



TOWN OF MIDDLEBURY

Conservation Commission
1212 Whittemore Road
Middlebury, Connecticut 06762
(203) 577-4162

RECEIVED FOR FILING

May 7, 2024 at 2:10 pm

TOWN CLERK'S OFFICE
MIDDLEBURY, CT

Mary Beth K. Kishinski
TOWN CLERK

Public & Regular Meeting Minutes April 30, 2024

Members Present:

Curt Bosco, Vice Chairman
Mary Barton (arrived 7 pm)
Joseph Martino
George Tzepos (arrived 7:32 pm)
Joe Bernardi (remote)
Peggy Gibbons

Members Absent:

Paul Bowler, Chairman

Also Present:

Deborah Seavey, W.E.O.
John Calabrese

CALL TO ORDER

The Meeting was called to order at 6:31 PM by Vice Chairman Curt Bosco.

PUBLIC HEARING: PERMIT MODIFICATION #490-A – 764 SOUTHFORD ROAD

Vice Chairman Curt Bosco opens the public hearing at 6:32 pm and reads the legal notice. Town council James Strub advised the commission on housekeeping that it is a modification for a permit that has been approved and appealed in court. He asked the original record be incorporated into this proceeding.

Motion: to incorporate the original approval record from May 10, 2023, into this file. Made by Mr. Martino and seconded by Mr. Bernardi. Peggy Gibbons votes no, passes 3-1.

Mr. Strub continued to advise the commission that the job in tonight's meeting is to make modifications to present any change in the regulated activities that result in an adverse impact on the wetlands. The application itself is not a prior approval review; they would just look at the modifications to see their impacts.

Mark Branse stated he provided an email to the commission outlining how the intervention works. Mr. Branse reads a paragraph of the intervention that the site is not designed to meet the latest Connecticut Deep 2023 stormwater manual; despite the applicant for the underlying permit representing to the town at the original hearings that it would meet this standard, the current application, allegedly, according to the applicant, is designed to comply with the standards found

in the 2004 stormwater quality manual. Thus, the application is inconsistent with the underlying permit, or it represents a degradation in the quality of stormwater management of the site.

Applicant:

Attorney Edward Fitzpatrick, representing the applicant, states for the record that this is for a reduction in the square footage of the building that was approved on the site and also for the impervious surface. He also turned in the return receipts of the mailings for the record. He also provided copies of Connecticut stormwater manual that provided effective dates of guidelines and how they affect existing applications. In addition, he provided a report dated April 17, 2024, addressed to Deborah Seavy, W.E.O, from the soil scientists.

Mark Grocki, Senior project manager with VHB, presented a site plan of the previously approved plan from SLR engineers describing the locations of the stormwater basins, wetland locations, building locations, and the limit of disturbance lines. He then showed the proposed plan, and the limit of disturbance lines remained the same. The buildings are in the same location. The large central parking area is no longer being proposed. The parking will be shifted to the eastern portion of the larger building and the southwestern portion of the smaller building. The building reduction is 2100 SF. The stormwater management features design will not be changed. Mr. Grocki refers to the 2023-2024 stormwater manual on pages 1 & 5 given to the commission members. Mr. Grocki states the site was already permitted and approved prior to the manual being implemented, and they do not need to adhere to the new manual. However, the key takeaway of the new manual is an increased pollutant treatment train for the stormwater management system. Another key point is an increase in water quality volume treatment from one inch to 1.3 inches, which is actually the original SLR design. VHB mimicking meets both standards. Mr. Grocki also wanted to address the stormwater management features, which is the 1.3-inch water quality volume retention on site. He describes to the commission the locations that will be. He states they looked at how much open-air volume is in each of the basins, and each has what's called an outlook control structure. It's basically a manhole structure. Water can go in. There is a plate orifice with a whole orifice to outlet water as a slow release, and there is a volume of open air below that orifice within the basins that opens to the basin's floor. When reviewing all of these basins, they noticed that they were oversized. They did their independent review and concluded that all the basins throughout the site accommodate enough open space volume to retain the 1.3-inch water quality volume. One of the 1.3 is slightly under. The basin will have a floor, and on that floor will be an 18 inch mix of bioretention media, consisting of sand, compost and loam. A Conservative approach would be a 15% void space. When accounting for that void space, they more than exceed the water quality volume of the 1.3 inches for that final basin.

Sarah Berryman, soil scientist with VHB, conducted a site walk on April 8th. She walked all the boundaries and did not see anything she would have deviated from. She described the wetland locations to the commission. She states she reviewed the reports, the previously approved plan, and the proposed site plan and found no changes. Ms. Barton asked if she had looked at the invasives, and she replied yes.

Intervenors:

Keith Ainsworth, attorney for MST A. He states that the same amount of wetlands is being impacted as before. He refers to a state law that has been passed that land use agencies may not permit a land use-related permit for a distribution facility on a site that meets the criteria as this one does and that it would apply to this even though this original permit was passed before that law was passed. He states they are also raising the issue that walls have been proposed for sound barriers that penetrate the wetlands.

Steve Trinkaus P.E. reviews his letter submitted to the commissioners (see attached).

