



# TOWN OF MIDDLEBURY

*Conservation Commission  
1212 Whittemore Road  
Middlebury, Connecticut 06762  
(203) 577-4162 ph  
(203) 598-7640 fx*

## REGULAR MEETING MINUTES October 31, 2023

### **REGULAR MEMBERS PRESENT**

Paul Bowler, Chairman  
Mary Barton, Vice Chairwoman  
George Tzepos  
Peggy Gibbons  
Joseph Bernardi  
Curtis Bosco

### **REGULAR MEMBERS ABSENT**

Joseph Martino

### **ALSO PRESENT**

John Calabrese, P.E.  
Deborah Seavey, W.E.O.

## **I. CALL TO ORDER**

Chairman Bowler called the Regular Meeting to order at 7:30 p.m.

## **II. ACTION ON MINUTES:**

### **September 26, 2023 Regular Meeting**

**Motion:** to approve the minutes of the September 26, 2023 Regular Meeting. Made by Curtis Bosco, seconded by George Tzepos. Mary Barton abstained. Unanimous Approval.

## **III. OLD BUSINESS**

### **1. Application #499 – Porter Avenue – Lot 4-06/151**

Andrew DelNegro of 80 Yale Avenue reviewed the revised plans with the commission

Chairman Bowler indicated that the subject property is the lot on the corner of Porter Avenue and Brook Lane and asked if any of the members had any questions.

Mary Barton questioned if a pool, shed or accessory structure were being proposed.

Andrew DelNegro replied that he was not.

Mary Barton explained that if he does eventually want to, he must return to the commission for approval.

Andrew DelNegro acknowledged that he would.

George Tzepos asked if the application was signed.

Deborah Seavey, W.E.O. confirmed that the application was signed.

Curtis Bosco asked if Deborah Seavey, W.E.O. was satisfied with the application.

Deborah Seavey, W.E.O. responded that she was.

**Motion:** to approve application #499 – Porter Avenue-Lot4-06/151 per the Draft Resolution. Made by Curtis Bosco, seconded by Joseph Bernardi. Unanimous Approval.

## **2. Application #500 – 1535 Straits Turnpike**

Attorney Edward (Ned) Fitzpatrick of 203 Church Street, Suite 4, Naugatuck, CT 06770 spoke on behalf of the applicant. He explained that Tom Daly, P.E. with SLR Consulting modified the plans to reflect the comments of the commission, the October 23, 2023 Engineering Review from John Calabrese, P.E. and the comments from Deborah Seavey, W.E.O.

Tom Daly, P.E. with SLR Consulting of 99 Realty Drive, Cheshire, CT 06410 provided the members with reduced copies of the plans and an overview of the application. The subject 70-acre parcel involves a high point in the center of the site with the high ridge acting as a backbone. Long Swamp Brook is at the front of the parcel along with other wetland soils, and the rear of the property includes various wetland pockets. The proposal is for 200 luxury apartments, each being 1-2 bedroom units with garages underneath, geared towards empty nesters and young professionals. A pool house is also being proposed and most of the units are centrally located around the open-space green. There

is an existing curb cut on Straits Turnpike and they are looking to hit the same access point. Approximately 20 years ago, a concrete box culvert was put in, which is in excellent condition and they plan to reuse it. They will clip the edge of a wetland in order to achieve this. Despite what he previously thought, they will not have to do anything to the culvert. Their previous proposal involved an estimated 4,000 sf of direct wetland impact, which has now been decreased to 1,130 sf. A cut and fill analysis was performed and it was determined that by raising the site an estimated four (4) feet, they were able to balance the site. The project is also being pushed back an additional twenty-five (25) feet. The stormwater basins are designed for water quality, meeting all of the DEEP standards, as well as mitigating for the peak runoff rates for the 2 through 100-year storm. A key for gated emergency access drive at Kelly Road will only be available for the Fire Department. The upland review activities are primarily associated with gaining access into the property and stormwater management. All of the development at the top of the hill is outside of the upland review area. The plans have also been revised to address the comments of John Calabrese, P.E. and Deborah Seavey, W.E.O. The revisions involve decreases in the upland review activity by 15%, the direct wetland impact by 71%, the activity within 150 feet of the stream by 22%, and the impervious area within the upland review area by 31%. Approximately 75% of the site will remain undeveloped.

