

MINUTES
MADISON INLAND WETLANDS and WATERCOURSES AGENCY MEETING MINUTES

Meeting Date: Monday, December 4, 2023 7:00 P.M.

Meeting Place: Virtual Meeting - Zoom

OPEN MEETING

1. Chair Freidenburg called the meeting of December 4, 2023 to order at 7:02pm

MEMBERS PRESENT: Chair Kealoha Freidenburg, Vice Chair Joseph Budrow, Tom Clancy, Anna Loss, Secretary Robert Zdon, Martin Brogie and Lee Schumacher

OTHERS PRESENT: Erin Mannix, Town Planner and agent for Madison Inland Wetland and Watercourse Agency; Maria Pettola, land use official

OLD BUSINESS

PUBLIC HEARING(S):

23-39. Long Shore Ln., Map 25, Lot 74-1, Owner: Lili Foggle Applicant: John Paul Garcia – John Paul Garcia Associates; Regulated Activity Application to restore a disturbed area to a pre-disturbance condition and allow construction of a 10’ wide trail for the purpose of maintaining and accessing property that is land locked within wetland and 100ft upland review area **Withdrawn**

Per Mrs. Mannix, the applicant has withdrawn their application and immediately resubmitted a new application to restart their statutory timeclock. They have requested that all previous documents, supporting information and testimonies from the public hearings be incorporated into the new application and asked for the agency to waive local permit fees.

23-49. 24 Old Schoolhouse Rd., Map 63, Lot 18; Owner/Applicant: Kent E. Allen; Regulated Activity, Construction of a single-family residence and associated driveway, subsurface sewage disposal system, water supply well and building utility services within 100ft upland review area. (continued from November 6, 2023)

Mrs. Mannix clarified that the public hearing had closed at the last meeting and the agency is currently in deliberations. She also gave a legal recap for the agency stating that this is considered a significant activity and the agency’s decision must be based on specific evidence in the record and on substantial evidence which typically comes from an expert, and cannot be based merely on speculation or perception or the idea that this could cause an impact to the wetlands.

Commissioner Schumacher states he does not see any substantial evidence or facts for a denial and states the applicant has been responsive to the agency’s concerns.

VC Budrow states he had asked Mr. Ott if there was any evidence of the wetland agency in the 80s blessing this subdivision, and he did not see any evidence of that. Also, the uplands seem as if they

will be disturbed to help construct the house, and he fears that the septic system could be a future potential for some kind of pollution to the wetlands.

After discussions, **Commissioner Schumacher made the motion to approve application 23-49. 24 Old Schoolhouse Rd with the conditions outlined in the staff memo. Seconded by Commissioner Clancy.**

The following facts and findings were read into the record by Chair Freidenburg:

Facts:

The Madison Inland Wetlands and Watercourses Agency received this regulated activity application, **#23-49. 24 Old Schoolhouse Road**, Map 63, Lot 18; Owner/Applicant: Kent E. Allen; Regulated Activity, Construction of a single-family residence and associated driveway, subsurface sewage disposal system, water supply well and building utility services within inland wetland and 100ft upland review area. The Agency received the application on August 7, 2023 and deemed the application a significant activity. The Agency walked the site during a Regular Site Walk Meeting on August 19, 2023. A public hearing commenced via Zoom platform on September 11, 2023, was continued to the October 2, 2023 meeting and further continued to the November 6, 2023 meeting after receiving written extension from the applicant. Upon closing the hearing on November 6, 2023, the Agency began deliberations.

Findings Regarding the Regulated Activity:

This lot is currently unimproved and was created via subdivision in 1986, which is after the adoption of the Inland Wetland and Watercourses Regulations for the Town of Madison (January 17, 1974). The Subdivision Regulations at that time reference the Inland Wetland and Watercourses Act and specific provisions for delineation and protection of said areas. In New England Environmental Services letter dated August 11, 2023, Mr. R. Richard Snarski identified the wetland soils as Leicester and described the wetland as wooded with the dominant plant species as Red Maple, Pepperbush, High Bush Blueberry, Black Gum, Ironwood, Winterberry, New York Fern, Cinnamon Fern, Skunk Cabbage, Violet, Jack-in-the-Pulpit, Greenbriar, Virginia Creeper, and Arrowhead. Mr. Snarski indicated that the wetland has high wildlife value due to the diverse plant species present. The wetland has moderate flood storage, sediment trapping, and pollutant renovation value.