Mr. Ainsworth clarifies his position about the walls that they interfere with the wetlands mitigation program.

Applicant:

Mr. Fitzpatrick states that some of the claims with regard to the basin 430 were not credited by the commission at the last public hearings and asks that they not be credited again. He also refers to the manual that speaks for itself as to when and what time frame it applies to. Regarding other claims, he feels they are a rehash of what has been proposed at previous public hearings. He asked Mr. Grocki to address some of the technical comments made by the engineer for the intervenors.

Mr. Grocki addresses the 430 basins on the presented screen and states they mimic the underground chambers and size will hold the same amount of water. He states that this does exceed the requirements of the manual. Regarding the underdrain system, SLR had a geotechnical engineer and did boring testing. VHB did its own testing and found a similar glacial till profile across the site in the groundwater. He states they are not proposing any changes that have not already been approved, and they want to keep the same system. Ms. Barton asked him about the sound walls. Mr. Grocki states they were proposed during the planning and zoning hearings after the conservation commission. He then describes the locations of the sound walls of the entire site. Ms. Barton asked if there would still be adequate wildlife corridors and if wildlife could still move, and Mr. Grocki replied that he supposed so.

Mr. Fitzpatrick addresses the commission, stating that they have responded to staff comments by Mr. Calabrese and that all the comments have been satisfied. They also have responded to comments from Wetlands Officer Deb Seavey and believe that all her comments have been addressed satisfactorily. Ms. Barton asked if there was an existing permit in place and if they were modifying the existing permit and amending it, and Mr. Fitzpatrick responded yes.

Mr. Bosco asks if there are any questions for Mr. Calabrese P.E., and Ms. Barton states no, but she has questions for Mr. Logan.

Ms. Barton asks George Logan regarding the bioretention basins that there is a claim it will not do what it is supposed to do. Mr. Logan states his opinion is that they will work because SLR accounted for the underdrain and that his opinion has not changed. Mr. Logan addressed the sound barriers and whether they will impede wildlife movement. He states that including these

sound barriers is a positive thing because it limits the auditory disturbance of wildlife already using the wetlands.

Ms. Barton also wants to clarify the number of acres, and Mr. Grocki states 8.72 was the original approval, and the reduction is 8.71. Ms. Barton inquired about the parking spaces, to which he responded that it has gone from 409 spaces to 284 and that the impervious surface reduction is 5,260.

Public Comments:

- Bob Nerney – 414 Longmeadow Rd. – stated at the last meeting that a herpetologist who spoke to the migratory routes of salamanders and inquired how this wall benefits the wildlife by cutting the migrator ranges and stated the individual should return to explain that.
- Don Andrews – 21 Avalon Dr. – inquired about the materials being used for the soundproof wall and asked that the council review the materials being used. Also, the applicant did not address that there is a state provision in place and that this should not have come to the Council.
- Gary Kline – 5 Hampshire Court – reads statement submitted into the record – see attached.
- Rebecca Spencer – 352 Judd Hill Rd – has concerns regarding the sound walls and whether it was in the original application and not just the modification. Also has concerns regarding wells and that there is not enough protection to protect the water quality.

Attorney Fitzpatrick responds to Mr. Andrews' question. It states that the statute does not apply to this application, and if there is a question regarding the statute's language, the Commission consults with their counsel. He says that the issues raised by Mr. Nerney were answered by Mr. Logan and that Mr. Kline's comments do not apply to the modification.

Mr. Branse states that he will email his letter prepared with his legal opinion regarding the applicability of the act, and he could also read it out loud.

Ms. Barton asked when the sound walls were added, and Mr. Fitzpatrick replied it was at the planning and zoning meeting and that they did it with the benefit of the wetlands approval. Ms. Barton states the commission does not regulate wildlife and that they regulate the impact of wetlands upon wildlife. She also inquired whether the sound wall would be installed to an engineer's design, and Mr. Fitzpatrick replied yes.

Mr. Bernardi addressed the sound wall and stated that he was sure the wall would be off the ground enough for the salamanders to crawl under. Mr. Grocki states the sound wall will not be embedded in the ground.

John Calabrese P.E. wanted into the record that VHB did respond to his report and did meet all of his recommendations in his report. Also, he reviewed the report from Mr. Grocki, dated April

25th, about the connected stormwater manuals and the water quality volumes for the basins, and he agrees with them. Ms. Barton asked if Mr. Calabrese agreed they do not need a new routing analysis, and he replied yes because it is the same. Mr. Bosco asked Mr. Calabrese if underground and above-ground have pros and cons. Mr. Calabrese said you use the underground when you have to in parking lots. Above ground, the basin is better, and you can see if it needs to be maintained.

Mr. Bosco asked Mr. Logan if he concurred, and he did. He also stated that it is a planted basin and is exposed to elements that improve water quality. That it will be a minute but measurable increase in water quality. (The public hearing is recessed from 7:54 pm-8:00 pm)

Mark Branse emailed his letter to the commission and read it aloud. See the attached file.

Motion: to close the public hearing at 8:14 pm. Made by Ms. Barton seconded by Mr. Martino. Unanimous approval.

