

# TOWN OF DURHAM

## Planning and Zoning Commission

P.O. Box 428

Durham, Connecticut 06422-0428

### MINUTES OF APRIL 2, 2008, MEETING

#### Present

Members: Ralph Chase, Frank DeFelice, Richard Eriksen, Dave Foley, Jim Kowolenko,  
Gene Riotte, Tom Russell

Town Planner: Geoffrey Colegrove

Alternates: Cathy Devaux, Mike Geremia

#### Absent

Members: George Eames, Dian O'Neal

Alternate: Mark Laudano

The meeting was called to order by Richard Eriksen, Vice Chairman, in the role of acting Chairman, at 7:30 p.m. Mike Geremia was seated on the Commission in George Eames' place. Cathy Devaux was seated on the Commission in Dian O'Neal's place.

Richard Eriksen stated that clarification was received that a public hearing sign is not required to be posted for the horse crematorium application.

#### 1. Approval of Agenda

Motion by Gene Riotte, seconded by Ralph Chase, to approve the agenda of April 2, 2008, as presented. Motion carried unanimously.

#### 2. Public Session

No business.

### 3. Payment of Bills

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

- Attorney Thomas Byrne -- \$800.00 (Dolphin Days)
- Attorney Thomas Byrne -- \$900.00 (Skeetclub/Elihu Road)
- Absolute Advantage, Jan Melnik -- \$394.87 (minutes 3/19/2008 meeting)
- Connecticut Federation of Planning & Zoning Agencies -- \$90.00 (annual dues)
- Midstate Regional Planning Agency -- \$220.80 (copies)

Richard Eriksen stated that he wished a mechanism existed for getting back money on frivolous lawsuits—the fees required to defend the regulations ‘just because someone wants to object.’ Ralph Chase stated that there should be a review board. Geoffrey Colegrove stated that there is an arbitration process that can be used; however, the Commission (and all parties to a case) would be required to live with the arbitrator’s decision.

Geoffrey Colegrove indicated that the record for the appeal by Silver Eagle Development was underway; the cost for preparing six sets of copies of the colored exhibits has already reached \$1,600. He indicated that there is a massive amount of work with no provision to recoup costs (except when there is a zoning violation).

Richard Eriksen asked that the bills from the *Middletown Press* be sent to MaryJane Malavasi at Town Hall for resolution; it was not clear upon inspection what the charges were for.

### 4. Approval of Minutes

Motion by Mike Geremia, seconded by Gene Riotte, to approve the minutes of the 3/19/2008 meeting as presented. Motion carried unanimously.

Ralph Chase stated that he had made statements at the meeting of March 19 that were reflected in the minutes that he wished to clarify. He had indicated that Dr. Michael Good was being sued personally by Silver Eagle Development and had retained a lawyer at a cost of \$1,000 to defend him. However, he (Ralph) has since been informed that Dr. Good has not been sued; he wanted to apologize to the Commission for his misinterpretation.

What apparently had happened was that Dr. Good received a letter in January asking him to retract his remarks. Attorney John Corona had requested that Dr. Good retract comments made in a January 10, 2008, letter to members of the Planning and Zoning Commission; he apparently also stated that if those comments were not retracted, he would be required to take legal action against him. Ralph Chase indicated that he had mistakenly interpreted this threat of lawsuit as accomplished fact. He also stated that it had been his intention to raise attention over the use of intimidation tactics to stifle the

April 2, 2008

Page 3

general public against speaking in public. He stated that, for this, he was not apologetic. A copy of Ralph Chase's letter of clarification is attached to the minutes filed at Town Hall.

#### 5. Town Planner's Report

Geoffrey Colegrove stated that professional office language would be distributed at the next meeting.

Cathy Devaux expressed concern with sandwich board signs getting closer and closer to Main Street, blocking vision and making it difficult to pull out of some business driveways.

Richard Eriksen asked that this be investigated by the zoning enforcement officer. Geoffrey Colegrove added that there are size and setback requirements. Signage on the town green is permitted through application at the Town Hall; this is a separate process from other signage regulated by the Planning and Zoning Commission.

A suggestion was made that language be available to hand out by the zoning enforcement officer to businesses where there are issues with signage. The Town Hall can provide language for signage on the town green.

#### 6. Miscellaneous

Gene Riotte asked the status of John Jackson's business on Main Street (home occupation, but Mr. Jackson is not residing at the property). Geoffrey Colegrove has not yet sent a letter, but will investigate this situation.

Frank DeFelice asked the status of the trailer parked at Dolphin Day's auxiliary parking lot. Geoffrey Colegrove indicated that he had talked with the property owner about it but that he would not be pursuing this further (i.e., will not be informing the property owner that it must be moved). Frank DeFelice reflected on a motion made at a previous Commission meeting (March 4) to issue a cease-and-desist order for this violation.

Richard Eriksen stated that the Commission could seek an opinion from Attorney Thomas Byrne and see if this is permissible (parking of the trailer even though it is not on the site plans).

