

TOWN OF DURHAM

Planning and Zoning Commission

P.O. Box 428

Durham, Connecticut 06422-0428

MINUTES OF FEBRUARY 6, 2008, MEETING

Present

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

Town Planner: Geoffrey Colegrove

Alternates: Cathy Devaux, Mike Geremia, Mark Laudano

Absent

Members: Dave Foley, Dian O'Neal, Gene Riotte

The meeting was called to order by George Eames, Chairman, at 7:36 p.m. Mike Geremia was seated on the Commission in Dave Foley's place. Mark Laudano was seated on the Commission in Gene Riotte's place. Cathy Devaux was seated on the Commission in Dian O'Neal's place.

1. Approval of Agenda

Motion by Ralph Chase, seconded by Tom Russell, to approve the agenda of February 6, 2008, as presented. Motion carried unanimously.

2. Public Session

Bryan Esparo, Bailey Drive, addressed the Commission regarding the pile of dirt placed along his joint property line with Pat DiNatale. The buried stumps and wood were removed from the berm—but the pile of dirt was put back in place later the same day. He stated that he had investigated planting staggered rows of 20- to 22-foot white pines; however, at a cost of \$2,500 per tree, the total would exceed \$20,000. He stated that he

did not feel it was fair—he was reprimanded for the equipment he had on his property while doing site work, yet Pat DiNatale has equipment on his property in full view of Bryan Esparo’s home. He also stated that he believed if he were to erect a dirt pile on the property line adjacent to the Piotrowskis’ property line, he was fairly certain a cease-and-desist order would be put in place with fines and that he’d be required to remove it. He stated he was entitled to the same protection from his neighbor (Pat DiNatale) and drew an analogy between Mr. DiNatale and his neighbors to the Dukes of Hazzard (Boss Hogg and the little Dukes).

Bryan Esparo also stated that Resident Trooper Pete DiGioia did request that Pat DiNatale remove the blinking strobe lights at the top of the dirt pile. He characterized the berm as a “spite fence.” Relative to the previous problems at the Esparo site, Bryan Esparo reported that the excess trucks have been removed, as have the sanders and plows. He also stated that because of the problems with the dogs, they have been given away.

Geoffrey Colegrove reported visiting the site several times and had contacted the Department of Environment Protection about the burial of tree stumps and logs. Pat DiNatale was informed and the offending material was removed. A silt fence has also been put in place. Geoffrey Colegrove added that while he did not know about language for spite fences, it was not the Commission’s responsibility to enforce this. He also stated that Bryan Esparo was incorrect in saying that the Commission would not enforce its regulations.

Geoffrey Colegrove stated that he would speak with Pat DiNatale; in addition, he will verify the zoning regulations to determine if there is an enforceable violation. If material is moved off a site, then there are regulations; however, moving material around on one’s own site is not covered by the regulations.

There was discussion about proximity to the property line; as dirt is not a structure, the 30-foot setback is not applicable.

Jim Kowolenko pointed out that there are slope regulations; the pile of dirt is steeper than a three-to-one slope.

Bryan Esparo reiterated that Pat DiNatale’s equipment is in clear view of his property; yet, he was forced to move his equipment and rent commercial space. In addition, he recalled that there was a similar situation on Brittany Drive where a property owner was required to garage his equipment. He noted that Pat DiNatale has enough property where it should not be required that the equipment be stored in plain view; he described the visible equipment as including concrete material, a backhoe and a full-size, tri-axle dumptruck “that hasn’t been moved in a year.” Geoffrey Colegrove acknowledged that he had seen Pat DiNatale’s equipment in recent site visits.

Geoffrey Colegrove stated that if material is being imported to the site, a special permit is required if it exceeds 1,000 cubic yards. It is not clear if some of the dirt was brought in from off-site; the stumps did come from Mauro Drive.

The Commission agreed to schedule a site walk on Saturday, February 9th, at 9:00 a.m., meeting at Bailey Drive.

During public session, Joseph Pasquale, Parmelee Hill Road, addressed the Commission. He stated that citizens are concerned about development activity and the Main Street/commercial district area. He reminded the Commission that he had originally come before the Commission with an application to lower the square footage of commercial buildings. He stated that there are 14 C-2 properties, 5 C-1 properties, and 50 M-R properties on Main Street that fall into split zones (all with partial commercial land). He suggested that the Commission proactively seek to address these zones and consider changes to the regulations. He referenced the Plan of Conservation and Development.

Joseph Pasquale reiterated concerns with traffic and safety and impact on the community's character. He stated that efforts should be taken to ensure the community is protected and that elected officials play a critical role in how the town will look. He suggested that the public has an obligation to let the Commission know its preferences—and that the public session portion of the meeting is the only venue for this communication. He stated that the Commission has three choices:

- 1) Do nothing at all – allowing issues/concerns to be controlled by future applications under the current zoning regulations, thus allowing applicants to control the town's destiny
- 2) Concerned citizens submit applications to drive change – he has done this, but is not the approach he thinks the community should take
- 3) The Planning and Zoning Commission could take proactive approaches to allow for sufficient review to address partial zoning issues that govern this district

Joseph Pasquale suggested a moratorium on commercial activity, noting that this has been done in area towns to give commissions a chance to review and change regulations. He stated that residents are looking to the Commission for leadership that is consistent with the Plan of Conservation and Development as well as with the desires of Durham's citizens. This should dovetail with the plans of the Economic Development Commission (plan is forthcoming). He suggested the same effort devoted by the Commission to the discussion of Main Street uses be put to the topic of planning to ensure development that is in harmony with the community.

To Frank DeFelice's query regarding source of the detailed properties, Joseph Pasquale indicated he had counted them from zoning maps. George Eames stated that when zoning was adopted, there weren't property maps and a line was simply drawn parallel to Route 17.

