

TOWN OF DURHAM

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

MINUTES OF DECEMBER 21, 2005, 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, Jackie Snow

Absent

Member: Dian O'Neal
Alternate: Gene Riotte

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

1. Approval of Agenda

Motion by Richard Eriksen, seconded by Ralph Chase, to approve the agenda of the December 21, 2005, meeting as presented. Motion carried unanimously.

2. Public Session

Sandy Kovak, Mountain Road, addressed the Commission regarding the activities of Greenland Realty. She indicated that operations begin as early as 5:30 a.m. and asked that Geoffrey Colegrove investigate this. She also stated that trash is being hauled out of the facility at that hour on a large tractor-trailer truck nearly every day. Geoffrey Colegrove indicated that no hours of operation were put on the actual use applied for; the specified hours of operation were for removal of topsoil and traprock. Hours of operation are normally not placed on a business.

Sandy Kovak stated that she had spoken with the then-First Selectwoman, Maryann Boord, who informed her that she should come before the Planning and Zoning Commission and that such things could be regulated.

Geoffrey Colegrove indicated that there is a town noise ordinance based upon decibel levels at property lines. Measurements would be different for her property, which is in the industrial zone. He added that the assessor's records do not appropriately reflect the zone she is in (this is a frequent situation where the assessor's records do not match current zones in many towns).

Brian Ameche stated his impression that the Commission has been misled by the operator of Greenland Realty, in particular with regard to uses and intensity of uses—they are not what had been presented during the application process. He believes that the Commission can regulate hours of operation and would like this matter reviewed with Attorney Thomas Byrne.

Geoffrey Colegrove stated that the neighbors had raised a valid point concerning the trucking activity and what appears to be a waste transfer facility; this is not a permitted use in the design development district. If a use extending beyond what was originally approved is desired, then an applicant must return to amend a special permit. The Commission can regulate hours of operation and can add this in with any amendment.

The key question is whether or not Greenland Realty is doing something other than what was proposed/approved in the original application. A landscape operation is what was approved originally; a transfer facility is not an approved use.

Cindy Turcik, Mountain Road, addressed the Commission, concurring with previous representations that traffic begins to come into the facility at around 4:50 each morning. The shrubbery is not helping at all, at this point, to diminish the lights.

Diana Cruise also described the operations of a 51-foot trash trailer coming onto the property between 4 and 4:30 with what looks like trash bags. William Cruise indicated that the plastic bags clearly have nothing to do with a landscape business.

In terms of the lights on the building at the northeast corner, Attorney Joan Molloy had indicated at a previous meeting that this situation "would be taken care of;" however, to date, this problem has not been addressed.

3. Discussion of Possible Changes to the Designer Subdivision Regulations

Pat Benjamin indicated that he had been before the Commission two months ago to discuss changing the regulations to reflect the two-acre minimum zoning. The Commission will review this at a meeting in January and then call a public hearing. New copies will be resent to Commission members.

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

Pat Benjamin addressed the Commission on behalf of Pat DiNatale. The two lots will be served by a shared common driveway. Acreage is about 52 acres and 16 acres respectively. Approval of the Inland Wetlands Commission was provided for the wetlands crossing. The driveway will be expanded to 20 feet wide (base), with a central paved section about 12 feet in width to address the concerns of the fire department.

In terms of fire protection, a permit is being pursued to create a fire pond on the larger lot. If this is not approved (won't know for 8-12 weeks), then all houses will have fire suppression systems. A 13-acre parcel of open space was created and approved at a previous town meeting.

The grade of the road is generally around 2% except for the initial 200 feet (about 15%).

Motion by Richard Eriksen, seconded by Ralph Chase, to approve the request of Pat DiNatale for a 2-lot subdivision, Mauro Drive, subject to creation of fire pond if approved by Inland Wetlands; otherwise, installation of fire suppression equipment will be required. Motion carried, 8-1, with all in favor with the exception of Dave Foley (in opposition).

