



# **TOWN OF MIDDLEBURY**

*Planning & Zoning Commission  
1212 Whittemore Road  
Middlebury, Connecticut 06762  
(203) 577-4162 ph  
(203) 598-7640 fx*

## **August 3, 2023 REGULAR MEETING MINUTES**

### **REGULAR MEMBERS PRESENT**

Terry Smith, Chairman  
Erika Carrington  
Joseph Drauss

### **REGULAR MEMBERS ABSENT**

William Stowell, Vice Chairman  
Matthew Robison

### **ALTERNATE MEMBERS PRESENT**

Frank Mirovsky  
Gerald Lukowski (arrived @ 7:01 p.m.)  
Paul Anderson

### **ALTERNATE MEMBERS ABSENT**

### **ALSO PRESENT**

John Calabrese, P.E.  
Curtis Bosco, Z.E.O.

### **CALL TO ORDER**

Chairman Smith called the Regular Meeting to order at 6:59 p.m.

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

Chairman Smith announced Regular Members Smith, Carrington & Drauss and Alternate Members Mirovsky, Anderson as present. Alternate Member Lukowski arrived at 7:01 p.m. Regular Members Stowell and Robison were absent. He appointed Alternate Member Mirovsky to act in place of Regular Member Stowell and Alternate Member Anderson to act in place of Regular Member Robison.

### **MINUTE APPROVAL**

#### **1. Discussion of the Minutes of the Regular Meeting held on July 6, 2023**

**Motion:** to approve the Minutes as submitted. Made by Erika Carrington, seconded by Paul Anderson. Unanimous Approval.

## **NEW BUSINESS**

### **2. Jad Harb, JTH Builders, LLC/Washington Drive – Application for an 11-Lot Subdivision on 60.135 acres, Sycamore Place (Application #23-42Z)**

Luke Sofair, P.E. with John Paul Garcia, P.E. of Garcia & Associates, 190 Fairwood Road, Bethany, CT 06524 spoke on behalf of the applicant. The subject parcel is approximately 60 acres in size on the west side of Washington Drive and is currently undeveloped. They are proposing an 11-Lot subdivision serviced by 1,300 feet of new town road. Approval has been granted by WPCA for capacity for flow for 11 residential building lots. Conservation Commission approval has been granted as well. All of the lots will be frontage lots and are oversized from a zoning perspective. They vary from 1.25 to 3 acres. They are also proposing to donate 37 acres of open space to the town, which would connect into two (2) existing open space parcels. A storm detention basin is included which attenuates all of the runoff from the development, resulting in the post development runoff being less than the predevelopment.

**Motion:** to schedule a Public Hearing for September 7, 2023. Made by Erika Carrington, seconded by Joseph Drauss. Unanimous Approval.

### **3. Waxwing Development, LLC/100 North Benson Road – Application for Site Plan Modification to allow a seasonal enclosure over tennis courts. (Application #23-43Z)**

Attorney Michael McVerry of 35 Porter Avenue, Naugatuck, CT 06770 spoke on behalf of the applicant. He reminded the commission that this property has been before this commission several times. In June 2008, his client received approval for a text change to allow tennis/pool clubs within the LI-200 Zones. In November 2008, the current Edgewood Bath & Tennis was approved with the tennis courts, swimming pool and clubhouse. In May 2011, approval was granted for liquor/alcohol sales at the snack bar and then again in April 2017 a site plan modification for the installation of two (2) paddle with platform tennis courts in the rear of the property. His client is now seeking approval for a site plan modification to allow a seasonal 35' inflatable bubble over three (3) of the six (6) tennis courts to allow for year-round usage. For the record, he submitted an email from Fire Chief Brett Kales, dated July 31 2023 and a letter from Police Chief Patrick Deely, dated August 2, 2023, both indicating that they have no issue with the proposed modification.

Chairman Smith stated that he had no issue with the modification and asked if any of the other members had any. No issues were raised.