ACTION ON MINUTES

Motion: to approve the March 26, 2024 regular meeting. Made by Mr. Martino and seconded by Mr. Tzepos. Unanimous approval.

PERMIT MODIFICATION #370-A BENSON WOODS

Mark Riefenhauser, Engineer for Smith & Co., for modifications to phase two of Benson Woods. He received a letter from John Calabrese dated 4/18/2024 and provided the commission with a response to that letter. He wanted to address the comments regarding community building, which are the same as what was previously approved. He also provided Mr. Calabrese with the drainage calculations he asked for. Notes for during construction and, maintenance and placement include a temporary settlement detention basin prior to site work, which Mr. Riefenhauser had outlined in his letter and incorporated into the new plan that he just submitted to the commission. They also added in the construction note specifications for the water quality basins. John Calabrese P.E. did receive the letter, and all his comments will be addressed in the letter, and his report will be part of the resolution. He states that everything has been addressed to his satisfaction. Ms. Barton asked Ms. Riefenhauser to give a refresher on the proposal. He states they are maintaining the 32 units and they will be doing mostly triplex units and one duplex unit. They are eliminating a wetland crossing as part of the roadway system. They have reduced the amount of area of development and went from 15.5 acres down to 8.2 acres. The impervious area is 6 acres to 3 acres. They have relocated the community service building to the north area.

Motion: to approve application #370-A per draft resolution. Made by Ms. Barton and seconded by Mr. Tzepos. Unanimous approval.

PERMIT MODIFICATION #490-A 764 SOUTHFORD ROAD

Motion: to table the decision for May 28, 2024, regular meeting. Made by Ms. Barton and seconded by Mr. Tzepos. Unanimous approval.

PERMIT MODIFICATION #423-B 369 WHITE DEER ROCK

Garrett Moore, regarding the installation of a one-lane swim spa behind a barn that has already been constructed,

Motion: to approve the renewal of the permit. Made by Ms. Barton and seconded by Mr. Martino, the motion carries with Mr. Tzezos being recused.

Motion: to approve modification of #423-B. Made by Ms. Barton and seconded by Mr. Martino. Motion carries with Mr. Tzezos being recused.

APPLICATION #511 – 9 BRISTOL ROAD

Ryan Faber will fix part of a wall that has fallen into the lake and remove another section of it on their beach. No structures are being added, working with David Hughes on a plot plan. He is looking to remove the part of the wall, the rusty gates, and the boat ramp.

Motion: to accept the application. Made by Mr. Tzezos and seconded by Ms. Barton.

APPLICATION #512 – 59 SANDY BEACH ROAD

Motion: to add to the agenda. Made by Ms. Barton and seconded by Mr. Martino. Unanimous approval.

Alfred Vagnini wants to repair a dock and also wants to add it to an existing deck. Also, a stone wall will be put in place to complement the neighbors. Ms. Seavy said at the next meeting to provide details of the wall as far as height and construction of what it will be built with. Ms. Barton asked how close the deck was to the edge of the water, and Mr. Vagnini replied that it was about 12 feet and that he would be making it larger. The deck is 12x12 existing, and the proposed is 12x30. The dock will be constructed of wood with aluminum posts in the water. The dock would come out of the lake for the winter.

Motion: to accept the application. Made by Ms. Barton and seconded by Mr. Tzezos. Unanimous approval.

ADJOURNMENT

Motion: to adjourn the meeting at 8:36 pm. Made by Ms. Barton and seconded by Mr. Martino. Unanimous Approval.

Middlebury Conservation Commission
Regular Meeting
April 30, 2024

Filed Subject to Approval,
Respectfully Submitted,

Jennifer Atkinson
Recording Clerk

Original to Brigitte Bessette, Town Clerk

cc: Conservation Commission
Mark Lubus, Building Official
John Calabrese, PE
Terry Smith, P&Z Chairman
Curtis Bosco, ZEO
Attorney Robert Smith, WPCA



Mark K. Branse
860.241.4088
branse@halloransage.com

August 28, 2023

Curtis Bosco, CZEO
Zoning Enforcement Officer
Town of Middlebury
1212 Whittemore Road
Middlebury, CT 06762

Re: Compliance of proposed lot line revision with zoning regulations and recent State legislation – property of Timex Group USA, Inc. – Southford Road/Christian Road, Middlebury

Dear Mr. Bosco:

You have requested my legal opinion of the following facts: There is property in Middlebury which consists of two parcels: 764 Southford Road, as described at Volume 217, Page 921 of the Middlebury Land Records, now or formerly owned by Stacey J. Drubner (“Drubner”) and containing 19.016 acres; and 555 Christian Road, currently owned by Timex Group USA, Inc. (“Timex”) and described at Volume 240, Page 393 of the Middlebury Land Records, and containing 92.902 acres, for a total of 111.918 acres. For purposes of this letter, I will assume that the current configuration of the property complies with the Middlebury Zoning Regulations. The property is located primarily in the LI-200 Zone and partly in the R-40 Zone, with a very small area in Flood Zone X.

