

APPROVED

**INLAND WETLANDS AGENCY  
REGULAR MEETING MINUTES  
NOVEMBER 5, 2007**

The regular meeting of the Madison Inland Wetland Agency was held Monday, November 5, 2007 at 7:30 p.m. in Madison Town Hall, Meeting Room A.

**MEMBERS PRESENT**

Rodney Bascom, Thomas Paul, Lee Schumacher, David Newton, John Mathieu, Glenn Falk, Ken Munro

**ALTERNATES PRESENT**

None.

**MEMBERS ABSENT**

Bill Freeman, Robert Speziale

**OTHERS PRESENT**

Robert Kuchta, Inland Wetlands Enforcement Officer; Mary Haburay, Land Use Assistant; and Michael J. Ott, Assistant Town Engineer/Director of Public Works.

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The regular meeting of the Madison Inland Wetlands Agency was called to order at approximately 7:32 p.m. Mr. Bascom noted, for the record, that new plans were submitted that day for application #07-34 with major revisions which did not afford town staff time for review, and so that application would not be discussed this evening.

**REGULAR MEETING AGENDA ITEMS**

1. **07-34. 202, 208 & 212 COUNTY ROAD.** Map 156, Lots 12, 13, 15, and 17. Owners/ Applicants: North Madison Estates, L.L.C. Regulated Activity Permit for grading and filling for proposed roadway within an inland wetlands and within 100 ft. of wetlands. Subdivision Referral.

No discussion.

2. **07-41. 41 WINDWARD LANE.** Map 27, Lot 19. Owner: Myron H. Brand; Applicant: Donald L. Gesick Jr. L.S. Amendment to Inland Wetlands and Watercourses Map of the Town of Madison. **Receipt.**

No one present for Applicant.

3. **07-43. 15 DEER RUN ROAD.** Map 35, Lot 49. Owners: Andrew & Faye Brownfield; Applicant: East Wharf Architects, Inc. Regulated Activity Permit to remove existing dwelling, garage, and designated trees; construct new dwelling, guest house; install driveway, underground utilities and plantings, all within 100 ft. of wetlands; install replacement bridge structure, step stones, tea house, dock, and pond aerator; cleanup of tree stumps, broken sticks, vines,

overgrown bank of Neck River, and removal of invasive plant species, all within the wetlands. **Receipt.**

On behalf of the Applicant were Lisa MacCartney of East Wharf Architects, with offices located at 98 East Wharf Road, and Robert Sonnichsen, President of Delta Environmental Services of Branford. Ms. MacCartney oriented the Agency to the property location. Ms. MacCartney stated that a log house and accessory log garage currently exist on the property, as well as a flagstone patio and circular, paved driveway. Ms. MacCartney stated that one corner of the garage is 22' to the wetland line, and one corner of the house is 40' to the wetland line. Ms. MacCartney stated that the property is 3.18 acres and is part of a subdivision that was created in the 1960's. Ms. MacCartney further reported that the inland wetland boundary was delineated and approved by the Agency in 2006. Ms. MacCartney stated that the property and about 50% of the existing house are located in Flood Zone AE. Ms. MacCartney stated that they would like to construct a new house on the property and bring it into conformance with modern regulations, and that the house was pushed further out of the flood zone. Mr. Sonnichsen discussed some of the site improvements. Mr. Sonnichsen stated that they designed the wastewater disposal system, a tiny portion of which will be in the upland review area. Mr. Sonnichsen described the existing pond on the property and stated that they have been exploring the idea of installing aerators only to be used when the dissolved oxygen level falls below a particular level. Mr. Sonnichsen described a second standing pool area in the northwest corner that drains into the pond, which becomes very stagnant during the dry months, and stated that they want to explore pumping some water to get some water flowing back into the main part of the pond. Mr. Sonnichsen stated that the channel where the pool flows into the pond used to have a bridge over it, which he indicated has fallen into disrepair and they would like to replace with a stone slab to a peninsula of land on the far side of the pond that currently has no access to it. Mr. Sonnichsen stated that they have been working with Mr. Kuchta to make some improvements to the edge of the pond system. Mr. Sonnichsen stated that the home was not lived in and not cared for and so the hope is to construct a new house and conduct the other proposed site activities. Ms. MacCartney clarified that while the application also listed construction of a teahouse, they are not actually proposing that. Mr. Newton asked whether the cement stone would sit on the ground or require supports. Ms. MacCartney stated that they are working with professionals who will do soil testing in order to figure out what sort of structure they need to plan for. Mr. Sonnichsen stated that chances are very good that the slab would be able to just sit on the ground. Ms. MacCartney submitted original signatures for the application to replace the faxed signatures that were on file. Ms. MacCartney also submitted a description of the seed mixture to be used for the lawn, marked **EXHIBIT 2**. Mr. Falk asked whether the Applicant intends to plant any trees to replace those that will have to come down. Ms. MacCartney identified areas where trees will have to come down and some areas where new trees will be planted. Mr. Paul asked that the plan be clear to specify planting plans on the property in order to ensure stabilization. Mr. Bascom agreed and added that the Agency wants to see plantings, silt fencing and BMPs on the plan to make sure the wetlands are protected, and requested that perhaps for the next meeting the Applicant could bring in a colored plan to aid the Agency. Mr. Bascom stated that the proposed grading plan appeared to be incomplete since the Applicant is clearly cutting into the hill and the contours shown don't work. Mr. Bascom asked Ms. MacCartney to sit down with Mr. Ott and Mr. Kuchta and work out issues and to address

flood storage. Ms. MacCartney pointed out that almost the entire house is outside of the flood zone. Mr. Bascom stated that the Applicant needs to be prepared to show where the flood line is and compensate for flood storage somewhere. A photograph of the proposed stone slab was marked **EXHIBIT 1** for the record. **Upon a motion by Mr. Munro, seconded by Mr. Paul, it was unanimously voted to receive this application and to schedule a site walk for Saturday, December 1, 2007 at 9:00 a.m.**

