

SUBJECT TO APPROVAL

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

February 16, 2021

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

A Special Meeting of the Madison Inland Wetlands and Watercourses Agency was conducted on Tuesday, February 16, 2021 at 6 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 6 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), Peter Gelderman (Town Attorney); Lawrence Reilly (Attorney), Thomas Crosby (Attorney), and Eric Bernheim (Attorney).

Chairman Kealoha Freidenburg called the meeting to order at 6 p.m.

SPECIAL 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 Town Attorney Peter Gelderman is prepared to give the Inland Wetlands and Watercourses Agency an overview as to his legal opinion regarding the process. Mr. Gelderman, who is with the law firm Berchem Moses, PC, representing the town of Madison, stated that his area is land use, planning and zoning and wetlands related matters. The state statute that requires the Inland Wetlands and Watercourses Agency to review subdivisions is Section 8-26 (e); when a subdivision involves a watercourse or wetland, the statute requires the Inland Wetlands and Watercourses Agency to review the subdivision and to issue a report to the Planning and Zoning Commission, according to Mr. Gelderman. The Planning and Zoning Commission cannot render a decision on the subdivision until the Inlands Wetlands and Watercourses Agency gives its report, he stated. The history of the statute goes back to 1977, and Mr. Gelderman reviewed some of the legislative background. This referral process that the state statute requires is not meant to give veto power over the subdivision; the Planning and Zoning Commission is the one who makes the decision on the subdivision. The Planning and Zoning Commission cannot deny a subdivision application based solely on the Inland Wetlands and Watercourses Agency report, Mr. Gelderman stated. The Inland Wetlands and Watercourses Agency's obligation is to provide the report, and the Planning and Zoning Commission cannot approve, deny or modify a subdivision before

Page 1. Inland Wetlands and Watercourses Agency, Special Meeting, Feb. 16, 2021

receiving this report from the Inland Wetlands and Watercourses Agency. When there are no applications filed to the Inland Wetlands and Watercourses Agency to conduct any regulated activities in wetlands on a proposed subdivision, the role of the Inland Wetlands and Watercourses Agency is solely to submit a report to the Planning and Zoning Commission about the subdivision. In the role of rendering a report to the Planning and Zoning Commission, the Inland Wetlands and Watercourses Agency can write a report about the wetlands, noting that until regulated activities over wetlands are approved, the development cannot move forward, according to Mr. Gelderman. Nobody has filed an application to conduct a regulated activity, yet, Mr. Gelderman stated, adding that it is hard to see how this subdivision could be developed without conducting regulated activities. There is another instance, however—if a site plan application involves a regulated activity, the applicant shall submit an application for a permit to the Inland Wetlands and Watercourses Agency, and that instance is not governed under Section 8-26 (e). Though there is disagreement between the attorneys involved in the development, particularly wherein it states that an applicant shall submit an application to the wetlands agency, Mr. Gelderman stated that the applicant did not submit the application—Director of Planning and Economic Development David Anderson submitted the application, on behalf of the Planning and Zoning Commission; it is not substantive; it is procedural, Mr. Gelderman stated. In discussing the role of the Inland Wetlands and Watercourses Agency in issuing its report to the Planning and Zoning Commission about the subdivision, Mr. Gelderman answered questions from the Inland Wetlands and Watercourses Agency commissioners. Secretary Robert Zdon asked about the mechanics involved in creating the report and stated that there is also the question of ownership on this parcel of land. Ownership is generally not something land use agencies get involved in, Mr. Gelderman stated. Land use agencies are only concerned about the area within the boundaries of the subdivision; after the Inland Wetlands and Watercourses Agency has viewed the subdivision map, it comes to a consensus and decides, as a whole, what to present to the Planning and Zoning Commission in the report; it can be put in a bullet point format; let the Planning and Zoning Commission know whatever the concerns might be, according to Mr. Gelderman. He cautioned against giving so much detail in the report that it looks as though the agency is prejudging it—the Inland Wetlands and Watercourses Agency does not have enough information to do that, but it can phrase the wording of the report to indicate that the agency anticipates that something is going to be an issue or a problem. Once the Inland Wetlands and Watercourses Agency writes down what it wants to say in the report, it must then vote on it, as a resolution, according to Mr. Gelderman. But it is up to the Inland Wetlands and Watercourses Agency how it wants to do the report. Commissioner David Newton stated that there is a large portion of the subdivision in tidal wetlands, and the state Department of Energy and Environmental Protection (DEEP) has jurisdiction over tidal wetlands. The Inland Wetlands and Watercourses Agency should restrict its comments to inland wetlands, but its report could also make mention of the tidal wetlands on this parcel and DEEP's role, adding that the Inland Wetlands and Watercourses Agency is not commenting on it, according to Mr. Gelderman. One of the reasons the report is important is that it gives developers information as to what is before them, in terms of the land use. Mr. Gelderman reminded the commission that it is not approving lots—it is making comments about the subdivision, the division of land. It cannot be said that lots are undevelopable; the Inland Wetlands and Watercourses Agency does not have the information to make such a statement; it does not have the application before it,

