



TOWN OF MIDDLEBURY

*Conservation Commission
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PUBLIC HEARING CONTINUANCE MINUTES Tuesday, April 18, 2023 7:00 P.M.

REGULAR MEMBERS PRESENT

Paul Bowler, Chairman
Mary Barton, Vice Chairwoman
George Tzepos (arrived @ 7:13 p.m.)
Peggy Gibbons
Joseph Martino
Curtis Bosco

REGULAR MEMBERS ABSENT

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 7:00 p.m.

II. PUBLIC HEARING

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

Vice Chairwoman Barton explained that the intervenor would be heard first so that they may address the comments that were submitted at the April 11, 2023 Public Hearing Continuance.

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 explained that Steven Trinkaus, P.E. would only be able to join the meeting via Zoom.

Curtis Bosco stated that he could call in via cell phone and be put on the microphone.

Jennifer Mahr attempted to contact Mr. Trinkaus.

Attorney Keith Ainsworth stated that they had the opportunity to review the latest set of plans and other information provided at the April 11, 2023 Public Hearing Continuance, none of which changes their position. He commented that the stormwater control system is still taking hundreds of thousands of square feet of impervious surface runoff and discharging it on and off site, whereas previously it filtered through on-site vegetation. While treatment trains are not an unusual concept, they do not believe ones that merge incompatible technologies is unique. They can be put in series, but you can't put two incompatible systems in the same space. A bioretention system and a stormwater detention basin perform two different functions. He questioned if the applicant utilized these combined treatment trains elsewhere. He believes the hybrid system was proposed because the intervenor raised insufficiencies in their designs. He went on to state that applicant retains the burden to show that there exists no feasible and prudent alternative to destroying wetlands. He interprets their response was that their economic needs require a very large building that requires filling wetlands. He reminded the commission members that they are bound by Section 10.3 of the Regulations, which is similar to Conn. Gen. Stat. §22a-41(b)(1). He believes that a feasible and prudent alternative does exist and that evidence is in the record from both sides. A smaller footprint outside of destroying wetlands is an alternative that is feasible because it can be built and it is prudent because it still provides a viable economic use of the property without depriving someone a reasonable economic use. He offered moving the buildings outside of the residential strips or within the existing Light Industrial Zone as options.

Steven Trinkaus, P.E., 114 Hunters Ridge Road, Southbury, CT 06488 spoke via cell phone on behalf of Middlebury Small Town Alliance, LLC. He stated that he had no additional comments at this time.

Vice Chairwoman Barton questioned if there were any other experts that would like to speak on behalf of the intervenors.

Attorney Keith Ainsworth thanked Vice Chairwoman Barton for the opportunity to speak and announced that they rest their case.

Vice Chairwoman Barton questioned if any members of the public would like to speak.

Michael McDonald – 209 Munson Road – He expressed his gratitude for the time given by the members of the commission. He stated that other than the applicant, no one is in favor of the application. He concurs with the statement made by Dennis Quinn,

Herpetologist that he does not believe remediation will work. He believes the use of heavy machinery will kill off of what is left of the wetlands and if approved, the commission will be breaking its own rules.

William Callahan – 5 Weymouth Way – He voiced his concerns with respect to potential health hazards resulting from soot being released by the trucks. He placed emphasis on the students and staff at the neighboring schools. He believes that the risk of cancers is far greater than any project that might be built on the property.

Tamar Swett – She stated that she recently relocated from Bridgeport and would not have purchased her home had she known about the proposed project. She feels real estate is an important consideration.

Barbara & Irving Benig – 107 Ridgewood Drive – A letter of opposition, dated April 4, 2023, was submitted by Maria Pastor on their behalf.

George Logan, Soil Scientist with REMA Ecological Services, LLC, who was hired by the town as a third party reviewer, stated that he reviewed the April 11, 2023 report submitted by Steven Trinkaus, P.E. which contains citations from various professionals used to discount BMPs used by SLR. Mr. Logan focused on the following:

- Town of Shelbyville, KY – Stormwater Management Practices – January 2013, bottom of page 2-18. - Upon further research, Mr. Logan found that the formula they used to calculate the pollutant loading analysis was the same that was utilized by SLR, which is also found in the Draft 2023 DEEP Water Quality Manual.
- Murfreesboro, TN – Section 2.1.6 Using Structural Stormwater controls in Series Subsection 2.1.6 Calculation of Pollutant Removal for Structural Control in Series - Upon further research, Mr. Logan found the additional verbiage:
For cases where a structural control which cannot achieve a Primary TSS removal rate is sited upstream from a structural control which can achieve the 70% to 80% removal in the treatment train, the downstream structural control is given full credit for removal of pollutants.
He went on to add that if the proper equation is utilized, even with a conservative approach, the result is 85.71% which means it passes the standard.
- Jamie Houle, PhD, Director of the University of New Hampshire Stormwater Center – Mr. Logan expressed his respect for her, however, he pointed out that there is no context which accompanies her quote, and which he believes is general in nature. He added that he is unsure what she was told or what she reviewed that was specific to the site. In his opinion, her quote can be taken in different ways.

