

Subject to Approval

MADISON PLANNING AND ZONING COMMISSION MEETING MINUTES Jan. 20, 2022

The Regular Meeting of the Madison Planning and Zoning Commission was conducted Thursday, January 20, 2022, at 7 p.m., remotely, using Zoom Videoconferencing. The public was invited to participate remotely by joining the meeting through a Zoom webinar link password, telephone call-in number, and a webinar identification number. Log-in and call-in details were posted to the Town of Madison website (<https://www.madisonct.org/>), prior to the meeting.

MEMBERS PRESENT

Carol Snow, Elliott Hitchcock, Giselle McDowall, and Seonaid Hay.

MEMBERS ABSENT

John K. Mathers, Ron Bodinson, and Peter Roos.

ALTERNATES PRESENT

None.

OTHERS PRESENT

Town Planner Erin Mannix. The meeting was recorded via Zoom Videoconferencing software for You Tube viewing.

The Meeting of the Madison Planning and Zoning Commission was called to order at approximately 7:01 p.m. by Chairman Carol Snow who went over the ground rules for the night's meeting.

During the public hearing, the applicant will be invited to join as a panelist to present the application, explaining to the Commission and others present what is being requested. The applicant or staff will share all application materials on the screen as needed. Comments of town agencies will be read for each application if there are any. There will be clarifying questions from the Commissioners. Then there will be an opportunity for clarifying questions from attendees. Please raise your hand through the zoom platform and wait to be called on and unmuted. Next, those who wish to support the application may come forward and then, those who oppose the application may come forward. As this public hearing must be recorded, it is necessary for speakers to identify themselves each time they speak by stating their name and address. The applicant will then have an opportunity to address any questions or concerns raised by the public or Commissioners. Once the public hearing is closed, the applicant is free to leave or remain for the balance of the regular meeting, during which the Commission will try to reach a decision on each application. Each applicant will be notified in writing as to the decision of this Commission and has a right to appeal to Superior Court if desired. Decisions of this meeting are available the day after the meeting by calling the Land Use Department at 203-

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245-5632 after 9am. All actions taken tonight by the Commission will be by roll call. All Commissioners and staff will identify themselves for the record before speaking. Seated this evening are members: Giselle McDowall, Seonaid Hay, Elliot Hitchcock and Carol Snow; which makes four for a quorum.

Staff present this evening is Erin Mannix, Town Planner.

This meeting is live streamed on YouTube and will be made available on the Town website for viewing.

The Town Planner then read the legal notice.

Notice is hereby given that the Planning and Zoning Commission will hold a public hearing on Thursday, January 20, 2022 at 7:00 p.m. The meeting will be conducted remotely as a Zoom Online Webinar. Attendees may join the webinar through either the webinar link or call-in information below. Webinar ID: 915 8196 6735 Password: 452138. The following application(s) will be heard: 21-27+CSP: 168-178 Cottage Rd- Map 32, Lot 9, 10, 11, 12 & 14; C-District; Marine Ventures III, LLC & 168 Cottage Road, LLC; Special Exception Modification to condition #7 of original approval requiring dredging. Further details on how to participate in the webinar are posted on the Town of Madison website: www.madisonct.org. Copies of these applications are available for inspection in the Land Use Office. All written correspondence shall be submitted to Erin Mannix, Town Planner, at mannixe@madisonct.org. Dial 203-245-5631 for assistance. Dated at Madison, Connecticut this 3rd day of January 2022. Elliott Hitchcock, Secretary

PUBLIC HEARING:

21-27+CSP. 168-178 Cottage Rd. Map 32, Lot 9, 10, 11, 12 & 14. C-District. Owners: Marine Ventures III, LLC & 168 Cottage Road, LLC; Applicant: Thomas A. Stevens & Associates, Inc. Special Exception Permit Modification and Coastal Site Plan Review.

Chairman Snow asked do we have representatives here for the project?

Commissioner Hay made a motion to open the public hearing which was seconded by Commissioner McDowall.

