

**MADISON INLAND WETLANDS AGENCY  
REGULAR MEETING  
Monday, May 4, 2009  
Meeting Room A, Town Campus**

A regular meeting of the Madison Inland Wetlands Agency (IWA) was held on Monday, May 4, 2009 at 7:30 p.m. in Meeting Room A, Madison Town Campus. With Chairman Thomas Paul presiding, the meeting was called to order at 7:35 p.m.

Present: Thomas Paul, John Mathieu, Rodney Bascom, Glenn Falk, Barbara Yaeger, Lee Schumacher and Alternates: Barry Nann and Ted Aub. Inland Wetlands Officer Robert Kuchta and Director of Public Works and Town Engineer Mike Ott were also present. David Newton and Alternate Bill Freeman were absent.

In order to expedite the agenda, applications and agenda items were addressed in the order that best served the Agency.

**REGULAR MEETING AGENDA ITEMS:**

**REMARKS – INLAND WETLANDS CHAIRMAN**

Chairman Thomas Paul – provided a copy of the 09-02 subdivision referral from IWA to P&Z for the Agency’s review in order for them to see the final report.

- 1. FEE ORDINANCE** – Proposed Fee Ordinance revising application fees and providing for applicant reimbursement of professional consultant fees.

IWO Kuchta – explained that in the past the Town has assumed the cost of hiring Professional Consultants for peer review comments and technical support on applications that may be controversial or complicated that warrant the additional professional technical assistance. This Fee Ordinance will put the burden of that expense on the applicant.

- 2. CITATION ORDINANCE** – Proposed Ordinance establishing citation procedures and fines for inland wetlands violations.

IWO Kuchta – in order for the Agency to levy either a fee or a fine, the Board of Selectmen have to have that authority included in the set of ordinances for the Town. Even though there was a vote to recommend to the BOS to propose a fee ordinance, because the vote wasn’t addressing an item on the agenda but instead addressed IWO comments, the BOS asked that procedurally this be included on the agenda and be voted on again.

L. Schumacher – how do you know when an application is submitted if it is going to be controversial enough to warrant additional professional technical assistance?

IWO Kuchta – when an application is received, it is reviewed to determine if it will be a significant activity. Various possibilities were discussed.

J. Mathieu – they have, in the past, voted to engage a technical expert when there was a disagreement on the wetland boundary.

M. Ott – in some other towns, when the application is received in the office, Town Staff gives the application a cursory review to determine if there are going to be complications with it. When the application is received by the Agency or Commission, Town Staff makes the recommendation for an outside technical expert if needed. The application package is sent to the outside consultant for an estimate as to how much they will charge for the review. That figure is then passed on to the applicant and they put that amount of money in an account designated for that purpose. There is plenty of time from the time it comes into the office until the public hearing.

This will be included for a vote on the next IWA agenda, June 1, 2009.

### **APPROVAL OF BILLS**

A motion was made by Rodney Bascom, seconded by Barbara Yaeger, whereby the Madison Inland Wetlands Agency voted unanimously to approve payment of the bills as submitted.

### **APPROVAL OF MINUTES**

A motion was made by John Mathieu, seconded by Rodney Bascom, whereby the Madison Inlands Wetlands Agency voted unanimously to approve the minutes of the March 2, 2009 meeting with one change on page 6, line 25.

A motion was made by Rodney Bascom, seconded by Barbara Yaeger, whereby the Madison Inlands Wetlands Agency voted unanimously to table the minutes of the April 6, 2009 meeting to the June 1, 2009 regular meeting.

**LITIGATION:** Executive Session as required – there was none.

### **REMARKS – INLAND WETLANDS OFFICER**

IWO Kuchta – reminded the Agency of the upcoming training program.

#### **Stormwater Management regulations**

M. Ott – the Conservation Commission has begun the process of starting to talk about developing Stormwater Management regulations for the Town. It will be a long process with many Commissions and Agencies involved as well as Town Staff and consultants. He will be putting the regulation together himself with the input from others.

