

TOWN OF DURHAM

Planning and Zoning Commission

P.O. Box 428

Durham, Connecticut 06422-0428

MINUTES OF NOVEMBER 16, 2005, MEETING

Present

Members: Brian Ameche, Al Bradanini, George Eames, Richard Eriksen,

Dave Foley, Jim Kowolenko

Town Planner: Geoffrey Colegrove

Alternates: Ralph Chase, Gene Riotte

Absent

Members: Jan Melnik, Dian O'Neal, Jackie Snow

Alternate: Frank DeFelice

The meeting was called to order by George Eames, Chairman, at 7:30 p.m.

Ralph Chase was seated on the Commission in Brian Ameche's place. Gene Riotte was seated on the Commission in Jan Melnik's place.

1. Approval of Agenda

Motion by Al Bradanini, seconded by Ralph Chase, to approve the agenda of the November 16, 2005, meeting as presented. Motion carried unanimously.

2. Public Session

Cindy Turcik, Mountain Road, addressed the Commission. She was seeking clarification of the actions taken since the last meeting. Specifically, she stated that it was the impression of the neighbors that the temporary certificate of occupancy was going to be rescinded for Greenland Realty. She also asked if this was not the case, what were the allowable hours of operations, days of week, etc.

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George Eames stated that the Commission had voted at the last meeting to rescind the temporary certificate of occupancy.

Geoffrey Colegrove advised that he had spoken with the Commission's attorney, Thomas Byrne. Attorney Byrne advised that the basis for rescinding the certificate of occupancy pertained to a requirement that was not in the special permit approval nor in the site plan. Attorney Byrne further stated that without due process and without the item being on the site plan, it cannot be rescinded. That matter is being carried over to December 7.

Cindy Turcik asked what hours and days of week the business could be operated. Geoffrey Colegrove indicated that the rules of operation were related to two things: (1) removal of traprock on the site and (2) removal of stockpiled earth materials from the site. These times are stipulated in the regulations. There were no conditions governing the hours of operation of the trucking business.

George Eames indicated that this is no different than any other business (i.e., a pharmacy or restaurant cannot be told what their hours of operation will be).

Cindy Turcik referenced the ongoing problem with operation of trucks at 4:30 a.m. in an area adjacent to a residential area.

George Eames clarified that hours of operations and days of operation are restricted to the earth and traprock removal.

Attorney Joseph Milardo addressed the Commission on behalf of Mr. and Mrs. Cruise. This was with regard to items appearing in the minutes regarding the site approval for Greenland which have not yet been met. To the issue of noise, this matter should be enforced by the First Selectman (referencing the noise ordinance). It is a matter of health, safety, and welfare. The business use of a property should be in conformity to allow neighbors the ability to have a peaceful existence, not be caused health problems, and be able to sleep during normal night hours.

Geoffrey Colegrove stated that the minutes of the meeting the neighbors are speaking of reflect discussion held approximately six months before approval of the actual application. It was never reflected in the conditions of approval. He added that it was his understanding that there was an agreement between the parties; the option was to put the trees on either Greenland Realty property or the Cruises' property, but not on both. The agreement was reached after the approval of the application.

Attorney Milardo asked if conditions were placed on the granting of the application and, if so, did they include the planting of arborvitae on the Cruises' property. Geoffrey Colegrove indicated this was not the case. To Attorney Milardo's query as to if it would have been possible that such condition was inadvertently omitted when 'sending approval' to the applicant, Geoffrey Colegrove replied 'no.'

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George Eames indicated that Attorney Thomas Byrne would be reviewing this case upon his return to his office in several weeks.

Attorney Milardo stated that if this was not a condition of the application approval, then there was a misrepresentation in the minutes. Geoffrey Colegrove explained that there was a difference between an approval with conditions and representations made during the hearing process. Geoffrey Colegrove clarified that it was not in the site plan and was not a condition of approval.

Attorney Milardo stated, then, that it appeared that a “slip up” was made in that this matter was not included in the final site plan.

Brian Ameche was seated on the Commission at 7:40 p.m. Ralph Chase was seated in Dian O’Neal’s place.

Stewart Keating addressed the Commission regarding the construction of a new home on Stagecoach Road on the downhill “s” curve. The driveway is not visible because of the offset and surrounding hills. Line of sight is the concern.

Geoffrey Colegrove stated that he had reviewed the area and Mr. Keating is correct in his representations of the poor line of sight. The site is not in conformance with the approved site plan that was submitted for this one-lot subdivision. The sight line will need to be cut back on one of the slopes (northerly side when egressing the driveway). This needs to be remedied before the issuance of a certificate of occupancy.