5. Michael Batista, New Meriden Donuts, Inc., Site Plan Review for Relocation of Walk-in Refrigeration units to rear exterior of building, 38 Main Street

Michael Batista addressed the Commission as the franchisee for Dunkin Donuts. Every ten years, corporate Dunkin Donuts requires franchisees to remodel. He is seeking additional space inside the building at 38 Main Street and, therefore, would like to move the walk-in refrigeration to the exterior of the building. Two propane tanks behind the building will be relocated to the side. The new units will extend 16 feet along the building and protrude 14 feet in an area where there is already a concrete pad. All mechanicals and the dumpster will be enclosed with beige vinyl fencing that has been approved by the Historic District Commission. A concrete ramp will be added up to the back door for deliveries.

To George Eames' query about the height of the fence, Michael Batista stated that it is between 8 and 10 feet in height depending upon ground elevation.

Geoffrey Colegrove questioned lot coverage, which was at 60% last July (actually, slightly greater than 60%). Pat Benjamin indicated that the areas proposed for the expansion have already been calculated into coverage requirements. Excess process stone has been removed to reduce the 1 to 2% excess coverage down to the 60% level.

Frank DeFelice asked the reason for moving the refrigeration unit. More storage of paper supplies is desired inside the building. In terms of future needs, this location will have the largest refrigeration unit of all 18 locations; it is unlikely anything larger would ever be needed.

Richard Eriksen asked the status of the driveway circle; the gravel still exists and this is used.

Motion by Richard Eriksen, seconded by Jackie Snow, to approve Michael Batista, New Meriden Donuts, Inc., site plan review for relocation of walk-in refrigeration units to rear exterior of building, 38 Main Street. Motion carried unanimously.

Motion by Ralph Chase, seconded by Jan Melnik, to recess the regular meeting at 8:05 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, Pisgah Road

Members: Brian Ameche, Ralph Chase, George Eames, Richard Eriksen, Dave Foley,
Jim Kowolenko, Jan Melnik, Tom Russell

Town Planner: Geoffrey Colegrove

Alternates: Frank DeFelice, Jackie Snow

Chairman George Eames read the call for the continued Public Hearing from the Legal Notice. Attendance was taken and all members present were seated on the Commission. Jackie Snow was seated on the Commission in Dian O'Neal's place. Frank DeFelice was present but unseated.

Denise Lord of Anchor Engineering Services, Inc., addressed the Commission on behalf of the applicant. Revised plans were submitted the previous week. The Inland Wetlands Commission approved the wetlands permit and discharge permit on December 12. On December 15, a letter was submitted withdrawing the second application for a special permit for the earth excavation of material in excess of 1,000 cubic yards. Plans had been redrawn so that the original amount of proposed material removal (about 7,000 cubic yards) was no longer necessary.

Denise Lord explained that the majority of material would stay on the site, making up the necessary fills throughout. She then detailed the specific cuts and fills that would be necessary to accomplish construction of the lots and the common driveway. A retaining wall will be constructed (using as much on-site material as possible) to thus preserve a slope that was previously proposed to be exposed/cut. There will be several widened pull-out areas along the driveway and yards have been enlarged to allow for placement of more materials. Therefore, no more than 1,000 cubic yards per lot will be removed.

To Geoffrey Colegrove's question regarding actual material excavated and distributed on site, it is still proposed that 7,000 cubic yards of material will be excavated; now, 5,500 cubic yards will be used on site with about 1,500 proposed for removal (combined, for the two sites; therefore, under the 1,000 maximum per site).

Denise Lord stated that she has not yet received commentary from the fire department (contacted more than two weeks ago). She also explained that until the actual excavation begins, there is no definitive way to know exactly what the composition of the material will be and the amount of blasting necessary.

