and McDowall.

OPPOSED: None.

ABSTAINED: None.

PUBLIC HEARING ITEMS (Scheduled for 7:30 P.M.):

Chairman Clark seated Alternate Commissioner Ron Bodinson for absent Commissioner Joseph Bunovsky, Jr. and Alternate Commissioner Seonaid Hay for absent Secretary Thomas Burland.

P&Z 19-22+CSP. 4 Boston Post Road. Map 44, Lot 57. C District. Owner/Applicant: Yarde Realty Company. Special Exception Permit to construct a 1,684 sq. ft. one-story multi-use building, including a 20-seat restaurant, 2-bedroom apartment, marina office/storage area, covered outdoor storage area with deck above, paved driveway/parking area, winter boat storage area, site lighting, landscaping, and associated improvements. A boardwalk is proposed along the west side of the property and the proposed docks/dock walkways and davit on the west side of the property were previously approved by Connecticut DEEP and Army Corps of Engineers. **Continued from December 19, 2019.**

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Chairman Clark asked Commissioners McDowall, Hitchcock and Richardson if they had seen the videotape of the Dec. 19, 2019 first public hearing on the application, as well as read the minutes of that session. All three, who were absent for the first public hearing, stated that they had done so and were prepared to participate in the public hearing.

Professional Engineer Joseph Wren gave a review of the proposed marina project, for those who did not attend the first public hearing in December. Plans are to construct a 1,684 sq. ft. one-story multi-use building, including a 20-seat restaurant, two-bedroom apartment, marina office/storage area, a covered outdoor storage area with deck above, a paved driveway/parking area, winter boat storage area, site lighting, landscaping, and associated improvements. A boardwalk is proposed along the west side of the property and the proposed docks/dock walkways and davit, on the west side of the property, were previously approved by the Connecticut Department of Energy and Environmental Protection (DEEP) and the Army Corps of Engineers. Being requested through the application is approval of a Special Exception Permit to complete the project. Applicant and Property Owner Michael Barnes, Landscape Designer John Cunningham, and Architect Matthew Williams were in attendance. During the review, Mr. Wren presented two exhibits: **EXHIBIT 1**, property rendering encircled with a light, medium and dark blue outline, and **EXHIBIT 2**, a set of revised plans. Mr. Wren explained that the plans represent a redevelopment of structures and uses, including a restaurant, a residential unit, a fish market, and a marina, all of which were on site up until the late 1960s, when the state Department of Transportation made plans to replace the bridge on Route 1 and move Boston Post Road. In 1970, the state took over 4 Boston Post Road through eminent domain to complete the bridge and road project. In the 1800s, the property had a shipbuilding facility.

Both the Planning and Zoning Commission and the Zoning Board of Appeals, following the December public hearing, had received several letters regarding the project that were placed into the record. On Jan. 14, 2020, the Zoning Board of Appeals heard the application for four variances needed to proceed, and all four variances were approved unanimously. The state Department of Energy and Environmental Protection (DEEP) sent a letter dated Jan. 14, 2020, in which it detailed recommendations and comments during its Coastal Site Plan (CSP) review; the CSP has to be found to be in compliance with the goals and policies of the Connecticut Coastal Management Act. The Conservation Commission and the Madison Land Trust, Inc. also submitted letters. Mr. Wren stated that they received a lot of new documentation, most of which is overlapping, but the one that is the most comprehensive is the DEEP Coastal Site Plan review letter, and that he would like to go through some of the points on that letter. He clarified the amount of tidal wetlands that had been restored, after the property owner was found to have placed fill on the site, in violation of inland wetlands regulations. DEEP required that 2,000 square feet of tidal wetlands on the east side be restored, and once that was done, the violation no longer existed. In addition, the property owner restored marsh on the west side of the property, consisting of 3,000 square feet of tidal wetland restoration, which was not a part of the violation, according to Mr. Wren. There is significant improvement on both the west and east side, Mr. Wren stated. DEEP and the Army Corps of Engineers gave permits in 2016, according to Mr. Wren. Although the permit for the marina slips were to be effective for three years, the current permit is valid until 2021, if there is an agreeable coastal site plan review at the state and local levels, according to Mr. Wren. The DEEP letter indicates water dependent uses are to be given the highest priority in considering coastal area management projects and requests that mitigation practices be applied to minimize any negative effects to the