2. **07-41. 41 WINDWARD LANE.** Map 27, Lot 19. Owner: Myron H. Brand; Applicant: Donald L. Gesick Jr. L.S. Amendment to Inland Wetlands and Watercourses Map of the Town of Madison. **Receipt.**

No one was present for the Applicant. Mr. Kuchta reported that the application is complete and ready to go forward and could be scheduled for public hearing. **Upon a motion by Mr. Falk, seconded by Mr. Paul, it was unanimously voted to receive application #07-41 and to schedule a public hearing for the next regular meeting December 3, 2007.**

#### **PUBLIC HEARINGS – Scheduled for 8:00 P.M.:**

- 07-33: 78 LONG SHORE LANE.** Map 25; Lots 74 and 74-1. Owner: Long Shore, LLC & Shorelands, LLC; Applicant: Ed Zimmerman. Regulated Activity Permits for 1) Lots 1, 2 and 6 – construction of proposed dwellings and septic systems, grading and filling within 100 ft. of wetlands; 2) Long Shore Lane – to allow clearing, filling, grading and paving to widen Long Shore Lane within 100 ft. of wetlands.

**Upon a motion by Mr. Newton, seconded by Mr. Mathieu, it was unanimously voted to open the public hearing for application #07-33.**

Mr. Bascom recalled some issues associated with ownership of Longshore Lane that were discussed in a previous application, and made it clear that the Agency would not be discussing ownership of the road. However, Mr. Bascom asked the applicant to state for the record why they believe they have standing to make this application. On behalf of the applicant, Attorney Lynn Pinder of 9 Old Post Road, Clinton, stated that they believe that they have a sufficient ownership interest over Long Shore Lane via the easement that is owned by the Applicant, which Ms. Pinder asserted the courts have found to be sufficient reason for standing. Mr. Bascom clarified that the Agency would only consider the potential effect on the wetlands from the proposed improvements. Mr. Falk was concerned that the issue of ownership would have to be addressed prior to hearing the application and stated his opinion that anybody opposing Ms. Pinder's view regarding ownership ought to be heard. Mr. Bascom agreed that the Agency could certainly hear that testimony and get it on the record, but reiterated that ownership was not the issue being discussed by the Agency. Mr. Mathieu stated his understanding that the plan before the Agency is the Applicant's concept for how the road could be, but that it's not a final plan for construction, and that any final construction plan would have to come before the Agency anyway. Mr. Bascom explained that the plan being presented was a final plan for the road. Mr. Bascom invited the Applicant to present the application.

Steven Sullivan, P.E., of CCA, LLC with offices located in Brookfield, Connecticut, presented the application. Mr. Sullivan clarified that the application proposes Regulated Activities associated with the developments of Lots 1, 2, 6 and improvements to Long Shore Lane. Mr. Sullivan stated his opinion that the plans are detailed enough for construction of the road, and noted that they are aware that if approved by the Agency, the plans would still require approval from the Planning and Zoning Commission and the Town Engineer. Mr. Sullivan stated that they only anticipated coming back to the Agency for the road if there was a change required by the Planning and Zoning Commission. Mr. Sullivan referenced a copy of the letter of approval for the Subdivision Referral and the cul-de-sac and driveway crossing for Lot 6. Mr. Sullivan noted that Lots 3, 4 and 5 have no inland wetlands Regulated Activities associated with them, but do have Regulated Activities associated with tidal wetlands issues presently being reviewed by DEP. Mr. Sullivan further noted that there would be a Coastal Site Plan Review application before the Planning and Zoning Commission as well. Mr. Sullivan stated that each lot would be served by on-site wells and septic systems, and demonstrated the proposed site plan, which included rain gardens on each lot to handle roof runoff, and a detailed landscaping plan. Mr. Sullivan referred to a chart that lists some distances between septic systems and houses to inland wetlands for the individual lots on page 10 of the Coastal Impact Assessment, which was submitted as part of the application. Recalling some interest at the hearing for the previous application regarding which trees would be cleared and which would be saved on Lot 6, Mr. Sullivan noted that that information was included in this application. Mr. Sullivan demonstrated his proposal to widen the portion of Long Shore Lane located between Lots 1 and 2 that is currently 10'-12' wide to 16' and stated that currently, runoff is going to an existing low spot located at the property line between Lot 1 and Lot 2, and that by this proposal, impervious areas will be disconnected, or broken up, to allow them to discharge the runoff via sheetflow and shallow, concentrated flow into multiple pervious, vegetated areas, which he stated gives it a better chance to absorb. Mr. Sullivan stated that the existing low spot would also remain to serve as a second point for runoff to go. Mr. Sullivan demonstrated a small sliver of wetlands identified at the corner of Lot 3, which he indicated will not receive any impacts from construction because it is disconnected from the proposed Regulated Activities by the topography of the land that prevents any runoff from going towards it, and that that same pattern will continue to exist post construction. Mr. Sullivan demonstrated other aspects of the proposed site plan, including construction driveway locations, erosion controls, topsoil stockpile areas and landscaping. Mr. Sullivan noted that the entire parcel is 26.08 acres, and demonstrated a proposed 14.2 acre conservation easement area, the majority of which is tidal wetland area. Mr. Sullivan noted that orange construction fence would be used to delineate the limits of construction so that the silt fence would remain in tact. Mr. Sullivan informed members that Michael Klein was also present to address any questions or concerns regarding his Coastal Impact Resource Report (on file). Mr. Sullivan clarified that there are no wetlands disturbances proposed with this application and that most activity is located beyond 50' of inland wetlands, with the exception of the crossing that was previously approved for Lot 6. Mr. Newton questioned why the applicant did not propose to provide public water to Lots 1 and 2 as opposed to the private well proposed. Mr. Sullivan stated that they were not proposing to extend the water main down from Boston Post Road because it is located more than 200' from the site and will be costly to the developer. Mr. Newton questioned whether the septic systems could be pulled further away from the

