

**SUBJECT TO APPROVAL**

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

**February 8, 2021**

**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 8, 2021 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 at 7 p.m.

**MEMBERS PRESENT:** Chairman Kealoha Freidenburg, Vice Chairman Joseph Budrow, Secretary Robert Zdon, C. Thomas Paul, John Mathieu, Lee Schumacher, and David Newton.

**MEMBERS ABSENT:** None.

**OTHERS PRESENT:** John De Laura (Zoning Enforcement Officer/Inland Wetlands Officer), David Anderson (Director of Planning and Economic Development), Lawrence Reilly (Attorney), Thomas Crosby (Attorney), John Bennet (Attorney), Eric Bernheim (Attorney), Christopher McKeon, (Attorney), Michael Ott (Professional Engineer and Land Surveyor), Thomas Craig (Madison Earth Care Services, Inc.), and Michael Harkin (Professional Engineer).

Chairman Kealoha Freidenburg called the meeting to order at 7 p.m.

**PUBLIC HEARING:** None.

**REGULAR MEETING:**

**Subdivision Referral of P&Z 20-16+CSP.** Longshore Lane. Map 25, Lot 74-1. R-2 District. Owner/Applicant: Shorelands, LLC. Subdivision application to divide 22.38 acres into 5 lots. Also, Coastal Site Plan Review.

Director of Planning and Economic Development David Anderson stated that the Planning and Zoning Commission cannot take action until a report is received from the Inland Wetlands and Watercourses Agency; it is part of the process, and it has to be done. The Planning and Zoning Commission would benefit from any input the Inland Wetlands and Watercourses Agency has, according to Mr. Anderson. In the past, there were regulated activities associated with the widening of Longshore Lane, and the extension of the cul de sac—two regulated activities, according to Mr. Anderson. This time around, there are no proposed regulated activities involved with putting lines on a map; when lot development takes place, those regulated activities have to be put on a map, according to Mr. Anderson. The application comes through this process for a report from the Inland Wetlands and Watercourses Agency, and the town attorney believes the town is proceeding appropriately with the referral process, according to Mr. Anderson. Chairman Kealoha Freidenburg stated that this is not an application, so there is no vote; the Inland Wetlands and Watercourses Agency has to have a report that goes to the Planning and Zoning Commission. She advised the commissioners that they can discuss these

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problems, flesh them out, and get the proper wording for the report; this referral is a process; it is not an application, so the Inland Wetlands and Watercourses Agency does not have to vote on it. The town attorney has said the commissioners may put whatever they want into their report, any of their concerns, according to Chairman Freidenburg. Vice Chairman Joseph Budrow referenced Inland Wetlands and Watercourses Agency Regulation 7.2, which states that if an application to the Planning and Zoning Commission involves wetlands, the applicant shall submit an application for a permit. The land the Inland Wetlands and Watercourses Agency is looking at is rock solid full of wetlands, Vice Chairman Budrow stated, adding that he does not understand why the commissioners do not have a permit application for it. The town attorney's opinion is that the subdivision does not have any activities on it, just the division of the property, and that just the division of property does not require a wetlands permit, according to Mr. Anderson. Secretary Robert Zdon asked whether the commissioners are supposed to draft this report as a form of a resolution that evening. Chairman Freidenburg stated that the town attorney stated that the commissioners can discuss their concerns tonight and draft and edit it by way of email, but she stated that she thinks that what she is sensing is that there is some reluctance on some parts of this agency to do a report. The Inland Wetlands and Watercourses Agency can ultimately decide what to do—this application can be continued to another meeting to talk to the town attorney, or it can state that it thinks a regulatory permit should be filed, according to Mr. Anderson. Vice Chairman Budrow stated that he wants a special meeting with the town attorney to discuss why town counsel thinks the agency does not need a regulated permit application. All of the commissioners need to give the report some thought, Secretary Zdon stated, adding that he wants to be able to review it and make sure it is correct; if the Inland Wetlands and Watercourses Agency's charge is to give a report to Planning and Zoning, then that is what the commissioners need to do. Commissioner Lee Schumacher stated that he does not see any real harm in writing a report, as long as the commissioners state their concerns and have their qualifications in it. Chairman Freidenburg stated that the commissioners can talk about their concerns, start an outline of those concerns, and then hold off until they meet with the town attorney, but the commissioners should discuss their concerns with the subdivision proposal as they see it. Chairman Freidenburg began discussing concerns with Lot 6, because access to that lot crosses wetlands directly, she stated, adding that she finds that lot incredibly problematic—there is little land between tidal wetland and inland wetland to access that lot. The report will also highlight the whole issue of the process with the application, which will be discussed with the town attorney, according to Chairman Freidenburg. Vice Chairman Budrow referenced Lot 5 as problematic and stated that Lot 6, from a wetlands perspective, may not let Lot 6 be buildable; Lot 6 has the worst impact on wetlands. Chairman Freidenburg discussed the challenges to the inland wetlands, as the commissioners see them; Lot 6 has negative impacts on wetlands; there has not been a reflagging or a re-delineation of the wetlands in 15 years; it is incredibly problematical that there has not been a wetlands delineation in that many years. Vice Chairman Budrow stated that he is still confused as to how town counsel thinks the Inland Wetlands and Watercourses Agency does not need a wetlands regulatory permit application. Chairman Freidenburg stated that the open space for the subdivision has been done differently than how open space is usually apportioned; it is done among the lots, and it does not serve the purpose of protecting the natural resources, with respect to inland wetlands. The easements are not going to be granted; that should be in the point list, Secretary Zdon stated; there are still legal issues as to whether they have clear title to the property. With respect to the Inland Wetlands and Watercourses Agency, the commissioners are just looking at the plans that the applicant sent to them, and the commissioners will not move forward with this, until they meet with the town attorney, Chairman Freidenburg stated. Commissioner David Newton stated that his concern

