

OLIVER P. MORAHAN & SON

-----SOLICITORS-----

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€20 chg
RN 44172
15/17/12/12

Consultation by appointment only

Our Reference: JM/PB/OTO013-001

Date: 17th December 2012

Secretary
Mayo County Council
Planning Section
Aras An Chontae
Castlebar
County Mayo



Re: Planning Application 12599
Applicant – John Moran

Dear Sir,

We act on behalf of Jane O'Toole, James O'Toole, Declan O'Toole, and Patrick O'Toole of Ballytoughy, Clare Island, Westport, County Mayo and on behalf of Pat O'Toole of Maum, Clare Island, Westport, County Mayo and Joe O'Toole of The Mill, Clare Island, Westport, County Mayo. They have instructed us to make submissions on their behalf in relation to the above application and these submissions are enclosed.

We also enclose cheque for €20.00 being the fee payable.

We await hearing from you in due course.

Yours faithfully,

Oliver P. Morahan & Son

Encls.

Submission on Planning Application 12599

Applicant – John Moran, Proposed Development at Maum, Clare Island

Submissions on behalf of Jane O’Toole, James O’Toole, Declan O’Toole, Patrick O’Toole, Pat O’Toole, and Joe O’Toole.

1. My clients are confused as to who the applicant is in this case. It is noted that the name appearing on the Notice of Application is John Moran. It is noted that the Natura Impact Statement refers to a Planning Application by Marine Harvest Limited. It is further noted that the registered owners of the property the subject matter of the intended development are John Moran and Mary Moran. Clarification is sought.
2. The applicant proposes to extract water from a stream and to divert the water into a freshwater impoundment, which he proposes to construct, and to sell that diverted water to Marine Harvest Limited. My clients object to the proposed development on the basis that the applicant does not have title to the water, which he proposes to divert into the freshwater impoundment. The applicant for Planning Permission could have acquired a right to divert or abstract water through legal means, but he has not acquired any such right to date. He could also have acquired the right to channel water by pipe or other artificial means onto his land but in this case he has no such acquired right. A riparian owner is a person who owns land through which a river or stream runs. It is established in law that a riparian proprietor is entitled to have the water at the stream on the banks of which his property lies, flow down as it has been accustomed to flow down to his property, subject to the ordinary use of the flowing water by upper proprietors, and to such further use, if any, on their part, in connection with their property, as may be reasonable under the circumstances”. The use to which the applicant intends to put the water, if the development is allowed is not a use “in connection with his property”. In the circumstances our clients object to the proposed development on the basis that the applicant does not own the water which flows through the stream and on the basis that he intends to use the water for purposes other than in connection with his property. The right of riparian proprietors to take water from a stream which passes his land has to be reconciled with the rights of the other riparian proprietors. To do this, the Courts have sought to resolve the conflict of rights by differentiating rights of abstraction by reference to the purpose of taking the water. The Courts look at whether the riparian proprietor is taking the water for an ordinary or primary purpose or for an extraordinary or secondary purpose. In this case, the use to which the water will be put could not be regarded as for an ordinary or primary purpose. In the case of McCartney –V-

site which will substantially irrevocably alter the character of the area.

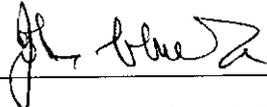
8. At a meeting between the representative of Marine Harvest Limited, the applicant, John Moran and my clients on the 11th of December 2012, the representative of Marine Harvest Limited indicated that the fish were effected by amoebic gill disease in 1996 and again in 2012. He stated that in 2012, fresh water was brought to treat the fish. It is noted that a period of 16 years elapsed between the first outbreak of the disease and the second outbreak of the disease. It is submitted that the development, if allowed, would be a disproportionate and excessive way of dealing with the problem, as a further incidence of the disease might not occur for another 16 years and the development would be lying unused during that period which would constitute a totally unwarranted interference with the area. While the Natura Impact Statement indicates that the disease is unpredictable in nature, there only appears to have been two incidents of the disease in 1996 and 2012. While the stated objective of Marine Harvest Limited is to have a fresh water supply available for the treatment of fish affected by the disease it would appear that the Company also intends to sell on the water supply to other fish farms in the Country. In the circumstances it is submitted that this type of development is totally inappropriate to the area.
9. The development, if allowed, will entail the pumping of fresh water from the impoundment to well boats. My clients are concerned about the effect that the temporary hose from the impoundment to the well boats would have on fishing. There are also concerned about the length of time that the hose would remain in the water especially in times of bad weather.
10. My clients are also concerned about the amount of fresh water that would be released into the sea when it was being pumped from the impoundment into the well boats, especially in view of the fact that fresh water may have an adverse effect on lobsters. Who would compensate the lobster fishermen if lobsters died because of their exposure to fresh water.
11. My clients express concern that the proposed development would be close to an important archeological site – a lime kiln and the effect of the development on the lime kiln has not been investigated.
12. My clients are confused as to who the actual applicant is. While the application is made in the name of John Moran the benefits of the development will accrue to Marine Harvest Limited. It is noted that the Natura Impact Statement refers to the Planning Application by Marine Harvest Limited whereas the actual application is made by John Moran. My clients are anxious to establish the true identity of the applicant. It is also noted that Marine Harvest Limited is a limited liability company, which could go out of business or could leave the area at any time. My clients are anxious to establish what would happen to the development in that event. My clients also fear that if planning permission is given for this development that future developments could be allowed in the area in years to come, which would

adversely affect that area of Clare Island.

13. There is a native woodland in the area and, if the development were to be allowed, my clients would be anxious that any landscaping of the impoundment would blend in with the natural species in the area.
14. Jane O'Toole complained that water samples were taken from her land earlier in the year without her permission. This constituted a trespass on her property. In view of the fact that the Company and the Applicant had not consulted with her about the proposed development, she was very annoyed by this unlawful trespass on her lands.
15. It appears that the provision of the fresh water impoundment is a form of insurance against the outbreak of the disease. It is submitted however that there may indeed never be another outbreak of the disease and that the Planning Authority should take due consideration of this fact before making a final decision in the matter. It is my clients' contention that this is a development to provide fresh water for export to other fish farms around the country which may experience a more regular occurrence of amoebic gill disease than the Clare Island fish farm which has only sustained two attacks in the past sixteen years.

Dated this 17th day of December 2012

SIGNED:



Oliver P. Morahan & Son

Solicitors,

Westport

County Mayo