wetlands if the wells weren't installed, which Mr. Sullivan stated they would not be able to do on Lot 1, and reiterated that the activity is beyond 50' of the inland wetlands. Mr. Bascom clarified for the Applicant that the review area in Madison is 100', which Mr. Sullivan understood. Mr. Bascom then requested a discussion of what is proposed within 100' for the lots and the road. Mr. Sullivan referenced a table toward the back of the application that includes all of the calculations for disturbed areas. To aid members and the public, Mr. Sullivan went through item by item what the proposed Regulated Activities are on the site, and described more detail on the road construction. Mr. Sullivan described the construction sequence located on Sheet P-1 included in the application, and noted that the first construction activity is going to be to have the surveyor go out and stake out the limits of construction. Mr. Mathieu asked the Applicant to show that they are going to mill the top of the pavement in a particular portion of the road on the plan, which Mr. Sullivan agreed to do.

Mr. Bascom invited questions from members. Mr. Falk asked the Applicant to state the distance from the proposed septic systems on Lot 1 and 2 to the inland wetlands boundary, which Mr. Sullivan stated is 53' to Lot 1 and 63' to Lot 2. Mr. Mathieu asked how snowmelt would be handled. Mr. Sullivan stated that there is plenty of room to push the snow off at an angle to the flat area on the west side. Mr. Munro asked whether the Applicant actually got an estimate and discussed what the cost differential would be between running public water to the property and drilling one or more private wells, and questioned the depth of the wells. Mr. Sullivan clarified that Lot 6 would have a lateral, and that the existing house on Lot 3 has a lateral on it, and so Lots 1, 2, 4 and 5 have proposed wells. Mr. Sullivan stated that it was hard to say how deep the wells would be, perhaps 300'. Mr. Sullivan stated his opinion that no improvement would be seen with respect to pulling the septic systems further away from the wetlands by running public water to the site. Mr. Sullivan noted that because of setback requirements and required separation distances from the septic system, relocating the septic system to the front yard would in turn push the house closer to the wetlands and no real benefit would be seen. Mr. Newton asked whether travel times and nitrogen dilution calculations were provided. Mr. Sullivan recalled that that information was submitted in the previous application and that comments from John Bowers, Director of Health, regarding septic feasibility were likely on file with this application. Mr. Newton requested that a copy of the calculations from the previous application be moved to this file (**EXHIBIT S**). Mr. Paul questioned how deep the trenches for the utilities will be, which Mr. Sullivan stated will be 30". Mr. Paul suggested that the depth should be shown on the map, and Mr. Bascom stated that the depth should also be included on the cross section. Mr. Schumacher asked what drove the house siting on Lot 6 and whether it could be pulled further from the wetlands. Mr. Sullivan agreed that that house on Lot 6 could be slid slightly to the south. Mr. Paul asked how that would affect the trees that were proposed to be saved. Mr. Sullivan stated that about the same number of trees would be saved. Mr. Newton remarked that the long term maintenance procedures included in the application were neat, but inquired as to who would be actually doing those maintenance activities. Mr. Sullivan stated that those procedures are actually for the drainage system for Maplewood Lane, and that they are recommendations for the Town, since it is a Town road. Mr. Newton felt that those procedures are really relevant to the application. Mr. Bascom asked what the Applicant used for their design Q and design year. Mr. Sullivan went over the Detention System Narrative in the Stormwater Management Report on file. Mr. Sullivan stated that the

drainage is sized for a 25-year storm and discharges to a water quality swale, which he indicated significantly improves the water quality coming off of Maplewood Lane. On Long Shore Lane, Mr. Sullivan noted that they are maintaining as much wooded area and minimizing impervious areas as much as possible. Further, Mr. Sullivan contended that they are providing buffers to the wetlands in the form of wooded areas and added landscaping, and reiterated that the impervious areas are disconnected to allow passage of water and better infiltration. Mr. Sullivan maintained that his analysis was based on the overall watershed and the size of development, which is less than 5% and located on the lower portion of the watershed, so there's no need to provide retention. Mr. Sullivan agreed that he could do that calculation if the Agency wants that information. Mr. Bascom acknowledged that the property is flat, but stated his opinion that it's good to know what kind of design flow and volume they are dealing with. Mr. Sullivan agreed that he could provide Q-pre and Q-post calculations if members want those, but noted that usually those calculations are provided when a retention system is being provided and, in this case, Mr. Sullivan felt that there is no need to provide retention since there is a large water body and a tidal wetland.

Members asked for a demonstration of where the actual conservation easement is located, which Mr. Sullivan demonstrated on the plan. Mr. Sullivan described the easement area for Lot 1 as being located between the inland wetlands boundary and the limit of construction, at varying limits from the inland wetland line, the maximum distance being 90', the minimum 1'. Mr. Sullivan indicated that there is more room for conservation than what was proposed. Mr. Bascom was concerned about the proximity of the conservation easement area to the inland wetlands in some places because he noted that the intent is to provide protection so that homeowners cannot maintain lawn areas that are close to the wetland. Mr. Sullivan demonstrated sheet L-1, the landscape plan, which provides for a split rail fence to be installed post construction along the limit of construction, and that on lots where no fence is provided, there shall be plaques provided at 50' intervals along the limit of clearing, attached to existing trees or wooden posts. Mr. Kuchta suggested that extending the conservation easement area to those limits would be a good idea because it would provide a permanent area of protection and a buffer to the wetlands. Mr. Kuchta explained that before a Certificate of Occupancy is granted, he would go out and verify that the plaques are properly installed. Mr. Kuchta stated that there could also be deed restrictions placed on the property to put future property owners on notice. Mr. Sullivan noted that he did have to go before the Conservation Commission as well. Mr. Kuchta asked how they could require the landowner to report to the Inland Wetlands Agency or the Conservation Commission in the future that that limit is still being maintained, and suggested that perhaps the Agency might want to require the landowners or the homeowners to provide a report that indicates that the conservation easement area is being maintained. Mr. Kuchta suggested that perhaps the office could "tickle" this file annually to inspect the few lots to determine compliance.