centers on if Planning and Zoning authorizes, for instance, Lot 6 as a building lot, without having access. First of all, Commissioner Newton stated that he thinks it is against zoning that they are promising to have access later; if the right of way is not achieved, the applicants are going to come back to the Inland Wetlands and Watercourses Agency and say they have an approved lot, and they want to go this way, across wetlands, and the commissioners will not have a choice to turn them down. Clarification is needed from the town attorney about the easement issues, Secretary Zdon stated, especially if the applicants are going in for a full subdivision referral and they do not have legal standing to do that. Commissioner Newton stated that Lot 4 shows proposed access to utilities that go across another person's lot. Chairman Freidenburg stated that Lot 4 and Lot 5 have access problems, with respect to easements and getting permission from neighbors, and Lot 6 has access problems over wetlands. Commissioner Newton stated that there is a tremendous amount of tidal wetlands in the property, and the state Department of Energy and Environmental Protection (DEEP) has jurisdiction over tidal wetlands. Mr. Anderson stated that DEEP is expected to provide comment on the tidal wetlands, through the coastal site plan review, at the Planning and Zoning Commissioner's upcoming meeting. Chairman Freidenburg stated that the commissioners clearly have legal questions about the process, as well as easements and ownership; in focusing on the inland wetlands, the commission is concerned about the wetlands delineation, Lot 6, with respect to the negative impacts on the wetlands, and the open space issue, as well. In inviting attorneys directly involved with the application to speak, Chairman Freidenburg stated that clearly, obviously, as an agency, the commissioners are not attorneys, and they are kind of bound to follow the town recommendations from the town counsel. Attorney Lawrence Reilly stated that his client has owned this property since 2006, and he has been trying to develop it for the past 15 years. The applicant had an approval in 2013, and was then prompted by a town official to file the application, in 2018, just before it expired, and the extension was filed, Mr. Reilly stated. The extension was filed, and the applicant only recently learned that the extension was only filed with respect to the inland wetlands approval, regarding the road changes and road improvements, instead of the individual lots, so that is a mistake that has led the applicants to return, according to Mr. Reilly. With respect to easement issues, involving Lot 5 and Lot 4, when this plan was originally approved by inland wetlands, Lot 5 was previously approved by inland wetlands with a specific contingency that the applicant wrote onto the subdivision plans; the commission can see that language, that Lot 5 would not be issued a building permit unless and until access was allowed onto Shorelands Drive, according to Mr. Reilly, who added that he does not think that that is an inland wetlands decision that the agency has to make tonight. In the past, the solution to that access problem on Lot 5 was solved by putting that language into the map; in this case, that same language has been put into the map with respect to Lot 4, which heads over to Longshore Lane, and Lot 5, which, again, goes over to Shorelands, according to Mr. Reilly. Attorney Thomas Crosby asked whether he and his client can factually report that they do not want a report based on 15-year old environmental and wetlands evidence, adding that he would rather not have the Inland Wetlands and Watercourses Agency issue a report based on old information and assumptions. Attorney Eric Bernheim stated that Inland Wetlands Regulation 7.2, Connecticut General Statutes Section 8-26(e), and town of Madison Planning and Zoning Regulations for subdivisions Sections 2.5 and 3.1 all make reference to requiring a full application if the land involves wetlands, and he implored that the applicant file a full application. All of the statutes require a full application, Mr. Bernheim stated, adding that once the Planning and Zoning Commission approves the subdivision, the applicants will come before the Inland Wetlands and Watercourses Agency for a permit. Section 3.12 of the town's subdivision regulations allows the Planning and Zoning Commission to deny a subdivision if it