The applicant, through their designated agent, Michael Ott, PE, LS of Summer Hill Civil Engineers & Land Surveyors, PC, provided detailed presentation of submitted plans on the record at the September 11, 2023 meeting. The three-bedroom residence is proposed to be built on slab twenty (20) ft from the wetland boundary and the subsurface sewage disposal system will be fifty (50) ft from the wetland boundary. A private well will be drilled on site more than fifty (50) ft from the wetland and site amenities include a permeable patio and gravel driveway with parking area. Construction activities would result in a deposition of forty (40) cubic yards of material within the wetland, permanently impacting 340sqft of wetland area. The vegetation, in the wetland proposed to be filled, is Pepperbush, New York Fern, Cinnamon Fern, one Ironwood sapling, a 24-inch Red Maple, and a 12-inch Black Gum tree. Grading is proposed up to the wetland boundary. The applicant proposed permanent delineation of the inland wetland no disturbance boundary on the site with markers at a minimum of thirty (30) ft. intervals. Additionally, the applicant proposed buffer plantings including thirty (30) native shrubs total along wetland flag markers 11 through 14. Mr. Snarski recommended ten each of Red Osier Dogwood, Shadblow, and Grey Dogwood for their high wildlife food value. Mr. Ott detailed the filter fabric fencing as the limit of disturbance. He also discussed an alternative that could eliminate the filling of the wetland and contains all activities

within the upland area. This plan would include a retaining wall at the rear of the new single-family dwelling.

This matter was continued on the October 2, 2023 meeting. Further information was submitted by the applicant for the November 6, 2023 meeting including a revised site development plan and a more detailed wetland impact and assessment report. This information was discussed during the hearing on November 6, 2023. Expert testimony was provided by Matthew Davison, PWS, PSS, CPESC, CT Forester, of Davison Environmental on behalf of the applicant. Mr. Davison confirmed Mr. Snarski's wetland delineation to be substantially correct. He further described the wetland to be wooded and characterized by seasonally saturated to seasonally flooded hydrology. The report and presentation by Mr. Davison noted wetland soils, vegetation, and functions and values. Of particular interest, much of the interior of the wetland appeared to provide suitable habitat for vernal pool "indicator species". The parcel does not lie within a CTDEEP Natural Diversity Database polygon. A wildlife survey was not conducted by Davison Environmental, primarily due to the relatively small size of the proposed development. However, during site investigations, potential vernal pool habitat was identified within the site wetland based on wetland morphology and observed hydrology. The quality of potential vernal pool habitat was lowest proximate to the proposed development area and increased in value to the east. While impacts to upland forest adjacent to this potential vernal pool have been minimized, there will be incremental habitat loss as a result of forest conversion.

Mr. Davison noted short and long-term impacts of this project. Short-term impacts relate to discharge impacts and recommendations include adequate erosion and sedimentation controls, and proper tree protection within the upland area. Long-term impacts to water resources are primarily related to the loss of functions and values and/or water quality degradation resulting from direct wetland impacts (filling), alterations to wetland hydrology, and stormwater discharges. Recommendations include avoidance of any direct wetland impacts, impervious surface coverage minimized to greatest extent possible, and locate septic system as far as possible from wetland. He further states that development within 100' of vernal pools in what is referred to as the "Vernal Pool Envelope" is typically avoided to remain compliant with accepted Vernal Pool Best Development Practices (Klemens and Calhoun, 2002). The new residence has been placed in the southwest corner of the lot, adjacent to the portion of the potential vernal pool that is less likely to provide optimal habitat due to the slight gradient of the wetland in this area and limited depth. The highest quality habitat appears to be in the eastern side of the wetland furthest from the proposed residence. Each of these recommendations has been adopted by the applicant.

No public comment was made during this hearing.