Mr. Bascom invited comments from Mr. Ott. Mr. Ott reported that he had several ex-parte conversations with parties both for and in opposition to this application, mostly regarding issues that are not germane to this application regarding status of the road or ownership. Regarding conservation easements, Mr. Ott suggested that the Applicant consider some type of restrictive conservation easement at a minimum of 50' to the

inland wetland and parallel to that boundary that would prevent any disturbance within that area in the future. Mr. Ott further suggested that there are a couple of areas that can afford slight shifts to minimize inland wetland impacts, including slightly shifting the house on Lot 6 to the south. Mr. Ott acknowledged that the Applicant has respected a 50' distance from activities to the inland wetlands, and that while the Town would like to see more, given the site restrictions and the proposal, it is not practical. Mr. Ott further suggested that perhaps Mr. Klein could discuss the areas shown on the landscape plan where seeding is proposed within the 50' offset area because he wondered whether that makes sense given the landscape – the soils, the type of vegetation, the topography on this particular site. Again, Mr. Sullivan identified lot by lot the activities and their distances from the inland wetlands to address the first issue raised by Mr. Ott, but did agree that the house on Lot 6 could be shifted a little further south. Mr. Sullivan explained that the idea behind some of the additional landscape areas is to make those areas denser with vegetation, and conceded that he and Mr. Klein could look at the possibility of changing the species of vegetation in those areas. Mr. Ott realized the intent behind the proposed landscaped plan, but explained that additional planting will not prevent a homeowner from cutting that vegetation down and converting it to lawn, and that his idea with respect to the conservation easement area is to prevent that. Ms. Pinder remarked that perhaps restrictive covenants on each of the lots that would run with the land permanently would serve to achieve the desired goal if they cannot provide the protection with a conservation easement, and that there are several different ways that that protection could be provided. Mr. Ott stated that whatever mechanism is used, the buffer is imperative to protection of the wetlands and that the idea is to prevent the property owners from being able to apply for Regulated Activities within that area or from just going forward with work without permits. Mr. Bascom asked Mr. Ott to comment on drainage. Mr. Ott stated that the stormwater management is key to this application for protection of inland and tidal wetlands, and that in his opinion, the Applicant is on the right track with regard to how to handle stormwater here. Mr. Ott agreed that stormwater detention is not required here, however, noted that stormwater quality is important here. Mr. Ott explained the existing condition on Long Shore Lane, which has some longitudinal grade as well as some flat areas, which he noted is very difficult to see on the plans. Mr. Ott summarized the proposal by the Applicant to create a uniform cross section on the road and slope it towards the proposed developed area, rather than towards the ball fields owned by the Town, which are generally located higher than Long Shore Lane. Mr. Ott offered that given the interest in this application, the Applicant should document pre and post change in runoff. Mr. Ott also suggested that there are places where the Applicant needs to revise the typical section to show how they're going to handle the shoulders of the road. Mr. Ott stated his opinion that water could just be allowed to run off of Long Shore Lane in the most northerly low point because there is significant distance between Long Shore Lane to the wetland, and a mild enough slope, particularly if the 50' minimum restriction is put in place; and that there is flat enough topography and enough of a buffer to allow stormwater runoff to infiltrate prior to reaching the wetland, and would improve water quality in more frequent storm events. Mr. Sullivan stated that they did do additional topography along the whole stretch of Long Shore Lane, and noted that on the Long Shore Lane Improvement Plan they included proposed grades all along the stretch. Mr. Sullivan conceded that maintaining the 50' buffer in the location of the northerly low point is not a problem. Mr. Ott next suggested that at the southerly low point in the curved area, assuming the soils

are adequate, perhaps the Applicant should cross slope the road to the north away from the wetland because the road is very close to both the inland wetland and the tidal wetland at that point and there is not room to provide an adequate buffer. Mr. Sullivan agreed that Mr. Ott's suggestion is feasible, but still felt that the road should be graded longitudinally in a southwest direction to allow it to drain out somewhere. Mr. Ott suggested that the Applicant not allow the runoff to go directly to the tidal wetland, rather conduct soil testing and size an infiltration area there because Mr. Ott anticipated that the DEP and the Planning and Zoning Commission would be commenting on that issue. Mr. Ott stated that if the Agency did not feel comfortable allowing the runoff to simply run off in the northerly location, soil testing could be conducted and an infiltration area sized for that area as well.

Mr. Bascom invited comments from the public.

On behalf of the Intervenor in this application, Attorney Thomas Crosby asked how many trees would be lost on the Applicant's property or on the Town's property as a result of widening Long Shore Lane. Mr. Sullivan was not prepared to answer that question at the time. Mr. Crosby asked whether there would be an application to DEP for any type of a widening of Long Shore Lane in the tidal wetland areas. Mr. Sullivan stated that part of the improvements to Long Shore Lane are part of the overall application for the proposed development and that a Coastal Site Plan Review application was submitted to the Planning and Zoning Commission.

Jeff Rosenberg of 318 Boston Post Road was concerned about the question of jurisdiction and the allegation that maintaining an easement gives the Applicant standing to make this application. Mr. Rosenberg was not sure that the Applicant actually has standing, and offered his opinion that the Agency cannot even make a ruling on the application until that question is resolved. Mr. Rosenberg remarked that he, too, has an easement, and that his easement is being affected by the Applicant changing the property.

