

**HEARINGS, MEETINGS, LICENSES**  
**5-11-09**

**Charles Cristello**

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**From:** Eileen Gates  
**Sent:** Monday, May 04, 2009 1:25 PM  
**To:** Charles Cristello  
**Subject:** Temporary Assistant Town Clerk

STM  
Article 1

Charlie,

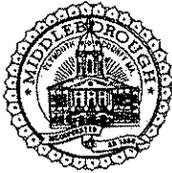
I have found someone who will be willing to take the minutes at the town meeting(s), and they will be available for all sessions, should the meeting(s) take more than one night.

The following account # and amount will need to be added the STM warrant to for the temporary assistant town clerk's position:

Acct # 01.161.51112.0.0 Assistant Town Clerk (Temporary) \$300.00

If you have any questions, give me a call.

Eileen



*Town of Middleborough*  
*Office of Economic & Community Development*  
20 Centre Street  
Middleborough, MA 02346  
Tel: 508-946-2402, Fax: 508-946-2413  
[Analevanko1@verizon.net](mailto:Analevanko1@verizon.net)

April 14, 2008

**Memorandum**

**To:** Chair Adam Bond and Board Members Marsha Brunelle, Patrick Rogers, Steven Spataro, and Muriel Duphily

**From:** Anna Nalevanko, Director, Office of Economic & Community Development

**RE:** Warrant Articles for Town Meeting: 43D Expedited Permitting

Two weeks ago I provided some background in your Board packet on the Commonwealth's economic development incentive program: 43D Expedited Permitting. Before the Town can submit an application to the Commonwealth for consideration and funding of a technical assistance grant, Town meeting approval is required. Therefore two warrant articles, one for each of the proposed priority development sites, have been submitted for the upcoming Town meeting.

As defined in background materials provided to you, 43D is a state incentive program to encourage streamlined permitting to promote commercial, industrial, or mixed use development on *pre-designated parcels (priority development sites)*. A timeframe for approval of local permits within 180 days would need to be followed for these priority sites only. The 180 days time clock can be stopped at various points due to delays in state approvals and incomplete application submittal. The Town still maintains the right to deny a project at the end of 180 days if the project does not meet the local land-use and permitting requirements. Participation in 43D does not require matching funds from a municipality

Over the past few months, Ruth Geoffroy and I have researched the benefits and drawbacks of this Smart Growth incentive program to determine if the Town of Middleborough can benefit from participation. We met on two occasions with staff from the Commonwealth's Office of Mass Development and the Southeastern Regional Planning and Economic Development District (SRPEDD). SRPEDD staff provide technical assistance to those communities interested in applying for 43D funds. In addition, I interviewed the Walpole Economic Development Director to learn how Walpole, a Town that has experience with 43D projects and is similar in population to Middleborough, implemented this Program. Ruth and I presented 43D and the priority development sites to Department Heads involved in the permitting process and the Planning Board for their input (this will be topic for further discussion at their 4-15-08 meeting).

The overall benefits to participating include: 1) priority consideration for state grants, 2) priority consideration for financing and training programs, 3) brownfields remediation assistance, 4) enhanced marketing of the parcel(s) by the state, 5) competitive advantage for economic development opportunities, and 6) a technical assistance grant of \$100,000 for use by the Town to streamline internal permitting process (i.e., production of a developer's guidebook, expansion of permit tracking software to all relevant departments, demographic and background materials to promote the Town, and other economic development tools).

Through we already have fairly streamlined processes in place this Program, along with the technical assistance monies, would assist in improving coordination between permitting departments, create greater efficiencies,

*(continued other side)*

bring attention to these priority sites to attract desirable businesses, provide funds for development of marketing materials, and give the Town some priority consideration on state infrastructure grant applications (i.e., PWED). Two priority development areas that were identified for 43D are: Middleborough Park at 495 and the Commercial Development District Southeast of Middleborough Rotary. Initially reaction from some of the property owners has been positive and their commitment to participate is needed at time of application.