3. Pat DiNatale, Request for a Proposed 2-lot Subdivision, Mauro Drive

Pat Benjamin addressed the Commission on behalf of the applicant. The parcel is 69 acres located at the very end of Mauro Drive. One lot is 52.76 acres and the other lot is 16.27 acres.

He described some of the wetlands on the property as well as the plans for proposed open space. Pat DiNatale is initially proposing to deed over 13 acres to the town of Durham before the end of this year; there will be additional acreage deeded over in the next three to five years.

The Inland Wetlands Commission was approached on Monday; however, a quorum was not present. Therefore, the application will be presented at their meeting on December 12.

Geoffrey Colegrove noted that this open space dedication will replace a previous conservation easement on the property.

Richard Eriksen asked that everything be depicted on the site plan, including the proposed open space.

4. PJM Properties, LLC, Site Plan Review for Additional Parking Area,
21 Ozick Drive

Raymond Lendley addressed the Commission on behalf of PJM Properties. He noted the increase in parking along Ozick Drive because of the pool business and the day care business. He pointed out an area previously approved in 2002 for additional parking spaces.

Current coverage of the site is at 51.9%; after the additional parking space, the amount will be 51.9% because of new grass/seeded areas.

George Eames noted that there has been a continuing problem with parking along the road.

Raymond Lendley indicated he just wanted to present this to the Commission given the lapse in time from the approval of the original application and the current timeframe. He also wanted verification that the 1.9% (exceeding limit of 50% site coverage) was acceptable. Geoffrey Colegrove indicated that this would need to be addressed.

On the issue of parking and access of fire protection vehicles on the road, Geoffrey Colegrove had talked with First Selectwoman Maryann Boord some time ago. Information was provided that the State Traffic Commission prohibits posting of no parking signs on this road. However, there is apparently a mistake as this is not a state highway. The designer subdivision and the road that connects to Route 68 was reviewed by the State Traffic Commission. But there is no jurisdiction on the part of the state.

Geoffrey Colegrove asked about the status of lights at the property; there has been a problem for the adjacent residential neighborhood. Raymond Lendley stated that the lights had been redirected and should not pose a problem in the future.

Geoffrey Colegrove advised that plans for the additional nine parking spaces can go forward; however, the applicant will need to return to the Commission to address the light issue as well as the 1.9% coverage amount that is exceeded on the site.

Motion by Ralph Chase, seconded by Dave Foley, to recess the regular meeting at 8:00 p.m. for the public hearings. Motion carried unanimously.

PUBLIC HEARING

1. Applicant/Owner: Jay Cusak
Location: Pisgah Road
Application: Request for a Proposed 2-lot Resubdivision

Members: Brian Ameche, Al Bradanini, George Eames, Richard Eriksen,
Dave Foley, Jim Kowolenko

Town Planner: Geoffrey Colegrove

Alternates: Ralph Chase, Gene Riotte

Chairman George Eames read the call for the Public Hearing from the Legal Notice. Attendance was taken and all members present were seated on the Commission. Ralph Chase was seated on the Commission in Dian O'Neal's place. Gene Riotte was seated on the Commission in Jan Melnik's place.

Denise Loren, a professional engineer, addressed the Commission on behalf of the applicant. Since the time of the last hearing, responses have been received from the town's engineer. The drainage computations have been revised, as well as the computations for the rip-rap channel.

She then reviewed the site plan. A common driveway will enter the site with separate driveways then leading to the two lots. Rip-rap channels will be installed along the sides of both driveways to carry water down the slope. Two sediment traps are proposed for installation during construction. Four areas of drainage, culverts, and sheetflow direction were described. Many measures have been taken to address the issues of waterflow and drainage as well as the concerns of the town engineer.

Denise Loren also stated that the town sanitarian had provided a letter (she had not seen it) that she believes states that he is satisfied that all concerns have been met. One condition of approval would be the requirement that additional material and further testing would be necessary prior to development. Contact has not yet been made with the fire marshal. The concern of the fire department would be whether or not sprinklers are required.

Geoffrey Colegrove indicated that the Planning and Zoning Commission could not act without the approval of the Inland Wetlands Commission. Denise Loren stated her impression that a conditional approval could be granted by the Planning and Zoning Commission. George Eames stated that the Planning and Zoning Commission requires input from the Inland Wetlands Commission as well as the fire marshal.

Jay Cusak asked if the matter on which the Commission needs input from the fire marshal relates to sprinkler systems. That is the case, in addition to any other information the fire marshal provides.

Dick Curtis addressed the Commission. He stated that there is presently an 'awful problem' on Pisgah relative to waterflow. The Public Works Department is not able to handle the runoff problem on the west side of Pisgah, going north and south, from the junction of Dead Hill to Laurelbrook. There is significant icing and other problems and he asked that these not be exacerbated with any additional influx of water.