Mary Barton asked how far the site is from Waterbury

Tom Daly, P.E. with SLR replied an estimated 900 feet away.

Mary Barton questioned what the functions of the wetlands are.

Megan Raymond, Registered Soil Scientist & Professional Wetland Scientist with SLR Consulting of 99 Realty Drive, Cheshire, CT 06410 stated that they delineated the wetlands on the property and they occupy approximately 13 acres (17%) of the 77 acres. The nine (9) wetland systems range in size from .01 acre to the Long Swamp Brook corridor, which is an estimate 8.5 acres. She shared that they are high-functioning wetlands, however, there are no vernal pools on the property. They are sloped wetlands that do not display a variable water table within them. She stressed that they went to great lengths to look at the impact areas in order to develop a plan that minimizes the wetland impact. They will be utilizing an existing crossing, leave a majority of the site undisturbed, allow for adequate buffers and avoid the upland review.

Mary Barton asked what invasive species exist on the site and if there is any plan to remove them.

Megan Raymond, Registered Soil Scientist & Professional Wetland Scientist, replied that Japanese Barberry is the dominate invasive species, but that multiflora rose Winged Euonymus, Garlic Mustard and others are also present. The plan is centered around

meadow maintenance but management of invasive species is not part of their proposal.

Mary Barton inquired if the corridor along Straits Turnpike access road is in the FEMA Flood Zone and if the box culvert went through the engineering process.

Tom Daly, P.E. confirmed that it is and that they are proposing a floodplain compensation. He added that plans for the box culvert went through this commission and approval was granted and that they are overcompensating because they are raising the grade above the culvert. Neither the culvert itself nor the pass-through will be changed.

Mary Barton asked if they looked at the Natural Diversity Data Base.

Megan Raymond, Registered Soil Scientist & Professional Wetland Scientist replied that the majority of the site is not mapped but there is a section that intersects with the southern boundary of Little Tracys Pond and extends to the north which is mapped for Spotted Turtle.

Mary Barton asked about the width of the access roads, parking, lighting to protect the wetland species, detention areas and pool discharge.

Tom Daly, P.E. replied that the access road is 24' and that the units have garages in the face as well as four (4) detached garages available for rent. Full cutoff LED lighting of the highest standard is being proposed. He proceeded to review the detention areas for Mary Barton and stated that any pool discharge will go to the sanitary sewer.

Mary Barton then asked about the maintenance building, if salt and sand would be housed on site and where snow would be placed.

Tom Daly, P.E. responded that there will be a maintenance building, salt and sand would come from offsite trucks. He added that all of the projects he's worked on with Metro, he has never seen any salt storage on site. He stated that snow will be stored on site due to the vast perimeter.

Peggy Gibbons mentioned the soil problem that arose years ago from what she thought was the cleaning of parts at Timex which contaminated water and soil through the Three Mile Hill area and questioned if the soil and/or water on the subject property could be invaded.

Tom Daly, P.E. pointed out the well at the Timex driveway which is far off of the site. He declared that they know of no contamination associated with the subject property but that they are maintaining a driveway access so that Timex can continue to manage it. He went

on to confirm that they are not hydraulically connected to the Timex property. He added that they are up high on the hill and water does not flow uphill.

Peggy Gibbons again questioned if their soil could be contaminated.

Tom Daly, P.E. assured her that it is not.

Peggy Gibbons asked if he had verification.

Tom Daly, P.E. replied that he could get the town copies and assured her that Metro would not be proceeding with the project if there was.

Geoffrey Sager, President of Metro Realty, added that there has never been any manufacturing activity on that portion of the site, that the studying and testing that was done was in the hundreds of thousands of dollars and he offered to have the professionals go through it. He professed unequivocally that it is not in their soils.

Tom Daly, P.E. clarified that Timex is retaining the rights to deal with their situation but there is no contamination in the soil that they are proposing. He again stated that they have no problem with getting the town copies of the documentation.