Richard Eriksen expressed concern with a site wherein 7,000 cubic yards of material are going to be quarried/mined/excavated/blasted. He asked whether all that blasting would be necessary. Denise Lord responded that this is necessary to flatten the slopes and increase the driveway widths (and that is how much of the material will be used and remain on site). She further explained the proposed drainage for the site and the fact that Kurt Bober, Town Road Foreman, has stated that the 18-inch pipe is more than adequate.

Because the plans reference suitability for a ten-year storm, Jan Melnik queried the ability to deal with the velocity of a 50- or 100-year storm, given the prevalence of those events in just the last ten years alone. Denise Lord stated that the applicant is required to meet only the regulations, a ten-year storm.

Braulio Santiago, 9 Laurelbrook Road, addressed the Commission regarding concerns with blasting and quarrying and impact on his well. In addition, he expressed concern with drainage/runoff at the site and implored the Commission to visit the site during the winter to see what happens with water and ice flows.

Sherry Adams, Fox Lane, addressed the Commission. She asked the impact on the area of excavating 7,000 cubic yards of material and leaving it on the lots—what this would mean for the neighborhood. Denise Lord indicated that, depending upon the type of material, earth materials would be used to finish off slopes and boulders would be used for walls. Up to 1,000 cubic yards per building lot can leave the site according to the regulations. She then reiterated the proposed cuts and fills. She noted that this occurred for some of the sites on Fox and Laurelbrook; in one instance, blasting occurred for seven days on one lot. Because no more than 1,000 cubic yards of material per lot will leave the site, the second permit being sought previously (earth excavation of material in excess of 1,000 cubic yards) is no longer needed.

Jay Cusak addressed the Commission. He stated that as is the case with any form of business plan, adjustments are made as an applicant goes along. Initially it was thought that materials would need to be bought for fill and for the retaining wall. Instead, materials from the site will be used. He acknowledged that blasting had occurred in the area in the past prior to development of houses (and that there are now houses in proximity to where the blasting will occur), but noted that this is the extent of development. Wells will be tested before and intermittently after blasting; in addition, inspections to walls will be made. Any damage will be repaired.

In terms of the water coming down Pisgah Mountain, Jay Cusak explained that the proposal attempts to control the water appropriately with water being deviated and sent to drains. Drains will be maintained and cleaned out appropriately. He noted that the retaining wall and fencing would prevent “cars from landing on Mr. Santiago’s deck.”

Materials would only be removed from the site during timeframes when school buses are not running (i.e., 10 a.m. until 2 p.m.). Given the complexity of the site, there is not a lot of material proposed for removal.

Krystyn Reardon, 28 Fox Lane, addressed the Commission with concerns about blasting (relative to her well, foundation, and rock wall). She also mentioned concerns to the natural habitat (deer) and the quiet, pristine look of the mountain. When they bought their property, they were told that the mountain could not be built on. She also questioned fire department access to the site. She asked how long the removal of material would require, how noisy it would be, and how many truckloads would be necessary.

Richard Eriksen, clarified that the removal of material is by right for up to 300 cubic yards and then up to 1,000 cubic yards as approved by the Zoning Enforcement Officer. Over 1,000 cubic yards requires a special permit from the Planning and Zoning Commission.

To Sherry Adams’ question regarding how much of a site can be disturbed, Geoffrey Colegrove stated that the coverage requirements are for buildings and structures only; the only requirements regarding disturbance to the site relate to volume of material excavated and removed.

Braulio Santiago asked how it was possible to not know the materials on the site, given excavation in the whole area ten years ago. Given the concerns expressed about what has transpired at Mountain Road, he is especially concerned.

Geoffrey Colegrove explained the degree of testing required to site septic systems. It is likely that 4,000 to 5,000 cubic yards of material will be bedrock (and require blasting).

Denise Lord then pointed out proximity to surrounding septic systems and wells from the proposed lots.

To neighbors' questions regarding recourse to address blasting problems, the developer can be held accountable; in addition, abutters of the property can appeal any Commission decision to the courts.

