



## **TOWN OF MIDDLEBURY**

*Planning & Zoning Commission  
1212 Whittemore Road  
Middlebury, Connecticut 06762  
(203) 577-4162 ph  
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### **NOVEMBER 6, 2014 REGULAR MEETING MINUTES**

#### **MEMBERS PRESENT**

Terry Smith, Chairman  
William Stowell, Vice Chairman  
Erika Carrington  
Matthew Robison

#### **MEMBERS ABSENT**

#### **ALTERNATES PRESENT**

Paul T. Babarik

#### **ALTERNATES ABSENT**

Christian Yantorno

#### **ALSO PRESENT**

John Calabrese, P.E.  
Curtis Bosco, ZEO

#### **CALL TO ORDER**

Chairman Smith called the Regular Meeting of the Middlebury Planning & Zoning Commission to order at 7:29 P.M.

#### **ROLL CALL AND DESIGNATION OF ALTERNATES**

Chairman Smith announced Regular Members Smith, Stowell, Carrington, and Robison and Alternate Member Babarik as present. Alternate Member Yantorno was absent. He appointed Alternate Member Paul Babarik to act in place of the open seat.

## **PUBLIC HEARINGS**

### **1. Middlebury Planning & Zoning Commission – Proposed change to Section 22.7 of the Regulations**

Chairman Smith called the Public Hearing to order at 7:30 P.M. He appointed Alternate Member Paul Babarik to act in place of the open seat. He read the Legal Notice published in The Voices on 10-22-14 & 10-29-14 for the record.

Attorney Dana D'Angelo, representing the Town of Middlebury, reviewed her proposal to change Section 22.7 of the Regulations with the Commission. She stated that in the summer of 2014 the first Affordable Resale in Brookside took place. To determine the selling price, she reviewed the Regulations and she deemed them to be confusing. This prompted her to contact the State of CT to question what they use as a formula. She feels there is a need to clean up the language in Section 22.7.2 and tie it into the State Statute resulting in consistency. The other proposed change is the definition of Moderate Income which is tied to the Waterbury Metropolitan Statistical Area. She came to the realization that Waterbury has the lowest statistical property values and income which she feels does not adequately reflect the income and property values in Middlebury. Therefore, she asked that the range be broadened by looking at all of New Haven County and Litchfield County to reach a more adequate reflection.

Attorney Michael McVerry of 35 Porter Avenue, Naugatuck, CT stated that it was his client's sale that brought said issue about. He also stated that he is in agreement with Attorney D'Angelo's proposal.

Attorney D'Angelo requested that the Commission continue the Public Hearing so that the surrounding towns, which have been notified, have ample time to respond should they choose to do so.

Chairman Smith agreed to continue the Public Hearing to December 4, 2014.

**Motion:** to continue the public hearing on 12-4-14. Made by Erika Carrington, seconded by William Stowell. Unanimous Approval.

**2. Middlebury Land Development, LLC – North Benson Rd. & Judd Hill Rd. – Application for Excavation & Grading Permit pursuant to Section 64 (Application #2014-9-1)**

Chairman Smith called the Public Hearing to order at 7:35 P.M. He read the Legal Notice published in The Voices on 10-22-14 & 10-29-14 for the record. He appointed Alternate Member Paul Babarik to act in place of the open seat.

Attorney Jennifer Yoxall of Carmody & Torrance spoke on behalf of the applicant. This is a 79 unit age restricted development with an approximate 1,200 square foot community building. The permit has been granted every year since 2002 with the last one having an effective date of December 26, 2013. She submitted a package of exhibits related to the project containing all of the permits and approvals associated with the project. The 2009 Construction Progress Plan is the most recent.

Mark Riefenhauser, L.E. of Smith & Co. reviewed the minor changes from the 2009 plan. He stated that all of the roadways on the west side of North Benson Rd. have been constructed for Phase 1 and that part of those roadways are included in Phase 3. Thirty (30) of the thirty four (34) units within Phase 1 have been constructed along with most of the landscaping. All utilities for Phase 1 and a small portion of Phase 3 are complete. Phase 2 and the remainder of Phase 3 have yet to be started. Some of the minor changes from the 2009 plan include air conditioning units, small decking or patios. A total of 29,000 cubic yards of excess material will need to be removed for the 3 phases.