Timex and Drubner propose to revise the lot lines between these two parcels as depicted on a map or plan prepared by Smith & Company, Surveyors and Engineers, entitled “Lot Line Revision Map” dated 07-31-23 (the “Lot Line Revision Map”). The revised lot lines would create a new Parcel A incorporating portions of 764 Southford Road and 555 Christian Road, and a new Parcel B containing some (but not all) of the land within 555 Christian Road. Parcel A (located entirely in the LI-200 Zone) would contain 77.038 acres and have frontage on Southford Road which would meet or exceed the 200 feet of frontage required in the LI-200, as shown on the Lot Line Revision Map. Parcel B (containing mostly R-40 zoned property and a 200-foot corridor of LI-200 Zoned property along Christian Road) would contain 34.880 acres, of which 9.579 acres would be in the LI-200 zones (where a 5 acre minimum is required) and 25.301 acres of which would be in the R-40 Zone (where a minimum of 40,000 SF is required), all as shown on the Lot Line Revision Map. Properties in the R-40 Zone must also establish the existence of a

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Zoning Enforcement Officer
Town of Middlebury
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"Minimum Building Square"¹ 150 feet on a side, and the Lot Line Revision Map indicates that a larger such square exists on Parcel B.²

Per the Lot Line Revision Map, Parcel A would contain 3.847 acres of inland wetlands and Parcel B would contain 3.931 acres of inland wetlands.

The Lot Line Revision Map also depicts an existing building and parking lot, but you have indicated to me that the combined property has been proposed for a warehouse/distribution center which would exceed 100,000 square feet in area.

In your letter to me dated August 16, 2023 and supplemental email of August 18, 2023, you have asked for my opinion concerning zoning compliance for the proposed lot line revision, and also whether the development of a 100,000+ square foot warehouse could be approved on the proposed Parcel A and be in compliance with a provision contained in the State's budget implementer legislation that addresses local approval of warehouses under certain circumstances. The exact wording of that legislation is in Section 173 of Public Act 23-204 (the "Act"), which provides as follows:

Sec. 173. (NEW) (Effective from passage) Notwithstanding any municipal charter, ordinance, regulation or resolution, special act or provision of title 8 of the general statutes, no municipality with a population of more than six thousand and less than eight thousand, as determined by the most recent federal decennial census, or board or commission of any such municipality authorized to regulate planning, zoning or land use, shall approve the siting, construction, permitting, operation or use of a warehousing or distribution facility exceeding an area of one hundred thousand square feet if such (1) facility is located on one or more parcels of land that are less than one hundred fifty acres in total, (2) parcels contain more than five acres of wetlands in total, and (3) parcel or parcels are located not more than two miles from an elementary school.

You have advised me that the Town of Middlebury has a population of more than 6,000 and less than 8,000 as determined by the most recent federal decennial census. The question is if the reconfigured Parcel A would be precluded by the Act from being approved for a warehousing or distribution facility which exceeds 100,000 SF in area.

¹ Such regulations are more typically described as a "minimum buildable square," per Sections 11 and 7.2 of the Middlebury Zoning Regulations.

² The square itself isn't depicted on the Lot Line Revision Map, but there is a dimension of 400 feet shown between the Christian Road frontage of the R-40 zoned portion of Parcel B and the rear, the width of that area appears to exceed 400 feet in the north-south orientation. Therefore, it appears that the 150 Minimum Buildable Square is present on the R-40 portion of proposed Parcel B.

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Zoning Enforcement Officer
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You have also provided me with the language of Sections 11 and 42 of the Zoning Regulations which would apply to Parcel A.

Discussion

Zoning:

For purposes of responding to your question about zoning compliance, I will assume that the Lot Line Revision Map is accurate. The copy that you sent me is sealed by a Connecticut Licensed Land Surveyor and it is appropriate for the Town to rely upon it. Even if this map is not accurate, the Town cannot adjudicate property line disputes and has no choice but to accept the accuracy of a duly sealed, certified survey map.

Section 11 of the Regulations sets forth the bulk requirements for parcels in the various zones. Parcels A and B comply with the minimum lot area and frontage for the LI-80 zone, and the R-40 portion of Parcel B complies with the requirements for that zone, per the Lot Line Revision Map. It's not possible to opine about the compliance of any future building because the Lot Line Revision Map provides no information about such a proposed building, but you have indicated to me that your inquiry concerns only the lot line revision, not the building details of the proposed warehouse.

Section 42.1 lists the permitted uses in the LI-200 District, and Section 42.1.5 lists "warehousing" as a permitted use. Section 42 has certain exceptions and supplements to the bulk requirements in Section 4.2, but again, without a proposed building on the plans, compliance can't be determined. Section 42.3 requires a site plan for any permitted use, which site plan must conform to Section 51 of the Regulations. Section 42.5 contains "special standards" for uses in the LI-200 District but again, without a specific set of plans, I cannot opine about compliance for any particular development on Parcels A or B.³ The same is true for Section 42.6, which lists "special procedures." Section 42.7 lists "prohibited uses" and "warehouse" is not listed as prohibited and the activities that are listed wouldn't be expected in a typical warehouse development.

