

SUBJECT TO APPROVAL

**MADISON INLAND WETLANDS AND WATERCOURSES AGENCY
REGULAR MEETING MINUTES**

January 4, 2021

**7 p.m. VIA ZOOM ONLINE WEBINAR WITH PUBLIC PARTICIPATION
PASSWORD AND CALL-IN INFORMATION PROVIDED PUBLICLY**

A Regular Meeting of the Madison Inland Wetlands and Watercourses Agency was conducted on Monday, January 4, 2021 at 7 p.m., by way of a Zoom Online Webinar, with public participation password and call-in information provided. Chairman Kealoha Freidenburg opened the meeting at 7 p.m.

MEMBERS PRESENT: Chairman Kealoha Freidenburg, Vice Chairman Joseph Budrow, Secretary Robert Zdon, C. Thomas Paul, John Mathieu, Lee Schumacher, and David Newton.

MEMBERS ABSENT: None.

OTHERS PRESENT: John De Laura (Zoning Enforcement Officer/Inland Wetlands Officer), David Anderson (Director of Planning and Economic Development), Steve Sullivan (Professional Engineer), Eric Davison (Soil Scientist and Wetlands Scientist), Lawrence Reilly (Attorney), Thomas Crosby (Attorney), and Eric Bernheim (Attorney).

Chairman Kealoha Freidenburg called the meeting to order at 7 p.m.

PUBLIC HEARING: None.

REGULAR MEETING:

Subdivision Referral of P&Z 20-16+CSP. Longshore Lane. Map 25, Lot 74-1. R-2 District. Owner/Applicant: Shorelands, LLC. Subdivision application to divide 22.38 acres into 5 lots. Also, Coastal Site Plan Review.

Professional Engineer Steve Sullivan presented the overview of the project and shared the plans, which consist of 22.38 acres, described as a vacant parcel, bordered to the south by Long Island Sound, to the east by Longshore Lane, to the west by Shorelands Drive, and to the north by Maplewood Lane. Proposed is a five-lot subdivision with Lot 1 and Lot 2 on Longshore Lane; Lot 4, consisting of an existing house known as 78 Longshore Lane, which was once part of the proposal, but is no longer, and plans propose an access and driveway easement at this site; Lot 5, with proposed access by way of Shorelands Drive; Lot 6, with access off of Maplewood Lane; and there is no longer a Lot 3, according to Mr. Sullivan. On site wells will provide water to Lots 1, 2 and 4; Lots 5 and 6 will be supplied by the Connecticut Water Company's water main on Shorelands Drive and Maplewood Lane; all lots will have septic systems, according to Mr. Sullivan. Roof leaders will discharge into rain gardens, and no-mow areas are being proposed, with a no-mow area delineated by a split rail fence; 17.6 acres is being proposed for the conservation easement area, according to Mr. Sullivan. Though a prior subdivision application for this site had included a cul de sac at the end of Maplewood La that is no longer being