In terms of calculations for removal of materials, it would require about 75 truckloads to remove 1,500 cubic yards. Blasting could require 10 to 15 days; smaller blasts will be used (which could take longer). With regard to overall project length, Jay Cusak stated it could be a year from start to finish for the houses, which will be valued at about \$700K each.

The holding basins were discussed; they will be two to two-and-one-half feet in depth and considered grassy areas (not deep detention basins).

Frank DeFelice asked if the Commission has the ability to dictate hours of blasting; the Commission can do this with their approval of the application.

George Roberts, Dead Hill Road, addressed the Commission, urging caution in considering the overall application because of the situation with water runoff from Pisgah Mountain. The town already has problems with icing and water on Pisgah Road.

Brian Hunter, 21 Laurelbrook, addressed the Commission. He asked the responsibility for maintaining the drainage system, adding that if the town can't properly take care of one pipe, what will happen if this site is developed.

Denise Lord indicated that it would be the responsibility of the homeowners to maintain their drainage systems. There would be an easement over the first part of the driveway. She also noted that there are check dams during construction to slow the flow of water.

Jim Kowolenko stated that he has been in town for 35 years and that water has always been a problem in this area. The drainage ditch across the road does not work. He suggested that someone should revisit the calculations.

Dave Foley queried the driveway length and grade. It is about 850 feet from Pisgah Road up to the top and except for the initial 60 feet and the top 40 feet, it is all at about a 15% grade, fairly constant. He expressed concern with a 700-foot driveway at 15% grade on the north side of a mountain. Denise Lord stated that there would be curbing on one side of the mountain.

Brian Ameche indicated that because a special exception permit is required, the Commission has the opportunity to evaluate many things. He indicated that under 12.05.01.01 of the regulations, the Commission has the ability to consider the imposition of many conditions related to the removal of earth products. His interpretation of the language of this clause as well as 12.05.02 is that it allows the Commission the authority to require a special exception approval regardless of the number of cubic yards being removed.

His understanding is that the 300 cubic yards (or up to 1,000 cubic yards) is to enable foundation and trench excavation only. He summarized that the Commission has the authority to require a special exception permit at its discretion in order to prevent damage to adjoining properties.

Motion by Richard Eriksen, seconded by Jackie Snow, to close the public hearing of Jay Cusak, request for a proposed 2-lot resubdivision, Pisgah Road. Motion carried unanimously.

PUBLIC HEARING

2. Applicant/Owner: Arrigoni Enterprises, LLC
Location: Old Mountain Road
Application: Request for a Special Permit to Construct Three Buildings

Members: Ralph Chase, George Eames, Richard Eriksen, Dave Foley,
Jim Kowolenko, Jan Melnik, Tom Russell

Town Planner: Geoffrey Colegrove

Alternates: Frank DeFelice, Jackie Snow

Chairman George Eames read the call for the continued Public Hearing from the Legal Notice. Attendance was taken and all members present were seated on the Commission. Jackie Snow was seated on the Commission in Dian O'Neal's place. Frank DeFelice was present but unseated.

Attorney Richard Carella addressed the Commission on behalf of the applicant and provided a letter granting an extension to December 22 to the Commission. He indicated that there was little to add to the application since the time of the last public hearing. He stated that nothing in the regulations requires frontage on a town road. The subject lot has been a lot of record in its present configuration since before the institution of the Zoning Regulations in the 1950s. An A-2 survey from a licensed surveyor indicates that Mountain Road is a town road; deeds to his clients reflecting their property as well as abutting property owners show that the frontage of the property is on a town road. He noted that the neighbors and their attorney, Attorney Joseph Milardo, can debate the status of the road with Durham's town counsel.

