

TOWN OF DURHAM

Planning and Zoning Commission

P.O. Box 428

Durham, Connecticut 06422-0428

MINUTES OF JULY 16, 2008, MEETING

Present

Members: Ralph Chase, Frank DeFelice, Cathy Devaux, George Eames,
Richard Eriksen, Dave Foley, Jim Kowolenko, Gene Riotte, Tom Russell
Town Planner: Geoffrey Colegrove

Absent

Alternates: Mike Geremia, Mark Laudano

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

Motion by George Eames, seconded by Gene Riotte, to approve Cathy Devaux's appointment as a full Commission member filling Dian O'Neal's vacancy (resignation). Motion carried unanimously. George Eames welcomed Cathy Devaux as a full Commission member; all Commission members congratulated Cathy Devaux on her appointment.

Motion by Ralph Chase, seconded by Tom Russell, to approve the agenda of the July 16, 2008, meeting as amended to delete item #7 (Beaudoin). Motion carried unanimously.

1. Public Session

No business.

2. Stonebridge Crossing, LLC, Modification to Site Plan to Create Fire Pond, Johnson Lane

Pat Benjamin, a professional engineer, addressed the Commission. He described the Commission's previous approval for a seven-unit subdivision and 14-unit active adult community. He indicated that two 20,000 water storage gallon tanks had been approved for fire protection.

He also discussed plans to dredge the existing pond—to bring it from a depth of four feet to about ten. About 1,300 cubic yards of material will be removed and spread along the site. The Inland Wetlands Commission has approved this plan. A 24-inch diameter pipe

RECEIVED: 8-7-08	TIME: 5:10 PM
Kim Garvis, Town Clerk	
OFFICE OF THE TOWN CLERK, DURHAM, CONNECTICUT	

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will extend to a manhole along the edge of the road. This pond would then be tested and approved by the fire department prior to issuance of a certificate of occupancy.

Motion by Richard Eriksen, seconded by Ralph Chase, to approve modification to site plan of Stonebridge Crossing, LLC, to remove one water storage tank, with creation of fire pond, Johnson Lane. Motion carried unanimously.

3. Durham Auto Center Request for Modification to Site Plan, 428 Main Street

At the request of the applicant, this agenda item will be carried over to the next meeting.

4. Payment of Bills

Motion by Ralph Chase, seconded by Frank DeFelice, to approve payment of the following bills:

- Absolute Advantage - \$587.58 (minutes, 7/2/08 meeting)
- Midstate Regional Planning Agency - \$4,775.47

Motion carried unanimously.

5. Approval of Minutes

Motion by Gene Riotte, seconded by Ralph Chase, to approve the minutes of the July 2, 2008, meeting as submitted. Motion carried unanimously.

6. Town Planner's Report

Geoffrey Colegrove discussed language for wood-burning furnaces, citing the manner in which Haddam and Portland handle this. Discussion ensued about existing units being required to conform with any newly implemented standards of the Department of Environmental Protection (there is an exclusion provision for those installed prior to 2005).

Richard Eriksen stated that with the energy crisis and spiraling fuel costs, there could be a big demand for these furnaces in the years ahead. With the possibility of DEP/state language, Frank DeFelice asked if the Commission might want to enact language or an ordinance with an effective date some time into the future.

It was noted that any state regulations would supersede whatever the Commission were to do. Dick McManus, the building inspector had expressed concern with neighbors objecting to 55-foot stacks for the furnaces next to their properties.

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A regional referral will be required if the Commission wishes to bring this to a public hearing, now planned for August 6. Geoffrey Colegrove will draft language to apply to all zones.

Geoffrey Colegrove advised that a letter of extension was provided by the applicant for the zone change and large animal crematorium that would cover through this evening's public hearing.

Brian Curtis, town engineer, recommended that a bond in the amount of \$14,000 be secured for Housewright Developers, Ozick Drive, along with a \$4,000 for the plan update. Geoffrey Colegrove was authorized to proceed with this.

Dave Foley was seated on the Commission at 7:58 p.m.

