

Subject to Approval

MADISON PLANNING AND ZONING COMMISSION PLANNING MEETING MINUTES Sept. 2, 2021

The Planning Meeting of the Madison Planning and Zoning Commission was conducted Thursday, Sept. 2, 2021, 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

Chairman Ronald Clark, Vice Chairman James Matteson, Giselle Mcdowall, Joseph Bunovsky, Jr., Joel Miller, and Thomas Burland.

MEMBERS ABSENT

Secretary Elliott Hitchcock, John K. Mathers and Seonaid Hay.

ALTERNATES PRESENT

Peter Roos, Ron Bodinson and Carol Snow.

OTHERS PRESENT

Interim Town Planner John Guskowski; Selectman Al Goldberg. The meeting was recorded via Zoom Videoconferencing software for You Tube viewing.

The Planning Meeting of the Madison Planning and Zoning Commission was called to order at approximately 7 p.m. by Chairman Ronald Clark, who seated Alternate Commissioners Carol Snow, Peter Roos and Ron Bodinson for absent Commissioner Seonaid Hay, absent Secretary Elliott Hitchcock, and delayed Vice Chairman James Matteson.

Review the recommended proposal for the sale of Island Avenue School in accordance with Connecticut General Statutes Section 8-24.

Connecticut General Statutes (CGS) Section 8-24 requires that the recommended proposal for the sale of Island Avenue School be referred to the Planning and Zoning Commission to comment on that planned transaction, according to Interim Town Planner John Guskowski. Selectman Al Goldberg stated that the first selectwoman asked him to relay her remarks to the Planning and Zoning Commission. In addition, First Selectwoman Peggy Lyons submitted a Sept. 2, 2021 four-page memorandum to Chairman Clark in which she provided “some background on the timeline and process leading up to the decision by the Board of Selectmen (BOS) to move forward with a potential sale of the former Island Avenue School property to Our Lady of Mercy Preparatory Academy (OLM Prep).” Selectman Goldberg reviewed the historical background, beginning with the 2017 Board of Education vote to close Island Avenue School, to decisions made to the present day, as well as the process and the timeline, as submitted in the