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environment. That letter also states that the proposed restaurant, residence, and retail space are not water dependent uses, however, the health department, in reviewing the septic system, asked that the most intensive uses be included in the plans, Mr. Wren stated. The residence is generally thought to be for the marina manager, and the restaurant is only on the plan for the most intensive use, according to Mr. Wren. A Natural Diversity Data Base (NDDDB) was done on the site in 2016 and is now expired, according to the letter. That data base found two endangered species, the salt marsh sparrow and the least shrew. The DEEP letter recommended that the applicant apply for another NDDDB on the site, and Mr. Wren stated that the property owner has already committed to that, as well as to hiring the proper wildlife biologist for the shrews and an ornithologist for the birds. To protect the endangered species, the letter recommends that work take place outside of the designated nesting season, which is agreed to, according to Mr. Wren. A reference in the letter about minimizing negative affects to the marsh is already evident in the fact that the plans have a buffer entirely around the marsh, and the marsh is not being affected at all, according to Mr. Wren. In looking at the letter's recommendations for low impact development, Mr. Wren stated that they feel that the DEEP did not look at the low impact development features in the plans closely enough. There are several to enhance storm water quality, several vegetative buffers, and three layers of crushed stone, 15 inches thick, into which all of the rain water will absorb and then flow into the ground; with a sandy fill and stone on top of that, Mr. Wren stated that he does not envision any storm water runoff. There is a five-foot vegetative buffer on the parking lot and 20 feet before any storm water gets to the wetlands, according to Mr. Wren. Permeable surface is being used to reduce storm water runoff; there is the vegetative buffer, and a slope moves the storm water over to the swale, according to Mr. Wren. In the northeast section parking lot portion, there is a crown stone infiltration trench, and if the storm water goes past that, it goes to gentle grades, making it about 100 feet before it gets to the wetlands, according to Mr. Wren. With infiltration, overland flows, and the breaking up of impervious surface, there are a lot controls in the plans that the DEEP missed, Mr. Wren stated. The state Department of Transportation will not allow any rain gardens, but that agency did agree to a gentle sloping into a swale, for the state right of way area, according to Mr. Wren. The DEEP letter recommends a minimum of five to eight feet of vegetative buffer along all edges of the tidal wetlands, and Mr. Wren stated that the width is about seven feet, which is right in the range of the DEEP letter. While the DEEP letter recommends plants on an area being set aside for lawn, Mr. Wren stated that the idea is to have that densely planted lawn area for storm water runoff, if it happens. Regarding the boardwalk, the letter recommends that it be set back at least five feet from the flagged wetlands. Mr. Wren stated that there are some areas less than five feet, but the majority is five feet or greater. In addition, the boardwalk is going to be elevated and have a buffer and a slope, so plants will be able to grow there. In the boat storage area, the DEEP letter recommends that the existing grades remain at four to five feet, without fill, but when sea level rises, that area will be inundated with water, and the water dependent use will be lost, according to Mr. Wren. Fill is not needed for Americans with Disabilities Act (ADA) access, it is said in the DEEP letter, but it is a better idea to provide at-grade ADA access to the boat davit and the building, than to have a back and forth ramp into the building, according to Mr. Wren. It is also mentioned that if the septic system is kept at the current grade, there will not be any need to dig far from the five foot elevations, however the state health code requires that the septic system be two feet above the ground water, so that dictates the elevation of the parking lot, according to Mr. Wren. It has to be made sure that having the parking lot right on top of the septic system does not jeopardize it; the septic system cannot be installed at existing grade, because it will not be a viable septic system, he stated. While the DEEP letter also recommends that the building be set back 50 feet, moving the

building juggles the entire site, Mr. Wren stated. If the building is pushed over to the east, more fill will have to be added to the site for that location, according to Mr. Wren. With plans that have restrooms, marina storage, and a marina office, the majority of the building is for water dependent use, Mr. Wren stated. In addition the applicant now has a Zoning Board of Appeals variance to keep the building where it is on the plans.