**Motion:** to approve the site plan modification. Made by Erika Carrington, seconded by Paul Anderson. Unanimous Approval.

Chairman Smith instructed Attorney McVerry that a new mylar reflecting the modification must be submitted.

Attorney McVerry agreed to do so.

**4. James A. Christiano/Nick Road – Application for a 6-Lot Subdivision on 20.45 acres, Trout Estates (Application #23-45Z)**

Scott Meyers, P.E. of Meyers Associates P.C. spoke on behalf of the applicant, James Christiano, and reviewed the plans with the commission. The subject property is approximately 20.5 acres in size at the end of Nick Road. Mr. Christiano purchased it from the McDonald family a couple years ago and combined it with his residence at 72 Nick Road. The road ends with no turnaround. He is seeking approval to develop the property into six (6) lots, with one being his house and five (5) new lots. He is also proposing an extension of the road to a full dead-end cul-de-sac, totaling an estimated 700 feet. The site will be serviced by both public sewer and CT Water. A storm system will be installed and they meet with the Conservation Commission last week and will return to that commission at the end of August. WPCA does not have July or August meetings, therefore, they plan to be before them in September.

Chairman Smith questioned if Mr. Meyers would prefer to schedule a public hearing for September or October.

Scott Meyers, P.E. replied that they would prefer September.

**Motion:** to schedule a Public Hearing for September 7, 2023. Made by Joseph Drauss, seconded by Paul Anderson. Unanimous Approval.

**PUBLIC HEARING**

**5. Jennifer Mahr/Middlebury Small Town Alliance, LLC/P.O. Box 1073, Middlebury, CT 06762 – Proposed Zoning Regulation Amendment. Moratorium on Distribution Facilities of any size and Warehouses in excess of 100,000 square feet. (Application #23-26Z)**

Chairman Smith called the public hearing to order at 7:08 p.m. He announced Regular Members Smith, Carrington & Drauss and Alternate Members Anderson, Lukowski and Mirovsky as present. He appointed Alternate Member Anderson to act in place of Regular Member Robison and Alternate Member Mirovsky to act in place of Regular Member Stowell. He then proceeded to read the following for the record:

- Legal Notice published in Voices on July 19, 2023 & July 26, 2023
- NVCOG Referral Report dated June 10, 2023
- To follow are the names, addresses and stance of those that sent correspondence prior to this meeting:
  1. Dawn Daley of Lockhart Drive – opposed
  2. Theodore Sadlouskos of 174 Ridgewood Dr. – in favor
  3. Arlene & Joseph Ferrara of 39 Avalon Dr. – in favor
  4. Karen Kleinschmidt of 271 Burr Hall Rd. – in favor
  5. Steve Huebner of 98 Ridgewood Dr. – in favor
  6. Barbara & Robert Wedinger of 67 Abbott Farm Road – in favor
  7. Lisa Newton of 29 Cambridge Court – in favor
  8. Diane Hook of 111 Acme Dr. – in favor
  9. Roseann & Brian McKean of 108 Joseph Ave. – in favor
  10. Greg & Nancy Scallon of 145 Ridgewood Dr. – in favor
  11. Dr. Marcia Tejada of 193 Falcon Crest – in favor
  12. Debbie Kirincic of 12 Fairview Ln. – in favor
  13. Joseph Kirincic of 12 Fairview Ln. – in favor
  14. Deb Cram of 7 Hackamore Circle – in favor
  15. Annette & Dennis Galipeau of 66 Yale Ave. – in favor
  16. Kirk Froggatt of 141 Ridgewood Dr. – in favor
  17. Phil Schneidmeyer of 203 Ridgewood Dr. – in favor
  18. Joel Giuditta of 205 Carriage Dr. – in favor
  19. Barbara Yantorno of 7 Hampshire Ct.- in favor
  20. Michael Yantorno of 7 Hampshire Ct. – in favor
  21. Dr. Jonathan Hertz & Margie Hertz of 159 Ridgewood Dr. – in favor
  22. Professor Steven Parlato of Joy Road – in favor
  23. Laurie Burk of 156 Richardson Dr. – in favor
  24. Gary Kline of 5 Hampshire Ct. – in favor
  25. Tom Rice of Judd Hill Rd. – in favor
  26. Michael & Christine Giordano of 4 Devon Ct. – in favor
  27. Rebecca Spencer - in favor
  28. Neil Cybart – in favor
  29. Rejane Gagliardi Costa Crisanti of 187 Ridgewood Dr. – in favor
  30. Jennifer Cybart of 3 Hampshire Ct. – in favor
  31. Melanie Peters of 173 Ridgewood Dr. – in favor
  32. Barbara Benig – in favor
  33. Amy Yantorno – in favor