Regarding the issue of quarrying of bedrock, Attorney Carella stated that the town's zoning regulations do not include in the definitions a specific definition of what quarrying of bedrock is. He referenced a previous letter concerning the Morgensen property on New Haven Road indicating that work done at the site was site preparation for development and not the quarrying of bedrock. He added that there was obviously far less material removed from the Morgensen site than is proposed for the subject application. Clearly, a 10-acre site is going to have the degree of development magnified significantly as compared to a single house lot.

In another way of examining quarrying of bedrock, the adjacent operations of Tilcon Minerals have excavation of more than a million cubic yards per year. This compares with the applicant's

intent to excavation 70,000 cubic yards over three years. Further, there is an end use proposed, a proposed site plan for the construction of three buildings, and an opinion from the town engineer that while a lot of material is proposed for excavation and removal, it is not excessive in order to develop the site according to the proposed plans.

Jim Kowolenko asked if there were only two buildings proposed, would the amount still be 70,000 cubic yards, adding that it was the third building that appeared to be requiring the majority of the excavation.

Attorney Carella then referenced the design development district requirements (encouraging the design of well-planned office, industrial, and commercial property with sound parking, suitable open space, compatible with district, etc.). Under the regulations for the zone, far greater development of their parcel is allowed than is proposed (i.e., four buildings instead of three).

Pat Benjamin, the project engineer, then addressed the Commission. While the applicants had considered various alternatives, even two buildings would require the size platform for the necessary turning radius for a truck-semi-backhoe arrangement. He also stated that the same degree of blasting, excavation, and removal would be necessary to construct one large building vs. three smaller ones.

Jan Melnik asked the hypothetical question of what would happen if the Commission were to approve this application, the applicant undertake the blasting and removal of 70,000 cubic yards of material over the next three years, and then at that time economic indicators did not support the buildout of the site plan as proposed (i.e., it ended up being simply an earth quarrying and removal operation).

Attorney Carella stated that the applicant does want his business there. However, there is nothing that binds an applicant to proceed with a specific site plan three years out.

Pat Benjamin explained that blasting and crushing would occur between 90 and 120 days per year over a three-year timeframe; the balance of the time would be spent hauling away material. On average, there is two to four feet of overburden on the site now.

Richard Eriksen stated that crushing is not allowed in the zone. Attorney Carella indicated that in order to get the material off site, in order to prepare the site for development, the material will need to be crushed. He added that precedent already allows for crushing at the Greenland site and that it would be arbitrary to deny it here.

To Frank DeFelice's question regarding the grade of the road approaching the lot, it is between 4% and 8%.

Attorney Joseph Milardo addressed the Commission on behalf of his clients: William and Diana Cruise, Cindy Turcik, Sandy Kovak, and Mr. Dingwell, all of Mountain Road. As stated previously, their concern is not only with regard to the status of Mountain Road but how the proposed operation will affect their neighborhood.

Attorney Milardo, in referencing some of the language in the regulations, stated the desire to create a compatible use with that of the surrounding and abutting neighborhood. He suggested that there are the issues of compatibility as well as equity and that a property owner's rights

cannot be taken away. A property owner must be able to derive the beneficial use of his property. The Commission has adopted language to ensure compatibility and a balancing act must be achieved. He also stated that the Arrigonis' property is adjacent to another quarrying operation (Tilcon) and that the Arrigonis might consider selling their property. The district in which the Arrigonis' property is located was not designed for blasting, extracting, crushing, and removal of materials (heavy industrial activities). He also urged the Commission to consider whether the proposed activities were in harmony with the orderly development of the area. Certainly, the proposed actions will impair adjacent lots' value.

Attorney Milardo then discussed the traffic along Route 68 and the impact of adding a truck to the congestion every 10 minutes or so throughout the day. If approved, it would be detrimental to the neighborhood and adjacent lots; a quarrying operation would create havoc in the neighborhood. He also stated that it is his opinion from all of the research into the matter that Mountain Road is not a town road. There has been no word from the First Selectman or town counsel; they are apparently "ducking the issue."

