



# TOWN OF MIDDLEBURY

*Conservation Commission*  
*1212 Whittemore Road*  
*Middlebury, Connecticut 06762*  
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## **PUBLIC HEARING CONTINUANCE MINUTES**

**Tuesday, April 11, 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 Stroby

### **ALSO PRESENT**

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

## **I. CALL TO ORDER**

Vice Chairwoman Barton called the Public Hearing Continuance to order at 7:03 p.m. She led the Pledge of Allegiance and then initiated roll call. Members Barton, Tzepos, Gibbons, Martino & Bosco were present. Chairman Bowler and Brian Stroby were absent.

## **II. PUBLIC HEARING**

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

Attorney Edward (Ned) Fitzpatrick of 203 Church Street, Suite 4, Naugatuck, CT 06770 spoke on behalf of the applicant. Due to several comments made based regarding past public hearings that this proposal should be in an industrial park, he wanted it noted for the record that this proposal is in a Light Industrial-200 (LI-200) Zone. The designation of the LI-200 zone is found and has been part of the regulations for at least twenty-five

years and was preceded by the LI-80 Zone, which goes back a couple of decades. He went on to add that there have been some revisions made to the plans based on comments from the peer review, staff and the public.

Ryan McEvoy, P.E. with SLR, 99 Realty Drive, Cheshire, CT 06410 provided a presentation comparing the previous proposal to the revised plans (Rev. April 10, 2023), which were submitted earlier this day. Said revisions are primarily focused around the southern building, originally 180,000 sf, which they are now proposing to be 130,000 sf in size. They also pulled back the level spreader outlet discharge from stormwater basin #110. The proposed modifications are in response to Denis Quinn's testimony with regard to the offsite wetlands to the west of the property and the sensitivity of the vernal pool that exists off of the site. As a result, the building, parking and drive aisles will be more than 200' from the vernal pool limits, yet slightly closer to the wetlands (approximately 190'). The level spreader discharge will now be out of the upland review area associated with the wetlands in the vernal pool. Additionally, photometric calculations were prepared by their lighting representative, Apex Lighting Solutions. Almost all of the wetlands on the property are at 0.0 foot-candles of light, with 1 wetland having 0.1 foot-candle of light. He reviewed the proposed process for stormwater retention and renovation as well as water quality management, which he stated meets or exceeds the 2004 DEEP Water Quality Manual as well as the Draft 2023 DEEP Water Quality Manual, as do the current existing basins. He provided a comparison of the Pollutant Removal Efficiencies submitted by SLR and Trinkaus Engineering, LLC and then reviewed his Proposed Bioretention Basin Hydrographs.

John Milone, P.E. with SLR, 99 Realty Drive, Cheshire, CT 06410 provided a presentation involving the original proposal, the feasible and prudent alternatives discussed during the March 28, 2023 and the newly revised plans. While their original proposal did not involve any residential development in the R-40 zone, one of their alternatives does and he stressed that it is permissible. He offered the following comments with respect to the two (2) suggested plans offered by Trinkaus Engineering, LLC. The first, he stated the development would extend into the residential zone, which is not permitted by zoning, would impact the wetlands, despite the claim that it would not and result in inadequate loading. The second, involves a great reduction in size of the larger building, some wetland impacts, inadequate loading and they feel to be a dramatic underutilization of the site. The current plan does not reduce the wetlands impacts, however, it does provide greater protection of the vernal pool off of the southwestern portion of the property. Twenty-five (25) acres would be provided under a conservation restriction, meaning there would be no further development in the area. He added that it would provide environmental benefits, involve 29.9 acres of impervious coverage and disturbance 54 acres, which is less than 50% of the overall site. He believes that the plan

as revised is a fair and reasonable proposal from and an environmental and industry standard social approach.

Vice Chairwoman Barton questioned if the applicant would be willing to extend the conservation restriction.

John Milone, P.E. replied that they would be open to doing so should the commission request it.

Vice Chairwoman Barton stated that the alternative proposal which included residential development seems like a brand new application.

John Milone, P.E. clarified that they are prepared to put a conservation restriction on the residential land. However, without it in place, there is always the potential for future development in that area.

