

Subject to Approval

MADISON PLANNING AND ZONING COMMISSION MEETING MINUTES Feb. 3, 2022

The Regular Meeting of the Madison Planning and Zoning Commission was conducted Thursday, February, 3, 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, John K. Mathers, Ron Bodinson, and Peter Roos and Seonaid Hay.

MEMBERS ABSENT

None.

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 and also stated that there are two public hearings scheduled for the night. *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 203-245-5632 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, John Mathers, Peter Roos, Seonaid Hay, Elliot Hitchcock, Ron Bodinson and Carol Snow.

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, February 3, 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: 21-34: 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. 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 10th day of January 2022. Carol Snow, Chair.

Vice Chair Roos made a motion to open the public hearing, seconded by Commissioner Mathers.

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. **(Continued from January 20, 2022)**

Commissioner Bodinson stated he was not at the prior meeting but he did read the minutes and view the video. He continued to say that as an additional issue in 2017 early 2018 when this was first proposed, he was concerned about the cottage road intersection as they are offset intersections. He wanted to know how far the intersections had to be apart as the proposed plan did not show the distances, however, it was resolved by the engineer. Vice Chair Roos also stated that he read the previous minutes and watched the video of the last meeting as he was also not present. Chairman Snow confirmed that all previous minutes are made available for viewing, and further stated that this application was approved; and the commission is moving forward on the issue regarding dredging. John Casey, the attorney for the applicant began the hearing by stating that this is a continuation of the hearing from two weeks ago. The meeting was continued at the request of the Department of Energy and Environmental protection to allow them to submit a comment letter regarding this application. Since the hearing was open last week there was a letter and a map submitted by Mike Gilman from Indian River Shellfish, the company is co-located by this parcel, it supports the application and indicates dredging is unnecessary and

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also raises concerns about potential damage to shellfish beds in the river. According to Mr. Casey, the comment letter from DEEP – does not object to removing the requirement to dredge the slips; DEEP does not typically want to encourage dredging and if DEEP does not like something it would be clear. There was a suggestion in the letter that the condition could be revised or a new condition added to demonstrate that the viability of the water dependent use remains in effect. He states, a water dependent use is defined in the Connecticut Coastal Management act as uses and facilities which require direct access to, or location in, marine or tidal waters. He further states that this project was approved as Madam Chair noted, as a mix use development- a 37 two-bedroom residential townhomes, retail offices and a marina. Therefore, a water dependent use is baked right into the approval. The marina shown on the plans has been an operating marina with permits from DEEP and its predecessor since the 1950s, there is evidence in the records that it is an active / operating marina and it serves its market well. Also, condition four of the original approval also requires the granting of an easement to the shellfish company the conveyance of 326,232 square feet of marshland to the town to preserve that, as well as an easement for public access to the shore which the original approval states are “intended for the purpose of making statutory management goals by maintaining water dependent uses at the property and enhancing public access to coastal resources”. He says this to say that the original approval recognizes and demonstrates that the marina is functional or remain functional and that the commission have actively in their approval preserved the sites water dependency. Therefore, no further amendments to the approval is necessary and the issue the applicant is present for is to remove the dredging requirement which is unnecessary and burdensome as discussed.

Chuck Mandel agent for the owner, stated hydrographic soundings were completed on the existing docks, and John Lust permitting agent proved that there are 29 viable slips. The original condition 7 was an error by stating *shall* go to DEEP as they have proven there is no need to go to DEEP. The slips are available and do exist and there is an excess of 40 slips. John Lust stated there are at least 43 viable slips at the marina, and if it was not viable it would not last this long. The condition to dredge should be removed.

Chairman Snow asked if there were any additional questions from the Commissioners.

Commissioner Bodinson asked Mr. Mandel who is the owner? Mr. Mandel responded Marine Ventures, LLC. Commissioner Bodinson asked if this was a different owner from 2018, Mr. Mandel said no, it is the same owner. Commissioner Bodinson asked, if it takes a couple of years to get a permit for dredging and it has been over 3 years since the application was submitted, why was this not done in the last several years? Mr. Mandel stated that there was no interest at the time and they did not realize the extent of how much this would take. Commissioner Bodinson asked if Mr. Mandel agreed that the condition of the river back in 2017 or 2018 when the application was made is exactly the same as it is now. Mr. Mandel stated yes, as he believes the last dredging permit was in 1994 or 1995 and in that area the outer slips are very well channelized being so close to the bridge, so there’s a natural scouring that happens there. Commissioner Bodinson further states that there is talk that DEEP is now for this project and asked if Mr. Mandel agreed that DEEP was very much against this project back in 2018; and one of the reasons repeated in their letter a few days ago is the deterioration and disrepair of the bulkhead. He continued to say that the commission was told that the bulkhead would not be repaired because the cost would make this project economically unsustainable and he assumes that’s the reason that the bulkhead is not being repaired even though DEEP keeps mentioning they're waiting for a permit to do so.