Jennifer Mahr, President of Middlebury Small Town Alliance (MSTA) submitted a spiral bound packet of her PowerPoint presentation, along with a folder of supporting documentation for the record. She provided each commission member with a copy of the spiral bound packet, which contained a non-bound document from OLR (Office of Legislative Research) RESEARCH REPORT, dated November 24, 1999, 99-R-1186, titled DUTIES OF PLANNING AND ZONING COMMISSIONS, By: Kevin E. McCarthy, Principal Analyst. She stated that the funds (approximately \$2,500) that MSTTA paid to have this application to be considered came from the people of the town that support the process. She asked that the members of the commission think of them as the source of their request. She then proceeded to review her PowerPoint presentation highlighting the following three (3) topics:

1. Why the need for a moratorium?

She stated that the community has been profoundly impacted by the events of the last eight (8) months as well as other communities such as Ashford, Windsor Locks, Newtown and East Granby. Concrete evidence is available that large scale distribution facilities will permanently alter the quality of life in any town and should be considered prior to making a decision to change the Zoning Regulations. She expressed her belief that this commission needs time for research, careful consideration of the evidence available and time to determine if this type of project conforms to the standards set in the Plan of Conservation & Development (POCD) and to the goals set by the Economic Development Commission. She feels that this process should not be subcontracted out to the town planner and that multiple stakeholder groups should meet for thoughtful conversation after the research is complete. She read statements that were made to the press by various town officials, including Chairman Smith and CEO Curt Bosco and declared that during Conservation Commission hearings, residents' concerns regarding traffic, noise and pollution were brushed off as only site plan considerations. She recited a June 6, 2023 email from Chairman Smith to the House Republican Leader, Vin Candelora. She emphasized that a moratorium creates the space and time necessary for a discussion to happen and that if they want to define warehousing differently than the regulations currently state, and change the intensity of what's considered light industrial in the LI-200 or LI-80 Zones, all of Middlebury is entitled to that conversation. A moratorium is procedurally appropriate and she doesn't feel that the concerns raised over the last eight (8) months can be handled by this commission during a site plan review due to the fact that a site plan application means the regulations allow what is being proposed, which she believes not to be the case, and that the whole purpose of the regulations is to set the rails. She then proceeded to recite a portion of the OLR (Office of Legislative Research) RESEARCH REPORT, dated November 24, 1999, 99-R-1186, titled DUTIES OF PLANNING AND ZONING COMMISSIONS, By: Kevin E. McCarthy, Principal Analyst. She emphasized the need for a hired outside land use expert to perform a land use analysis for the property. She recited the Warehouse definition (pg. 9-9 of the regulations) as well as Section 6.1.4 and declared that because of them, a warehouse with a trucking terminal and without a manufacturing process would not be permitted. She added that she does not believe the

moratorium would apply to commercial enterprises such as retail grocery stores, lumber yards, hardware stores, furniture consignment stores or anything that might have a storage function connected to a retail operation.

2. What else could a moratorium achieve for our community?

In two (2) years, Middlebury's POCD is up for its 10-year review. She believes the process that this commission would have to undergo to review and update the POCD is the same process that would be required for a moratorium to review the regulations.

