

**\MADISON INLAND WETLANDS AGENCY
REGULAR MEETING
Monday, June 1, 2009
Meeting Room A, Town Campus**

A regular meeting of the Madison Inland Wetlands Agency (IWA) was held on Monday, June 1, 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, David Newton, Glenn Falk, Barbara Yaeger, Lee Schumacher and Alternates: Barry Nann and Bill Freeman. Inland Wetlands Officer Robert Kuchta, Director of Public Works and Town Engineer Mike Ott and ZEO Marilyn Ozols were also present. Alternate Ted Aub was absent.

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

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

NONE

REGULAR MEETING AGENDA ITEMS:

- 1. 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.

Atty Tom Cronan, Crosby and Cronan

As Attorney for the applicant he gave the history of the property. He negotiated the conservation easements for the open space areas of The Highlands subdivision with the Town Attorney's office. The first of the easement documents were drafted in 2003. The conservation easements were finalized in 2006. Mr. Dowler asked him what could and couldn't be done on these areas and he gave Mr. Dowler the incorrect information. §22A.40 of the CT General Statutes exempts from wetlands regulation, grazing, farming, nurseries, gardening, harvesting, etc. At one point in time, he and Mr. Dowler had spoken about these uses and being aware of the Statute, he had advised Mr. Dowler that he would probably not need to go before the Inland Wetlands Agency. During the course of negotiating the conservation restrictions, the enforcement agency was the Planning and Zoning Commission. He pointed out that there is an exemption under the conservation restrictions for the removal of invasive species but there is a requirement that before they are removed, Planning and Zoning must be consulted. He and Mr. Dowler spoke about this over the course of 6 years and during that time he probably gave Mr. Dowler some incorrect information. Currently, invasive species have been removed within the review zone and there are other invasives remaining. They could just plant grass in the area and leave it but this is not a desirable solution. Mr. Dowler is not sure what he wants to do with the property. Whatever he is going to do will fit under the exemptions of 22A.40 or the conservation easement. What Mr. Dowler would like to do is to get concurrence from the IWA and then subsequently from Planning and Zoning to allow him to continue the removal of the invasives, to dig the appropriate disposal pits and to stabilize the area

probably with something simple like the planting of Rye Grass that would not be mowed or fertilized but would provide some stability to the slopes.

Chairman Thomas Paul – questioned the location of the invasives.

Bob Dowler, 82 Edinburgh Lane – they were over the entire property. He has removed approximately 80% of them and the trash trees that have grown there since he purchased the property such as Red Cedars that, for the most part, were dead. He was trying to put the property back to the shape it was in when he bought it. There is approximately 20% of the area that still needs to be cleared and half of that is within the wetland boundary. They rebuilt the pond about 20 years ago and since then, it has filled up with leaves from the growth that has grown up around it. Now it is ugly for the neighbors and he would like to get it cleaned up. He doesn't know specifically what he wants to do with it. He has not worked with Planning and Zoning to establish a plan. He did not go back before P&Z after they had approved the conservation easement and sent a letter to the Selectmen; the Selectmen signed off on the agreement between him and the Town. After that, he should have gone back again to Planning and Zoning but he didn't. That was his mistake. He felt that after all of the years of working with them on this, that they knew what he was going to do.

Chairman Thomas Paul – the Agency would like to see a plan for what is proposed.

D. Newton – explained what they are really looking for in a plan. What are the steps you will take? What areas do you want to cut? What species are you trying to eliminate? What are you planning to cover with Rye Grass? Where will the excavation be? Where will the erosion control be?

J. Mathieu – how do you propose to remove the stumps that are there?

Bob Dowler – with a backhoe as you would on any construction site.

J. Mathieu – are you going to have to build a road to get into that area?

Bob Dowler – there was a road put in when we cleaned up the pond.

R. Bascom – this is an application for an as-of-right use. If the Agency did not agree that this is an as-of-right use wouldn't we deny this application and then require an application for a regulated activity permit?

IWO Kuchta – yes, the Agency could make a ruling that this is not an as-of-right use and require a regulated activity permit.

R. Bascom – so our alternatives are: to agree that it is a permitted use as-of-right with conditions or to deny and require the regulated activity process?

IWO Kuchta – correct. This is a verbal cease and desist. A restoration can also be requested.

B. Yaeger – Wasn't this supposed to be a public hearing?

IWO Kuchta – he spoke with Town Attorney Mike Zizka and he said this should not be a public hearing because it is not allowed in §4 of our regulation or by State Statute.

R. Bascom – if we denied and it came back as a regulated activity, a public hearing could be forced. This is another option.