Mr. Casey states that he was not a part of the project when the approval was originally granted. However, he noticed DEEP did mention that, he states when the applicant or the owner is ready to discuss the permitting, their services will be offered. When the project was approved, there was consideration that this might be sold to a different entity to actually do the improvements. So, while that was happening, there wasn't any activity to do work on the bulkhead. Mr. Casey thinks this is something that will get done as part of the overall improvements to the property. Commissioner Bodinson further asked if Mr. Casey disputes the minutes of 2018 by the owner stating that it was economically unfeasible to repair the Bulkheads. Mr. Casey said, he has no basis to doubt the minutes, and he hasn't reviewed them. But from discussions in the last week, it would be apart of the overall improvements in the future. Commissioner Bodinson asked if they will be willing to make that a condition - that the bulkhead would be repaired as part of removing this condition. Mr. Casey states he thinks we should learn our lesson from the dredging from us being here now, because there's two things, they would need DEEP permit and it's not best practice to condition one agency's approval on the approval by another agency over which it has no control whatsoever. And the applicant would be placed in a tough position because the two agencies can work off each other, and the project may not move forward. Mr. Mandel then interrupted to say he understands what Commissioner Bodinson is saying and there was some discussion with the owner specifically about this as they felt this would come up. Mr. Mandel states that the owner was willing to say that they will apply for permits for the bulkhead, but they didn't want it to hold up any COs, and in some regards, could make that a condition that they will pursue permitting for the bulkheads.

Commissioner Bodinson states so much was made in 2018 about the uneconomic sustainability of the project if you had to do the bulkheads. And now, here in the last meeting it's the exact same argument that is being made about having to dredge. He states, it's in the minutes I've written it down and John Lust testified to it that this project would now be economically unsustainable if you had to dredge, and the reason for that is the timing of the permits apparently changed circumstances in the last few years about where you can put disposal. And it just seemed like a repeat of the situation from four years ago. He further states, we're seeming to be moving farther away from the water dependent use, which also raised the question, is the public going to get any of these slips, because as it was mentioned in 2018, the slips are going to be first served to the condo, or the condo owners will get their slips and once they have their slips there's no public slips. Mr. Mandel responded by stating per the last minutes, he did state there would be 43 viable slips and 32 units. He does not believe that every condo owner has a boat. The water dependent use is not going to change, it will still be a marina. Furthermore, in regards to dredging it was presented by their team, that thou shall dredge (he doesn't know how that ever got there) but it was proven that there is no need for dredging, so they're really not substituting one for the other. The dredging is not necessary as they have proven with their hydrographic study and John Lust's testimony. Mr. Mandel continues to say in regards to the bulkhead they will pursue application to get that repair, because with this condo project he does not think new buyers or any buyer would want the bulkhead in that disrepair, as its not attractive. Therefore, the bulkhead would get repaired at some point. He states, the dredging cost may have been expensive or made it not viable at the time and now with the new regulations its not; but the bulkhead repair is something that would fit into the budget of the new condos. So, to tie a condition of approval that the bulkhead will be repaired, they would certainly pursue getting the permit for that, but they don't want to hold up a CO, or a unit number 14.

Commissioner Bodinson stated that the whole emphasis of the Planning Commission -this was a four to three vote; a very close decision- is that they tied the conditions to the CO and they made it very clear. He states if you look at the motion by Joe Miller – he moves to approve it and he mentions conditions, the only condition he actually specifically mentions is condition number seven in the minutes. And that was the focus of the P&Z; three of the members weren't satisfied about this being a water dependent use based upon the refusal to consider repairing the bulkhead. And that's why it was 4-3, he states the other four commissioners felt number seven was essential and that's how it came down as the only condition mentioned. He further states, you're coming to us and saying, don't look at any other part of this whole development, the whole application, all the pieces that were controversial in that word, just focus on this one piece. But this one piece affects the entire decision of the Planning and Zoning Commission. And you're asking us to just change that and ignore its effect on how they voted entirely.

Mr. Matthews then asked if he can make a couple of comments because he has been working on his project for six years. He states, initially, it was not required to have any slips at all. The whole project was based upon not using the slips for anything. And at some point, the commission decided that for each viable slip they would give us 250 square feet of commercial space, which affected our density. So, they agreed to do 250 square feet, and each one of those gave them 500 square feet of residential property. Initially they didn't need to switch, but the slips were there, so it was decided that they will use that and reduce the amount of commercial space that they were going to build on the existing building. And when the project was approved, there was no issue or discussion, or inclusion of the bulkhead in that approval. They have demonstrated that the condition was really onerous because those slips did not need to be dredge. Chairman Snow asked if there were any other comments. John Casey then states for the record, he feels strongly that removing this condition, doesn't change the nature of this application or this development in any way. But the purpose of that condition was to make sure there were 29 viable slips at the Marina. And they've shown that, he has a feeling that everyone who was present at the last minute weren't cognizant of just how difficult it is to dredge and the environmental impacts of dredging and the permitting environment that goes with it. And as stated permitting has gotten worse since 2018; he states since the last meeting, the Department of Commerce which oversees Coastal Zone Management upheld an objection, by the State of New York to another Connecticut marinas dredging project, which basically means, that New York can object to every dredge disposal now proposed by a Connecticut Marina, and one by one, have them prohibited from disposing of any dredge in the three disposal sites that the Environmental Protection Agency has created specifically. So, this is a big issue, bigger than this commission, and this Marina has the benefit as shown on the record that the water depths around slips have been stable, since the mid-90s. He states, there is sufficient evidence on the record and in your prior approval, that this will have a water dependent use associated with the development. And that their requests to simply remove the dredging requirement is completely reasonable, and would ask that the commission grant the application on those grounds, and if there are concerns about the bulkhead, then at most, the commission should ask, that the condition says they will apply for approval to repair or replace the bulkhead. Because, tying it to an absolute approval, which is not guaranteed is too big a burden on the applicant. He further states, Mr. Mandel made the point that this is going to have to be done as part of the overall