Ralph Chase stated that a low-profile trailer did not seem to be a matter that was problematic. Richard Eriksen suggested reviewing what exactly was approved and/or getting a legal opinion.

Geoffrey Colegrove stated that at one previous meeting, the Commission did not have an issue with the trailer; then, at the next meeting, it was a problem. He characterized pursuit of this matter as a 'huge waste of resources to go after the parking of one item in one

parking space' and noted inconsistency on the part of the Commission. He reiterated that he had contacted the property owner and hoped that he would voluntarily remove the trailer, but this hasn't happened.

Dave Foley stated that one trailer, in his opinion, does not look that bad. More at issue is the fact that the Commission had been told that the parking area would be used for overflow parking a few times (maybe up to six) per year and not for storage. What would be next? The problem can be in the future with expanded uses and that perhaps the Commission should 'draw a line in the sand' to enforce the lot not being used for storage. He pointed out how a number of things have come back to haunt the Commission in the past, and then the Commission has to spend considerable money enforcing its decisions and regulations.

Geoffrey Colegrove's suggestion was that the Commission would be better off accommodating this situation and using its resources elsewhere.

Jim Kowolenko suggested tabling the issue until the Commission has time to research it. This will be pursued at the next meeting; a request was made for the language of the original approval.

Motion by Mike Geremia, seconded by Gene Riotte, to recess the regular meeting at 8:00 p.m. for the public hearings. Motion carried unanimously.

## **PUBLIC HEARING**

1. Applicant/Owner: Woodland Manor  
Request: Amend Previously Approved Special Permit and Delete the Condition Requiring the Town to Maintain a Reserve Fund, Briarwood Lane

### Present

Members: Ralph Chase, Frank DeFelice, Richard Eriksen, Dave Foley, Jim Kowolenko, Gene Riotte, Tom Russell

Town Planner: Geoffrey Colegrove

Alternates: Cathy Devaux, Mike Geremia

Richard Eriksen, Vice Chairman, opened the public hearing. Mike Geremia was seated on the Commission in George Eames' place. Cathy Devaux was seated on the Commission in Dian O'Neal's place.

Jan Melnik read the legal notice. Geoffrey Colegrove described the original approval of the Commission in 1988 that required the reserve fund. He explained that the town counsel serving in former First Selectman Jim McLaughlin's administration had provided

a legal interpretation of this matter that would relinquish the town's responsibility and provide for returning reserve funds to the Woodland Manor Association (there is no statutory requirement to maintain the fund and the money should go back to the homeowners' association). There were no public improvements for this project. There have been no additional contributions to the fund since it was originally established with the construction of the first two units.

When the newer units were constructed, two new septic systems were built (but not connected) to provide all units with the same level of reserve status. The two older units are still connected to their original systems. Unlike the Lexington condominium project off Higganum Road, for instance, Woodland Manor is not a community water or septic system.

Richard Parmelee addressed the Commission. He stated that he did not want the town to incur liability with either water or septic systems and thought that the proposal would resolve this.

Geoffrey Colegrove explained that if the Commission approved of this request, then the Board of Selectmen/WPCA will take the necessary action to dissolve the original agreement. The decision of the Planning and Zoning Commission is essential to happen first. This would effectively 'get the town out of the business of non-community water and septic systems.'

To questions from Ralph Chase and Richard Eriksen, Geoffrey Colegrove stated that if there is a system failure at Woodland Manor, the association has the responsibility, not the town, once the provision of tonight's hearing is enacted.

Frank DeFelice expressed concern with impact on any purchase-sale agreements for the association's units if the Commission enacts the proposed change. Ralph Chase indicated that the action being taken is simply to release the monies being held to the association.

Geoffrey Colegrove stated that the town counsel's letter carefully details the action of the Commission and the role it should have.

Motion by Ralph Chase, seconded by Frank DeFelice, to close the public hearing of Woodland Manor, amend the previously approved special permit and delete the condition requiring the town to maintain a reserved fund, Briarwood Lane. Motion carried unanimously.

## **PUBLIC HEARING**

2. Applicant: Planning and Zoning Commission  
Application: Proposed Zoning Text Amendment to Section 11, "Signs and Outdoor Advertising Structures," Subsection

11.01.01.03, to include “internally illuminated signs” as a prohibited use

Present

Members: Ralph Chase, Frank DeFelice, Richard Eriksen, Dave Foley, Jim Kowolenko, Gene Riotte, Tom Russell

Town Planner: Geoffrey Colegrove

Alternates: Cathy Devaux, Mike Geremia

Richard Eriksen, Vice Chairman, opened the public hearing. Mike Geremia was seated on the Commission in George Eames’ place. Cathy Devaux was seated on the Commission in Dian O’Neal’s place.

Jan Melnik read the legal notice. Jim Kowolenko asked if by the elimination of internally illuminated signs, exit signs would be included. The language refers to exterior signage and was brought to address the problem with excessive light from the internally illuminated sign at Dolphin Day Care on Route 68. Because of the difficulty in trying to regulate brightness of light, the effort is being made to eliminate internally lit signs altogether.