Geoffrey Sager, President of Metro Realty, stated that it is his understanding that Timex acquired the property after it became apparent that there had been some pollution. They bought the adjacent clean site, so they were already aware, and they have a pumping treatment facility in the upper corner of the site which and is the main reason they purchased it.

Peggy Gibbons questioned if there was any dumping of contaminants anywhere near the subject site.

Geoffrey Sager, President of Metro Realty, replied absolutely not and that it was never part of the manufacturing process that created the pollution.

Tom Daly, P.E. confirmed that it is clean and offered his belief that Timex put in the well to do cleanup, not because there was contamination on the site.

Mary Barton questioned where the roof drains for the buildings are being discharged.

Tom Daly, P.E. replied typically go down into a collector pipe system which will discharge into the drainage system.

Joseph Bernardi asked John Calabrese, P.E. if the applicant addressed his concerns.

Chairman Bowler also asked if the changes that were made are acceptable

Deborah Seavey, W.E.O. confirmed that they were.

John Calabrese, P.E. added that there was one issue that he did not put in his report. He recommended that concrete piping instead of AES.

Joseph Bernardi stated that he did visit the site during a rainy part of the year and noticed that the culvert was in great condition and not even close to capacity.

**Motion:** to approve application #500 – 1535 Straits Turnpike per the Draft Resolution and with the inclusion of all drainage pipe to be reinforced concrete. Made by Curtis Bosco, seconded by Mary Barton.

**Discussion:**

Peggy Gibbons questioned what would happen next and if this was to approve the application.

Chairman Bowler confirmed that this was a vote to approve the application, as it was accepted last month. He added that it would then move on to the next department/board.

Peggy Gibbons suggested that her point was moot about obtaining a Soil Contamination Report.

Chairman Bowler replied that it could be included as a condition of approval.

Curtis Bosco amended his motion to include that the applicant must provide a Soil Contamination Report for the file.

Tom Daly of SLR stated that they would be happy to supply it.

Mary Barton stated that she too was fine with the amended motion.

Chairman Bowler clarified for a member in the audience that requested to speak that this was not a public hearing.

Peggy Gibbons was opposed.

Vote: 5:1, Motion Passed.

**3. Permit Modification #423-B – 369 White Deer Rock Road**

Attorney Michael McVerry of 35 Porter Avenue, Naugatuck, CT 06770 spoke on behalf of the applicants. The application was originally approved in March of 2019 for a house, walls, stormwater drainage, and carriage house. It was later modified in 2021 to resize the house and septic system. Currently, there are seeking approval to construct a 25' X 40' open storage shed with a corner partially located in the lake setback area on the other side of the carriage house.

Garrett Moore provided photos for the record.

Deborah Seavey, W.E.O. stated that she would like the opportunity to review them to compare the plantings with the plan that was approved.

**Motion:** to approve permit modification #423-B – 369 White Deer Rock Road per the Draft Resolution and subject to review by Deborah Seavey, W.E.O. that the plantings have been provided as per the original plan prior to permit issuance. Made by Curtis Bosco, seconded by Mary Barton. George Tzezos abstained. Unanimous Approval.

**IV. NEW BUSINESS**

**1. Application #501 – 20 Juniper Road**

Maria Tapia stated that she had a company come to cut some trees in the setback area and was asked to submit a replanting plan.

Deborah Seavey, W.E.O. clarified that this was from a cease and desist.

Mary Barton questioned if the order was still in effect.

Deborah Seavey, W.E.O. replied yes, until the application is submitted and approved.

**Motion:** to accept application #501 – 20 Juniper Road. Made by George Tzezos, seconded by Peggy Gibbons. Unanimous Approval.