will endanger or pollute the environment, according to Mr. Bernheim, who asked the Inland Wetlands and Watercourses Agency to look at the subdivision regulations before sending a report to the Planning and Zoning Commission. Attorney John Bennet stated that he can only endorse what Eric Bernheim and Thomas Crosby said. In representing the Shorelands Association, Mr. Bennet stated that he finds it unbelievable that a lot would be approved, subject to future approvals, subject to gaining access from his client. This is a different application; there have been changes, Chairman Freidenburg stated. The Inland Wetlands and Watercourses Agency needs to regroup and meet with its town attorney, Chairman Freidenburg stated. Mr. Anderson stated that a special meeting will be scheduled, notice of it will be posted, and everyone will be notified.

**21-03. 856 Boston Post Road.** Map 39, Lot 8. Owner: Faith Whitehead; Applicant: 856 Boston Post Road. Regulated Activity Permit to construct single family residential cluster development and associated site improvements within 100 feet of an inland/wetland. **Receipt.**

Attorney Christopher McKeon, representing the applicant, introduced Professional Engineer and Land Surveyor Michael Ott, who shared the plans with the Inland Wetlands and Watercourses Agency. This property is known locally as The Ledges, Mr. Ott stated. It currently has a large, white estate house with a garage building on site, and the proposal is to build a single family residential cluster development, remove the existing garage, renovate the estate house into two units with two garages, known as Estate Residences, have a Gateway Residence with one unit and one garage, and construct two buildings, known as Carriage House Residences with two units and two garages. There will be seven residential units in total, septic tanks, wastewater pumps operating by gravity to leaching fields, and access from Birnbaum Lane by way of a driveway that climbs up to the house and then slopes southeasterly, according to Mr. Ott. There will be a broad lawn area, and in the southwest corner, off of the property, there are inland wetlands, which Mr. Ott stated he calls an upland review area, which is approximately 2,000 square feet, and the vast majority of it is a ledge outcrop. To construct one of the buildings, they have to cut into the ledge 10 feet, and that 10 feet of exposed bedrock has to be removed; in the removal of the rock, there may be some activity near the upland review area, according to Mr. Ott, who estimates that they will be disturbing 1,300 square feet of the 2,000 square feet, an estimate he termed as conservative. Surface water runoff will be directed to the southeast and not to the wetlands; no pipes and no septic system components will be within the 100 foot review area. At most, the upland review area extends 28 feet into the property, Mr. Ott stated. There will be no basement in that building; the removal of the rock is to slide the building into the ledge; about a 10 foot width of this exposed rock has to be removed to construct the building, Mr. Ott stated. Chairman Freidenburg stated that given there is some unknown, with respect to removing that rock, she wondered if there is any reason they couldn't have done something differently, so this wouldn't happen. Mr. Ott stated that there are geometric requirements for the driveway area. Chairman Freidenburg asked if the proposed activity will go into the wetland. Water drains perpendicular to the contours, and when this 10 foot strip of rock is removed, this surface water drainage pattern won't change, Mr. Ott stated. In the redesign of the driveway, the paved area is being reduced by 2,000 feet, he stated, adding that roof water will be infiltrating into soft soils and directed to a subsurface drainage area; it does not affect the wetlands. Thirteen test pits have been dug so far, going down eight to 10 feet, and there are soft soils, according to Mr. Ott. There is also ledge along the westerly portion of the property, and there is

