



TOWN OF MIDDLEBURY

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

MEETING MINUTES

January 2, 2014

MEMBERS PRESENT

Terry Smith, Chairman
Matthew Robison
William Stowell

MEMBERS ABSENT

Erika Carrington

ALTERNATES PRESENT

Paul T. Babarik

ALTERNATES ABSENT

Ron Kulpa

ALSO PRESENT

Curtis Bosco, ZEO
Rachelle Behuniak

REGULAR MEETING

1. Call to order

Chairman Smith called the Regular Meeting of the Middlebury Planning & Zoning Commission to order at 7:31 P.M.

2. Roll Call & Designation of Alternates

Chairman Smith announced that Regular Members William Stowell, Matthew Robison and Alternate Member Paul Babarik were present while Regular Member Erika Carrington and Alternate Member Ron Kulpa were absent. He appointed Alternate Member Paul Babarik to act in place of Erika Carrington.

3. Discussion of the Minutes of the Regular Meeting held on December 5, 2013

Motion: to approve the Minutes of the Regular Meeting held on December 5, 2013 as submitted. Made by William Stowell, seconded by Paul Babarik. Unanimous Approval.

OLD BUSINESS

None

NEW BUSINESS

4. David & Heather Messina – 6 West Lake Road – Application for new construction subject to new Regulations Section 25 (Application #2014-1-1)

Scott Meyer, P.E. & L.S. of Meyers Associates, P.C. spoke on behalf of the applicant. In 2012 a plan was prepared for the applicant for a reconstruction of their existing cottage, Unit D-22, which called for at that time a demolition of said cottage, which has been done, with construction of a new structure. Wetlands approval was granted in 2012. He reviewed the plans with the Commission. The plans include the same impervious coverage as the previous one. The proposed structure will be positioned further away from the lake. Community water and sewer has been put in place for the whole Association.

Chairman Smith confirmed that the West Shore Home Owner's Association has granted their approval.

Motion: to approve the site plan showing reconstruction of the cottage owned by David & Heather Messina at 6 West Lake Road. Made by Matthew Robison, seconded by Paul Babarik.

Discussion:

Olli LeDuc, Building Inspector voiced his concerns with respect to the proposed 12' X 28' deck totaling 336 square feet which will result in exceeding the 10% lot coverage requirement. He also addressed the proposed shed replacement which does not include dimensions.

Chairman Smith stated that the application does comply with the Regulations that were approved and the Home Owner's Association. He questioned all of those in favor. Paul Babarik, Terry Smith and Matthew Robison all vote "Aye" while William Stowell voted "Nay". Vote: 3:1; Motion passed.

5. 1365 LLC – 86 Woodlawn Drive – informal discussion regarding addition to an existing building.

Curtis Bosco, Z.E.O. stated that he spoke to the applicant. The property is in a Commercial Zone, it continues to be used as a residence by Dean Yimoyines' son and wife. They would like to construct a 12' X 18' walk in closet. Any expansion of the house would need to be for commercial use only.

Chairman Smith stated that he has a residential use in a Commercial Zone (at the previous request of the applicant); a non-conforming use. You cannot expand a non-conforming use. Therefore, he cannot put an addition on the house.

Matthew Robison, William Stowell, and Paul Babarik all agreed.

OTHER BUSINESS

6. Any other business added to agenda by 2/3 vote of Commission

Motion: to add Attorney Dana D'Angelo to discuss Maximum Resale Price Affordable Housing Unit – Brookside to the Agenda. Made by William Stowell, seconded by Matthew Robison. Unanimous Approval.

Attorney Dana D'Angelo stated that she requested to be added to the Agenda to deliver her letter dated January 2, 2014 that is required under the Affordability Plan to put on the Land Records. Unit 8 is now available for resale.

Chairman Smith that said letter and corresponding documents would be added to the Minutes (see attached).

7. Enforcement Report

Curtis Bosco, ZEO reviewed his Enforcement Report with the Commission.

Chairman Smith requested more details regarding the Kennel letter that Curtis Bosco sent to the owner of 658 Watertown Road.

Curtis Bosco stated that Mr. Bona had received some complaints about boarding at said residence. After clarification, the owner stated that he has borders living with him and is not boarding animals.

Curtis Bosco reviewed a reduced version of the Waterbury Oxford Airport Development Zone map with the Commission. All those agreed that a more detailed map would be more beneficial.

Curtis Bosco questioned Chairman Smith if he shared with the members of the Commission that fact that there will be money in the budget to redo the Regulations.