Vice Chairwoman Barton asked for details regarding snow removal/deicing and if there would be a fueling station.

John Milone, P.E. replied that there would not be a fueling station on site.

Ryan McEvoy, P.E. stated that there is no long unimpeded stretch of asphalt where snow removal can't occur within the landscaped areas adjacent to the roadways and parking lots. The largest stretch of impervious area is the parking/loading area to the west of the larger building. The landscaped islands and landscaping around the perimeter of the loading area where snow could be removed, not immediately adjacent to the adjacent parcel and there is no wetlands in the vicinity of the loading area. He went on to add that salt would be utilized for deicing although no specific product is being proposed.

Vice Chairwoman Barton inquired if a maintenance building would be included on the site and where salt would be stored.

Ryan McEvoy, P.E. responded that anything with respect to maintenance would be stored in the larger building and that there is no proposal for salt storage on site.

Dennis Quinn, Herpetologist and owner of Quinn Ecological, LLC wanted to address some comments that were made by members of the public during the April 4, 2023 public hearing.

- He conducted a habitat assessment, not species specific surveys
- During his assessment, he was able to survey a few species
- Accurate species surveys could not be performed due to mild temperatures

- He did not offer an opinion as to whether he thought ribbonsnake are present or absent from the Timex property based on species specific surveys
- This evening, he stated that in his professional opinion and without conducting surveys, he does not believe ribbonsnakes occur on this property. This is due to the landscape within the area, distribution of the ribbonsnake throughout CT, its association with track rock ledges and other larger wetland complex systems. The actual systems that they rely on, do not occur within the Timex property. With that being said, he cannot rule out that there is some suitable habitat for the ribbonsnake. However, he does not think the habitat is suitable enough to support them. He did not perform species specific surveys, but he was asked to enhance the wetlands as much as possible for the potential presence of the ribbonsnake and other amphibian species that were using the wetland on the property.
- Distribution of species are influence by biogeography, geology and elevation
- Northern Leopard Frog is not present on the property and is not an endangered species, it is listed as a species of special concern from the CT DEEP Endanger Listing Species Status
- Bog Turtles are not present on the property. It is the most endangered turtle species in the country and one of the top ten most endangered turtle species in the world. Calcareous wetlands are essential for their survival and calcareous wetlands cannot exist without underlying marble bedrock, which does not exist in Middlebury. They are only present on the western side of the Housatonic River.
- He was questioned by someone outside of the public hearing about the Blue Spotted Salamander. He stated that they would have been active during his habitat assessment, but does not occur here. They are solely restricted to the surficial geology to the glacial lakes, which do not exist on the Timex property. They are listed as a special concern.
- Gray Treefrogs are not a habitat specialist and he believes they would be present on the property.
- Eastern Box Turtle could exist on the property, however, they are not considered a wetland-dependent species. Therefore, they are not within the purview of this commission.
- Spotted Salamander is often only seen at night but can be seen in daylight. Claims of sightings on roadways are indicative that the species has already been impacted and on the decline.
- He did survey for vernal pools, and found no evidence of seasonal wetlands (those that support obligate vernal pool breeding species).

Dennis Quinn, Herpetologist then reviewed the design modifications and during construction and post-construction phases. He clarified that an obligate wetland species is one that has to breed in a vernal pool (seasonal wetland), which are absent of natural

predators because they dry up seasonally. Facultative species could breed in vernal pools but they do not have to.

Curtis Bosco questioned if he believes it's possible to create an environment that flourishes and is suitable for the reintroduction of various species.

Dennis Quinn, Herpetologist replied that the state does not allow reintroduction. In his professional opinion, he does not believe that any of the created wetlands will make any difference on the site because the damage is already done when it comes to the amphibian community. However, it may be beneficial for the wetland as a whole as well as the bird and plant communities. There is no ability to recolonize. The wetlands along Christian Road will work for many of the common species. No value in recreating more wetlands, but there is value in concentrating on and tending to the systems that are already functioning.

Vice Chairwoman Barton asked Mr. Quinn what his thoughts were on the removal of the invasive species.

