

TOWN OF DURHAM

Planning and Zoning Commission

P.O. Box 428

Durham, Connecticut 06422-0428

MINUTES OF FEBRUARY 20, 2008, MEETING

Present

Members: Ralph Chase, Frank DeFelice, George Eames, Richard Eriksen,
Jim Kowolenko, Gene Riotte, Tom Russell

Town Planner: Geoffrey Colegrove

Town Engineer: Brian Curtis

Alternates: Cathy Devaux, Mike Geremia, Mark Laudano

Absent

Members: Dave Foley, Dian O'Neal

The meeting was called to order by George Eames, Chairman, at 7:30 p.m. Mike Geremia was seated on the Commission in Dian O'Neal's place. Mark Laudano was seated on the Commission in Dave Foley's place. Cathy Devaux was present, but unseated. She was later seated for such votes/discussion from which Gene Riotte and Frank DeFelice recused themselves.

1. Approval of Agenda

Motion by Ralph Chase, seconded by Gene Riotte, to approve the agenda of February 20, 2008, as amended to change the order of agenda items (moving item 10 to follow item 6).
Motion carried unanimously.

2. Public Session

Jim Piotrowski, 48 Bailey Road, addressed the Commission. He referenced the long-standing problems that continue at the Esparo property and presented photographs for the

record that depicted trucks gathering at the property prior to the snowfall the week of February 12, construction equipment remaining on the property, and two unregistered vehicles. He asked for the help of the Commission in ensuring that there is compliance with the regulations.

George Eames indicated that he would have the Zoning Enforcement Officer follow up on these concerns.

Bryan Esparo stated that the plate had been lost for one of the vehicles; a sticker in the window identifies that the vehicle is registered to him; up to one unregistered vehicle is permitted.

Pat DiNatale, 35R Catherine Drive, addressed the Commission and read into the record a letter in order to clarify statements made at previous meetings. He confirmed that a berm 250 feet long and 25 feet tall had been constructed along the property line separating his parcel from the Esparos. The berm was constructed using stumps from his own property (which wraps around to Mauro Drive and is about 200 acres of contiguous land). Because the stumps were placed on undisturbed soil, it was thought to be in compliance with regulations of the Department of Environmental Protection. However, after learning that it was not, the stumps were removed and disposed of properly; the dirt berm was put back in place. It has not been completed because of winter weather conditions.

Pat DiNatale explained his reasons for constructing the berm and positioning “no trespassing” signs and flags; he stated that Bryan Esparo had used a chainsaw and bulldozer “to rearrange” some of his (DiNatale’s) property after moving to 36 Bailey Road three years ago. A surveyor had to restake the property and Trooper Pete DiGioia informed the Esparos not to tamper with the stakes. Fencing was added to prevent the Esparos from dumping trash onto the property.

Pat DiNatale also referenced a number of court actions (criminal, civil, and small claims) in which the Esparos either have been or are currently involved and that he believes himself to be a likely prospect for a similar suit as a means of revenue generation for the Esparos. In terms of the berm, Pat DiNatale clarified that Trooper DiGioia never described it as a “spite fence.” The equipment he maintains on his own site is strictly for the operation of his farm (he raises elk and bison); he is creating new pastures and fencing on his property. Despite the Esparos claim that the berm diminishes their property, Pat DiNatale indicated his belief that the Esparos themselves have diminished their own property value through their own actions. His presence before the Commission was to present the facts from his standpoint. He expressed dismay with Bryan Esparo using the public session portion of Planning and Zoning Commission meetings to discredit neighbors and characterized the thousands of dollars spent in legal fees and Commission times as a regrettable waste. He further expressed hope that the Commission could take action to halt the Esparos’ “blatant disregard” of the zoning regulations.

3. Silver Eagle Development Trust, LLC, Request for a Special Permit for the Construction of 3 Retail Buildings, Main Street

Frank DeFelice and Gene Riotte recused themselves from discussion of this agenda item.