Mr. Crosby testified that he filed an Intervenor Petition and requested the Agency to consider whether it was filed in a proper form and to make a decision whether he has standing as an Intervenor. If the Agency determines that his client does have standing as an Intervenor, Mr. Crosby then asked that the Agency make a determination as to whether there is any likelihood of an impairment of any of the natural resources on the site and from there, make a determination of whether there are any feasible and prudent alternatives. Mr. Crosby noted that he represents the owners of 107 Long Shore Lane, immediate abutters to the property, and stated that they oppose this application in part due to the fact that the Applicants do not own some of the land that they propose to change. Mr. Crosby distributed a submission which included a letter identified as Exhibit A within the submission, from Mike Zizka, Counsel to the Agency, in which Mr. Zizka indicates to Ms. Ozols that the Town Attorney's (Attorney Clendennen) letter to Stewart MacMillan states that the status of Long Shore Lane needs to be considered by the Agency. Mr. Crosby referenced §7.4a-5 of the Inland Wetland Regulations which states that in order to apply, written consent of the landowner is required if the applicant is not the owner of the land. Mr. Crosby then called out Exhibit B in his submission, the deeds to the Applicant, Exhibit C, the map on

file, with the Applicant's ownership depicted in green and what the Applicant does not own, particularly Long Shore Lane, in yellow. Mr. Crosby stressed that the Town Attorney, in Exhibit B of the handout, states that Long Shore Lane is Town owned property. Mr. Crosby respectfully concluded that in his opinion, the Agency lacks jurisdiction to allow the Applicants to apply to widen the road on somebody else's land. Mr. Crosby pointed out that Attorney Zizka recommends that the Commission accept the Town Attorney's opinion for the purpose of making its decision on the pending application. Mr. Crosby further pointed out that §11.9a of the Inland Wetland Regulations also says that the Agency can revoke any previous approval that has been submitted on the basis of inaccurate or incomplete information, and recalled the Subdivision Referral that was before the Agency a year prior. Mr. Crosby contended that the Agency did not vote on the Subdivision Referral, rather made a referral, and that the Applicant is now maintaining that they received a favorable vote for the Subdivision Referral. Mr. Crosby called out Exhibit C contained in his submission, the Applicant's application which he noted was not signed by the Town; Exhibit D, the minutes from the Inland Wetlands Agency's meeting held March 5, 2007, which he noted contained no actual vote to favorably recommend to the Planning and Zoning Commission regarding the subdivision; Exhibit E, the Verified Pleading; and a list of the 26 species of birds that inhabit the site. Mr. Crosby alleged that the proposal is a very intense use within the setback of the wetlands. Mr. Crosby called out Exhibit G of his handout, which outlines the requirements for a C.G.S. §22a-19 Intervenor. Mr. Crosby pointed out that the Applicant could not tell him how many trees were proposed to be removed, which he indicated is a major impact. Mr. Crosby alleged that the Applicant failed to demonstrate in the application that they have taken any steps to protect the variety of birds on the site, one being an endangered and one a threatened species. Finally, Mr. Crosby contended that the application is deficient on its merits for several reasons; no alternatives were demonstrated on the plan and a waiver was not sought from the Agency; the amount of fill being removed and brought in for the Long Shore Lane activity was not identified in the application; Exhibit J, *Manatuck Associates vs. Conservation Commission Town of Fairfield* is on point to this application, and C.G.S. §22a-41 requires the Agency to consider all of the relevant impacts with respect to any application; all of the facts and the circumstances related to the suitability or unsuitability of a project are required by to be considered by the Agency, which would include the widening of Long Shore Lane. Based on that, Mr. Crosby stated that the Agency has to consider whether the widening of Long Shore Lane will have an effect on the wetlands. Furthermore, Mr. Crosby remarked that the widening would begin where the subject property begins, and that the first 500' of Long Shore Lane is not going to be bigger than 9'-10'. Mr. Crosby contended that the feasible and prudent alternative would be not to allow the widening of Long Shore Lane or the removal of trees on both sides of the road. Mr. Crosby summarized that the Agency should deny this application and take all of the defects of the pending application into consideration.

Mr. Newton requested clarification as to whether trees were just being taken down on the west side or on both sides. Mr. Sullivan stated that tree removal would either be on the east side or the west side, however, noted that it is not a requirement that the number of

trees be counted. Mr. Sullivan offered to obtain that information if the Agency would like.

For the record, Mr. Crosby's submission, with exhibits he identified therein as A thru J, was marked **EXHIBIT M**; the map outlined in green and yellow **EXHIBIT N**; and the property deeds **EXHIBIT O**, for the record.

