

## Subject to Approval

### MADISON PLANNING AND ZONING COMMISSION REGULAR MEETING MINUTES June 3, 2021

The Regular Meeting of the Madison Planning and Zoning Commission was conducted Thursday, June 3, 2021, at 7 p.m., remotely, using Zoom Videoconferencing. The public was invited to participate remotely by joining the meeting through a Zoom webinar link password, telephone call-in number, and a webinar identification number. Log-in and call-in details were posted to the Town of Madison website (<https://www.madisonct.org/>), prior to the meeting.

#### **MEMBERS PRESENT**

Chairman Ronald Clark, Vice Chairman James Matteson, Secretary Elliott Hitchcock, John K. Mathers, Joseph Bunovsky, Jr., Giselle Mcdowall, Seonaid Hay, Thomas Burland, and Joel Miller.

#### **MEMBERS ABSENT**

None.

#### **ALTERNATES PRESENT**

Peter Roos, Ron Bodinson and Carol Snow.

#### **OTHERS PRESENT**

Director of Planning and Economic Development David Anderson. The meeting was recorded via Zoom Videoconferencing software for You Tube viewing.

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The Regular Meeting of the Madison Planning and Zoning Commission was called to order at approximately 7 p.m. by Chairman Ronald Clark, who asked Commissioner Joel Miller if, in light of his previous absence, he had had an opportunity to review the tapes and read the minutes. Commissioner Miller stated that he watched the You Tube video and is ready to proceed. Chairman Clark also announced the format of presentations, questions, responses, comments, and applicant summation, to then see where the commission stands, as to the possibility of closing the public hearing.

#### **PUBLIC HEARING ITEM:**

**21-03+CSP. 856 Boston Post Road.** Map 39, Lot 8. R-2 District. Owner: Faith Whitehead; Applicant: 856 Boston Post Road LLC. Special Exception Permit Application to construct a single-family residential cluster development and associated site improvements, also Coastal Site Plan Review. **Continued from May 20, 2021.**

Chairman Clark asked Attorney Keith Ainsworth to identify his clients.

Attorney Keith Ainsworth, representing Steven Bischoff and Jane Zennario and William and Laura Downes, summarized his professional background and stated that he is an environmental attorney. A verified petition to intervene, under Connecticut General Statutes Section 22a-19, has *Page 1. Madison Planning and Zoning Commission, Regular Meeting, June 3, 2021*

been filed by Mr. Ainsworth and is in the Planning and Zoning Commission's public record for application 21-03+CSP. 856 Boston Post Road; this environmental intervenor petition states "that the proceeding or action for judicial review...involves conduct which has, or is reasonably likely to have, the effect of unreasonably polluting, impairing or destroying the public trust in the air, water or other natural resources of the state." Environmental impairment is expected to be caused by storm water management and effluent system practices in a number of natural resources, including the groundwater and downstream environmental features. Mr. Ainsworth stated that the applicant has chosen to push the limits by maximizing the number of units, has gamed the septic system regulations to avoid more stringent regulations, has an unidentified contractor for blasting, and has haphazard plans for the neighbors' retention of water in a private main. Mr. Ainsworth stated that his clients are not opposed to change. The change that is proposed they did not consent to, he stated, adding that the rules changed on them; they invested money in their properties and on renovations. It is legal to change zoning; there was a notice posted, a hearing on it, and it passed in accordance with law, Mr. Ainsworth stated. The way to really get consent of the governed is to send a notice to these families, before changing the zoning regulations—instead, the regulations changed, he stated. The Downses even spent hundreds of thousands of dollars to purchase a portion of this property to prevent development, Mr. Ainsworth stated. This application has been sloppy; it has been revised and revised again, according to Mr. Ainsworth, who stated that it violates Section 4.4.2 of the Madison Planning and Zoning Regulations, in that it does not preserve the health, safety and convenience of property. Mr. Ainsworth stated that the wetlands approval is on appeal. In addition, this is a special exception permit application, and it is not something to which anyone has a right, according to Mr. Ainsworth. This application has undergone additional changes with additional data, and there have been offers to fix problems that will happen, later, if only the Planning and Zoning Commission gives this approval, according to Mr. Ainsworth. The water supply, via a private water line, to the Farmer and Downes families, impairs the convenience of these properties, as stated in Section 4.4.2, and it is the applicants' burden to address this, because water is not a convenience—water supply is fundamental to being able to live in a house, Mr. Ainsworth stated. The applicant is not Faith Whitehead; the applicant is a limited liability company, whose head is William Pite, and no one has heard from Mr. Pite, according to Mr. Ainsworth. His clients are not politically connected, Mr. Ainsworth stated, adding that his clients are relying on the Planning and Zoning Commission to protect their investment—not as an investment, but as their homes. This neighborhood is the heart and soul of Madison, as the Plan of Conservation and Development states, Mr. Ainsworth stated, adding that the limited liability company admitted to his client that it is planning to sell this project, this multi-family project. One of the models used by the applicants during The Ledges presentations has been The General's Residence, Mr. Ainsworth stated, adding, let's talk about the model. During The General's Residence construction, there is uncovered soil within steps of Fence Creek, a sediment cesspool, and music from the working crew blasts from 7 a.m., all day long, Mr. Ainsworth stated. When someone complained about being able to hear the music inside their own home, they switched the music from high volume rock 'n' roll to high volume opera, Mr. Ainsworth stated. Because The General's Residence is on the market for high values, none of the units have been sold, Mr. Ainsworth stated. This is not preserving health, safety, public convenience and property values, according to Mr. Ainsworth. With reference to The Ledges, and the seven septic systems under the front lawn, the applicant suggested this is within the jurisdiction of the local health department, Mr. Ainsworth stated, adding that Section 26.8.7, wastewater disposal, states that impacts to coastal resources must be considered. He referenced Professor David K. Skelly's letter, in which it was stated that the applicant is trying to