One potential obstacle with including Middleborough Park at 495 as one of the priority development sites is the developer's proposed 40B project in this industrial/commercial area. We would not want to go forward with this site if the developer proceeds with this housing project and would have time to withdraw this as a priority site before application submittal and/or before accepting award in July.

There appears to be a great interest in many Massachusetts communities in participating in 43D. The benefits outweigh any small negatives that can be anticipated.

C: Steve Lombard, Town Manager  
Ruth Geoffroy, Town Planning  
Planning Board

## **CHAPTER 43D EXPEDITED PERMITTING PROGRAM OVERVIEW**

### **WHAT IS 43D?**

43D is a state incentive program to encourage streamlined permitting in Massachusetts municipalities. The purpose of 43D is to promote commercial, industrial or mixed-use development on *pre-designated parcels (priority development sites)*. Chapter 43D provides for a transparent and efficient process for municipal permitting, permitting decisions on priority development sites within 180 days, and increased marketing and visibility of sites and community. The permitting process follows the locally established process. At the end of the 180 day period the municipality can deny or approve an application. A municipality may also be eligible for a \$100,000 technical assistance grant.

### **WHAT IS A PRIORITY DEVELOPMENT SITE?**

A priority development site is a privately or publicly owned property that is:

1. commercially or industrially zoned;
2. eligible under applicable zoning provisions, including special permits or other discretionary permits, for the development or redevelopment of a building at least 50,000 square feet of gross floor area in new or existing buildings or structures; and
3. designated as a priority development site by the state Interagency Permitting Board. Several parcels or projects may be included within a single priority development site.

### **IS SMART GROWTH CONSIDERED?**

The state strongly encourages priority development sites to be located in areas that are near existing public transit service, adjacent to existing development, or in under-utilized buildings or facilities, but it is not a requirement for the site to qualify for PDS designation.

### **WHAT IS THE GOVERNING BODY?**

Depends on your municipal charter, but in most cases the governing body will be a Board of Selectmen, Town Council or City Council.

### **WHAT IS THE ISSUING AUTHORITY?**

The issuing authority is the board or department reviewing a specific permit. For the purposes of this law, the issuing authority can be any or all of the following: Planning Board, Conservation Commission, Zoning Board of Appeals, Public Works, Fire Chief, Board of Health, and Historic Commission.

### **WHAT IS THE INTERAGENCY PERMITTING BOARD?**

A state board that is established to review and approve or deny municipal priority site development proposals and administer technical assistance grants. The members of the Board are comprised of representative from each state office that issues permits.

### **WHICH "ISSUING AUTHORITIES" WILL BE AFFECTED BY THIS LAW?**

All boards, departments or agencies that are involved with land use development.

### **WHAT PERMITS ARE AFFECTED BY THIS LAW?**

Orders of conditions and wetlands decisions issued by the Conservation Commission, Special Permits issued by the ZBA and/or Planning Board, Site Plan Review issued by the Planning Board, Flammable Materials License issued by the Fire Chief, historic district decisions, and Title V and septic decisions issued by the Board of Health. *\*Building permits issued by the building inspector, ANR plan approval and subdivisions under the subdivision control law are not affected by this statute.*

**HOW IS THE LAW ACCEPTED BY A MUNICIPALITY?**

This law is at local option which means that in order for the law to become effective in a municipality it has to be authorized by a majority vote of Town Meeting, or City/Town Council.

**HOW IS A PARCEL DESIGNATED AS A PRIORITY DEVELOPMENT SITE?**

Once local approval is granted, the governing body must apply for the designation through the Interagency Permitting Board. The law is not accepted until the application is approved and the governing body decides to proceed with the designation.

**WHAT IS A TECHNICAL ASSISTANCE GRANT?**

Communities that accept this law are eligible for a one-time grant to implement the requirements of the expedited permitting law, which shall include but not be limited to, professional staffing assistance, local government reorganization, and consulting services.

