

**Town of Middlebury  
Development Review Board (DRB)  
Town Office Large Conference Room  
Minutes of February 28, 2017  
Approved 4/24/2017**

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**Members Present:** Kevin Newton, Gary Baker (Alt.), Rick Emilo, Don Keeler, John MacIntyre, David Hamilton, Scott Foster, Anne Taylor

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**Members Absent:**

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**Staff Present:** Jennifer Murray, Victor Sinadinovski, Katherine Wheatley (videographer)

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**Others Present:** Benj Deppman, Barney Hodges, Brett Grabowski, Brent Rakowski, Brian Collins, Jeff Glassburg, Greg Rabideau, Tom Denecker, Mike Capra

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**MEETING AGENDA**

- An application by Milot Real Estate for a PUD Amendment and conditional use review of a multi-unit apartment building in the South Village PUD on Court Street. The parcel number is 07:009 and the property is located in the Village Residential/Commercial zoning district.
- An application by Mr. Benjamin Deppman for conditional use approval to add business/professional office as a use at 2 Park Street. The parcel number is 24:066 and the property is in the Central Business District.
- The DRB will informally revisit the previous DRB decision dated 12/14/2015 for the Denecker Chevrolet building and discuss its conditions of approval

Kevin Newton called the meeting to order at 7:02 pm.

**1. Minutes of 11/14/2016, 12/12/2016, and 2/13/2017**

On a **Motion** by Scott Foster, seconded by Kevin Newton, the Development Review Board **voted to approve the minutes of 11/14/2016 as amended**. Motion passed 5-0. Don Keeler, John MacIntyre and David Hamilton abstained.

On a **Motion** by Kevin Newton, seconded by Rick Emilo, the Development Review Board **voted to approve the minutes of 12/12/2016 as submitted**. Motion passed 6-0. Scott Foster and Anne Taylor abstained.

On a **Motion** by Gary Baker, seconded by John MacIntyre, the Development Review Board **voted to approve the minutes of 2/13/2017 as submitted**. Motion passed 4-0. Scott Foster, Rick Emilo, Don Keeler, and David Hamilton abstained.

**2. Hearing for Benjamin Deppman**

Kevin administered the oath to all present.

Benjamin Deppman presented an application for a change of use from retail to professional office at 2 Park Street. Mr. Deppman is currently a partner at the Deppman & Foley law office located at 7 Washington Street. He and his wife are now seeking to operate their own law practice. Space on the first floor of 2 Park Street recently became available after Middlebury Mountaineer, the current tenant in the space, decided it would move its retail operations to a location on Main Street. The

43 owner of 2 Park Street is Elmwood Properties, and Barney Hodges, a representative of Elmwood  
44 Properties, was in attendance for the hearing.

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46 Don noted that the parking requirements for the proposed use as a law office will be less than the  
47 current parking requirements for the current Mountaineer retail store. Anne asked if there was any  
48 on-site parking. Mr. Deppman indicated there were a couple of spots behind the building, and that  
49 there may be a potential to expand the parking in the future. Anne asked how many total  
50 employees would be at the office. Mr. Deppman replied that there would be four employees: two  
51 lawyers and two staff.

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53 David asked Jennifer if the change of use applied to the parcel. Jennifer said that the professional  
54 offices use would be added to the parcel. Don asked if the upstairs floors had residents in them.  
55 Mr. Hodges stated that they did. Kevin noted that this change of use applies to the space where  
56 Middlebury Mountaineer is currently located.