R. Bascom – it is important to note that many towns have spent a lot of money to develop the regulations. One of the requirements of the regulations is that every one of the Town's stormwater outfalls has to be located. It is a good thing that the Town is doing this on its own, in house.

M. Ott – in addition, because Planning and Zoning requires formal comment from him for each application, from the engineering aspect, he suggested that the same thing be done with the IWA.

### **PUBLIC HEARING**

A motion was made by Rodney Bascom, seconded by John Mathieu, whereby the Madison Inland Wetlands Agency voted unanimously to open public hearing 09-03: 227 Copse Road, owner: Holly Johnson, applicant: Peter Gulick.

Barbara Yaeger recused herself from sitting for this public hearing in order to avoid any conflict of interest.

**09-03: 227 COPSE ROAD.** Map 57, Lot 4. Owner: Holly Johnson; Applicant: Peter Gulick. Amendment to Inland Wetlands and Watercourse Map of the Town of Madison.

Peter Gulick, Gulick and Spradlin, LLC

As representative for the applicant he explained that Bascom and Benjamin had delineated the wetlands on the property. He pointed out the wetlands for the Agency. ZBA has approved a variance for the property.

R. Bascom – noted for the record that he is not related to Bascom and Benjamin.

J. Mathieu - asked if IWO Kuchta had walked the property.

IWO Kuchta – yes, and there is a soils report in the file from Soil Scientist Eric Davison. He read the report from his field walk into the record.

Chairman Thomas Paul – asked if there were any questions or comments from the public and there were none.

A motion was made by Glenn Falk, seconded by Lee Schumacher, whereby the Madison Inland Wetlands Agency voted to close the public hearing for 09-03: 227 Copse Road.

A motion was made by Rodney Bascom, seconded by John Mathieu, whereby the Madison Inland Wetlands Agency voted to approve application 09-03: 227 Copse Road.

#### **REGULAR MEETING AGENDA ITEMS:**

**09-04: 82 EDINBURGH LANE. The Highlands.** Map 41, Lot 47-23. Owner/Applicant: Robert E. Dowler. Request for as-of-right activity under Sec. 4 of the regulations to clear land of invasive vines and grub tree roots in Open Space within wetlands and wetland review area for agricultural use.

Bob Dowler, 82 Edinburgh Lane – the as-of-right application was submitted shortly after the last IWA meeting.

J. Mathieu – in reading the Conservation Easement, he noted that Inland Wetlands was not mentioned. Shouldn't the Planning and Zoning Commission have alerted the Agency when Mr. Dowler met with them?

IWO Kuchta – this subdivision was developed and the Open Space was created without any real restrictions. At the time the subdivision was developed, there was a very limited definition of what "Open Space" could be used for. At some point in Mr. Dowler's efforts, he came to the Planning and Zoning Commission to create a protection. Through the work with his Attorney and Town Attorney, they developed this easement. He (Kuchta) was never consulted. He does not know how the Inland Wetlands Agency was bypassed within the written easement itself. This may have been the first conservation easement that was developed in the town.

Bob Dowler – When this subdivision came before P&Z, it was granted with several “Open Space” locations. They tried to convey them to the Land Trust but they were not interested because the parcels were not contiguous and did not connect any of their trails. So they became “Open Space” that is privately owned. When doing his estate planning, none of his children were interested in assuming the responsibility for them. His Attorney consulted the Town as to what could be done with privately owned “Open Space” and the Town of Madison zoning regulations at that time, allowed agricultural use and recreational use. But, there was no definition of what agricultural use or recreational use was. After discussing this with ZEO, Marilyn Ozols, she consulted the Town Attorney. His attorney, Atty. Tom Cronan submitted conservation easement language to the Town which was passed on to the Town Attorney and in about 2 years it was resolved. The Town Attorney approved it and he believes that ZEO Ozols then took it to P & Z. It was never suggested that he come before the Inland Wetlands Agency. He started to clear the land for agricultural use, notified the neighbors accordingly. Then IWO Kuchta received a complaint and he asked that he cease clearing until this can be resolved.