improvements and its more appropriate for this commission to stay within its jurisdiction, since they can't give the applicant the permit to approve that bulkhead.

Commissioner Mathers states in reviewing the minutes of the previous meetings on this topic he believes John Matthews said that the integrity of the bulkhead did not impact the viability of the 29 slips, and if the bulkhead was left to be deteriorated that it would not impact the viability of the slips and is that still his position? Mr. Matthews believes that is the case as down the way there's no bulkhead at all, there is just a slope that goes into the water. Commissioner Mathers asked if the condition of the bulkhead is an aesthetic concern or is there a structural concern? John Lust said he could speak to that as he does not think a deteriorated bulkhead would affect the function of that Marina, as its more an aesthetic problem and the marina would still function like its function since 1955. He thinks the applicant wants to improve it and make it more viable. Commissioner Mathers asked if there are any public safety concerns with the condition of the bulkhead or the deterioration? Mr. Lust states, the deterioration he has seen is not a structural failure, the bulkhead does not have to do a lot of work as it is not a very high bulkhead and it's not holding back the land away from the marina or the river. If the bulkhead failed, the river would get wider. He does not see a structural failure or public safety issue.

Being that there were no more questions from the Commissioners, Chairman Snow moved on to the attendees. The owner, Gary stated the previous owner a while back had the property, and the bulkhead was backed up with blocks all the way down. So, they put a wood bulkhead in. In terms of safety there's absolutely no issue whatsoever. Also, you can drive right up to the bulkhead and it doesn't do anything, it's not a problem at all.

Another public attendee, Mike Gilman co-owner of Indian River Shellfish stated that he is in the river every single day and can attest to a lot of the things that had been discussed tonight. The depth of the river, the water flow in that particular area and the depth on the outside is not in question at all. The water flow there is enough to remove a lot of silt and keep the slips as pretty deep. He is concerned as this has not been dredged since 1995 and that potentially there are some sediments that are going to be brought into the water column. He states that he gets his livelihood out of this river, and he has an oyster bed that is within 800 feet of this dredge site and another oyster bed that is probably half a mile down the river. He grows about 2 million to 3 million oysters. He states that most of these dredge projects require dredging to occur on outgoing tides and the sediment that's going to come out of the ground is going to fall south on the shellfish beds. Both the towns of Clinton and Madison have spent the last 10 years putting quite a bit of money to enhance and make sure that the oysters are spawning, and to allow it to be not only a commercial entity but to grow the native population of oysters which were decimated in the 90s. So, he has a lot of concerns with anything that's going to disturb the bottom. He also states that he owns the property next door and any sediments that are going to be released could potentially be washed into his slips which is also a concern. The environmental impacts of dredging on that site could potentially be pretty large. He is very much in support of there not being any dredging that occurs on that site at all.

Next, Steve Atkins stated that he is speaking as the Madison harbormaster, a job he has had for almost 10 years. He supports the shellfish position of no dredging as it will do them great harm. He also states that the Hammonasset river is a tremendously protected spot and part of this application or part of this process is to give the town 7.48 acres; He states this is a great opportunity for the town to really expand to the beautiful watershed and such an opportunity for the town to develop access to the river and hopes this application is approved.

John Matthews asked Mrs. Mannix to put up the aerial photo on the screen, he states where the kiosk is at the north end of the Bulkhead is where the town property starts and the town waterfront has no boats. To the south all the way down to the Bulkhead where their property starts and the shellfish guy starts; there's no bulkhead, it's just a bank that goes into the river. He further states, as according to Gary, the owner, behind the bulkhead there's actually concrete boxes and beyond their parking lot, the big green area after the water turns to the right is the 7 1/2 acres that's being given to the town. Commissioner Bodinson then asked if Cottage Road is a public road that comes in to the Town where the dock is (by the kiosk)? Mr. Matthews answered correct. Commissioner Bodinson further stated / asked, that as part of their project, the applicant did not give the town, any road, or any access to the river, if the town owned that already? John Matthews states that is correct. Commissioner Bodinson adds so you didn't give the town anything to create a public access? Mr. Matthews said we gave them parking spaces and access to the waterfront and access to the deck for public access which is part of the water dependent use. Mr. Casey states that the approval from 2018 requires that the applicant convey easement for public access to the town of Madison through proposed deck, sidewalk and stairs leading to the deck and for parking spaces as shown on sheet. So, there is public access that's going to be deeded on this property, which it enhances the adjoining town property but it definitely enhances the public access.