Present for the applicant was Chuck Mandel, Stevens & Associates, Inc; John Matthews, Architect; John Casey, Land Use Attorney at Robinson & Cole; John Lust, Permitting Agent. Attorney Casey began the hearing by stating that this application is a follow up request as the project was approved in 2018 to allow a mixed used development. The reason that they are here tonight is for the removal of condition # 7 which states prior to the issuance of any building permits for Phase One, the owner shall apply for permits and approvals necessary to complete the dredging of at least 29 slips, if the required permits and approvals are granted, the approved dredging work will be completed before certificates of occupancies are granted for phase one. Mr. Casey further states this is a mixed-use development and key to its approval is that part of the marina remain a water dependent use. It's his understanding that the condition was put in place with the idea that perhaps there might be a cetacean problem in the river, or that the slips would become unusable for some reason - resulting in lost water dependent use. He states that

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this is not the case as the Marina was dredged almost 30 years ago, in the early 90s. Since 1996, the conditions there have been stable, and the owner has been able to rent the slips to boat owners and make good active use of that Marina. Therefore there is no need to require dredging. John Matthews then gave an overview of the project as Mr. Casey felt it was necessary since some members were new to commission and the application. He states this project started in 2016, in the sea district, which requires for a mixed use for every square foot of commercial space, therefore, you can do two square feet of residential space. As the project developed, the town made a ruling that for each boat slip, it was worth 150 square feet of commercial space. So therefore, for every boat they could do 500 square feet of residential space and that's why the 29 slips became such an issue. Presently, they have 30,000 feet of commercial space which includes the 29 slips and they also have about 58,000 square feet of residential. Right now, they have an excess of commercial space over what would be required for the 37 units. Under the 37 units, 32 are townhouses with garages underneath. Five of them are ADA accessible units that have first floor bedroom with a garage. So, it is a mixed-use development. Mr. Matthews also stated that they went through all boards and it was approved, and he believes this would be a great addition to the Town. Mr. Matthews asked if the site plan can be placed on the screen, he states that the site was developed with three different parcels, it's a 11-acre site and each parcel has its own septic systems. He then reviewed each parcel. An aerial photo of the site was shown from the north side of the post road. There you see a river to the left, the townhouses, residential building, and the commercial building. Between the big building and the water would be the parking area for parking boats. The aerial photo also showed the slips going out into the river itself. A drone picture was also shown from the other side of the river looking into the existing main building. Mr. Matthews stated that the Marina was originally approved for 61 slips. And at some point, they were 61 slips there. The 29 slips being used are the ones shown plus some around the Northside. Mr. Lust continued the presentation by stating he would like to make two points regarding dredging. He states this is a very shallow portion of the river, and it doesn't generate a lot of money. He believes the marina has existed as a small boat Marina and answers the need of a very specific market. He states you will get small center console boats and row boats where the water depth in the existing slips is appropriate for that. And being that it seems to have developed a stabilization, it's great for the marina. Mr. Casey then asked Mrs. Mannix if the site plan with the Hydrographic survey that shows the water depth could be shown. He further asked Mr. Lust to explain what he means when he says it's not sustainable as there are some requirements to keeping boat slips at an unnatural depth. He asks would you have to dredge basically every two to three years, because of the silting in that amount of time. Mr. Lust states that larger Marinas have the shortest cycle time and he has seen for regular dredge projects, seven years. And generally, it's closer to 10 or 15 years between dredges. To have to dredge a marina every three to four or five years to maintain a depth, for a market that they achieved by creating that depth it wouldn't be sustainable. He further states, it's a 29 slip Marina and they couldn't function as a business. In reference to the plan, Mr. Casey asked Mr. Lust to explain to the commission, and to the public the numbers expressed in the negative values and what they represent. Mr. Lust stated the numbers represent the water depth and to read them, you have to realize that its actually an elevation and from that elevation you can determine water depth. The elevation of a mean low water is minus 2.8, so if you look at the depth numbers and subtract minus 2.8; that will be your water depth and all but between four and seven of those slips have well over two feet of water, and two feet is what he considers minimum for a typical Long Island