**WHAT HAPPENS AFTER THE APPLICATION IS SUBMITTED TO THE BOARD?**

The Interagency Permitting Board must review and determine eligibility of the proposals and applications for technical assistance within 60 days of receipt from the municipality.

**WHAT HAPPENS AFTER THE MUNICIPALITY HAS RECEIVED APPROVAL FROM THE STATE?**

If the governing body chooses to proceed with the designation, the governing body must do the following within 120 days:

1. appoint a single municipal point of contact for streamlined permitting;
2. amend local rules, regulations, bylaws, etc. to comply with 180 day permit timeline;
3. determine and make available the requirements for each permit;
4. establish a procedure for identifying necessary permits for a project;
5. establish a procedure for determining completeness of the required submissions.

After the 120-day phase-in period has expired, the municipality is required to conduct the permitting process on the PDS within 180 days. Extensions may apply in extenuating circumstances or for good cause.

**HOW LONG DOES THE PDS DESIGNATION STAND?**

PDS locations will maintain that designation for no less than five years. After five years, the municipality may request that the designation be removed. If no request is issued, the designation will remain in place.

**DOES THIS LAW REQUIRE LOCAL BOARD AND COMMISSION TO REDUCE THEIR STANDARDS OF REVIEW?**

No!! Nothing in the expedited permitting law alters the substantive jurisdictional authority of local boards or departments.

**DOES THE LAW REQUIRE THAT ALL PERMIT APPLICATIONS ARE APPROVED?**

No. The law only requires that all decisions are rendered by each issuing authority within 180 days.

**WHAT HAPPENS IF AN ISSUING AUTHORITY DOES NOT RENDER A DECISION WITHIN 180 DAYS?**

The application is deemed approved.

**WHAT ARE THE FEES INVOLVED FOR THIS LAW?**

The governing may establish additional fees to the developer for overseeing/administering the expedited permitting process. This fee is in addition to fees already charged by the Conservation Commission, the ZBA, and the Planning Board, etc and must be used for the purposes of this law.

**WHAT EXTENSIONS MAY BE GRANTED?**

The 180-day review period may be extended in the following circumstances:

1. if an additional and originally unforeseen permit or predevelopment review is required, the timeline may be extended for a maximum of 30 days;

2. if action by another federal, state or municipal government agency is required before the issuing authority may act, or judicial proceedings affect the ability of the issuing authority or applicant to proceed with the application, or if enforcement proceedings that could result in revocation of an existing permit and denial of the application have been commenced, the timeline may be extended;
3. if the governing body and the applicant mutually request that the 180-day review period be waived or extend.

**CAN THE ISSUING AUTHORITY USE LACK OF TIME AS A REASON FOR DENIAL?**

No. An issuing authority may not use lack of time for review as a basis for denial of a permit if the applicant has provided a complete application and met all other obligations in accordance with the expedited permitting law.

**WHEN CAN AN APPEAL BEGIN?**

Appeals from issuing authority decisions or from a grant by operation of law shall be filed within 20 days after the last individual permitting decision has been rendered or within 20 days after the conclusion of the 180 day period, whichever is later. The 180-day period shall be increased by the number of days in any extension granted.

**WHERE ARE APPEALS HEARD? WHEN ARE THEY DECIDED UPON?**

Appellants may bring consolidated appeals before the Division of Administrative Law Appeals to obtain a decision within 90 days. Appeals of DALA decisions may be filed within 20 days of the decision with Superior Court or Land Court. Appellants may also bring an appeal directly to Superior Court or Land Court (see MGL c.185 s.3A) without going through the DALA process.

**ARE THE PERMITS TRANSFERABLE? WHEN DO THEY EXPIRE?**

Not automatically transferable unless the permit expressly allows the transfer. Permits issued pursuant to this law shall expire in 5 years from the date of applicable appeal period for the permit. Where permits cover multiple buildings, commencement and continued of construction of one building shall preserve the permit validity of all permits issued for that PDS.

