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July 13, 2021

BY E-MAIL ([townadministrator@chilmarkma.gov](mailto:townadministrator@chilmarkma.gov))

Tim Carroll, Town Administrator  
Town of Chilmark  
P.O. Box 119  
Chilmark, MA 02535

Re: Abutter Appeal of Chilmark Conservation Commission Decision  
under Chilmark Wetlands Protection Bylaw and Regulations

Dear Tim:

This letter is sent in response to the Notice of Appeal dated July 7, 2021 to the Chilmark Board of Selectmen by Island Grown Initiative, LTD, Heidi Dunkl, Peter A. Dunkl, Frank H. Dunkl, Mollie Doyle, Erin Doyle, and Robert Doyle (collectively referred to as the "Abutters"), seeking to appeal the Chilmark Conservation Commission's decision under the Chilmark Wetlands Protection Bylaw (the "Bylaw"). The Abutters request a hearing before a joint committee comprised of the Select Board, the Planning Board, and the Board of Health (the "Joint Committee") under §5.01(2)(A) of the Chilmark Wetlands Protection Regulations (the "Regulations"). For the following reasons, it is my opinion that §5.01(2)(A) establishes an appeal process only available to applicants. An aggrieved party, other than an applicant, is still free to appeal the Conservation Commission's decision under the Bylaws to the Superior Court pursuant to G.L. c. 249, § 4.<sup>1</sup>

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<sup>1</sup> Unlike an appeal to the Department of Environmental Protection under the state Wetlands Protection Act, an abutter does not enjoy a presumption of standing to appeal a decision under the Bylaw. See Friedman v. Conservation Comm'n of Edgartown, 62 Mass. App. Ct. 539, 543 (2004).

Section 5.01(2)(A) of the Regulations provides, in relevant part:

"An appeal of a decision of the Conservation Commission regarding the operation of [the Chilmark Wetlands Protection] Bylaws may be made to a special meeting of a joint committee. . . . The meeting shall be called by the chairman of the [Select Board] and written notice shall be made to the applicant and to all members of the boards concerned. After hearing all the evidence provided by the applicant and the Conservation Commission, said committee shall, by majority vote, decide if the proposed activity is likely to have a significant or cumulative effect upon the value of Chilmark resources protected by this law."

(Emphasis added).

An "applicant" is defined in §1.05 of the Regulations to only include a "person who files an Application for Permit (Request for Determination and/or Notice of Intent), or on whose behalf such notice is filed". The Regulations make a distinction between an "applicant" and an "abutter" ("abutter" is defined as "the owner of land within 300' of the boundary of the Assessor Parcel of the proposed activity, including those across a travelled way and those within 300' across a body of water").

Section 5.01(2)(A) provides that only an applicant -- not an abutter -- shall receive notice of the appeal meeting and that the applicant and the Conservation Commission are the only parties to present evidence at the local appeal meeting. Section 5.01(2)(A) makes no mention of "abutters." Given this language, it is my opinion that §5.01(2)(A) cannot be reasonably read to permit a non-applicant appeal to the Joint Committee. By its plain language, the appeal process under §5.01(2)(A) applies only to an applicant appealing the Conservation Commission's decision.<sup>2</sup>

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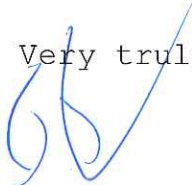
<sup>2</sup> In contrast to the Bylaw and the Regulations, M.G.L. c. 131, § 40 (state Wetlands Protection Act) expressly provides an administrative appeal process available to aggrieved parties and abutters.

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In contrast to the narrow availability of an appeal under §5.01(2)(A), §5.01(2)(B) of the Regulations provides all parties -- applicants and non-applicants -- an avenue for appeal: appeals may be made to the Superior Court. Accordingly, this avenue of appeal remains available for the abutters to pursue.

Please do not hesitate to call with any questions.

Very truly yours,



Ronald H. Rappaport