Attorney Yoxall requested that the Commission waive the requirement for the traffic report as this was submitted in 2007 and that the Commission make a separate Motion stating said waiver. She also submitted a proposed Resolution should the Commission decide to approve the application along with a proposed Legal Notice.

**Motion:** to close the public hearing. Made by William Stowell, seconded by Paul Babarik. Unanimous Approval.

**MINUTE APPROVAL**

**3. Discussion of the Minutes of the Regular Meeting held on October 2, 2014**

**Motion:** to approve the Minutes of the Regular Meeting held on October 2, 2014. Made by Erika Carrington, seconded by Matthew Robison. Unanimous Approval.

**OLD BUSINESS**

**4. Middlebury Planning & Zoning Commission – Proposed change to Section 22.7 of the Regulations**

Discussion was tabled.

**5. Middlebury Land Development, LLC – North Benson Rd. & Judd Hill Rd. – Application for Excavation & Grading Permit pursuant to Section 64 (Application #2014-9-1)**

**Motion:** to approve the attached resolution. Made by Matthew Robison, seconded by Erika Carrington. Unanimous Approval.

**Motion:** to waive the requirement for the traffic plan as it has already been submitted. Made by William Stowell, seconded by Paul Babarik. Unanimous Approval.

**6. Lake Quassapaug Amusement Park, Inc. – 2132 Middlebury Rd. – Application for Site Plan Modification (Application #2014-9-2)**

Attorney Michael McVerry of 35 Porter Avenue, Naugatuck, CT spoke on behalf of the applicant. The proposal is to modify the site plan by adding a maintenance building alongside the MRA, replace the existing Redemption Center on the west side of the property with a Candy Store on the same footprint, add a Snack Bar and two new water slides. Copies of the approvals from the Middlebury Police & Fire Departments, the Conservation Commission and the Economic and Industrial Development Commission & Architectural Review have been submitted. The only change required by the Conservation Commission was that the applicant place small a plunge pool in the area of the access road for drainage purposes. The Candy Store and Snack Bar will mirror the architectural plans of the new Ticket Booth as well as the Railroad Station.

Eric Anderson stated that the natural wood color will be utilized and that beer and wine will be served at the Snack Bar.

**Motion:** to approve the Site Plan Modification labeled Improvement Location Survey Lake Quassapaug Amusement Park, Route 64 Middlebury by Smith & Company dated 9-11-14. Made by Erika Carrington, seconded by Paul Babarik. Unanimous Approval.

Attorney McVerry stated that revised plans will be submitted referencing the plunge pool.

**7. Michael Hartnett – 2 West Lake Road – Site Plan Review (2014-8-1)**

John Calabrese, P.E. confirmed that there was a 3 X 15 foot porch by the front door which was not included in calculating the final footprint of the Molder property.

Chairman Smith stated that there was a letter submitted which raised several questions for him. Therefore, he referred it to Town Attorney Dana D'Angelo.

Dana D'Angelo stated that the memo, which was submitted by a unit owner, asked that the application not be approved. The issue of a justification for a waiver stated in Section 25.6.9 indicates that a waiver may be allowed provided that the application contains written consent of the abutting condominium unit owners and consent of the West Shore Executive Board. With respect to the Mr. Largay's legal interest, she deferred that to Mr. Largay's counsel. While Mr. Largay does not own the property, it is her understating that he does have approval from the owner to act on his behalf which is common practice. The request for written evidence of what occurred at the West Shore Owners Association is not within the Regulations of the Middlebury Planning & Zoning Commission. The applicant is required to demonstrate approvals and bring said approvals before this Commission. The procedure that was followed by the Condominium Association is not within this Commission's jurisdiction.

Chairman Smith confirmed that this Commission should not be involved in what transpires within the Condominium Association. He wants to ensure that if approval from this Commission is granted that it is in compliance with the Regulations. He also confirmed that evidence of the Executive Board approval was submitted.

Steve Molder, a member of West Shore Owners Association and representing some of the other owners present, stated that per their by-laws Executive Board meetings must be noticed members.