George Logan, Soil Scientist emphasized that he is not working for the applicant and that he is trying to be objective when looking at the same data that everyone else is reviewing. He went on to state that if that was not the case, he would not have made recommendations throughout the process. He declared that he does not see what Mr. Trinkaus has put into the record to substantiate his calculations actually holds water.

Vice Chairwoman Barton asked Mr. Logan if he would provide an opinion with respect to off-site wetland impacts.

George Logan, Soil Scientist replied that the nexus for off-site wetland impacts would be what Dennis Quinn, Herpetologist spoke about regarding the adjacent vernal pool habitat. However, the primary nexus is water quality. The water that will be leaving the stormwater management systems of sufficient quality in order not to impact the existing wetlands. He does not view Federal Wetland B as a sensitive resource as it has already been impacted in the past and has a detention basin discharging to it which is full of barberry and has no indicator of species in it. Federal Wetland C is a different regime and has most sensitivity, but the applicant is doing what they need to do with the detention basin. He concluded by stating that if he thought that the systems would not work or promote unreasonable pollution leaving the site in concentrations which would be sensitive for the impact to the aquatic environment and to the vegetation of the wetland, then he would have said something.

Curtis Bosco, questioned town counsel if Mr. Logan, as the town's third party reviewer, would be available for questions once the public hearing is closed.

Attorney James Strub cautioned members of the commission to be careful with that. The town's experts can be available to clarify information that is already in the record, however, new information or new responses to something that is already in the record cannot. He highly recommended that the members ask the experts questions while they are present.

Chairman Bowler asked if there is a question, if it should be cleared through town counsel.

Attorney James Strub confirmed that it is acceptable to him.

John Calabrese, P.E. stated that he does not have anything to add as he provided his report at the last meeting.

Attorney Edward (Ned) Fitzpatrick of 203 Church Street, Suite 4, Naugatuck, CT 06770 spoke on behalf of the applicant. He introduced John Milone, P.R., Ryan McEvoy, P.E.

and Matt Sanford, Professional Soil Scientist and Wetland Scientist all with SLR, 99 Realty Drive, Cheshire, CT 06410 as well as Dennis Quinn, Herpetologist and owner of Quinn Ecological, LLC.

John Milone, P.E. with SLR, 99 Realty Drive, Cheshire, CT 06410 reviewed the revised plans submitted this evening which are in response to questions made members of the commission during the April 11, 2023 public hearing. He stressed that said revisions in no way modify their proposal.

Chairman Bowler asked Mr. Milone to clarify their stance as the intervenor did not have the opportunity to review the revisions. He requested confirmation that they pertain to questions that were brought up that are now being answered.

John Milone, P.E. confirmed that is correct. He confirmed that the drawings have been in front of everyone, however, there is additional information that does not change their proposal. He went on to explain that a question was raised by Vice Chairwoman Barton as to whether or not the applicant was willing to extend the conservation restriction area further to the west along Southford Road. Originally they identified that they were prepared as part of the application to dedicate a conservation restriction in the residentially zoned land which extends along Christian Road/eastern side of the property to the intersection (approximately 25.5 acres). He confirmed this evening that the applicant is willing to extend the conservation restriction four hundred (400) feet along Southford Road and up to the intervening parcel, which is clarified on the map. This adds an estimated 10 acres to the conservation restriction area, now totaling approximately 35.5 acres. He stressed that this does not change their application and it only expands the size of the conservation area. He also pointed out clarifications of alternatives, just for informational purposes because they sensed that the commission was struggling over the fact that they added residential uses into the residentially zoned land. He acknowledged that it would not be permitted with their application because they are identifying that land as conservation area. They wanted to provide a comparison but it does not change their alternatives. A numbers to numbers comparison was also provided of the direct wetlands impacts, building coverage, impervious coverage and approximate land disturbance. They also added the wetland mitigation area as they deem it to be important as part of their alternatives since they are proposing to mitigate two (2) times the wetlands that are being disturbed.

Vice Chairwoman Barton announced that she viewed the application and she requested confirmation that said application is for a warehouse distribution facility.

John Milone, P.E. confirmed that it is.

Curtis Bosco questioned if salt would be stored on site and if the conservation easement encompasses all of the residential property.

John Milone, P.E. declared that they do not intend to have any salt storage on the property and that it would be brought in by outside contractors providing the service. He added that fueling will not be permitted or proposed on the site. The conservation easement follows the zone line in the residential zone and then extends further into the industrial zone.