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58 On a **Motion** by Don Keeler:

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60 I move that the Middlebury Development Review Board, having reviewed the application submitted  
61 and having heard and duly considered the testimony presented at the public hearing of February 28,  
62 2017, approves this conditional use request for a change of use for the property located at 2 Park Street  
63 from a retail store to business/professional office. Seconded by John MacIntyre. Motion **passed**, 7-0.  
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### 65 3. Hearing for Milot Real Estate

66 Kevin administered the oath to all present.

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68 The applicant, Milot Real Estate, was represented by Brett Grabowski. Along with Mr. Grabowski  
69 was Brent Rakowski from Otter Creek Engineering and project architect Greg Rabideau. Mr.  
70 Rakowski gave an overview of the project. In 2014, the DRB approved an application to build 16  
71 town homes on Lot #5 at South Village. That project did not proceed and now Milot is seeking to  
72 build a 40-unit apartment building on Lot #5. From an engineering perspective, Mr. Rakowski  
73 stated that this is an easy and sensible project because water, sewer and other infrastructure already  
74 exists and they only need to make minor amendments to the site. The traffic flow follows the  
75 original design and concept of the South Village PUD in 2005. The Middlebury Design Advisory  
76 Committee (DAC) reviewed the project on February 3, 2017 and were positive about it.

77 Don stated that the previous approved decision for 16 town houses had some units geared toward  
78 senior living. He asked what would be the difference in the number of people, now that there will  
79 be 40 apartment units in the same space. He also asked who would be responsible for paying for  
80 the traffic light that will eventually be needed to get onto Route 7 from Creek Road, as traffic will  
81 significantly increase due to 40 new units. Mr. Grabowski noted that the original approval intended  
82 Lot #5 to be a two-story office building. He noted that the proposed use as an apartment building  
83 would actually decrease the intensity of the proposed traffic usage in South Village. It will be a  
84 lower impact from a civil infrastructure perspective. Don reiterated that someday, someone will  
85 have to pay for the traffic light that will have to go in there and that he does not want that burden  
86 to fall on the taxpayers.

87 Ann asked how many parking spaces would be available for the tenants. Mr. Rakowski stated that  
88 there are 62 parking spaces available. Anne asked if the available parking spaces are all on the lot  
89 that is being purchased. Mr. Grabowski stated that includes 28 parking spaces that are off the lot  
90 but is on the South Village PUD, which allows for shared parking. Anne hoped that people who  
91 live in the apartments will leave during the day, which would allow those shared parking spaces to

92 be filled with people coming to South Village for office/retail visits. Anne asked if any of the  
93 parking spaces will be restricted to tenants and Mr. Grabowski said they would not.

94 David asked if any of these units could be considered affordable housing. Mr. Grabowski said they  
95 cannot truly be called affordable, but there are varying definitions of what affordable means. These  
96 units will not be subdivided. Addison County has a median household income level of about  
97 \$65,000 and these units will be affordable at 100% of that median income level. Don asked if they  
98 will provide Section 8 housing. Mr. Grabowski said they are not geared toward Section 8 housing,  
99 but that they would not deny anyone who – through the use of any assistance or vouchers – can  
100 afford to pay the monthly rent. David asked if these units could be considered as non-luxury  
101 housing. Mr. Grabowski said that they could be described that way. He said there is a need for  
102 basic housing in Middlebury for those who earn too much money to qualify for subsidized housing  
103 and cannot afford luxury housing.

104 Don said that the DRB must address affordable housing when reviewing housing projects.  
105 Jennifer, in the role of Town Planner, noted that the median household income is \$58,414.  
106 According to HUD data, a family of four that earns less than \$56,800 annually is considered low  
107 income. Large employers have talked about the need to create housing in Middlebury for their  
108 employees. She noted that the Planning Commission concluded that the Town needs workforce  
109 housing projects that fits those needs. Anne added that by creating 40 units marketed at reasonable  
110 rates, more affordable housing will likely become available that is currently being occupied by  
111 people who can afford slightly higher rents.

112 David asked about the previously approved decision on the 16 town houses and how those  
113 conditions impact the DRB’s review of the present application. Jennifer said that decision has no  
114 impact on this decision, but the DRB can use that previous decision as reference and to look for  
115 ideas. Don said that if we build, people will come and 40 units will fill easily.