Mr. Mandel then stated that Commissioner Bodinson mentioned mix and match and that the applicant wanted to get out of one thing and into the other. He states we are here to address condition number seven, which was the dredging, he states that dredging is not needed which was the condition. They would substitute that with going ahead and applying for a permit for the bulkhead, but they didn't want that tied to any COs, or starting development. If they can do a phase four, they will certainly add a phase four to that and will certainly go ahead and go for applying for permitting for the bulkhead. Commissioner Bodinson asked Mr. Mandel if he would be agreeable to do what the P&Z draft ordinance says and even more so what DEEP has suggested; which requires the applicant to demonstrate to the commission satisfaction that the marina is functional, in order to conserve the site water dependency before any development of the current property. Commissioner Bodinson states that his suspicion is everything seems to be headed away from assuring this water dependent use and taking credit for the town's kayak entrance is not a water dependent use that has been created. He states water dependent use is the number one issue for any development on the water in Connecticut and to say it's an afterthought, is ludicrous. Commissioner Bodinson states he is not convinced that the slips are going to be there, or they're going to be used for public purposes, and he needs some assurance. Mr. Mandel states to say that the water dependent use is pushed to the background is at all not possible because the number one issue was the water dependency use. So traditionally right now, the water dependent use for that Marina was really for dockage and storage of boats and there really wasn't much there. He states there are 43 slips there, and 34 units that are going to be there and he can't imagine everyone will own a boat there. It will be a viable business and they will look to rent those slip; he states the water dependent use will not change and easements will be in place and maybe a percentage will have to be dedicated to the public after a certain time in the season, and that could certainly be worked out. Mr. Casey further states this has been approved as a marina and they have shown to the commission satisfaction as DEEP has stated in their last letter. He states it should not matter to this commission who gets to use the slip. Mr. Mandel states that some of the 1100ft of frontage from Salt Meadow Park that the town would be

acquiring includes another launch area for kayaks and for canoes, so in regards to water dependent use they are helping the town expand on that.

Mrs. Mannix mentioned on the record she did provide a memo to the commission and wanted to share some of that with the applicant so they are aware of the communications. Mrs. Mannix states the memo is dated February 3, 2022- *The Commission has received two new pieces of information since the last meeting. The first is a letter from CTDEEP which has been added to the record. It indicates that the State does not necessarily object to the removal of condition #7, provided the intent of the original condition to demonstrate the viability of the water dependent use remains a priority. The second document received is a letter from Indian River Shellfish Co in favor of the removal of the condition. This letter is also included in the record for the application. The Commission, at CTDEEP's suggestion, may wish to have the applicant state on the record the reasons this marina is viable in its current condition. At the last meeting, the applicant detailed the depths of the slips and the types of boats that could be accommodated. Additionally, the applicant should speak to the condition of the docks themselves and whether repairs are needed. Lastly, documentation of slip usage over the last year or two could help demonstrate viability.*

Chairman Snow asked if there is anyone else who would like to speak in support or in opposition of this application.

Commissioner McDowall made a motion to close the public hearing, seconded by Vice Chair Roos.

A motion was made to go to deliberation about this application and then to continue the public hearing for 21-34: 14 Railroad Ave after the commission deliberated on the first application. Moved by Commissioner Bodinson, seconded by Commissioner McDowall.

DELIBERATION OF PUBLIC HEARING ITEMS

Commissioner Bodinson stated he had a question for Mrs. Mannix as a lot has been made of the fact that there are plenty of water dependent use protections here, and there is tie-in on the number of slips in relation to reducing the amount of commercial space, as that was part of the original application. He further asks what happens if a hurricane hits and all the slips are wiped out and the next day the applicant comes in with their application to begin construction of the condominiums and retail. What handle does the town now have being that there are no slips? Are they in a position to say no you can't build, because your entire development was arranged based upon the number of slips versus retail residential or are they out of luck? Commissioner Bodinson states he does not care about who has the slips, he cares that they exist, and also that is what DEEP is saying and before they let them start building, to make sure there is still a viable water dependent use. And if the bulkhead caves in and slips aren't maintained and a hurricane wipes them out, what power does the town have in relation to say no you can't go ahead with the rest of the development. Mrs. Mannix states if we had some type of environmental catastrophe like a significant storm that has damaged the property and the Marina prior to or during the construction activities it's likely that the applicant would be returning to the commission to address this particular condition of approval. And as attorney Casey indicated they are linked and they would need to come up with some type of mitigation whether it's to get permits for new slips and that's something the commission could address at that time. She states, we can't foresee what will happen with storm events or any act of nature and that's reason enough for the applicant to return to you. Commissioner Bodinson then states that he is convinced about not