memorandum by Selectwoman Lyons. In early 2020, the Board of Selectmen created an Ad-Hoc Island Avenue Future Use Committee, to develop a path for future use of the property, according to the memorandum; around the same time, the Boards of Selectmen and Finance voted to modify and extend the existing lease to OLM Prep for another year, with the option to renew for an additional year, pending town meeting approval. After extensive work, including a public survey and public hearing, the Island Avenue School Committee recommended in early 2021, that the Board of Selectmen have the town launch a Request for Proposal (RFP) for the sale of the property. Colliers was selected to advise on the RFP process, and the RFP was launched in May 2021, with a deadline of June 30, 2021. The town received three responses to the RFP with proposals to purchase the property: two offers involved purchase of the land and plans to develop condominiums and multi-family units at the site, and the third offer was made by OLM Prep to purchase the site and maintain its use as a private school. The Board of Selectmen agreed to the sale to OLM Prep, according to Selectman Goldberg; the Planning and Zoning Commission is being asked to review the recommended proposal, and the Board of Finance will review it on Sept. 15, 2021. It is anticipated the proposed sale will go to town meeting in the fall, with a referendum on the purchase being scheduled by early 2022, according to Selectman Goldberg. Included in First Selectwoman Lyons's memorandum were the deed restrictions that go along with the Island Avenue School property, restrictions dating to at least 70 years ago, which Selectman Goldberg also reviewed. One of those restrictions states that it remain at its current use as a school, according to Selectman Goldberg. OLM Prep has offered to buy the property for \$2.3 million, which exceeds the town's \$2.1 million appraisal, and the two other purchasing proposals were \$300,000 and \$250,000, according to Selectman Goldberg. There were a variety of questions from the Planning and Zoning Commission, which Selectman Goldberg answered. The property consists of eight acres, with most of it being wetlands, leaving approximately five acres on which to build, according to Selectman Goldberg, who added that the acreage does not meet state Department of Education requirements for a public school. Commissioner Thomas Burland asked how the proposed sale aligns with the Plan of Conservation and Development, and Selectman Goldberg stated that it is his understanding that the Plan of Conservation and Development supports having a school on that property, since the school was there, when the plan was created. Commissioner Burland stated that the Plan of Conservation and Development favors higher density units downtown. The long term fiscal impact of these various proposals were reviewed by the selectmen, according to Selectman Goldberg, who stated that OLM Prep provided the best fiscal proposal to the town, and it will be taxed. If the Board of Selectmen had decided to sell it to the developers for \$250,000 or \$300,000, the property's heirs likely would have stepped in to match it, buy it, and perhaps flip it, Selectman Goldberg stated. Commissioner Joseph Bunovsky, Jr. asked if the town can put in a restriction so that it cannot be sold to a non-taxable entity; Selectman Goldberg stated that it will be part of the contract with the buyer. Commissioner Ron Bodinson stated, in reference to Commissioner Burland's comments about providing higher density living units downtown, that there is nothing in the Plan of Conservation and Development that promotes selling a school so it can become higher density units. Commissioner Burland respectfully disagreed. Commissioner Burland referenced Section 3.4 (c) in Madison's Planning and Zoning Regulations, wherein the requirement that it be non profit was removed, and that paved the way for this proposed sale to move forward, he stated. There are also limits on institutions that serve the intellectually disabled, Commissioner Burland stated, and he asked Selectman Goldberg if it is the position of the Board of Selectmen that it does not want a school for special needs? The Board of Selectmen engaged in this process with wide ranging RFPs, and it received three responses, according to Selectman Goldberg. Commissioner Burland stated that it appears there was a desire to not allow the support of the

intellectually disabled in this school. Selectman Goldberg stated that he is not sure why Commissioner Burland is saying that; he is not sure where it is coming from; Vice Chairman James Matteson stated that he is confused about this, too, and Commissioner Bodinson stated that he thought it was federal law that special needs education has to be provided. Mr. Guskowski shared the Madison Planning and Zoning Regulations, to which Commissioner Burland referred, and stated that this does not apply to this proposed property sale. Chairman Clark stated that this is something the Planning and Zoning Commission should pursue—the regulations need to be modernized, but this does not apply to the state statute, 8-24, currently being considered. Commissioner Bunovsky stated that he is surprised there were only three bidders. Selectman Goldberg stated that the bidding is closed, and Colliers felt that the deed restrictions imposed by the heirs scared off a lot of potential bidders. Commissioner Bunovsky asked if there will be a right of refusal. Selectman Goldberg stated that the Board of Selectman wants to put in the deed that the town wants the first right of refusal, should OLM Prep wish to sell, in the future. Chairman Clark stated that he is in support of this, and he stated that the school should spend some money to alleviate the parking problems on Island Avenue, when school opens and closes. Chairman Clark advised Vice Chairman Matteson that he cannot participate in this vote, because he seated alternates, prior to his arrival.

Commissioner Bunovsky made the motion that the proposed sale of Island Avenue School is in accordance with the town of Madison Plan of Conservation and Development; it was seconded by Commissioner Bodinson and approved.

Vote on Island Avenue School proposed sale, with reference to CGS 8-24, passed, 7-1-0.
IN FAVOR: Chairman Clark and Commissioners Giselle Mcdowall, Bunovsky, Carol Snow, Joel Miller, Peter Roos, and Bodinson.
OPPOSED: Commissioner Burland.
ABSTAINED: None.

Commissioner Burland left the meeting, and Chairman Clark seated Vice Chairman Matteson for absent Commissioner Burland.

Discussion regarding expansion of 391 Durham Road, Klein Properties.