116 Scott asked about the lighting plan. Jennifer showed the lighting plan and confirmed her  
117 understanding that the lighting plan does not show any off-premise dispersal. Mr. Grabowski  
118 responded that is correct. Jennifer asked if the pole-mounted and wall-pack lights will remain on  
119 all night and Mr. Grabowski responded that they will remain on at night. Kevin asked the  
120 applicants to speak about the landscaping plan. Mr. Grabowski said that the DAC did not have any  
121 issues with the types of species but only some minor comments about the location of the trees.  
122 Anne asked how tall the honey locust trees can grow. Mr. Rabideau said that they can grow up to  
123 60 feet tall, but much of that depends on soil and space.

124 Rick noted that an interested citizen had a comment about open space on the lot. Mr. Grabowski  
125 stated that Milot is keeping with the original approved plan for green space. Anne said that the  
126 proximity of the Town Recreation Center, school sports fields and sidewalks to this project should  
127 be noted. Rick agreed stating that the Cottage Lane residences do not contain much green space  
128 but are close by to the recreation center and schools. Scott asked how many school-aged students  
129 could be expected to be living in the apartment building. Mr. Grabowski answered that it would be  
130 very few. There would likely be none in the one-bedroom units, and previous studies have shown  
131 that there are typically 0.2 school-aged children per two-bedroom unit, meaning that we could  
132 expect about 4 school-aged children in the building, as there will be about 20 two-bedroom units.  
133 Scott said that this likely means there will be no impact on the area schools.

134 On a **Motion** by Rick Emilo:  
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136 I move that the Middlebury Development Review Board, having reviewed the application submitted  
137 and having heard and duly considered the testimony presented at the public hearing of February 28,  
138 2017, approve this PUD Amendment and conditional use review of a multi-unit apartment building in  
139 the South Village PUD. Seconded by Don Keeler. Motion **passed**, 7-0.

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141 The DRB discussed conditions that should be attached to the decision. David suggested a condition  
142 emphasizing the shared parking and that no parking spots should be designated solely for the  
143 apartment tenants. Mr. Grabowski indicated that would not be a problem. Mr. Rakowski and Mr.  
144 Grabowski confirmed that the lot was reconfigured to be larger than its original footprint (still  
145 shown on the old tax maps). As such, they were able to confirm that all the landscaping  
146 improvements will happen on their property and not within the common land. The DRB did not  
147 feel that any easements were required for site improvements.  
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149 **4. Informal Discussion on the Denecker Chevrolet Building**

150 Scott Foster recused himself and left the meeting at 8:08 pm.

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152 Tom Denecker and Mike Capra of Denecker Chevrolet appeared before the DRB for an informal  
153 discussion to address several unmet conditions of approval associated with their 2015 DRB  
154 decision of approval. Don noted that this is his first recollection of having an applicant come to the  
155 DRB to review alleged violations. He is afraid the DRB isn't following the law and he doesn't  
156 want to be a part of the discussion. He insisted that it is the Zoning Administrator's job to deal  
157 with zoning violations. Jennifer responded that the decision has a condition of approval that allows  
158 the DRB to maintain continuing jurisdiction and call the applicants back in to discuss unmet  
159 conditions. Additionally, the applicants had expressed an interest in speaking with the DRB when  
160 an inspection of the property on 2/21 revealed several unmet conditions of their original approval.  
161 Denecker Chevrolet has requested a Certificate of Occupancy, but the Zoning Administrator  
162 cannot issue that certificate if there are open violations on the parcel. Jennifer noted that many of  
163 the violations are related to the fact that there are too many vehicles at the property, and the  
164 operation is being conducted at a larger scale than anticipated in the original approval. She  
165 suggested that the inventory be reduced or another storage location be sought. She emphasized that  
166 this hearing is not warned as a modification of the original approval so no changes can be made to  
167 the decision, but that we can hear the applicant's concerns and hold an informal discussion of  
168 potential next steps.  
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170 Mr. Capra asked what was needed in order to obtain the Certificate of Occupancy. Gary said that  
171 they need to be compliant with the law. Anne said that, according to the September 2015 decision,  
172 one condition relates to the number of vehicles allowed on the lot. She asked why there are so  
173 many more vehicles now on the lot compared to what was granted by the DRB in 2015. Mr.  
174 Denecker said that, as a franchise dealer, he has to take vehicles when they are made available to  
175 him. He cannot tell GM to give him 100 new vehicles and then they comply. He said that his  
176 business had such a low amount of new vehicles early last year that he needed to increase the  
177 number of used vehicles on site. Anne asked how he then agreed to have only 183 vehicles on the  
178 lot 18 months ago. Mr. Denecker said he took his best guess at operating a new business by  
179 looking at the capacity of the lot at the time and at historical values.  
180