**2. Application #502 – 1082 Southford Road**

Emily Jones, P.E. with Civil 1 Engineering in Woodbury, CT spoke on behalf of the applicant, Wiggles Pet Resorts, LLC. The subject property is approximately 2.14 acres in

size within the GIDD. It is mainly clear in the front 2/3, with some woods in the rear associated with the wetland area and Eight Mile Brook. There is a FEMA Floodplain associated with the brook that is down close to the edge of the watercourse. The site will be served by public water and sewer. They are proposing a 13,120 sf single-story building for a pet resort for a kennel, grooming, doggie day care, etc. In addition, there will be two (2) outdoor play areas for the dogs that will be fenced in made of a turf material with underdrains, a subbase and other draining material. Parking will be in both the front and back of the property. She acknowledged that the site is in close proximity to Eight Mile Brook with 2,700 acres of drainage area/watershed area above the property. Therefore, they are not proposing detention of the stormwater, however, they do have an infiltration basin in the rear of the property for water quality. There will be no direct wetland activity, but there is an estimated 11,050 sf of activity within the regulated area. She pointed out that the plans reflect the correct amount of 11,050 sf, however, the application mistakenly states 5,235 sf of activity which she plans to correct.

George Tzezos asked who the owner was.

Emily Jones, P.E. replied she would find out.

**Motion:** to accept application #502 – 1082 Southford Road. Made by George Tzezos, seconded by Mary Barton. Unanimous Approval.

### **3. Application #503 – 305 Burr Hall Road**

Emily Jones, P.E. with Civil 1 Engineering in Woodbury, CT spoke on behalf of the applicant, Mary Lawlor and Jon Lieff. The lot is approximately 3.5 acres in size that does have an existing residential dwelling, wood deck, slate patio and stairs leading down to grade. A wetland is located in the rear of the property that has been flagged, has an associated floodplain. The proposed project consists of the installation of a 15' X 32' pool with a surrounding patio, walkway and steps leading down from the driveway as well as up along the back. The stone patio is proposed to be laid dry stone, no grout and with a 6" pea stone subbase which will ultimately add approximately 2,300 sf of added patio and walkway. She added that the soils on the site are well drained and they do not anticipate any point runoff down toward the wetlands. Erosion control measures are in place and it will bring the patio area an estimated 12' closer the wetland. Approval was granted by the Health Department.

Mary Barton questioned what type of pool is being proposed.

Mary Lawlor replied that they were planning on a salt water pool but that they have yet to

make a firm decision. She then offered to modify their choice if need be.

Mary Barton assured her that it was not necessary but that she was inquiring if the pool would use a cartridge.

Mary Lawlor confirmed that they use a cartridge filter and that it will have an automatic pool cover so a fence would not be required.

**Motion:** to accept application #503 – 305 Burr Hall Road. Made by George Tzepos, seconded by Mary Barton. Unanimous Approval.

#### **4. Application #504 – Madison Court-Lot 3**

**Motion:** to add application #504 – Madison Court-Lot #3 to the agenda. Made by George Tzepos, seconded by Curtis Bosco. Unanimous Approval.

Albana Lame stated that the setback requirement from the subdivision to the wetlands was 50' when the lot was previously approved. Currently, they are proposing to construct a single-family house, driveway, well and in-ground pool. While there are no wetlands on the lot itself, they do exist outside the parameters of the lot and they do not meet the current 100' setback requirement.

Chairman Bowler questioned when the lot was originally approved.

Deborah Seavey, W.E.O. confirmed that it was approved in 1999.

**Motion:** to accept application #504 – Madison Court-Lot #3. Made by George Tzepos, seconded by Mary Barton. Unanimous Approval.

### **V. OTHER BUSINESS**

#### **1. 2024 Meeting Dates**

**Motion:** to accept the 2024 Meeting Dates. Made by Mary Barton, seconded by George Tzepos. Unanimous Approval.

**VI. ADJOURNMENT**

**Motion:** to adjourn the meeting at 8:26 p.m. Made by George Tzezos seconded by Mary Barton. Unanimous Approval.

Filed Subject to Approval,

Respectfully Submitted,

Rachelle Behuniak, Recording Clerk

Original to Brigitte Bessette, Town Clerk

cc: Conservation Commission Members  
Debbie Seavey, W.E.O.  
Mark Lubus, Building Official  
John Calabrese, P.E.  
Terry Smith, P&Z Chairman  
Curtis Bosco, Z.E.O.  
Attorney Robert Smith, WPCA

### **RESOLUTION/REPORT**

Application#499 Porter Ave Lot 4-06/151

**WHEREAS:** The Middlebury Conservation Commission for the Town of Middlebury has received an application on August 29, 2023 from Andrew Del Negro map entitled "Site Plan prepared for Andrew DelNegro 151 Porter Ave Middlebury, Connecticut" dated September 23, 2023 with revision date of October 11, 2023;

**WHEREAS:** The Commission has considered the proposed activity, application and all documents and reports submitted by or on behalf of the applicant.

