

**SUBJECT TO APPROVAL**

**MADISON INLAND WETLANDS AND WATERCOURSES AGENCY  
REGULAR MEETING MINUTES**

**Feb. 7, 2022**

**7 p.m. VIA ZOOM ONLINE WEBINAR WITH PUBLIC PARTICIPATION  
PASSWORD AND CALL-IN INFORMATION PROVIDED PUBLICLY**

A Regular Meeting of the Madison Inland Wetlands and Watercourses Agency was conducted on Monday, February 7, 2022 at 7 p.m., by way of a Zoom Online Webinar, with public participation password and call-in information provided. **Chairman Kealoha Freidenburg opened the meeting.**

**MEMBERS PRESENT:** Chairman Kealoha Freidenburg, Vice Chairman Joseph Budrow, John Mathieu, and Lee Schumacher.

**MEMBERS ABSENT:** Secretary Robert Zdon

**OTHERS PRESENT:** John DeLaura (Zoning Enforcement Officer/Inland Wetlands Officer) and Maria Pettola (Land Use Staff)

Chairman Kealoha Freidenburg opened the meeting at **7:02 p.m.** and stated the regular meeting agenda items application 21-36 has been moved to march 7th so the agency will begin with application 21-39; 61 Lovers lane, which was received at the last meeting.

**REGULAR MEETING AGENDA ITEMS:**

**21-36. 1 River Edge Farm Road.** Map 24, Lot 2. Owners/Applicants: Frank and Lynn Kling. Regulated Activity Permit to construct an additional garage bay with living space above existing garage within 100-foot wetland review area. **(REQUEST TO TABLE TO MARCH 7<sup>TH</sup>)**

**21-39. 61 Lovers Lane.** Map 39, Lot 78. Owner/Applicant: Richard B. Evarts. Regulated Activity Permit to build an attached 9.5' x 31' pergola to an existing accessory building within 36 feet from the edge of a wetland.

Chairman Freidenburg asked if the applicant was present. Mrs. Pettola stated she does not see the applicant in the list and ask if he wants to raise his hand. Chairman Freidenburg stated that she looked through the minutes and it didn't seem like there was a lot of discussion about this because it was for receipt. She states, for the commission members this is an application to construct a pergola within the review area and asked if any of the agency members had any questions or comments that could be forward on to the applicant because as she understands, the agency could approve or disapprove this tonight. Chairman Freidenburg further states it could be voted on tonight but that they also have until next meeting.

Commissioner Schumacher stated that he looked at the plans and it looks pretty straightforward to him, so he does not have any questions. Commissioner Mathieu stated he had no questions. Vice Chair Budrow stated he was okay with this, he was okay with giving it to john or voting on it tonight. Chairman Freidenburg asked what was meant by give it to John, does he mean switch it to section 13. Vice Chair

Budrow stated if the agency is going to vote on it tonight, to just keep it with them, he also doesn't believe the agency was waiting on anything else.

**Vice Chair Budrow made the motion that application 21-39 for 61 Lovers lane be approved as submitted as long as it has E&S measures in place that John DeLaura is satisfied with. Seconded by Commissioner Schumacher.**

IN FAVOR: Chairman Freidenburg, Vice Chairman Budrow, and Commissioners Schumacher and Mathieu.

OPPOSED: None.

ABSTAINED: None.

**21-41. 544 Opening Hill Road.** Map116, Lot 1. Owner/Applicant: Timothy Mack. Re-subdivision Referral to create additional lot; Regulated Activity Permit to grade new lot, construct new single-family dwelling, associated driveway, and subsurface sewage disposal system within upland review area

Present was Bob Doane, for the applicant Timothy Mack. A site plan was shown on the screen. Mr. Doane states that the site was walked with Mr. DeLaura and Mrs. Mannix along the western property line of the 2.93-acre lot that they are proposing to create, and seen is a significant amount of grading for that lot. So, they decided to slide the driveway off of the steep hillside and put it at the toe of the slope and have a much gentler grading for the driveway. He states even though the driveway is quite closer to the wetlands, the grading is significantly less. Pursuant to submitting a re-subdivision application, they proposed a common driveway that runs from the intersection of their proposed driveway and the existing driveway, up to opening Hill Road. They have submitted the plan to the health department and received comments and responded to those comments. He states this plan is being submitted for referral because they are going through a re-subdivision process and it will come back to this commission after approval when they have a detailed house. He states that they show all the detail that is typically shown on a site plan and once the lot is sold or Timothy decides to build a house, they will have a detailed house. But, the house location, sanitary system location, and the driveway location will remain the same. Furthermore, because of the re-subdivision they had to do soil testing for the existing house and prepare b100a system to demonstrate that the lot can accommodate a code compliant sanitary system. Part of the activity would be fixing the existing driveway with maintenance as it does run immediately adjacent to wetlands swale on the driveway and they proposed to install a waddle along the edge of the driveway, because it is so close to the swale. Lastly, he states this is a referral to the Planning Commission for the re-subdivision that they are proposing.