John Paul Garcia, P.E., with an office located at 190 Fairwood Road, Bethany, at the request of Attorney Crosby and on behalf of the owner of 107 Long Shore Lane, went over his report contained in **EXHIBIT M** as Exhibit G. Mr. Garcia explained that he was asked to look at this application with respect to the materials submitted, with respect to the Madison Inland Wetland Regulations and to the application of potential impacts to this site. Mr. Garcia recalled two issues raised by Mr. Crosby to support their opinion that the application is deficient on its face; 1) no feasible and prudent alternatives were presented as part of the application or a waiver requested as required by the Regulations; and 2) the Applicant has made specific requirements with respect to Lots 1, 2, 6 and Long Shore Lane yet fails to mention any of the materials that will be required to reconstruct Long Shore Lane. Mr. Garcia reviewed sheets S-1 and P-1 of the Applicant's application and noted that there is no provision anywhere in the application to handle the runoff in accordance with the 2002 Sediment and Erosion Control Manual or the 2004 Stormwater Quality Manual. While he agreed with the Applicant that detention is not warranted on this site, Mr. Garcia stated that there should be provisions for stormwater quality, which is not provided in the application. Mr. Garcia noted that he could find no calculation on the pre- and post-development flow on the site, which he indicated is relatively simple to determine and to design for. Mr. Garcia strongly disagreed with the Applicant's design approach with how they propose to reconstruct Long Shore Lane. Mr. Garcia stated that the drawings do not address staging areas, and noted that the amount of traffic and construction trucks coming in and out of Long Shore Lane during construction is probably going to destroy the existing pavement surface of the first 500' of Long Shore Lane. Mr. Garcia expressed his opinion that that portion of the road is going to have to be rebuilt. Mr. Garcia contended that there were inconsistencies with the drainage proposed where the Applicant maintained that water would pitch one way while the road actually pitches the opposite direction, and suggested that the Applicant is going to have to address that. Mr. Garcia reiterated that there was no mention of construction staging, where vehicles will be parked, whether there will be on-site fueling, etc. Mr. Garcia pointed out that these issues are important because the site is extremely tight and there is no margin for error because anything that happens on the site is going to have a direct impact on the wetlands. Mr. Garcia stated that the Applicant failed to show how the driveways to the lots will drain into the proposed rain gardens, and failed to provide supporting information that demonstrates that the Applicant has done any kind of testing in the area of the proposed rain gardens to determine high ground water or whether or not they have the same soil conditions as they are assuming they have. Mr. Garcia next called out the fact that the Applicant testified that the drawings presented are meant to be the final construction drawings, and that note #1 on the proposed mitigation plan

- clearly states that the drawings are not intended to be used for construction. Mr. Garcia noted the lack of detail for anti-tracking pads either on Long Shore Lane or on the individual lots during construction. Mr. Garcia concluded that his biggest concern is the fact that there was no provision provided for stormwater management. Mr. Garcia stated his opinion that “piecing together” the road as proposed will not work, but will not become a wetlands issue until the road fails. A colored version used for presentation purposed by Mr. Garcia entitled, *Road Improvement Plan Long Shore Lane Long Shore Estates Prepared For Ed Zimmerman 78 Long Shore Lane Madison, CT*, sheet P1 dated 1/04/07, revised to 8/27/07, and prepared by CCA, LLC, was marked **EXHIBIT Q** for the record.
- Marjorie Shansky, Attorney for Robert Weinstein and Claudia Bemis, owners of 50 Whedon Lane, noted the proximity of the proposed house on Lot 6 and her clients’ house, which configuration she expressed takes on an urban scale, and thanked the Chairman for picking up on that proximity earlier. Ms. Shansky introduced Mark Goodin, P.E. from Meehan & Goodin, to offer his comments on the proposed plans.
- Mr. Goodin distributed a summary of his comments marked **EXHIBIT R** for the record. Mr. Goodin stated that he has 25 years experience in the field of land development and was asked to review this application with respect to the Inland Wetlands Regulations and Best Management Practices (BMPs). Mr. Meehan submitted a copy of Exhibit 20c from the previous wetlands application #06-67, Septic System Analysis Report prepared by CCA, LLC, dated November, 2006, which was marked **EXHIBIT S**. Mr. Meehan alleged that the previously approved application should be null and void because it provided for a specific maintenance schedule for the cul-de-sac, catch basins and water quality swale, which by this application the Applicant testified is an option to the Town if it decides to utilize it. Mr. Meehan stated that the Applicant provided for hand shoveling of the water quality swale and cleaning of the catch basins, both to occur bi-annually in the previous application. Mr. Meehan stated his opinion that they would be better off without a cul-de-sac if it’s not going to be maintained. Mr. Meehan contended that the Agency needs to look at Lot 6 as a whole because it has the largest impact to the wetlands, and suggested that one feasible and prudent alternative is to eliminate Lot 6.
- Ms. Shansky thanked Mr. Meehan and continued her remarks. Ms. Shansky stated that §10.5 of the Inland Wetlands Regulations states that the applicant has the burden of demonstrating that the application is consistent with the purposes and policies of the regulations and C.G.S. §22a-36 to 22a-45 inclusive. Mr. Shansky stated that through the testimony of the Intervenor’s attorney, their engineer and Mr. Garcia, it is clear that the Applicant has not met the burden because the plans are superficial in many respects; the narratives that accompanied the application are generic as opposed to application site specific. Ms. Shansky stated that she “associated herself deeply” with Attorney Crosby’s remarks about Long Shore Lane. Ms. Shansky stated that Ms. Pinder’s response that they have standing because Connecticut law says so was more of a conclusion than an explanation. Ms. Shansky stated that there is nothing about an easement for a right of passage that gives one the right to expand the easement. Ms. Shansky reiterated Mr. Crosby’s remark that the Regulations require that the Town of Madison be listed as a co-applicant in order for this application to come before the Agency

jurisdictionally appropriately. Ms. Shansky further pointed out that the Regulations also require that the applicant describe their interest in the land, and that nowhere in the application is the easement interest described or how it is distinguished from the Town of Madison's ownership interest. Ms. Shansky stated that before the Agency can assert jurisdiction over the merits of this application, it must determine whether or not it has jurisdiction over the request pertaining to Long Shore Lane. Ms. Shansky also contended that the application is deficient because the legal notice for this application failed to list the Town of Madison as an owner of this property. Ms. Shansky suggested that if Long Shore Lane were not to be widened, the number of lots would be significantly reduced. Ms. Shansky felt that it would be more appropriate for the Applicant to withdraw their application and come back when the ownership issue has been worked out rather than to go forward with this "chaos". Ms. Shansky was also concerned as to why Lot 6 came before the Agency in a separate application without the consideration of a crossing. Ms. Shansky stated that the Agency should have anticipated many of the current issues in the previous application process.