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

PUBLIC HEARING

1. Applicant: CSK Realty, LLC, Request for a Proposed Zoning Text Amendment to Section 07.01.03. (23) of the Zoning Regulations to Allow Large Animal Crematoriums by Special Permit in the Heavy Industrial Zone
2. Applicant: Connecticut Horse Cremation, Request for a Special Permit for a Large Animal Crematorium
Location: 41A Commerce Circle

Present

Members: Ralph Chase, Frank DeFelice, Cathy Devaux, George Eames,
Richard Eriksen, Dave Foley, Jim Kowolenko, Gene Riotte, Tom Russell
Town Planner: Geoffrey Colegrove

George Eames, Chairman, opened the continued public hearing and read the legal notices.

Attorney John Corona addressed the Commission on behalf of the applicants, Jeff Blashke and Dominic Gambardella. He indicated that additional information would be presented this evening as part of the record, including a photograph depicting the nature of the transport vehicle (not necessarily exactly what the applicant would use, but roughly of the same type). The vehicle is fully enclosed, will have no lettering on it, and has a bottom pan that prevents leakage. Attorney Corona stated that it would probably be refrigerated with a machine inside capable of transporting animals into the unit.

The Town Sanitarian, Bill Milardo, wrote a memo that Attorney Corona distributed to the Commission and read into the record. Salient points included Bill Milardo's comment that "the proposed use of quaternary ammonia compounds for disinfecting surfaces, including floors and equipment, is appropriate." There is also clarification in the memo to an earlier (July 2) memo from the Health Department; the correct statement is: "The staff could *not* understand why a town would require the monitoring if a CTDEP permit was deemed unnecessary for the emissions expected from the cremation unit."

Attorney Corona also provided additional proposed conditions of approval for the Commission's use in crafting a possible approval; he added that the applicant was certainly willing to comply with any state or Federal standards subsequently enacted. The additional conditions (augmenting those provided at the July 2, 2008, meeting and reflected in the minutes of that meeting) were the following:

7. The use shall comply with any subsequently enacted applicable state or Federal laws and regulations concerning health and safety in the operation of animal crematoria, including emission standards.
8. Any solid or liquid waste generated by the use shall not be kept or released outside the building in which the use occurs. Operation shall comply with all recommendations and orders of the Durham Health Department, or any successor office, authority, relating to any collection or disposal of solid or liquid waste generated by the use.
9. The facility shall, at all times, maintain a consulting relationship with a Connecticut-licensed veterinarian, and this veterinarian shall be available to the operation at all times to respond to questions and emergencies. The facility shall not accept animals with communicable diseases or open wounds causing loss of body fluids.

In terms of disinfectant, Attorney Corona indicated that he had reviewed this with Bill Milardo. It will not be applied on a wholesale basis; other kennels and veterinary practices in the area use the same chemical. He also advised that the proposed business will not be a route for bringing contagions into town (no different than a family bringing a pet to any of the area veterinary practices). Most animals succumb to old age and not disease. While it is not the desire of the business owners to transport and cremate diseased animals, it will not be possible to certify this fact. The business will not allow animal owners or commercial haulers to transport dead animals to the facility; they will exclusively provide all transportation.

To concerns expressed previously by Jim Kowolenko about incinerators and the lack of regulations in the town for them, Attorney Corona stated that he had heard of at least one business in town that does use its own incinerator for industrial waste. He pointed out that any use not specifically listed in the use tables would not be allowed (i.e., if the proposed language under consideration were approved and the use table amended accordingly,

there would still not be the ability to have a free-standing incinerator). He then distributed proposed text additions that included:

“Incineration” is the treatment and/or disposal of animals and/or waste through the combustion of organic materials. “Large Animal Cremation” is the incineration of hooved animals and livestock, including horses, goats, cows, and llamas; and excluding non-hooved animals such as dogs, cats, and other in-home pets. Except as explicitly permitted in these regulation, incineration of animals and/or waste as a principal or accessory use is prohibited. Attorney Corona pointed out that under the existing regulations, where incineration was secondary—but normal and incidental to the already approved uses in the area—businesses could come into the zone and pursue such activity without the knowledge or approval of the Commission. This proposed text change would forbid an accessory use.

Attorney Corona also distributed information provided by the manufacturer of the proposed equipment—Penram Diversified Manufacturing Corporation—regarding testing that was done in 1999. He stated that the applicant is willing to be held to these specifications—emissions results detailed in the report from three separate test runs. The system complies with California emissions standards, among the most stringent in the country. The State of Connecticut’s own DEP regulations do not currently regulate this type of use.