circumvent the use of a single treatment septic system, in order to avoid state oversight. If there are seven septic systems jammed into an area, the effluent is going to flow downstream, according to Mr. Ainsworth, who stated that Mr. Skelly urges denial of the application. Salt marshes are sensitive to effluent loading, Mr. Ainsworth stated. As currently designed, the septic system pumping stations will not operate during power outages, and the Plan of Conservation and Development states that it must be ensured that individual systems operate effectively, and that the cumulative impacts are understood, Mr. Ainsworth stated. This application should be denied because the quality of the environment is being shortchanged, in the interest of expediency, Mr. Ainsworth stated. He shared a report entitled, *The Small Cluster Development is Neither Small nor Clustered*, which included the following: Section 4.1.13 states that “cluster” is a grouping of buildings close together; an area on the plans noted as “open space” is not open space—it is septic systems; The Gatehouse is oriented sideways and it is not consistent with the architectural vernacular; units of 5,849 square feet and 4,136 square feet are not small; the public convenience and welfare will not be substantially served, due to construction impacts on an adjacent private water main and the adverse effects from the installation of seven septic systems under the front lawn; Units Six and Seven are outside the permitted district, because the 500-foot cluster district boundary goes parallel to the road and runs right through Units Six and Seven; and the maximum density of the project exceeds the regulations in Section 3.12(d). Mr. Ainsworth stated that the project exceeds the coverage limits, it is not compatible with surrounding uses, and it does not meet the regulations in Section 3.12(b), which state that the purpose of cluster developments is to address the need for smaller and more diverse housing choices, while ensuring compatibility with surrounding traditional single-family residential developments. The Ledges is not single family; it is multi-family; it is not traditional; it is a cul-de-sac of snout houses; and The Ledges is not smaller, with a 4,136 duplex building, according to Mr. Ainsworth. The Ledges is not diverse; it is high income housing which will have a domino effect of high density condominium-type developments from East Wharf Road, westward, into town, Mr. Ainsworth stated. It will lead to assemblage, where parcels will be combined to permit condo-like developments, according to Mr. Ainsworth, who stated that this application will erode a signature neighborhood. It is a state designated scenic road, and they stuck a house on it, Mr. Ainsworth stated; the one they stuck on the front lawn is the one that is most disrespectful of the architectural vernacular. The site is surrounded by historic homes and Section 30.9 of the Downtown Village District (DVD) regulations states that the single family residential density pattern of Madison must be maintained. Mr. Ainsworth shared *The Register Citizen* Aug. 19, 2004 story, updated Aug. 29, 2017, by Rick Klimanowski entitled, *Cause of blast still unknown*, dateline, Winsted, which was also submitted into the Planning and Zoning Commission’s record, that reported on a blasting accident at a site overseen by Blast Operator Richard Hosley. Mr. Ainsworth stated that Mr. Hosley was doing blasting on this site and it sent rocks like a dart; rocks flew as far as 300 yards away. In the story, submitted into the Planning and Zoning Commission’s public record, the fire marshal called it a “fluke accident.” Mr. Ainsworth stated the following reasons to deny the application, “Too dense. Too many multi-family units. Too large. Too far beyond the district. Too many impacts to neighbors and to wetlands. Too much ledge. But, putting in seven units and 20 bedrooms does not erode the heart and soul of Madison.” Licensed Professional Engineer and Board Certified Forensic Engineer Jeffery Cissell, Licensed Professional Engineer Steven Trinkaus and Principal Environmental Scientist George Logan were introduced by Mr. Ainsworth to provide their presentations. Mr. Cissell gave his professional background and stated that he has spent quite a lot of time looking at this project, and he looked at a number of properties immediately adjacent to it, adding that he is neither for nor against this proposal, and he would talk about how to