Dennis Quinn, Herpetologist responded that does not believe it would be worthwhile to remove the invasive species and that resources would be better spent on protecting areas that have not been impacted.

George Tzepos inquired if there were any species on the site that he believes are worth protecting.

Dennis Quinn, Herpetologist replied "no".

George Logan, Soil Scientist with REMA Ecological Services, LLC, who was hired by the town as a third party reviewer, summarized his 3rd Party Application Review – Supplemental, dated March 27, 2023, by stating that the recommendations that they made to the applicant's experts were addressed to his satisfaction. He then reviewed his 3rd Party Application Review – Supplemental, dated April 10, 2023, which he wrote in response to the additional information submitted by Middlebury Small Town Alliance, LLC, Steven Trinkaus, P.E. and Dr. Steven Danzer. He pointed out an error on page 3, item b. of said report. 32 hours should be 72 hours.

*b. During routine maintenance, duration of surface flooding should be noted; if more than half is flooded after 48 hours or if any water remains after 32 72 hours, this indicates clogging in the upper portion of the media. Recommendations: correct short-circuiting to make inflow distribution more even. Remove the top few inches of media and replace.*

Prior to reviewing the topic of Wetland Mitigation in his review, he declared that he agrees with Dennis Quinn as far as the kinds of species that they would like to see out there. He was pleased to learn that the removal of invasive species will be site-wide. In his opinion, the proposed restoration, enhancement, creation and preservation is a proper alternative analysis.

Vice Chairwoman Barton asked Mr. Logan to confirm that execution is key when it comes to invasive species removal and wetland creation. She also questioned him about lighting impact on wetland obligate species and plantings.

George Logan, Soil Scientist, stressed the importance of eradicating the invasive species within 100+ feet of the potential mitigation area. Typically it involves a five-year plan but the proposed ten-year monitoring maintenance is basically what the Army Corps of Engineers requires. It is a labor intensive process and requires guidance from a professional. He confirmed that stand-alone documents with detailed plans for both the eradication and creation would be an understandable request from the commission. He confirmed that he made recommendations for plantings adjacent to the wetlands with the exception of the wetland mitigation area because it is open to Timex Road and will allow for a screening at the upper edge, closer to any proposed building. He also explained the benefits of tree planting for the filtering of air pollution.

George Tzezos questioned the costs involved in monitoring a created wetland.

George Logan, Soil Scientist, responded that monitoring fees alone could cost an estimated \$25,000-\$30,000 over the ten-year period. After implementation, maintenance and corrective measures will multiply that figure by two or three times.

John Calabrese, P.E. reviewed his Supplemental Engineering Review dated April 10, 2023, which is in response to the March 28, 2023 report submitted by Steven Trinkaus, P.E. He acknowledged the concern surrounding the resuspension of solids, however, with the installation of the hydrodynamic separators, he believes the suspended solids will be greatly reduced before they enter the pond. In addition, the underdrainage of the pond is more than adequate to support the low flow that would be coming from the perched water table. Pollutant removal is done by offline hydrodynamic separator which is located before the underground units. With respect to groundwater during the excavation process, he believes the outlet structure contains a 6" X 8" opening at the bottom which will remove any groundwater that would infiltrate the basins, ultimately leaving the chambers empty. He also pointed out that he has not been able to locate the equation that was used in Mr. Trinkaus' report, however he did find equations that support the efficiency in series in Connecticut Stormwater Quality Manual (Draft 2023) and New Jersey Stormwater Best Management Practices Manual. He confirmed that the efficiencies in the

pollutant removal that was calculated in the SLR engineering report are based on those calculations.

Steven Trinkaus, P.E., 114 Hunters Ridge Road, Southbury, CT 06488 spoke on behalf of Middlebury Small Town Alliance, LLC. He submitted and reviewed his letter, dated April 11, 2023, for the record. He shared that he has been following LID (Low Impact Development) since the mid-90s, has presented at LID conferences since 2008 and speaks with researchers in the field. He spoke with James Houle, Director of the University of New Hampshire Stormwater Center, who confirmed to him that the combination of a bioretention system with a dry detention pond is not adequate. It is his professional opinion that the system as proposed will not adequately reduce the pollutant loads and will discharge to onsite wetlands and possibly offsite wetlands. He also believes that the site is not appropriate for the proposed development.

