



# **TOWN OF MIDDLEBURY**

*Conservation Commission*  
*1212 Whittemore Road*  
*Middlebury, Connecticut 06762*  
*(203) 577-4162 ph*  
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**PUBLIC HEARING & REGULAR MEETING**  
**MINUTES**  
**Tuesday, March 28, 2023**  
**7:00 P.M.**

**REGULAR MEMBERS PRESENT**

Mary Barton, Vice Chairwoman  
George Tzepos (Via Zoom)  
Peggy Gibbons  
Joseph Martino  
Curtis Bosco

**REGULAR MEMBERS ABSENT**

Paul Bowler, Chairman  
Brian Strobey

**ALSO PRESENT**

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

**I. CALL TO ORDER**

Vice Chairwoman Barton called the Regular Meeting to order at 7:01 p.m.

**AGENDA**

**Motion:** to add the Pledge of Allegiance to the agenda. Made by Curtis Bosco, seconded by Peggy Gibbons. Unanimous Approval.

Vice Chairwoman Barton led the Pledge of Allegiance.

## **AGENDA**

**Motion:** to act on items #1, #2 & #3 under Old Business prior to opening the Public Hearing. Made by Joseph Martino, seconded by Peggy Gibbons. Unanimous Approval.

### **IV. OLD BUSINESS**

#### **1. Application #492 – 20 Juniper Road**

There was no one present.

**Motion:** to issue an order and a show cause hearing for application #492 – 20 Juniper Road. Made by Joseph Martino, seconded by Peggy Gibbons. Unanimous Approval.

**Motion:** to deny application #492 – 20 Juniper Road. Made by Joseph Martino, seconded by Curtis Bosco. Unanimous Approval.

#### **2. Permit Modification #461-A – 1582 Straits Turnpike**

There was no one present.

**Motion:** to table action for Permit Modification #461-A – 1582 Straits Turnpike. Made by Curtis Bosco, seconded by Joseph Martino. Unanimous Approval.

#### **3. Application #494 – 600 Middlebury Road**

There was no one present.

**Motion:** to approve application #494 – 600 Middlebury Road per the Draft Resolution. Made by Joseph Martino, seconded by Peggy Gibbons. Unanimous Approval.

### **III. ACTION ON MINUTES**

#### **February 28, 2023 Regular Meeting**

**Motion:** to approve the Minutes of the February 28, 2023 Regular Meeting. Made by Peggy Gibbons, seconded by Joseph Martino. Unanimous Approval.

## **II. PUBLIC HEARING**

### **1. Application #490 – 555 Christian Road/764 Southford Road**

Vice Chairwoman Barton confirmed with the technicians that Zoom was live. She read the legal notice for the record which was published in the Republican-American on March 16, 2023 and in Voices on March 22, 2023.

Attorney Edward (Ned) Fitzpatrick of 203 Church Street, Suite 4, Naugatuck, CT 06770 spoke on behalf of the applicant. He requested confirmation that the following were received and have been made part of the record:

- Receipts and return receipts of the certified letters containing the legal notice that were mailed to abutting property owners
- SLR - Comment Response Letter dated 3-16-2023

Vice Chairwoman Barton confirmed receipt of the above.

Attorney Fitzpatrick submitted the following for the record:

- SLR - Certification of 7.7, dated 3-28-2023, per Regulation requirement
- Resume of Matt Sanford, Professional Soil Scientist and Wetland Scientist with SLR
- Resume of Dennis Quinn, Herpetologist and owner of Quinn Ecological, LLC

Attorney Fitzpatrick requested confirmation that the following were received and have been made part of the record:

- REMA Report dated 3-27-2023
- John Calabrese, P.E. Engineering Review dated 3-23-2023

Vice Chairwoman Barton confirmed receipt of the above.

Attorney Fitzpatrick went on to state that the application produces minimal changes to wetlands and fulfills the regulations by preserving and protecting them, in accordance to the experts that have provided reports. He added that they are maintaining and improving the water quality and that the Wetlands Commission cannot just deny an application due to wetland disturbance. The regulations and statutes provide that there should be balance. The criteria surrounding the preservation of the habitats and maintaining/improving water quality are two of the primary criteria, which and are being done according to the experts.