dredging but he likes the idea of what DEEP and the Town Planner is proposing - to make sure there's a water dependent use that's viable before giving occupancy or construction permits. Commissioner Mathers stated that it was his understanding that protection is already built in, he asked Mrs. Mannix if this business application is dependent upon the slips they have? Mrs. Mannix stated correct. Commissioner Mathers asks if a storm did wipe out the slips the applicant will be obligated to restore the slips in order to maintain the integrity of the development agreement? Mrs. Mannix stated yes, the commission has the opportunity at this point, also to condition that the 29 slips be maintained in the marina as a priority to conserve the sites water dependent use and that responsibility is on the property owner as part of this special exception approval. Commissioner Hay states isn't the condition that there's 29 viable slips already built in, therefore she's not sure what more would be enforced or gain as she feels that what was already in the original condition that there were 29 viable slips. Mrs. Mannix states, that is condition seven...prior to the issuance of any building permits the applicant or the owner shall apply for permits and approvals necessary to complete the dredging of at least 29 slips, so there's an understanding of that number of slips. However, the applicant is seeking that they remove that condition as they feel they have demonstrated that they do have 29 viable slips based on the information they have provided to you as part of this application. Commissioner McDowall asks, would we need to reconfigure how we're writing condition seven like if they agreed to take out the dredging but still wanted them to maintain a number of slips, because the marina is approved based on water dependent usage. Chairman Snow, states that is a good point and the suggestion that we do include a condition about the water dependent use and maintaining the 29 slips is not unreasonable, even if it's redundant. Secretary Hitchcock stated he was actually one of the four that voted in favor of this project back in 2018 and with one of the conditions being the dredging, he does feel comfortable with the information that was provided to basically show that there are 29, or up to 40 viable slips on this property and as long as the commission put in something for maintaining the viability of the slips and maintaining the slips, he has no problem removing the condition of having to do the dredging, especially after hearing from the shellfish gentleman.

Commissioner Roos voted that the Madison Planning & Zoning Commission approve application #21-27 + CSP, 168-178 Cottage Rd, Special Exception modification request and coastal site plan review to remove condition #7 with the following conditions: 1- That all conditions of the original Special Exception approval of July 19, 2018 except #7 remain in effect; 2-That as a priority, the marina, including the 29 boat slips be maintained to remain functional in an effort to conserve the site's water dependent use. 3- that the applicant apply for a permit to repair or replace the bulkhead. This action is based upon a finding that the applicant has sufficiently demonstrated to the Commission's satisfaction that the marina is a viable water dependent use in its current condition. This application is approved based upon the finding that it is consistent with the coastal use and resource policies of the State of Connecticut. The effective date of this approval shall be February 18, 2022 and upon filing in the Town Clerk's office. Seconded by Commissioner Hay.

IN FAVOR: Chairman Snow, Vice Chair Roos, Secretary Hitchcock, and Commissioners McDowall, Hay, Mathers, and Bodinson.

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.

John Matthews, architect with office located at 817 Boston post road and also a Madison town resident stated he has been working on this parcel for a couple of years, with the client who owns Bradley and Wall. He states this site was formerly the Henry Cooney Septic system company, where he dealt with half the septic systems in town. A colored site plan was shown of Railroad Avenue, and Mr. Matthews further stated that as you come down on the site a new two-family house is being constructed. There's an existing two-family house there, but it's way too close to the east property line in order to get a proper driveway into the site. He states there is some parking, or some public space, outdoor activity areas and then there is three residential buildings, which consists of 13 townhouse units that have garages on the first floor. The Second floor has living room, dining room, kitchen and two bedrooms above. The unit that is sort of center of the site is an ADA unit that does not have a garage, it has a first-floor bedroom, living room, dining room, kitchen and then on the second level there's a bedroom and an open loft area. He states these units are very sort of urban, it's a tight site. All the setbacks are met. There's an 18-foot-wide driveway and the regulations require a 15-foot driveway. He further states, this would be built as individual townhouses, and they would be under the residential building code, so the state fire code does not apply. They have 42 parking spaces, including 13 garages. There's a big open area down at the bottom which can be a place for snowplow or for putting snow. The septic systems are down in the parking area at the southern part of the site. There's a storm water system and also site lights. He states there is a photo metrics plan and a landscape plan that tech landscaping completed. They met with ACA last month and they had some comments which were addressed and there will be meeting again this coming Tuesday, which hopefully they will write a favorable report back to the commission. He states this is probably the last site that's available for housing of this nature. Mr. Matthews further states that Mrs. Mannix suggested to continue this hearing to the 17th as there were some issues brought up. He states a memo was received today at two o'clock; and a number of the issues are already addressed but they need to sit with the staff and review, to be sure that the issues identified are addressed. John Cunningham then showed the landscape plan – it showed an outdoor area for the two-family house, behind the two-family house will be a community area that's going to have both benches and a picnic table. Each unit will have a 10 by 15 rear patio. He further states, on Mr. Matthew's architectural site plan, there is a secondary entrance or exit into Bradley and Wall parking lot and on Mike Ott's site plan, there is not. He thinks they would probably want to meet with the Fire Marshal department to find out if they did want the secondary entrance. Chairman Snow pointed out that there's an inconsistency on the plan, she states, you're not showing the trash receptacle on your plan you're showing grass. Mr. Cunningham replied he was under the impression that each of these units will have their own trash pickup, so there's no need for a dumpster. Mr. Matthews pointed out that each unit has a 8 foot by 15 foot patio and not a 10 by 15 that Mr. Cunningham mentioned.

