

# TOWN OF DURHAM

## **Planning and Zoning Commission**

P.O. Box 428

Durham, Connecticut 06422-0428

### **MINUTES OF OCTOBER 1, 2008, MEETING**

#### Present

Members: Ralph Chase, Frank DeFelice, Cathy Devaux, George Eames,  
Richard Eriksen, Dave Foley, Jim Kowolenko, Gene Riotte, Tom Russell  
Town Planner: Geoffrey Colegrove  
Alternate: Stuart Keating

#### Absent

Alternates: Mike Geremia, Mark Laudano

The meeting was called to order by George Eames, Chairman, at 7:30 p.m. Stuart Keating was welcomed as the new alternate and seated on the Commission in Gene Riotte's place (and subsequently unseated upon Gene's arrival).

Motion by Dave Foley, seconded by Frank DeFelice, to approve the agenda of the October 1, 2008, meeting as presented. Motion carried unanimously.

Gene Riotte was seated on the Commission at 7:33 p.m. Stuart Keating was unseated.

#### 1. Public Session

Pat Murawski, 154 Skeet Club Road, asked the status of the notice of zoning violation given to Schwan's for having truckload sales; she also provided photographs. Geoffrey Colegrove issued a letter of violation on this matter (allowing 10 days to bring the site into compliance), which was hand-delivered by a sheriff on September 29. The letter was read into the record by Jan Melnik.

Attorney John Corona noted that a letter had been submitted to the Commission from Senator Tom Gaffey at the previous meeting but because the public hearing for the horse

crematorium had closed, the letter could not be read into the record. Senator Gaffey took issue with Attorney Corona's representation during the public hearing process that he (Sen. Gaffey) had written a letter indicating support for the crematorium. Attorney Corona indicated he had followed up with the recording secretary, Jan Melnik, regarding the minutes of the subject meeting at which this point was made; he originally thought that it was perhaps a typographical error, confusing Senator Gaffey with Senator Meyer. However, upon review of the transcript from the same public hearing, he learned that the minutes were not in error; it had been his mistake—indicating Senator Gaffey instead of Senator Meyer as he had intended (it was Sen. Meyer who had written the letter of support). He wanted this clarified in the minutes.

Frank DeFelice stated that he had listened to the tapes of the previous meeting (at which there was a public hearing for the outdoor wood-burning furnaces as well as continued discussion on the large animal crematorium).

## 2. Town Planner's Report

Regarding the problem with lights along Ozick Drive, the regulations are clear that there is to be no light trespass from a property; existing lights can be modified with a shield.

Geoffrey Colegrove stated a letter was sent regarding the very large patio facility with large fireplace constructed five feet from a property line on Agerola Road. No zoning permit was sought for this project; the property owner needs to bring the property into compliance or obtain a variance from the Zoning Board of Appeals.

As far as the garage constructed on Howd Road about ten feet from the property line, a cease-and-desist order will have to be issued if the situation is not remedied.

A letter was sent to a homeowner on Wilcox Drive because of a junkyard situation with appliances in a parking area; this is not permitted. The property owner has 14 days to comply with the regulations.

## 3. CT Horse Cremation, Request for a Special Permit for a Large Animal Crematory, 41A Commerce Circle

Geoffrey Colegrove disseminated possible conditions for the Commission's review and discussion. He aggregated points made at previous meetings in drafting this newest document. He stated that there have been a number of interveners; the Commission is required by statute to respond to the issue raised regarding potential negative effects on the air, water, and other natural resources and physical environment of the town of Durham—in other words, stating that these points have been considered with no negative effects found. A draft reply to this intervention was distributed.

This agenda item was then tabled until later in the meeting.

4. Durham Auto Center, Request for Modification to Site Plan, 428 Main Street

Attorney John Corona addressed the Commission on behalf of Michael Corona. The applicant is seeking to modify the site plan. Now that the business has been operating for some time, there are some logistical and aesthetic issues that he would like to address. Foremost, the current traffic pattern brings traffic onto the property from a southerly entrance—this is the only way in and out. The applicant would like to have an exit only out onto Parsons Lane to alleviate the need for backing/turning around at the north end of the site. The steepness of grade at the back of the site as well as buried services prevent full circulation around the side of the building.