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a lot of easy-to-see exposed bedrock on the property, Mr. Ott stated. Letters have been received by the Inland Wetlands Commission, regarding the development, so there may be a public hearing, according to Chairman Freidenburg. A neighbor to the east is concerned about wetlands that may be affected, according to Commissioner Newton, and there also may be interest about blasting, Chairman Freidenburg stated. There will be other rock removal, and there will be blasting for a single unit structure, with rock removal on the east side, and rock removal in another area to get the garage structures in, so there are several locations for rock removal, according to Mr. Ott. The Inland Wetlands and Watercourses Agency will see this application again, next month, Chairman Freidenburg stated. There are a number of abutters and neighbors who are deeply interested in this project, so the commissioners could have a public hearing at their next meeting, Chairman Freidenburg stated. Mr. McKeon stated that there definitely is public interest in this project, but in terms of the regulated activity, there is almost none, and having a public hearing for the wetlands issues, of which there are not many, is unnecessary. Inland Wetlands Officer John De Laura stated that although there may not be a significant activity on the wetlands, residents should be able to bring forward any concerns they have; with regards to the wetlands on the east, the residents who live there believe it to be wetlands, so it would be due process to hear them, and it would be best, in the public interest. Commissioner Lee Schumacher asked if there is another forum to voice their concerns. Mr. McKeon stated that in order to get this type of development through Planning and Zoning, the applicant has to apply for a special permit, and there will be a public hearing, and he stated that they are gearing up for an extensive public hearing, therefore, what, if anything, is going on in the review area does not warrant a public hearing. Mr. Anderson stated that any time the public expresses a lot of interest in an application, he does not see any reason why there should not be a public hearing to learn what their concerns may be. Mr. Ott asked the commissioners if there would be a site walk; Chairman Freidenburg stated that they should schedule a site walk.

**Commissioner Newton made the motion to receive application 21-03, 856 Boston Post Road and schedule it for a public hearing at the next meeting; it was seconded by Commissioner C. Thomas Paul and unanimously approved.**

Vote to receive application 20-03, 856 Boston Post Road, and schedule it for a public hearing passed, 7-0-0.

IN FAVOR: Chairman Freidenburg, Vice Chairman Budrow, Secretary Zdon, and Commissioners Paul, John Mathieu, Schumacher, and Newton.

OPPOSED: None.

ABSTAINED: None.

**21-01. 645 Green Hill Road.** Map 84, Lot 1,2. Owner: Alex Klein; Applicant: Madison Earth Care Services, Inc. Regulated Activity Permit for regrading and lawn installation around pool area within the 100 ft. wetland review area. **Receipt.**

Thomas Craig of Madison Earth Care Services, Inc. stated that Alex Klein put in a swimming pool, and he wants to extend the lawn space off of the pool. Plans are to plant some winterberry five feet to the watershed line, but the grading would be finished 30 feet to the watershed; up to 110 yards of soil and clean fill will be used to regrade, according to Mr. Craig. There is a 10 to 15 foot wide planting bed along the border, and this will be removed to put in a six-foot wide planting bed, according to Mr. Craig. The closest the winterberry would be is five feet from the wetland, he stated. It is good that there is going to be a vegetative buffer, Chairman Freidenburg

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stated, but she asked whether there will be any erosion control measures. Geodetic fabric or landscaping fabric will be used, and the planting strip will stop a lot from going into the wetlands, Mr. Craig stated. There will be disturbance mostly by hand, and more plants than what currently exist will be placed on site, according to Mr. Craig.