Atty. Cronan – cited court decision annotations from a related case pertaining to §22A.40. In his opinion, this says that to the extent that there is cutting and so on, not protected by the invasive species clause, cutting that is preparatory to creating farmland, grazing land, etc. is covered under this Statute.

D. Newton – That is repeated in our regulations.

R. Bascom – because this is not a public hearing, are we prohibited from receiving public comment?

IWO Kuchta – no.

R. Bascom – we know we have public opposition to this, so it is difficult not to hear it.

Chairman Thomas Paul – we will allow it.

Bob Dowler – is not opposed.

B. Freeman – shouldn't we determine if this is an as-of-right use?

R. Bascom – they are willing to provide a restoration plan.

B. Freeman – he is simply preparing for agricultural use.

G. Falk – there is no bonafide plan to discuss.

IWO Kuchta – read 4.5 of the Town regulations.

J. Mathieu – because of the cease and desist order the applicant wasn't able to complete this project. He would like to see a plan of what ever the applicant proposes to do to complete the additional part of clearing and rule on that additional information.

IWO Kuchta – a ruling must be made tonight according to the regulations.

R. Bascom – couldn't we get a letter to waive this time limit and give us an extension?

B. Freeman - in the mean time, couldn't IWO Kuchta oversee the installation of erosion control measures?

IWO Kuchta – concurred that something should be done. The majority of the property is fairly stable.

B. Yaeger – would like to see a plan.

J. Mathieu – the applicant has indicated that he doesn't have a final plan but what he would like to do is do some additional cleanup; remove the stumps; stabilize the area and plant some grass. It would be good to have a more detailed plan for that proposal, indicating that if anything else is done, it would have to come back to the Agency with a more detailed plan. A plan should be provided showing the cleanup proposal.

Chairman Thomas Paul – asked for comments from the public.

Carol Altieri, 54 Edinburgh – read the letter sent from Mr. Dowler to neighbors from 2008, into the record. She spoke in opposition.

Frank Altieri, 54 Edinburgh – spoke in opposition.

Louise Noyse, 19 Tuxis Road – spoke in opposition.

Bob Hartley, 86 Duck Hole Road – spoke in opposition.

Diana Becker, - spoke in opposition.

ZEO Ozols – no official cease and desist was issued by P&Z because they wanted to allow the IWA to issue a decision first.

R. Bascom – what ever is decided by the IWA, they applicant will still have to go to P&Z?

ZEO Ozols – yes, and she would assume that any proposal submitted to P&Z would incorporate comments by the IWA.

A motion was made by Glenn Falk, seconded by David Newton, to continue the application to the July 6, 2009 meeting with a public hearing to be held at that time because the IWA determined that this is a significant activity and they would benefit from public input.

D. Newton – why can't they hold a public hearing for the application?

IWO Kuchta – it speaks to the way that §4 is enabled by the State. He read comments from Atty. Mike Zizka into the record.

G. Falk – withdrew his motion.

Mike Ott – He recommended continuing the application to next month while addressing problem areas of erosion that are occurring now. The applicant needs to be asked to stabilize those areas of erosion. Also, IWO Kuchta should speak with Atty. Zizka and get specific information as to what the IWA's recourse is.

R. Bascom – does not have enough information to make a decision at this point. During the month, before the next meeting, they should be developing a plan that will help the Agency to make a decision.

Mike Ott – hopefully, IWO Kuchta will get guidance from Atty. Zizka early so the applicant has as much information as possible.

Bob Dowler – The property with the erosion is not his. The owner has been advised of it.

Mike Ott – IWO Kuchta can speak with that property owner as well.

A motion was made by Glenn Falk, seconded by David Newton, the IWA voted to continue the application by Bob Dowler, 09-04: 82 EDINBURGH LANE. The Highlands. to the July 6, 2009 meeting. Rodney Bascom voted in opposition

2. **09-10: 104 HICKORY LANE.** Map 128, Lot 46-3. Owners/Applicants: Ronald D. and Diane D'Amato. Regulated Activity Permit for modification of driveway within 100 ft. wetland review area. Resubdivision Referral. **Receipt.**

Kevin Kenny, Kenny Associates, Guilford

As representative for the applicant he explained that he was representing the applicant for two applications, 09-10 and 01-51T+Mod, both on the same property. The existing application was obtained four or five years ago, a driveway to be constructed off of Route 80 on this property to access the rear of Lot 3 of the Gesner Hill Subdivision on Hickory Lane. That approval is still in effect and they are asking to modify aspects of that application. Instead of constructing that driveway they wish to construct a new driveway from Hickory Lane to serve both lots. The new application is to construct a new driveway from Hickory Lane to serve both lots.