Those signs in town that are already internally lit will be ‘grandfathered.’ The regulation change (if enacted) would affect future signage only.

Frank DeFelice noted that the fire code does not require internally illuminated signs— simply that they be illuminated (external light source is fine). He stated that with the continued dropping in costs for electronic/LED billboards/signs, it’s not difficult to imagine that they could be coming to Durham. These, in his opinion, would change the character of Main Street.

Francis Willett addressed the Commission as a Durham resident and member of the Fair Association; he is the Deputy of Emergency Management. He mentioned that the Fair Association does have a LED sign and uses it in accordance with state right-of-way approvals (with a permit from the Department of Transportation). Geoffrey Colegrove stated that the Dolphin Days’ sign is on their own property.

Francis Willett asked that the Commission give consideration to detailing the rules explicitly and helping business owners to know what is and is not allowed, noting that it was very confusing now. He also suggested that Dolphin Days be asked to remove some of the bulbs in their sign (to lower the brightness).

Richard Parmelee stated that he was aware of the Dolphin Days’ sign and its high degree of visibility. He stated that signs could be very informative and navigational, when done tastefully. He cited a recent statistics on the news—that 2,700 businesses have ceased to exist in the last quarter alone in Connecticut (reported by Secretary of State Susan

Bysiewicz). He also mentioned the problems that Durham had with the signs at the south end of town, which the Commission attempted to resolve. He stated that he didn't want to see the town/Commission become completely hostile to businesses. He thought that light could be measured on signs.

Darcy Serle, Wallingford Road, addressed the Commission. She expressed concern with the intensity of light from the Dolphin Days' sign ('surprised the astronauts can't see it'). She hoped that whatever action the Commission takes could also result in the Dolphin Days' sign being illuminated somewhat less intensely. She stated that everyone speaks about the character of Durham and its Main Street; but the town is also made up of neighborhoods along all of the state highways coming into town (Routes 17, 68, 77, 79, 147). She summarized that while business is desirable, a little respect/neighborly help would be appreciated.

Joseph Pasquale asked whether or not the change in language, if enacted, would affect all zones in town (commercial, industrial, residential, design development district); the answer is that it would. He concurred with Darcy Serle's remarks.

Richard Eriksen stated that the issue had first come up with the problem with the Dolphin Days sign; now the Commission wants to ensure that this doesn't happen again. Dave Foley pointed out that Dolphin Days had committed to bringing forward their proposed signage for the review/approval of the Commission; however, they instead went ahead and installed what is on the site without going through the Commission. The whole issue before the Commission is a result of someone not following through in good faith on what was promised.

Francis Willett expressed concern that the proposed regulation could potentially hurt any applicant coming in; for instance, he cited an instance where someone might wish to have an attractive, historic-looking sign created by New England Sign Carvers, but with a LED panel—this would now be prohibited.

Richard Eriksen stated that the Commission can always adapt the regulations, but this new language, if adopted, will prevent another Dolphin Days problem.

Jim Sayer, 45R Ozick Drive, Unit 20, suggested that a light meter could be used (at a cost of under \$100) to measure light and control it.

The Commission summarized that while the proposed change might seem severe, it makes enforcement simplified; the language can always be changed in the future.

Mike Cote, 18R Pent Road, addressed the Commission. He asked, hypothetically, what would happen if a vehicle careened off the road and 'took out' the Dolphin Days sign—i.e., could it be replaced.

April 2, 2008

Page 8

Motion by Frank DeFelice, seconded by Dave Foley, to close the public hearing of proposed zoning text amendment, Section 11, signs and outdoor advertising structures, subsection 11.01.01.03, to include internally illuminated signs as a prohibited use. Motion carried unanimously.

Motion by Gene Riotte, seconded by Mike Geremia, to reconvene the regular meeting at 8:53 p.m. Motion carried unanimously.

7. Woodland Manor, Amended Previously Approved Special Permit and to Delete the Condition Requiring the Town to Maintain a Reserve Fund, Briarwood Lane

Motion by Dave Foley, seconded by Ralph Chase, to approve deletion of condition requiring the town to maintain a reserve fund, Briarwood Lane, Woodland Manor. Motion carried unanimously.

8. Proposed Zoning Text Amendment to Section 11, "Signs and Outdoor Advertising Structures, Subsection 11.01.01.03. to include "internally illuminated signs" as a prohibited use

Motion by Frank DeFelice, seconded by Gene Riotte, to adopt the proposed zoning text amendment to Section 11, signs/outdoor advertising structures, subsection 11.01.01.03 to include "internally illuminated signs" as a prohibited use effective May 1, 2008. Motion carried unanimously.

Motion by Frank DeFelice, seconded by Cathy Devaux, to adjourn the meeting at 9:00 p.m. Motion carried unanimously.

Respectfully submitted,

Jan Melnik  
4/9/2008