In summary, based on the information provided (primarily the Lot Line Revision Map), the proposed Parcels A and B would comply with the applicable requirements of the Middlebury Zoning Regulations, and I can't see any reason why a warehouse could not be placed on Parcel A or the industrial portion of Parcel B.

³ Note that there is an irrebuttable presumption that a permitted use is appropriate for any location in the subject zone. See *TLC Development, Inc. v. Planning and Zoning Commission of Town of Branford*, 215 Conn. 527, 532-33 (1990).

Public Act 23-204

Please note the use of the conjunctive in the language of the Act, i.e., the prohibition against a warehousing or distribution facility exceeding an area of 100,000 SF only applies if *all three* of the stated conditions are present. *Location Realty, Inc. v. Colaccino*, 287 Conn. 706, FN #11 (2008). Therefore, in order for the warehouse prohibition to apply, the proposed building would have to exhibit *all three* of the listed conditions:

1. The warehouse would have to be located on one or more parcels of land that are less than one hundred fifty acres in total. Parcel A would be on 77.038 acres, which is less than 150 acres. Parcel B would be 34.880 acres, which is also less than 150 acres. This element is present for both parcels.
2. The parcels upon which the warehouse was located must contain more than five acres of wetlands in total. Parcel A would only have 3.847 acres of wetland, which is less than 5 acres. Parcel B would have only 3.931 acres of wetlands, which is also less than 5 acres. This element is *not* present for either parcel.
3. The parcel or parcels on which the warehouse is to be located is prohibited if it's not more than two miles from an elementary school. You have advised me that Long Meadow Elementary School is less than two miles from both parcels, so this element is present.

Based on the above, it would be my opinion that a 100,000+ SF warehouse would be permitted on Parcel A or Parcel B because all three of the stated conditions are not present, i.e., they do not contain 5 or more acres of inland wetlands.

One could make the argument that since a warehouse on Parcel A would utilize the existing entrance driveway on Parcel B, that both parcels must be considered consolidated for purposes of evaluating the impact of the Act (citing the phrase, "one or more parcels of land"). I would not agree with such an argument for the following reasons:

- The plain fact is that the Lot Line Revision Map depicts two separate parcels, owned by two separate owners, and they must be considered as separate. The Act doesn't authorize a town to ignore property lines and consolidate separate parcels, especially in this case where the two parcels are owned by separate entities.
- The Act refers to a "warehousing or distribution facility exceeding an area of one hundred thousand square feet." Such language indicates that the Act applies to a *building*, and the proposed building would be on either Parcel A or Parcel B, not straddle both. The Act doesn't say, for example, "warehousing or distribution facility, including associated parking, driveways, and other supporting facilities, exceeding an area of one hundred thousand square feet in area for all such facilities and associated

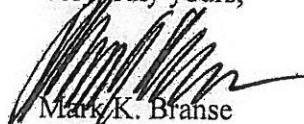
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facilities.” The square footage of a “facility” for warehousing or distribution would never include associated parking and driveways located on some other parcel of land.

- The driveway in question is shown on the Lot Line Revision Map as existing. Therefore, even if it were associated with a warehouse, it is not proposed to be built for that facility because it’s already there. The Act says that the Town shall not authorize the use of a *facility*. It does not prohibit the use of an *existing driveway* to serve a facility. I also don’t think that a town *could* prohibit the use of an existing roadway which forms the sole existing access to a parcel of land. *Wellswood Columbia, LLC v. Town of Hebron*, 295 Conn. 802 (2010).⁴ Note such a denial of access could form the basis for a civil rights action against the Town. See *Wellswood Columbia, LLC v. Town of Hebron*, 327 Conn. 53 (2017) where such a claim was unsuccessful but based only on the procedural history involved. I could not advise the Town to attempt to deny use of an existing driveway based on the language of the Act.
- The rules of statutory construction are that zoning regulations are in derogation of common law property rights and thus are to be narrowly construed in favor of the rights of a property owner. Therefore, if the term “facility” is ambiguous as to whether it applies to associated driveways and parking areas, then that ambiguity must be construed in favor of the property owner and against the restriction. See, *Fillion v. Hannon*, 106 Conn. App. 745, 752 (2008).

For the above reasons, it would be my opinion that the Town is not prohibited by its Zoning Regulations or the Act from approving a warehouse on the LI-200 portions of Parcels A or B. I hope that this opinion is of help to the Town. If you have any further questions, please do not hesitate to contact me.

Very truly yours,



Mark K. Branse

cc: Dana D’Angelo, Esq.
Gail McTaggart, Esq.
James Strub, Esq.

⁴ While the *Wellswood Columbia* case involved a public road, the same logic could be applied to a law that prohibits the use of an existing private access driveway.



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April 30, 2024

Mr. Paul Bowler, Chairman
Middlebury Conservation Commission
1212 Whittemore Road
Middlebury, Connecticut 06762

Re: Warehouse Proposal
"Southford Park"
555 Christian Road & 764 Southford Road
Middlebury, Connecticut

Dear Chairman Bowler and Members of the Conservation Commission,

This memo is to clarify that it is not appropriate to use the full pollutant removal rates when treatment systems are in series. This is based on a professional literature review conducted by my office.