Chairman Smith stated that he did inform them. He also requested that in the future, Curtis Bosco forward and all West Shore applications to Ollie LeDuc and John Calabrese for their written comments or concerns and that they be forwarded to the Commission prior to all meetings containing said property on the Agenda.

8. Adjournment

Motion: to adjourn the meeting at 8:12 P.M. Made by Paul Babarik, seconded by William Stowell. Unanimous Approval.

Filed Subject to Approval,

Respectfully Submitted,

Rachelle Behuniak, Clerk

Original to Edith Salisbury, Town Clerk

cc: P&Z Commission Members
Ollie LeDuc, Building Official
Curtis Bosco, Z.E.O.
Deborah Seavey, W.E.O.
David Alley, Chairman, Z.B.A.
Patricia Traver, Assessor Clerk
Mary Barton
Attorney Dana D'Angelo
Larry S. Hutvagner, CFO
Rob Rubbo, Director of Health

The Middlebury Law Firm

20 Woodside Avenue
Middlebury, CT 06762

January 2, 2014

RECEIVED FOR FILING

Jan 6 2014 at 9:00 AM

TOWN CLERK'S OFFICE
MIDDLEBURY, CT

Edith S. Sabin
TOWN CLERK

Chairman Terry Smith
Planning & Zoning Commission
Town of Middlebury
1212 Whittemore Road
Middlebury, Connecticut 06762

Re: *Resale Affordable Housing Unit 8 Brookside Development*

Dear Chairman Smith:

Please accept this letter as notice of the availability of Affordable Housing Unit 8 at the Brookside Development for resale.

In accordance with the applicable restrictions are set forth in the Brookside Statutory Warranty Deed, paragraph "(h) (3)", in the "affordable housing unit" deeds; the Planning And Zoning Commission is to receive notice of the availability of an Affordable Housing Unit. Said notice is to include "a description of said property, the eligibility criteria for potential purchasers, the Maximum Sale Price and the availability of application forms and additional information."

Unit 8 , Brookside Drive, Middlebury , Connecticut is a Four (4) bedroom home located in the Brookside Development. A copy of the deed containing the legal description is attached hereto.

Eligible purchasers for the property may have an annual family income which does not exceed \$80,550.00 for calendar year 2013. This number is subject to change as frequently as the income guidelines are published by HUD. "Annual family income" is more particularly defined in the Brookside Affordability Plan recorded in Volume 199, Page1038 of the Middlebury Land Records.

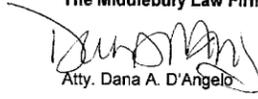
The Maximum Sale Price is Two Hundred and Fifty Six Thousand Nine Hundred and Forty Five Dollars (\$256,945.00). A copy of the calculation as well as an letter to Atty. McVerry explaining the calculation are attached hereto. This calculation is subject to change as frequently as the income guidelines are published by HUD. Further, the authority of the Administrator to adjust the Resale Price "by the addition of reasonable cost of sale" may include a real estate commission, closing attorney fee and conveyance taxes that on a typical residential resale total an additional Six (6%) percent of the gross sale price. Therefore, subject to proof of cost of sale to the Administrator, it is my legal opinion that the subject unit could have a Gross Sale Price, within the limits of the Maximum Resale Price, of Two Hundred Seventy Two Thousand Three Hundred and Sixty One Dollars and Seventy Cents (\$272,361.70).

Application forms and additional information is available at the Assessor's Office for the Town of Middlebury located at 1212 Whittemore Road, Middlebury, Connecticut.

If you have any further questions on this matter, please do not hesitate to contact me.

Very truly yours,

The Middlebury Law Firm



Atty. Dana A. D'Angelo

RECEIVED FOR FILING

Jan 6 2014 at 9:00 AM

TOWN CLERK'S OFFICE
MIDDLEBURY, CT

VOL. 200 PAGE 0981

**BROOKSIDE
STATUTORY WARRANTY DEED**
(for Housing Opportunity Units)

Edith Salaskey
TOWN CLERK

BAKER RESIDENTIAL LIMITED PARTNERSHIP whose address is 485 Washington Avenue,
Pleasantville, NY 10570,

in consideration of the sum of ***Two Hundred Nine Thousand Nine Hundred and 00/100***

\$209,900.00

paid, grants to Della M. Dagnan, whose address is 19 Glenwood Avenue, Middlebury, CT 06762.

WITH WARRANTY COVENANTS, the premises more particularly described in Schedule A annexed
hereto and made a part hereof.