Per the site plan shown, Chairman Freidenburg asked Mr. Doane to outline where the wetland boundary is (which he did). She further asked if the whole house was in the 100-foot review, Mr. Doane answered yes. Commissioner Schumacher asked if they need to addresses the referral and the regulated activity permit that they have to deal with -and if it's for grading. Mr. Doane states that the regulated activity is the construction of the driveway, the associated grading will have underground utilities in the driveway. He further states, the house, the grading and the sanitary system is about 85 feet or so away from the wetlands in this area but the silt fence indicates their limit of activity.

Based on Mr. Doane statements, Chairman Freidenburg states it seems like (Mr. Doane) wants to deal with the referral tonight but that includes this regular activity permit for the driveway and the septic but not the house. Mr. Doane responded, no; this is a referral to the Planning Commission and they will come

back with a similar plan once they have some additional details for the House. He states that the sanitary system and the driveway are essentially fixed as shown and the house will change when they have a detailed house design so he guesses it is a combination of both the referral and a review/ permit of the regulated activity for the driveway and the sanitary system.

Chairman Freidenburg asked if there are any comments or questions from the agency members.

Vice Chair Budrow asked Mr. DeLaura if he was okay with taking in a combination of the re-subdivision application at the same time as a regulated activity request because he has never seen an application where a proposal for a new lot was combined with activity.

Mr. Doane states in discussion with Mr. DeLaura about the driveway – he felt strongly about the location of the driveway as it is shown. He did show an alternative to it; getting it out of the 100-foot review area as much as possible created a grading challenge. And he feels comfortable with a referral (not to presume anything) that suggests that the driveway and the sanitary system be in a similar location when the detailed site plan comes back. Vice Chair Budrow states that he is not disputing the locations at all its just the combination of the re-subdivision application at the same time as a regulated activity.

Mr. DeLaura stated he would like to answer Vice Chair Budrow’s question which was directed to him. Mr. DeLaura states he is okay with this as he spoke with staff; he spoke with the town planner and reached out to third party professionals. He further states a lot of times this is done on small subdivision or re-subdivisions particularly if it's one lot and if the owner is involved- the owner is going to own the lot that the agency is going to refer this evening; he in fact, lives in the adjacent lot. So, to his understanding this is done to sort of expediate the process a little bit. Mr. DeLaura further states that he walked up and down the slope with Erin (Town Planner) and it was his recommendation or his agreement with the recommendation to move the driveway where it is and the town planner concurred. So, to Vice Chair Budrow point, it’s not something that they see all the time but it's also not unique and he’s okay with it.

Chairman Freidenburg said she had a question about the water on the driveway, she assumes its paved and wants to know how it will be managed. Mr. Doane states, yes, it is paved. They have a cross slope that gets it to the south side of the driveway and then down to the swale.

Chairman Freidenburg states, for the septic, she assumes based on the Mr. Doane stating that the soils are good, that’s the best place for the septic? Mr. Doane answered, yes, it’s the best place for the sanitary system. He believes the option shown is the best to be presented and by approving this activity of the driveway and the sanitary system, and having the plan come back to the agency, the agency is committing the owner to this location. Commissioner Schumacher asked what's the nature of the wetland. Mr. Doane replied it’s a wooded wetland.

**For application 21-41, Vice Chair Budrow made the motion to approve the re-subdivision of two new lots, one being vacant and to allow the creation of the lots and also should they be approved by planning and zoning, the subsequent installation of a driveway with the grading and the proposed installation of a septic system in the locations as shown. Seconded by Commissioner Schumacher.**

Mr. Doane stated he would like to suggest to the agency to include that the site plan does come back before this commission.

Chairman Freidenburg stated, that will be in their comment section, as she would like to make sure that given the driveway in place, and the septic sanitary system in place, that any house / any other regulated activity come back to them.

All in favor of the motion as discussed and amended.

IN FAVOR: Chairman Freidenburg, Vice Chairman Budrow, and Commissioners Schumacher and Mathieu.

OPPOSED: None.

ABSTAINED: None.