Brian Hunter, 21 Laurelbrook Road, addressed the Commission. There are currently barriers along Pisgah Road from previous storms and runoff. The proposed development would only make matters worse. To a query regarding the tape malfunction from the previous public hearing, Geoffrey Colegrove indicated that all exhibits made a part of the record are available, as well as all information. Comments can be reiterated at this evening's meeting. There is concern with the large removal of material on the site with respect to damage to foundations and wells. Further, the disruption to the topography would appear to be significant. Icing and road safety is a major concern as well as worry about the increased waterflow.

Braulio Santiago, 9 Laurelbrook Road, addressed the Commission. He expressed worry with the blasting that was proposed. His lot, the first one on the left when entering Laurelbrook, is in close proximity to the proposed steep driveway that will be about 20 feet from his deck. Their property already has major water problems predevelopment. Icing is an additional problem. There was some discussion that if the deck were 20 feet from the property line, it would be out of compliance with setback requirements.

Denise Loren addressed some of the points presented. The present drainage sheetflows and "channelizes itself" and creates erosion down the steep slopes. With the proposal as presented, there will be flatter slopes of water traveling, ditches will be lined with rip-rap, there will be a foot width to the bottom, all measures which slow the water down. A settling basin and culverts are also proposed. The driveway will also be curbed. Guide-railing is also being installed along both sides of the driveway where required.

Jay Cusak addressed the Commission. He indicated that any damage from blasting would be remedied, including replacement of wells. In terms of the waterflow, there are problems currently. The plans are designed to remedy those existing problems as well as prevent future problems.

Kay Mooney, 33 Fox Lane, addressed the Commission. There is concern about the blasting and the significant amount of earth removal required to develop the property. A significant change in the natural landscape within the neighborhood is being proposed. There is some question about the limits of tree clearance near their property.

Denise Loren indicated that there is no proposal to do any work on any adjacent properties. Trees and grading would all be within the limits of the developer's property.

Jay Cusak stated that it is his goal to preserve the natural beauty of the area throughout all aspects of development. Geoffrey Colegrove indicated that the Commission will

determine appropriate limits of clearing; to Ms. Mooney's question, this could include going right to the property line.

Jim Kowolenko stated that for the 30 years he has been in town, the drainage off Pisgah Mountain onto the road has never been adequate. Anything proposed should be designed to improve the conditions. The situation should be corrected.

Richard Eriksen asked for clarification about the amount of material proposed for removal. George Eames asked that this matter await the second public hearing.

Geoffrey Colegrove indicated that his research revealed that this property initially went through an illegal division and not a proper first division. Jay Cusak responded that it was his opinion that this was not correct.

Geoffrey Colegrove stated that there was one parcel initially divided between Anthony Cuomo and Frank Magnotta. Then this parcel was broken out of the Magnotta piece. The first division was legally possible without going before the Planning and Zoning Commission. However, this parcel, created from the Magnotta parcel (adjunct to a front lot), was not legally divided. That second division had never been presented to or approved by the Planning and Zoning Commission.

The second division from Frank Magnotta to Jay Cusak was not legally handled. It is probably a subdivision and not a resubdivision. There appeared to be general agreement that this is actually a subdivision. However, the fact remains that it is before the Commission properly at this point for review and possible approval.

To Brian Ameche's question regarding driveway slope, Denise Loren stated that it is 15% maximum.

Dave Foley stated that he has been by the site several times and not observed a public hearing sign. George Eames stated that he had seen the sign on Pisgah Road and Laurelbrook Road. Geoffrey Colegrove indicated that signage was verified. The initial signage featured an incorrect date, but this was corrected. Geoffrey Colegrove stated that the sign needed only to be posted for the first hearing.

Dave Foley noted the regulations do stipulate that when a proposed drainage system discharges to a town storm drainage system (4.11.01), provisions must be made by the developer to address additional discharge in the event that 'the town system is not adequate.' He stated that this would appear to be the case from residents' comments.

Denise Loren stated that she had run calculations on the culvert based on field survey of the culvert. It is an 18-inch pipe. The proposed flow is less than half of its capacity. Maintenance of the pipe may be necessary. Flow along the road will remain the same as it exists today all along the road.

Dave Foley then referenced 4.01.03 in the regulations which state that the 'general layout and design of subdivision shall avoid, to the maximum extent possible, large-scale changes in topography, watercourse locations, etc.' He asked the applicant's response to this, given the large-scale changes to topography proposed.

Denise Loren cited the decreased density; it is a six-acre parcel which could accommodate three lots. The clearing that is necessary is in keeping with the neighborhood. Many of the lots in the existing subdivision are smaller. The amount of clearing, proportionately, is kept to a minimum. The driveways meet the zoning regulations. There are many other driveways that exceed what these lots will have.