Attorney Milardo stated that anything more than four or five trucks a day would overburden the neighborhood. There are many issues with the application—from the status of a town road to compatibility with the neighborhood as far as uses are concerned to whether or not the activity as proposed is really a quarrying operation disguised as preparation for development.

Attorney Milardo introduced Evan Noglow, a licensed real estate appraiser from Middletown, to discuss the impact on property values. He stated that taking into consideration the characteristics of the neighborhood and the proposed activity, there would be significant negative impact on the home values of the surrounding properties (citing such things as truck trips every eight minutes onto an unimproved road, noise, dust, other nuisances).

Attorney Milardo added that if an adjacent house were put on the market, how many buyers would be interested after hearing about 20 to 30 truckloads per day. He is certain that the properties would be devalued.

Terry Peters, 670 Wallingford Road, discussed several neighborhood concerns, in particular the busy traffic already on Route 68. She stated her impression that quarry truckers are paid by the truckload and not by the hour; thus, they'll be traveling as fast as possible to increase the number of truckloads they can carry. She also referenced the October law about jake brakes and noise—only adding to the problem for surrounding residents. She stated that when she purchased her home, she was certainly aware of Tilcon's activities; however, she didn't bargain for another quarry on the other side of her. Between the two operations, there's likely to be blasting every day. She also asked if this quarry operation would have the same 1,000-foot buffer zone as Tilcon maintains.

William Cruise indicated that the 1,000-foot buffer zone has been held to beautifully by Tilcon since its inception.

Cindy Meskill, 664 Wallingford Road, asked about the problem with dust, noting she had just learned of the application today. She asked if the 90 to 120 days of blasting each year would be on a consecutive, daily basis. She also asked for clarification that this type of processing and quarrying was, in fact, allowed in the design development district. She mentioned that her home is of 1759 construction and she was worried about the effect of blasting.

She also queried the problem with additional runoff from the mountain and where this would go.

Pat Benjamin indicated that there would be as many as 40 truck trips per day, but not every day. A complete blast survey would be prepared of all properties in the area. Seismometers would be set up on all properties of concern. He noted that blasting has occurred within 25 feet of homes constructed in the 1700s without incident. To the blasting timeframe of 90 to 120 days per year, it would not be every single day in that timeframe. In the first year, there might be blasting to do the first section for just 30 days. Then the balance of the time would be spent crushing and moving to stockpile material, then removing it from the site.

In terms of lot coverage, Pat Benjamin stated that, as proposed, the coverage will be 36%.

Attorney Carella reflected on the changes of zone for this property over the last 20 years (from Farm-Residential to Light Industrial to Design Development District). Each zone change was designed to make the area more compatible with the surrounding properties. He believes the application tries to be compatible and meets every one of the regulations.

In following up to the idea previously noted about Tilcon being a buyer for the property, William Cruise indicated this would enable Tilcon to come even closer to surrounding properties (using the 1,000-foot buffer zone). They would derive 9 million tons of material from this site if they were to process the material. It would certainly be to the advantage of Tilcon (he noted he was a retiree from Tilcon); however, William Cruise noted that the Arrigonis would not give Tilcon a price.

To Sandy Kovak's question about the location of the additional 30 to 40 acres that could be developed, Pat Benjamin demonstrated it on the maps.

Geoffrey Colegrove described the history of the 1,000-foot buffer, that it is not a cast-in-stone requirement; rather, it was an agreement reached with Tilcon back when Hank Robinson was involved with the Planning and Zoning Commission.

Pat Benjamin clarified that if there were 40 truck loads a day (80 trips), this would total 130,000 cubic yards in one year—nearly twice the material proposed over three years. Therefore, there wouldn't be that intensity of truck traffic.

Cindy Meskill said that if the Design Development District was designed as a buffer between the Heavy Industrial and Farm-Residential zones and quarrying was proposed, it would seem to be a contradiction. She also asked how much bigger this site was than the one currently occupied by the Arrigonis' operations in Middlefield (that question was not germane to the discussions or within the purview of the Planning and Zoning Commission).

