



## **TOWN OF MIDDLEBURY**

*Planning & Zoning Commission  
1212 Whittemore Road  
Middlebury, Connecticut 06762  
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### **March 1, 2018 REGULAR MEETING MINUTES**

#### **REGULAR MEMBERS PRESENT**

Terry Smith, Chairman  
William Stowell, Vice Chairman  
Joseph Drauss  
Erika Carrington

#### **REGULAR MEMBERS ABSENT**

Matthew Robison

#### **ALTERNATE MEMBERS PRESENT**

Jeffrey Grosberg

#### **ALTERNATE MEMBERS ABSENT**

Paul T. Babarik  
Christian Yantorno

#### **ALSO PRESENT**

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

#### **CALL TO ORDER**

Chairman Smith called the Regular Meeting to order at 7:00 p.m.

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

Chairman Smith announced Regular Members Smith, Stowell, Carrington & Drauss and Alternate Member Grosberg as present. Regular Member Robison and Alternate Members Babarik & Yantorno were absent. He appointed Alternate Member Grosberg to act in place of absent Regular Member Robison.

## **PUBLIC HEARINGS**

### **1. Toll CT II, L.P./Southford Rd. (Rt. 188) – Application for Preliminary & Final Development Approval and Special Exception for Excavation & Grading Permit pursuant to Section 64 (Application 2017-12-3)(Continued)**

Attorney Joseph Williams of Shipman & Goodwin, 265 Church Street, Suite 1207, New Haven, CT 06510 spoke on behalf of the applicant. He reminded the Commission that the need for the permits is due to the fact that additional time is needed to complete the approved plan with the exception of a few minor tweaks. Per the request of the Commission, a Dust Control Plan, dated February 27, 2018 and prepared by Milone & Macbroom, was submitted. He added that Toll Brothers invested approximately \$250,000.00 in the construction access road and put it where the Town requested it to be placed. This was done so even though they will probably be abandoning and not using a good portion of it. Since then, there have been additional improvements from a dust perspective in the materials and the location of the road.

Ted Merchant, Land Development Director with Toll Brothers, stated that dust control is a main topic that was discussed last month. For a number of years up until January of 2018, the construction access was behind the houses in the back of Winding Trail and connected to Phase II. A number of modifications were done to the road based on meetings with Town staff and residents. In January, a new construction access road was created. All construction access now is no longer going back behind Winding Trail, but rather through the back of the site and through the back of Phase III. As a result, they are significantly limiting the number of residents that are being affected by said road. In addition, the asphalt millings portion of the road has been extended to eliminate the processed base portion thus significantly decrease the amount of dust. This has allowed them to sweep the section of the access road on a weekly basis during the last month and intend to continue to do so.

John Calabrese, P.E. confirmed that he was in approval of the Dust Control Plan dated February 27, 2018 that was prepared by Milone & Macbroom.

Attorney Joseph Williams declared that a more detailed response memo from Dan Kroeber of Milone & Macbroom was submitted, confirming that all of Mr. Calabrese's recommendations will be implemented and shown on the plans. There was also expression of preference that Toll Brothers should meet again with homeowners or make a form available for that which was done as well. There was a homeowners meeting on February 15, 2018 and the topic of this plan and the construction access road was on the

agenda for that meeting. In addition, Ted Merchant met with Mrs. Sullivan as well as Bob Berger and he believes that progress was made with respect to their issues.

Catherine Cincogrono of 14 Winding Trail who stated that she and her neighbors are opposed to the application as it relates to the back of Winding Trail and the excavation of the Great Lawn that they plan to do. She apologized for not being at the last meeting but informed the Commission that her husband was told by someone at the office that it is just a renewal of the original application that was put in and that there was no need to attend the meeting. However, they did read the Minutes of the meeting and added that they sympathize with Bob Berger and what he has gone through. They feel that Toll has treated their property disrespectfully for three (3) years. She thanked the First Selectman, ZEO Curtis Bosco, and John Calabrese P.E. for their help up to the present time. She voiced her frustration and concerns with respect to the following issues:

- Mess behind the homes on Winding Trail including bathtubs, fireplace mantles, piles of dirt, piles of gravel, piles of tarps, cement, scraps of wood and various types of debris littered behind their homes, construction road and the adjacent fields before the Town became involved, despite repeated pleas to Toll;
- Agreements that Toll made with the Town and the residents repeatedly being broken;
- Not watering the road as required;
- Cars and pickup trucks on the road after promising it would be restricted to construction vehicles only;
- Speed limit of 15 mph not being enforced;
- Use of residents' water after seeding of Great Lawn and never reimbursed them as promised;
- Three (3) project managers in three (3) years
- Failure to lock the gate even after vehicles were stolen at Ridgewood;
- Taking three (3) years for the residents to be able to sleep in the mornings without trucks barreling by at 6:30 a.m.;
- Dust and noise pollution;
- Now that the road and lawn are finally stabilized, they want to disrupt it again;
- Fears backyard will be dumping ground again;
- Additional excavation will further erode the property, be unsafe for residents and makes no sense;
- Retention ponds or rain gardens are unsightly, unsafe and not labeled on the maps;
- Road and unlit parking are abutting the play area and sliding glass doors;
- Only access to Great Lawn area is to go down Winding Trail and enter on the emergency access road which is where children ride bikes on the cul-de-sac;

- They do not want or need the parking lot or another playscape;
- Picnic tables shown on map would require garbage cans and logistics must be considered;
- Toll should restore the damage they did to the hill.

She asked the members of the Commission to do a site visit before any decisions are made and thanked them for their time.

Bob Berger of 60 Bona Road stated that he lives in the highest impacted area. Since last month's meeting, Ted Merchant met with him and came up with very reasonable ideas to correct the problems. They are now sweeping the road and his issues with the trucks have been rectified. He also added that retention ponds are mandated and take time to develop. He feels that if the preapproved project is done in the right fashion, it will enhance the project and that it's going to take time. He doesn't see the reason to deny an Excavation & Grading Permit because it will make things worse.

Mr. Sullivan of 22 Winding Trail questioned who will be responsible for maintaining the road. He fears that Toll Brothers will be able to turn the responsibility over to the homeowners by State law in a short period of time. He added that Toll representatives never attended a meeting to inform the homeowners of the work being done. He feels that Toll Brothers is not a good neighbor. He voiced his frustration with the Great Lawn and the numerous changes that have occurred as well as piles of dirt in front of his unit. Although the problems that arose with his own property were addressed, it took months for the issues to be rectified.

Arlene Sullivan of 22 Winding Trail stated that she agrees with all that Catherine Cincogrono expressed. She stressed the importance of safety and security and feels that this plan warrants a Cease and Desist Order. Her written statement was submitted for the record.

Zachary, HOA Representative on the Board of Directors for Ridgewood, declared that he feels for his fellow residents on Winding Trail. He understands their frustrations that come with living in a construction zone. Unfortunately, the rest of Ridgewood is a construction zone so the remainder of the residents deal with daily construction and knows that they will for years. They bought their property knowing that and also knowing that there would be another playground and a Great Lawn that they could all use. Going forward with the planned construction, the current playground will not be sufficient for all of the residents that will be there. He agreed that Toll is not perfect, but he feels that the representatives are good people that are trying to improve the community. He has not heard much on the issue with respect to the Great Lawn project

other than the residents that live near it. He understands that for the rest of the residents, it is an amenity but a headache for those that live by. He just wanted to be certain that this Commission knows that it is not a consensus through the community that this is an unwanted project.

Peter Cincogrono of 14 Winding Trail stated that he appreciated Zachary's opinion but that Zachary has been living there for one (1) year while the Cincogronos have been with Toll for four (4) years and that they have not kept one (1) promise. He voiced his frustration with the lack of dust control and the start time of trucks. He added that they do not need another playscape as there will never be enough kids. He also fears that it would attract children from the park across the street. Another pool may be needed but not another playscape. He spoke with the First Selectman last week who informed him that he would speak with Toll representatives and request that all they get together with the residents to come up with a solution that works for all. He feels that the letter that Jeff sent to everyone as a consensus is his idea of consensus and not the residents.

Joe Salemi of 18 Winding Trail stated that Toll never followed through. He also questioned why fourteen (14) unlit parking spaces would be needed in the back of the road as he feels it would be unsafe. He also added that the garbage that people leave out is a major problem.

Catherine Cincogrono of 14 Winding Trail stated that the retention pond on Ridgewood has had almost four (4) established years growing, yet when looking at the map, there is no maintenance line item for it. She wants to know who maintained it and who will pay to maintain it. She added that it is not a rain garden but rather a swamp.

Chairman Smith requested that Catherine Cincogrono submit her written statement and photos for the record to which she complied. He added that he would like to extend this. He wants to give the applicant the opportunity to go a little farther with some comments and questions that Chairman Smith has as well.