Brian Ameche asked if anyone has charted the slopes in terms of the existing contours. There is a steep slope requirement in the regulations related to slopes greater than 30%.

Geoffrey Colegrove indicated that Brian Curtis has reviewed this in a 20-scale drawing and the two lots do conform following a 'close-call' review.

An extension was provided by the applicant so that the hearing could be continued to December 21, 2005 (this allows for the next meeting of the Inland Wetlands Commission and receipt of an opinion from the fire marshal).

Motion by Richard Eriksen, seconded by Dave Foley, to continue the public hearing to December 21, 2005, on the request for a proposed 2-lot resubdivision, Pisgah Road. Applicant/Owner: Jay Cusak. Motion carried unanimously.

PUBLIC HEARING

2. Applicant/Owner: Jay Cusak
Location: Pisgah Road
Application: Request for a Special Permit for the Earth Excavation of Material in excess of 1,000 cubic yards

Members: Brian Ameche, Al Bradanini, George Eames, Richard Eriksen,
Dave Foley, Jim Kowolenko

Town Planner: Geoffrey Colegrove

Alternates: Ralph Chase, Gene Riotte

Chairman George Eames read the call for the Public Hearing from the Legal Notice. Attendance was taken and all members present were seated on the Commission. Ralph Chase was seated on the Commission in Dian O'Neal's place. Gene Riotte was seated on the Commission in Jan Melnik's place.

Denise Loren stated that the amount of material proposed for removal from the site will be approximately 5,000 cubic yards. This permit is required for any sites exceeding 1,000 cubic yards of material. All materials that can be used on the site will be.

Jay Cusak stated that the large rocks on the site will be removed, crushed off site, then moved back. About 4,000 cubic yards of material will be removed (350 truckloads). Hours of operation are proposed as 7 a.m. to 5 p.m. Monday-Friday; Saturday from 7 a.m. to 12 noon. No trucks will be moved on Saturday. The applicant is willing to also use a 9 a.m. to 2 p.m. or 3 p.m. timeframe; however, this would extend the overall timeframe which will be necessary to remove the material. Jay Cusak stated that if hours of operation are 9 a.m. to 2 p.m. and three or four trucks are used, it will take about 1.5 months to remove the material. These proposed hours will help limit impact on the neighborhood.

Richard Eriksen asked for clarification of the material being removed—i.e., rock. Jay Cusak indicated that he, too, was a layman; however, he'll use as much material on site as possible. He does not know what percentage of the material will be bedrock that is removed, crushed, then returned.

Richard Eriksen asked if blasting would be taking place within 50 yards of a property line. Jay Cusak stated that it would. Most of the blasting will not be immediately adjacent to other property owners, perhaps 30 to 50 feet away at the closest. Until a machine is brought on site, it is not possible to know precisely where the blasting will occur.

Brian Ameche referenced language in the excavation/removal section of the regulations that states that the quarrying of bedrock is not permitted in a Farm-Residential zone. It is only permitted in the industrial zone. Brian Ameche noted that the Commission has used this caveat in the past to deny a subdivision application. He believes the opinion previously provided by Attorney Thomas Byrne can be challenged.

Richard Eriksen suggested Attorney Byrne revisit this issue and clarify the applicability to this application.

Braulio Santiago, 9 Laurelbrook Road, addressed the Commission. He is concerned about the potential for blasting and the uncertain nature of what may occur on the site.

Jay Cusak stated that until they get into the site, they can't predict exactly what materials are on site, the exact quantities, and what methods of blasting and removal will be necessary. The same is true regarding numbers of trucks to haul material; until the quantity is actually known, that number can't be confirmed.

A female spoke (inaudible); she asked about proximity to a well and a property line. Denise Loren stated that the well is about 140 feet from the property line.

Well arcs for the two proposed lots are entirely within their property lines.

Mrs. Adams, Fox Lane, addressed the Commission regarding her concern with the impact on the environment in the area and the natural topography. The town of Durham has spent considerable sums to purchase open space, including areas adjacent to the Mattabassett Trail.

Brian Ameche noted that the Conservation Commission did issue a letter on this application for the Commission's review.

Richard Eriksen suggested it might be a good idea to have Attorney Thomas Byrne attend the meeting on December 21, 2005. He can clarify what quarrying is. George Eames asked for a ruling ahead of time on this issue.

Motion by Ralph Chase, seconded by Al Bradanini, to continue the public hearing to December 21, 2005, on the request for a special permit for the earth excavation of material in excess of 1,000 cubic yards, Pisgah Road. Applicant/Owner: Jay Cusak.
Motion carried unanimously.

