

TOWN OF DURHAM

Planning and Zoning Commission
P.O. Box 428
Durham, Connecticut 06422-0428

MINUTES OF JANUARY 18, 2006, MEETING

Present

Members: Brian Ameche, Ralph Chase, George Eames, Richard Eriksen, Dave Foley,
Jim Kowolenko, Jan Melnik, Tom Russell
Town Planner: Geoffrey Colegrove
Alternates: Frank DeFelice, Gene Riotte, Jackie Snow

Absent

Member: Dian O'Neal

The meeting was called to order by George Eames, Chairman, at 7:30 p.m. Frank DeFelice was seated on the Commission in Dian O'Neal's place. Gene Riotte and Jackie Snow were present, but unseated.

1. Approval of Agenda

Motion by Ralph Chase, seconded by Dave Foley, to approve the agenda of the January 18, 2006, meeting as presented. Motion carried unanimously.

2. Public Session

Donia Viola questioned the Commission about the policy regarding grandfathering of one-acre zoning and open space. Geoffrey Colegrove noted that when the Commission enacted two-acre zoning about two years ago, a provision was made to enable approval of no more than two one-acre lots for a limited period of time. She also asked about the waiver of frontage on a designer subdivision that was approved in March of 2003. It was determined that this was the Sichon designer subdivision on Arbutus Street. There was, in fact, no waiver of frontage; rather, there was a waiver on the number of lots permitted.

3. Proposed Amendment to “Sand and Gravel Pits” Zoning Regulations

Geoffrey Colegrove distributed proposed language for the Commission’s review. The salient language stipulates that “An excavation and/or removal of *more than 1,000 cubic yards* requires a *special permit* from the Planning and Zoning Commission ...” and that such permit is required “for the removal *or excavation* of sod, peat, stone, loam, soil, clay, gravel, or any other earth or mineral products from *or on* any land.” In addition, the language clarifies that “these regulations shall not be deemed to prohibit the transferal of less than *1,000 cubic yards*” of those same products “from one part of a lot or parcel of land to another part of the same lot or adjacent tract or parcel of land in the same ownership.”

This has been referred to adjacent agencies and will be the subject of a public hearing on February 15, 2006.

Ralph Chase asked why no consideration had been given to owners of large tracts of land who might wish to move more than 1,000 cubic yards of material on their own property. He stated his opinion that the proposed language inhibits landowners’ rights. Tom Russell concurred with these sentiments.

The question was raised as to whether or not this matter must move forward to public hearing, given that it was initiated by the Commission. While the Commission certainly would have the option to stop the process, Brian Ameche stated that the Commission’s feeling at the previous meeting was that this was supported. He stated his impression that in the 15 years he has been a part of the Commission, such activities have been difficult to manage and create problems for adjacent neighbors. He added that 1,000 cubic yards is “a lot of material to push around” on a site. This language gives the Commission the option of reviewing the proposed activity and stipulating conditions as it deems appropriate. He added that he believes the proposal balances the interests of neighbors and landowners. He also noted that history has reflected a mediocre job at best in terms of policing such activities; this gives the Commission a strong tool.

Richard Eriksen indicated that he is a proponent of property rights, but that there has been much abuse. All of the “easy building” in town has already been completed. In his opinion, the proposal is not restrictive, but does provide a check system. He also stated his impression that the previous regulations have allowed for abuse and contributed to the problems the Commission has seen in the past. He added that “peace and tranquility” are as important to preserve as property rights. He also pointed out that regulations can be enacted, changed, and even revoked.

Frank DeFelice indicated that while undecided on the matter, he would like to see clear definitions provided in the regulations for excavation and removal.

Jan Melnik suggested it might make sense to define separating distances from property to property that would enable large landowners the option of being able to move more material on their properties. The difficulty, again, becomes policing.

Frank DeFelice stated that since crushing is clearly not permitted, the noise factor “goes away.” Jan Melnik noted, however, that there is still the noise from trucking related to hauling material, the bed of the truck slamming down on the base, etc.