Vice Chairwoman Barton instructed them that the applicant would need to return to this commission if there are any changes and mentioned the importance of complying with Public Act 22-25.

John Milone, P.E. conveyed his understanding.

Peggy Gibbons asked if they are planning on building private residences in the residential zone.

John Milone, P.E. replied that all of the residential zone and the industrial zone 400 feet back from Southford Road would be part of the conservation restriction so there would be no development.

Peggy Gibbons cited a portion of EPA Chapter 440, Page 326 then questioned if the proposed application would not disturb the natural native and indigenous character of the watercourses and wetlands.

John Milone, P.E. replied that it is an activity that can be approved.

Vice Chairwoman Barton clarified that the application is for the applicant to impact the wetlands.

George Tzepos questioned what conservation restrictions are being offered.

Matt Sanford, Professional Soil Scientist and Wetland Scientist all with SLR, 99 Realty Drive, Cheshire, CT 06410 submitted his Invasive Species Management Plan dated April 18, 2023 for clarification purposes. He also provided aerial images of the property for the years 1934, 1951, 1970 and 1995. He added that the existing wetlands are not natural in nature as they man-made and formed through agricultural practices and construction processes.

Peggy Gibbons questioned if they occurred naturally after the Timex construction.

Matt Sanford, Professional Soil Scientist and Wetland Scientist clarified that they did not create any other additional wetlands purposefully on top of the drumlin. The wetlands that were formed were a case of excavating, ground water exposer that seeps out into one of the wetlands and on the west side of the building where they had the A/C unit and large stonewall.

Vice Chairwoman Barton clarified for Peggy Gibbons that they are a result of the manipulation of the landscape, which is not unusual.

Matt Sanford, Professional Soil Scientist and Wetland Scientist added that both he and George Logan, Soil Scientist, agree that all wetlands are not created equally. They are isolated, small, man-made, low productivity in terms of functions and values, and groundwater discharge seems to be their only function. He also affirmed that moving a building in order to avoid the wetlands does not change the function to the wetland and reminded all that they are proposing to create a higher functioning natural wetland on the site than what currently exists.

Vice Chairwoman Barton asked Mr. Sanford if he would provide an opinion with respect to off-site wetland impacts.

Matt Sanford, Professional Soil Scientist and Wetland Scientist replied that the upland buffer has been increased between the smaller building and the wetland. They provided the appropriate water quality and water quantity measures to protect the off-site wetland. They provided additional upland habitat protection for obligate dependent amphibian species, such as woodfrogs and spotted salamanders, by pulling the building back. They protected the 100-foot vernal pool envelop. Therefore, it is his opinion that there will be no significant adverse impacts from a water quality perspective to that vernal pool. He also believes that the vernal pool in Wetland C has other issues that are forthcoming with the development of Benson Woods Phase 2 which will have significant adverse impacts to the wetland given the fact that there is a roadway proposed through the vernal pool as well as all of the development that will be within 50' of the vernal pool.

Curtis Bosco commented that wetlands are designated as to soil type. He questioned what they plan to do with the 16,000+sf of soil during construction.

Matt Sanford, Professional Soil Scientist and Wetland Scientist replied that he does not encourage the reuse of the wetland soils that would be disturbed due to the invasive species they contain. Typically when they create wetlands, they utilize the upland topsoil that is adjacent to the wetland which is free of any invasive species. He added that the wetland soils will be part of the fill associated with other portions of the site, such as under the building slab and parking lot.

George Tzepos stated that the success rates for the newly created wetlands is not good and questioned how they would ensure the success of their newly created wetlands.

Matt Sanford, Professional Soil Scientist and Wetland Scientist responded that things such as hydrology, excessively high or deep grading, inaccurately constructed mitigation areas as well as short maintenance and monitoring periods can all lead to unsuccessful wetland creation. He believes that a 10-year period is needed to ensure they are successful.

George Tzepos then questioned what the costs would be to maintain the wetland.

Matt Sanford, Professional Soil Scientist and Wetland Scientist answered that there is always a monitoring cost which can range from \$15,000-\$20,000 per year. However, if it is determined that maintenance is required, remedial measures can range from a couple hundred to a couple thousand per year.

Curtis Bosco questioned Deborah Seavey, W.E.O. if they would be required to post a bond and if the 10-year plan is more than what is typically required.

Deborah Seavey, W.E.O. confirmed that a bond would be required and that two (2) growing seasons is the norm.

Curtis Bosco questioned if Mr. Sanford has been involved with projects that have a 10-year mitigation plan.

Matt Sanford, Professional Soil Scientist and Wetland Scientist confirmed that he has and offered Killingsworth Reservoir as an example. It was 6.5 acres of wetland creation and was monitored for 10 years as part of DEEP approval. He believes that 10 years for this application is appropriate based on the size and the fact that they want it to be successful.