PUBLIC HEARING

3. Applicant/Owner: Arrigoni Enterprises, LLC
Location: Old Mountain Road
Application: Special Permit for earth excavation and rock crushing and removal and the regrading of the site to construct three buildings

Members: Brian Ameche, Al Bradanini, George Eames, Richard Eriksen,
Dave Foley, Jim Kowolenko
Town Planner: Geoffrey Colegrove
Alternates: Ralph Chase, Gene Riotte

Chairman George Eames read the call for the Public Hearing from the Legal Notice. Attendance was taken and all members present were seated on the Commission. Ralph Chase was seated on the Commission in Dian O'Neal's place. Gene Riotte was seated on the Commission in Jan Melnik's place.

Attorney Richard Carella addressed the Commission on behalf of the applicant. He asked that all testimony presented during this public hearing also be included as part of the second hearing on the construction of three buildings. George Eames indicated that there are two actual, separate public hearings and information needs to be presented differently.

Attorney Carella described the property, bounded by the Cruise family to the north and Tilcon Minerals to the west and south. Prior to 1986, all the parcels in this area were

zoned Farm-Residential. In June of 1986, in response to existing residential complaints about the growth of Tilcon's activities and the conflicting land-use activities between Heavy Industrial quarrying and the existing residences as well as the potential development of other vacant parcels, the land was rezoned to Light Industrial to create a buffer between the Heavy Industrial and Farm-Residential zones.

Other options established by the Commission to regulate future industrial growth included the creation of the Design Development District in this area to allow for a broad range of non-residential uses via special exception.

Attorney Carella read into the record a letter dated October 27, 1986, from Geoffrey Colegrove to Attorney Thomas Byrne regarding the continued problems with the land adjacent to Tilcon Minerals (despite Tilcon being a good neighbor) and the desire to create a buffer zone.

Minutes of the Planning and Zoning Commission meetings of December 2, 1987, and the January 6, 1988, were submitted that detail discussions about the development of the Design Development District. The primary reason was to create a compatible environment for a mix of Heavy Industrial, Light Industrial, and Farm-Residential zones.

The subject parcel has been in an undeveloped state in the Arrigoni family since May of 1955. In 1992, several property owners along Mountain Road and adjacent areas asked for their properties to be zoned back Farm-Residential. The abutting landowners (Tilcon and the Cruises) were opposed to rezoning this parcel to Farm-Residential. The Commission also stated opposition and the application was subsequently withdrawn.

Minutes of the July 29, 1992, and September 16, 1992, meetings were also introduced. Several sections were excerpted and read. Salient to the discussion was the following from page 5 of 7/29/92 minutes: In reiterating the history of the zone changes of the subject parcels, Frank Lane stated that the transition zone (Design Development District) had been created to appropriately buffer the residential development of abutting property from the Heavy Industrial zones (both Tilcon and Atlas as well as the subdivisions along Airline Park Road) ... Frank Lane summarized Tilcon's stance that the planning undertaken in 1986 and 1988 was both thoughtful and at a considerable expense and that the rationale utilized then is still valid today ... Geoffrey Colegrove stated that, in all likelihood, the parcel would be developed one way or the other (either Farm-Residential, if the zone change were approved, or Design Development District)." The comments were offered in opposition of a change from Design Development District back to Farm-Residential.

In May of 2005, Mr. Arrigoni sought to change the zone to Heavy Industrial in order to accommodate the excavation and removal of materials which would need to be removed for development. The application was met with opposition by the surrounding landowners and was ultimately denied by the Commission. Minutes of that meeting (5/4/05) were also submitted for the record.

In referencing the May 2005 meeting, the minutes cite remarks offered by the Cruises with regard to respecting the objectives in creating a Design Development District.

Pat Benjamin, a professional/civil engineer, addressed the Commission on behalf of the applicant. The parcel is 9.1 acres in size. He oriented the Commission to the actual site and described the entirely wooded site. There are three small watersheds on the property.

Excavation on the site is required for site development work. The only reasonable access into the site is at a 12% grade. He described the plans for the buildings on the site as it relates to elevation and grading. There will be about 75,000 cubic yards of bedrock that will need to be excavated to allow development on the site.

Pat Benjamin then outlined the phased plan of excavation and site work. He also indicated that a DEP stormwater registration is necessary; this includes a site inspection. The earth excavation sequence is similar to that for permits for all earth excavation and removal permits. He then outlined the timing of the various phases.

Pat Benjamin stated that the proposed site plan features a 32% coverage; 50% is allowed in the zone. A platform will be created with the proposed excavation. He explained that if the site were, instead, developed in tiers, blasting would still need to occur, plus crushing and screening of about 50,000 cubic yards of materials would also be necessary. More trees would need to be cleared from the site.