Documents Reviewed:

- A. Site Plans by VHB – March 25, 2024
- B. Memorandum by VHB of March 25, 2024 – adjustment to upland disturbance area and impervious area totals
- C. Memorandum by VHB of March 25, 2024 – Stormwater Management Revisions
- D. Memorandum by VHB – April 24, 2024 – CT Water Quality Volume
- E. Current (2023) Connecticut Stormwater Quality Manual (557 pages).

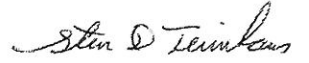
After reviewing the above documents, I have the following comments for your consideration.

1. The design of the stormwater management needs to comply with all the requirements of the 2023 CT DEEP stormwater management manual in my professional opinion for the following reasons:
 - a. VHB is not the original design engineer of the site. As the plans were dated just before the March 30, 2024 date of implementation by DEEP, it should comply with the new standards to ensure that there are no environmental impacts from the discharge of stormwater on the site.
 - b. As additional basins have been proposed in lieu of underground storage systems, this is a substantial change in the handling of stormwater management.

- c. No calculations have been provided for the new stormwater Basin 430 for the routing of all required storm events have been provided.
 - d. Additionally, the discharge from Basin 430 is then directed to Basin 420 along with runoff from other impervious areas. No updated routing analysis has been provided for Basin 420.
 - e. No updated pollutant renovation analysis has been submitted for the project which complies with the 2023 Manual. The 2023 Manual requires the following reductions for New Development which would apply to all new construction of the site which is not located the existing development of the Timex Facility:
 - i. Total Suspended Solids (TSS) = 90%
 - ii. Total Phosphorous (TP) = 60%
 - iii. Total Nitrogen (TN) = 40%
 - f. The 2023 Manual requires the following reductions for Redevelopment which would apply to all new construction of the site which is located over the existing development of the Timex Facility:
 - i. Total Suspended Solids (TSS) = 80%
 - ii. Total Phosphorous (TP) = 50%
 - iii. Total Nitrogen (TN) = 30%
 - g. Construction of this project, if the modifications are approved by all land use agencies may not commence until after September 30, 2024 which the 2023 Manual is to be fully implemented.
2. The forebay for Basin 430 has a functional depth of 12" which is insufficient to trap sediments. The 2004 Manual required a forebay depth of 4'-6' and the 2023 Manual requires a forebay depth of 2'-4', so the forebay for Basin 430 does not comply with both versions of the Manual.
 3. The forebay for Basin 410 has a functional depth of 12" which is insufficient to trap sediments. The 2004 Manual required a forebay depth of 4'-6' and the 2023 Manual requires a forebay depth of 2'-4', so the forebay for Basin 430 does not comply with both versions of the Manual.
 4. Basin 420, as originally designed by SLR contains a Bioretention system at the bottom of a standard detention basin. These are two distinct stormwater management practices that have functionality which conflict with each other. No such hybrid design exists in either the 2004 or 2023 Manual. No documentation or analyses have been to support the hybrid design.
 5. The stormwater memo by VHB states that bioretention basins with sediment forebays will be used. These are not standalone practices but are incorporated as the bottom of a standard detention basin and thus do not function as a standalone Bioretention system. The Bioretention Basins cannot be used as detention basins without eliminating the water quality treatment associated with the Bioretention system due to the ponding of water to provide detention and reduce peak rates.
 6. There have been modifications to the site design which according to the applicant will reduce the impervious area proposed on the site. However, no updated routing analyses have been provided by the applicant for all the stormwater basins to demonstrate how the modifications will affect the functionality of all the stormwater basins.

Please contact my office if you have any questions concerning this information.

Respectfully Submitted,
Trinkaus Engineering, LLC

A handwritten signature in cursive script, reading "Steven D. Trinkaus".

Steven D. Trinkaus, PE



April 17, 2024

Ref: 43367.00

Ms. Deborah Seavey, Wetlands Official
Middlebury Town Hall
1212 Whittemore Road
Middlebury, CT 06762

Re: Wetland Delineation Verification Memo
Southford Park
Middlebury, Connecticut

Dear Ms. Seavey,

This letter has been prepared to document that VHB has conducted a field verification of the delineated wetland resource boundaries at the project site located at 764 Southford Rd and 555 Christian Road in Middlebury, Connecticut. The wetland delineation was completed by SLR in October and November 2022, and February 2023. Site design plans were developed based on this delineation by SLR and submitted to the Middlebury Inland Wetlands and Watercourse Commission, which were subsequently approved by the Commission on May 10, 2023. VHB has since prepared a modified site design plan using SLR's delineation boundaries, titled "Southford Park" dated March 25, 2024.