181 Rick wondered why Mr. Denecker agreed to reduce the inventory from the previous use of the  
182 property by Shea Motors, reducing it from 210 to 183 vehicles, if they did not know what the  
183 future would look like. Mr. Denecker said he did not know how the building would lay out and  
184 was restricted on where he was allowed to park the vehicles. Anne asked if he really had no idea  
185 that they would have 100 more cars on their lot. Mr. Denecker said that he cannot stack cars and  
186 received flack for parking cars on the property across the street. Anne asked why his experience at  
187 the Ferrisburgh location was not transferable to Middlebury. Mr. Denecker said that they had taken  
188 two businesses and combined them into one facility. He had known they would do more business

189 than Shea Motors, which had occupied the lot previously, but did not know how much more  
190 business they would do than what transpired in Ferrisburgh.

191  
192 Jennifer said that the cars at Shea Motors were parked within the front setback, too close to Route  
193 7. When Denecker Chevrolet sought approval for their expansion, they needed a variance in order  
194 to build closer to Route 7 than the zoning allowed. Part of the rationale presented for why they  
195 needed the variance to erect the new building within the front setback was the fact that there are  
196 wetlands in the back of the property that would have prevented circulation of traffic and a car  
197 carrier around the back of the building. Denecker Chevrolet was allowed to continue the non-  
198 conforming use as a car dealership on that parcel because they agreed to reduce the intensity of the  
199 use, explicitly promising to decrease the number of total vehicles parked on the lot as well as the  
200 number of vehicles parked beyond the front line of the building, between the building and the road.  
201 Denecker agreed to have a smaller business in exchange for to be allowed to continue a  
202 nonconforming use (car dealership- not allowed in the VRC district). This agreement is described  
203 in the 2015 decision and is reflected in the conditions attached to that decision, which are not being  
204 followed. Jennifer provided a field inspection report to the DRB and applicants prior to the  
205 meeting. Denecker is approved for 183 total vehicles, and had 282 on the day of the inspection.

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207 Mr. Denecker said that in order to reduce the inventory and maintain it at 183 total vehicles, he  
208 would have to take used cars to auction and sell them faster, which would hinder him from getting  
209 a fair value for the vehicles. Mr. Denecker noted that had been parking many cars on the property  
210 across the street, but that he was getting calls on a daily basis to move the cars. He had steadily  
211 reduced the load across the street from 200 to 25, and then moved those remaining 25 all at once in  
212 order to not get more flack for parking the cars across the street.

213  
214 John wanted to know if they would ever get down to the agreed number of 183 cars. Mr. Denecker  
215 said they will get closer to that number as they better figure out the Middlebury market. In January  
216 of 2016 they sold 15 cars, while in January of 2017 they sold 34 cars. Kevin asked if they could  
217 foresee GM pressuring them to take more cars than they can hold. Mr. Denecker noted that GM  
218 says his business does not have enough cars while the Town says he has too many cars. He said  
219 that GM cannot force him to take more cars, but that there is retribution if he does not. Anne asked  
220 if they could find property to store their excess vehicles. Mr. Denecker said that he can move used  
221 cars elsewhere but that he is not permitted by GM to move new cars. He said he would have to get  
222 a storage lot approved. One of his thoughts was to make the 4.5 acres he owns behind the  
223 dealership into a parking lot. Anne asked how many of the cars are used. Mr. Denecker stated 107.