**WHEREAS:** Field inspections were conducted by Commission members;

**WHEREAS:** The Commission finds based on evidence received that the proposed activity does conform to the purposes and requirements of the Inland Wetlands Commission;

**WHEREAS:** The Commission finds on the basis of the record that a feasible and prudent alternative does not exist. In making this finding, the commission considered factors and circumstances as set forth in Section 10.2;

**NOW THEREFORE, BE IT RESOLVED** That the Middlebury Conservation Commission approves the above application with the following conditions:

- (1) The proposed activity that consists of construction of dwelling, driveway and associated grading within the upland review area will not have a substantial impact on the regulated area.
- (2) Prior to permit issuance, revised plans shall be signed and sealed by the engineer.
- (3) Prior to permit issuance, permanent wetland markers shall be installed along the disturbance limits.
- (4) Prior to permit issuance, required property owner signatures shall be on the application.
- (5) The applicant shall notify the enforcement officer forty-eight (48) hours prior to the commencement of work and upon its completion.
- (6) Timely implementation and maintenance of sediment and erosion control measures are a condition of this approval. All sediment and erosion control measures must be maintained until all disturbed areas are stabilized.
- (7) No equipment or material including without limitation, fill, construction materials, or debris, shall be deposited, placed or stored in any wetland or watercourse on or off site unless specifically authorized by this approval.
- (8) All work and all regulated activities conducted pursuant to this approval shall be consistent with the terms and conditions of the wetland permit. Any structures, excavation, fill, obstructions, encroachments or regulated activities not specifically identified and authorized shall constitute a

violation of this approval and may result in its modification, suspension, or revocation.

- (9) It is the applicant's responsibility to give notification to the Army Corps of Engineers and the Department of Environmental Protection if necessary.

October 31, 2023

### **RESOLUTION/REPORT**

Application #500 1535 Straits Turnpike

**WHEREAS:** The Middlebury Conservation Commission for the Town of Middlebury has received an application on September 26, 2023 from the Metro Realty Management Group; map entitled "The Preserves at Middlebury 1535 Straits Turnpike Middlebury Connecticut" dated September 25, 2023 with latest revision date of October 24, 2023;

**WHEREAS:** The Commission has considered the proposed activity, application and all documents and reports submitted by or on behalf of the applicant.

**WHEREAS:** The application was referred to consulting engineer, John Calabrese whose comments have been considered by the Commission;

**WHEREAS:** Field inspections were conducted by Commission members;

**WHEREAS:** The Commission finds based on evidence received that the proposed activity does conform to the purposes and requirements of the Inland Wetlands Commission;

**WHEREAS:** The Commission finds on the basis of the record that a feasible and prudent alternative does not exist. In making this finding, the commission considered factors and circumstances as set forth in Section 10.2;

**NOW THEREFORE, BE IT RESOLVED** That the Middlebury Conservation Commission approves the above application with the following conditions:

- (1) The proposed activity that consists of drainage facilities, discharge of drainage and road construction within the regulated areas will not have a substantial impact on the regulated area.
- (2) Prior to permit issuance:
  - Revised plans shall reflect comments from John Calabrese
  - Revised plans shall reflect RCP drainage
  - Revised plans shall reflect a detailed construction sequence
  - The applicant shall provide documentation regarding the current soil condition of the property
  - A cash wetland planting bond for the stormwater detention basins shall be in place. Said amount shall be acceptable with town staff. The bond shall remain in place for three(3) growing seasons and after a final report from a wetland consultant has been submitted.
- (3) As-builts of all stormwater detention basins shall be submitted.
- (4) The engineer shall certify all site work has been completed in accordance with the approved plans.