Attorney Joseph Williams replied that if there is additional information they need to provide to the Commission, although he doesn't know that that would be, they would be happy to listen. He doesn't feel that based on the testimony given this evening that it's necessary to keep it open but acknowledged that it is the Chairman's call. He stated that there is a difference in the community about some aspects of the plan. He acknowledged the experiences that some of the residents have had. However, improvements have already been made and he hopes that their experiences have been better. He complimented Ted Merchant on improving communications with the residents. They can't change the past but going forward, do you want this project finished in accordance

with the approved plan which was changed before Toll bought the property. To date, Toll has sold more than 140 homes and it has a number of additional contracts for people that are waiting to get into these homes with the understanding that there will be a playground, gazebo at the Great Lawn, and a parking area all available for the community as recreational use. He believes that it is unfair for the Commission to be put into the position now saying we're going to change one element when it's been in the plan for a long time. If there was a universal consensus among the entire community, the Commission, and Town Departments to make a change in the plan, he assured the Commission that Toll Brothers would listen and be open to discussion.

Chairman Smith questioned how many of these complaints are being caused by this "minor tweaking" that Attorney Joseph Williams is talking about. If the Great Lawn is stabilized, why is it being torn up again? Is it caused by one these "minor tweaks"?

Attorney Joseph Williams responded that he doesn't think so but asked that Ted Merchant or Dan Kroeber to reply with more details.

Ted Merchant stated that the only change in this plan from the last plan is moving the road further away from the existing units.

Chairman Smith added that he believes that the gazebo and play area are being swapped around also.

Ted Merchant acknowledge that change as well.

Chairman Smith conveyed that he questions if there may be other "tweaks" that are not being discussed.

Dan Kroeber, Civil Engineer with Milone & Macbroom, 99 Realty Drive, Cheshire, CT 06410 joined in by adding that the reason the parking lot shifted down is because of the emergency access. The plan was redone to modify the road which will stay in its current configuration. One portion of the road will need to be rebuilt but will be rebuilt very close to grade. He added that they made a concerted effort to work in such a way so the trees do not need to be removed. The amount of fill has been reduced on the latest plan. They will not need to transport all of the excess fill over to the site like the previous plan. Due to the fact that the permit is still active, the previously approved work could happen potentially tomorrow. The rain gardens are different than detention basins and were put in specifically at the request of the Conservation Commission.

Chairman Smith expressed his confusion and questioned if they plan on tearing up the Great Lawn.

Dan Kroeber, Civil Engineer with Milone & Macbroom confirmed that there will be some minor regrading, not major or 4-5 foot fill. The road will not be torn up at all. He pointed out the trees that will remain which will also be supplemented with additional plantings to increase the buffer. There will be some disturbance when the gazebo is built and when the walkway is put in. There will also be some minor regrading for the playground and disturbance for the parking lot. He confirmed that there will be no stockpiling of fill.

Chairman Smith requested an extension for the site plan portion of the application from Attorney Williams to which he agreed to grant.

**Motion:** to close the Public Hearing at 8:03 p.m. Made by Erika Carrington, seconded by Joseph Drauss. Unanimous Approval.

### **MINUTE APPROVAL**

**2. Discussion of the Minutes of the Regular Meeting held on February 1, 2018**

**Motion:** to approve the Minutes of the February 1, 2018 Regular Meeting as submitted. Made by Joseph Drauss, seconded by Erika Carrington. Unanimous Approval.

### **OLD BUSINESS**

**3. Toll CT II, L.P./Southford Rd. (Rt. 188) – to Accept the application and set a Public Hearing for February 1, 2018 for Preliminary & Final Development Approval and Special Exception for Excavation & Grading Permit (Application 2017-12-3)**

Discussion was tabled.

**4. Patricia & Guy Gentil/14 West Lake Rd – Application for a Zoning Permit at West Shore (Application 2018-1-1)**

Scott Meyers, P.E. & L.S. of Meyers Associates P.C., 60 Linden Street, Waterbury, CT 06702 spoke on behalf of the applicants, Patricia & Guy Gentil. They are seeking to demolish an existing cottage and reconstruct a new one. He confirmed receipt of

Hiram Peck's comments dated 2-26-18 and sent an email response and believes that all issues have been taken care of. The five (5) large pine trees furthest from the lake will have to be removed. The backyard will be filled slightly. Conservation Commission approval was received on February 27, 2018 as well as approval from the West Shore Board. He added that they do need a waiver for the footprint due to the garage being attached making the footprint larger than the 30%.

Mr. Gentil commented that they could have had a smaller footprint with the house and a larger garage. The bedroom will be above the garage with sole access from within the house.