Attorney Corona indicated that a representative of Aerocam, LLC, a Commerce Circle business, had approached the Commission at the previous hearing indicating that he was one of the larger tax payers and might move from the area if this proposal were approved. Copies of annual tax bills were presented, totaling \$1,089.18 for the business with an additional \$467.78 for a vehicle. This concluded his presentation of new information; he reserved the right to speak later in response to any comments offered.

Frank DeFelice asked for clarification that the applicant is seeking approval for one unit only; Attorney Corona replied in the affirmative. If the business is successful, the business owners would return to the Commission for approval of a second machine.

In terms of testing, the applicant has proposed to have testing conducted within six months of the operation being established to assure that it is performing according to manufacturer specifications. Because of the high cost of testing (about \$8,500), the applicant would propose to do the test just once—unless there are problems that would require additional testing as determined by the Health Department. To conduct annual testing for no specific reason would be terribly cost prohibitive. Of course, if the Commission were to stipulate annual testing, the applicant would comply; it is hoped this would not be necessary. The operation will maintain a log of all cremation activities as well as testing results.

Frank DeFelice asked that NOX and CO testing be added to the initial testing; Attorney Corona concurred.

To a query regarding hours of operation. Attorney Corona stated that within the heavy industrial zone, no other businesses are required to stipulate specific hours of operation. With regard to the proposed activity, Attorney Corona indicated that the Health Department would have the right to oversee and suspend operations in certain atmospheric conditions; should that include daytime hours but not evening hours, then the applicant would want to preserve the right to operate during the night. Because the activity is relatively invisible, there is no reason it shouldn't operate during anytime of day or night.

To Frank DeFelice's query as to a former assertion of operating for 12 to 16 hours a day, Attorney Corona stated that the actual cremation process is about three hours, but the preparation time and then extensive cooling off period leads to the longer number of hours. All requirements of the manufacturer will be followed explicitly. Attorney Corona also pointed out that even in the peak of operation, the machine itself can be touched by hand on the outside.

Frank DeFelice noted that any conditions required by the Town Sanitarian, Bill Milardo, would be part of any approval.

To Jim Kowolenko's query about the Commission adding more conditions, Attorney Corona stated that the Commission has the "unlimited right to add any conditions as deemed appropriate."

Jan Melnik described correspondence received; a letter in support of the application was received from Douglas and Brenda Vynalek.

Letters and e-mails in opposition to the proposed project were received from the following (addresses noted where provided):

- Fred & Judith Bulmer, Powder Hill Road
- Paul Caron, Jr., 130 Skeet Club Road
- Jeff Johnson
- Jim and Diane Kranich, 20R Skeet Club Road
- John and Melissa Lesniak, 200R Skeet Club Road
- Louise St-Germain and Paul Cieniewicz, Brandon, Pierre and Alec Cieniewicz, 144R Skeet Club Road
- Patrick Sung, D. Phil.
- Rhonda Upton, 166 Skeet Club Road
- Kevin and Jennifer Zettergren
- Ray Kalinowski – letter dated July 15, 2008, from Senator Tom Gaffey in opposition read into record

Senator Gaffey indicated in his letter that while he did not represent residents in Durham, he did speak for constituents in Middlefield who were very concerned with and opposed to the application. He spoke of concerns about public health and safety and recommended

denial of the application on the basis of a number of factors, pointing out that the subject will be addressed in an upcoming General Assembly session.

Representative Ray Kalinowski expressed his agreement with the remarks made by Senator Gaffey.

State Senator Ed Meyer, 12th District, also spoke. He stated that the Commission was in a difficult position—being asked to grant a special permit without the benefit of local or state standards. Unfortunately, this matter won't be addressed at the state level until January at the earliest. He plans to introduce a set of standards, as the Chair of the Environmental Committee, with respect to large animal crematoria.

He cautioned the Commission about permitting any retroactive acceptance of standards enacted at state or Federal levels by the applicant, suggesting counsel be consulted as to the legality of such action. He stated a better constitutional legal practice would be to defer approval of the application until there are state standards and regulations in place.

A Middlefield resident spoke in favor of the application, recommending approval. She indicated safety concerns had been addressed by the applicant and the proposed operation would be a help to the tax base.