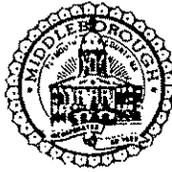
**WHAT ARE THE BENEFITS TO THE MUNICIPALITY?**

A priority development site shall enable the municipality to take advantage of the following:

1. priority consideration for state grants;
2. priority consideration for quasi-public financing and training programs;
3. brownfields remediation assistance;
4. enhanced marketing of the parcel by the state;
5. technical assistance provided by the regional planning council;
6. competitive advantage for economic development opportunities.

**HOW DOES THIS AFFECT THE MEPA PROCESS?**

This law requires that MEPA and Mass Historic Commission reviews are conducted concurrent to the 180-day municipal review period. It is anticipated that the MEPA filing will be initiated in the 180 days, but may not be completed as the MEPA review is not abbreviated.



## *Town of Middleborough*

*Massachusetts*

PLANNING DIRECTOR  
Ruth McCawley Geoffroy

Planning Board

Telephone (508) 946-2425  
Fax (508) 946-1991

### MEMORANDUM

**To:** Patrick Rogers, Chairman, and Board of Selectmen  
**Cc:** Planning Board  
**From:** Joyce Rowley, Staff Planner  
**Date:** May 8, 2009  
**Re:** **Proposed Zoning By-Law Amendment, Section IV, Industrial Districts**

Attached is an article submitted by the Planning Board for the May 26, 2009 Annual Town Meeting Warrant for proposed changes to the Zoning By-laws regarding Industrial District uses. Last fall, a similar proposal was brought forward which included language on compatibility with neighborhoods and restrictions on uses. That language was opposed as it was difficult to define certain concepts. Because of the opposition, the By-law was voted down.

The new proposed Zoning By-Law has eliminated the objectionable language and simply includes a special permit process for manufacturing and industrial uses in keeping with Section VII C of the Middleborough Zoning By-laws. Under the proposed language, special permits will be administered by the Zoning Board of Appeals

#### Purpose and Need:

The purpose of the article is to put in place regulatory controls for manufacturing and industrial uses in the existing district. The Industrial District is the only zoning district in Town that does not have special permit requirements. In fact, the only zoning restriction is that new buildings must be located 150 feet from any property lines. As a result, heavy manufacturing and industry can be conducted in the district without Town oversight or involvement.

The proposed change is intended to provide minimum safeguards by allowing Town review utilizing standards already existing in the Zoning By-law for the issuance of Special Permits. The proposed zoning change allows the same uses that are allowed by the current by-law.

Uses listed as "Permitted Uses" are those which by State statute cannot be further restricted by zoning. Prohibited uses are those which are currently prohibited in the existing Zoning By-Law for Industrial Districts.

### Location of Area to be Rezoned

The Industrial Zoning District is located on the northerly side of Town, on the north side of River Street, between the street and the Taunton River. The area was zoned Industrial in the 1970s to allow the K&F Brick Company to mine and manufacture bricks.

Currently the majority of the Industrial District is comprised of woods, farmland or non-conforming houses that existed prior to zoning. The exception is the K&F Brick property, although it has been abandoned and out of business for more than 20 years. The land across the street from the Industrial District on the south side of River Street, is zoned Residence Rural and is residential or agricultural in nature.

### Schedule for Warrant

Below is a timetable for the Industrial District Zoning By-law Warrant.

- Legal Ad Published: April 9 and April 16, 2009
- Abutting Town Notices of Zoning Change April 10, 2009
- Public Hearing at Planning Board April 28, 2009
- Town Meeting May 26, 2009

The Planning Board held a public workshop on April 21, 2009 and a duly-advertised public hearing on April 28, 2009. At their April 28, 2009 meeting, they voted to recommend its adoption.