protect the residents of the area from damage and claims, with respect to the proposed blasting. When rock is blasted, it can swell 70 to 80 percent, and there has to be a place for that rock, once it comes out of the ground, according to Mr. Cissell. He stated that he is now doing a lot of forensic work in the area of construction defects and blasting complaints, and he has studied how to investigate that. Mr. Cissell stated that hopefully he can provide the commission with some of his experiences and recommendations. When people try to file a claim, typically, it is denied, and it goes in the contractor's favor, so they file a claim with their personal insurance carrier, according to Mr. Cissell. It is incumbent on the commission to insist on a pre-blast survey, he stated. Mr. Cissell stated that he sent the Planning and Zoning Commission a report on vibration issues in antique structures, and he hopes the commissioners have a chance to review it. Mr. Cissell shared with the public, *Madison Ledges Blasting and Construction*, which had aerial views of the site, blasting zones, details of the residential homes surrounding The Ledges, as well as a variety of photographs of the area. Antique structures are more vulnerable to blasting, because fragile plaster will crack, cracked plaster causes frames and shelves to fall off the cracking walls, and damage continues to escalate, according to Mr. Cissell. There are a number of antique structures around and adjacent to The Ledges, according to Mr. Cissell. In addition, Mr. Cissell shared and discussed the following reports: *Projected Blasting Area*, *Projected Blasting Area Comparison*, and *Southern Section of Applicant's Property*. In the report entitled, *Blasting Considerations*, Mr. Cissell stated the following: several antique structures are partially built on the same rock formation that is being blasted; residential properties are within 300 feet of the blasting; the Madison Historical Society building is less than 400 feet from the blasting; there is an old cast iron pipe that is about 100 years old that provides water to adjacent residences and is fragile; the proposed blasting plan is to be designed, executed and monitored by the blasting company; town staff and the fire marshal do not supervise the blasting operation; blasting complaints are likely; blasting records and pre-blast construction surveys are not typically available except by subpoena; common damages from blasting or construction operations are cosmetic damages to wells and ceilings, objects on shelves and walls falling, and repair costs are typically too low to hire attorneys; when claims are presented to insurance companies, insurance claims are tracked by carriers and can influence premiums. In addition, Mr. Cissell shared a report entitled *Construction Vibration Considerations*, which stated that groundwater conditions may extend vibration waves and affect other structures. In the shared report, *Recommendations*, Mr. Cissell stated that a preconstruction survey of structures should take place within 400 feet of the blast and for older structures, within 200 feet of proposed construction compacting or other vibration inducing equipment; there should be test probes in planned areas of construction to determine the actual ledge profiles; a blasting design plan should be provided by a third party consulting firm; test blasts should take place in several locations to facilitate a blasting design plan; a consulting firm should monitor the blasting; there should be a complete transparency of records for blasting and construction vibration monitoring, as well as pre-blast survey records being made available to the public; and water service lines servicing other adjacent properties should be tested for leaks using test pressures that are code compliant, after reconnection and construction activities are complete. Finally, Mr. Cissell's report entitled, *Why*, stated that blasting construction vibrations are a necessary result of the construction activities to achieve the proposed development; neighbors will detect vibrations from construction and blasting accidents and unknown variations can affect even the most well-designed blasting plans; it should not be incumbent on the neighbors to suffer the expense and time required to submit a claim to their insurance company or against the blasting firm to recover potential damages—most carriers that insure blasting companies use a much higher vibration measurement before they accept responsibility; blasting contractors have an embedded conflict