Michael Corona has talked with Mr. Blanke, who owns Parsons Lane (it is not a town road); a legal document will need to be secured providing use by easement, but permission has been granted to Mike Corona for this exit-only purpose. Several residents on Parsons Lane have similar easements, as does Whitehouse Construction.

In addition, in lieu of planting a row of shrubs along the front of the building, as approved for the site plan, the applicant would instead like to create several attractive landscaped islands on the site. It is thought that these would look better, be easier to maintain, and be less obtrusive than a row of shrubbery. Also, the applicant would like to relocate the business sign to the south end of the site adjacent to the entrance driveway (with sufficient setback so as not to impede line of sight). The applicant would also like to add lighting (three full cutoff light fixtures with 70-watt bulbs on the building and two freestanding lights with shoebox lighting and fully recessed light sources at the south end of the site)—it is currently extremely dark. Frank DeFelice asked that Attorney Corona provide wattage detail for the freestanding lights.

To a question about the adjacent home (the former Behrens' residence), it was noted that this house is now owned by Michael Corona.

Ralph Chase stated that the Commission originally wanted shrubbery planted along the front of the site to obscure some of the parked cars. Attorney Corona stated that the building was moved back and constructed some 15 feet lower than what had originally been planned because of excavation. With the lower elevation, the originally proposed landscaping designed to disguise the former plateau view is not as necessary. Attorney Corona added that there is nothing unattractive about the site that requires screening and virtually every commercial property in town has parked cars at the front of the site. The originally approved deciduous shrubbery wouldn't provide any screening in the winter anyway.

Attorney Corona stated that the applicant recently learned that CL&P and the telephone company intend to place three poles next to each other directly in front of the building and mount a transformer cabinet at the top. Utilities do have a right to locate within a right of way.

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Stuart Keating expressed concern about the location of signage and the possibility of hindering line of sight.

Michael Corona stated that the three 50-foot poles proposed by CL&P could possibly impact line of sight.

To Frank DeFelice's question about proposed signage, Attorney Corona stated that at the point that the applicant was contemplating signage, the Commission enacted a ban on internally lit signs. Therefore, the plan would be for a sign externally illuminated by a gooseneck light; the sign will be of the size appropriate to the project as allowed by the regulations.

Richard Eriksen suggested a site walk be held by the Commission. Attorney Corona will make sure that proposed locations of the items discussed are staked out in advance of the site walk. This will be held on Saturday, October 11, at 9:00 a.m.

#### 5. Payment of Bills

Motion by Ralph Chase, seconded by Mike Geremia, to approve payment of the following bills:

- Attorney Thomas Byrne -- \$5,675.00 (Silver Eagle)
- Absolute Advantage -- \$557.36 (minutes Sept. 17, 2008, meeting)

Motion carried unanimously.

#### 6. Approval of Meeting Minutes

Motion by Dave Foley, seconded by Frank DeFelice, to approve the minutes of the September 17, 2008, meeting as amended to reflect correction on page 3, final paragraph (should be 350 feet). Motion carried, 8-1, with all in favor with the exception of Frank DeFelice (in abstention).

#### 7. CT Horse Cremation, Request for a Special Permit for a Large Animal Crematory, 41A Commerce Circle

The Commission continued discussion of this agenda item from earlier in the meeting.

Geoffrey Colegrove distributed proposed conditions of approval for the Commission's consideration and review (provided below—with details of discussed items following the 16 conditions):

A propane-fired Pennram incinerator and refrigeration unit will be installed inside the existing building at the site, and in accordance with all applicable codes and

requirements. The facility will accept only non-infectious large, hooved animal carcasses, primarily horses. Customers will contact the facility by telephone or electronically to solicit assistance. An enclosed refrigerated vehicle will be dispatched to collect the animal at the customer's site. All contractual arrangement, including payment, will be completed at the customer's site. The animal will be off-loaded, and either refrigerated for later disposal, or immediately cremated. The incinerator will, at all times, be operated and maintained in accordance with the manufacturer's instructions and requirements, and neither visible emissions nor odors will be detectable from off the premises. There will be no outside storage or view of animals. Backup electricity generation will be available at all times. Two staff members may be on site during operations.