**22-01. Warpas Road.** Map 71, Lot 1; Owner/Applicant: Madison Land Conservation Trust. Regulated Activity Permit construct a stone aggregate surfaced access driveway and trailhead parking lot located partially in an upland review area of an inland wetland.

Chairman Freidenburg recused herself from this application.

Mr. Ott, licensed professional engineer and land surveyor with Summer Hill civil engineers was present on behalf of Madison Land Trust. Ben Diebold, David Roach and Robert Kuchta were also present. Mr. Ott showed an orthophotograph of Lowry Woods Community Forest Parking Area site plan on the screen. He begins by stating, Warpas Road is left to right and the neck river is to the south crossing beneath Warpas road. And if he remembers correctly there is a house – number 58; and the driveway for the proposed parking area is directly across the street from this home. The proposal is to construct an 18-foot-wide driveway. He states, the only portion of the parking area and driveway that would be paved is a bituminous apron, at the very beginning at the edge of Warpas road. He says this is not a formal survey or plan, but he did scale the photo and create a surface model and he also put the state's lidar base topography on the plan so that the agency could see two things. One is, you can get an estimation of where the wetlands are. You can see there's an elevation 28 ground surface contour on the neck Riverside, and another elevation 28 and then the ground slopes up, to the site which is up at elevation 32 or so. Her further states, the whole inland wetland and the area between the wetland and the parking areas is wooded. Mr. Ott states some clearing took place in this area and the proposal is to have some native plantings put in place to replant that area between the new construction, and the area that they're clearing, so that area will get reestablished with vegetation after the parking lot is completed.

Commissioner Schumacher asked from a document standpoint what would it be to have the wetlands delineated on this for the record? Vice Chair Budrow states it makes sense to know where the wetlands are. Mr. Ott states the wetland boundary was delineated by Rich Starsky, what they did not do, is do a survey and locate them, and place them on a map, but as stated earlier, it's pretty obvious when you're in the field that they're down at the 28-elevation contour – that he pointed to. He further states that he measured the edge of parking area to be about 75 feet from the Wetland boundary from the flags in the field. The distance between the construction and the wetland boundaries is about 75 feet.

Mr. Kuchta states that there is about 65 to 75 feet of undisturbed Wetland forest between the sediment control barrier to the wetland itself and about half of the 18-foot-wide driveway is within the hundred-foot review and then the rest of it is out of the review. And from walking it, it looks like most of the parking spots are out of the hundred-foot review, it's mostly just half of the driveway coming in off of Warpas road that's within the hundred-foot review.

Vice Chair Budrow asked, how come some clearing took place?

Commissioner Schumacher asked Mr. DeLaura if he had any information on that.

Mr. DeLaura states, they received a verbal notification of a violation, they were basically clear cutting

a lot closer than 75 feet to the flags, and the clearing was much closer to the wetlands. He agrees that the parking lot may not be within 100ft but the clearing was and he's a little bit concerned as to why there wouldn't be a remediation plan. He states he is basically looking at a sketch; basically, a presentation of a theory of a parking lot. So, his question would be, what's the remediation plan.

Mr. Ott states that he did indicate that this area was cleared and the limits of clearing are definitely to the left of this parking area. And the area that won't be new construction will have to be planted and reestablish. So, there's definitely been clearing within 100 feet, for sure. He further states that this parking lot and driveway will only encumber a portion of that cleared area. They're still cleared area to the left of the proposed parking area that has to be planted and reestablished and that's what he meant earlier when he said that possibly Dave Roach or Bob Kuchta or Ben Diebold could have some details about how they plan to plant this and reestablish this.

Mr. Kuchta states that he's been out there at least two or three times during the clearing and after. And if the agency wants to see white pines and cedars, winterberry etc., that's certainly feasible and they could have that put on a plan, as well as a line that delineates the existing clearing. Also, if that's information that they would like to have provided before the agency is comfortable with moving forward with this, he and Mike could work on getting that information to them.

Commissioner Mathieu states that should be included with the application.

Vice Chair Budrow states so there's a potential remediation plan to the south of the driveway and they don't have the wetlands red line at least on this plan so he would think if they're not going to want a survey of the area-the 150 by 300 feet of this area that they should definitely have on the town website, the remediation plan, and all the plantings to reestablish vegetation to the south, and they should definitely have the wetland line at least red line on this ortho map. Which was agreed upon by the other commissioners.

Commissioner Schumacher asked Mr. DeLaura if he had anything else to add. Mr. DeLaura states his main concern is the remediation plan and he knows that Land Trust has reached out to the neighbors who in fact showed some concern about what was going on there and how that was going to impact their residential character. So, to their credit they've got a meeting on February 12th with the neighbors on the site to explain what's happening. And that gives the agency sometime between the 12th of February and the next meeting to get input from the neighbors who were concerned. So, he thinks it's a good idea to continue this as it's within the statutory time limit to go to March.

