



TOWN OF MIDDLEBURY

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

November 7, 2019 REGULAR MEETING MINUTES

REGULAR MEMBERS PRESENT

Terry Smith, Chairman
William Stowell, Vice Chairman
Matthew Robison
Erika Carrington

REGULAR MEMBERS ABSENT

Joseph Drauss

ALTERNATE MEMBERS PRESENT

Jeffrey Grosberg

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 7:00 p.m.

ROLL CALL AND DESIGNATION OF ALTERNATES

Chairman Smith announced Regular Members Smith, Stowell, Robison, & Carrington and Alternate Member Grosberg as present. Regular Member Drauss was absent and he appointed Alternate Member Grosberg to act in his place.

PUBLIC HEARINGS

1. Peter Vileisis/288 Watertown Road – Application for a Special Exception for an Excavation & Grading Permit pursuant to Section 64 (Application #2019-9-1) (Continued)

Attorney Franklin Pilicy of 365 Main St #3, Watertown, CT 06795 spoke on behalf of the applicant. He acknowledged the concerns expressed last month regarding the quality of the material and so forth. Since then, the applicant hired a professional soil licensed environmental individual to conduct soil sampling/testing.

Brian Baker of Civil 1 located at 43 Sherman Hill Road, Woodbury, CT stated that they prepared the maps for the applicant which were reviewed last month but he continued to give a brief overview. It is an existing condition survey that was done based upon the request of the Wetlands Commission and the entire wetlands of the property was mapped. A new aerial topo survey was done as well as a property line survey and they flagged all of the wetlands in the field. Approval from the Conservation Commission was granted on October 29, 2019 for previous work that had been done and the mitigation plan. He displayed the existing conditions and the proposed work of earth excavation in the western portion of the property. The existing driveway would not meet sightline requirements for any future development. Therefore, Mr. Vileisis would like to bring in material to create a new driveway entrance further to the south to meet sightline requirements for potential future development. The proposed activity area is approximately 2 acres in size and he is seeking to bring in an estimated 4,720 cubic yards of material. At last month's public hearing, the amount, the source of, and the need to test the previous material was questioned. As a result, they had the soil tested. Five locations were sampled and he added that some of the material tested was sourced from the same location of where they plan to obtain the new material for the proposed project.

Timothy Carr, L.E.P. of Down to Earth, 122 Church Street, Naugatuck, CT 06770 submitted his report dated 11-5-19 to the Commission. He stated that he visited the site, looked at the fills and took five (5) environmental samples. Samples 1A and 1B (2.5-foot deep) were obtained from the eastern portion of the site and were reportedly regraded from what was existing on site and consisted of topsoil. Sample 2 was obtained from material that was derived from a project at Naugatuck Valley Community College. Samples 3 & 4 were obtained from material that was derived from a residential development at Lake Quassapaug. It is his opinion that the soils are suitable for use.

Garrett Moore of 389 White Deer Rock Road informed the commission that the proposed 4,720 cubic yards of fill will come from his property. His property was blasted in June, July, and August of 2019 and crushed by Mr. Vilieisis during that time frame. It was all virgin property and he added that there were no contaminants at all and the material continues to sit on his property.

David Alley of 121 Westwood Drive, whose property adjoins the applicant's property in the far southeast corner, requested answers to the following questions since the core samples were taken by those hired by the applicant:

1. Why were only 5 samples taken?
2. What was the placement of the samples?
3. At what depth were the samples taken?
4. In the event the property is subdivided and the proposed buyer finds contaminants, who would be responsible? Is it the Town of Middlebury?

Chairman Smith questioned who calculated the estimation of 1,500-2,000 cubic yards of material previously brought on site.

Brian Baker replied that it was based on the testimony of Mr. Vileisis.

Chairman Smith responded that 1,500-2,000 cubic yards of material already brought on site over a ten (10) year period of time doesn't seem like a lot considering the applicant is now asking to import 4,720 cubic yards of material.

Brian Baker stated that they were retained in April of 2019 for their survey work and that he cannot attest to how long work has been going on at the site or what was brought in previously.

Chairman Smith asked if the core samples went down to virgin soil.

Timothy Carr replied that they tested the fill utilizing an excavator. For samples 1A & 1B, which were taken at a depth of 2.5 feet, it included the topsoil and exposed subsoil below. The other samples were taken at approximately 6 inches.

Chairman Smith reminded those present that it was requested to go down to virgin soil to find out how much fill was put in those areas and have it tested. He added that there is no way for the members of the Commission to know actually how much fill was actually put in over ten (10) years. Somehow, that must be legal before what is currently before this Commission can be addressed. He asked if the Public Hearing should be closed or if the applicant would be willing to request an extension.

Attorney Pilicy agreed to ask for an extension to continue the Public Hearing.

Chairman Smith offered to speak with Town Counsel in the hopes of coming up with a solution.

David Alley added his concerns with respect to the applicant's claim that 1,500 cubic yards of material was brought in for the road that was built. He asked the members of the Commission to look at the photos he presented last month, as he feels that it is obvious that there has been a lot more than 1,500 cubic yards of material brought in and questioned the validity of what is happening on the property.