of interest in monitoring their own work; and there are antique structures near a high profiled project that has substantial opposition. Licensed Professional Engineer Steven Trinkaus presented information on run-off volumes and water quality; he shared information on the number of gallons a day discharge planned for the septic systems and the difference in amounts that would decide whether jurisdiction would be the responsibility of the local health department or the state department of health, as well as state Department of Energy and Environmental Protection (DEEP) regulations. Mr. Trinkaus stated that the local health department could have the state look at this; it is 3,000 gallons a day in a very small area. Between Feb. 1 and May 31, groundwater monitoring should take place in every test pit, he stated. In the proposed project, each unit has its own tank and pump system, however it is in one building; this should be evaluated by the state health department, he stated, and a decision may preclude the number of bedrooms the applicant is proposing. It can be required by the health department to do a DEEP renovation analysis, Mr. Trinkaus stated, adding that septics are a major concern, in his professional opinion. A concern has been raised about storm water management, in that additional water would be going over the leaching system, and that should not happen, according to Mr. Trinkaus, who stated that it is standard practice to have a storm water analysis. Data is either missing or just not clarified in several areas, including, there is no description of land use, with respect to storm water runoff, whether it is impervious, whether there should be a curb or a curve, the type of fill that is going to be used is unknown, and there is no pre-treatment of the runoff, according to Mr. Trinkaus. The driveway really needs to be curbed, he stated. During construction, a silt fence needs to be installed parallel to the contour lines, and in this case, the silt fence is being installed perpendicular, which does not protect the area, Mr. Trinkaus stated. There is no assessment of the pollutant loads that will be generated on the site, and it needs to be demonstrated that the infiltration systems meet DEEP standards for storm water management, he stated. Principal Environmental Scientist George Logan gave his professional background and stated that he has been a registered soil scientist for approximately 33 years. Mr. Logan stated that he has scrutinized the plans, and he was involved in the wetlands application. He stated that he must concur with Dr. David Skelly's conclusions, adding that his presentation will focus on the impacts of all seven septic systems, and Mr. Logan also stated that he agrees that the storm water management system will not meet DEEP standards—even a well-designed system. Mr. Logan shared a 2016 aerial photograph of this site, which he stated highlights the property roughly, shows one-foot contours, and stated that the septic system effluent that is not pre-treated will ultimately end up in the salt marsh of Fence Creek. Nitrate nitrogen generated by the septic systems will find its way to the organic soils in the salt marsh and to the tidal creek of Fence Creek, according to Mr. Logan. Nitrogen negatively affects the herbivores and the vegetation in the tidal wetlands, tidal creek, and salt marsh, according to Mr. Logan. Elevated nitrogen levels cause changes in salt marsh structure; at Fence Creek, at the edge of the salt marsh there is the common reed, phragmites, that is kept at bay by nature, Mr. Logan stated. Native marsh degrades as a result of phragmites expanding, which takes place as a result of nitrogen being released, due to minimally treated septic effluent, according to Mr. Logan. A concern has been raised about the effect of the development on wildlife surrounding The Ledges, according to Mr. Logan. Because of the slopes, the knolls, and the ledges, there is significant wildlife at the site, but no one has conducted a wildlife survey; trees will be removed, and there will be long term impact on wildlife, but it cannot be quantified without a survey, Mr. Logan stated. Mr. Ainsworth stated that they are open to questions. Chairman Clark sought questions from the Planning and Zoning Commission. Vice Chairman James Matteson clarified a statement that Mr. Ainsworth made regarding the number of attached units in a cluster development, stating that the development complies by having no more than two attached units,

while Mr. Ainsworth had earlier indicated there were four attached units in the development, thus making it noncompliant with the regulations. Mr. Ainsworth stated that he did recognize that there would be two interpretations of that, and he stated that he read it in the alternative. A question was raised about the 500-foot boundary line in the proposed development. Director of Planning and Economic Development David Anderson stated that in his interpretation, the 500-foot zone line is in the midpoint between the northern end of Boston Post Road and the southern portion of Old Birnbaum Lane, which would put the 500-foot boundary beyond what was shown, earlier, during Mr. Ainsworth's presentation, when Mr. Ainsworth stated that the 500-foot cluster district boundary line was going through the middle of Units Six and Seven. That gives the town's view, but Commissioner Ron Bodinson stated that he cannot resolve it. Chairman Clark asked if there were any questions from the public, and there were none. Attorney Christopher McKeon, representing the applicant, stated that he would really like to close the public hearing tonight, and he would defer to the public speaking, first. Chairman Clark sought comments from the public in favor of the application. Lurrae Lupone of 25 Wall Street spoke in favor of the application, adding that she trusts there will be a meeting of the minds and this project will be approved. She stated that she sees it as a wonderful addition to the town. Chairman Clark asked if anyone wanted to speak in opposition to the application. Sara Maurer of 153 Middle Beach Road stated that she has been a resident of Madison for 66 years, and her parents, together, stopped The General's Residence from becoming a restaurant and bar. She stated that she has been a trial lawyer with four decades of experience, and she heard from the blaster that he has \$5 million in insurance; \$5 million is nothing, she stated, adding that she has that on her car. In terms of land use litigation, number one, this is a special exception, and number two, the blasting, in all 50 states, is an inherently dangerous condition, Ms. Maurer stated. Due to damages that take place during blasting, insurers will use the argument that this was not a sudden and unexpected loss, according to Ms. Maurer. Under Connecticut law, not only the town and the zoning board can be sued, but the individuals can also be sued; this is making a special exception, and there is no sovereign immunity, Ms. Maurer stated. She asked whether anyone really wants to spend their tax money defending this. To bring this to trial is upwards of \$1 million, and the town will bear the responsibility, Ms. Maurer stated. Timothy McHugh of 14 Fence Creek Drive stated that in a couple days he will have been a Madison resident for three years, and he fully understands the draw of downtown and of wanting affordable housing in Madison. However, Mr. McHugh stated that he has lived through a 20-day ordeal of blasting from a neighbor at Fence Creek, and the fire marshal relayed to him that some of the regulations enforced are upwards of 42 or 43 years old. Originally, Mr. McHugh stated that they were told the blasting would last four to five days, but it went to 20 days; the whistle is heard, there is a 30-second wait, a bang, and then a picture falls off the wall. Mr. McHugh stated that he cannot overestimate the blasting impact, and in terms of the wildlife—the amount of wildlife, just from the construction on The General's Residence, that is just re-routed and walking along the street, rather than on the creek. Sheri Pasqualoni of 6 John's Path stated that she has lived in Madison three decades and summered in town 20 years; this development is not fit for the town of Madison, and she implored the commission to do the right thing and vote against this project. Gregory Johnson of 153 Middle Beach Road stated that he agrees with many of the opponents that this is the first step in changing the character of Madison—from Old Saybrook to New Haven are condos; Madison is unique and different, and he cautioned against Branfordizing Madison. Mr. Johnson stated that this whole thing should be delayed until there can be an old fashioned town meeting; this should be delayed until there can be a face-to-face town meeting, where people can look each other in the eye. This is an artificial process; delay it until it can be real, Mr. Johnson stated. Tina Zimmerman of 838 Boston Post Road read a passage from the *Page 6. Madison Planning and Zoning Commission, Regular Meeting, June 3, 2021*