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 questioned if public comments would still be permitted.

Vice Chairwoman Barton replied that she was not certain but that all would need to vacate the premises by 10:00 p.m. She added that the public hearing did not need to be closed until May 2, 2023.

Attorney Keith Ainsworth went on to state that he and his experts did not have adequate time to review the revised plans due to the fact that they were received at approximately 3:30 p.m. this afternoon. He commented on the Supplemental Engineering Review, dated April 10, 2023, from John Calabrese, P.E. stating that it is evident to him that the resuspension of solids is from the accumulation of the solids that get through. When the flushing comes through, it resuspends. The hydrodynamic separators reduce some of it, but they do not remove the problem. With respect to the footnote in George Logan's Supplemental Report, dated April 10, 2023, regarding trucks becoming hybrid electric in the future. He does not believe that will happen. He questioned who will oversee the site-wide invasive removal over the ten-year period and commented on the town's limited resources. The details of the conservation easement matter greatly. He asked if there is a willing recipient and expressed his doubt of the Middlebury Land Trust having any interest. A third party must hold it and if the applicant or the subsequent owner holds it, it's able to be invalidated, therefore, additional details are needed. He questioned the applicant's credibility, stating that they claimed at the time of their original proposal that it was approvable and protective of wetlands, yet they have submitted a number of revised plans. He does not believe that meeting the economic means of the applicant is how the wetlands' law works.

Vice Chairwoman Barton assured Attorney Ainsworth that economic desires of an applicant is not within the purview of this commission.

Attorney Ainsworth continued to state that if there is a significant impact activity occurring, then this commission must determine that there is no feasible and prudent alternative to the project. He believes there is evidence that there are feasible and prudent alternatives. He mentioned Mr. Milone's response to one of the suggested plans offered by Trinkaus Engineering, LLC, and how he commented that the development would extend into the residential zone, which is not permitted by zoning. Attorney Ainsworth then stated that the applicant previously applied for a text amendment for a use that is not permitted. He reminded the commission of the law that governs these proceedings. One of the purposes of the regulations and the wetland's statute is to avoid the prohibition on the ability to restore wetlands. He claimed that if one stopped mowing them and provided a buffer around them, they have the hydrology. He added that the proposed project builds on top of them, thereby prohibiting any hope of ever restoring it and is grounds for denying the application. He indicated that the applicant did not make the effort to reduce the footprint from the areas where they would fill in wetlands. He questioned why Dennis Quinn spent time discussing species that do not exist on the site and stressed the need to protect species like the spotted salamander. He believes there is a larger percentage of the property that they would be impacting, than Attorney Fitzpatrick claims. He commented that George Logan did not wait for the applicant to weigh in on anything, thus questioning his neutrality. For the record, he submitted a letter dated April 4, 2023 as well as correspondence from Jennifer Mahr of 68 Abbott Farm Road dated April 11, 2023.

Vice Chairwoman Barton suggested that the public hearing be recessed to April 18, 2023 at Shepardson Community Center at 7:00 p.m.

George Tzezos confirmed that he did view the March 28, 2023 meeting via zoom, although he missed Attorney Fitzpatrick's statements at the beginning due to an audio issue.

**Motion:** to recess the public hearing to April 18, 2023 at 7:00 pm at Shepardson Community Center. Made by Curtis Bosco.

**Discussion:**

Attorney Fitzpatrick requested confirmation that he along with the other applicant's representatives would be given the opportunity to speak at the April 18, 2023 public hearing continuance.

Vice Chairwoman Barton assured Attorney Fitzpatrick that they would be allowed to do so.

Motion to recess the public hearing to April 18, 2023 at 7:00 pm at Shepardson Community Center was seconded by Joseph Martino. Unanimous Approval

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

**V. ADJOURNMENT**

**Motion:** to adjourn the meeting at 9:56 p.m. Made by George Tzepos, seconded by Peggy Gibbons. 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