R. Bascom – asked that they address one application at a time.

Kevin Kenny – currently, there is a permit that exists to serve the proposed lots of 3A and 3B of the Gesner Hill Subdivision from Route 80. This is an easement on the property of a third party. They are currently seeking, in the new application, to come off Hickory Lane with a new driveway to serve Lot 3A. It would also serve Lot 3B which is the next application.

B. Yaeger – cannot see where the approved driveway is located.

Kevin Kenny – the approved driveway is not shown because we are proposing not to use it.

R. Bascom – the approval is 5 years old?

Kevin Kenny – approximately. But the permit has been extended.

R. Bascom – it is in effect.

Kevin Kenny - yes it is.

G. Falk – so this is a driveway going between two existing houses to some interior lots? There will be two new houses or one?

Kevin Kenny – correct and there will be two new houses. One of the new houses will be the first application and the second one will be the existing one which is a modification of the existing permit.

D. Newton – are 3A and 3B currently one lot?

Kevin Kenny - yes.

D. Newton – so you are dividing the lot?

Kevin Kenny – yes, this is a resubdivision.

D. Newton – when the original subdivision was done, we didn't allow this lot.

Kevin Kenny – yes, in the minutes, it was a vote 4-3 not to approve. He isn't clear why.

D. Newton – it was denied once and now the applicant is back asking again.

Kevin Kenny – we did obtain a subsequent approval.

G. Falk – will it cross the stream?

Kevin Kenny – we would be crossing the stream with a box culvert.

G. Falk – that has not been previously approved?

Kevin Kenny – no, it was not approved at the time of the subdivision.

G. Falk – the Route 80 access did not involve the crossing of the stream?

Kevin Kenny – correct.

G. Falk – this is the first time you have asked for two houses?

Kevin Kenny – no, the permit that is in place is for two houses. If Lot 3 is approved by this Agency, it will be for a three lot resubdivision of which one lot is the current house.

D. Newton – what was application 01-51 for?

Kevin Kenny – it was for the permit that is in effect.

D. Newton – but it is not on this map.

Kevin Kenny – it is for a modification of the bulk of Lot 3. The approval of that permit also included certain activities that were within the upland review area of that time or avoided the upland review area. Specifically with 3B, at the time the setback was for 50' for all activities but sanitary which was 75' and we were successful, except for the driveway, in accomplishing that. At this point in time, the review setback is 100' and that is the reason we are seeking a modification of that permit with respect to Lot 3B.

D. Newton – this is just for acceptance tonight. When we have the hearing, he would like to see what 01-51 did include.

Kevin Kenny – he will bring the original plan that was approved.

D. Newton – he would like to see what is being modified.

R. Bascom – are these two applications complete?

IWO Kuchta – yes.

A motion was made by Rodney Bascom, seconded by John Mathieu, the IWA voted unanimously to receive application 09-10, 104 Hickory Lane and schedule it on the agenda for the next regularly scheduled IWA meeting.

- 3. 01-51T+MOD: 104 HICKORY LANE.** Map 128, Lot 46-3. Owners/Applicants: Ronald D. and Diane D'Amato. Transfer and Modification of previously approved application 01-51. **Receipt.**

A motion was made by Barbara Yaeger, seconded by Rodney Bascom, the IWA voted unanimously to receive application 05-51T+Mod 104 Hickory Lane and schedule it on the agenda for the next regularly scheduled IWA meeting.

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

ZEO Ozols – there is no change in the IWA portion of the ordinance.

A motion was made by Glenn Falk, seconded by Rodney Bascom, the IWA voted unanimously to recommend the proposed Fee Ordinance to the Board of Selectmen for approval.

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

A motion was made by Glenn Falk, seconded by John Mathieu, the IWA voted unanimously to recommend the proposed Citation Ordinance to the Board of Selectmen for approval.

APPROVAL OF BILLS

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

APPROVAL OF MINUTES

A motion was made by Glenn Falk, seconded by Rodney Bascom, whereby the Madison Inlands Wetlands Agency voted unanimously to approve the minutes of the April 6, 2009 meeting as submitted.

A motion was made by Rodney Bascom, seconded by Barbara Yaeger, whereby the Madison Inlands Wetlands Agency voted unanimously to approve the minutes of the May 4, 2009 meeting with Barbara Yaeger's recusing herself from the 227 Copse Road application.

On a motion by Glenn Falk, seconded by Rodney Bascom, the Madison Inland Wetlands Agency voted unanimously to adjourn at 9:00 P.M.

Respectfully submitted,

J. Donnette Stahnke
Recording Secretary, Inland Wetlands Agency