**Conditions:**

Each and every condition attached to this special permit is an integral part of the special permit and inseparable from it. Should any of the conditions attached hereto be found by a court of competent jurisdiction on appeal to be void then, in that event, the special permit granted herein is void and of no legal effect.

- 1) The operation of the facility will be conducted in accordance with the above summary at all times. All manufacturer specifications for operation and recommendations for maintenance will be adhered to.
- 2) No emissions waste, or other byproducts of operation shall be permitted to cause a nuisance or unreasonable annoyance to surrounding property owners. No odor or particulate matter shall be permitted outside the property line of the parcel on which the use is located. Any liquid or solid waste generated by the facility as a result of cleanup, maintenance, equipment repair or unclaimed animal ashes shall be disposed of in accordance with applicable state and local regulations or ordinances.
- 3) No signage indicating the use shall be placed at the site or on any vehicle used in the operation of the business except as may be required by law.
- 4) The Town of Durham Health Department or any successor office or authority may order temporary suspension of incineration operations during periods of extreme atmosphere conditions where such official determines such conditions may reasonably result in the transmission of odors, particulate, or other byproducts of incineration off-site. Such officials shall consult the Conn. D.E.P. air quality information in making a determination to temporarily suspend the operation of the incinerator. Such officials may inspect the facility at any time during business operations.
- 5) Written records of all incinerator activity and maintenance shall be maintained at the facility and shall be available to the Durham Health Department or any successor office or authority during business operations.
- 6) Within the first 30 days of operation, the applicant shall furnish the Durham Health Department with at least one air quality testing report prepared by a professional air

quality testing laboratory. The purpose of this report shall be to provide confirmation that all manufacturers' emission specifications and any applicable local or state emissions requirements are met. In the event the report determines that such specifications or requirements are not met, no further incineration shall occur until subsequent testing confirms that such specifications and requirements are met. Thereafter, the Durham Health Department or any successor office or agency shall require such testing at least once each calendar year to confirm operation is within specifications and requirements.

- 7) The use shall comply with any subsequently enacted applicable state or Federal laws and regulations concerning health and safety in the operation of animal crematoria, including emission standards providing the special permit is amended by the Commission to reflect such changes. The applicant is obligated to make application for such amended special permits if such changes are enacted within 90 days of such effective date.
- 8) Any solid or liquid waste generated by the use shall not be kept or released outside the building in which the use occurs. Operation shall comply with all recommendations and orders of the Durham Health Department, or any successor office, authority, relating to any collection or disposal of solid or liquid waste generated by the use. Any materials removed from the site shall be handled and transported by persons licensed to perform such work.
- 9) The facility shall, at all times, maintain a consulting relationship with a Connecticut-licensed veterinarian, and this veterinarian shall be available to the operation at all times to respond to questions and emergencies. The facility shall not accept animals with communicable diseases or open wounds causing loss of body fluids. A licensed veterinarian shall certify that the animal does not have an infectious or communicable disease. Certifications shall be kept on the premises and available for inspection during normal business hours by the Durham Health Department or its successor.
- 10) The approval is for one Pennram model LLC-500 Long Life Crematory unit, additional units shall require an amendment to this special permit. Any substitution to the Pennram system shall require approval from the Commission.
- 11) The facility is permitted to operate Monday through Saturday from 7:00. a.m. to 7:00 p.m. only except for Connecticut Legal Holidays.
- 12) No liquid materials of any kind generated from the operation of this facility, except domestic sewerage, shall be discharged to the on-site septic system or any drain system that would allow such materials to enter the surface or ground waters of the State of Connecticut. Any materials, liquids, solids or gases used or generated in connection with the operation of this facility shall be handled and disposed of in accordance with the manufacturers' recommendations, standards or regulations of the State of Connecticut or recommendations of the Durham Health Department or its successors.