Cathy Devaux was seated on the Commission for Gene Riotte; thus, all three alternates were seated: Mike Geremia was seated on the Commission in Dian O'Neal's place and Mark Laudano was seated on the Commission in Dave Foley's place. Both Mike Geremia and Cathy Devaux attested to having listened to tapes of all public hearings they had missed for this application.

George Eames stated that he had conferred with the Commission's counsel, Attorney Tom Byrne, over the past few days regarding the application and was informed that Commission members could speak as individual members of the Commission on this application and make any statements desired—but that these remarks would not necessarily represent the Commission's stance as a whole. He was also apprised that whether the Commission opted to vote the application "up or down," Commission members did not have to provide rationale either way.

Richard Eriksen stated that he would like to present a motion—but not to limit any discussion or comments from other Commission members. He worded his motion in the affirmative, adding that this was predicated on the fact that if, indeed, the motion was approved, then conditions that would be attached to the approval would need to be discussed, as had been discussed in prior meetings. He described the commercial property at the north end of town and said that he personally did not have a problem, despite the fact that there are "people in this town who don't believe it should be developed." He stated that it is the right of the property owner to develop the property, adding that he believed Silver Eagle had presented plans that in fact were not only credible, but that addressed most if not all of the conditions required under the regulations for property development. He noted that there had been some discontent in town about what the dimensions of the project were or even the potential tenants. He stated that these should not be the considerations of anyone—it is a piece of commercial property.

The biggest problem Richard Eriksen could see was the traffic along Route 17 and Route 147 in terms of access/egress to/from the site. Unfortunately, he said that the state of Connecticut has "deemed not to offer any kind of direction to the Commission about how impact can be accommodated." Absent that input and with the existing traffic problems, the proposed development would exacerbate the overall traffic situation. He indicated that this is a "catch 22" and places an onerous burden on the Commission and the town. He also stated that the property will be developed commercially "sooner or later," adding that this is "rightly so, since the town doesn't want or is unable to purchase the property." The owner has a right to develop it. The fact that it is going to impact the town adversely is not the developer's problem, but is the problem of the state of Connecticut/Department of Transportation and the issues that have never been addressed on Route 17.

He said that safety is a major concern and its effect on the town would be adverse. But he didn't agree with a lot of people in town who say that it would be a "travesty, that they just don't want it [large grocery store] there."

Cathy Devaux indicated that from the time the project first came before the Commission, she was very concerned about traffic and congestion. In reviewing the regulations, she thinks these are insurmountable problems. She described Middlefield Road as a "disaster," citing the school bus traffic, commuter traffic, and then all truck traffic from the project emptying onto Route 147. She referenced repeated accidents at Maple Avenue and in the last week took several test drives along that road, which she believes to be too narrow with speeding cars to be safe. With the potential for 3,000 additional cars, she doesn't think the area's back roads will be safe for anyone.

Ralph Chase cited the preamble of the Plan of Conservation and Development as well as the zoning regulations—and the mission of the Commission to maintain public safety and good traffic patterns as well as a general overall atmosphere of community. He believes that the traffic problems that have been discussed *ad nauseam* are such that people's lives, including school children, will be placed in jeopardy. He stated that the traffic would have a negative impact on the entire community, adding that people have approached him to advise that if the project were to be approved, the alternate route they would be traveling would be directly past his house (on Haddam Quarter Road). He added that he is not against development, but believes that it has to take place in keeping with the public safety and general atmosphere of the community as well as conform to the regulations and Plan of Conservation and Development. He said that he could not sit on the Commission and support the application in good conscience.

Jim Kowolenko supported the sentiments expressed by other Commission members. His belief was that the stop-gap measures proposed to address traffic concerns will not adequately correct the situation. He could not support the application.

George Eames indicated that the zoning regulations stress orderly growth—something he believes the proposed application does not provide. While he acknowledged that a project will be developed at some point, "it could provide more orderly growth than what the applicant is proposing right now."