Signed OCT 1 - 2004

Witnessed by:

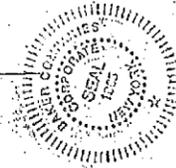
Cindy McArdle
Cindy McArdle

Beth Torreggiani
Beth Torreggiani

BAKER RESIDENTIAL LIMITED PARTNERSHIP

By: Baker Companies, Inc.

By: *Mano Shan*
Mano Shan, Treasurer of Baker Residential



STATE OF NEW YORK)
COUNTY OF WESTCHESTER)

ss: Pleasantville

The foregoing instrument was acknowledged, before me, OCT 1 - 2004 by Mano Shan,
Treasurer of Baker Residential for Baker Companies, Inc., the Managing General Partner of Baker Residential
Limited Partnership, as his free act and deed and the free act and deed of said limited partnership.

Rence Ellison
Notary Public

Record and return to:
Michael J. McVerry, Esq.
Attorney at Law
35 Porter Avenue
Naugatuck, CT 06770

RENCE ELLISON
Notary Public, State of New York
No. 01EL5021280
Qualified in Westchester County
Commission Expires Dec. 13, 2005

"\$524.75 Conveyance Tax Received

"\$ 0.94.50 State Conveyance Tax Collected

R. J. B. Grant
Town Clerk of Middlebury

R. J. B. Grant
Town Clerk of Middlebury

SCHEDULE A TO STATUTORY WARRANTY DEED

ALL THAT certain piece or parcel of real property situated in the Town of Middlebury, County of New Haven and State of Connecticut, declared by Declaration of Brookside, a Common Interest Community, dated December 10, 2003, and recorded in the Middlebury Land Records on January 26, 2004 at 2:44pm in Volume 199, Document #235. First Amendment dated April 28, 2004 and filed in the Middlebury Land Records on May 4, 2004 at 4:20pm in Volume 202 at Page 479, known and designated as Unit No. 97, Brookside and as 8 Brookside Drive, Middlebury, Connecticut, TOGETHER WITH a percentage of undivided interest in the common elements as set forth in the above described Declaration of Brookside.

TOGETHER, ALSO, WITH the benefits, rights, privileges and easements, and SUBJECT TO the terms, conditions, agreements, covenants, restrictions, rights, reservations, easements, rules and regulations, contained in the Declaration of Brookside referred to above, as the same may hereafter be amended of record.

SUBJECT, ALSO, TO the following:

(a) Any and all provisions of any ordinance, municipal regulation or public or private law, including, without limitation, zoning and planning rules and regulations.

(b) Taxes and municipal charges due the Town of Middlebury, including taxes resulting from any reassessment or reallocation from the creation of the common interest community, which become due and payable after the date of the delivery of the deed. The Grantee agrees, with regard to the period subsequent to closing, that in the event any taxes relative to the Unit or the common elements conveyed therewith are billed to the Grantor, the Grantee shall be liable for the same whether said taxes are billed to the Grantor or directly to the Grantee.

(c) Sewer use charges due the Town of Middlebury and water use charges due the Heritage Village Water Company.

(d) Notes and notations shown on Map No. _____ on file in the offices of the Middlebury Town Clerk.

(e) The Declarant's right to grant easements to the Town of Middlebury or to public utility companies and to convey improvements within those easements anywhere in the common interest community for the purpose of furnishing utility and other services to the community.

(f) The Declaration of Brookside to be recorded on the Middlebury Land Records prior to the recording of the first Unit deed, and any amendments thereto as of record may appear.

(g) The right to construct utility lines, pipes, wires, ducts, conduits and other facilities across the land not designated "Development Rights Reserved in this Area" on the above described map for the purpose of furnishing utility and other services to buildings and improvements to be constructed on the land designated "Development Rights Reserved in this Area" on said map.

(h) The property conveyed hereby is an "affordable housing unit" as defined in Connecticut General Statutes Section 8-30g. Said property is subject to the following restrictions (the "Restrictions"):

1. The owner of said property shall sell or transfer said property only to certain eligible families or households. A family or household whose income is less than or equal to eighty percent (80%) of the lesser of the area median income for the Town of Middlebury ("Town"), or the statewide median as determined by the Connecticut Department of Housing and the U.S. Department of Housing and Urban Development ("HUD"), shall be eligible to purchase said property. Determination of a potential purchaser's eligibility shall be made by the Administrator (as defined in that certain Affordability Plan (the "Affordability Plan") for the subdivision of which said property is a part, a copy of which plan is on file in the Town's Planning and Zoning Office).