3. What should we consider if a moratorium is approved?

Should the moratorium be approve, she proposed that traffic and roadway safety be studied and referenced the High-Cube Warehouse Vehicle Trip Generation Analysis, dated October 2016, within her presentation/packet. Traffic impacts of a warehouse are based on what kind of warehouse it is and stressed the importance of knowing what type of warehouse the town of Middlebury would get should one be approved. Specific limitations could be enacted or all types could be accepted. However, consequences come with choices made. Adequate road capacity is questionable and how traffic will impact all town roads is of much concern. She believes that health impacts such as air quality, noise and pollution, environmental impacts such as natural resources and natural diversity and economic impacts should all be carefully be considered. She conveyed her understanding that the Timex property or any property within the industrial zones will eventually change. However, asking what is wanted in said zones is a legitimate question and everyone's opinion should be heard and respected. In conclusion, she reiterated her thoughts that the current regulations do not allow distribution facilities and that the existing definition cannot be stretched to avoid the clear mandate for warehousing to be a subordinate use to on-site manufacturing. A feels a moratorium in critical and will create time and space for the community to consider its future.

Chairman Smith stated that he would then open up the floor for public comments. He added that each person would be given three (3) minutes to speak, beginning with those that are opposed to the moratorium.

The following people spoke in opposition of the application:

1. Kelsey Buchbinder spoke on behalf of her employer, Olymbec, which owns hundreds of acres of commercially developed and underdeveloped land south of I84, between the highway and airport in Middlebury, Oxford and Southbury. Their Middlebury property is zoned commercial and while they understand the concerns of MSTA, they believe blanket moratoriums are destructive and that the Planning & Zoning Commission should continue to use its existing power to shape the future of Middlebury one project at a time.

2. Attorney Michael McVerry of 627 Breakneck Hill Road (office in Naugatuck), spoke on behalf of Harold Murtha, principal of Route 188, LLC and owner of 32 acres from Benson Rd. up to the homes on Christian Rd. In the early '90s, this commission approved a 200,000 square foot factory but was never built because the user found another location in Watertown. Since then, Mr. Murtha has been actively marketing said property. Not taking any position on distribution centers or large warehouses, Mr. Murtha is an innocent bystander by a proposed moratorium. A potential purchase may not be able to take place, depending on what the buyer may intend, if during the course of a moratorium.
3. Attorney Edward (Ned) Fitzpatrick of 203 Church Street, Suite 4, Naugatuck, CT 06770 spoke on behalf of Stacey Drubner, Trustee, the owner of LI-200 property in Middlebury and also represents the contract purchasers for a property consisting of approximately 92 acres. Upon review of the subject application, it is their recommendation that the commission deny the petition as they believe it is not warranted. As part of the argument in the petition, there was a reference to the town of Farmington's moratorium. He added that said moratorium is for a specific purpose aimed at a specific use. He believes the petition before this commission is deficient in that it is generic in nature, and mentioned the recommendations in NVCOG's June 7, 2023 report: to identify the location and define the terms. He declared that it is unwarranted because the Section 42 of the Regulations contains a specific outline of all the conditions that Ms. Buchbinder mentioned. He deems the petition and what it seeks to be unlawful. Moratoriums in CT are allowed for a limited duration and a specified purpose. He added that it violates specific expressed terms found on page 10 - #3 of the POCD, and pages 57 & 58 of the POCD which encourages industrial development and stated a moratorium discourages any type of development.