Chairman Smith again stated that the issue is internal to the Condominium Association and that the Planning & Zoning Commission has no jurisdiction. If their Regulations were not followed then said issue must be taken up with the Association.

Gail Hanley, a resident and Board Member, stated that she had no knowledge of the Molder application or the current application before this Commission and wanted to know what West Shore Board Member granted approval.

Erika Carrington voiced her concern with respect to the fact that the original footprint included the porch for the calculations for the Molder property and that it was not included in the final calculations for the porch.

Attorney Dana D'Angelo stated that the Commission is bound to what the Regulations say.

Curtis Bosco, ZEO stated that a map/plan approved by the Association was submitted for the file.

Attorney D'Angelo recited various portions of the Regulations pertaining to Erika Carrington's concerns.

Attorney Tom Riley stated that the confusion is in the order of the description of the ordinances. The original footprint was intended to include all the porches etc. but the resulting structure did not have to include it in its calculations.

William Stowell stated that outside the footprint to him means it is not attached.

Attorney Riley stated that this was done for Mr. Molder and requested that the same be done for his client.

Matthew Robison stated that either way, the proposal is significantly over the 30%.

William Stowell indicated that he had issue with an Association that reports something and doesn't follow their by-laws.

Matthew Robison agreed with William Stowell and questioned the validity of their approval as a member of their Board was not even aware of this application.

Attorney Riley stated "With all due respect, it's not your job to determine whether it's a valid approval.

Matthew Robison replied "Well it is if it's submitted to us as being an approval from the Executive Board. We need to know it's valid."

Attorney D'Angelo stated that this Commission does not have the jurisdiction to go examine the procedure being followed.

Chairman Smith confirmed that the signature on said plan was that of Mr. John Butkus.

Attorney Riley indicated that Mr. Butkus was present at the last meeting and stated that that was the approval.

Gail Hanley stated that Mr. Butkus is not only the President of the Board but he is also the neighbor to the home that is in question and questioned if he was approving it as a neighbor or as the President and was speaking for the rest of the Board.

Chairman Smith confirmed that there were two separate approvals submitted by Mr. Butkus: 1 on behalf of the Board and 1 as a neighbor.

Gail Hanley indicated that she learned of this application due to an article in The Voices and finds it disturbing that she was never notified as a resident and a Board Member.

Chairman Smith voiced his understanding.

Paul Babarik questioned if Ms. Hanley voiced her concerns to the Association.

Gail Hanley stated that she attempted to contact her fellow Board members via email. Until this evening, she did not realize that there was a preapproval.

**Motion:** to deny the application. Made by William Stowell, seconded by Matthew Robison.

**Discussion:** Erika Carrington stated that she agreed with William Stowell with the 30% requirement. She also does not agree with the interpretation of the footprint being counted before and not after. She acknowledged the Molder approval but that there needs to be a time to stop. She found it disingenuous that the Commission was led to believe that the homeowners would be somewhat of a guard dog of these applications and that it does not seem to be true.

Attorney Riley requested that the application be tabled.

Erika Carrington stated that there was a motion on the floor.

Chairman Smith stated that an extension would be needed to which Attorney Riley agreed.

William Stowell requested that they just move forward and did not want to withdraw his motion.

Chairman Smith asked if he would deny it without prejudice.

William Stowell agreed to amend the motion to deny it without prejudice.  
Unanimous Approval. Application was Denied without prejudice.

**NEW BUSINESS**

**8. Dean Yimoyines/JSD Partners, LLC – 1067 Southford Road – Application for Change of Use (Application #2014-10-1)**

Dean Yimoyines stated that the majority of the use of the building will be for warehouse space to process shipping & receiving and that some sales may be made out of the front of the building. Retail will be 10,000 square feet and the warehouse 22,000 square feet.

Chairman Smith confirmed that parking is adequate.

Dean Yimoyines also indicated that he would like to place a 4 X 8 sign on the property which would require a Special Exception from this Commission.

Chairman Smith instructed Mr. Yimoyines to apply for a Special Exception and that a Public Hearing will be scheduled for December 4, 2014. A Site Plan showing where the sign will be on the lot will be needed for the Commission's review.