Dave Foley reflected on some of the more egregious issues the Commission has endured, along with residents, because of problems in this regard. He stated that the Commission would obviously not deny a reasonable request; however, in the past, people have clearly taken advantage of the situation. It is, in fact, the continuing problems with Greenland Realty/Mountain Road that prompt this to be a matter for the Commission's consideration. He would certainly be willing to contemplate other ideas.

Tom Russell suggested that perhaps a lot size restriction would be appropriate.

Frank DeFelice suggested expanding the limit to 1,500 cubic yards of material (noting the possible excavation necessary for a very large [4,000 sq. ft.] ranch).

Geoffrey Colegrove indicated that the process for subdivision and site plan approval is to seek an earth excavation and removal permit concurrent with the site plan permit.

4. Exploratory Discussion Regarding Possible Rezoning, Route 147

Geoffrey Colegrove indicated that letters would be sent to all abutters of the properties involved in the proposed informal discussions about possible rezoning on Route 147. A workshop will be held on the Commission's regular meeting night of February 1. This is not a public hearing, rather, a working informal discussion.

5. Update on Greenland Realty Property

Geoffrey Colegrove distributed a letter from the Commission's counsel, Attorney Thomas Byrne, noting that there is not a provision in the General Statutes, nor is there case law, that would indicate a certificate of zoning compliance (or a subsequent certificate of occupancy) could be revoked or rescinded because of non-compliance with the provisions of the Zoning Regulations or any approvals granted by the Commission. A cease-and-desist order can, of course, be issued if there is violation of some specific provision of the site plan approval.

Geoffrey Colegrove also disseminated a log covering the timeframe of January 9 to January 18, 2006, attesting to site inspections and random visits to the property by both himself as the Zoning Enforcement Officer and Ed Grimes as the Assistant Zoning Enforcement Officer. The situation of the lights being activated, turning on, and/or staying was inconsistent at best. George Eames stated that he had visited the site the night before (at about 5:05 p.m.) and observed that the lights on the northeast corner of the building were, in fact, on and pointed directly in the direction of the Cruises' property (not the required cutoff downlighting).

Brian Ameche pointed out that a related concern has been the hours of operation. Regardless of whether the hours of operation that had been discussed in meetings and/or hearings are or are not reflected on the site plan (they are not), the Commission should "stand up and enforce" this matter on which part of the approval of the operation was predicated.

Brian Ameche also reiterated a request to Geoffrey Colegrove with regard to providing the Commission with copies of all minutes dating back as far as necessary (2003 or even earlier, if appropriate) reflecting discussions about the Greenland Realty operation; copies of any transcripts that would be prepared for Attorney Byrne would also be desirable. Geoffrey

Colegrove will provide all Commission members with copies of the material being assembled for Attorney Byrne.

Geoffrey Colegrove noted that Attorney Byrne would be in attendance at the February 15 meeting. Prior to that date, Attorney Byrne will review the situation to determine what exactly is in violation. The Commission has requested specific things from Attorney Byrne; once these items come together, then the Commission can proceed with whatever action it deems appropriate. Frank DeFelice asked that Attorney Byrne specifically review hours of operation and the nature of the business.

Geoffrey Colegrove also noted that while a transfer operation clearly had been taking place at the site previously, it is not going on now. There is just one roll-off on the site.

Diana Cruise, a Mountain Road resident in attendance, queried the contents of a 51-foot covered trailer entering and leaving the site. It was noted that all trailers are tarped (as required by state law) and, as private property, there is no right of inspection.

George Eames referenced the signing of the modified site plan the week earlier and recapped the language on that map which specifically prohibits mechanical truck repairs and truck washing, but permits the accessory use of outside storage on the property for topsoil, mulch, and decorative stone.

Brian Ameche asked why the mylar was signed as recently as last week, given the ongoing problems with the site. George Eames noted that the Commission had given its approval of the modified site plan back in September.