2. Said owner shall convey said property at a price that will preserve said property as affordable housing. Calculation of the maximum resale price ("Maximum Resale Price") for said property, so as to satisfy Connecticut General Statutes Section 8-30g, shall be calculated as follows: The Maximum Resale Price shall mean the Previous Sale Price of a

Housing Opportunity Unit as adjusted by the Resale Index ("Index") and as further adjusted by the addition of reasonable costs of sale, as approved by the Administrator. The Index shall mean the calculated percentage of change in the median State of Connecticut income for a household of four using the income guidelines as published by HUD. Said measure shall include the time from Previous Sale to the time of the Resale.

3. In the event said owner desires to make said property available for sale, said owner shall notify the Administrator in writing. The Administrator shall then provide notice of the availability of said property for purchase. Such notice shall be provided, at a minimum, by advertising at least two times in newspapers of general circulation in the Town. The owner shall bear the cost of such advertisement. The Administrator shall also provide such notice to the Middlebury Planning and Zoning Commission, the Town of Middlebury and the Middlebury Board of Education. Such notice shall include a description of said property, the eligibility criteria for potential purchasers, the Maximum Sale Price and the availability of application forms and additional information. All such notices shall comply with the Federal Fair Housing Act, 42 U.S.C. 3601 et seq. and the Connecticut Fair Housing Act, C.G.S. Sections 46a-64b, 64c. Said owner may hire a real estate broker or otherwise individually solicit offers, independent of the Administrator's action, from potential purchasers. Said owner shall inform any potential purchaser of the affordability restrictions before any purchase and sale agreement is executed by furnishing the potential purchaser with a copy of the Affordability Plan. The purchase and sale agreement shall contain a provision to the effect that the sale is contingent upon a determination by the Administrator that the potential purchaser meets the eligibility criteria set forth in the Affordability Plan. Once the purchase and sale agreement is executed by said owner and the potential purchaser, the potential purchaser shall immediately notify the Administrator in writing. The Administrator shall have thirty (30) days from such notice to determine the eligibility of the potential purchaser in accordance with the application process set forth in the Affordability Plan. The Administrator shall notify said owner and the potential purchaser of its determination of eligibility in writing within said thirty (30) day period. If the Administrator determines that the potential purchaser is not eligible, the purchase and sale agreement shall be void, and said owner may solicit other potential purchasers. If the Administrator determines that the potential purchaser is eligible, the Administrator shall provide the potential purchaser and said owner with a signed certification, executed in recordable form, to the effect that the sale of the particular Housing Opportunity Unit has complied with the provisions of the Affordability Plan. The owner shall bear the cost of recording said certification.

4. Said owner shall occupy said property as said owner's principal residence and shall not lease said property.

5. Said owner shall maintain said property. Said owner shall not destroy, damage or impair said property, allow said property to deteriorate, or commit waste on said property. When said property is offered for re-sale, the Administrator shall cause said property to be inspected.

6. Right of First Offer during the 40 year Affordability Period.

a) During the forty (40) year period during which these Restrictions are in effect, in the event said owner desires to convey said property, said owner shall first offer said property to the Offeree (as hereinafter defined), which Offeree shall have the right to acquire said property, free and clear of all liens and encumbrances except those existing on the date of the initial conveyance of said property by Baker Residential Limited Partnership to an eligible family or household (the "Original Liens").

b) Said owner shall give written notice (the "Transfer Notice") to the Offeree and the Administrator of his intention to convey said property. The offer price (the "Offer Price") shall be calculated promptly by the Administrator in accordance with the formula set forth in paragraph 7 of these Restrictions, basing the computations on then-current data for the statewide median income. The Administrator shall provide written notice of the Offer Price to said owner and the Offeree within fifteen (15) days of the date of the Transfer Notice. The Offeree shall have forty-five (45) days from the date of the Transfer Notice to give written notice (the "Election Notice") to said owner of its election to purchase said property for the Offer Price and free and clear of all liens and encumbrances except the Original Liens.

c) If the Offeree shall so elect to purchase said property, the closing (the "Closing") on such purchase and sale shall take place at the offices of Offeree at 10 a.m. on the date sixty (60) days from the date of the Election Notice, or at such other place or upon such earlier date as the parties may mutually agree. At the Closing, any closing adjustments and allocation of closing costs which are then usual and customary in the Town of Middlebury for real estate closings shall be made between seller and purchaser.

d) In the event the Offeror (i) notifies said owner that it elects not to purchase said property, (ii) does not provide the Election Notice within said forty-five (45) day period, or (iii) fails to consummate its purchase of said property, said owner shall file an affidavit on the Middlebury Land Records evidencing such event, following which said owner may sell said property in accordance with Sections 2 and 3 herein.

e) "Offeror" shall mean the Town of Middlebury.

f) All notices required to be provided pursuant to this right of first offer shall be hand-delivered, sent by overnight courier, or mailed by certified or registered mail return receipt requested. These Restrictions shall run with the land for a period of forty (40) years from the date of initial conveyance of said property by Baker Residential Limited Partnership to an eligible family or household. After the expiration of said forty (40) year period, the Restrictions shall be of no further force and effect.