David Klein stated that he would like a zone change to allow for the expansion of retail, the restaurant, and a cottage, which is being rented out; the cottage is in poor shape, and he stated that he wants to find a way to redevelop it. The property is located north of the intersection of Green Hill Road and across from Madison Flower Shop and Garden Center on Route 79, Mr. Klein stated. Klein Properties consists of the golf range, Amato's Pizza and Molly Rose Consignments. Under the current special exception, Amato's Pizza and Molly's cannot expand, and both would like to, according to Mr. Klein. The rental of the cottage is restricted at 2,500 square feet; Molly's has 1,250 square feet and would like another 1,000 square feet or more, to sell furniture; and Amato's has 730 square feet, needs space for another oven, and would like to add a dining room, as well as outdoor seating on the west or north side, according to Mr. Klein. Mr. Klein stated that he would like to move the golf operation to the end of the building; the solar farm may be built in two to three years, from now, and he would like to build three to five affordable and accessible living units on the north side. Benefits to the zone change include increasing the property's value and its taxes, he stated. These plans are supported by the Plan of Conservation and Development because Madison residents indicate they favor business and

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economic development, and these plans would diversify Madison's housing stock, according to Mr. Klein. Mr. Klein listed several ideas for a path forward: modify the special exception; make the property a commercial zone; or make it a planned development district. What is needed is a path that makes incremental improvements easier, averts the need for public hearings for small improvements, and keeps development costs reasonable, according to Mr. Klein. This is a commercial operation in a residential zone, according to Chairman Clark. Interim Town Planner John Guskowski stated that he has spoken to the town attorneys about this; the property is conforming to the custom regulations that were written for Mr. Klein, Section 4.b of the zoning regulations; Section 4.1.35 is the regulation made for Mr. Klein's property; he is precisely conforming to this regulation designed for his property. The town attorneys believe because all of this is delineated in the zoning regulations, it would take the form of a text amendment to the zoning regulations, to make a change, according to Mr. Guskowski. The standard is the Plan of Conservation and Development, which has to comply with this. A proposal to change the text in the regulations would be an allowable way to move forward, according to Mr. Guskowski. Chairman Clark asked if there were any questions, adding that this is a discussion, not an application. Mr. Guskowski stated that in Section 4.1.35.1.1, the underlying residential zone would apply. Chairman Clark stated that it is certainly something that is beyond a simple regulation change. Mr. Guskowski stated that everything would require a public hearing. The site consists of 14 to 15 acres, according to Mr. Klein. Chairman Clark stated that public input is something that should be heard and considered. Chairman Clark stated that the zone change on a 15 acre property consists of a large parcel in the middle of a residential area bounded to the north and south by residential properties. Mr. Klein stated that there is a significant buffer around the site, on all sides. Chairman Clark asked if there are any comments. Commissioner McDowall stated that she is interested in hearing more. Commissioner Bunovsky stated that he is totally against any effort that would be skirting public input, and he would not like the commissioners to make any unilateral decisions that would cut out public input. Commissioner McDowall stated that her first reaction is that this would be worth looking into. Commissioner Miller stated that there are a number of ways an application could come before the commissioners to be considered in the form of a regulation. The commission would be open to seeing an application; it would involve public hearings and full public participation and input, Chairman Clark stated. Mr. Guskowski stated that he would be happy to work with Mr. Klein and the town attorney on this.

Discussion to appoint an administrative agency for monitoring sale of affordable housing units.

Interim Town Planner John Guskowski stated that recently there have been a number of sales of deed restricted units. Basically, there has to be a guarantee that the sale price will remain affordable. Madison's Planning and Zoning Regulations Section 26.4 outlines the administration of this process. Mr. Guskowski stated that he wants to make an administrative agency to ensure the regulations are followed.

Vice Chairman Matteson made the motion to recommend that the Board of Selectmen establish a standing team to oversee the monitoring of the sale of affordable housing units; it was seconded by Commissioner Roos and unanimously approved.