After the preliminary presentation, Mrs. Mannix stated she has provided a staff review of the site development plans, both architectural site plan and the engineered site plan, mostly for

inconsistencies, and for any missing information. She stated that the document has not made it to the town website at this point. However, she is happy to read it into the record if the commission would like, otherwise it is submitted for the record. She further states that it does indicate 22 items that she's asking the applicant to address, or at least suggests to the commission that the applicant should address these. It was her recommendation also that the hearing, should be continued to the march 3rd meeting to allow the applicants some time to work these out. She states, John had mentioned he's hoping to have it continued to the February 17 meeting but that's a conversation for their team, if they're prepared to present their response to her memo and have their full presentation on the 17th and that's completely up to the commission. She recommended giving a month to allow for communication with the health department and utility companies. Chairman Snow asked Mrs. Mannix if her comments; the 22 points made, if that will get posted. Mrs. Mannix stated yes, it will tomorrow morning and that the physical paper copy is in the file which is the official record. Commissioner Mathers stated he received a copy, and thinks that they all did, so he does not see a need to read it into the record tonight. Chairman Snow agreed. Chairman Snow then gave the public who are attending the opportunity to raise any questions or concerns.

Tom Hansen from 120 Princess Drive commented that he is chairman of the water pollution control authority but he's not speaking as chairman, he states the Wall Street area, which he's seen grown in usage and density, over the last 10 years or so, is an area where septic systems operate very well from a hydraulic standpoint because the soil is so good. But the downside of that is the treatment level, and the renovation of the wastewater is not optimized because the water does move so quickly through the soil. He states there are private wells on amber lane (later corrected as Arbor Lane) and he was alerted to this quite a few years ago when clarity came in with those wells. He encourages the Planning and Zoning Commission to carefully consider what they would hear from Trent Joseph, Mike Ott and the other engineers associated with this project, as this project requires a little bit more attention to what's been going on in the broad concept of how many septic systems are going in around the site. Most of these properties have public water but amber trail does not, and possibly there are some other sites too.

Mrs. Mannix highlighted that this portion is for any questions you may have at this point and to save comments for the next meeting.

Martin Brogie from 28 Arbor Lane, states Mr. Hansen was referring to Arbor lane property. He further states there are four houses on Arbor lane, all of which have private water supply wells, three of the wells are shallow wells, which are particularly susceptible to septic system pollutants, so certainly discharging 3000 gallons of septic effluent into very sandy soil is a very big concern. In regard to questions, he didn't see any lighting details on the plans and lighting is a big concern for them in Arbor Lane, lighting can be done obviously in such a way that doesn't impact neighbors and still provide safety for the residents.

Larry DeBurra, 23 Arbor Lane states, the initial comment from John Matthews said that they were looking to get more high-density housing in the downtown area, so how will commission consider quantity, in terms of the wastewater. He knows that there are generic setback requirements, but to consider a single system in terms of the distance to a well in comparison to 16 units is a concern. In addition to wastewater, he states when you're talking about taking a property and turning it to 80 to 90% pavement and buildings, the general rainwater will head right to them and he's a little bit concerned about erosion considerations as well.

Sam DeBurra, 20 Arbor Lane, states his property butts one of those section houses and the

the power lines from the substation are going right through his property. And he would like to know how they're going to address those power lines so they're not going to be moved anywhere near any of the structures that are on his property.

Chairman Snow stated that Mrs. Mannix had recommended to continue the hearing to March 3rd so that the applicant could have plenty of time to address issues. Mrs. Mannix stated that the commission has 35 days to hold a public hearing opened without an extension from the applicant so yes, the commission would be within that time frame to continue the hearing until March 3rd.

Commissioner Mathers made a motion to continue the public hearing for application 21-34: 14 Railroad Ave to March 3rd.

Michael Lacurci for the applicant stated he would be looking for the next hearing for February 17th. Commissioner Bodinson stated that he is fine with March 3rd as there are so many deficiencies and so many outstanding issues, therefore he will second the motion that John was making. Commissioner Hay then stated if issues come up at that meeting which might require further continuation or if they want further continuation in the discussion then they will be beyond the 35 days and an extension may be needed. Mrs. Mannix stated, correct and the applicant would have to grant you an extension to hold the hearing open further. Mr. Bodinson agreed but stated if the reason it had to be held open is because the application is incomplete, then the commission can simply turn the application down. Mrs. Mannix stated typically applicants tend to work with the commission and try to get all the questions addressed so that the Commission can make a determination based on sufficient information. Commission has a right to continue this to the 17th and should the commission wish to allow the applicant a chance to reach out to the necessary parties to try to coordinate; and if their attorney feels they may be able to provide this information in time, the worst case would be to continue from the 17th to the third.