Mike Geremia stated that his first concern was with public safety, in particular where the town does not have a police force. He added that commercial activity does "tend to breed crime, as most people know." Looking at some of the numbers presented at the January 23 hearing with regard to crime in adjacent towns, the numbers for Roberts in North Madison, averaging one call a week, might not seem ridiculous, but is still a concern. He

added that he did not believe the parcel could accommodate a project of this size, especially from the standpoint of the surrounding road infrastructure.

Mike Geremia also stated that he had spent time in the past few weeks driving the surrounding roads at various times of day. He does not believe the existing roads were designed to handle the kind of traffic that would come through.

Motion by Richard Eriksen, seconded by Ralph Chase, to approve the application of Silver Eagle Development Trust, LLC, request for special permit for the construction of three retail buildings, Main Street. Motion unanimously denied (voting in opposition: Cathy Devaux, Mike Geremia, Mark Laudano, George Eames, James Kowolenko, Ralph Chase, Richard Eriksen, and Tom Russell).

4. Zoning Enforcement Officer's Report

Gene Riotte and Frank DeFelice were reseated on the Commission; Cathy Devaux was unseated.

Geoffrey Colegrove advised that Dolphin Day Care had not applied for a building permit for the small outbuilding on the site, nor was the structure on the approved site plans. The location does conform to setback requirements. He will notify the owners that they need to return to the Commission for a site plan amendment, then will need to secure a building permit.

With regard to recent complaints about lighting on Ozick Drive, Geoffrey Colegrove stated that once the project doors are installed, lighting should not be an issue (full cutoffs are in place).

Richard Eriksen stated that the Commission should have a very specific list of criteria for lighting (perhaps including fixtures and model numbers—Frank DeFelice noted that this changes very infrequently), as this is a repetitive, ongoing problem that wastes a considerable amount of time. It seems that one person's opinion of full cut-offs is different than another's; cost is an apparent factor, but this is not the concern of the Commission. While the building inspector is aware of the Planning and Zoning Regulations, the actual type of fixture is not the concern—safety and compliance with the national electric code is.

Frank DeFelice and Richard Eriksen discussed possible remedies; Richard Eriksen will get a copy of the lighting regulations from the town of North Branford. These (if adopted by the Commission) should be provided to anyone who applies for a permit.

George Eames asked Frank DeFelice if he had had an opportunity to do an informal study of the light out at Dolphin Days (internally illuminated sign). He also asked Brian Curtis, town engineer, to look into possible regulations. Language has been drafted and it was

the thought that the public hearing would be scheduled when this was ready to go forward, along with any changes for uses on Main Street.

In other enforcement-related discussion, Geoffrey Colegrove stated that Jamie Stanley, Haddam Quarter Road, moved the objectionable equipment on the tenth (and final) day provided in the warning letter. At present time, there has been no activity or advertising for the wrestling federation located in the former Parson's building.

Gene Riotte stated that John Jackson continues to operate a business from his house on Main Street, but is not living there. This matter will be referred to Attorney Tom Byrne as a cease-and-desist order has already been issued.

5. Bryan Esparro, Update on Adjacent Property, 36 Bailey Road

Bryan Esparro addressed the Commission, objecting to the monologue delivered by Pat DiNatale and citing some remarks as having crossed over a personal line. He clarified that it was a judge who had described the berm as a "spite fence." He thanked Richard Eriksen for coming on the Saturday site walk and taking the time to explain things to him. He characterized the Esparro and Ceretelli families as one of the "hardest working, close-knit" families in the community and described the patterns of frequenting local businesses, personally and through his Cheshire Construction Business, as "dumping lots of money into the town in the past year." He retorted remarks made about legal actions, saying that whether or not he was being sued or suing someone else has nothing to do with character and that he was not "an urban terrorist." He stated that his children do not run amuck on the property line and that he feels like he lives "next door to machine-gun Kelly."

He stated that in defending "himself against equipment," if Mr. DiNatale can say that what he owns (equipment) is for his own personal property use, then he'll do just the same—he will buy equipment and it will never leave his property, he'll park it in the backyard. He specifically stated that if Pat DiNatale's equipment was not going to be moved (from visibility to his property), he would buy some equipment of his own.