Joe Rowe of Lincoln Service and Equipment, 9 Commerce Circle, stated that while he understood the need for a large animal crematorium, he did not think that this particular heavy industrial zone was the most appropriate, given proximity to other businesses and residences. As the largest land owner in Commerce Circle, he has plans to expand his building; however, this is on hold pending the Commission's actions. If this application is approved, he stated that he would invest his money in New Jersey where he has another facility, possibly moving his operations to that area. He stated that he would not allow a business such as this to negatively impact his investment.

Hugh Curley, 715 Haddam Quarter Road, addressed the Commission. He is a member of the Economic Development Commission and has worked in this arena for 21 years. He reported on informal investigation into a similar enterprise in Dover, New Hampshire, and stated that the operation there is adjacent to other businesses and a residential subdivision, as well as a veterinary practice and surgical facility and new restaurant added since the addition of the crematorium.

He indicated that he would not want to see a loss of business to the town as a result of diminished attractiveness of Commerce Circle to other businesses. However, there has been no adverse impact on the area at all, on the basis of his informal study. He also noted apparent conflicts in language referenced by Senator Meyer, mentioning at one point a 20-acre requirement and then another instance of such activity being 500 feet from residential structures or land. Hugh Curley expressed support for requiring that an operation be required to comply with the most current safety and health standards, reflecting any new regulations that might be adopted.

Carl Philbrick, Aerocam, addressed the Commission, stating that his gross assessment is \$240,000. He expressed concern with worries stated at the last public hearing—bioaccidents. He stated that, if approved, this business would be in close proximity to the bus depot that houses and services school buses that transport Durham and Middlefield children. He asked if an accident were to happen, who would monitor it.

John Lesniak, 200 Skeet Club, addressed the Commission, reading into the record a letter from Justin O'Neill of O'Neill Industrial Corporation, 105 Commerce Circle. Mr. O'Neill is opposed to the business—along with 11 other business owners at Commerce Circle, who signed a petition that was presented. The adverse effect on business would be difficult and there was concern noted as to environmental and health safety. He also noted concern with a drop in local property values and ensuing vacant real estate.

Deborah Summers, Middlefield, spoke in favor of the crematorium, having buried some 10 horses in the ground over the years.

Greg Bedell 176 Skeet Club Road, stated that he had talked with Don Gonyea of the Connecticut Department of Environment Protection's Water Division as well as Town Engineer, Brian Curtis, with the firm of Nathan Jacobsen. He presented to the Commission a ground water classification map for the Commerce Circle area, noting that because of the classifications (GAA and GA), substances cannot be poured down drains or put into the ground directly. He stated that Brian Curtis indicated that it was very important these points be brought before the Commission.

Julie McNaught, 176R Skeet Club Road, stated her opposition to the crematorium. She also stated that, from her research, it appeared that an air quality permit was required (stationary sources of air pollution related to use of incinerator).

Meghan Quitco, a Meriden resident, addressed the Commission and is in support of the proposed application. She stated that a letter had been received at the last meeting from Jack McCain, Jr., in favor of the crematorium. She read it into the record. Jack McCain took issue with a letter in the *Town Times* from a Skeet Club Road resident identifying herself as a nurse and speaking on behalf of the safety of children. Specific references were made to dioxins from the crematorium, but he asserted that the numbers as presented were incorrect and misconstrued from an EPA table. His bottom line was that one would need to cremate four horses to release the same quantity (110 nanograms, as represented) in one human. In addition, the nurse's letter discussed that one of the statistics she presented reflected births from 1956 to 1993 *in England* without a direct connection to the application or location here in Connecticut. In terms of a comment about the dangers of mercury as a pollutant from the crematorium, this is from dental work (in humans), not horses.

Bob Fulton, 160 Skeet Club, addressed the Commission in opposition to the application. He thanked those elected officials present for their thoughtful comments. He asked if the

standards for the operation as presented to the Commission had been verified by an independent third party; since he didn't believe that was the case, he said it was not appropriate that the applicant is asking the Commission to rely on uncorroborated assertions about standards. He also pointed out an apparent contradiction: the applicant has said there will be no odor generation; however, the applicant has said it would agree that the Durham Health Department could order the operations suspended during certain weather conditions because of odors, particulates, and other byproducts of incineration traveling off-site.