A site plan for this community was approved by agencies of the Town based in part on the condition that a defined percentage of the homes in the community would be preserved as affordable housing units. The Restrictions are required by law to be strictly enforced.

A violation of the Restrictions shall not result in a forfeiture of title, but the Middlebury Planning and Zoning Commission shall otherwise retain all enforcement powers granted by the Connecticut General Statutes, including Section 8-12, which powers include, but are not limited to, the authority, at any reasonable time, to inspect said property and to examine the books and records of the Administrator to determine compliance of said property with the affordable housing regulations.

7. In the event that an institutional lender forecloses its mortgage or accepts a deed in lieu of foreclosure:

a) Nothing contained herein shall obligate an institutional lender to notify the Town of Middlebury about a pending foreclosure.

b) In the event of the sale of a foreclosed property, any excess funds, as hereinafter defined, shall be paid to the Town of Middlebury. Excess funds shall be the total amount paid for the unit in excess of the greater of: (i) the maximum permissible resale price of said property as of the date of foreclosure sale pursuant to the provisions of these Restrictions or (ii) the amount required to satisfy said lender's mortgage, including costs of foreclosure and any payments to junior creditors out of the foreclosure sales proceeds.

c) The Restrictions shall not apply to future sales of said property.

d) Notwithstanding the provisions of Paragraph 7 c) above, for a period of ninety (90) days after the property is listed for sale by the institutional lender, the Town of Middlebury shall have the right of first refusal, after receipt of a copy of an accepted bona fide offer, to purchase the property for cash in an amount equal to the bona fide offer. Written notice of the exercise of such right shall be given by the Town of Middlebury within 30 days of receipt of written notice of such bona fide offer, which notice shall include a copy of the offer. Should the Town of Middlebury exercise this right, a closing shall occur within forty-five (45) days of the notice of exercise. Waiver or non-exercise of the right within the required time limit shall not affect the Town's right of first refusal as to subsequent offers that take place within any ninety (90) day period following the receipt of notice of property being available for sale. The proposed buyer who has made the accepted bona fide offer shall be obligated to notify the Town of Middlebury of the existence of said offer and to obtain the waiver of the right of first refusal.

RECEIVED FOR RECORD: October 4, 2004 AT 1:10 PM
MIDDLEBURY, CT
RECORDED BY Regina M. Berrath TOWN CLERK

RECEIVED FOR FILING
 Jan 6 20 14 at 9:00 A.M.
 TOWN CLERK'S OFFICE
 MIDDLEBURY, CT
Edith Sabatino
 Middlebury TOWN CLERK
 SAMPLE

Affordable Appeals
Maximum Sales Price Calculation
 Fill In the Yellow Boxes

Step 1: The Area Median Income 80550
 Identify the Number of Bedrooms in the Unit 4
 Adjustment for Family Size based on 1.5 Persons per Bedroom 6
 Step 2: Adjust Income for Family Size 93438

80% Units

Step 3: Multiply Step 2 by Applicable Percentage 74750
 Step 4: Multiply Step 3 by 30% 22425
 Step 5: Divide Step 4 by 12 months 1869
 Step 6: Determine Monthly Expenses and Sum:
 Common Charges (Condo Fees) 85
 Real Estate Taxes 389
 Property Insurance 59
 Heat/Water/Electricity/Sewer 206 739
 Step 7: Subtract Step 6 from Step 5:
 This is the maximum available for monthly debt service (P & I) 1130
 Step 8: Using an Amortization Table or Financial Calculator
 reverse amortize the value in Step 7 to determine
 maximum loan using commercially available mortgage term/rate 5.21% @ 30 yrs fixed \$205,556.00
 Step 9: Divide Step 8 by 80% to determine
 Maximum Initial Sales Price.
 This assumes a 20% Downpayment. \$256,945

If RESALE:

Step 10: Documented Capital Improvements
 Since Initial Purchase 3600
 Step 11: Add Step 10 to Step 9 \$260,545
 Maximum Resale Price