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proposed, according to Mr. Sullivan; instead, just a driveway with a hammerhead on Maplewood Lane will provide access to Lot 6. A 12-inch clay pipe will be removed; concrete abutments will be installed to support a timber bridge, according to Mr. Sullivan. This is a subdivision referral; if the Planning and Zoning Commission approves the subdivision, the application will still have to go before the Inland Wetlands and Watercourses Agency for individual site plan approvals, and Mr. Sullivan stated that he thinks that all of these lots will have to go back for review of the individual upland areas. Registered Soil Scientist and Professional Wetlands Scientist Eric Davison stated that the original review of the property was done in 2007; there was also some follow-up work, in 2018, for the Department of Energy and Environmental Protection (DEEP), involving permitting issues. In October 2020, Mr. Davison stated that he visited the site to confirm that the resources and character of the land had not changed since 2007, noting maturation of vegetation areas, tidal wetland, boardwalks that were installed in accordance with DEEP in 2018. In the past, the widening of Longshore Lane had been proposed, but that is not currently being proposed, unless the Planning and Zoning Commission determines such widening is necessary, and if so, it will be done, according to Mr. Sullivan, who stated that that approval from the Inland Wetlands Agency is still valid. Director of Planning and Economic Development David Anderson stated that the widening approval is still active, but all previous wetlands approvals have expired, which includes the extension of Maplewood Lane cul de sac, Lot 6, Lot 1, and Lot 2. When discussion continued into the historical aspects of previous applications for the site, with Inland Wetlands and Watercourses Agency commissioners seeking to compare and contrast the current proposal with the past, Chairman Kealoha Freidenburg stated that this is a new application before the agency, and commissioners are starting from scratch; she advised the commissioners to keep their questions focused on the current application. This is a new application, Chairman Freidenburg stated. Commissioner C. Thomas Paul asked about plans for Lot 6, which contains some very large trees. Mr. Sullivan stated that the landscape plan for Lot 6 details which trees will be eliminated, and the Inland Wetlands and Watercourses Agency will receive an individual application for that lot. Commissioner Lee Schumacher asked if the plans are the original drawings or completely new drawings. Mr. Sullivan stated that it is really not much new; it is a combination of new and original, and it is updated. Chairman Freidenburg stated that Mr. Davison has been out to the site to look it over, but it has been a long time since the wetlands have been delineated, noting that wetlands do change over time. In addition, the Conservation Commission mentioned this in a letter it submitted to the agency, according to Chairman Freidenburg. There have been several storms since the 2007 data was reported, and relying on this natural resource information from 13 years ago is particularly problematic, Chairman Freidenburg stated. Regarding Lot 6, there is a large wetland there now, and Lot 6 is within feet of this wetland, according to Chairman Freidenburg. It is not clear how that wetland would be protected; the soil scientist did not remark it—he just looked at it, so to her, that is kind of a big problem, Chairman Freidenburg stated. In guidance to the Inland Wetlands and Watercourses Agency, Chairman Freidenburg stated that there are some lawyers for a neighbor, who have filed as interveners, and they will be speaking, tonight, adding that the commissioners do not have to come to a decision, this evening, on the subdivision referral. Commissioner Schumacher stated that it seems like the interveners are saying that a new application has not been filed. Mr. Anderson stated that it is a subdivision application to the Planning and Zoning Commission; it does not call for a cul de sac or road widening, and every individual lot has to go back to the Inland Wetlands and Watercourses Agency for approval. Mr. Anderson stated that he spoke to Town Attorney Peter Gelderman about this, and he believes the process is being followed accurately. Chairman Freidenburg stated that Lot 6 and the wetland