To William Cruise's concern about runoff into his brook, Pat Benjamin explained that he had clarified at the last public hearing that there is zero increase in runoff from the site during and post-development and that water does not flow to William Cruise's brook. He also referenced an

oversized detention basin that serves as a sediment basin during construction; this has been approved by the town engineer.

Pat Benjamin also explained that the blasting company's insurer dictates what houses must be tested in their pre-blast survey. Any problems resulting can, of course, be pursued in civil court.

In terms of the days of blasting, Pat Benjamin explained that the blasts would be smaller shots more frequently (as compared with Tilcon: huge volumes less frequently). Neighbors would be notified before any blast.

The Cruises and Cindy Turcik explained that trucks line up now on Mountain Road waiting to pull out; how will this work if the site is approved?

Attorney Carella stated that the applicant is willing to work with the town in making improvements to Mountain Road if it is determined to be a town road. Otherwise (if not a town road), the applicant will need to improve his section of the road.

Motion by Richard Eriksen, seconded by Jan Melnik, to close the public hearing of Arrigoni Brothers, proposed three buildings, Old Mountain Road. Motion carried unanimously.

PUBLIC HEARING

3. Applicant/Owner: Arrigoni Enterprises, LLC
Location: Old Mountain Road
Application: Request for a Special Permit for an Earth Excavation Permit

Members: Ralph Chase, George Eames, Richard Eriksen, Dave Foley,
Jim Kowolenko, Jan Melnik, Tom Russell

Town Planner: Geoffrey Colegrove

Alternates: Frank DeFelice, Jackie Snow

Chairman George Eames read the call for the continued Public Hearing from the Legal Notice. Attendance was taken and all members present were seated on the Commission. Jackie Snow was seated on the Commission in Dian O'Neal's place. Frank DeFelice was present but unseated.

Attorney Richard Carella addressed the Commission and asked that all comments, evidence, and exhibits from the immediately preceding hearing be included in this hearing and vice versa. An extension was also provided to December 22 on this hearing.

Attorney Milardo reiterated that what is proposed is not just excavation for site preparation; it cannot be disguised as anything other than large-scale quarrying, excavation, crushing, rock removal, and blasting. In addition, the road is not suitable and still has an undetermined status. Finally, there would be an exorbitant number of truckloads using Mountain Road to access Route 68 every day.

Motion by Richard Eriksen, seconded by Jim Kowolenko, to close the public hearing of Arrigoni Enterprises, earth excavation and removal, Mountain Road. Motion carried unanimously.

Motion by Ralph Chase, seconded by Jackie Snow, to reconvene the regular meeting at 9:57 p.m. Motion carried unanimously.

6. Jay Cusak, Request for a Proposed 2-lot Resubdivision, Pisgah Road

Brian Ameche commended the work of the property owner/developer and engineer. However, in citing section 04.01.01 of the subdivision regulations, he believes the proposal to require excessive rock removal and grading in the immediate vicinity of an existing neighborhood. In addition, the site must be excessively altered to develop for building purposes. The amount of rock excavation is excessive and significantly changes the natural terrain of the property. The site is steeply sloped and extraordinary site grading must be enacted to make it suitable for building. There will be extensive erosion and sedimentation on adjacent surfaces to accommodate increased drainage.

He added that there would be a violation of section 04.01.03 of the regulations, necessitating large-scale changes to the topography without regard to existing significant trees. The subdivision as proposed violates lot design and does not preserve unique attributes of the site. Nor does it provide for safe vehicular access (violating section 04.03). The site is unsuitable for building.

Brian Ameche further added that the proposed subdivision violates section 04.02 relative to open space in that there is no proposed open space.

Dave Foley stated that an 800-foot road, of which more than 700 feet are at a grade of 15%, is patently unsafe and needs to be denied on that basis. He concurred with the remarks offered by Brian Ameche, as did Jan Melnik.