It is their belief that science and facts matter and that the information being presented on social media sites is actually misinformation. They are proposing 1/3 of 1% of disturbance. They plan to replace what is being disturbed by more than double and believe they are introducing quality wetlands possibilities, as opposed to wetlands that are deemed to be nonfunctional and nonproductive.

Vice Chairwoman Barton initiated roll call. Members Barton, Gibbons, Martino & Bosco were present. Member Tzepos' presence was via Zoom. Chairman Bowler and Brian Stroby were absent.

Ryan McEvoy, P.E. with SLR, 99 Realty Drive, Cheshire, CT 06410 provided a presentation describing the existing conditions of the subject property, which have been discussed at prior meetings. He displayed an aerial image of the property with north being to the right. Currently, it consists of two properties: 555 Christian Road where the Timex Headquarters is located and 764 Southford Road which runs along Southford Road. The two properties total approximately 112 acres. The white Timex building is located on the right/north side of property and the parking lot is to the south with access through what they refer to as Timex Road out of Christian Road. 764 Southford Road is to the left/west and currently contains a single-family residential structure. The parcel has been partially developed over the years, mostly due to Timex development, and includes large areas of open meadow, significant parking areas and agricultural areas along the intersection of Christian Road and Southford Road. Two (2) stormwater basins currently serve the Timex building: one to the south/left of parking area and one along Christian Road. While it is not within the purview of this commission, he shared that site is located both in the LI-200 Zone (majority of the property) and the R-40 Zone (300' x 400'). Delineation between the two zones is indicated with a dashed yellow line. The site is generally dominated by a ridgeline that runs north to south (right to left on topography map) with a high point of approximately 735 at the location of the existing Timex building to a low point of 650 along Christian Road. Further to the left/south, there is an additional high point on the Southford Road parcel with a low point along same of 540. The site drains in three (3) directions: to the east towards Christian Road, to the south towards Southford Road and towards residentially zoned land to the west. Delineated wetlands on the property are depicted in blue with a dashed magenta line which represents the 100-foot regulated upland review area associated with said wetlands. The Timex property is served by public water, sanitary sewer, electric and natural gas.

Matt Sanford, Professional Soil Scientist and Wetland Scientist with SLR, 99 Realty Drive, Cheshire, CT 06410 continued the presentation which included a map and photos depicting the various wetlands on the site. He noted that the wetlands were delineated under two regulatory authorities. The Federal Wetlands were delineated in accordance with the 1987 Delineation Manual as well as supplements that have been developed over

the last few years. Additionally, they were delineated in accordance with both state and local/Town of Middlebury regulations by way of drainage class of the soils, which includes poorly drained soils. The descriptions he provided for each can be found in his Soil Scientist Report November 2022, Revised March 2023.

Ryan McEvoy, P.E. then reviewed the plans. They are proposing to construct 2 buildings. The larger of the two (540,000 square foot warehouse) will be in the vicinity of the existing Timex building, and the smaller (180,000 square feet) will be located on the Southford Road piece. Access to both buildings will be taken off of Southford Road with a perimeter roadway that would extend from the south of Southford Road around to both buildings for 360° vehicular access. The existing Timex road would strictly be used for emergency purposes and not actively used by either proposed buildings. The proposed parking total is approximately 450 spaces for employees with an estimated 106 trailer parking spaces. Landscaping will provide screening along Christian Road, along the areas between the perimeter road and the building itself, and on the north side of the building.