Pat Benjamin reiterated that this is the Design Development District and that it extends 50 acres to the south. Trucks will continue to be on Mountain Road when the rest of this site is developed. The plan can be completed in three years. The earth excavation permit will need to be renewed every year. It will take from 90 to 120 days per year to be able to do the blasting and the crushing over a 2- to 3-year period to remove it from the site.

The applicant will attempt to do all of this from November through about February or March (colder months); the balance of the year, the applicant would be hauling material from the site. The trucks on Mountain Road would be anywhere from zero trucks to 40 trucks per day for the lifetime of this operation (about three years). Forty trucks per day would be equal to what this site will probably generate at its peak capacity as a Design Development site.

The tiered design was then reviewed with various elevations pointed out by Pat Benjamin. Significantly more blasting and very expensive site work would be required to create a tiered site. More of the site would be disturbed to create a tiered design. Finally, a tiered site would not accommodate the applicant's needs for the site.

With the proposed plan, there is a zero increase in discharge to the Mountain Road area. The site is split with water routed in a different direction. As many trees along the edge of the road have been maintained as possible.

Attorney Richard Carella then spoke, describing the need for earth excavation and removal. He reiterated the purpose of the Design Development District and read from the regulations. The Arrigoni family is very aware of the responsibilities associated with this type of earth excavation. They have developed property and been in the excavation business in this town and others for over 25 years. They have a “spotless record of compliance.”

In terms of quarrying of bedrock, the issue was raised as to whether it is allowed in a zone other than Heavy Industrial. A letter dated March 1, 2003, from Attorney Thomas Byrne to the Commission regarding the quarrying and removal of bedrock at 767 R New Haven Road for the Mogensen property was read into the record. Attorney Byrne stated that the “activity occurring [on that parcel] did not constitute quarrying of bedrock as envisioned by the regulations. The term quarry is defined As a place where stone or slate is excavated, as by cutting or blasting, for building purposes. The current activity on the Mogensen parcel, in my opinion, does not constitute a quarry as that term is defined in Webster’s.” Rather, Attorney Carella stated that the excavation required is part of a site plan for development of a piece of property. Removal of bedrock, in this instance, does not represent quarrying.

Richard Eriksen pointed out the tremendous quantity of material required for removal. Attorney Carella acknowledged that a substantial amount of material is concerned in this application. The amount of material to be removed is 70,000 cubic yards; an additional 5,000 cubic yards will remain on the site.

George Eames referenced the site walk and indicated that after looking at the site, he wondered why the buildings, as proposed, couldn’t be positioned on the site in its present state, thus eliminating the need for removal of 75,000 cubic yards of material.

Attorney Richard Carella stated that it would not be feasible financially to build the structures on a tiered basis. The additional concrete and cost of buildings would be impossible to fund (an incremental \$68,000 as an architect’s estimate).

Pat Benjamin discussed detention; with any type of tiered design, there would be 50,000 cubic yards that would need to be blasted and crushed. Underground detention would then be necessary, adding another \$75,000 to the site plan. Close to 600 to 1,000 linear feet of buried 4x4 galleries would be necessary to account for the amount of impervious area from the rooftops, driveway, and processed stone areas. The detention basin as proposed with the site plan presently before the Commission is preferred.

George Eames reflected upon the 75,000 cubic yards of material that will need to be removed over a three-year timeframe. Pat Benjamin acknowledged this to be the case, adding that Tilcon Minerals quarries 1.4 million cubic yards of material each year. George Eames replied that Tilcon is a mining operation, in existence prior to the

establishing of the Planning and Zoning Commission. The plans, as proposed, appear to be for a small mining operation.

Attorney Carella stated that at the end of three years, there is a suitable, usable property in the Design Development District—which is what the property is zoned for. He also noted that the applicant will have to appear before the Commission on an annual basis to demonstrate compliance with the regulations. While 75,000 cubic yards of material is large, there is no limit expressed in the regulations; there is only a requirement to apply for a special permit if the quantity exceeds 1,000 cubic yards. The Commission then can impose hours of operations, numbers of truckloads, etc. Neighbors' preferences can be taken into consideration with regard to hours and days of the week.

Richard Eriksen indicated that the Commission can set limitations.

Attorney Carella pointed out that the application before the Commission is the applicant's second attempt to change the zone so that it can be developed in some manner in accordance with the regulations. The site plan application itself does meet every single one of the standards of the Design Development District.

Down the street, the Commission is allowing Greenland Realty to crush and remove material. Should the Commission deny this application, such an action would constitute an inverse condemnation of the property (or taking), according to Attorney Carella. No other reasonable way of developing the property exists. The applicant has sought to change the zone on two prior occasions to develop the property, both of which have been denied.