The following people spoke in favor of the application:

1. John Pollard of 197 Chesham Dr. – spoke and submitted statement for the record
2. Bob Nerney of 414 Long Meadow Rd – He emphasized the opportunity for town planning vs. town processing. He acknowledged that this commission has done good planning over the years, but feels that this is a unique situation and that the town is not prepared. He believes the law is unclear and that the way the regulations are written, this type of development was not anticipated. It will be temporary and he hopes that the town would underwrite a study and include anyone that has an interest. He asked if residential property owners would have their taxes lowered due to depreciation. He believes the POCD is based on preservation. In conclusion, he commended the commission for their work and asked they think about it.
3. Dr. Scott Peterson of 317 Tranquility Rd. and President of Middlebury Land Trust – spoke and submitted statement for the record

4. Eric Carlson of 123 Periwinkle Dr. – spoke and submitted statement for the record
5. Sam Dexter of 148 North St. – spoke and submitted statement for the record
6. Joyce Nowak of 140 Ridgewood Dr. – spoke and submitted statement for the record
7. Joe Puzzo of 42 Avalon Dr. – spoke and submitted statement for the record
8. Kristine Filippelli of 73 St. Joseph Ave. – spoke and submitted statement for the record
9. Tim Mahr of 68 Abbott Farm Rd. - spoke and submitted statement for the record
10. Joe Siegel of 30 Ridgewood Dr. – He stated that he has seen distribution centers during his travels that are in close proximity of interstates, for the ease of access. He then proceeded to discuss anticipated changes to roadways that would be needed to accommodate one 1.5+ miles inland.
11. Kerry Baldwin of 30 Judd Hill Rd. – She compared the size of the Timex building (2-story 81,00 square feet) to the proposed facility which she heard would be 750,000 square feet and 5 stories. She recited content from Timex’s website involving its profile and expressed her concerns regarding dangers associated with a proposed facility being in a highly residential neighborhood.
12. Sally Romano of 1 Brookside Dr. – She stressed the need for time, being thoughtful, transparent and inclusive in decisions that have the capacity to change the nature of the town.
13. Ohene Kwapong of 6 Kentwood Ct. – He emphasized the importance of seizing the moment and the responsibility they all have to sit down, discuss and ponder what the current residents of Middlebury want to leave behind for future generations.
14. Amy Yantorno of 20 Brookside Dr. – She read a portion of her written statement she emailed earlier in the day.
15. Susan Striker of Ridgewood Dr. – spoke and submitted statement for the record
16. Katie Martin of 4 Nantucket Way – spoke and submitted statement for the record
17. Alice Hallaran of 644 South St. – She questioned if there is a technicality that prevents a moratorium from occurring and stressed the need for residents to have a discussion with the members. She expressed her gratitude to the members and MSTA for their time and work. She questioned the timing requirements for the commission to render a decision regarding an application for a zone change.

Chairman Smith replied that there are two (2) months to do a public hearing and a third can occur if the applicant approves it, followed by sixty-five (65) after the public hearing is closed.

18. Dana Shepard of 302 Hemlock Ln. – spoke and submitted statement for the record
19. Don Andrews of 21 Avalon Dr. – He shared the results given when he utilized Chat GPT and asked “Would a distribution facility over 650,000 square feet be a good thing for a small town under 10,000 in population”. The response was that it depends on the nature



of the facility, specific location and the needs of the town. It disclosed both benefits and challenges to the town.

20. Ann (Raimo) Zimkus – She spoke of her father’s involvement in and love of the town. She stressed the importance for the residents and board members to take into consideration what will happen if the distribution center is built and the anticipated adjustments to roads, etc. She believes it will ultimately cost the town. She then asked when they will know if the moratorium is approved.

Chairman Smith replied that he was not sure but reiterated that legally they have two (2) months to hold a public hearing and a third can occur if the applicant agrees to an extension, followed by sixty-five (65) after the public hearing is closed for the commission to make a decision. He added that they plan to continue the hearing this evening because the commission has yet to receive reports from town counsel and its town consultant.