- (5) Required weekly site inspection reports shall be provided to the commission.
- (6) The applicant shall notify the enforcement officer forty-eight (48) hours prior to the commencement of work and upon its completion.
- (7) Timely implementation and maintenance of sediment and erosion control measures are a condition of this approval. All sediment and erosion control measures must be maintained until all disturbed areas are stabilized.
- (8) No equipment or material including without limitation, fill, construction materials, or debris, shall be deposited, placed or stored in any wetland or watercourse on or off site unless specifically authorized by this approval.
- (9) All work and all regulated activities conducted pursuant to this approval shall be consistent with the terms and conditions of the wetland permit. Any structures, excavation, fill, obstructions, encroachments or regulated activities not specifically identified and authorized shall constitute a violation of this approval and may result in its modification, suspension, or revocation.
- (10) It is the applicant's responsibility to give notification to the Army Corps of Engineers and the Department of Environmental Protection if necessary.

October 31, 2023

### **RESOLUTION/REPORT**

Permit Modification #423-B 369 White Deer Rock Road

**WHEREAS:** The Middlebury Conservation Commission for the Town of Middlebury has received a permit modification on September 26, 2023 from Kelly and Brian Keane map entitled "Site Plan for Storage Building" dated September 20, 2023;

**WHEREAS:** The Commission has considered the proposed activity, application and all documents and reports submitted by or on behalf of the applicant.

**WHEREAS:** Field inspections were conducted by Commission members;

**WHEREAS:** The Commission finds based on evidence received that the proposed activity does (not) conform to the purposes and requirements of the Inland Wetlands Commission;

**WHEREAS:** The Commission finds on the basis of the record that a feasible and prudent alternative does not exist. In making this finding, the commission considered factors and circumstances as set forth in Section 10.2;

**NOW THEREFORE, BE IT RESOLVED** That the Middlebury Conservation Commission approves the above application with the following conditions:

- (1) The proposed permit modification activity that consists of constructing a 25'x40' storage building within the upland review area will not have a substantial impact on the regulated area.
- (2) Prior to permit issuance, written verification shall be submitted with regards to the previous requirement of wetland plantings.
- (3) All conditions of the original approval remain applicable.
- (4) The applicant shall notify the enforcement officer forty-eight (48) hours prior to the commencement of work and upon its completion.
- (5) Timely implementation and maintenance of sediment and erosion control measures are a condition of this approval. All sediment and erosion control measures must be maintained until all disturbed areas are stabilized.
- (6) No equipment or material including without limitation, fill, construction materials, or debris, shall be deposited, placed or stored in any wetland or watercourse on or off site unless specifically authorized by this approval.
- (7) All work and all regulated activities conducted pursuant to this approval shall be consistent with the terms and conditions of the wetland permit. Any structures, excavation, fill, obstructions, encroachments or regulated activities not specifically identified and authorized shall constitute a violation of this approval and may result in its modification, suspension, or revocation.
- (8) It is the applicant's responsibility to give notification to the Army Corps of Engineers and the Department of Environmental Protection if necessary.

October 31, 2023



## **TOWN OF MIDDLEBURY**

*Conservation Commission  
1212 Whittemore Road  
Middlebury, Connecticut 06762  
(203) 577-4162 ph  
(203) 598-7640 fx*

### **2024 MEETING SCHEDULE Shepardson Community Center Room 26 7:30 p.m.**

**Tuesday – January 30, 2024  
Tuesday – February 27, 2024  
Tuesday – March 26, 2024  
Tuesday – April 30, 2024  
Tuesday – May 28, 2024  
Tuesday – June 25, 2024  
Tuesday – July 30, 2024  
Tuesday – August 27, 2024  
Tuesday – September 24, 2024  
Tuesday – October 29, 2024  
Tuesday – November 26, 2024**

**Approved this 31<sup>st</sup> day of October, 2023**

**Paul Bowler,  
Chairman**