**Motion:** to approve the change of use for JSD Partners, LLC application located on 1067 Southford Road. Made by Erika Carrington, seconded by William Stowell. Unanimous Approval.

**OTHER BUSINESS**

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

**Motion:** to add the 2015 Middlebury Planning & Zoning Commission Meeting Schedule to the Agenda. Made by Erika Carrington, seconded by Paul Babarik. Unanimous Approval.

**Planning & Zoning Commission – 2015 Middlebury Planning & Zoning Commission Meeting Schedule**

**Motion:** to approve the 2015 Middlebury Planning & Zoning Commission Meeting Schedule. Made by Matthew Robison, seconded by William Stowell. Unanimous Approval.

**10. Discussion regarding Plan of Conservation & Development**

Chairman Smith stated that Curt Bosco, ZEO will have copies available for the members in 2 weeks. Brian Miller will be present at the December 4, 2014 meeting to review the final draft with the Commission.

**11. Regulation Update**

Chairman Smith and Erika Carrington submitted their corrections. Rachelle Behuniak will submit additional copies to Paul Babarik and Matthew Robison for their revisions.

**12. Enforcement Report**

Curtis Bosco, ZEO reviewed his report with the Commission. He stated that he confirmed with Park & Rec. that Room 26 of the Shepardson Community Center will be available for the 2015 scheduled meetings. He informed the Commission that someone inquired about where crematories would be allowed.

Chairman Smith, along with the Commission, confirmed that any application concerning a proposed crematory should be made with the LI-200 district.

Curtis Bosco, ZEO questioned the allowable use for a piece of property on Park Road Extension which contains a horse barn with 7 stalls.

Chairman Smith, along with the Commission, confirmed that only 1 horse would be allowed on the property due to the size of the property unless additional property was leased.

John Calabrese, P.E. discussed some grade changes to Phase 2A and 2B at Ridgewood at Middlebury. He asked if the Commission would require a formal application or just a field change.

Chairman Smith confirmed that a field change would be adequate and that it be referenced on the As-Built to which the Commission agreed.

Curtis Bosco, ZEO reviewed the issues referenced in his blight letters.

Attorney Stephen Savarese informed the Commission of the Oxford Planning & Zoning Commission meeting scheduled for November 13, 2014. At said meeting, the CPV Towantic Energy Center Project will be discussed and requested that this Commission submit their concerns for the record.

Chairman Smith agreed to submit a letter on behalf of the Middlebury Planning & Zoning Commission.

**13. Adjournment**

**Motion:** to adjourn the meeting at 9:28 P.M. Made by Erika Carrington, seconded by Paul Babarik. Unanimous Approval.

Filed Subject to Approval,

Respectfully Submitted,

Rachelle Behuniak, Clerk

Original to Edith Salisbury, Town Clerk

cc: P&Z Commission Members  
Thomas Proulx, Chairman, Conservation Commission  
Ollie LeDuc, Building Official  
Curtis Bosco, Z.E.O.  
David Alley, Chairman, Z.B.A.  
Attorney Dana D'Angelo  
Larry S. Hutvagner, CFO  
Rob Rubbo, Deputy Director of Health  
Mary Barton

RESOLUTION  
(SECTION 64 EXCAVATION & GRADING PERMIT)

WHEREAS, the Commission has conducted a public hearing on the application of Middlebury Land Development LLC for a permit for excavation and filling incident to construction of the approved planned residential development, Benson Woods, for which a permit was originally granted in the name of Timex Corporation; and

WHEREAS, this Commission previously granted: a Section 64 Excavation and Grading permit on September 5, 2002 and approved modified plans on December 5, 2002, which approval was effective as of December 26, 2002; a subsequent permit for the same or similar activities on November 6, 2003, which permit was effective December 26, 2003; and permits for the same or similar activities in each subsequent year thereafter, which permits were effective on December 26<sup>th</sup> of the applicable year, with the most recent permit approved on November 1, 2013, which permit was effective December 26, 2013.