As such, VHB conducted a review of available documents previously submitted to the Commission with the original approval, as well as a field review of the delineation boundaries. The documents reviewed are as follows:

- 555 Christian Road and 764 Southford Road Wetland Delineation Soil Scientist Report, SLR, dated November 2022, revised March 2023
- Snake Management Plan, SLR, dated February 20, 2023
- Invasive Species Management Plan, SLR, dated April 18, 2023
- 3rd Party Application Review – Proposed Southford Park – Timex Site, REMA, dated February 22, 2023
- Response to Third Party Technical Wetland Application Review, Southford Park – Timex Site, SLR, dated February 28, 2023

Engineers | Scientists | Planners | Designers

100 Great Meadow Road
Wethersfield, Connecticut 06109
P 860.807.4300
F 860.372.4570

Ms. Deborah Seavey, Wetlands Official

Ref: 43367.00

April 17, 2024

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- Additional Wetland Boundary Verification/Delineation, Southford Park – Timex Site, SLR, dated February 16, 2023
- Comment Response Letter, Warehouse Proposal 555 Christian Road and 764 Southford Road, SLR, dated March 16, 2023
- 3rd Party Application Review – Supplemental, Proposed Southford Park – Timex Site, REMA, dated April 10, 2023

On April 8 and 11, 2024, one of VHB's certified soil scientist's, Sara Berryman, completed a review of the delineated wetland boundaries located on the project site, as listed in the SLR Wetland Delineation Report, dated November 2022, revised March 2023. The wetlands were evaluated in the field and were found to be substantially the same as when they were originally delineated. VHB does not propose any modifications to the wetland boundaries. VHB's civil engineering team has designed proposed site development modifications that are substantially similar to the previously approved site design plans by SLR, demonstrating that the proposed modifications would not result in any additional wetland impacts.

If you have any questions related to our review, please reach out to me at 860-807-4336.

Sincerely,

Vanasse Hangen Brustlin, Inc.

A handwritten signature in black ink, appearing to read "Sf".

Sara Berryman, CSS
Wetland Scientist
sberryman@vhb.com

A handwritten signature in black ink, appearing to read "JShamas".

Jeffrey Shamas, CE, CSS, ENV SP, SPWS
Energy Market Leader/Director of Environmental Services
jshamas@vhb.com



CONNECTICUT DEPARTMENT OF ENERGY & ENVIRONMENTAL PROTECTION

Connecticut Stormwater Quality Manual

Publication Date: September 30, 2023

Effective Date: March 30, 2024

Latest Revision March 26, 2024

79 ELM STREET • HARTFORD, CONNECTICUT 06106

THIS REVISION REPLACES THE VERSION TITLED 2004 STORMWATER QUALITY MANUAL

Chapter 1 – Introduction

Adoption of this Manual

This manual will be used for guidance immediately upon its effective date. Any design that has completed preliminary design phase (approximately 50% of full design), however, as of the effective date will not be subject to this updated guidance. If this is the status of your project, you must immediately communicate this to the appropriate review authority. However, all projects received or permitted after one year from publication must comply with the updated Manuals. Any reference in DEEP General Permits for adherence to the guidelines, criteria, recommendations and/or requirements specified in the Manual shall be considered to have adopted these dates and criteria.

Any references in municipal regulations shall at least meet the dates above, but, if they so choose may adopt an earlier date of compliance with the updated guidance.

Purpose of the Manual

The Connecticut Stormwater Quality Manual (Manual) provides guidance on the measures necessary to protect the waters of Connecticut

from the adverse impacts of stormwater runoff. States like Connecticut, which are National Pollutant Discharge Elimination System (NPDES) authorized, are required to address stormwater pollution from three potential sources: construction activities, municipal separate storm sewer systems (MS4s), and industrial activities. While the NPDES permits are the driver for the requirements, this Manual provides guidance for operators of these sources to evaluate and select the best stormwater design options to meet the requirements in these various permits. The guidance provided in this Manual is applicable to post-construction stormwater controls for new development, redevelopment, and upgrades to existing development (i.e., retrofits).

The Manual emphasizes the use of source controls and pollution prevention, non-structural Low Impact Development (LID) site planning and design strategies, and structural stormwater Best Management Practices (BMPs). Related topics such as construction-phase soil erosion and sediment control and storm drainage system design are integral components of a comprehensive stormwater management strategy. These topics, which are included in the

What's New in this Chapter?

- ❖ Summary of major revisions to the Manual and where to find information on future updates
- ❖ Updates to the organization and use of the Manual
- ❖ Updates to the applicability and regulatory basis of the Manual
- ❖ Updated descriptions of federal, state, and local regulatory stormwater programs as they relate to the Manual (moved to the Manual appendices)

Received at 4-30-24 ph#

For Inclusion into the Public Record: Middlebury Conservation Commission Public Hearing,
April 30, 2024

Hello –

My name is Gary Kline. I am a homeowner and resident in Avalon Farms and a member of the HOA Executive Board. The 80+ residents and homeowners in Avalon Farms are **opposed** to the Permit Modification #490-A for the Southford Park development project to build a distribution facility on the Timex property.

I'd like to remind the Commission that the original wetlands permit is under an administrative appeal, which means this modified application is unnecessarily and irrevocably ruining 8.71 acres (379,407.6 square feet) of wetlands and upland review area.