Commissioner Joel Miller asked how would plants grow at the boardwalk and under it, when the boardwalk is located on the western side, because most of the day it will be shaded. Mr. Barnes stated that there will be slats between the decking boards of the boardwalk to allow light to go through. Vice Chairman Matteson stated that the DEEP letter mentions that one third of the site is impervious, and Mr. Wren said that it is not—the building and impervious surface comprise 23.8 percent. Vice Chairman Matteson also asked for a description of what will take place at the boat area. Mr. Barnes stated that as is typical of a lot of small boat yards, and most of these boats are small, there will be no boat service done by boat owners; it will not be allowed. Mr. Wren cited information about DEEP's Connecticut Coastal Management Program, related to the revitalization of water dependent uses in urban communities—while Madison is not an urban community, these same goals apply in protecting water dependent uses, which include marinas, boatyards, and marina transportation services. The fill that will be placed in the boat storage area is protecting this water dependent use, Mr. Wren stated. Chairman Clark questioned the aspects of boat storage. Mr. Barnes stated that in the DEEP permit, there is a winter storage plan; the boats can stay in the water—they do not need to come out. With the winter storage plan being in the DEEP permit, it has to be followed, Mr. Wren stated. From winter storage to year round storage, to say there is no potential for environmental issues is naïve, Chairman Clark stated. To tell boat owners they cannot wax their hulls or rinse them with water is naïve, he stated. Director of Planning and Economic Development David Anderson is requesting there be a management plan, and that will be provided at the next meeting, Mr. Wren stated. Chairman Clark stated that he does not think that a building that was on the property 70 years ago needs to be grandfathered.

Chairman Clark asked for questions from the public. One asked how tall the building would be, since it will be elevated 11 feet. Architect Matthew Williams stated that once the fill is placed, the building would be 19.5 to 20.5 feet in height. At existing grade, it is 26.5 feet in height, he stated. There were also questions about the septic system, most of which had been earlier addressed. It was asked how it would be possible to maintain and keep vegetation alive, as the salinity in the water increases. Landscape Architect John Cunningham stated that the buffer will consist of a variety of sumac that will do fine—all of the material being planted will take any type of storm and salt that comes through the site.

Chairman Clark asked if anyone wanted to speak in support of the application. Bruce Beebe, lifelong resident of the East River, stated that he is in support of these plans, and recommended the commission vote yes. It is a commercial piece of property and it is a water dependent use, Mr. Beebe stated, adding that the property owner has gone through quite a lengthy process involving the DEEP, the Army Corps of Engineers, and town officials. Open issues seem to be about spreading fear, Mr. Beebe stated. Being in the marina business, Mr. Beebe stated that he knows the right way and the wrong way; if this were the wrong way, his hand would be up. This is a good project and a well thought out development, Mr. Beebe stated, asking why Madison residents should not be allowed to kayak and boat in their own town. A Jonathan's Landing resident stated that what is being proposed is very well suited to the East River area,

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however he wanted to restate a concern expressed at the last public hearing, that consideration be given to the impact this development will have on the view from and security of Jonathan's Landing. One of a generation of seven shipbuilders in Madison stated that there are fourth and fifth generation shipbuilding residents in town as well, and Madison is known for its boating and for its shipbuilding. She spoke favorably of allowing the property owner to just be able to do what his grandparents had done in the past. A resident of 62 years, who grew up on Long Island Sound, stated that he has no concerns with this project; he likes it and thinks it should be favorably voted upon.