Richard Eriksen stated that at the heart of the matter is the issue of what was actually approved as a use for the property and the hours of operation (whether or not the latter are on the map—what was presented during meetings and hearings?). Brian Ameche indicated that a typo (omission of the hours of operation from the site plan) should not bind the Commission from the standpoint of having to ignore this important factor.

George Eames stated that nothing was mentioned on the plans about trucking activities; if a trucking business is to take place, then a permit should be sought.

Attorney Joan Molloy, representing Greenland Realty, addressed the Commission and indicated that she had presumed the problem with lighting was resolved (she had not received further complaints). She referenced the presence of an electrician at Greenland Realty to make the appropriate repairs—the lights were functioning properly and had shielding, according to her.

Brian Ameche stated that the regulations and site plan requirements are very clear in terms of requiring full cutoff downlighting. A certificate of occupancy should not have been issued if the lights were improper.

Dave Foley expressed frustration with the fact that the Commission continues to be dealing with ongoing problems at Greenland Realty. He asked that Geoffrey Colegrove continue to document activities at the site.

Attorney Joan Molloy stated that the hours of operation discussed before the Commission related only to the processing of topsoil, which was an accessory use. She also stated that minutes from a September 2003 meeting reflect the discussion about the business being a garage and trucking operation.

Cindy Turcik, a Mountain Road resident, stated her recollection from meetings long ago about the activities at Greenland Realty being those of a landscaping business.

6. Discussion of Unimproved Town Roads

Geoffrey Colegrove distributed a map detailing all of the unimproved town roads in Durham, as developed from a variety of records and sources. Not all are likely to be developed.

Richard Eriksen stated that with property selling for upwards of \$250K per acre, the town shouldn't have to develop roads.

It was agreed that the Commission would move forward with attempting to garner support from the current Board of Selectmen for discontinuing at least some of these unimproved town roads.

7. Payment of Bills

Motion by Richard Eriksen, seconded by Ralph Chase, to approve payment of the following bills:

- Midstate Regional Planning Agency - \$3,872.72
- Absolute Advantage, J. Melnik - \$383.57 (minutes, January 4, 2006)
- *Middletown Press* - \$60.54 (new charges)

Motion carried, 8-1, with all in favor with the exception of Jan Melnik (in abstention).

8. Approval of Minutes

Motion by Ralph Chase, seconded by Dave Foley, to approve the minutes of December 21, 2005, as submitted and the minutes of January 4, 2006, as amended to reflect a correction on page 5 concerning cubic *yards*, not cubic *feet*. Motion carried, 8-1, with all in favor with the exception of Jan Melnik (in abstention).

9. Miscellaneous

George Eames read into the record a letter received from James Piotrowski, 48 Bailey Road, dated January 4, 2006. It concerns the situation of the home occupation by Bryant Esparo on Bailey Road. Originally, agreement was reached earlier this year that all but one plow would be removed from the property by November 30, 2005. However, a number of other pieces of equipment remain on the site (tri-axle dump truck, cement mixer, excavator). In addition, a large truck with signage remains parked on the road and was operated at midnight (loudly) recently. The continued violations are noise/altering the quiet of the neighborhood, trucks on the site and being operated at unusual and disturbing hours, and construction equipment being on the site. Geoffrey Colegrove will follow through on these complaints.

January 18, 2006

Page 6

Richard Eriksen noted that the Zoning Board of Appeals recently denied the request of Donald Stephan for 2.78 acre minimum lot area variance and a 35.2' minimum lot width at minimum front yard variance to allow a two-family dwelling. He praised the efforts of Gene Riotte in attending ZBA meetings and presenting the Commission's viewpoint on such variance requests.

Dave Foley asked that the Zoning Enforcement Officer investigate the presence of a flashing arrow at the Hitching Post Taverne on Route 17 at the south end of town (it should be removed).

Motion by Ralph Chase, seconded by Jim Kowolenko, to adjourn the meeting at 9:07 p.m.

Motion carried unanimously.

Respectfully submitted,

Jan Melnik

1/25/2006