Madison Historical Society about preservation and the importance of protecting historic buildings; she asked that everyone listen to the historical society and preserve Birnbaum Lane by voting no on this project. Shawn Banerji of 6 Wharf Road stated that he sees these as quite different projects—he did see it was an appropriate property to be developed; when The General’s Residence was approved, townspeople were led to believe the project that was presented and approved is what would be developed. William Plunkett had presented a plan where The General’s Residence would be preserved, Mr. Banerji stated, but now he is looking at a hole in the ground, where The General’s Residence no longer exists. When the blasting is done at The Ledges, Mr. Banerji asked if that which has been approved will be, in fact, what is delivered. Mr. Anderson stated that William Plunkett did submit a formal application that was approved, but it did not go forward. Another property owner took possession of The General’s Residence and presented another plan for the site, which was approved. David Gagnon stated that Madison is a special place; in a few years, it is going to celebrate 200 years. It has historic homes, and while he is not against development, Mr. Gagnon stated that there must be a balance in that development. Since construction started on The General’s Residence, people are taking notice, and people have asked him if it is low income housing, due to the density of The General’s Residence, with homes only feet apart. The Ledges layout is trying to accomplish the same, Mr. Gagnon stated, adding that he truly believes those who approved cluster development did not envision this concept. There is already a lot of traffic in this area, and there will be more parking on Birnbaum Lane, Mr. Gagnon stated, adding that he is the southeast wetlands owner, and he has never been notified about this project. Mr. Gagnon stated that he is concerned about the runoff that will flow into his wetlands. He asked the commissioners to put themselves in any of the property owners’ places and experience how it feels; they have put a lot of money in their properties, and they are just trying to protect the character. David Franks of 18 East Wharf Road stated that they have been residents of Madison since 1996 and have been fortunate enough, blessed enough, to be able to move to the town of Madison. He indicated that the commissioners should spend time looking at the quote, unquote runoff that is supposedly not coming from the wetlands. Under consideration is a special exception, all for the almighty dollar, Mr. Franks stated, adding that everyone has to take a look at what is right and what is fair. Regarding the slippery slope argument, Robin Phillips stated that he could combine his property with two adjacent properties, the three property owners could build nine condominiums, clear a \$3.5 million profit, and then move out. But they do not think this is a good outcome for the town, if they were to do that, according to Mr. Phillips. The planners said they’ve worked really hard on this project, read all 150 letters, with a few in favor, and all they did was reduce the size of the garages, Mr. Phillips stated. There has been no material change, he stated. The project still consists of seven large condos with all the supporting structures, and Mr. Phillips asked why they did not talk to the neighbors, the Madison Historical Society, or the library. There has been no outreach, he stated. Chairman Clark asked the commissioners if they had any questions on the comments made. Mr. McKeon stated that he submitted a report by Mr. Marc Nadeau, and there was some comment and criticism on that report, and he would like to address those comments. Marc Nadeau stated that he was retained by Faith Whitehead to measure the impact of evaluation on the properties in the area, as a result of the project being built; for comparison, The General’s Residence, The Mews, and 66 High Street, Guilford, were chosen. Mr. Nadeau stated that he took a pin and drew a circle around the properties, for one quarter of a mile and one third of a mile around, and all of those projects resulted in bringing up the value of the properties in the area. A comment was made that the project does not meet the architectural vernacular of the area, Mr. Nadeau stated, adding that it falls right in the wheelhouse of the vernacular in the size of the houses in the area; it is a meld of architectural style that co-exists in that area. Mr. Nadeau