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crossing need to be well delineated; that driveway is incredibly close to the wetland—in it. Typically, open space is set aside for a conservation easement, no more than 50 percent wetland, and setting aside most of the salt marsh, that really cannot be developed, anyway, as a conservation easement, is problematic, as well as having no-mow zones that may or may not be enforced, she stated. Mr. Sullivan stated that another way to handle the conservation easement is to have a fee in lieu of, and the Planning and Zoning Commission decides that; the applicant is doing a privately owned conservation easement area—it is not publically owned. Chairman Freidenburg stated that having five more septic systems in this area, with wetlands and tidal, is a lot in a flood zone. For the Inland Wetlands and Watercourses Agency to not have current wetland delineation, after 13 years, is unacceptable; Lot 6 has a lot of impact on wetland, according to Chairman Freidenburg. There has not been a lot of observation during the growing season, she stated, adding that the wetlands delineation is outdated and not up to date. Commission Secretary Robert Zdon stated that he is very uncomfortable with the application, and he really would hope to receive full size documents to review. He stated that he is worried about the groundwater, the age of all the data, and the fact that the applicants say that they have to return to the Inland Wetlands and Watercourses Agency for individual approvals, describing that as a “slippery slope,” adding that he understands a lot of work has gone into this. Mr. Sullivan stated that this is the town process. Secretary Zdon stated that he does not see how the commissioners can make a decision on this. Mr. Anderson stated that he has communicated with Attorney Gelderman, and that the Inland Wetlands and Watercourses Agency does have an ability to continue this application, if it chooses to return to it in February. An Inland Wetlands and Watercourses Agency report is just that—a report, according to Mr. Anderson. It is not an approval or a recommendation for denial; the outcome will be a whole host of commentary regarding wetland regulations in this subdivision, according to Mr. Anderson. Attorney Lawrence Reilly stated that they had just received, before noon, today, a copy of the intervenor’s objection papers, and they have scarcely had any opportunity to read these documents. While it is known, by the intervenors, that this law firm represents Shorelands, LLC, copies of the documents did not arrive directly from the intervenors’ attorneys to his law firm, according to Mr. Reilly. There is a history of conflict, animosity, from the adjoining property owner; they are claiming that that stipulation settlement agreement is still operative, and it is not, according to Mr. Reilly. The settlement they referred to culminated with having had to achieve approval from the Planning and Zoning Commission, and none of that happened; in addition, Lot 3, with the existing house on it, was lost to foreclosure, according to Mr. Reilly. The end of that story is that the settlement agreement is contingent on the final approval by the Planning and Zoning Commission, and that approval just did not happen; that settlement agreement is null and void, Mr. Reilly stated. The substantive elements of this plan have not changed, and the substantive elements of this project have not changed; there is value to the historical project, in that it was approved in the past, but the lapse of time has sabotaged the project, Mr. Reilly stated, adding that a short amount of time, possibly a week or so, is needed to return to the Inland Wetlands and Watercourses Agency with a response to litigation questions raised in Attorney Thomas Crosby’s Dec. 30, 2020 letter. There are some comments that would be answered during a regulated activity application, Mr. Sullivan stated. When the Inland Wetlands and Watercourses Agency does a subdivision referral, it needs as much information as possible, Chairman Freidenburg stated, adding that she argues that there could be significant changes to the project, because, currently, the agency is looking at severely limited wetland data. It is nice to have the history, but the Inland Wetlands and Watercourses Agency’s focus is on protecting the wetlands, according to Chairman Freidenburg. Attorney Thomas Crosby, representing Lili and John

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Foggie, 107 Longshore Lane, stated that the referral should be denied, unless or until a new wetlands application is submitted. He asked how the application can show access to Lot 4 over 78 Longshore Lane, when the owner of that property has not granted the easement. In referring to Section 7.2 of Madison's Planning and Zoning Regulations, Mr. Crosby stated that when an application to the Planning and Zoning Commission for a resubdivision contains wetlands, which this property contains, then the applicant shall submit an application to the Inland Wetlands and Watercourses Agency, no later than the day this application is submitted to the Planning and Zoning Commission. Attorney Eric Bernheim stated that Connecticut state statutes require that if an application involves inland wetlands, the applicant shall file an application to the Inland Wetlands and Watercourses Agency at the same time that the application is filed with the Planning and Zoning Commission, adding that the procedure that is currently being followed is wrong. There is no application pending before the Inland Wetlands and Watercourses Agency, which is contrary Madison's regulations and state law, according to Mr. Bernheim. It is a great piece of property, Mr. Bernheim stated. Once they have their approvals for the building lots, your hands are tied, and if the easement is achieved, there is going to be a driveway in wetlands, according to Mr. Bernheim, adding that he hopes a full application for submission is required. Mr. Anderson stated that an attendee has a question, and he asked if it could be heard; Chairman Freidenburg granted the request. Shorelands Association Attorney John Bennet, referring to Lot 5, stated that there are no plans to give permission to use this road, and access to Lot 5 will definitely involve wetlands. In reference to Section 8-26 sub (e), Mr. Bennet stated that it requires an application, and there is no application; therefore, there is no process for a referral, when there is no application. Chairman Freidenburg stated that this is not an application; it is a referral. She then asked whether the commissioners want to continue this to the next month. Vice Chairman Budrow sought clarification on Section 7.2 of Madison's Planning and Zoning Regulations. Mr. Anderson stated that he did refer this to Attorney Gelderman, and he did not feel, at the time, that it required an application, but, now, Mr. Anderson stated that he thinks it is a good idea to revisit that.