Kevin Upton, 166 Skeet Club Road, thanked local politicians for speaking out on the application and representing their constituents.

Laurie Stevens, 164 Skeet Club Road, stated her opposition to the application, noting that the proposed tax benefits are minimal; the applicant is not proposing a new building, just equipment that depreciates in value every year. She also stated that the town lacks an effective way to deal with problems when they occur, citing the Greenland Realty and Permatreat problems in recent years.

Lisa Brodeur, a Plantsville resident, described the recent loss of her horse, the only option for cremation being available through UCONN, where the horse was first dismembered. She supported the proposed application.

Pat Murawski, Skeet Club Road, asked how problems would be handled and who would take responsibility for standards not being upheld (if the application were approved). It wasn't clear to her where responsibility ultimately resided—with the Planning and Zoning Commission or the Health Department.

Caroline Rinaldi, 188 Skeet Club Road, read into the record a letter of opposition from herself, her husband, and their two children. They live directly across from Commerce Circle, moving here in 1999 because of the country atmosphere, Durham Fair, proximity to Lyman Orchards, and the school system. She cited concerns with bus and truck traffic and problems with odor from Permatreat, and then the power lines in the area. She is concerned with potential health risks and odors from the proposed application and did not understand how Durham would benefit from being "the crematorium capital of Connecticut."

Janet Morganti, 178 Skeet Club Road addressed the Commission, stating it was her first meeting on this topic. She did not state a position either for or against the application, rather suggesting that more information was needed. She stated that there was a good deal of data presented by Hugh Curley and suggested further investigation into the Dover, New Hampshire crematorium and resulting experiences.

Bill Child, 50R Elihu Drive, addressed the Commission, stating that his home is the closest in proximity to the proposed activity. He talked about the flammability of one of the chemicals to be used—Neutral-Q—as well as proximity to not only the incinerator

itself, but the adjacent fireworks business, Dapkus, which houses class 2 explosives. He pointed out that if Ozick Drive had been deemed to be inappropriate because of the residents, there were far fewer in that neighborhood as compared with Commerce Circle.

Pete Glenewinkel, Skeet Club Road, reiterated his opposition to the application.

Tom Cushing, 132 Skeet Club Road, addressed the Commission. He stated that, as a business owner, he was sensitive to the applicants and agreed that there was probably a need somewhere for a horse crematorium. However, he stated that the risk appeared high for the financial gains to be obtained from approving this application.

Steve Rinaldi, Skeet Club Road, questioned the revenue stream for the operation with just one incinerator with possibly two cremations a day.

Dawn Geremia, from Wallingford, indicated that because of close proximity to Wallingford, there should be notification to the adjacent town; she is within three miles of the proposed location. She also stated support for the activity. She did not think the town should be worried about being labeled as a crematorium town.

Stan Murawski, 154 Skeet Club Road, commented on having attended the last two meetings, stating that people in favor of the application don't live 1,000 feet or less away from the proposed site.

Barbara Cushing, Skeet Club Road, thanked the local politicians for doing their jobs and serving constituents. She pointed out the contradictory nature of the applicants' willingness to be shut down by the Health Department if there are concerns with air quality and climate and then in another point stating there would be no odors or emissions.

Hugh Curley clarified that he had spoken with four people from New Hampshire about the Whispering Pines facility there; this was not a statistical sampling, rather, an informal polling.

Trish Dynia, Main Street, addressed the Commission, stating that she does live more than 1,000 feet from the proposed operation and surrounding neighborhood. However, she pointed out that the Commission's decision is not made via a popularity contest. She said that there have been many things on Main Street that she has not been pleased with; nonetheless she did not "act like a six-year-old" at meetings over her dissatisfaction. She expressed concern with the rudeness and disruptions from people not in favor of the application toward proponents speaking in support. She encouraged everyone to be respectful.

Alex Upton of Middletown, addressed the Commission. He supported the proposed operation, noting that people moving into that neighborhood knew that they were living in an industrial zone. He stated that many people have mentioned moving to Durham as a farming community. With that comes the natural deaths of farm animals, it is part of farming.