stated that of the three projects he reviewed, all of them have brought up the medium values of houses in the area. Attorney Christopher McKeon stated that he represents the applicant. He addressed a number of issues raised by Attorney Ainsworth and others in opposition to the project at 856 Boston Post Road. He listed a number of statements made, such as that his client's experts gamed the rules in designing the septic system, concerns about the water supply to adjacent neighbors, that the applicants were responsible for changing the rules, and attacks on the applicant that she has one foot out the door, when her hope is to live in The Ledges residence, where she lives with her daughter, now. It is possible the property will be sold, Mr. McKeon stated. It is possible the owner will enter into the project with a developer and live in one of the units, herself, Mr. McKeon stated. One of Mr. Ainsworth's statements was that the application does not comply with Section 3.12, and Vice Chairman Matteson stated that the regulations allow two units to be attached together, according to Mr. McKeon. This is an issue Mr. McKeon stated that he personally discussed with Mr. Anderson, who drafted this regulation at the commission's request. Mr. Ainsworth stated that the application does not comply with Section 4.1.13, but Mr. McKeon stated that that section applies to a limited parcel of land in the East River, and not to The Ledges. This application for the special exception permit is being applied for under Section 3.12, which has its own definitions, all of which are being met in the project, according to Mr. McKeon. There has been criticism of the placement of The Gatehouse; it serves as a Gatehouse to the estate, according to Mr. McKeon. The Ledges residence is the focal point of the community, he stated. With respect to the statement that the rear building, Units Six and Seven, are located outside of the zone, that was a flawed description, and Mr. Anderson provided the correct zone line, Mr. McKeon stated. The Madison Planning and Zoning Regulations state in Section 1.1, zoning of streets, that the boundary shall be deemed to be the center of the right of way; Mr. Anderson's interpretation is correct, and if started there, the project is within the 500-foot line, Mr. McKeon stated. That was the basis of stating that the application does not meet the density and coverage in Section 3.12, he stated. It was stated that there was a question on how much slope there is on the site, but their interpretation of slope was not based on an actual site survey that determined the topography of the site, which was done by and presented by Mr. Michael Ott, who put the slope into the plans and signed and sealed it with his name—they want everyone to ignore what Mr. Ott did, Mr. McKeon stated. The Ledges architect and landscape architect both show on the plans the driveway in detail, Mr. McKeon stated, in response to a statement by the opposing side that lines were drawn upon lines in the driveway, and it was difficult to distinguish the new driveway from the old. The plans were reviewed by the Advisory Committee on Community Appearance (ACCA), and the committee unanimously approved them, Mr. McKeon stated. A criticism was made that a large fire apparatus would not be able to turn around in the area set aside for that turn-around, but Mr. Ott spoke to the fire marshal and the fire chief, and it was determined that the driveway area is sufficient to accommodate the fire apparatus, according to Mr. McKeon. Regarding the domino effect—that historic homes will be demolished, to be replaced by condominiums—this is a phobia that has permeated the project from the beginning, Mr. McKeon stated. In 2013, the Plan of Conservation and Development makes a recommendation for cluster developments; in 2018, cluster development regulations are passed by the Planning and Zoning Commission, and in 2019, they are amended, according to Mr. McKeon. The applicant then makes an application, under the existing storm water and septic system regulations, Mr. McKeon stated. This application has followed the protocol and delivered what the commission has proposed, he stated. The remainder of Mr. Ainsworth's comments is refuted by expert testimony, according to Mr. McKeon. DEEP has submitted into the record a March 18, 2021 letter stating that the project is located outside of the 100 foot flood plain; there is roof runoff to an underground