Jan Melnik noted that before the vote could be taken on this request and in order to create a perfect record, those Commissioners who had been unable to listen to any tape of any public hearing would need to disqualify themselves from voting (this included the one meeting/public hearing at which there was a tape malfunction).

Motion by Richard Eriksen, seconded by Jim Kowolenko, to approve the request of Jay Cusak, request for a proposed two-lot subdivision, Pisgah Road. Motion denied, 5-4, with Ralph Chase, George Eames, Dave Foley, James Kowolenko, and Richard Eriksen in opposition and Jan Melnik, Jackie Snow, Brian Ameche, and Tom Russell in abstention.

7. Arrigoni Enterprises, LLC, Request for a Special Permit to Construct 3 Buildings, Old Mountain Road

Jan Melnik recommended delaying a vote this evening to allow time to review all points presented during the public hearings against the information provided by Attorney Thomas Byrne at the previous meeting. She added that the Commission has 65 days to decide on the application.

George Eames stated his impression that the Commission had already had time throughout the extended hearing process to consider the facts presented and that little new information would be forthcoming.

Brian Ameche stated that under the purview of the special permit process, the Commission can deny applications for inappropriate uses and, when considering removal of earth products under section 12.05.03 of the regulations, must be satisfied that all of the conditions spelled out are complied with. In this case, the Commission is clearly not satisfied. A 75,000 cubic-yard excavation operation is an inappropriate operation and use for this site; further, crushing is not permitted in this zone. He stated that there were enough compelling reasons for the Commission to consider denial of the applications.

Dave Foley added that in the regulations under section 12.05.03.01.03 (b), it specifically states that “no washing, crushing or other forms of processing of earth products shall be conducted upon the premises unless located within a Heavy Industrial zone and then it must not be located within 100 feet of any property or street line.”

This application includes crushing operations as part of the excavation, but it is not permitted in the zone.

Richard Eriksen indicated that, as proposed, the three buildings necessitate site work exceeding any reasonable norms. Perhaps a revision could be developed that will not necessitate draconian methods of site preparation and enable the site to conform to the zone (i.e., not requiring removal of 70,000 cubic yards of material).

Motion by Richard Eriksen, seconded by Ralph Chase, to approve request for special permit, Arrigoni Brothers, earth excavation permit, Old Mountain Road. Motion denied, 8-1, with all in opposition with the exception of Tom Russell (in abstention).

Motion by Richard Eriksen, seconded by Ralph Chase, to approve request for special permit, Arrigoni Brothers, to construct three buildings, Old Mountain Road. Motion denied, 8-1, with all in opposition with the exception of Tom Russell (in abstention).

8. Payment of Bills

Motion by Ralph Chase, seconded by Jim Kowolenko, to approve payment of the following bills:

Absolute Advantage - J. Melnik - \$499.97 (minutes Dec. 7, 2005)
Attorney Thomas Byrne - \$2,775.00 (Esparo case)
Attorney Thomas Byrne - \$1,375.00 (prepare for/attend 12/7 P&Z meeting)
Midstate Regional Planning Agency - \$4,014.29 (expenses)
Middletown Press - \$195.62 (new charges)

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

9. Approval of Minutes

Motion by Dave Foley, seconded by Ralph Chase, to approve minutes of the December 7, 2005, meeting as presented. Motion carried, 8-1, with all in favor with the exception of Jan Melnik (in abstention).

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10. Town Planner's Report

Geoffrey Colegrove stated that Attorney Thomas Byrne was proceeding with the Bryant Esparo case.

With regard to Yankee Way, there are still open issues to be satisfied before acceptance as a town road.

Motion by Ralph Chase, seconded by Dave Foley, to adjourn at 10:35 p.m. Motion carried unanimously.

Respectfully submitted,

Jan Melnik
12/28/2005