Chairman Smith questioned if the applicant received written consent from the abutting property owners to which Mr. Gentil confirmed that he did.

**Motion:** to approve the application per the attached Resolution. Made by Erika Carrington, seconded by Joseph Drauss. Unanimous Approval.

### **NEW BUSINESS**

**5. Janis & Michael Carnaroli/7West Lake Rd. – Application for a Site Plan (Application #2018-2-1)**

Chairman Smith stated that the application could not be accepted due to the fact that the applicant has yet to receive approval from the Association. Therefore, the application is withdrawn.

**6. 1365 LLC/1365 Whittemore Rd.(West St.)/86 Woodland Rd. – Application for a Special Exception for an Excavation & Grading**

**7. 1365 LLC/1365 Whittemore Rd.(West St.)/86 Woodland Rd. – Application for a Site Plan (Application #2018-2-3)**

Attorney Michael McVerry of 35 Porter Avenue, Naugatuck, CT 06770 spoke on behalf of the applicant. They are seeking to convert the upper level to a banquet facility with the necessary parking in the site plan revision as well as an approval for a Special Exception for the necessary excavation in order to do the parking.



David Hughes, P.E. of 57 Norway Street, Oakville, CT 06779 submitted and reviewed the revised plans with the Commission. The revisions include the parking which was pushed over on the 1435 Middlebury Road and 0 West Street properties. A layout was also created to defer 25% of the parking. The required number of parking spaces was 189 and they were proposing 196. The deferred number would drop down to 142, which would be 75% of what is required and they would be providing 155 spaces.

Attorney McVerry added that they don't even anticipate getting to the maximum number required and that the proposed plans will get them further away from the Ericksons.

David Hughes, P.E. stated that the plan outlines all of the different floors and the different requirements with the total numbers and that the only thing they are asking for is the deferment of the 25%.

Chairman Smith questioned how the 1,900 cubic yards will be tied into the existing contours with respect to the Excavation & Grading. Details about the buffers will be needed and wants to know how it will look when it is done.

William Stowell voiced his concerns about the greenway being in such close proximity and the possibility of a buffer being put in place.

Chairman Smith also wanted confirmation that should the applicant need to build the parking, that access to Woodland is prevented.

**Motion:** to schedule a Public Hearing for April 5, 2018 for the application for an Excavation & Grading Permit. Made by Erika Carrington, seconded by Joseph Drauss. Unanimous Approval.

**Motion:** to accept the application for a Site Plan. Made by William Stowell, seconded by Joseph Drauss. Unanimous Approval.

## **OTHER BUSINESS**

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

None

### **9. Enforcement Report**

Curtis Bosco, Z.E.O. stated that complaints are at a minimum and that he expects new housing to start. He also announced that Mr. Stowell has been selected to receive a Life

Time Achievement Award from the Connecticut Federation of Planning & Zoning Agencies on March 22, 2018 as a result of his nomination.

Chairman Smith along with all present congratulated Mr. Stowell.

**10. Adjournment**

**Motion:** to adjourn the meeting at 8:43 p.m. Made by Joseph Drauss, seconded by Erika Carrington. Unanimous Approval.

Filed Subject to Approval,

Respectfully Submitted,

Rachelle Behuniak, Clerk

Original to Edith Salisbury, Town Clerk

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

## SITE PLAN RESOLUTION

Upon motion by Commissioner Carrington, seconded by Commissioner Drauss, it was voted unanimously to approve the application of Guy Gentil for a SITE PLAN located on 14 West Lake Road, as shown on Record Subdivision Map entitled Plot Plan Unit D Reconstruction of Cottage 14 West Lake Road and prepared by Meyers Associates and dated 7-14-17 Revised to 12-29-17.

The Commission specifically finds The Application:

1. is in compliance with the requirements of the Panning & Zoning Regulation 51.3.1; 25.6

The Application is subject to the following conditions/modifications:

- a) providing bond satisfactory to the Commission and the Board of Selectmen;
- b) posting of a landscape bond as determined by the Board of Selectmen;
- c) signing of the Map by the First Selectman;
- d) signing of the Map by the Conservation Officers;
- e) compliance with the conditions in letter from Plan Three dated 2-26-18;
- f) waiver of 30% increase due to garage per 25.6.9 waive the requirement of 25.6.8 as the garage is under the main living area of the main house.

If the above conditions and or modifications are complied with within 90 days of this decision, the Chairman is authorized to sign the Map. Otherwise, the application is to be considered disapproved and denied.

March 1, 2018