infiltration system, and DEEP has no further comment, it states in the letter, according to Mr. McKeon. It has been stated that water to three residences will be interfered with or blocked, but Mr. Ott has submitted documents showing that he has mapped and provided all documentation that shows otherwise, according to Mr. McKeon. Mr. Ott has coordinated with the Connecticut Water Company, he has included the Connecticut Water Company, and he has worked with the Connecticut Water Company, Mr. McKeon stated. Mr. Ott has given all documents to the Connecticut Water Company, Mr. McKeon stated. This developer will have to maintain the water to these three residences, Mr. McKeon stated. The Connecticut Water Company does not issue final approval until all local approvals and permits are achieved, Mr. McKeon stated. The developer is under no obligation to replace the private water line, but that is what this developer is doing—replacing it with an 8” line—and nobody is skipping out on anyone, Mr. McKeon stated. Mr. Ott’s notes have been submitted into the record, he stated. Comments have been made regarding screening from the back view of the Downes’s property; John Cunningham’s landscape plans do show the screening, and people have the option of putting up their own screening, if they don’t like what they see in the view, Mr. McKeon stated. Regarding the testimony of Mr. Trinkaus, Mr. McKeon stated that a lot of his time was spent poking a hole in the septic system; the commission cannot be the arbiter of what is or is not the septic system, and the state has told Mr. Trinkaus that this is in the jurisdiction of the local health department. Mr. Ott has signed his name to a septic system he believes can be approved by the local health department, according to Mr. McKeon. The concern that what the applicant is applying for is not what is actually going to be built is not accurate, because ACCA has approved the project, according to Mr. McKeon. Mr. Gagnon indicated that he did not receive notice of the application, but Mr. McKeon stated that he has the certificate of mailing that he was, indeed, notified. Mr. McKeon asked Mr. Anderson if that is something he could check is in the record, and Mr. Anderson responded in the affirmative. Regarding blasting, if Ms. Whitehead, or anyone, wanted to put in a swimming pool, she could do it without a public hearing, Mr. McKeon stated, adding that they will do everything they can to minimize harm. When he heard Mr. Cissell’s recommendations, including that pre-blast surveys be requested, Mr. McKeon stated that it is all of which Mr. Hosley provides. With reference to *The Register Citizen* story of the blasting accident, Mr. McKeon stated that it is kind of a low blow that someone brings up an accident that occurred 17 years ago—it’s apples and oranges, that project and this project. In Mr. Cissell’s circles drawn around residences near the blasting site, he left out The Ledges, and it is the closest structure to the blasting, Mr. McKeon stated. The simple fact about the rock removal on the site is that it is necessary, and everything will be done legally and within the regulations to minimize any potential problems, he stated. Several conditions have been proposed to be placed on this application, during its approval process, and there is a condition related to the blasting that provides a mechanism to ensure the aspects of that condition actually get implemented, according to Mr. McKeon. A lot has been made that Mr. Hosley may not be the contracted blaster on the site, Mr. McKeon stated. He very well may be the blasting contractor on the site—there could be no one better to choose, Mr. McKeon stated. The applicant’s experts are working within the code and regulations, and they are relying on state officials, in order to get the project built right, Mr. McKeon stated, who then read the proposed conditions into the record. After the blasting conditions were read by Mr. McKeon, Realty Securities Blasting Professional Richard Hosley stated that blasting records can be requested by the local and state fire marshals, so there is transparency on that. Chairman Clark asked about the Scranton Library letter, and the sensitivity of what is inside the library, and he asked if there is any thought or agreement that could be included in the blast survey. Mr. McKeon stated that he thinks the library is 500 or 600 feet away, which is outside the recommended area for doing a

pre-blast survey, and it is quite an expense; however, the library can be included, as a condition, if that is what the commission wants. Mr. Hosley stated that micro blasts will protect The Ledges in increments of feet, micro feet, so outlying areas will be protected—it is based on physics. Change is difficult and construction can create short term disruption; it cannot be avoided, but it can be minimized, without any major damage to the neighborhood tranquility, Mr. McKeon stated. This is an exemplary plan that has been put before this commission, and if there is some minor way the commission can offer to improve it, then make it a condition, Mr. McKeon stated. The application and project meet the criteria of Section 3.12 and Section 4.4; it squarely meets a compelling need for diverse housing, he stated. There is the short term disruption of construction and the potential for blasting; the public convenience and welfare is in the diversification of Madison's housing, Mr. McKeon stated. A lay person can look at what's happening in terms of the sales of The General's Residence, The Mews, and Windermere; there is a demand for that, Mr. McKeon stated. The General's Residence is a future of The Ledges, he stated. With this project going forward, it is a way to preserve the structure through a community that lives within it, Mr. McKeon stated. There are many ecological benefits to this small cluster development, in terms of people biking and walking, rather than driving; it allows for less traffic, Mr. McKeon stated. This application is in accordance with the Comprehensive Plan, he stated. In knowing that once the public hearing is closed, no one would be able to answer any questions, Commissioner Thomas Burland asked if the applicant would consider having no blasting; if the applicant would consider having a single septic system, as opposed to seven; and whether the applicant would agree to the requirement that the water plan be solidified by the Connecticut Water Company, prior to any construction starting, in order to protect the existing water supply. Mr. Hosley presented the alternative to blasting, which is drilling and hammering, but the length of time and the noise is a potential problem; the project isn't able to be built, without the removal of the rock, Mr. McKeon stated. In terms of the single septic system, as opposed to the seven, Mr. McKeon stated that he does not know how they could agree to that; it is not what has been designed or put into the plans, and it complies with what is wanted by the health department. Licensed Professional Engineer and Land Surveyor Michael Ott stated that each of the seven individual septic systems has an individual leaching field and a reserve leaching field—that is required by the technical standards of the public health code. With respect to the water, it is known, from years of experience in submitting and reviewing land use applications, that the Connecticut Water Company does not get involved with the project until all local approvals and permits are in place, Mr. Ott stated. The Connecticut Water Company has to follow state regulations; the owner, or developer, and their engineer, have to meet with the Connecticut Water Company and work on the final details of the plan, before the project can start, Mr. Ott stated. Commissioner Burland sought assurance that the developer and owner of the property would bear the total responsibility and cost that allows the water service to continue, and that the residents would have the same service they have, today, and that the cost would be borne by the property owner. That is the understanding, Mr. McKeon stated; if it has to be a condition, yes. Vice Chairman Matteson asked if the applicant would remove The Gatehouse from the project. Doing that may very well render the project economically unfeasible, according to Mr. McKeon, who stated that he has suggested to Mr. Anderson a phasing of the construction—the units in the southern portion would get built, all site work done, and then, and only then, The Gatehouse would be built. ACCA approved The Gatehouse, Mr. McKeon stated. Commissioner John Mathers stated that he has concerns about the blasting, but he is not that concerned, because he thinks it can be controlled. He also stated that he has trust in the water. What he is completely hung up on is the septic system, he stated. Commissioner Mathers stated that he trusts that Michael Ott designed it properly, but he stated that he agrees with Mr. Skelly,