Bryan Esparro stated that the rubble around the property, which he spent time and money to bring from his construction project sites to his home, will be used this summer as rip rap for drainage in the swamp areas. He retaliated with remarks about character, indicating that he was tired of his own character being assailed and noted concerns with the matter escalating into something, referencing other tragic property line disputes.

Richard Eriksen commented on the Commission's recent site walk. He said that everyone had seen the berm and agreed that it was not necessarily a bad thing—it prevents view by the Esparros of the equipment on Pat DiNatale's property. If it grows in, it is not illegal; it is not a structure, it is a berm. There would be no basis for the Commission to act against it.

Richard Eriksen stated that, at the same time, the Commission has been subjected to what he considers to be a “war between two neighbors,” with three parties present this evening (Dinatale, Esparo, Piotrowski). He said that the Commission is not going to take a side. In further referencing the “Hatfield-and-McCoy” situation that has developed, he does not know what the Commission can do and suggested that a number of civil actions and remedies could be available. The Commission has spent a lot of time on these matters, noting that the Piotrowskis are the only neighbors without a berm or construction equipment. He, too, expressed concern with the contest that has developed at this point with worry about degeneration into something where someone could get hurt. He added that he is “prepared to take action as a witness—if the situation is not resolved, he would serve as a witness against any of the principals in the dispute.”

Richard Eriksen also pointed out that the whole problem started with Bryan Esparo (which Mr. Esparo acknowledged) and the initial commercial activities (construction yard, plowing) at the property. He said that Mr. Esparo has personally made a promise to Richard Eriksen that “he’s had enough, he’s done, he’s through, and will stop the war, give up, and who ever is ahead is ahead.” He is taking Mr. Esparo at his word. He would like to think that Pat DiNatale and the Piotrowskis could do the same. And if it is not possible for them to talk personally, they accomplish this through lawyers—but not the Planning and Zoning Commission.

Jim Piotrowski addressed the Commission, asking that the rules and regulations be enforced. He pointed out that when the matter did go before the court, the judge admonished that the residents should approach the Commission for enforcement of the regulations.

To a specific question from George Eames, Pat DiNatale explained that the flags along the fence were specifically to flag the property and try to prevent the Esparos from trespassing and dumping trash on his property.

Ellen Piotrowski addressed the Commission. She stated that she and her husband did not come to the meeting to “bash anyone personally.” There are issues that fall under the Commission’s purview that they want to see addressed. She noted that when the Esparos sued them for photographing zoning violations, the matter went to court. It was put on record that the pictures were only of zoning violations—not of family members, not of personal activities. The judge told them they had every right to photograph zoning violations and bring them before the Commission. She stated that there needs to be enforcement—that property values and the beauty of the area is being destroyed.

George Eames reiterated that the Commission is tired of what has been occurring over the past three years. He believes the zoning issues have been handled. Perhaps court will be the only way to solve the problems. He encouraged all parties to sit down and work out a solution.

6. John McDonald, Request for a Home Occupation Permit for the Sale of Police Supplies and Shooting Supplies

John McDonald addressed the Commission and discussed his plan to apply for a home occupation permit. His business is unique; as a law enforcement officer with the state of Connecticut, his business is to provide a special service exclusively to law enforcement professionals (both in Connecticut and possibly beyond the state) wherein he will procure, by special order, supplies, including guns, that these professionals need, which are not issued as part of their line of duty equipment. (For instance, when a cadet graduates from police academy and goes to work in Hartford, it is typical to spend \$3,500 out of pocket on equipment that is not reimbursed. Typical equipment issue includes a standalone service sidearm. But most troopers have need of a long gun (shot gun or rifle) for a myriad of situations.)

All business will be transacted remotely, via the internet, and most items can be shipped through the postal service. However, federal law prohibits the shipping of firearms through the mail; for these items, individuals who have already made arrangements for purchase are required to physically retrieve the items from the home occupation location. In order to procure the required federal license, the Zoning Enforcement Officer must sign off on a use permit that this is allowed in the district.