Sound center console. And if that's been stable since 1996, there's no problem proceeding. He also believes that the marina satisfies the needs locally. Mr. Lust states that this Marina does not have to be dredged to exist. And the second point to when making a condition about dredging, is the dredging process. For the last two or three years the process has been a nightmare for all the marinas in the state dredging, a permit ranges from 28 to 52 months and that's if New York will allow disposal in the Long Island Sound. So, to make it a condition, you would be putting the owners of this Marina in a position that they may not be able to meet. Mr. Casey adds to say that this condition is unnecessary because the marina in its current state and the water depths are stable, and it's burdensome on the property owner. So, for those reasons, they would ask the commission to modify to actually remove that condition from the approval, as they feel this really has no impact on the overall development. Mr. Mandel stated that he watched the P&Z meeting of July 19th and noticed that three of the commissioners were at that hearing. He stated that during that meeting, a couple of items came up, one was the condition of approval. And that the permitting for the dredging may have been worded improperly. it perhaps should have said, prove that they're 29 viable slips as opposed to getting the proper approvals. Another issue that came up was a letter from DEEP, which he believes might come up in the discussion for the night. Mr. Mandel states that he knows there's concerns about DEEP and from the original application they had about a 10-page letter of different conditions that they had to satisfy. The owner of the project had quite a bit of expense to satisfy all the conditions for DEEP. On the night of the meeting they finally received a two-page letter, instead of a 10-page letter from DEEP which satisfied most of those conditions and he does not believe that DEEP can weigh in on this matter as it has already been approved and have proven that there are 29 viable slip. From a previous email from Mr. Lust, Mr. Mandel knows that there are over 40 viable slips So, to make that a condition of approval to get permitting from the DEEP, which they don't actually need permitting at this point, he does not understand the logic. He understands that the commission is new and wants to do the right thing but, in this instance, this will delay the project. Mr. Casey referred to Mr. Lust's email dated October 29 2021, in summary its states the Marina Landing Facility have found that they have a 50-slip facility with seven slips being too shallow to utilize until dredge. This leaves 43 usable slips, so that's in the record in writing. Mr. Casey further states that the issue was making sure they had 29 which means they are well past the 29 required to support this facility. Mr. Casey asked if anyone on the commission had any questions. Secretary Hitchcock asked of the 29 exact existing slips, how many were actually rented last year? Mr. Mandel stated he is not sure but when he was there in the summer, almost every slip was filled. Chairman Snow stated that she has a few questions and noted that she was also not a part of the previous presentations. Chairman Snow asked about the use of the 29 slips, is it public used and not by the owners of the development? Mr. Mandel answered correct. Chairman Snow asked if there any place to launch or haul boat there? Mr. Mandel answered that there is no boat lift capacity. The Chairman asked is there boat storage? Mr. Mandel answered yes and that he is not sure if repairs are done, but it's mostly for storage. Chairman snow asked are boat owners allowed to work on their boat while there, such as bottom painting? Mr. Mandel answered he does not know and that will be zoning and he would like to stay focus on condition 7. Commissioner Hay asked would you limit what types of boats will be able to use the 29 slips, would that be condition of the rental. She states the obvious concern would be that a boat could get stuck or there could be some potential environmental impact from boats dragging through the silt. So is there a way to limit or to restrict what types of boats are allowed to use the docks.

Mr. Lust responded by stating that every marina has its limit, every marina has an area of shallow draft, and the managers of the marina are very careful in slip usage. They all have their slips on a wall, and each one will have a number on it as to what's the maximum length or draft boat that could fit in there. Commissioner Hay asks if that's part of the plan for this project? Mr. Lust states he is not sure as he has not seen a manager's operation plan. Mr. Casey adds by stating the river itself presents certain limitations. Mr. Mandel also clarified that the last dredging permit was in 1992. Mr. Matthews then states that the owner called affirming that the north end of the outer slips, are limited to boats 20 feet in length, because longer boats there would stick out into the channel. Therefore, there is some limitations and then as you go south you have bigger boats that are some 32-foot boats down on the lower end of the slips on the outside on the East Side. Chairman Snow asked Mrs. Mannix if there are communications from DEEP. Mrs. Mannix responded yes and stated there are two points she would like to clarify. The first is from the original action date of July, 19 2018, but it's her understanding that it was the applicant who suggested this condition in the first place for this application and asked if that was correct according to the minutes; stating that prior to the issuance of any building permit the owner would apply for permits to dredge. She states that was transcribed into an actual condition of approval. Mrs. Mannix further asks why did the applicant suggest this as a condition, and now a few years later, come back and decide against that suggestion? Mr. Casey states he is not sure and was made aware of that today by Mr. Mandel. He assumes everyone didn't appreciate the significance of what was being offered and he thinks it was a way to confirm the water dependent use, but not knowing the impact of that request. Mr. Mandel added that he did look at the transcript and it was one hour and 17 minutes into the meeting that Tom Cody said shall apply for 29 slips to the appropriate agencies. So, by saying *shall* apply, that means *shall* apply and that's how it got written in. He believes dredging did come up at some point whether those slips were viable and that the team, kind of ran with that idea. He further states sometimes they'll do that to get approvals, and it was naive to say, *shall* apply and it was an error and it should have said, maybe prove that you have 29 slips. Mrs. Mannix further states that her thoughts on that, was that the state did have concerns as to the maintenance of a water dependent use on the property along with several other environmental concerns. She states, as you are aware the Madison Planning and Zoning Commission does refer to their coastal site plans to DEEP for comments and as they did have extensive comments the first time around on this approval process, this application for modification was referred to DEEP. And we did receive notice yesterday from our analyst indicating that she had received the modification, as well as the survey that was submitted and indicated their office has preliminary review the application and they're anticipating providing comments with significant concerns. Given the current timing, they would like to request that the commission keeps the hearing open to allow for their comments to be submitted. Additionally, they asked that we please note that their office has previously provided extensive comments associated to this proposal. Mrs. Mannix believes that this is something that the Commission should consider as she understands that the applicant is requesting that the commission take action at this time. She states it may be beneficial to the commission to have this additional information submitted by the state and perhaps as John Casey had alluded to maybe DEEP is not interested in having dredging occur at this time and that may actually help their claim. Therefore, her suggestion and as staff, the commission does have 35 days to keep the hearing open. So, if there are no other comments from the commission or the