224  
225 Kevin said he was concerned about the lack of ability for the car carriers to unload on the site.  
226 There are safety problems with the trucks unloading on Route 7. Mr. Denecker said that they are  
227 working toward being able to unload the car carriers in front of the building. A police officer  
228 notified him earlier that day about receiving a complaint the trucks being on Route 7. Jennifer said  
229 that she had called the police chief to look into a safety concern about the car carrier unloading  
230 cars on the shoulder of Route 7, and also followed that up with an email to Mr. Capra. Don said  
231 that the shoulder was a break down lane and that cars can stand there but cannot park. Kevin noted  
232 that it would be a lot safer to unload the truck on the property and not on Route 7. Mr. Capra said  
233 that Jen had talked to him about Route 7 unloading and that word is getting to the dispatchers and  
234 truck drivers that they cannot unload on Route 7, but there have been a couple that haven't gotten  
235 the message. Anne pointed out that one of the conditions was that they must unload the vehicles in  
236 the back of the building. Kevin said that Denecker should make a good-faith effort to make the  
237 unloading happen on site. Mr. Denecker said they will never see another car carrier unload on  
238 Route 7. Mr. Capra said there may be a couple more that may have missed the message, but they  
239 will be making them unload on site going forward.

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Jennifer stated that they are approved for 24 vehicles in front of the front line of the building, and had 55 on the day of the inspection. Kevin asked if the condition of only 24 being allowed in front of that line was going to be followed or if Denecker would ask for a change. Mr. Denecker said he would know by this summer. If he cannot meet the parking requirement by then, he will come back asking for a change.

Anne said that he had already had an opportunity to consider the decision and conditions when it was approved in 2015. She asked if he did not read the conditions or if he ignored them. Mr. Denecker replied that that number was a workable number at the time of the application. Currently his business is trying to see what makes sense.

Jennifer noted that the DRB is meeting here tonight to help brainstorm solution. She wants to point out that the proposal to use the back 4.5 acres as a parking lot would be an expansion of a non-conforming use, and it crosses into the Agricultural / Rural zoning district. The DRB likely may not be able to approve that back lot as a parking lot. She does not want Mr. Denecker to count on an approval of this lot, and should not put all of its eggs in one basket by assuming that the back parking lot would be approvable for this use. Mr. Denecker believes it is a grandfathered use, and Don said there were cars parked there in the past, previous to Shea Motors being on that lot. Jennifer believes that in order for use of that lot to be approved, Denecker would have to prove that parking cars on the back lot was a grandfathered use that had continued to be used for that purpose since that time, with a cessation of no more than 6 months. She said that they might want to think of different spots nearby where they could get approval to park some cars. David said that if that back lot could work, it would solve many problems. Kevin said they could potentially seek a change to the zoning regulations. Jennifer said there is no formal process for changing zoning. It would be at least a year-long process and there is no guarantee the zoning would change, and Denecker cannot wait that long to fix this situation.

Kevin asked what other concerns there were with the property. Jennifer said she will have to measure the lighting levels on the property to make sure the lighting is in compliance. She said that the landscaping is not complete, but that she understands that the weather needs to warm up for them to complete the landscaping. David said that Denecker should make a good-faith effort to address the outstanding issues. Mr. Denecker indicated that he could come up with a stair-step plan to reduce his inventory if the issue is the number of vehicles that is detaining him from getting a Certificate of Occupancy, which he needs for his lender. Jennifer felt that was a sufficient discussion for now, and she will develop next steps for the zoning enforcement and certificate of occupancy inspection process, which is under the authority of the zoning administrator.

**5. Adjournment:**

On a **Motion** by Gary Baker, seconded by Rick Emilo, the DRB **voted to adjourn**. Motion passed, 7-0.

Meeting adjourned at 9:28 pm.

Minutes Submitted by Victor Sinadinowski