WHEREAS, the site plans submitted by the applicant are as listed in Exhibit 1 attached to this resolution; and

WHEREAS, the Commission has received and considered testimony, reports, and other information regarding the access and parking, traffic, landscaping, topography of the site and surrounding areas, the proposed buildings, storm drainage systems, and other aspects of site development; and

WHEREAS, this Commission has considered all applicable regulations regarding excavation, grading and filling, the standards of the applicable zone and all other applicable regulations and finds the proposal complies with those regulations; and

WHEREAS, the Commission specifically finds that the proposed filling, excavation and removal of material would not be detrimental to the purposes set forth in Section 64.1 of the Zoning Regulations and will be consistent with such purposes; and

WHEREAS, the Commission has determined that the proposed use of land, buildings and structures will be established and conducted in accordance with the performance standards under the Zoning Regulations and other sections of the Zoning Regulations and with the standards in other relevant town, state and federal codes, ordinances or regulations; and

WHEREAS, when the filling, excavation, grading or removal is in direct connection with the improvements shown on the Final Development Plan, the Commission finds that the applicant should be exempt from Subsection 64.6.3 of the Zoning Regulations; and

WHEREAS, a traffic report has been previously submitted in connection with the Benson Woods Development such that a separate traffic report pursuant to Section 52.3.16C for the Section 64 Grading and Excavation permit is not reasonably necessary to a proper disposition of the application; and

WHEREAS, the Commission also specifically finds that the proposed excavation and filling incident to construction which may occur below the elevation of any abutting street or property line within 50 feet of such line would not involve or create a substantial risk of damage to the abutting property.

NOW THEREFORE, it is

RESOLVED, this Commission does hereby approve the application of Middlebury Land Development LLC for an excavation and grading permit under Section 64 of the Zoning Regulations, and the proposed sedimentation and erosion control plan, subject to the same conditions as under the existing permit:

1. That the applicant continue to provide a certificate of insurance with respect to the activities permitted under Section 64 naming the Town of Middlebury as a named insured in amounts required under Section 64 of the Zoning Regulations.
2. That prior to the commencement of each of the three Phases the applicant provide a performance bond or irrevocable letter of credit in amounts set by the Board of Selectmen to secure the completion of the proposed excavation and grading work associated with such Phase, which performance bond or irrevocable letter of credit may be the same as that provided for the related Final Development Plan. The Commission acknowledges that such a letter of credit has already been provided for Phase 1.

This approval shall be effective December 26, 2014, and legal notice of this decision shall be published prior to that date.

**EXHIBIT 1**

[One copy of each of the following plans is included with this application. All are previously on file in connection with prior applications]

<u>Document</u>	<u>Date (or latest revision)</u>	<u>Prepared By:</u>
Cover Sheet, Final Development Plan – CS-1	April 4, 2007	Bradford E. Smith & Son
200 Scale Compilation Plan – S-1	April 4, 2007	Bradford E. Smith & Son
100 Scale Compilation Plan – S-2	April 4, 2007	Bradford E. Smith & Son
Property Survey – S-3	April 4, 2007	Bradford E. Smith & Son
Common Open Space – S-4	April 4, 2007	Bradford E. Smith & Son
Site Development Plan Sheets SP 1-4, Final Development Plan	April 4, 2007	Bradford E. Smith & Son
Plan/Profile Sheets		Bradford E. Smith & Son
Final Development Plan – P1 – P4	April 4, 2007	
Site Development Plan	April 4, 2007	Bradford E. Smith & Son
Engineer's Notes and Standard Details, N1, N2, and N3		
Three Bedroom Parking Design	April 4, 2007	Bradford E. Smith & Son
Sediment and Erosion Control Plan SE1-SE4	April 4, 2007	Bradford E. Smith & Son
Excavation Progress Plan (also referred to as the "Construction Progress Plan")	August 7, 2009	Bradford E. Smith & Son

[The following plans are already on file]

Landscape Plans - LA1 - LA5	September 5, 2002	Jack Curtis & Associates
Landscape Enlargement Plans - LA6	June 25, 2002	Jack Curtis & Associates
Planting Details - LA7	April 23, 2002	Jack Curtis & Associates
Wetland Mitigation Plan - LA8	September 5, 2002	Jack Curtis & Associates
Site Lighting	August 1, 2002	Jack Curtis & Associates