Matt Brady, 174 Skeet Club Road, stated that he had attended all of this application's hearings. He stated that he had expected to hear a lot of testimony regarding air emissions—but the only thing, to date, has been a sales brochure from the equipment manufacturer. He said that it was not even clear if this is the same unit as that proposed for installation. Senator Gaffey had referenced using the best available control technology. Nor were specific quantities of Co, NOX, opacity, etc., presented. Particulate matter was not discussed either. He believed the Commission had entirely inadequate information on which to base a decision.

He also stated that the idea of annual testing is really quite meaningless—it would depend on what was being burned that day and doesn't take into account what happens every day the rest of the year.

Attorney John Corona was then afforded the opportunity to respond to comments made. He stated that it was interesting that Senator Gaffey has considerably changed his mind since a March 2008 letter he'd originally wrote (in which he endorsed the project and commended the applicants). In terms of a comment about an emissions permit, he cited communications from the DEP indicating that the proposed operation does not meet the applicability requirements of regulations for an emissions permit and that one was not required.

Attorney Corona acknowledged that Representative Ray Kalinowski has stated that he has horses and that crematoriums are a good idea—but that he has refrained from stating where they should go.

In terms of the remarks offered by the owner of Lincoln Equipment, Attorney Corona stated that he was sorry to hear the remarks made about not investing in Commerce Circle if the crematorium were to locate there. Other business park areas have survived quite well—with businesses that are perhaps far more sensitive than machine shops and other industrial uses that currently exist at Commerce Circle. In terms of comments made about the school bus depot, Attorney Corona stated that he believed that a different site was being investigated for the parking of school buses; nonetheless, horses continue to be buried throughout town in people's yards and there could be biohazardous impacts from this activity.

In terms of effect on business activities in Commerce Circle, Attorney Corona did not believe there would be any impact at all from the proposed operation; there are already vacancies throughout the industrial park. More occupants in the park would be likely to make the place more successful and attractive to future businesses.

Attorney Corona also stated that the business will be no different than others in terms of use of water on the site. Ammonia will not be discharged into the septic system; it is similar to bleach, which most people use. The question is one of quantity.

To comments made regarding emissions and testing, the applicants anticipate that there will never be a need to limit their operations in terms of emissions; however, to be thorough recommended language simply gives authority to the Health Department. The applicants are taking every precaution to ensure safe operations. In terms of future tax benefits, it is impossible to predict the growth of any business. However, using Dolphin Day Care as an example, that business grew from a small operation to a large business with a capital investment in town. The proposed business in town will not likely be the largest taxpayer—nor the smallest taxpayer. He contended that businesses should not be invited to town on the basis of what they will pay.

With regard to authority and enforcement, the Health Department is being given maximum authority with layers of state and Federal regulations over the proposed operations. Depending on what the hypothetical problem is would determine who had the respective authority.

Attorney Corona stated that people have stated they are drawn to the country atmosphere; however, it is impossible to have farm animals without the other things that go with them inherently: 'horse poop' and death. He suggested rhetorically that if someone is attracted to an image, they should buy a book of postcards.

Attorney Corona stated that the Bureau of Alcohol, Tobacco, and Firearms carefully regulates the location of explosive facilities (i.e., Dapkus fireworks business) and mandates separating distances.

With regard to the comment that the Ozick Drive location was declined for this applicant, Attorney Corona stated that that was not the case. Instead, the applicant reconsidered and withdrew the application, taking the advice of Commissioners Richard Eriksen and Frank DeFelice to remove the application from the Design Development District and place it in the more suitable Heavy Industrial zone.

In terms of economic viability, the business owners are planning to charge in the vicinity of \$1,500 to \$1,800 per animal; this is a more than sufficient business model to sustain two full-time owner/operators of the business.

Attorney Corona stated that the information provided by Hugh Curley demonstrates how such an operation can be successfully integrated into the community. If a restaurant can survive next to a horse crematorium, it must not be offensive.

In terms of emissions information, this data was submitted. The State of Connecticut reviewed the data submitted by the applicant—as it does virtually all data submitted by applicants. This is how the system works.

Facility testing, by its very design, is staged; however, on the day of testing, actual operations (cremation of a horse) would need to occur across more than just one testing (typically three).

Attorney Corona stated that while the public sentiment might be that they like the idea of a horse crematorium, just not in their neighborhood—that is no credible reason to deny the application.

Greg Bedell, 176R Skeet Club Road, pointed out that there is a continued problem with waste water, stating that the Connecticut Environmental Protection Agency will not allow processed waste water to be put into the ground in that area.