- 13) The facility will operate within the parameters of the Durham Noise Ordinance.
- 14) The applicant shall maintain an inventory of spare parts to prevent downtime in any event as the result of a system failure.
- 15) The use shall comply with the National Ambient Air Quality Standards enacted by the Environmental Protection Agency pursuant to the Clean Air Act which was last amended in 1990 and as the same may be further amended. In addition, the emissions from the facility shall meet the following stack emission standards:

Opacity	5% (6 min avg)
Particulate Matter	0.010 gr/cu.ft
Carbon Monoxide	50ppm (43 hr avg)
Hydrogen Fluoride	5ppm or 95% reduction
Hydrogen Sulfide	150 ppm
Nitrogen Oxides (as NO <sub>2</sub> )	120 ppm
Sulfur Dioxides	20 ppm or 90% reduction
- 16) The use shall comply with the Section 19-508-24, of the Regulations of State Agencies as the same may be amended as well as Section 22a.124.18 and 22a.174.22 of the Connecticut General Statutes.

Considerable discussion ensued regarding the requirement for certification by a veterinarian as to the health of the horses prior to death. There was generally consensus that while this might be desirable, it would be somewhat impractical. However, as Tom Russell pointed out, if an animal is ill prior to death, the horse owner's vet would have been treating the animal and could easily certify as to its health status. But if the horse is not ill (and dies of natural causes/age), then a certification would be more impractical to secure.

Richard Eriksen pointed out the problems of such diseases as equine flu, encephalitis, etc. It would be ideal to have certification that an animal is not infected with such illnesses. He pointed out that if horses are brought to auction, certification is required that they do not carry contagious diseases.

Ralph Chase stated that cremation is a far better solution for disposal of an animal—with or without a disease—than simply burying it in the ground and possibly contaminating groundwater.

Jim Kowolenko pointed out that the two-chamber operation of the furnace will adequately handle any problem with infectious diseases. Of course, the transport will need to be secure and sealed.

Cathy Devaux pointed out that there was testimony in the hearings that the animal would be in a sealed container not opened until it was in the enclosed garage. There was then discussion around the type of sealed container (i.e., plastic could not be placed in furnace

because of dioxins and the fact that it would coat the inside of the furnace). Cathy Devaux also stated that the owners of the crematorium stated that they will have a vet working with them.

The Commission then discussed the point that the conditions should tie to the information presented by the applicants in terms of equipment standards. It was agreed that 12 hours would be sufficient for hours of operation. In terms of handling waste, it was agreed that anything not incinerated would have to be handled by a licensed hazmat operator.

Ralph Chase pointed out that as a land-use commission, he felt many of these technical requirements were outside the realm of the Planning and Zoning Commission—and that standards should be established by a higher authority (the state, the Department of Environmental Protection, etc.), with the Commission's role to defer to the Health Department in terms of enforcement. He indicated that the Commission should be determining if this area is an appropriate location for the incinerator use.

Frank DeFelice reviewed some of the specifications, suggesting that opacity be reduced from 10% to 5% (as noted by the manufacturer). He also suggested that condition 16 be enhanced to include several additional relevant sections of the state statutes.

Richard Eriksen suggested that condition 6 be amended to state that testing *will* be required (instead of *may*).

The Commission then discussed consideration of impact on the environment (responding to action of interveners), the salient points of which were that the Commission finds that the proposed special permit as described and conditioned is not reasonably likely to have the effect of unreasonably polluting, impairing, or destroying the public trust in the air, water, and other natural resources and physical environment of the town or the state for the following reasons:

- 1) The incinerator is not currently regulated because the emissions do not meet state thresholds for regulation. Data provided by the manufacturer indicate that the unit will meet California emission standards, which are the strictest in the country. All applicable air quality standards must be met including those imposed by the Commission.
- 2) The approval does not permit the discharge of any liquids to the soil or ground waters of the town of Durham or the state, except domestic sewerage.
- 3) By-products from the operation must be handled in accordance with federal, state, local regulations, or ordinances as well as the manufacturer's recommendations.
- 4) There can be no visible or discernable environmental impacts leaving the property other than traffic.