21. Arthur Liederman – He focused on the covenant that exists between government and citizens and mentioned EDC’s comments of not needing a distribution center of its size. He believes the moratorium will provide the commission with the opportunity to respond to a public need and that the people deserve to understand what the integrated concept is for growth of Middlebury that is consistent with all the various values that coexist in the community and that they should reflect on where they want to be in future years. He stressed the importance of not judging one particular developer’s request and the need to avoid piecemeal development.
22. Andrew Kwashnak of 59 Bioski Rd. – He voiced his concerns with respect to safety, traffic and pollution and urged the approval of the moratorium to allow for all residents to feel that their concerns are being heard.
23. ShawnaLee Waterbury-Kwashnak of 59 Bioski Rd. – She spoke of the town’s beauty, the various reptiles and amphibians she has encountered and the need for preservation. In addition, she expressed her concerns with respect to safety and traffic.

Jennifer Mahr concluded by thanking everyone for their comments and support. She believes there can be a positive balance between development and conservation, which comes with careful planning and consideration of all factors. She also rejected Attorney Fitzpatrick’s claims that this is not a warranted application because Section 42 of the regulations lists out all of its protections. She disagrees that the distribution facility is the kind of warehouse that is allowed by said regulations. She added that they do have a specific purpose and specific use. The purpose of the moratorium is to halt any sort of development that is related to a distribution facility that is not defined as the current regulations define a warehouse. The terms are defined by what already exists in the regulations. She also declared that they clearly identified where in the regulations that this moratorium would apply: LI-80 and LI-200 Zones. She does not believe that their request is an unlawful one and referred to the POCD, stating that its purpose is to operate from a vantage point of conservation and protection of an idea of what Middlebury is: a semi-rural,

small town. It is the purpose of the alliance to protect the ideal and that idea comes first and then secondly bringing development in a way that protects that idea. Lastly, she asked that the commission carefully consider their request and encouraged the members to utilize the services and expertise being offered by of the residents.

**Motion:** to continue the Public Hearing on September 7, 2023. Made by Erika Carrington, seconded by Paul Anderson. Unanimous Approval.

**Upon conclusion of the meeting, Peggy Gibbons submitted letters/notes from the following people expressing their support of the moratorium:**

1. Annette William of 10 Kimberwick Ct.
2. Robert Marages of 4 Weymouth Way
3. Deborah E. Marages of 4 Weymouth Way
4. Peggy Gibbons of 6 Weymouth Way

**\*All documentation is available for public inspection in the Land Use Office.**

### **OLD BUSINESS**

6. **Jennifer Mahr/Middlebury Small Town Alliance, LLC/P.O. Box 1073, Middlebury, CT 06762 – Proposed Zoning Regulation Amendment. Moratorium on Distribution Facilities of any size and Warehouses in excess of 100,000 square feet. (Application #23-26Z)**

No discussion.

### **OTHER BUSINESS**

7. **Reminder of Public Hearing scheduled for September 7, 2023 regarding Timex Group USA, INC/Route 188, LLC/Stacey Drubner, Trustee/555 Christian Rd./P.O. Box 51 Beacon Falls, CT/500 Chase Parkway, Waterbury, CT - Application for a Text Change regarding height in LI-80 Zone (Application #23-32Z)**

No discussion.

8. **Any other business added to the agenda by a 2/3 vote of the Commission**

None

9. **Enforcement Report**

No discussion.

**10. Adjournment**

**Motion:** to adjourn the meeting at 8:56 p.m. Made by Paul Anderson, seconded by Joseph Drauss. Unanimous Approval.

**\*The next Regular Meeting of the Planning & Zoning Commission is scheduled for  
September 7, 2023 at 7:00 p.m.**

Filed Subject to Approval,

Respectfully Submitted,

Rachelle Behuniak, Clerk

Original to Brigitte Bessette, Town Clerk

cc: P&Z Commission Members  
Paul Bowler, Chairman, Conservation Commission  
Mark Lubus, Building Official  
Curtis Bosco, Z.E.O.  
Ken Long, Chairman, Z.B.A.  
Attorney Dana D'Angelo  
Rob Rubbo, Director of Health