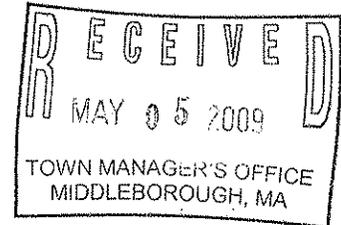
**DECAS, MURRAY & DECAS** ATTORNEYS AT LAW  
132 NORTH MAIN STREET · MIDDLEBORO · MASSACHUSETTS 02346 · (508) 947-4433

GEORGE C. DECAS (RETIRED)  
DANIEL F. MURRAY, ESQUIRE  
WILLIAM C. DECAS, ESQUIRE

REPLY TO POST OFFICE BOX 201  
MIDDLEBORO, MA 02346-0201  
FAX (508) 947-7147

WAREHAM OFFICE:  
210 MAIN STREET  
(508) 295-2115

May 1, 2009



Charles J. Cristello, Town Manager  
Town of Middleborough  
(via FAX#: 508-946-2320)

RE: South Middleboro Protective Association, Inc. – proposed  
Town land exchange with White McGill Realty

Dear Charlie:

You authorized me to prepare a revised draft vote for the South Middleboro Protective Association, Inc. which I enclose. The revision addresses the request of the South Middleboro Protective Association, Inc. that the land to be received by the Town in the proposed exchange will be subject to a right of entry/reverter of title in the event the land is used for some purpose other than municipal fire department uses.

I gave copies of this letter and enclosure to John Healey who will deliver the draft to a SMPA officer.

Very truly yours,

  
Daniel F. Murray  
Town Counsel

DFM/s  
T-1331  
Enclosure  
cc: John F. Healey

MINUTES OF SPECIAL MEETING  
OF THE BOARD OF DIRECTORS  
OF  
SOUTH MIDDLEBORO PROTECTIVE ASSOCIATION, INC.

A special meeting of the Board of Director of the above captioned corporation was held on the date, time and at the place set forth in the written waiver of notice signed by all the Directors, fixing such time and place, and affixed to the minutes of this meeting.

The meeting was called to order by the President and the proposed land exchange between the Town of Middleborough and White McGill Realty, LLC or some other party involving conveyance by the Town of a 1.7 acre parcel part of the South Middleborough Fire Station property in exchange for a conveyance to the Town of a 1.3 acre parcel on Wareham Street abutting the easterly side of the South Middleborough Fire Station property was presented to the meeting. After discussion, upon motion duly made, seconded and carried out was –

VOTED, to approve a land exchange between the Town of Middleborough and White McGill Realty LLC or some other party which exchange would consist of conveyance by the Town of a 1.7 acre parcel part of the South Middleborough Fire Station property in exchange for a 1.3 acre parcel to be conveyed to the Town located on the southerly side of Wareham Street (Route 28) abutting the easterly side of the South Middleborough Fire Station property provided that the 1.3 acre parcel to be conveyed to the Town shall be conveyed subject to a right of entry, and reverter of title to the corporation in the event that the parcel is used for a purpose other than municipal fire department purposes;

VOTED, to waive and release the corporation's right to reverter under a deed of South Middleboro Protective Association, Inc. et al dated March 27, 1991 recorded in the Plymouth County Registry of Deeds in Book 10762, Page 260 with respect to the 1.7 acre parcel to be conveyed by the Town, but reserving the corporation's right of reverter with respect to the remaining land subject to the reverter; and

VOTED, to authorize the President and Treasurer to execute and deliver on behalf of the corporation an instrument to be recorded to waive and release the corporation's right to reverter set forth in said deed recorded in Book 10762, Page 260 with respect to said 1.7 acre parcel, reserving however the corporation's right of reverter with respect to the remaining land subject to reverter.

There being no further business to come before the meeting, upon motion duly made, seconded and unanimously carried, the same was adjourned.

\_\_\_\_\_  
Secretary/Clerk

Approved:

\_\_\_\_\_  
President