Attorney Carella stated these points in the interest of creating a clear record in the event of appeal. To construct even one building on the site would require crushing and removal of material. Attorney Carella indicated that this concluded the information being presented for this portion of the hearing. He asked that the material presented in this hearing become a portion of the record for the subsequent hearing.

Richard Eriksen stated his desire to speak with Attorney Thomas Byrne regarding the issue of quarrying. Brian Ameche stated that there appears to be a disconnect between the definition and the interpretation (Attorney Byrne's letter). The definition states "a place where stone is excavated by blasting for building purposes." He believes that this is a clear definition upon which the Commission can rely. He added that Pat Benjamin has done some great engineering with a very difficult site. To the presentation that it is not feasible to pursue alternatives because 'the owner of the property would have to spend more money,' that's not an issue that the Commission has to concern itself with. The Commission tries to determine whether or not an application conforms with the regulations. The whole question of economic feasibility is not an argument that has traction.

Attorney Carella stated that the economic points were added to supplement the other engineering points—drainage, visibility, buffers, etc.—in addition to which the excavation and crushing of 50,000 cubic yards of material will still be necessary.

Dave Foley agreed that economic feasibility is not the concern of the Planning and Zoning Commission. To his knowledge, the Commission did not disapprove the zone change because of the proposal. It was the belief that the property was better off to remain in the Design Development District (and the decision was unrelated to the site plan put before the Commission).

Attorney Joseph Milardo addressed the Commission on behalf of William and Diana Cruise and Cindy Turcik. He stated that he had been retained to determine if Mountain Road is a town road. Based upon title search of attorneys in the past and under his own review, Mountain Road would appear to not be a town road. This current project before the Commission requires access to a town road. He cautioned the Commission in pursuing consideration of this application. Mountain Road was abandoned as a town road in 1933. There was a series of town meetings by the Board of Selectmen regarding the abandonment of several town roads. Residents subsequently had to maintain the road at their own expense.

In 1998, First Selectman Ray Kalinowski requested clarification of the road's status from the town attorney, Ken Antin. An opinion letter from Attorney Antin states that "his best guess is it's an unmonumented town road, but the town does not list this as a town road, did not maintain the road, and did nothing for the people paying taxes on that road to maintain the road, plowing, etc."

Since that attempt to resurrect the existence of this as a town road, the town has stepped up and begun to do some maintenance of the road. However, there has not been a rededication of the road. Mountain Road exists as a private way; the town is doing a "nice thing" in helping to plow the road. He will be following up this matter with First Selectwoman Maryann Boord. He asked that caution be taken by the Commission in considering the application without clarification of the status of the road.

Geoffrey Colegrove stated that with the change of leadership within the town hall, it is likely that town counsel will also change.

Brian Ameche stated that status of the road should be ascertained (not simply "best guess," as Attorney Antin indicated). Geoffrey Colegrove indicated that he would follow up with Maryann Boord on this.

William Cruise, Mountain Road, indicated that his opinion of mining is based on whether you use the material on site or haul it off. If it is excavated/blasted, crushed, and screened, it is mining. Whether you use it on site or haul it off, that is building rock. He stated that there is well over a million dollars worth of rock on the property.

Dave Dingwell asked what type of excavation would be required for the construction of one 10,000 square foot building. Pat Benjamin indicated that it would not be possible to calculate this without further study.

William Cruise indicated that it was erroneously stated that he did not want the property turned back into Farm-Residential. He stated that he had approached Mr. Arrigoni and tried to buy the parcel. At the time, he had horses and wanted to use it for pasture land. There is no way that he would not want this to be Farm-Residential.

Richard Eriksen stated that a formal request should be submitted to the Board of Selectman regarding the need for advice and opinion in order to proceed with the application. A letter should be sent.

Jim Kowolenko suggested that to eliminate the building at the top of the rock, he would suspect that at least half of the excavation would also be eliminated.

Motion by Richard Eriksen, seconded by Ralph Chase, to continue the public hearing to December 7, 2005, on the request for a special permit for an earth excavation permit Old Mountain Road. Applicant/Owner: Arrigoni Enterprises, LLC. Motion carried unanimously.

PUBLIC HEARING

4. Applicant/Owner: Arrigoni Enterprises, LLC
Location: Old Mountain Road
Application: Request for a Special Permit to construct three buildings on Old Mountain Road

Members: Brian Ameche, Al Bradanini, George Eames, Richard Eriksen,
Dave Foley, Jim Kowolenko

Town Planner: Geoffrey Colegrove

Alternates: Ralph Chase, Gene Riotte

Chairman George Eames read the call for the Public Hearing from the Legal Notice. Attendance was taken and all members present were seated on the Commission. Ralph Chase was seated on the Commission in Dian O'Neal's place. Gene Riotte was seated on the Commission in Jan Melnik's place.