Matt Sanford, Professional Soil Scientist and Wetland Scientist wanted to clarify that there are two (2) types of groundwater tables associated with drumlin features that have been farmed over the years: perched water table (within 0-2' below the soil surface, depending on various factors involving farming activity) and static ground water table (12-20' below the soil surface). He then reviewed the wetland impacts associated with proposed development which can be found in his Soil Scientist Report November 2022, Revised March 2023. He stressed that there are no direct wetland impacts to the Federal Wetlands being proposed, they maintain the hydrologic regimes to said wetlands and made extensive modifications to the stormwater management plan. The connectivity of the system and maintaining the wildlife corridor is a critical component so as to allow organisms to move throughout the site. The wetland impacts associated with the project are to the isolated State Wetlands which equates to approximately 16,335 square feet or .37 acres, which is less than 5% of the overall wetlands on site or .0033 of the entire site. He displayed a map of the proposed development for the site that was previously approved in 2013 and recently reapproved by this commission. He discussed the wetland mitigation and planting plans as well as the proposed upland review area restoration. He emphasized the importance of maintaining the faunal connectivity through the site. With the development being pushed towards the western portion of the site, it has allowed them to maintain wildlife connectivity between the wetlands and wetlands.

Dennis Quinn, Herpetologist and owner of Quinn Ecological, LLC which is a consulting company that specializes in the conservation and management of amphibians and reptiles across the states of CT, RI, MA and parts of NY, provided a presentation on behalf of the applicant. He discussed the potential impacts to some of the species and habitats that he identified on site. He was asked to look specifically at the habitat suitability for the

Ribbonsnake, however, it went into more detail than just looking at said species. He stressed the importance of the management of habitats as a whole and the maintenance of ecological conductivity within communities. He performed his assessment on 3-23-2023 and 3-26-2023 for the potential presence of habitat for the ribbonsnake. It included walking through each wetland on the site as well as neighboring properties that he was granted access to. He acknowledged that they are a difficult species to identify which is why the State of CT will not accept records of the species without photographic documentation, as they are often confused with the eastern garter snake. The ribbonsnake's dorsal lateral stripe always falls or is retained within dorsal scale rows 3 and 4, while the garter snake's lateral stripe is confined to lateral scale rows 2 and 3. Additionally, the lower lip of the ribbonsnake is white while the garter snake has a yellow lip with black markings. He displayed a distribution map of the ribbonsnake in CT which showcased the highest population being in the Central CT River Valley area. He also pointed out that a ribbonsnake has yet to be recorded in the town of Middlebury. Upon his assessment, he was able to document three (3) vernal pools with varying evidence that they support spotted salamander, marble salamander and/or wood frog reproduction. He went on to state that areas by North Benson Road are already directly impacting the wetlands, resulting in the loss of habitat. Spotted salamander and wood frog are most prevalent in the vernal pools and will spend a short amount in the pools during this time of year, and during the remainder of the year, the adults are in the surrounding upland. The 90° curbs on the existing catch basins prevent the migration of amphibians across the road. Once the site is developed, it will have a greater impact. From his perspective, the federal wetland that is of most concern provides no biological function for amphibians as it is completely inundated with invasive plants and invasive worm species. They will be recommending a mitigation plan where they will be eliminating a level spreader that was formerly putting water into a vernal pool, modifying the snake management plan to include post construction habitat enhancements, including the removal of some of the invasive shrubs and other species on site, and also to promote various native plant species that will be more suitable for some of the species still capable of thriving on the site.

Vice Chairwoman Barton questioned if invasive shrub removal is successful.

Dennis Quinn, Herpetologist replied that if it is maintained, it can be done, although barberry has proven not to be successful.

Ryan McEvoy, P.E. reviewed their plans for retention and renovation of stormwater from the property. He emphasized that all of their proposed basins include 1.5-2' of water quality volume and another 1.5-3' of filter media of crushed stone storage below the low level orifice that will be drained over several hours and days after a storm event via a 6" underdrain at the bottom of the ponds. All details can be found their Drainage Report,

dated December 22, 2022 (Revised January 24, 2023; February 22, 2023; March 15, 2023).