The Madison Inland Wetlands and Watercourses Agency has considered the application, supporting materials, and all documents and testimony entered into the record. The Agency understands that their decision must be a determination supported **by substantial evidence**. The Wetland Impact and Assessment Report from Matthew Davison, of Davison Environmental, has, in our opinion, adequately depicted the existing conditions of the inland wetlands and appropriate recommendations for how the applicant can take steps to minimize impacts area in both short and long terms to the wetland, specifically the potential vernal pool. Michael Ott, PE LS, designed an alternative plan which incorporates all of Mr. Davison's recommendations and eliminates the filling of the wetland (direct impact) by installing a retaining wall at the rear of the house. The plan minimizes impervious surface coverage by providing a small house footprint, gravel driveway, and permeable paver patio in the southwestern corner of the lot adjacent to the portion of the potential vernal pool that is less likely to provide optimal habitat due to the slight gradient of the wetland in

this area and limited depth. The limit of disturbance as shown on the plan with filter fabric fencing denotes the limit of construction related activities and maintained lawn. The Agency acknowledges that the subject parcel is an approved building lot via subdivision in 1986. Preserving the property owner's rights to this property while protecting the inland wetland system on site is a challenging balance that does include potential impacts. However, the Agency feels that the applicant has provided a prudent and feasible alternative to the original design and finds the measures taken to eliminate and further minimize these impacts is acceptable.

Resolution Regarding Regulated Activity:

The Madison Inland Wetlands and Watercourses Agency authorizes the regulated activity as shown on plans entitled, "New Residence 24 Old Schoolhouse Road, Madison, Connecticut", by Summer Hill Civil Engineers & Land Surveyors Rev 10/15/23 with the following conditions of approval to minimize impacts associated with the proposed regulated activity and protect the inland wetlands and watercourses on this site:

1. The Inland Wetland Agency's agent shall be notified at least 48 hours prior to commencement of any regulated activity.
2. A financial guarantee for erosion and sedimentation controls shall be submitted prior to commencement of any regulated activity in accordance with Section 14 of the Madison Inland Wetlands and Watercourses Regulations in an amount based upon the cost of materials and installation of said controls as shown on the approved plan plus ten percent contingency.
3. Prior to the start of any site clearing, healthy, mature trees that are proximate to the Limit of Disturbance shall be protected by installing orange construction fencing minimally beneath the outer extent of the tree canopy to protect roots within the drip line.
4. At all times during site work and until soil areas are stabilized, the applicant shall install and maintain erosion and sediment control measures such as fabric filter fence, staked hay bales or other measures deemed necessary by the Agency's agent to prevent erosion and sedimentation impacts to the wetlands and watercourses.
5. Erosion control and soil stabilization measures shall comply with the approved plan and the guidelines as established in the Connecticut Guidelines for Soil Erosion and Sediment Control, 2002.
6. The patio shall remain permeable and the driveway shall remain gravel to reduce impervious surface coverage on the site.
7. The applicant shall establish a permanent delineation of the inland wetland boundary at each flag location and every 50ft interval as needed. This boundary shall be marked at 50ft intervals with identification markers, approved by the Agency's agent, affixed to trees or 4"x4" wooden posts.
8. The applicant shall install markers as shown on approved plan set along the entire limit of disturbance line at intervals of no less than thirty (30) ft to establish a "Wetland No Disturbance" boundary. This area shall serve to delineate the maintained lawn/yard area with the wetland buffer.
9. The applicant also shall plant thirty native shrubs along the no disturbance boundary east of the retaining wall extending to the existing rock wall along the front property line, which shall serve to establish a physical native buffer to protect the inland wetland resources from direct and indirect impacts associated with adjacent land development.
10. The above permit conditions shall be placed on the approved site development plan and filed on the Madison Land Records.

All work and all regulated activities conducted pursuant to this authorization shall be consistent with the terms and conditions of this permit. Any structures, excavation, deposition of fill, obstructions of flow, encroachments or other regulated activities not specifically identified and authorized herein shall constitute a violation of this permit and may result in permit modification, suspension or revocation.

In the event that any additional wetland or watercourse regulated activities are required as a result of other agency permitting to support the proposed activity, the Madison Inland Wetlands and Watercourses Agency reserves the right to reconsider the proposed regulated activity and may require modifications to minimize the impact to wetland resources.

This permit shall be valid for a period of 5 years. Permit extensions may be authorized in accordance with CT General Statutes 22a-36 through 22a-45 inclusive.

The Inland Wetlands and Watercourses Agency renders this decision in accordance with the Madison Inland Wetlands and Watercourses Regulations based on the following considerations:

- a. The applicant has sited the development including house footprint and septic system to reduce impacts to the adjacent wetland system. The applicant provided a prudent and feasible alternative to the original plan which eliminates the permanent filling of approximately 340 square feet of inland wetland; and
- b. Temporary protection measures during construction activities shall protect the adjacent wetland system from sedimentation and erosion and preserve the remaining tree canopy; and
- c. The permanent delineation of both the inland wetland boundary and the proposed no disturbance boundary shall serve as a physical reminder and delineation from the maintained lawn area. Filing of the approved development plan on the Madison Land Records shall help preserve these conditions for future property owners.