3. Nick Onofrio, Request for a Home Occupation Permit for a Landscaping Business, 145R Old Farms Road

Nick Onofrio was not in attendance at the meeting. He was asked to send registered letters to neighbors informing them of his plans, but this was not done, according to adjacent property owner Kathy Kirschner (147R Old Farms Road). Mr. Onofrio's offer of buying the subject property was withdrawn.

Motion by Richard Eriksen, seconded by Jim Kowolenko, to deny the application of Nick Onofrio, request for home occupation permit for a landscaping business, 145R Old Farms Road, without prejudice. Motion carried unanimously.

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

Frank DeFelice recused himself from discussion of this agenda item.

All Commission members/alternates have listened to all tapes of the Silver Eagle hearings, with the exception of Mark Laudano and Cathy Devaux (because of the unavailability of tapes from the October 17, 2007, hearing). Jan Melnik stated that she would contact Brian Ameche, who had been absent from that meeting, on the chance that he might have the tapes.

To Jim Kowolenko's query about acting on the application at this meeting, George Eames stated that the Commission must await receipt of the report from the Inland Wetlands Commission (it won't be available until next week); therefore, the earliest a vote could occur would be at the February 20th meeting. George Eames added that he saw "no reason why the Commission couldn't render a decision on the 20th," he does not want to drag the process on. He also cautioned members of the audience not to try to "load the meeting"—if capacity of the meeting room is exceeded, the meeting (and vote) would need to be postponed. The Commission has 65 days from the close of the hearing on January 23 to render a decision. George Eames stated he would "personally like to see it brought up on the 20th and taken care of."

Geoffrey Colegrove indicated a final traffic report had been prepared by the traffic engineer (dated January 30) and will be forwarded to all Commission members; this can be accepted into the record as it is a report from staff. The Commission asked that Geoffrey Colegrove verify this with Attorney Steve Byrne.

5. Payment of Bills

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

- Jan Melnik, Absolute Advantage -- \$943.45 (minutes of 1/23 meeting)
- Jan Melnik, Absolute Advantage -- \$530.29 (minutes of 1/16 meeting)

- Traffic Engineering Solutions -- \$2,786.50 (traffic engineer's report)
- Jan Melnik, Absolute Advantage -- \$155.00 (request for *ex parte* communications)
- Jan Melnik, Absolute Advantage -- \$750.00 (calls, meeting at high school, preparation for 1/23 hearing)
- Jan Melnik, Absolute Advantage -- \$350.00 (prepare exhibits)
- Jan Melnik, Absolute Advantage -- \$675.30 (prepare Commissioner copies of all correspondence)
- *Middletown Press* -- \$198.81 (new charges)

Motion carried unanimously.

6. Approval of Minutes

Motion by Ralph Chase, seconded by Cathy Devaux, to approve the minutes of the January 16, 2008, meeting as presented. Motion carried unanimously.

Motion by Ralph Chase, seconded by Cathy Devaux, to approve the minutes of the January 23, 2008, special meeting as amended (paragraph to reflect reading of Frank DeFelice's letter, Public Safety Committee, recusing himself). Motion carried, 8-1, with all in favor with the exception of Frank DeFelice (in abstention).

George Eames thanked Jan Melnik for the work she had done relative to the Silver Eagle public hearings and preparation of comprehensive minutes and the record, including exhibits. Members of the Commission and the public concurred.

7. Town Planner's Report

Geoffrey Colegrove will look into the parking of snowmobiles and the shed at Dolphin Days.

Regarding the suggestion of a moratorium by Joseph Pasquale, Geoffrey Colegrove stated that a moratorium is treated as a zone change legally and requires the same procedures: public hearing, drafted regulations, etc. Referrals to abutting towns must also occur. Richard Eriksen added that the state takes "a dim view of moratoria" unless there is a major reason (i.e., rezoning).

The Commission discussed the village district concept, something mentioned in the Plan of Conservation and Development. There is substantial work in enacting such a district (requiring lawyers, surveyors, etc.). One of the biggest problems, according to Geoffrey Colegrove, is defining design criteria, for which an architect is needed. All applications are compared against design criteria. Village districts can regulate color, for instance; historic districts cannot.

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Richard Eriksen suggested that the Commission await the report of the Economic Development Commission. Diana McCain, a member of that group and in attendance at the Planning and Zoning meeting, stated that it is anticipated that the report will be sent to the Board of Selectmen for the February 26th meeting.

Jan Melnik will ensure that Judy Snyder/Midstate Regional Planning Agency send all Commission members the most recent copy of the Plan of Conservation and Development.

George Eames advised that a copy of a letter sent by Wendy Manemeit to Mary Jane Malavasi was received indicating status of the DeMartino bond. The only bond on record was for \$5,000 in May of 2002, for which \$2,500 was released per the Planning and Zoning Commission's vote on November 7, 2007. It is believed that part of the bond record problems relate back to when Ellen Mauro's computer experienced a failure.

George Eames stated that Commission members were invited to attend the annual meeting of the Connecticut Federation of Planning and Zoning Agencies on March 27th at the Aqua Turf in Southington; the Commission pays for members to attend. Geoffrey Colegrove's office should be notified if there are members who wish to attend. In addition to length-of-service awards, the agenda includes discussion of farms and affordable housing.

Frank DeFelice distributed information about several public acts, including language concerning the Connecticut Siting Council and cell towers as well as purchase of subdivision lots.

Motion by Jim Kowolenko, seconded by Tom Russell, to adjourn the meeting at 8:42 p.m. Motion carried unanimously.

Respectfully submitted,

Jan Melnik

2/13/2008