Attorney Richard Carella addressed the Commission. He asked that all material presented, exhibits, testimony, and comments from himself, Pat Benjamin, members of the Commission, and members of the public be included in the record of this hearing as well.

Pat Benjamin, a professional and civil engineer, addressed the Commission. The site is located on the west side of Mountain Road. It is 9.1 acres in size. He described the access as a 20-foot wide paved private driveway at a 12% grade. There is an overall decrease in runoff to several of the drainage pipes. He then described the three proposed buildings and the drainage serving those structures.

Bill Milardo, the town sanitarian, has conducted test holes on the site, the site plan has been revised, and an approval has been rendered (a letter is in the record). The town engineer asked for specific changes, which have been incorporated in the site plans. Some additional items have been requested, which will be addressed for the next meeting. The Inland Wetlands Commission was approached earlier in the week for review of an activity within 100 feet of a wetland. It was determined that no permit is required.

Attorney Carella reviewed the regulations of the Design Development District and a demonstration of how the proposed site plan meets them all. Beginning with 7.04.01, statement of purpose, there is an obvious match (well-planned office industrial park). The history of the parcel was reviewed (from Farm-Residential to Light Industrial to Design Development District), followed by the proposed but unaccepted recent changes. Section 7.04.02 relates to the master site development plan, which has been reviewed by Pat Benjamin.

An A-2 survey is required and has been presented along with review of all features on the site. Another natural topographic feature is the peaking of the site that provides a buffer back to Tilcon's property. The dropoff to the west splits the property in half and renders half the property suitable for development. The location and division of lots, as spelled out in the regulations, is not relevant; no division is planned. Utility access is also detailed in the regulations and was reviewed (underground wires). Private well and septic will service the site.

Proposed phasing of the development was discussed in the hearing earlier this evening. All bulk requirements for coverage are met or exceeded. Permitted uses were then discussed. No proposed uses exist at the present time, other than Mr. Arrigoni's use of building #3 (a portion) for his business. Any tenant would need to approach the Commission for approval of a special exception permit to ensure compliance with the zone.

Special regulations also relate to the application for the special exception permit. These pertain to the need for traffic study (more than 100 spaces, not proposed with this site). Other issues include excavation, bulk requirements, coverage, etc. Landscaping has already been presented. The site plan meets every one of the Design Development District criteria. An architectural rendering was also presented showing the proposed buildings.

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Richard Eriksen asked about the lighting. Wall-packs are proposed with 40-watt bulbs. There are no standing pole lights on the site.

To Brian Ameche's question, the lot is a lot of record in the Design Development District. Attorney Carella stated that it has been in its existing shape and state (undeveloped) for many years. It preceded the 10-acre requirement. No subdivision is proposed. More than ten acres is required for subdivision.

Attorney Joseph Milardo spoke on behalf of his clients, Ms. Turcik and the Cruises. He raised the same serious question about the status of Mountain Road being a town road (or not). Incidentally, he pointed out that Spruce Hollow Road is a town road; abandonment of that road was previously voted down.

Motion by Richard Eriksen, seconded by Al Bradanini, to continue the public hearing to December 7, 2005, on the request for a special permit to construct three buildings on Old Mountain Road. Motion carried unanimously.

Motion by Ralph Chase, seconded by Dave Foley, to reconvene the regular meeting at 10:55 p.m. Motion carried unanimously.

5. Payment of Bills

Motion by Dave Foley, seconded by Ralph Chase, to approve payment of the following bill:

- *Middletown Press* — \$471.84 (new charges)

Motion carried unanimously.

6. Miscellaneous

Motion by Richard Eriksen, seconded by Dave Foley, to send a letter to the Ozicks regarding removal of the signs within 30 days and bringing a sign plan before the Commission. Motion carried unanimously.

Richard Eriksen pointed out that there appears to be some sort of dumping behind Route 68 and Route 157. There is wetlands behind this area.

George Eames thanked two members, Jackie Snow and Al Bradanini, for their years of dedicated service to the Commission. This is their last meeting.

Brian Ameche questioned a lot on Stagecoach Road (inadequate lines of sight). His recollection is that the lot was initially denied by the Commission when it first came before the group. He asked how it was approved. The vertical curve on the corner will be impossible to address. There was substantial clearing of trees along the town's right of way. He asked Geoffrey Colegrove to look into it.

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Motion by Gene Riotte, seconded by Dave Foley, to adjourn the meeting at 11:01 p.m.
Motion carried unanimously.

Respectfully submitted,

Jan Melnik
11/25/2005