Vice Chair Budrow would also like Mr. Ott to add the boundary of where the clearing limit took place.

**Commissioner Schumacher moved to continue application 22-01, Warpas Road to the March 7th meeting. Seconded by Commissioner Mathieu.**

IN FAVOR: Vice Chairman Budrow, and Commissioners Schumacher and Mathieu.

OPPOSED: None.

ABSTAINED: None.

### **RECEIPTS**

As we moved into receipts, Mr. DeLaura states, they are not accepting testimony, but basically, the agency will decide if there's some reason to have a public hearing, a site walk, or if the agency would like to talk

to staff about what they think they would want at the next meeting so that staff can convey to the applicants, or notes in the minutes that they can also convey to the applicants. But there not accepting testimony from the applicants, or the applicant's professional disciplines. It is basically just to start the clock for the 65-day process to make a decision.

**22-02. 30 White Oak Ln.** Map 116, Lot 16. Owners/Applicants: Gregory C. Nappo and S. Patricia Nappo. Regulated Activity Permit to remove five (5) trees and replace with fruit trees, leaving root systems and existing vegetation.

Chairman Freidenburg states this is an application to remove five trees to replace with fruit trees. She further states that it was not entirely clear where the wetland boundary was. And the wetland boundaries should be clearly delineated on the application. Vice Chair Budrow would like to know if the five trees are sick? Chairman Freidenburg stated that was not clear as well.

**22-03. 50 Pleasant View Avenue.** Map 24, Lot 223-1. Owners: Michael A. and Aimee L. Stowe; Applicant: Atlas Construction Services, LLC. Regulated Activity Permit to construct a single-family residence and associated site improvements partially within the upland review area of an inland wetland.

Chairman Freidenburg states this is for a new house with septic and everything included. She states if you look at the site plan, the leaching field is near / within the wetland boundary or regular activity and asked if the agency would like to do a site walk? All members agreed to a site walk.

**22-04. 301 Boston Post Rd.** Map, 36, Lot 14. Owners/Applicants: Albert and Tatiana Rojas. Request for modification to previously approved Section 13 regulated activity permit to build a single-family house and detached accessory structure, associated well and septic system. Modification request includes a new two-bedroom guest house and detached barn within a 100' wetland review area.

Mr. DeLaura gave background on this application. He states at the agency's direction he approved administratively a plan that had been extended two or three times since 2006, it went to 2011, 2016 and then 2021, and it was to expire September of 2021. The applicant came before the agency in August of 2021, and it was exactly the same plan that was approved in 2006, extended in 2011 and 2016. He states so, the one change was that in fact the sanitary system was now moved out of the 100-foot review area so in that aspect, it was better. And he was given permission to approve that as a section 13, which he did. Subsequent to that approval, the applicants submitted a building permit and as he reviewed the building permit, it became obvious that the plan had changed significantly

Mr. DeLaura asked to have the two plans shown on the screen; the one that the agency gave permission to approve, and the one the applicant submitted as part of their building permit recently, subsequent to the section 13 to show graphically why he was a little apprehensive to continue that as an approval 13 without the agencies review. On the second plan, the sanitary system is where it was outside the 100ft, and the small barn is gone -it's turned into a two-bedroom single family dwelling, sharing a sanitary system and then a larger barn he believes is going to be in the future. So, the Barn will be future, the house will be future, therefore, they are asking for a small single-family dwelling and eventually they'll come back for the bigger single family of four-bedroom house and the larger barn.

Chairman Freidenburg asked if the septic will be the same for everything. Vice Chair Budrow states the second dwelling is connected to the septic and asked Mr. DeLaura if the applicant is basically building a detached accessory apartment before the house. Mr. DeLaura states, they want to live in it while they're building the house and that's it possible to do that but there are steps to take. He adds, he would have

them file on the records that they'll have to abandon the small single family two bedroom and revert that to an accessory dwelling before they'll get a CO for the four-bedroom new house. Vice Chair Budrow asked if this plan showed a clearing limit? Mr. DeLaura states it shows E&S barrier, but he didn't actually see a clearing limit. Vice Chair Budrow states he favors this coming off the 13 list and coming to the commission. Chairman Freidenburg agreed. And a site walk was added.

**22-06. Wildwood Ave. Dev. Lot 1.** Map 54, Lot 2. Owners/Applicants: Hilary & Michael Delaney. Regulated Activity Permit to build a single-family home, pool, with associated site improvements.