**Commissioner Schumacher made the motion to receive application 21-01, 645 Green Hill Road; it was seconded by Commissioner Paul and unanimously approved.**

Vote to receive application 21-01 645 Green Hill Road passed, 7-0-0.

IN FAVOR: Chairman Freidenburg, Vice Chairman Budrow, Secretary Zdon, and Commissioners Paul, Mathieu, Schumacher, and Newton.

OPPOSED: None.

ABSTAINED: None.

**21-02. 110 & 114 Bradley Road.** Map 38, Lots. 74 & 75. Owner: Ironworks LLC; Applicant: Davis Realty. Regulated Activity Permit for construction of a 48 bedroom apartment building and associated appurtenances. **Receipt.**

Michael Harkin of Harkin Engineering stated that he is representing Davis Realty, Jerry Davis. This development is proposed for where the old laundromat was located; it contains a very small wetland, approximately 525 square feet, according to Mr. Harkin. The property line runs through the wetlands, he stated, and there are monitoring wells for the dry cleaners. Plans are to build a residential housing development, one building with 48 bedrooms, and access off Bradley Road; parking will be in the rear, according to Mr. Harkin. There will be a detention basin at the wetlands area, sheet flow and roof leader, catch basins with hoods, a post development maintenance plan for the catch basins, utilities on the east side for water, gas, and electric; coming in from the left side will be cable television, and in the front and towards the back, the septic systems are being designed to be far away from the wetlands, according to Mr. Harkin. In showing the plans, he also showed the erosion control plan and details about the catch basin hoods, dust control, maintenance program, and inspections. There will be 30 apartments in a three story building, with a mix of one and two bedrooms. A detention basin is within the regulated area. Chairman Freidenburg stated that the water table comes up pretty high a lot of the time, and this will impact the wetlands; that's a lot of septic to put in an area where there are a lot of issues with respect to the water tables. Soils testing revealed that the soils on the site are excellent, medium gravels, and this site is six to seven feet higher than that wetland area; the elevation is 22 feet, whereas the wetlands are at an elevation of 15 feet, according to Mr. Harkin. There are extremely well draining soils on site that will be replaced with extremely well draining soil, and there are four septic areas, in total, Mr. Harkin stated.

**Vice Chairman Budrow made the motion to receive application 21-02, 110 and 114 Bradley Road, and schedule it for the next regular meeting; it was seconded by Commissioner Paul and unanimously approved.**

Vote to receive application 21-01 passed, 7-0-0.

IN FAVOR: Chairman Freidenburg, Vice Chairman Budrow, Secretary Zdon, and Commissioners Paul, Mathieu, Schumacher, and Newton.

OPPOSED: None

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ABSTAINED: None.

**SECTION 13 APPROVALS:** None.

**Approval of Minutes ~ August 3, 2020, November 2, 2020, and January 4, 2021.**

**Vice Chairman Budrow made the motion to accept the minutes, as submitted, for Aug. 3, 2020, Nov. 2, 2020, and Jan. 4, 2021; it was seconded by Commissioner Newton and unanimously approved.**

Vote to accept the minutes of Aug. 3, 2020, Nov. 2, 2020 and Jan. 4, 2021 as submitted passed, 7-0-0.

IN FAVOR: Chairman Freidenburg, Vice Chairman Budrow, Secretary Zdon, and Commissioners Paul, Mathieu, Schumacher, and Newton.

OPPOSED: None.

ABSTAINED: None.

**Remarks:** Inland Wetlands Chairman ~ No report.

Inland Wetlands Officer ~ Mr. De Laura stated that the chain link fence at 16 Georgetown is gone, and they have complied.

**Adjournment**

**Secretary Zdon made the motion to adjourn at 9:08 p.m.; it was seconded by Commissioner Schumacher and unanimously approved.**

Vote to adjourn at 9:08 p.m., passed, 7-0-0

IN FAVOR: Chairman Freidenburg, Vice Chairman Budrow, Secretary Zdon, and Commissioners Paul, Newton, Schumacher, and Mathieu.

OPPOSED: None.

ABSTAINED: None.

Respectfully Submitted,  
Marlene H. Kennedy  
Clerk