Peggy Gibbons questioned when the wetlands would be created.

Ryan McEvoy, P.E. with SLR, 99 Realty Drive, Cheshire, CT 06410 stated that the plans do include a construction sequence which indicate that the wetland creation area will be constructed during Phase 2.

Peggy Gibbons requested clarification if there are any amphibians and reptiles.

Dennis Quinn, Herpetologist and owner of Quinn Ecological, LLC clarified where the diversity of amphibians and reptiles occur. The series of 3 vernal pools just off of the property contain spotted salamanders, marble salamander and woodfrog. Those 3 pools in

series are used to reproduce and they are utilizing the surrounding upland for the rest of the year. All of the uplands are not off-site, however, the wetlands are. They are 200 feet from the edge of the most southerly vernal pool. He added that the wetlands have been having agricultural impact for the past 100 years due to runoff from tilling, fertilizer, herbicide applications, etc. They are not supporting any listed amphibian species at this point. He did surveys for some wetlands species by flipping approximately 150 rocks, specifically the dusky salamander and two-lined salamander, and found none which leads him to believe that they are probably not there. He pointed out which wetlands do have amphibians such as bullfrogs, green frogs, gray tree frogs and American toads. Once the wetlands are restored and managed, it will be beneficial for said species. There is no occurrence of any listed wetland dependent or obligate species. They are common widespread species that are not restricted by specialized habitat requirements. While there could be a ribbonsnake, he does not believe there is.

Peggy Gibbons asked if vibrations from the trucks affect the various species.

Dennis Quinn, Herpetologist after some explanation and stated that they will not be affected by vibrations from the trucks.

Peggy Gibbons questioned the frequency of the lighting on the property.

Ryan McEvoy, P.E. replied that they submitted a photometric plan that shows zero light spillage into the wetland corridors off of their site and will have full cutoff fixtures.

Dennis Quinn, Herpetologist added that the only impacts from lighting are the existing impacts from Christian Road.

Attorney Edward (Ned) Fitzpatrick reiterated that a lawyer is not an expert. He believes that their experts are a top shelf group that provided facts and were straight forward. For the record, he submitted a document titled *Applicant's Summary of Relevant Facts Southford Park – Conservation Commission Application*. He believes it represents what they have been able to show by way of scholarly verifiable science. He added that their engineers are held to the highest of scientific and engineering standards. Their witnesses have relied on established scientific data to determine the impacts that they are having on wetlands, the quality of the wetlands, the long and short term impacts, and all the factors that are considered in Section 7 and criteria in Section 10 of the Regulations. He went on to state that they do comply with all of the requirements of Section 7 and that much of their evidence was not been challenged. They meet or exceed all of the 2004 and proposed 2023 Stormwater Management Guidelines for DEEP. In the event, the commission chooses not to believe the members of their team, he asked the members to believe the people that the town independently hired to do an evaluations. Lastly, in

response to a comment made by Attorney Ainsworth with respect to the applicant's submittal of revised plans, Attorney Fitzpatrick commented that he does not believe he has ever been a party to an application that has not changed or been revised after receiving input from the public, commission members or received peer reviews. He believes that is indicative of a team that was willing to listen.

Vice Chairwoman Barton questioned what details are involved with the conservation easement.

Attorney Edward (Ned) Fitzpatrick replied that the scope of the area was determined and compliance was ensured. He recommended to the team that the property be placed with the legislative body of the town of Middlebury to do with it what it sees fit. Although the LI-200 Zone allows municipal uses, they are not proposing any. Since Attorney Ainsworth stated MLT does not wish to acquire it, Attorney Fitzpatrick is uncertain as to another entity to convey it to so as to ensure there is no development without the town's elected officials having a say.

Vice Chairwoman Barton informed Attorney Fitzpatrick that he must go before the Board of Selectmen with the offer of conveyance. In the event they do not accept it, the applicant must return to this commission.

Attorney Edward (Ned) Fitzpatrick acknowledged knowing the process.

Motion: to close the public hearing at 8:27 p.m. Made by Paul Bowler, seconded by George Tzepos. Unanimous Approval.

Vice Chairwoman Barton announced that the commission plans to meet with town counsel, Attorney Strub to determine available dates for deliberation.

Attorney Strub confirmed that the commission has 35 days to make a decision, which must be made by May 23, 2023, and that the members can meet as many times as they wish provided the meetings are noticed properly.

Vice Chairwoman Barton requested that the members send their availability to Deborah Seavey, W.E.O., so that a date(s) could be scheduled.

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

III. ADJOURNMENT

Motion: to adjourn the meeting at 8:30 p.m. Made by Paul Bowler, 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