John McDonald stated that he is not yet transacting any business on the internet; rather, he is in the process of establishing a business structure and securing the appropriate permits. Return receipts were provided for the record from all abutters within 100 feet of the property.

Richard Eriksen asked about the proposed business resembling retail sales. John McDonald explained that the general public cannot buy from him, he will not be stocking any inventory (rather, there will be custom/special orders for specific customer requests that are immediately provided to those individuals). Richard Eriksen stated that the Commission knows there are any number of “illegal” retail operations in town operated as home businesses. He commended Mr. McDonald for appearing before the Commission.

Ralph Chase sought and received clarification from John McDonald: the business is actually a procurement service for fellow law enforcement officers—not open to the general public.

The question and definition of “retail sales” was discussed. Speaking as a member of the public, Jan Melnik raised the point about various craft businesses being allowed to sell seasonally, hair salons being able to sell merchandise as retail sales, Mr. Mielke’s appliance repair business where sales are made, and even her own business (she received one of the first home occupation permits in 1983) where retail sales of work product accompany sale of professional consulting services.

Mike Geremia asked for details about the proposed items for sale. John McDonald explained certain equipment that law enforcement professionals require is not provided in the line of duty. These items are permitted to be provided to law enforcement professionals by the federal government and through a valid firearms license, but require in-person pickup from a location (and cannot be shipped through the mail).

It was noted that if the business were located in a commercial zone, there would be no need for a Zoning Enforcement Officer's signature on a permit. Richard Eriksen pointed out that there is plentiful commercial space in town that's available; Mr. McDonald could likely secure a very small commercial space.

Returning to the topic of retail sales, the restriction in the regulations is designed to prevent a business from growing to the point where it is an infringement upon the quality of life in a neighborhood.

John McDonald pointed out that it would be within the scope of the Commission's authority to revoke any granted license if the activities engaged in presented a problem for the neighborhood.

To Mark Laudano's question, John McDonald stated that he would not be tying up money in stocking inventory—the business will operate more as a drop-ship, ordering only what customers have specifically ordered from him. He can order directly from vendors/manufacturers, save overhead costs, and pass some—if not considerable—savings along to fellow law enforcement professionals.

Richard Eriksen stated that while the business model and service seems “like a wonderful thing,” there is still the issue of retail sales. There is concern about establishing precedent.

John McDonald continued to make the point that his service is not open to the public; it is all specialty order for a very select population.

Motion by Richard Eriksen, seconded by Jim Kowolenko, to approve the home application of John McDonald, for sale of police supplies and shooting supplies. Motion denied, 6-2-1, with all in opposition with the exception of Mike Geremia and Jim Kowolenko (in favor) and Tom Russell (in abstention).

John McDonald thanked the Commission for their time, stating he would conduct further research. He also pointed out the presence of a welding business along Parmelee and Saw Mill where there is frequent traffic to/from. He further asked for clarification of the term retail as it applies to sales and products.

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Where not already spelled out in the regulations, the Commission usually uses “dictionary definitions.” There was general agreement that a solid definition for retail sales would be desirable in the regulations.

7. Payment of Bills

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

- Jan Melnik, Absolute Advantage -- \$396.27 (minutes of 2/6/08 meeting)
- William Wrang -- \$40.00 (new charges)

Motion carried unanimously.

8. Approval of Minutes

Motion by Ralph Chase, seconded by Frank DeFelice, to approve the minutes of the Special Workshop meeting and the regular meeting, both held February 6, 2008, with a change in the word wish to with. Motion carried, with all in favor with the exception of Gene Riotte (in abstention).

9. Miscellaneous

Richard Eriksen and George Eames advised that they would not be present for the next two to three meetings.

Frank DeFelice queried the status of the berm at Dolphin Days, saying that the issues weren't resolved and that the neighbors weren't satisfied with what was going on. Geoffrey Colegrove indicated that these concerns had been addressed previously.

Motion by Jim Kowolenko, seconded by Tom Russell, to adjourn the meeting at 9:15 p.m. Motion carried unanimously.

Respectfully submitted,

Jan Melnik
2/27/2008