Site walk added.

**22-07. Wildwood Ave. Dev. Lot 2.** Map 54, Lot 2. Owners/Applicants: Hilary & Michael Delaney. Regulated Activity Permit to build a single-family home, pool, with associated site improvements.

Site walk added.

**22-08. Wildwood Ave. Dev. Lot 8.** Map 54, Lot 2. Owners/Applicants: Hilary & Michael Delaney. Regulated Activity Permit to build a single-family home, pool, with associated site improvements.

Site walk added.

Commissioner Schumacher states that 22-08, is misidentified as lot 8 and it should be lot 3.

**22-09 463 Summer Hill Rd.** Lot 131 Lot 1. Owners: Camp Laurelwood, Inc.; Applicant: Water-Flo. Regulated Activity Permit to install 22 x 25 building on a concrete slab to house a new water system approximately 60 feet from wetlands area.

Vice Chair Budrow states he is interested as to why such a big water system is needed.

Received and a site walk is not needed.

### **SECTION 13**

**22-05 70 Garnet Park Rd.** Map 35, Lot 1. Owners: Pat & Gary Staffa; Applicant: Anderson Brothers Sanitation. Regulated Activity Permit for a septic repair within a wetland review area.

Mr. DeLaura states this is a repair, the lot is basically along the river and tidal marsh and the septic is failing. For notes, he states, to protect with the E&S barrier prior to start, and be maintained during the work. And the area to be stabilized until it's complete. Also, to notify him when the E&S is up to make sure its adequate to protect the river, that's 25 feet away from the fields. He states this was done as section 13 because there really is no other area. Vice Chair Budrow asked if they have already started to fix it. Mr. DeLaura said yes.

All members approved the Section 13.

### **PUBLIC HEARING TO BEGIN AT 7:30 –**

**21-31. 35 Cottage Road.** Map 31, Lot 5. Owner/Applicant: 35 Cottage Road, LLC. Regulated Activity Permit to construct a multi-family residential development and associated site improvements within 100 feet of a wetland. **(Extension granted and request to continue to 3/7/22 meeting)**

Request to continue to 3.7.22

**Approval of Minutes:** Regular Meeting Minutes January 10, 2022

Chairman Freidenburg flagged a number of items.

1. On page 4, it states Attorney Bilcheck claimed that there was a baseline data regarding the site's regulated resources.
  - It should state, Attorney Bilcheck claimed that there was **no** baseline data regarding the site's regulated resources.
2. Commissioner Schumacher states On Page 4, Ms. Shansky stated that they would be listening at this meeting and responding at the next.
  - It should state, Ms. Shansky stated that they would be listening at this meeting and responding at the next **meeting**.
3. On page 5, it states Attorney Bilcheck asked if Mr. Logan was implying that a lot of the chemicals from the parking lot, will eventually end up in the pot.
  - It should be Attorney Bilcheck asked if Mr. Logan was implying that a lot of the chemicals from the parking lot, will eventually end up in the **pond**.
4. On page 7, it states to allow stockpiling of new buildings.
  - It should state to allow **stacking** of new buildings.
5. On page 10, Chairman Freidenburg recused herself from the discussion and **did not vote to approve the waiver for the Land Trust.**

Mr. DeLaura reminded the agency of upcoming elections for Chair, Vice Chair, Secretary etc. Commissioner Schumacher asked what is being done for getting new members. Mr. DeLaura stated they have reported it to the BOS and democratic / republican parties

**Commissioner Schumacher moved to approve the minutes of January 10<sup>th</sup> as discussed and amended. Seconded by Vice Chair Budrow.**

IN FAVOR: Chairman Freidenburg, Vice Chairman Budrow, and Commissioners Schumacher and Mathieu.

OPPOSED: None.

ABSTAINED: None.

**Remarks:**

Inland Wetlands Chairman - Chairman states with the receipts and scheduling of the site walks especially with the ones highlighted at this meeting, she thinks it will be efficient and good to preview these as it will help for the future, for instance Lovers Lane was approved tonight, in just one meeting tonight.

Inland Wetlands Officer – None.

**Adjournment:**

**Vice Chair Budrow made the motion to adjourn at 8:22p.m.; it was seconded by Commissioner Schumacher and unanimously approved.**

IN FAVOR: Chairman Freidenburg, Vice Chairman Budrow, and Commissioners Schumacher and Mathieu.

OPPOSED: None.

ABSTAINED: None.

Respectfully Submitted,  
Racquel Stubbs