Commissioner Brogie left the meeting prior to voting.

In Favor: Chair Kealoha Freidenburg, Tom Clancy, Anna Loss, Secretary Robert Zdon, and Lee Schumacher

Oppose: Vice Chair Joseph Budrow

Abstention: None

NEW BUSINESS

PENDING APPLICATION(S):

2. **23-65. 241 Neck Rd.**, Map 12, Lot 103-1; Owner/Applicant: Andrew Corwin & Pamela D'Arc; Regulated Activity, Installation of water main and underground electrical service within 100ft upland review area and inland wetland (Received on November 6, 2023)

Application Withdrawn.

RECEIPT(S):

3. **23-68. 454 Horsepond Rd.**, Map 84, Lot 24; Owner: 454 Horsepond LLC, Applicant: Timothy Mack, Mack Building, LLC; Regulated Activity, Open space conservation district subdivision to develop 4 residential lots for single-family residence and associated site improvements. Approximately 5.39 acres of open space will be provided within 100ft review area.

Mrs. Mannix states this is a resubmission of previous application. At the time, the applicant lacked the amount of detail that this commission would need to accurately review for impacts.

All members agreed a site visit is needed.

Commissioner Loss made the motion to deem application 23-68. 454 Horsepond Rd a significant activity. Seconded by Chair Freidenburg.

During discussions, Chair Freidenburg noted the motion is based on the agency's regulation of significant activity #s 1-4.

The motion unanimously passed.

Agency members further agreed that expert testimony from a wetland or soil scientist is needed as decisions should be based on substantial evidence, which is typically expert testimony on the record. Mrs. Mannix states the engineering department can handle the stormwater review and other issues.

Chair Freidenburg made the motion to request the town or request the applicants to pay for a 3rd party wetland scientist expert and to have an RFP issued this month. Seconded by Commissioner Schumacher and unanimously approved.

Chair Freidenburg made the motion to schedule the public hearing for February 5, 2024. Seconded by Commissioner Schumacher and unanimously approved.

4. **23-69. Long Shore Ln.**, Map 25, Lot 74-1, Owner: Lili Foggle Applicant: John Paul Garcia – John Paul Garcia Associates; Regulated Activity Application to restore a disturbed area to a pre-disturbance condition and allow construction of a 10' wide trail for the purpose of maintaining and accessing property that is land locked within wetland and 100ft upland review area

Mrs. Mannix restated that the applicant had submitted a letter asking the agency to incorporate all the previous application documents and hearing testimonies into this new application and to note that the application was deemed a significant activity, in which case the agency would need to schedule a public hearing. She further states, it's within the agency's purview to waive the local fees associated with this application and that is being requested by the applicant.

Commissioner Schumacher made the motion to (1) schedule the public hearing for application # 23-69. Long Shore Ln for January 8, 2024, (2) deemed the application a

significant activity and (3) waived the permit application fee for the applicant. Seconded by Commissioner Loss and unanimously approved.

PERMIT TRANSFER(S):

5. **22-06. Wildwood Ave. Dev. Lot 1.** Map 54, Lot 21-2. (aka 23 Sheep Pasture Rd)
Owners/Applicants: Hilary & Michael Delaney. Regulated Activity Permit to build a single-family home, pool, with associated site improvements Request to transfer to Sheep Pasture, LLC
6. **22-07. Wildwood Ave. Dev. Lot 2.** Map 54, Lot 21-1. (aka 19 Sheep Pasture Rd)
Owners/Applicants: Hilary & Michael Delaney. Regulated Activity Permit to build a single-family home, pool, with associated site improvements. Request to transfer to Sheep Pasture, LLC
7. **22-08. Wildwood Ave. Dev. Lot 3.** Map 54, Lot 21. (aka 15 Sheep Pasture Rd)
Owners/Applicants: Hilary & Michael Delaney. Regulated Activity Permit to build a single-family home, pool, with associated site improvements. Request to transfer to Sheep Pasture, LLC

Mrs. Mannix states the applications are the same approved plans and this is just a change in ownership of the lots. This is a formality, so that the agency can track the property owner and the responsible party for the open permit.