Senator Ed Meyer addressed the Commission, stating that he represents 100,000 people in Connecticut and makes decisions every day to protect his constituents. It was his personal decision to attend the hearing and he believes he is doing his public duty, looking at the law, alternatives, and the responsibility of the Commission.

Frank DeFelice clarified that the proposed testing protocol is done with actual loading based on 95% maximum capacity of unit with three tests conducted, each one hour apart. He stated that this was a reasonable protocol and Attorney Corona concurred, that this is the type of testing planned.

Attorney John Corona then summarized the application, noting that there are two certainties of life: death and taxes. Farming, an integral part of Durham, does include the death of animals with the incumbent need to dispose of them in a way that is safe and environmentally responsible. Burial in the ground is not the best method. He noted that Durham has long been an agricultural community; the town seal depicts an ox. There are a great many horses in town and the town has an obligation and responsibility for providing for proper burial upon the death of these horses.

In terms of economic benefit and tax implications, Attorney Corona stated that Commission Jim Kowolenko said it very well at a previous meeting: this proposed business doesn't generate traffic or noise, doesn't require outside lighting, and will pay taxes—"what could be better?"

Given the number of vacancies at Ozick Drive and within Commerce Circle, this is another potential tenant that could move into town. Attorney Corona pointed out that without public sewer or water, there were a lot of limitations. He added that Rory Wilson's building (Ozick Drive) will be auctioned through a foreclosure sale shortly. Commerce Circle is not yet fully built out. He suggested that the town is not in a position to cast aside potential economic development opportunities. The proposal is consistent

with the Plan of Conservation and Development. He added that if the Commission means what it says—preserving the agricultural nature of the town—then this is a business that directly supports agriculture. To do nothing would mean that animals continue to be buried in the ground.

Attorney Corona also addressed the remarks about members of the public speaking out rudely; he stated that facts tend to get lost in the shuffle when people applaud and talk among themselves throughout a hearing/presentation.

Finally, he asked if the Commission had any questions that needed answering—stating that it can be frustrating for applicants to have a hearing close and then hear of questions as the Commission continues its discussion—never having been informed in the hearing that there were questions.

The applicants both thanked the Commission, stating that they are not politicians and don't make these application presentations for a living before zoning commissions. They asserted that in their world, this is a handshake business, where what you say is what you mean. They summarized that the burden is on them to demonstrate that they will be good neighbors and become a good part of the community. They thanked the Commission for their time.

Motion by Richard Eriksen, seconded by Ralph Chase, to close the public hearing of CSK Realty, LLC, request for proposed zoning text amendment, Section 07.01.03 (23) Zoning Regulations, large animal crematories, special permit in heavy industrial zone, and close hearing of Connecticut Horse Cremation, request for special permit, large animal crematory, 41A Commerce Circle. Motion carried unanimously.

Motion by Frank DeFelice, seconded by Jim Kowolenko, to reconvene the regular meeting at 9:58 p.m. Motion carried unanimously.

7. CSK Realty, LLC, Request for a Proposed Zoning Text Amendment to Section 07.01.03. (23) of the Zoning Regulations to Allow Large Animal Crematories by Special Permit in the Heavy Industrial Zone

and

CT Horse Cremation, Request for a Special Permit for a Large Animal Crematory, 41A Commerce Circle

Geoffrey Colegrove indicated that the referral to Wallingford had not been responded to and 35 days have passed.

Richard Eriksen expressed concern with a lack of sewage facilities and handling of whatever disinfectant is used. George Eames suggested that some kind of tank could be used, as exists with gas stations.

Richard Eriksen discussed the concerns of the neighbors and while it is true that many knew they were living adjacent to an industrial area, this is a new use (similar to a small airport that once handled Piper Cubs now handling 747s). He added that he thought the proposed crematorium is “innocuous” and not the same as if humans were being cremated. The activities of elected legislators in terms of establishing regulations at the state level will not be in time for the Commission’s decision.

The Commission discussed the likelihood that any newly enacted state or Federal regulations would affect existing crematoriums. George Eames noted that if the state felt this were such an important issue, regulations would have been enacted before now.

Jim Kowolenko stated that there is plenty of information available through the internet for the Commission to be able to write its own regulations, conditions, and requirements.