Commissioner Mathers made a motion to amend his motion to February 17th. Seconded by Secretary Hitchcock.

IN FAVOR: Chairman Snow, Vice Chair Roos, Secretary Hitchcock, and Commissioners McDowall, Hay, and Mathers.

OPPOSED: Commissioner Bodinson

ABSTAINED: None

REGULAR MEEETING:

Pending Applications:

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.

Chuck Mandel, agent for the applicant, stated Arben Meco is a builder and has done a few houses in Madison. It's a three-lot subdivision, RU-1 zone, they are proposing three conforming building lots. They have approval for potential septic areas from the health department, and these lots can support the septic. They also have a letter from the Madison Land Conservation Trust that they are very interested in obtaining the open space element of this. They are proposing parking spaces for public use and people could access the trail just below the property line which is on the Land Trust property and then it meanders back on to the subject property. This

application also has wetlands approval. They are asking for a waiver, not for area for open space, but for the upland aspect of the open space. Mr. Mandel states in regards to the area, they're offering about 27% more land than what's required, and there is access to the site, through the upland area, so naturally you're not walking through a swamp. Mr. Mandel then states Mrs. Mannix had a couple questions; one was from the town engineer about sightline along Summer Hill, he says they went out and did sightline plans for each driveway and those are part of the sheets and they did prove the site line. The posted speed limit is 25 miles per hour on that road. The other element was two existing culverts that currently have no easements for the town to service. So, they are doing a 25 by 25 drainage easement for cleaning if the Town needs to do maintenance.

Mrs. Mannix then states that there are some comments as these plans are in response to the town engineers' previous email. One thought that the town has are that these easements be identified as drainage easements. However, she believes that the town would like them to be labeled as drainage maintenance easements, so that the town does not only have the right to drain, but they have the right to access those culverts on the property should any maintenance or repairs need to be done. She further states that Mr. Mandel had indicated section 3.11 of the subdivision code requires that no more than 50% wetland type soils, as defined in the general statutes and inland wetlands section could be dedicated as part of the open space requirement. The Commission may grant a waiver of this section with a three-quarter vote of all members. There are two cases that the Commission should consider: One, is in the opinion of the commission that conditions exist, which affect the subject land and are not generally applicable to other land in the area, and or number two, conditions exist where the strict application of the subdivision regulations as either unnecessary or undesirable due to conditions which affect the subject land, and are generally not applicable to other land in the area. The Commission is required to state on the record the reasons for which the waiver is granted in each instance. Mrs. Mannix further states that Mr. Mandel indicated the Madison Land Conservation Trust has submitted a letter indicating a desire to accept this open space as proposed as it is contiguous to existing open space that they already have and the lot sizes and areas do comply with the zoning regulations. Lastly, Mrs. Mannix states that the following was not addressed in a staff memo but Mr. Mandel reminded her of this - when he discussed the installation of public parking spaces along summer Hill. She thinks it would be appropriate should the commission move forward that willingness be acknowledged. However, the actual location within the town right of way for sightline reasons or safety purposes, should be ultimately at the discretion of the town engineer with encroachment permits. So, it does not necessarily need to be a condition of approval that those parking spaces be installed.

Commissioner Bodinson states, there is no familiarity with the other land in the area to know whether this is just like the lot next door or not like the lot next door, he is all in favor of giving the land next to the river as it makes total sense. But if they had to find that the exception is based upon all the other lands, maybe Mr. Mandel can comment on that to provide factual basis. Mr. Mandel states that he has walked the property, and even though it shows as wetlands it's really not swamp. He states when the soil scientist was out there, it didn't look like wetlands to him and right now the entire Land Trust property along there is within the wetlands and yet there is a walking trail which you can walk. Mrs. Mannix asked Mr. Mandel if he can speak to any unique characteristics of this particular parcel as it may differ from any other parcels in that general area, which creates that unique situation that makes it stand out. Mr. Mandel stated

there's an existing trail, and it's about 1000 feet along the river and it's a very unique property in that regard. He states there is access for the public to get down there. Chairman Snow asked if Mr. Mandel can review where the access is for the public. Mr. Mandel responded, to the north side where they are proposing parking. Mrs. Mannix stated the actual access is not on this property currently... there's existing public access to a trail on the Land Trust land. Mr. Mandel responded correct, there is no public access, it's all privately owned and as Mrs. Mannix had mentioned the parking that is proposed is within the town right away. For public to use that trail, they would have to trespass on the property. Mrs. Mannix pointed to a flatter area on the plan shown and stated that this could provide for an opportunity for additional public access.