applicant, she recommends allowing the public if they do have comments at this time or questions to be asked to allow them to be heard and then the commission can decide whether or not they would like to continue the hearing. Secretary Hitchcock asked Mrs. Mannix if the minutes from that meeting should become part of an exhibit for this particular hearing seeing that there were a few members that were not actually on the commission at that time or present being that there were pretty extensive deliberations on this project. Mrs. Mannix states that she is happy to share those minutes as the hearing continued to over three evenings, it was May 17 2018, June 21 2018, and July 19 2018. She further states, if there is a desire to close the public hearing and continue this hearing she will get those minutes read into the record of this evening so the commissioners can hear the initial dialogue. Secretary Hitchcock states he was thinking more along the lines if they were to continue the hearing and Mr. Mannix responded yes, she could get those. Chairman Snow then asked if anyone from the public had any questions or comments about the application. Brad Murphy from the public states that he's a boat owner / Madison business owner and he previously had a boat at this marina. Mr Murphy says he is speaking on behalf of himself as a Madison business owner, and from what he has heard about this plan, he thinks it's positive for the community.

Commissioner Hay made a motion to continue this public hearing to Feb 3, 2022; seconded by Secretary Hitchcock

IN FAVOR: Chairman Snow, Secretary Hitchcock, and Commissioners McDowall and Hay.

OPPOSED: None.

ABSTAINED: None

REGULAR MEEETING:

21-28. Summer Hill Road. Map110, Lot 30, RU-1. Owner: Samuel C. Lovejoy III Limited Partnership; Applicant: Arben Meco. Application to build a 3-lot subdivision. **(Review & Possible action)**

Chuck Mandel was present to represent the developer Arben Meco. He states comments were received from the town engineer at about 4:57pm today. So, they wanted to continue the hearing until the next meeting so that they can address his comments. He states this is a 3-lot subdivision right on the Hammonasset river- and they are asking for a waiver for an upland open space. They had also contacted the Land Trust, who also wrote a couple letters stating that the land trust was very interested in obtaining that open area (hatched area on the plan). A plan was submitted that shows some drainage easements that would be dedicated to the town. A letter from the health department was received, soil testing was done, and they also received B100a letter from the health department, stating that the lots can support individual septic systems and wells. The application also has wetlands approval as they are not proposing any activity within the hundred-foot review zone. The homes proposed will be single family residences. Mr. Mandel notes that there is a very steep slope; so, sometimes those aren't counted for open space area, or for developable area – so that's they are asking for the waiver for the percentage of land from the open space. Mrs. Mannix states the commission has 65 days from receipt for an approval. It is an administrative approval by the Commission. She confirmed that wetlands referral has been made (that report needs to be in the record), as well as confirmation from the Madison land