Motion: to continue the Public Hearing on 12-5-19. Made by William Stowell, seconded by Erika Carrington. Unanimous Approval.

Chairman Smith requested something in writing from Attorney Pilicy asking for the extension to which he agreed to submit something on the following day.

MINUTE APPROVAL

2. Discussion of the Minutes of the Regular Meeting held on October 3, 2019

Motion: to approve the Minutes as submitted. Made by Matthew Robison, seconded by William Stowell. Unanimous Approval.

OLD BUSINESS

3. Peter Vileisis/288 Watertown Road – Application for a Special Exception for an Excavation & Grading Permit pursuant to Section 64 (Application #2019-9-1)

Discussion was tabled.

4. Pomperaug Regional School District/65 North Benson Road – Application for Site Plan Approval (Application #2019-9-2)

Brad Parsons, P.E. of All-Points Technology Corporation spoke on behalf of Greenskies Renewable Energy, LLC. In response to the questions brought up at last month's meeting, one was with regards to the screen. The Board of Education was amendable to the southern screening and the screening of a portion of the eastern side approximately

1/2 way up the side as they would like to keep some of the space open for educational purposes. The area along the southwestern side will consist of the removal of trees and leaving the chippings in place but will still provide the screening on the southwestern side. Additionally, he submitted a letter from the adjacent property owner, Matthew McConnon of 950 Southford Road, indicating his approval of the project and removal of some trees provided they plant natural screening on the southwestern edge of their solar array in order to mitigate the view from his property. The system will be monitored 24/7, technicians will be ready to provide maintenance and as part of the power purchase agreement with the Board of Education, and there is a production guarantee attached. Greenskies, being the ultimate owner of the system, has a vested interest in making sure that the system is constantly operating at full capacity. With respect to safety concerns, the system will be hosted with “high voltage keep out” signs around the fence, the products will be installed per the National Fire Protection Association’s Electrical Code. Greenskies will coordinate with the Fire Department once the installation is complete to ensure that they have the access that they are looking for and have the appropriate training.

Chairman Smith asked when the proposed construction will occur.

Brad Parsons replied that it will probably be during the school year.

A representative from Greenskies Renewable Energy added that they plan on constructing this in the middle of December and continue on until March or April of 2020 since most of the outdoor activities will not be taking place. All of the major equipment will be enclosed in a temporary fence and all of the loading area is going to take place to the south outside of where recess and outdoor activity is conducted. The entire construction team and subcontractors will have a background check provided to the school.

Chairman Smith questioned if there will be a shutoff/disconnect if something happens at the school.

The representative from Greenskies Renewable Energy confirmed that there absolutely will be. If the power goes out at the school, the system will shut down automatically per State Law. Otherwise, EverSource will not sign off on the project. The project is also subject to a full building permit process.

Chairman Smith announced that any future projects will require that the solar array be shielded.

Motion: to approve the application per the attached Site Plan Resolution. Made by William Stowell, seconded by Erika Carrington. Unanimous Approval.

NEW BUSINESS

5. **Boch Middlebury-Waterbury, LLC/1628, 1648 & 1672 Straits Turnpike – Application for a Motor Vehicle Dealership and accessory uses per Sections 31.4.3 and 52.10.9 (Application #2019-10-1)**
6. **Boch Middlebury-Waterbury, LLC/1628, 1648 & 1672 Straits Turnpike – Application for signage per Sections 63 and 52.10.10 (Application #2019-10-2)**
7. **Boch Middlebury-Waterbury, LLC/1628, 1648 & 1672 Straits Turnpike – Application for Excavation & Grading per Section 64 (Application #2019-10-3)**

Chairman Smith announced that discussion concerning all 3 above referenced applications would run concurrently.

Attorney Michael McVerry of 35 Porter Avenue, Naugatuck, CT 06770 spoke on behalf of the applicant. In 2017 a zone change approval was granted by this Commission for the property at 1628 Straits Turnpike going down to JoAnn Drive while 1648 & 1672 had already been zoned CA-40. In March of 2019, text change approval was granted by this Commission which allows an automobile dealership in this area on Straits Turnpike. They are proposing to build a 27,000 square foot car dealership as well as a 5,000 square foot mezzanine and adjacent parking.

Chairman Smith stated for the record that this Commission is only concerned about the Middlebury side of the proposed application.

Attorney McVerry declared that the town line goes through the middle and offered the following breakdown. He also added that they are in the process of dealing with the City of Waterbury for approval of this application and testified that a zone change approval was already granted:

1. #1628 = 1.4 acres in Middlebury; 1.6 acres in Waterbury
2. #1648 = mostly in Middlebury; slight piece in Waterbury
3. #1672 = 1.5 acres in Middlebury; 1.9 acres in Waterbury

An application was filed with the Conservation Commission, WPCA, Fire Marshal, and Torrington Health District. The Waterbury Wetlands already granted their approval.