John Milone, P.E. with SLR, 99 Realty Drive, Cheshire, CT 06410 provided a presentation of the feasible and prudent alternatives required by this commission. They purposely avoided the residential land along Christian Road and portions of the industrial land. One proposed alternative involves development of the residential land and industrial land with less wetland impact (16,000 square feet) and the industrial building would cover 720,000 square feet and no coverage in the residential zone. The other proposed alternative includes four separate buildings with some coverage in the residential zone, which would avoid some of the direct impacts (1,500 square feet) on wetlands but they feel is less desirable. Development in the residential zone would involve a planned development in the northeastern corner and a multifamily development (80 units of apartments) in the southeastern corner resulting in an increase in total disturbance.

George Logan, Soil Scientist with REMA Ecological Services, LLC, who was hired by the town as a third party reviewer, reviewed his 3rd Party Application Review – Supplemental, dated March 27, 2023. He confirmed that he is satisfied with the delineations, the water quality being proposed and believes the applicant has done a good job to ensure that the hydrological components of the wetland remain as is. He confirmed that he did review the report submitted by Steven Trinkaus, P.E., dated March 28, 2023 and believes that he made a mistake as far as calculating the total suspended solids and the efficiencies of the best management practices of using standard methodology. He stated that what the applicant has provided in their report regarding pollutant removal and efficiencies is correct. He believes that CT Wetland C is no longer a wetland. His opinions with respect to the proposed alternatives, are also included in his supplemental report.

John Calabrese, P.E. reviewed his engineering review dated March 24, 2023.

Curtis Bosco stated he was in contact with Commissioner George Tzepos (via Zoom) and questioned if the experts would be available at the next meeting so that he could ask questions.

Attorney Fitzpatrick replied that the applicant will ensure that the experts are available at the next meeting.

Attorney Keith Ainsworth of 51 Elm Street, Suite 201, New Haven, CT 06510 and legal counsel to Middlebury Small Town Alliance, LLC, spoke on their behalf. He stated that John Calabrese, P.E. was satisfied with the proposed plans at the first meeting yet now he has a list of things he is satisfied with. With respect to Mr. Logan's comment that CT

Wetland C is no longer a wetland, he stressed the importance of having to base comments on evidence and feels that Mr. Logan's comment is speculation. In order to not be reparative and in the interest of time, he requested confirmation that all past documentation and presentations are incorporated by reference into the record.

Vice Chairwoman Barton confirmed that it is all incorporated by reference into the record.

Attorney Keith Ainsworth went on to state that the alternatives that were presented were similar to a juvenile tantrum. He deemed the proposed alternatives insulting and indicated that they are the same size, offer no compromises, and add in two (2) more developments. He added that the idea of the Wetlands Act is to prevent impacts to wetlands and to provide that there is no feasible and prudent alternative of lesser impact, then you can permit them. If there are wetland impacts, this commission may deny the application. He believes that a reduction of the facility should have been proposed, yet they added in two (2) residential developments.

Steven Trinkaus, P.E., 114 Hunters Ridge Road, Southbury, CT 06488 spoke on behalf of Middlebury Small Town Alliance, LLC. He added that he is also an expert in LID (Low Impact Development), which is the sole focus of dealing with water quality and runoff volumes. He stressed his belief that the applicant, John Calabrese, P.E. and George Logan, Soil Scientist do not understand the difference between conventional stormwater management and LID. If only water quality was being addressed, then yes, the bioretention basins without detention would be fine. However, you cannot have them together. He spoke with James Houle of the New Hampshire Stormwater Center as well as a stormwater contact at EPA in D.C. who both concurred that you cannot stick bioretention media in the bottom of a detention basin. He reviewed his letter dated March 28, 2023 and submitted it for the record. He expressed his dismay to the alternatives proposed and believes they are a disservice to the commission. He also stated that with all due respect, Mr. Logan is not an engineer and does not do water quality analysis for a living, but he does. He has attended LID conferences since 2008, missing only one (1) due to a conflict during Covid-19, and will attend one this year in Oklahoma City in August. He concluded by stating that the approach in his letter is the proper and correct approach for doing a pollutant loading analysis for multiple systems in series. He believes using the bioretention or the internal water storage concept will cause the systems to fail.