in that the regulations governing septic systems are 40 years old. With no pre-treatment, there will be problems with Fence Creek, and the pumping system is dependent on electricity, Commissioner Mathers stated. The existing health code is passing on the system that Mr. Ott proposed, Mr. McKeon stated, adding that he does not know how an application can be made that can comply with rules that do not yet apply. Commissioner Mathers stated that he thinks that the commissioners are charged with not approving an application that hurts the neighbors; both Mr. Skelly and Mr. Logan have stated that regardless of what these regulations are, they may not be adequate. Commissioner Mathers would like more assurance that this septic system works, and if it doesn't then they cannot get a building permit, according to Mr. McKeon. There were additional comments from Mr. Ott, Mr. Ainsworth, and Chairman Clark, and then no further discussion.

**Commissioner Burland made the motion to close the public hearing; it was seconded by Vice Chairman Matteson and unanimously approved.**

Vote to close the public hearing on 856 Boston Post Road passed, 9-0-0.

IN FAVOR: Chairman Clark, Vice Chairman Matteson, Secretary Elliott Hitchcock and Commissioners Mathers, Giselle Mcdowall, Seonaid Hay, Joseph Bunovsky, Jr., Joel Miller, and Burland.

OPPOSED: None.

ABSTAINED: None.

Chairman Clark stated that it is a late hour and the commission has a lot of information to ponder; he asked if the commissioners would prefer to delay in having a discussion, and they agreed to do so; the session will continue on June 17, 2021.

**Commissioner Bunovsky made the motion to close 21-03+CSP. 856 Boston Post Road and to continue on June 17, 2021; it was seconded by Commissioner Miller and unanimously approved.**

Vote to continue 856 Boston Post Road on June 17, 2021 passed, 9-0-0.

IN FAVOR: Chairman Clark, Vice Chairman Matteson, Secretary Hitchcock and Commissioners Mathers, Mcdowall, Hay, Bunovsky, Miller, and Burland.

OPPOSED: None.

ABSTAINED: None.

**APPROVAL OF MINUTES:** Regular Meeting—April 15, 2021. Tabled.  
Planning Meeting—May 6, 2021. Tabled.  
Regular Meeting—May 20, 2021. Tabled.

**REMARKS:** Commission Chair ~ Chairman Clark stated that the June 17, 2021 Planning and Zoning Commission meeting will include the Bank of America application for lighting.

Director of Planning & Economic Development ~ Mr. Anderson stated that there will also be a couple of small Coastal Site Plan (CSP) review applications at the June 17, 2021 meeting.

**ADJOURNMENT:**

**Secretary Hitchcock made the motion to adjourn at 11:50 p.m.; it was seconded by Commissioner Bunovsky and unanimously approved.**

Vote to adjourn at 11:50 p.m. passed, 9-0-0.

IN FAVOR: Chairman Clark, Vice Chairman Matteson, Secretary Hitchcock and Commissioners Mathers, Mcdowall, Hay, Bunovsky, Miller, and Burland.

OPPOSED: None.

ABSTAINED: None.

Respectfully submitted,  
Marlene H. Kennedy, clerk