Motion: to schedule Public Hearings for the three above referenced applications (#5, #6 & #7) to run simultaneously on December 5, 2019. Made by Matthew Robison, seconded by Erika Carrington. Unanimous Approval.

8. Appointment of Middlebury Representative to NVCOG Regional Planning Commission

Chairman Smith announced that in light of Ken Long's resignation as the Middlebury representative to NVCOG Regional Planning Commission, Brendan Browne has expressed an interest in becoming the new Middlebury representative.

Motion: to approve to recommend to the Board of Selectmen the appointment of Brendan Browne as the Middlebury representative to NVCOG Regional Planning Commission. Made by William Stowell, seconded by Erika Carrington. Unanimous Approval.

9. 3 Sandy Beach Road complaint

Chairman Smith stated that on October 18, 2019 Curtis Bosco, Z.E.O. sent him a letter stating his recusal on this issue. The town also contacted Attorney James Strub to assist this Commission with said issue. In light of the recusal, it puts this Commission in the position of being the Enforcement Acting Board.

Attorney James Strub stated that this Commission allocates the enforcement powers to the Enforcement Officer but due to the fact that Curtis Bosco, Z.E.O. recused himself, the powers then fall back to this Commission. While it is not an actual application that requires approval, a complaint has been filed and it must be decided whether there are any valid issues in the complaint or if there are not.

Chairman Smith expressed that he feels the best course is to take a month and get all of the information in the file out to all of the members and then come back next month with the two individuals to have them state their cases or perhaps have it done on two separate nights.

Attorney James Strub verified that it is up to this Commission and that it can be done on the same night but declared that it will not be a Public Hearing.

OTHER BUSINESS

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

None

11. 2020 Planning & Zoning Meeting Schedule

Motion: to approve the attached 2020 meeting schedule. Made by William Stowell, seconded by Matthew Robison. Unanimous Approval.

12. CGS 8-7d (f) Referral from City of Waterbury

Curtis Bosco, Z.E.O. stated that a couple of months ago, the City of Waterbury received an application for excavation, blasting and such to make way for an 18 lot subdivision adjacent to Middlebury. The application was withdrawn and has since been modified and they submitted a new application. Some of the items listed in the Resolution from a couple of months ago have been addressed, but not all. Down to Earth Consulting has since been hired by the applicant and they did an extensive report which has been made part of their application. The items not addressed are listed in the current Resolution (see attached).

Motion: to approve the attached Resolution to oppose the application. Made by Erika Carrington, seconded by William Stowell. Unanimous Approval.

13. Enforcement Report

Curtis Bosco, Z.E.O. briefly reviewed his report with the commission.

14. Adjournment

Motion: to adjourn the meeting at 7:57 p.m. Made by William Stowell, seconded by Matthew Robison. Unanimous Approval.

Filed Subject to Approval,

Respectfully Submitted,

Rachelle Behuniak, Clerk

Middlebury Planning & Zoning
Regular Meeting Minutes
11-7-19

9

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
Rob Rubbo, Director of Health

SITE PLAN RESOLUTION

Upon motion by Commissioner Stowell, seconded by Commissioner Carrington, it was voted unanimously to approve the application of Pomperaug Regional School District for a SITE PLAN located on 65 North Benson Road as shown on Record Subdivision Map entitled Long Meadow ES Solar and prepared by All Points Technology Corp. and dated August 9, 2019 Rev. to November 7, 2019.

The Commission specifically finds The Application:

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

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 Officer;

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.

November 7, 2019



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2020 MEETING SCHEDULE Shepardson Community Center Room 26 7:00 p.m.

**Thursday – January 2, 2020
Thursday – February 6, 2020
Thursday – March 5, 2020
Thursday – April 2, 2020
Thursday – May 7, 2020
Thursday – June 4, 2020
Thursday – July 2, 2020
Thursday – August 6, 2020
Thursday – September 3, 2020
Thursday – October 1, 2020
Thursday – November 5, 2020
Thursday – December 3, 2020**

Approved this 7th day of November, 2019

**Terry Smith,
Chairman**



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Middlebury, Connecticut 06762

Planning & Zoning Department
(203)577-4162 ph Ext. 2
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At the November 7, 2019 Regular Meeting of the Middlebury Planning and Zoning Commission, the following RESOLUTION was adopted:

WHEREAS the Planning and Zoning Commission of the Town of Middlebury has received a CGS 8-7d (f) Referral from the City of Waterbury Zoning Commission.

WHEREAS the Referral **PL 2019-0283 Special Permit for an Accessory Earth Excavation; Location: 18.87 acres located on the north side of Chase Parkway, east of the Middlebury Town line, south of the terminus of Crest Street and west of Lakeside Blvd West, Wooster Street and the rear property lines of the properties on the northwestern side of Mason Avenue./MLB# 0383-1009-0911; Applicant: Mike Dillon.** was received by the Middlebury Town Clerk on November 1, 2019.

WHEREAS The Planning and Zoning Commission of the Town of Middlebury has reviewed the proposal has determined it will have a substantial impact on its municipality and offers its comments.