Vote to recommend the selectmen establish a standing affordable housing monitoring team passed, 8-0-0.

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IN FAVOR: Chairman Clark, Vice Chairman Matteson, and Commissioners Mcdowall, Bunovsky, Snow, Miller, Roos, and Bodinson.

OPPOSED: None.

ABSTAINED: None.

Discussion of regulation of short term rentals.

Interim Town Planner John Guskowski stated that he and the zoning enforcement officer have received a number of complaints south of Route 1, where houses are being used as short term rentals, resulting in noise and loud parties. Complainants believe that because short term rentals are not included in the town's planning and zoning regulations, that they are, therefore, not allowed. Mr. Guskowski stated that he and the zoning enforcement officer have looked into this and disagree. It is unenforceable from a zoning standpoint to check leases, he stated, and some sort of concurrence is needed from the Planning and Zoning Commission. Commissioner Miller stated that this is not a problem to be tackled by this board. Chairman Clark stated that enforcement would be horrible—on weekends there would be no one to do the enforcement. It is the behavior of the individuals; Madison is a destination town, Chairman Clark stated, adding that there should be something through an ordinance or through the police, that if there is a loud activity after eight o'clock, that something should be done. Vice Chairman Matteson stated that the issue is someone buys a house, never lives in it, and rents it out; this is really something that should be done through a Board of Selectmen ordinance. Chairman Clark stated that he suggests the commissioners ask the selectmen to form an ad hoc committee to look into this, to find a way that these types of situations can be avoided. Commissioner Bunovsky stated that this is not in the Planning and Zoning Commission's purview; Vermont handled this problem by getting the state involved, which taxes the short term rentals. Commissioner Mcdowall asked about the existence of a disturbing the peace law; she later stated that a hotel will ask guests to leave if they are making too much noise. Commissioner Bunovsky stated that in his 30 years in the entertainment industry, working along the shoreline, no town has an ordinance about noise; the police are usually called, and they do respond to the incidents, warning those participating in the events. Mr. Guskowski stated that there is a state noise ordinance, so, literally, it is a police matter. Vice Chairman Matteson suggested property owners include noise issues in their lease and rental agreements. Chairman Clark stated that for disturbing the peace, there is an arrest, but he suggested a ticket with a fine be issued, instead. Chairman Clark stated that an ad hoc committee should include all the stakeholders. Mr. Guskowski stated that he would be happy to draft a memo, asking the Board of Selectmen to create an ad hoc committee. Commissioner Bunovsky stated that he would be happy to serve on it. Chairman Clark asked Mr. Guskowski to write a memo on the commission's behalf.

REMARKS: Commission Chair ~ Chairman Clark stated that a new town planner has been hired; Erin Mannix begins Sept. 20, 2021. The Board of Selectmen has formed an ad committee of 10 members to study the recreational marijuana law, and the Planning and Zoning Commission could be represented on it, according to Chairman Clark; Commissioner Bunovsky will represent the commission. The possibility of implementing a moratorium on applications for the growth of marijuana is expected to be agenda item at the commission's next September meeting. Dates are available for commissioners to be given a walking tour of The General's Residence, Sept. 18, Oct. 2, and Oct. 9, Chairman Clark stated, adding that no more than four commissioners can visit in a group.

Interim Town Planner ~ None.

ADJOURNMENT:

Commissioner Bunovksy made the motion to adjourn at 9:27 p.m.; it was seconded by Commissioner Miller and unanimously approved.

Vote to adjourn at 9:27 p.m. passed, 8-0-0.

IN FAVOR: Chairman Clark, Vice Chairman Matteson, and Commissioners Miller, Snow, Bodinson, Mcdowall, Roos, and Bunovsky.

OPPOSED: None.

ABSTAINED: None.

Respectfully submitted,
Marlene H. Kennedy, clerk