Vice Chairman Budrow made the motion that the Inland Wetlands and Watercourses Agency continue discussion of 20-16 to be continued to the next regular meeting of the commission; it was seconded by Commissioner David Newton and unanimously approved.

Vote to continue 20-16 passed, 7-0-0.

IN FAVOR: Chairman Freidenburg, Vice Chairman Budrow, Secretary Zdon, and Commissioners C. Thomas Paul, John Mathieu, Schumacher, and David Newton.

OPPOSED: None.

ABSTAINED: None.

Election of Officers

Commissioner Paul made the motion to continue with the current slate of officers; it was seconded by Secretary Zdon and unanimously approved.

Vote to continue with the current slate of officers passed, 7-0-0.

IN FAVOR: Chairman Freidenburg, Vice Chairman Budrow, Secretary Zdon, and Commissioners Paul, Mathieu, Schumacher, and Newton.

OPPOSED: None.

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ABSTAINED: None.

2021 Meeting Schedule Review and Approve

Commissioner Newton made the motion to approve the 2021 meeting schedule; it was seconded by Vice Chairman Budrow and unanimously approved.

Vote to approve the 2021 meeting schedule passed, 7-0-0.

IN FAVOR: Chairman Freidenburg, Vice Chairman Budrow, Secretary Zdon, and Commissioners Paul, Mathieu, Schumacher, and Newton.

OPPOSED: None.

ABSTAINED: None.

SECTION 13 APPROVALS:

20-30. 9 Alex Drive. Map 51, Lot 37. Owners/Applicants: Francis P. & Martina Mendillo. Regulated Activity Permit for installation of an in-ground pool and associated patio and landscape improvements within 100 feet of an inland wetland. Approved 11-12-2020.

Inland Wetlands Officer John De Laura stated that this probably won't start until February or the beginning of March. It is 65 feet from wetlands, and there is lawn. There is some vegetation that will be removed—some invasive species.

20-29. 35 Tuxis Road. Map 16, Lot 13. Owner: Curtis Baker; Applicant: Gulick & Co. Regulated Activity Permit to elevate the house and a portion of the garage to the FEMA elevation, digging a foundation and lowering the house and garage onto the foundation, within the 100 ft. wetland review area. Approved 11-12-2020.

Mr. De Laura stated that the existing house is L shaped, with a garage to the south; the garage is not going to get lifted, just the house to meet Federal Emergency Management Agency (FEMA) requirements. The garage is 7.5 feet from the delineated wetlands; there is no vegetation. There is no excavation except for the concrete. Nothing has started—just interior demolition with the filling up of a dumpster.

Approval of Minutes ~ August 3, 2020 No action was taken. **November 2, 2020** No action was taken; minutes approval was tabled.

Remarks: Inland Wetlands Chairman ~ No report.
Inland Wetlands Officer ~ No report.

Adjournment

Secretary Zdon made the motion to adjourn at 8:24 p.m.; it was seconded by Chairman Freidenburg and unanimously approved.

Vote to adjourn at 8:24 p.m., passed, 7-0-0

IN FAVOR: Chairman Freidenburg, Vice Chairman Budrow, Secretary Zdon, and
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Commissioners Paul, Newton, Schumacher, and Mathieu.

OPPOSED: None.

ABSTAINED: None.

Respectfully Submitted,
Marlene H. Kennedy
Clerk