Chair Freidenburg made the motion to approve the permit transfers for application 22-06. Wildwood Ave. Dev. Lot 1, 22-07. Wildwood Ave. Dev. Lot 2, and 22-08. Wildwood Ave. Dev. Lot 3 currently owned by A Hilary & Michael Delaney to Sheep Pasture LLC of all three lots. Seconded by Commissioner Schumacher and unanimously approved.

Commissioner Loss left the meeting at 8:30pm

VIOLATION(S):

8. **129 Green Hill Rd;** Map: 55, Lot: 7; Matthew and Jessica Joseff; Clearing of vegetation, and deposition of materials within 100ft watercourse and inland wetland upland review

Present for the meeting: Matthew Joseff

Per Mrs. Mannix, at the last meeting, the agency amended the cease and desist order to a corrective action requesting / instructing the applicant to have the upland wetland boundary delineated by a soil scientist by the January 8th meeting. Commissioners were also able to walk the site to see the extent of clearing. Staff was also able to look through historical mapping for the property and found old topography and surveying, but given the nature of the clearing and the potential for future activities on the property, staff recommended having the wetlands flagged and then having a surveyor place those flags on an A2T2 survey for accuracy and gradings which will help with any future proposed activities.

In order to determine mitigation, Mrs. Mannix noted it may be worthwhile to have both a soil scientist and a wetland scientist look at the pond to be able to provide some recommendations or assessment of that area. The agency will give directives on mitigation of what's required for the clearing that was done without a regulated activity permit.

After discussions, it was noted by Chair Freidenburg that it is helpful to have the survey and wetland delineation in order to have a better understanding of this particular violation. It will also help with the proposed future activities on the property.

For the January meeting, the applicant should have the wetlands delineated and an update / status as to whether the survey will be available for the February meeting.

SECTION 13 APPROVAL(S):

9. **23-66. 35 Oakwood Dr;** Map 123, Lot 54; Owner/Applicant: Michael Riccio, Regulated Activity, Construct 12x16 shed on crushed stone.

Approved as Section 13

10. **23-67. 199 Mungertown Rd;** Map 55, Lot 19; Owner: John & Sharon Datino, Applicant: Anderson Bros. Sanitation, Regulated Activity, Septic repair.

Approved as Section 13

APPROVAL OF MINUTES:

11. Regular Meeting Minutes November 6, 2023
12. Walk Meeting Minutes November 18, 2023

During discussion, VC Budrow states for the regular meeting of November 6, 2023, he was not present for the Summer Hill application. He states that for the special walk meeting minutes it should be more descriptive to get a visual of the site and the minutes do not mention that there was an intermittent watercourse that they didn't know existed and also that Chair Freidenburg smelled detergents during the visit. He further states there was activity within the watercourse and within the upland review area.

It was noted that this is part of the structure of taking minutes for the site walk and there is no real discussion. Mrs. Mannix states the minutes are technically a record of action by the commission and the only action taken on a site walk is opening and closing the meeting. She further states the minutes could be more specific as far as areas of the property. Agency members have permission to be on the property and see the extent of clearing but not to discuss their future plans.

After discussions, the following motion was made:

Commissioner Schumacher made the motion to approve the regular meeting minutes of November 6, 2023 and the site walk minutes of November 18, 2023 with the comments made by VC Budrow. Seconded by VC Budrow and unanimously approved.

DISCUSSION

13. Approval of 2024 Meeting Calendar

After discussions, **Chair Freidenburg made the motion to approve the 2024 meeting calendar as submitted; seconded by Commissioner Schumacher and unanimously approved.**

14. Remarks

Inland Wetlands Chairman – Chair Freidenburg thanked staff for their work on the old school house application

Inland Wetlands Agent – Mrs. Mannix states the regulations, statutes, and case laws are important in the agency’s decision-making and there are resources available to the agency such as land use council. She further states it is required that at least one member of the agency completes the DEEP commissioner training program and encourages members to take some of those modules. Also, in February, the plan is to have a legal session with town council to go through questions the agency may have, i.e. site walks, substantial evidence, significant activities, feasible alternatives etc.

Secretary Zdon announced his resignation - this meeting or the upcoming January meeting may be his last depending on the Board.

CLOSE MEETING

15. Adjournment.

Commissioner Schumacher made the motion to adjourn at 9:00pm; seconded by Secretary Zdon and unanimously approved.

Respectfully submitted,
Racquel Stubbs