Vice Chair Roos VOTED that the Madison Planning & Zoning Commission approve application #21-28 Summer Hill Road, Map 110, Lot 30, RU-1, three lot subdivision as shown on a set of plans entitled, "Subdivision Plan Ninevah Estates" prepared for Arben Meco, Assessor's Map 110, Lot 30, Summer Hill Road, Madison, Ct, by Thomas A. Stevens & Associates, Inc, dated revised to 1/25/22 with the following condition:

- 1. That the record subdivision map be modified to also include a maintenance easement in favor of the Town of Madison in the areas identified as drainage easements at the culvert outlets.**
- 2. That easement language be submitted to the Town for review and approval prior to the filing of the record subdivision map.**

BE IT FURTHER VOTED that the Madison Planning & Zoning Commission approve with a $\frac{3}{4}$ vote, a waiver of Section 3.11 of the Subdivision Regulations to allow for greater than 50% wetland type soils in the dedicated open space area. This action is taken based upon the finding that the unique characteristics of this property include frontage along the Hammonasset River. This proposed open space, while consisting of mostly wetland soils, provides an opportunity to preserve the immediate upland adjacent to a significant natural resource in our community. The fact that this area is contiguous with existing Madison Land Trust property, allows for an undeveloped corridor of the River to remain protected in perpetuity.

The effective date of this approval is February 18, 2022 and upon filing of the record subdivision map on the land records. Seconded by Commissioner Mathers.

IN FAVOR: Chairman Snow, Vice Chair Roos, Secretary Hitchcock, and Commissioners McDowall, Hay, Mathers and Bodinson.

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. **(Table to 2/17/22)**

Mrs. Mannix stated that she met with DEEP, the property owners and their professionals on site today to go over the wall, and the state's concerns regarding the armoring of the slope. She

believes she made progress and the applicant is revising some drawings and is looking forward to sending those revisions to the state and then hopefully getting a favorable recommendation to come back to the commission at the next meeting.

NEW APPLICATIONS

22-01. 544 Opening Hill Rd. Map 116, Lot1, RU-1. Owner/Applicant: Timothy Mack. Application for a two lot Re-Subdivision. (Public Hearing 3/3/22)

Mrs. Mannix states this is an application for Re-subdivision, and it is currently before inland wetlands and the statutes do require that a re-subdivision have a public hearing. It is recommended to set that public hearing for March 3rd, and look to have a full presentation from the applicant and hopefully comments and a report from the inland wetland's agency by then.

22-03. 1362 Boston Post Rd. Map 31, Lot 38/1, R-2. Owner/Applicant: Town of Madison. Site Plan Modification for Salt Meadow Park tree landscape plan. (**Earliest Action 2/17/22**)

Mrs. Mannix stated this is an application that the town is making while working with the MAD for trees organization to plant additional trees throughout town. This does require review by ACA, and so they will be going to ACA next week as to why the discussion will be next meeting. Commissioner Snow asks if this is a zoning issue if it's just landscaping and trees? Mrs. Mannix replied yes, as the park is special exception use with an approved site plan and landscaping plan, that had not been implemented, so a modification of that approved plan does require the Commission's approval.

APPROVAL OF MINUTES: January 20, 2022

Commissioner McDowall made the motion to approve the Jan. 20, 2022 minutes as submitted; it was seconded by Vice Chair Roos.

IN FAVOR: Chairman Snow, Vice Chair Roos, Secretary Hitchcock, and Commissioners McDowall, Hay, Mathers and Bodinson.

OPPOSED: None

ABSTAINED: None

REMARKS: Commission Chair - None

Town Planner - None

Commissioner Bodinson stated that the public hearings were normally in the middle of month, and then the meeting the first of the month was sort of planning and discussion and now the public hearings are placed whenever and if there's any desire to get back to having the public hearings in the middle of the month and some planning and discussion at the first meeting.

15 - *Madison Planning and Zoning Commission, Regular Meeting, Feb. 3, 2022*

Chairman Snow states, when you have combined Commissions that are planning and zoning, they can schedule it as they see fit according to the pressures of deadlines.

Mrs. Mannix stated that the commission is on the verge of diving into plan of conservation development updates where they will likely be utilizing one meeting a month, dedicated solely to that purpose, so at this time with pending applications and no new actual planning business to handle, items have been brought before the commission as they come up. Mrs. Mannix further states the commission will have lots of items to discuss with the POCD as she will start the RFP process to look to hire a consultant, to help the commission along with that process of updating their plans which will take a lot of work and does need to be done by the end of next year.

Vice Chair Roos asked if this is an effort that all Planning and Zoning does, or is it more where three or four come off of Planning and Zoning then other citizens from the town of Madison join as well. Mrs. Mannix states this is a planning document that is adopted by the planning and zoning commission per statutes, this is very public and will seek everyone's input.

ADJOURNMENT

Vice Chair Roos made the motion to adjourn at 9:26p.m.; it was seconded by Commissioner McDowall

IN FAVOR: Chairman Snow, Vice Chair Roos, Secretary Hitchcock, and Commissioners McDowall, Hay, Mathers and Bodinson.

OPPOSED: None

ABSTAINED: None