Jeff O'Connor of 324 Boston Post Road said that his property is one of the properties on the easement of Long Shore Lane and that he was opposed to the application and was also concerned about the number of outstanding issues with this application. Particularly, Mr. O'Connor invited people to go down to Long Shore Lane with a tape measure and actually see what the impact will be of widening the road. Mr. O'Connor pointed out that there are Town owned ball fields directly abutting Long Shore Lane that are provided a buffer by existing trees and vegetation. Mr. O'Connor further pointed out that the fields are safer with the existing road conditions because the road is not wide enough for cars to travel at high speeds. Mr. O'Connor was also concerned that the existing road will be ruined through the construction process and will have to be dealt with, at which time, he anticipated further widening and more impact.

Rob Weinstein of 50 Whedon Lane asked whether there is going to be a well located on Lot 6, which the Applicant clarified public water will be provided. Mr. Weinstein was concerned about the impact of digging a trench to provide that service. Mr. Weinstein was also concerned about whether any future homeowner would comply with a non-clearing restriction.

Jeffrey Rosenberg of 318 Boston Post Road stated his opinion that the Agency does not have the right to rule on the merits of the application until the ownership issue is settled, and suggested that the Agency not rule on the merits until such time.

Tricia Mauro of 320 Boston Post Road stated that her home is sandwiched between Lot 1 and Lot 6 and also has the deeded right to pass over Long Shore Lane, and was opposed to the road being widened. Ms. Mauro was also concerned about the location of Lot 4 right in the middle of tidal wetlands. Ms. Mauro asked why the Agency would approve a cul-de-sac over wetlands when a driveway would accomplish the same thing. Ms. Mauro stated that she is totally opposed to the whole application.

William Davis of 33 Shorelands Drive pointed out that there is a creek that runs right through the property to the Long Island Sound, where it discharges right at a beach at the end of Shorelands Drive with a diversity of habitat. Mr. Davis was concerned that the project would introduce pollutants to the creek and the habitat of the stream and the Long Island Sound. Mr. Davis stated that during large

storms, the whole area does flood and the creek gets filled with sand, which the neighbors frequently clean out. Mr. Davis also had concerns about Lot 6 and did not feel the cul-de-sac should have been approved. Mr. Bascom pointed out that many of the issues being raised relate to tidal wetlands, and clarified that the Inland Wetlands Agency does not have jurisdiction over tidal wetlands, rather DEP does.

Tom Paul asked for a definition of the easement that is being used as a basis for standing and how it's coming through. Mr. Bascom suggested that the Agency defer to their counsel and continue this hearing to the next meeting. Mr. Newton agreed and suggested that perhaps the Applicant might come prepared to address some of the concerns that were raised. Mr. Falk reiterated a previous comment from Mr. Bascom that the Agency has no interest in the road, but acknowledged that the question of jurisdiction was raised. However, Mr. Falk disagreed that the letter from Attorney Clenenden says that the Agency does not have jurisdiction, rather points out that the road is owned by the Town, and is a private road, and does have an easement over it that gives the people to traverse back and forth to their homes, but does not say that the Town will not grant other people that right someday in the future. Mr. Falk agreed that the question about the road will be an issue for another body, but felt that the issue is not for this Agency to determine. In response to the question of why the cul-de-sac was allowed rather than a driveway, Mr. Falk recalled that the cul-de-sac was intended to provide for a turnaround for vehicles and school buses.

Mr. Paul stated that he wants to see what all of the implications would be of moving the house on Lot 6. Mr. Bascom noted also that the Agency would make a determination about the Intervenor status at the next meeting as well. Then, **upon a motion by Mr. Newton, seconded by Mr. Mathieu, it was unanimously voted to continue this portion of the public meeting to the next regular meeting December 3, 2007.**

**07-38. 236 RIDGE ROAD.** Map 78, Lot 7. Owner/Applicant: Gareth Isaac. Amendment to Inland Wetlands and Watercourses Map of the Town of Madison.

**Upon a motion by Mr. Newton, seconded by Mr. Paul, it was unanimously voted to open the public hearing for application #07-38.**

Thomas A. Stevens, P.E. and L.S., with offices located at 141 Durham Road, presented the boundary amendment application for the one acre lot located on the east side of Ridge Road. Mr. Stevens stated that the boundary was flagged by Richard Snarski, C.S.S., of Marlborough, Connecticut, and located by Mr. Stevens' office. Mr. Stevens noted that the soils report was provided with the application and is on file. Mr. Stevens also noted that when he files the mylar, he will darken the contour lines that were barely legible. Mr. Bascom invited questions and comments from the public. Seeing none, **upon a motion by Mr. Newton, seconded by Mr. Paul, it was unanimously voted to close this portion of the public hearing.**

Based on the application as presented, **upon a further motion by Mr. Newton, seconded by Mr. Schumacher, it was unanimously voted that the Madison Inland Wetlands Agency approves the Amendment to the Inland Wetlands and**

**Watercourses Map of the Town of Madison for application #07-38: 236 RIDGE ROAD; Map 78, Lot 7; Owner/Applicant: Gareth Isaac, as presented at the hearing and as shown on the map entitled, *Inland Wetlands Boundary Amendment Map Property Of Gareth Isaac Assessor's Map 78, Lot 7 236 Ridge Road Madison, Connecticut*, sheet 1 of 1 dated 9/25/07, revised to 10/13/07, and prepared by Thomas A. Stevens & Associates, Inc.**

The motion carried 7-0-0.

IN FAVOR: Bascom, Paul, Schumacher, Newton, Mathieu, Falk, Munro

OPPOSED: none

ABSTAINED:none

**REGULAR MEETING AGENDA ITEMS (continued):**

- 4. 07-36. 236 RIDGE ROAD.** Map 78, Lot 7. Owner/Applicant: Gareth Isaac. Regulated Activity Permit to allow addition to dwelling within 100 ft. of a wetland.