conservation trust that they would be interested in the dedication of open space. She states as Chuck indicated, there are some topographic challenges on this site, some being steep slopes which are separated out as part of determining buildable lot area and the subdivision regulations. There is a request being made by the applicant for waiver of 3.11 of the subdivision regulations with respect to open space dedication, the regulation requires that no more than 50% of the dedicated open space area be comprised of inland wetland soils. She further states that the commission should weigh the benefits of providing space to the land trust to allow for public access to the river, as well as conservation along the Hammonasset River that is contiguous with other land trust space...the commission could also consider that perhaps there is too much density, eliminating any of the potential upland open space area and the reduction of one lot could eliminate the need for that waiver. Mrs. Mannix states there were also two culverts under Summer Hill Road, which were identified by our town engineer; Additionally, there is a 24inch culvert on the side of the property that has not been identified on this record subdivision which was the additional information that the town engineer was seeking and wants the surveyor to identify that. There's a request to have maintenance easement provided in favor of the town on the properties of this location of this culvert should any work need to be done by the town for repairs. And lastly, there was a concern on this particular lot with respect to sight line- so there was a request for the engineer to verify sightlines as she believes there was a little crest in the road that was questionable. So, some additional information is needed. Mrs. Mannis states that Chuck is correct that this kind of came in at the 11th hour, although the Commission does have some time to kick this down the road for another couple of weeks and the applicant is agreeable to doing that. Chuck Mandel then states in regards to the open space waiver that is being asked, they do have the correct area there, it's just the soil types. So, they are giving the land that's required and asks for a waiver on the soil type. He will also get a sightline plan in there, and will prepare to show easements and will look at the comments for the next meeting.

Commissioner McDowall made a motion to table this meeting discussion to the next meeting. Seconded by Secretary Hitchcock.

IN FAVOR: Chairman Snow, Secretary Hitchcock, and Commissioners McDowall and Hay.

OPPOSED: None.

ABSTAINED: None

21-30. 109 Hartford Avenue. Map 12, Lot 79, R-4. Owner: Amy Cohen; Applicant: Docko, Inc. Application for Coastal Site Plan Review to restore existing deteriorated shoreline stabilizing retaining wall. **(Review and Possible action)**

Mrs. Mannix states that there is an update for this application with a request to table discussion as well. She states this is for a shoreline flooding erosion control structure sea wall reconstruction. The mandatory statute do require a mandatory referral to DEEP for comments, they did receive comments back from their analyst recommending denial of the application for a few different reasons, one of which is the replacement of vegetated seawall with an armored design, and there were some concerns so the applicants engineer has reached out to engineers at DEEP requesting a meeting to go over their concerns and requests that we table discussion, hopefully for February 3rd as well although the Commission does have until February 17 to take action on this without an extension.

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Commissioner Hay made the motion to table application 21-34: 14 Railroad Ave to Feb. 3, 2022; Seconded by Secretary Hitchcock.

IN FAVOR: Chairman Snow, Secretary Hitchcock, and Commissioners McDowall and Hay.

OPPOSED: None.

ABSTAINED: None

21-34: 14 Railroad Ave- Map 49, Lot 54; D-District; 14 Railroad Avenue, LLC; Site Plan Review & Special Exception per Sec.6.2.2.2 to construct 16-unit multifamily development and associated site improvements **(Public Hearing tabled to 2/3/22)**

Public Hearing tabled to 2/3/22.

APPROVAL OF MINUTES: January 6, 2022

Regular Meeting ~ January 6, 2022

Commissioner Hay made the motion to approve the Jan. 6, 2022 minutes as submitted; it was seconded by Commissioner McDowall.

Vote to approve the Jan. 6, 2022 minutes as submitted passed, 4-0-0

IN FAVOR: Chairman Snow, Secretary Hitchcock, and Commissioners McDowall and Hay.

OPPOSED: None.

ABSTAINED: None

REMARKS: **Commission Chair** -Chairman Snow stated since the last meeting she took an online Land Use training that's offered by the Center for Land Use Education and Research at the University of Connecticut and has also joined the planning professional's listserv. She also reached out to Mrs. Mannix about updating the Planning and Zoning Commission website providing some more information about our mission and the role of the commission.

Town Planner – None

ADJOURNMENT

Secretary Hitchcock made the motion to adjourn at 8:24p.m.; it was seconded by Commissioner McDowall

Vote to adjourn at 8:24 p.m. passed 4-0-0.

IN FAVOR: Chairman Snow, Secretary Hitchcock, and Commissioners McDowall and Hay.

OPPOSED: None.

ABSTAINED: None

Respectfully submitted,
Racquel Stubbs