Mr. Gelderman stated. This report is to give the Planning and Zoning Commission some idea of what the land is; it is the role of the Planning and Zoning Commission to approve it, deny it, or modify it, according to Mr. Gelderman. Chairman Freidenburg stated that there are questions related to Lot 6, regarding accessibility, because a wetlands crossing will be needed to access that parcel. That wetlands crossing is going to require a permit for a regulated activity, Mr. Gelderman stated. The difference is that no application has been filed for that wetland activity, yet, he stated. Therefore, the Inland Wetlands and Watercourses Agency report can state that no application has yet been filed, but an application will be required for a wetlands crossing, Mr. Gelderman stated, and the Inland Wetlands and Watercourses Agency will want to know what the detail is in that application. It is not inappropriate for the Inland Wetlands and Watercourses Agency to report to the Planning and Zoning Commission that the subdivision has a wetlands crossing that will require its approval, Mr. Gelderman stated. Commissioner Newton stated that Lot 5 does not have access because adjacent properties will not give an easement, and he asked if the Inland Wetlands and Watercourses Agency is able to mention that. That is not a wetlands issue, Mr. Gelderman stated. Chairman Freidenburg expressed concern over the fact that, clearly, a wetlands crossing will be needed to get to Lot 6, and yet there is no application before the Inland Wetlands and Watercourses Agency for that crossing. An application will have to be done, eventually, if circumstances have changed, Mr. Gelderman stated. If there has been a material change in circumstances, they will still have to come back to the Inland Wetlands and Watercourses Agency with an application, he stated. Though an approval may have been given for that crossing years ago, the Inland Wetlands and Watercourses Agency may state that it has different concerns for that wetlands crossing, the report will make clear that there will be regulated activity in that area. Often times, a site plan is put together with a subdivision plan; subdivision is dividing the land, and Madison's planning and zoning regulations do not require a site plan with a subdivision plan, Mr. Gelderman stated. Furthermore, concerns may focus on how that crossing will be built—pervious or impervious materials, wood or steel, according to Mr. Gelderman. The reason for Section 8-26 (e) is so people who own property can understand that they have issues with respect to those lots, and it is not absolute approval to build, according to Mr. Gelderman. In discussing items of concern to incorporate into the report, Chairman Freidenburg listed: the inland wetlands delineation has not been done in 10 to 15 years, it is not current, it has clearly changed, and that is a challenge; the Inland Wetlands and Watercourses Agency identified Lot 6 as being through fresh water and tidal wetlands; open space; the wetlands crossing on Lot 6. Concerns should be highlighted as challenges, and concerns could be specific, according to Chairman Freidenburg, who opposed the idea of simply writing a general report. Somebody could draft the report, it can be sent around to all the commissioners for input and review, but it has to be discussed and voted on in a meeting, according to Mr. Gelderman. Chairman Freidenburg asked for a vote on which process to follow, in completing the report.

Secretary Zdon made the motion that the Inland Wetlands and Watercourses Agency have Chairman Freidenburg draft the report, have the commissioners comment on it, and then move it on to the next meeting; the motion was seconded by Commissioner Lee Schumacher and unanimously approved.

Vote to have the chairman draft the report, followed by agency review and comment, with movement to the next meeting, passed 7-0-0.

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

OPPOSED: None.

ABSTAINED: None.

The special meeting adjourned at 7:10 p.m.

Respectfully Submitted,
Marlene H. Kennedy
Clerk