Thomas A. Stevens, P.E. and L.S., with offices located at 141 Durham Road, presented the Regulated Activity plan, and clarified that the application called for a foundation for the addition. Mr. Stevens stated that the application is to push out the existing kitchen area of the house and demonstrated the proposed addition that he clarified will not be put on a full foundation, rather will be put on piers. Mr. Stevens stated that a very small portion of the existing deck would be removed. Mr. Stevens stated that silt fence would be installed if necessary, but noted that he would not install it if it is not necessary. Mr. Stevens stated that the entire back lawn is fenced in and that the scope of the work as opposed to the piers will have minimal impact. Mr. Stevens stated that the proposed addition will not be closer to the wetlands than the existing deck is, and that there is a net gain by removing a portion of the deck. The presentation plan was marked **EXHIBIT A** for the record. Mr. Stevens identified that he would amend the maps to darken the contours as noted and to get the proper heavy line on the deck. The Agency agreed that the presentation plan was amended at the meeting to put the proper heavy line on the deck and that the boundary map would need to be revised prior to filing the mylar.

Based on the application as presented, **upon a motion by Mr. Falk, seconded by Mr. Newton, it was unanimously voted that the Madison Inland Wetlands Agency approves the Regulated Activity Permit to allow an addition to dwelling within 100 ft. of a wetland for application #07-36. 236 RIDGE ROAD; Map 78, Lot 7; Owner/Applicant: Gareth Isaac, as shown on the plan entitled, *Improvement Location Survey Property Of Joyce E. Isaac Assessor's Map 78, Lot 7 236 Ridge Road Madison, Connecticut*, dated 9/17/07, revised to 10/13/07, prepared by Thomas A. Stevens & Associates, Inc., as modified at the meeting, marked **EXHIBIT A**.**

The motion carried 7-0-0.

IN FAVOR: Bascom, Paul, Schumacher, Newton, Mathieu, Falk, Munro

OPPOSED: none

ABSTAINED:none

5. **07-44. 107 BLAKEMAN ROAD.** Map 24, Lot 118. Owners: Robert A. & Ronny Levine; Applicant: Robert Levine. Amendment to Inland Wetlands and Watercourses Map of the Town of Madison. **Receipt.**

Mr. Kuchta reported that this application is complete. **Upon a motion by Mr. Munro, seconded by Mr. Mathieu, the Madison Inland Wetlands Agency unanimously voted to receive this application.**

6. **07-45. 107 BLAKEMAN ROAD.** Map 24, Lot 118. Owners/Applicants: Robert A. & Ronny S. Levine. Regulated Activity Permit to remove existing dwelling and septic system, construct new dwelling and grading within 100 ft. of a wetland. **Receipt.**

Mr. Kuchta reported that this application was ready to be scheduled for the regular meeting in December. **Upon a motion by Mr. Falk, seconded by Mr. Munro, the Madison Inland Wetlands Agency unanimously voted to receive this application and to schedule it for the regular meeting December 3, 2007.**

7. **702 SUMMER HILL ROAD.** Map 147, Lot 70. Owners: Lars E. & Deborah M. Helgeson. Enforcement Order.

Mr. Bascom acknowledged that he received a note from Mr. Helgeson in which Mr. Helgeson indicated that he had to leave due to the hour and that he would be back at the next regular meeting in December.

## 8. **APPROVAL OF BILLS**

**Upon a motion by Mr. Mr. Munro, seconded by Mr. Bascom, it was unanimously voted that the Madison Inland Wetlands Agency approves the bills totaling \$461.86 as submitted.**

## 9. **APPROVAL OF MINUTES – September 10, 2007**

**Upon a motion by Mr. Munro, seconded by Mr. Falk, it was unanimously voted that the Madison Inland Wetlands Agency approves the minutes of September 10, 2007 and October 1, 2007 as submitted.**

## 10. **DISCUSSION: DEP Inland Wetlands and Watercourses Model Municipal Regulations – Fourth Edition, May 1, 2006.**

No discussion.

## 11. **SECTION 13 APPROVALS:**

Mr. Kuchta reported the following applications he approved under Section 13 of the Regulations, and reported that the shed for #07-42 is not located in the wetlands and will have no impact on the wetlands:

**07-39. GREEN HILL ROAD.** Owner: Town of Madison; Applicant: Madison Public Schools. Regulated Activity Permit to allow construction of sidewalks within upland review area.

**07-42. 172 OPENING HILL ROAD.** Map 81, Lot 17. Owners/Applicants: David & Diane Newton. Regulated Activity Permit for installation of shed within 100 ft. of wetlands.

**12. LITIGATION:** Executive Session As Required – None.

**13. REMARKS – INLAND WETLANDS CHAIRMAN**

Mr. Paul recalled that the Agency previously discussed waiving the fee for application #07-37 for the Madison Land Conservation Trust but that no vote was ever taken, and asked whether the Agency wanted to vote on that at this time. **Upon a motion by Mr. Falk, seconded by Mr. Newton, it was voted that the Madison Inland Wetlands Agency waives the fee for application #07-37.** Mr. Paul abstained.

– INLAND WETLANDS OFFICER

Mr. Kuchta reported that he received a request from MJM Land Development to reduce the bond for Terrace At West Wharf Lot 13, and noted that the conditions of approval for the bond require two years, which had not yet passed. Therefore, **upon a motion by Mr. Munro, seconded by Mr. Newton, it was unanimously voted that the Madison Inland Wetlands Agency denies the request to reduce the bond for application #06-49.**

**Horsepond violation – no discussion.**

#### **ADJOURNMENT**

**Upon a motion by Mr. Mr. Falk, seconded by Mr. Munro, it was unanimously voted to adjourn the regular meeting of the Madison Inland Wetlands Agency at approximately 11:17 p.m.**

Respectfully submitted,

Samile Keeler  
Clerk Pro Tem