Dave Foley reiterated that there are two decisions at stake: amending the use table to allow large animal crematoriums and then considering the specific application for a particular business. The applicant has stipulated that they will abide by any new state or Federal regulations; however, he would like verification from Attorney Tom Byrne that making this a condition of approval is a legal move on the Commission’s part.

He also pointed out that not many horses die of weird diseases (as compared to humans with HIV, typhoid, etc.). He believes the information as presented regarding emissions show that they are clearly below a minimum threshold. Frank DeFelice concurred, indicated that there would be compliance with best available control technology. He also stated that testing could be done initially and then the Commission could determine if it wanted to test periodically or perhaps every five years. The protocol used is three one-hour tests loaded at 95%.

Tom Russell pointed out the need—there are five farms in town with approximately 210 horses. He personally knows of 13 horses buried in the last six months—each one is put to sleep before burial. It is unknown what the toxicity is going into wells. The proposed business is a clean alternative to burial.

Richard Eriksen stated that the Commission originally felt that proximity to several close neighbors and the day care center was what precluded Ozick Drive (Design Development District) from being ideal. Now the Commission needs to wrestle with whether or not the Heavy Industrial zone is appropriate or if such an activity belongs anywhere in Durham.

Ralph Chase stated that it has become a very emotional issue—and the public has given a clear message.

George Eames stated that as Richard Eriksen noted, the Commission had originally advised the applicants to look at the Heavy Industrial area—which they have done. If the Commission now decided that it doesn’t want this type of business in the Heavy

Industrial zone or even in Durham, is that a valid reason to not accept such an application?

Richard Eriksen stated that he did not know if the constitution provides for crematorium (citing the protection for adult entertainment—which the Commission restricts to just Heavy Industrial zones). If the Commission approves the change to the use table to allow for large animal crematoriums in the Heavy Industrial zone by special permit, then it can determine what conditions would be appropriate.

Frank DeFelice suggested that the language presented by Attorney John Corona could be considered.

Dave Foley pointed out that they, the Commission, represent all of the residents of Durham, not just the residents of Skeet Club Road and its immediately vicinity. He noted that compared with other hearings on controversial topics, this particular hearing had substantially more favorable opinions cited than most. He stated that the Commission needs to look at the needs of Durham. He stated that he personally could not think of any other zone more appropriate than the Heavy Industrial zone, but that he hasn't made that decision yet. He also pointed out that when considering a business in town, it doesn't necessarily have to have the town (and just the town) as its only focus (i.e., Permatreat and many other companies in town have clients nationwide).

Jim Kowolenko pointed out that such a business increases the tax roster and doesn't send kids to the schools.

Richard Eriksen noted that approximately 70 neighbors and 7-8 commercial tenants have weighed in negatively on the proposed application.

Frank DeFelice asked for clarification about how the Design Development District is subordinate to the Heavy Industrial zone (and if allowing it in Heavy Industrial would automatically allow it in DDD); this is not the case; Geoffrey Colegrove stated that to amend the use table as proposed would enable large animal crematoriums only in the Heavy Industrial zone and not the Design Development District.

Gene Riotte mentioned an examination of the Plan of Conservation and Development with regard to long-term, long-range benefits to the town (i.e., from the standpoint of protecting water supplies—from the burial of horses in-ground). This could be an opportunity to plan for the protection of natural resources and the environment.

Motion by Ralph Chase, seconded by Tom Russell, to approve the addition of use: large animal crematoriums by special permit in the heavy industrial zone—as proposed zoning text amendment to Section 07.01.03 (23) to Zoning Regulations, effective August 10, 2008. Motion carried, 7-2, with all in favor with the exception of Ralph Chase and Richard Eriksen (in opposition).

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The Commission asked that Geoffrey Colegrove confer with Attorney Tom Byrne concerning the legality of a stipulation in an approval that is hinged to a change in state or Federal regulations.

Ralph Chase stated that Durham is not the first town to wrestle with animal crematorium language.

Richard Eriksen stated that because it is now on the use table, the Commission is required to approve the application with conditions—in other words, a horse crematorium is now allowed by special permit.

Motion by Ralph Chase, seconded by Richard Eriksen, to adjourn the meeting at 10:43 p.m. Motion carried unanimously.

Respectfully submitted,

Jan Melnik

7/23/2008