R. Bascom – prohibitions are listed on Page 2, Section I. The prohibition under #4 of Page 2 “ The removal or destruction of trees, shrubs, or other vegetation, the destruction of wildlife or its habitat, the application of pesticides or herbicides, or any other activity or use which is or has the potential for being detrimental to drainage, flood control, water quality, erosion control, soil conservation, wildlife or the land and water areas in their natural condition, except as approved by the Madison Planning and Zoning Commission for agricultural and/or recreational purposes. Nothing herein shall prohibit the conduct of good management practices including the control of invasive species provided any such activity is done with the prior approval of the Madison Planning and Zoning Commission.” It sounds as though you are allowed to use this for agricultural purposes but not without approval by Planning and Zoning. Did you get approval?

Bob Dowler – We went before the Planning and Zoning Commission with the application for this approval.

R. Bascom – subsequent to this 2006 decision?

Bob Dowler – was not sure. He believes so but does not know the date.

R. Bascom – this is the issue. The fact that this doesn’t say Inland Wetlands in addition to Planning and Zoning is an issue but we weren’t involved at the time this was approved. If this is what is in place right now, Mr. Dowler would have had to have gone to Planning and Zoning prior to the removal of any trees. If Mr. Dowler is not sure if agricultural use was approved, then we need to find that out.

Bob Dowler – they did approve; it is agricultural use.

R. Bascom – the way I read this, you needed to do one more step. They said agriculture is okay before you do it, you’ve got to get approval from P&Z.

IWO Kuchta – normally, any application that goes before P&Z, if it involves wetlands, simultaneously comes to IWA as an application or review. When he asked ZEO Ozols if there had been any application or plan, she replied that there wasn’t.

Bob Dowler – no, I never put in a specific application for this.

IWO Kuchta – we don’t even know if there was even an application form to be filled out at that time.

B. Yaeger – wouldn’t we have had to say that this was an as-of-right use, regardless of Planning and Zoning?

R. Bascom – that is not the issue.

B. Yaeger – does this supersede wetlands?

R. Bascom – in his understanding, in order to get that parcel for agricultural use, the applicant would have had to come back to Planning and Zoning after the date of this document and request permission to use it for agricultural use. At that point P&Z should have kicked the application back to IWA.

Bob Dowler – He believes that once the Town Attorney and his Attorney completed their negotiations and it went on to Planning and Zoning, he believes that by right he has agricultural use. I have the right to put a gazebo on the property and was told all I would have to do is put in a building permit application.

IWO Kuchta – there is a Section 4 application before the Agency for an as-of-right use.

Chairman Thomas Paul – made a topographical map of the area (Exhibit A 5/4/09). He walked the site. There is a stream that runs through the parcel. Vineyards require a lot of chemicals, herbicides and insecticides. There is a steep slope here and a stream that runs into a pond and then a very short distance to the salt water marsh next to the Hammonasset River. This is a very sensitive location. He recommended the Commission walk the site.

On a motion by Rodney Bascom, seconded by Glenn Falk, the Madison Inland Wetlands Agency voted unanimously to schedule the application by Robert Dowler 09-04: 82 Edinburgh Lane, The Highlands, for a public hearing on June 1, 2009 with a site walk to be held by the Agency. The history of this “Open Space” in the Planning and Zoning Commission’s records is to be located and provided to the Agency prior to the public hearing.

On a motion by Glenn Falk, seconded by Rodney Bascom, the Madison Inland Wetlands Agency voted unanimously to adjourn at 8:30 P.M.

Respectfully submitted,

J. Donnette Stahnke  
Recording Secretary, Inland Wetlands Agency