The storm water management plans have not been fully addressed. The applicant grossly downplayed the impact to the Timex property and surrounding areas, including the year-round stream flowing from the Timex property, underneath Christian Road, and into the Avalon Farms pond. This stream is a critical feeder to the Avalon Farms pond, which will be detrimentally impacted from the proposed alterations^{to} the site, which has been undisturbed for more than two decades. The extent of the impact will range from nutrient loading into the Avalon Farms pond to dewatering of the stream and pond. Avalon Farms hired a firm at considerable expense to perform baseline analysis of the pond and will have to continue to have the pond monitored on a regular basis, at the expense of the homeowners. The applicant has not taken into account the full impact of the storm water management, especially to the streams flowing away from the impacted areas to neighboring properties.

The original permit did not include the 10-foot sound barriers, so the impact of the new walls to the critical habitat area around the Benson Woods vernal pool on the west side and the wildlife corridor on the 35 conservation acres has not been addressed. The wetlands mitigation project is supposed to improve the size and quality of the wetlands on the conservation easement, but a sound wall and huge building that cuts off half of the available upland habitat undermines the effectiveness of the mitigation to be a high functioning and quality wetland.

There is still no formal agreement on who is holding the conservation easement, the details around the easement, and who will be responsible for what. The original permit did not include the easement, which was added during the

For Inclusion into the Public Record: Middlebury Conservation Commission Public Hearing,
April 30, 2024

Planning and Zoning Commission reviews in an effort to skirt Public Act 23-204 section 173. While the original Conservation Commission permit was approved prior to the state law, modifying the permit now exposes it to having to comply with the existing state law. VHB stated on the record that it intends to fully comply with all of the conditions of the original permit, including the proposed wetlands mitigation and the 35-acre conservation easement on the second parcel. These two parcels for one project that together fully satisfy all of the conditions in Public Act 23-204 §173 means the modified application cannot be approved.

Public Act 23-204 §173 now prohibits this project:

"Notwithstanding any municipal charter, ordinance, regulation or resolution, special act or provision of title 8 of the general statutes, no municipality with a population of more than six thousand and less than eight thousand, as determined by the most recent federal decennial census, or board or commission of any such municipality authorized to regulate planning, zoning or land use, shall approve the siting, construction, permitting, operation or use of a warehousing or distribution facility exceeding an area of one hundred thousand square feet if such (1) facility is located on one or more parcels of land that are less than one hundred fifty acres in total, (2) parcels contain more than five acres of wetlands in total, and (3) parcel or parcels are located not more than two miles from an elementary school."

The Middlebury Conservation Commission should **deny** the permit modification for the reasons stated.

Thank you.
Gary Kline

Avalon Farms resident and HOA Executive Board Member
5 Hampshire Court, Middlebury CT, 06762

May 7 20 24 at 2:10pm
TOWN CLERK'S OFFICE
MIDDLEBURY, CT

RESOLUTION/REPORT

Permit Modification #370-A N Benson Road-Benson Woods

WHEREAS: The Middlebury Conservation Commission for the Town of Middlebury has received a permit modification #370-on March 26, 2024 from Benson Woods Associates, LLC map entitled "Benson Woods Phase 2 Overlay-Previously Approved vs. Proposed" dated March 12, 2024, latest revision date of April 9, 2024

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 modification that consists of a reduction in regulated area disturbance and elimination of one wetland crossing will not have a substantial impact on the regulated area.
- (2) Prior to permit issuance, revised plans shall be submitted to included John Calabrese's letter dated April 18, 2024.
- (3) All original conditions still apply.
- (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.

April 30, 2024

RECEIVED FOR FILING
May 7, 2024 at 2:10 pm
TOWN CLERK'S OFFICE
MIDDLEBURY, CT
Manoel Lumbardi
TOWN CLERK

RESOLUTION

Permit Renewal # 423/423B 369 White Deer Rock Road

WHEREAS: The Middlebury Conservation Commission for the Town of Middlebury has received an application on April 30, 2024 to renew permit #423/423B;

WHEREAS: The applicant has stated there are no changes from the original approval date of March 26, 2019;

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

- (1) Permit #423/423B is renewed for another five years, with a final expiration date of March 26, 2029. Activities include construction of structures, well, stonewalls, dry hydrant, driveway and discharge of stormwater within the upland review area, subject to conditions.
- (2) All conditions in the original approval and any modifications still apply.

April 30, 2024

RECEIVED FOR FILING
May 7 2024 at 2:10pm
TOWN CLERK'S OFFICE
MIDDLEBURY, CT
Margaret L. Lohr, Assoc.
TOWN CLERK

RESOLUTION/REPORT

Permit Modification #423-B

WHEREAS: The Middlebury Conservation Commission for the Town of Middlebury has received a permit modification on April 30, 2024 from Garrett Moore Sr & Kelly Keane map entitled "Site Plan for Building Addition" dated March 9, 2024;

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 an addition to the existing barn within the upland review area will not have a substantial impact on the regulated area.
- (2) Prior to final sign-off, the applicant must comply with the planting plan as outlined in Permit #423A.
- (3) All original conditions and modification conditions still apply.
- (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.

April 30, 2024