The following members of the public spoke in strong opposition of the application (some submitted their written statements for the record):

- Sam Dexter - 148 North Street
- Don Andrews - 21 Avalon Drive



- Jennifer Mahr - 68 Abbott Farm Road
- Gary Klein (Executive Board Member for Avalon Farms HOA) - 5 Hampshire Court spoke on behalf of the 80 residents and homeowners of the 44 homes
- Mary Tullo - 64 Cross Road
- Bill Puzzuto – 20 Somerset Drive
- Simone Pyne - 28 Brookside Drive Pine
- Terry Jack - 21 Somerset Drive
- Kerry Baldwin - 36 Judd Hill Road
- Shawna Lee Kwashnak - 59 Bioski
- Tom Rice – Judd Hill Road
- Gina Gardella – 47 Judd Hill Road
- Joe Morningstar – 257 Christian Road
- Manesh Dodia - 151 Judd Hill Road
- Eric Holst-Grubbe - 28 Judson Road
- Additional written correspondence was submitted for the record by other members of the public that did not speak

Vice Chairwoman Barton stated that the public hearing should be continued, as all needed to leave shortly.

Curtis Bosco added that April 4, 2023 and April 11, 2023, both at 7:00 p.m., were scheduled with Pomperaug High School.

Vice Chairwoman Barton suggested that April 4, 2023 could be designated for members of the public to speak and April 11, 2023 for the applicant which would allow them enough time to respond.

Curtis Bosco agreed to set April 4, 2023 for public comment and apologized to members of the public for not having enough time to hear from everyone that wanted to speak and set April 11, 2023 for the applicant and intervenors to return.

Vice Chairwoman Barton asked if April 11, 2023 worked with their schedules.

Attorney Fitzpatrick stated that Matt Sanford, Professional Soil Scientist and Wetland Scientist, would not be available and feels it's important that he is present.

Vice Chairwoman Barton questioned if April 18, 2023 would work.

Attorney Fitzpatrick confirmed that April 18, 2023 would be fine.

Vice Chairwoman Barton stated that it came to her attention that the school will be closed on April 18, 2023. She agreed to set April 4, 2023 for public comment and the

only person on April 11, 2023 that will not be available will be Mr. Sanford. She then questioned Mr. Sanford if he could attend April 4, 2023 in the event there are questions.

Attorney Fitzpatrick reiterated the importance of having Mr. Sanford present.

Vice Chairwoman Barton replied that April 4, 2023 will be for the public to finish their comments, April 11, 2023 as a continuation and if another meeting is needed, they will hold another one. She announced that this public hearing is recessed until April 4, 2023 at 7:00 p.m.

**\*All documentation and statements submitted for the record are available for public inspection in the Land Use Office.**

## **II. OLD BUSINESS**

### **4. Application #490 – 555 Christian Road/764 Southford Road**

There was no discussion. (Public hearing was recessed until April 4, 2023 at 7:00 p.m.)

## **V. NEW BUSINESS**

None

## **VI. ADJOURNMENT**

**Motion:** to adjourn the meeting at 9:56 p.m. Made by Curtis Bosco seconded by Joseph Martino. Unanimous Approval.

Filed Subject to Approval,

Respectfully Submitted,

Rachelle Behuniak, Clerk

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

## **RESOLUTION/REPORT**

Application #494 600 Middlebury Road

**WHEREAS:** The Middlebury Conservation Commission for the Town of Middlebury has received an application on February 28, 2023 from Joseph Dinova;

**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 restoration of previously disturbed wetland regulated area (tree cutting) with a New England Conservation/Wildlife Mix will not have a substantial impact on the regulated area.
  - (2) The applicant shall notify the enforcement officer forty-eight (48) hours prior to the commencement of work and upon its completion.
  - (3) 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.
  - (4) 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.
  - (5) 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.
  - (6) It is the applicant's responsibility to give notification to the Army Corps of Engineers and the Department of Environmental Protection if necessary.
- March 28, 2023