Chairman Clark asked whether anyone wanted to speak in opposition to the project. Attorney Keith Ainsworth, representing the Madison Land Trust, Inc., stated that they rise in opposition for a number of reasons. This area is known for endangered species, he stated. The applicants talk about filling the property to preserve water dependent use, and that the reason for the fill is because the property is going to flood; however, what is flooding is where the marsh is going to be able to migrate, according to Mr. Ainsworth. Currently, the marsh can migrate 60 feet, but if the property is filled, it can only migrate five feet, Mr. Ainsworth stated. When a boat is brought in, especially motorboats, they are going to drip oils, salts, and other products, according to Mr. Ainsworth. The operational plan is dependent on the operator of the site, who has a history of violations, and now "you're going to trust this operator," Mr. Ainsworth stated. The Department of Energy and Environmental Protection (DEEP) and the Army Corps of Engineers have their own standards, he stated. A legitimate question about the dock was raised—it is on the western side, and it is going to be difficult to establish growth, Mr. Ainsworth stated. The applicants talk about the original use of the site being a marina, retail, shipbuilding, in the past, according to Mr. Ainsworth. Prior to that, its original use was a marsh, natural resources, and no one should ever forget that, Mr. Ainsworth stated. Now there are plans to place thousands of pieces of gravel and crushed stone into this area for boat storage, according to Mr. Ainsworth, but the boat storage is not necessary. That's a bonus, he stated. The restaurant is not necessary for a water dependent use, nor is the residence, Mr. Ainsworth stated. Sea level rise will continue, and there will be more salt water under that fill, he stated, but putting in soil and erosion control methods is not necessary. It is a very intense use of this site, and it certainly can be scaled back, Mr. Ainsworth stated. He presented **EXHIBIT 3**, Verified Petition to Intervene, Jan. 16, 2020, wherein Madison Land Trust, Inc. board member Kealoha Freidenburg is applying to become an intervening party. Kealoha Freidenburg stated that the land trust does not normally oppose development. The salt marsh sparrow will not be back until May, and the least shrew does not hibernate, so the land trust is happy about another NDDB being conducted on the site, according to Ms. Freidenburg. The water is not only coming from the top, as it flows, but it is also coming from underneath, according to Ms. Freidenburg. In looking at the projected 20 inches of sea level rise by 2050, it is not only the rise of the water but also the frequency of the 100-year storm to consider—this does not mean the 100-year storm comes once every 100 years, with climate change, it is coming more frequently, perhaps three times a year, or more. Water is very dynamic, Ms. Freidenburg stated. The marsh is active, and the water is very powerful, she stated. Currently, what exists on the property is a very healthy marsh, according to Ms. Freidenburg. One resident stated that while he appreciated the family history of the property owner wanting to develop his land, and to make money from it, what started out as a marina has since become a restaurant, an apartment upstairs, and now it is too big of a project for that little piece of land. Conservation Commission Chairman Heather Crawford stated that she had not seen a kayak rental in the plan, though the applicant has mentioned it. In terms of the fill, 15 inches of rock is going on top of already compacted soil, so it becomes less of an infiltrated body, under those

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conditions—as the water goes into the 15 inches of stone, it will flow out, because it will not be able to penetrate the compacted soil, according to Chairman Crawford. The front half of the project is a good mix of environmental protection, but the back half of the project is too much of an environmental problem, according to Chairman Crawford. She stated that she is not opposed to the marina front half, but she is opposed to the back half.

Chairman Clark asked if the applicant wished to respond to any of the comments. Mr. Wren stated that they had been advised to hold off until next month to respond.

Commissioner Miller made the motion to continue the public hearing to Feb. 20, 2020. It was seconded by Vice Chairman Matteson and unanimously approved.

Vote to table continue the public hearing to Feb. 20, 2020 passed, 8-0-0.

IN FAVOR: Chairman Clark, Vice Chairman Matteson, Secretary Hitchcock and Commissioners Miller, Richardson, Mcdowall, Hay, and Bodinson.

OPPOSED: None.

ABSTAINED: None.

ACCA Assignments.

Director of Planning and Economic Development David Anderson stated that he will send out an e-mail with the ACCA assignments.

REMARKS: ACCA Liaison Report ~ No report.

Commission Chair ~ No report.

Town Planner ~ Mr. Anderson stated that there will be a public hearing about the General's Residence at the next meeting, and neighbors expressing concerns about cluster developments will have an opportunity to comment.

ADJOURNMENT

Vice Chairman Matteson made the motion to adjourn at 10:10 p.m.; it was seconded by Commissioner Richardson and unanimously approved.

Vote to adjourn at 10:10 p.m. passed, 8-0-0.

IN FAVOR: Chairman Clark, Vice Chairman Matteson and Commissioners Mathers, Mcdowall, Miller, Richardson, Hay, and Bodinson.

OPPOSED: None.

ABSTAINED: None.

Respectfully submitted,
Marlene H. Kennedy, clerk