Richard Eriksen stated that he was still not comfortable, feeling that the Commission is “not learned enough to establish conditions that may be required for something that doesn’t exist in Connecticut.” His analogy was that the Commission is “sitting out here on a pond with ice—and doesn’t know how thick the ice is,” believing it should not rush to judgment nor be the experiment for the state.

Jim Kowolenko stated his impression that the Commission does have the knowledge and expertise to review and make a decision in this matter. Cathy Devaux added that to await the actions of the state legislators might ‘take forever.’

Motion by Jim Kowolenko, seconded by Tom Russell, to approve the application for special permit for Connecticut Horse Cremation, request for special permit, large animal crematory, 41A Commerce Circle, per attached conditions of approval (*noted above in minutes*). Motion carried, 7-2, with all in favor with the exception of Ralph Chase and Richard Eriksen (in opposition).

Gene Riotte noted that there was a significant amount of data provided by the applicants speaking to the quality of the product, how it operates, the output, and—absent any data from the public, except for their opinion—he believed the Commission’s decision was sound.

Motion by Dave Foley, seconded by Cathy Devaux, to concur with the recommended findings regarding interveners’ action, that the proposed special permit as described and conditioned is not reasonably likely to have the effect of unreasonably polluting, impairing, or destroying the public trust in the air, water, and other natural resources and physical environment of the town or the state. Motion carried, 7-2, with all in favor with the exception of Ralph Chase and Richard Eriksen (in opposition).

8. Proposed Zoning Text Amendments to Add New Sections 02.15.02 and 04.07 to Prohibit “Outdoor Wood-Burning Furnaces” in All Zones

Geoffrey Colegrove stated that he had researched with the Department of Environment Protection regarding the height for the stack (55 feet, even if not higher than rooflines within 500 feet). He had also researched agricultural uses with a number of farms listed (limited dairy farms, but a number of horse farms as well as Christmas tree farms). There are a number of legitimate farms that might not meet the 225 foot setback but could be listed in the Farm Bureau’s records.

Instead of defining “what a farm is,” the Commission discussed determining applications by special permit on a case-by-case basis. Ralph Chase stated that he does not want to limit agricultural operations.

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The Commission was in general agreement—using a special permit process—that if the 225-foot minimum separating distance to property line is met, then outdoor wood-burning furnaces for farms and related uses (kennels, etc.), should be considered for approval.

The Commission also discussed the type of equipment that might be considered for approval—those systems on the EPA's voluntary certification list. It was also suggested that units must be both EPA-certified as well as meet DEP requirements. Current regulations limit structure height to 35 feet.

Geoffrey Colegrove noted that a letter from the attorney representing Central Boiler had been received; the recommendation is provided that because the Commission's possible action appears so dramatic, another hearing should be scheduled. He will work on drafting language for the Commission's consideration for the next meeting.

#### 9. Miscellaneous

Release of a non-Commission required bond was discussed for Nosal Enterprises, Ozick Drive. Brian Curtis has represented that all conditions have been met with the exception of work required by the property owner (Rory Wilson) to adjust catch basin height.

A letter was received from W. David LeVasseur of the State Office of Policy notifying the Commission that beginning July 1, 2010, there were be penalties enacted for commissions statewide that do not update their plans of conservation and development every ten years.

There has been recent dumping of fill at the corner of Routes 157 and 68, according to Frank DeFelice and Dave Foley. Geoffrey Colegrove will investigate this and check the site plan. No fill was approved by the Planning and Zoning Commission or the Inland Wetlands Commission.

Motion by Dave Foley, seconded by Frank DeFelice, to adjourn the meeting at 9:40 p.m.  
Motion carried unanimously.

Respectfully submitted,

Jan Melnik

10/9/2008

Received: 10-13-08

Kim Garvis, Town Clerk