

TOWN OF DURHAM

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

MINUTES OF DECEMBER 7, 2005, MEETING

Present

Members: Ralph Chase, George Eames, Richard Eriksen, Dave Foley,
Jim Kowolenko, Jan Melnik, Tom Russell
Town Planner: Geoffrey Colegrove
Alternates: Gene Riotte, Jackie Snow

Absent

Member: Dian O'Neal
Alternate: Frank DeFelice

The meeting was called to order by George Eames, Chairman, at 7:30 p.m. Jackie Snow was seated on the Commission in Dian O'Neal's place. Gene Riotte was seated on the Commission in Brian Ameche's place.

George Eames introduced the newly elected members of the Planning and Zoning Commission, Tom Russell and Ralph Chase (Commissioners) and Jackie Snow (Alternate).

1. Approval of Agenda

Motion by Dave Foley, seconded by Jan Melnik, to amend the agenda of the December 7, 2005, meeting to include an 8-24 review of the 13-acre parcel, Mattabessett Ridge (two-lot subdivision), Pat DeNatale, as item 6a on the agenda. Motion carried unanimously.

Brian Ameche was seated on the Commission at 7:34 p.m. Gene Riotte was unseated.

2. Public Session

Jim Catarano, New Haven Road, addressed the Commission regarding the reestablishment of a business at the former Red's Mill Taverne/Hot Rod Café site. It will be the "Hitching Post

Taverne.” He asked if the Commission was aware of these plans and the advertising of live music (9 p.m. until 1 a.m.).

Richard Eriksen stated that this is a nonconforming use that is permitted in that location; music is allowed to be played inside the business. The State of Connecticut is responsible for licensing the business.

Jim Catarano stated that the business is purported to be a “family-run business,” but that the owner is really “trying to hoodwink the town.”

Richard Eriksen indicated that until/unless there is a violation, there is nothing the Planning and Zoning Commission can do. The Board of Selectmen is responsible for enforcing the noise ordinance.

Attorney Joseph Milardo addressed the Commission on behalf of his clients, William and Diana Cruise, Sandy Kovak, Mr. Dingwell, and Cindy Turcik. He stated that while he had contacted Attorney Ken Antin and offered to sit down to discuss the matters related to Greenland Realty, no contact has followed from Attorney Antin. He distributed a letter dated September 18, 1998, from Geoffrey Colegrove detailing some of the history behind the status of Old Mountain Road. There is considerable question as to the actual status of Old Mountain Road and whether actions from 1905 can be construed to represent abandonment of the road. Attorney Milardo’s position is that the road was abandoned and, therefore, cannot be used for further development of the Ozick Drive-area properties. He distributed copies of minutes from a 1905 meeting and a 1929 meeting where there was discussion and deferral of the question of abandonment of the road in question. Subsequently, on March 3, 1930, there was a town meeting at which the question of “closing several of the old roads in town” was discussed. Two comments were highlighted from the minutes: “The Selectmen recommended the closing of these roads. Voted, that these roads be discontinued at the discretion of the Board of Selectmen.”

However, Geoffrey Colegrove pointed out that while these comments relate to possible closing of Old Mountain Road, there is no record that the Board of Selectmen actually followed through and officially removed the road as a town road.

Attorney Milardo detailed the ongoing maintenance of the road assumed by neighbors along the road until quite recently, when the town began to make some improvements.

To George Eames’ query as to whether or not abutters of Mountain Road (if it is determined to not be a town road) have the right to use the road to gain access to Route 68, Attorney Milardo’s reply was that abutters could use the road in concert with other neighbors—but the easement cannot be overburdened. He further admonished the Commission not to entertain the idea of a subdivision on a road determined to be a non-town road.

Geoffrey Colegrove reiterated that per meetings with the first selectwoman, Maryann Boord, he was authorized to contact Attorney Ken Antin who, in turn, was authorized to hold discussions with Attorney Milardo over the matter.

Attorney Milardo then discussed residents’ rights versus the rights of developers and the potential for inappropriate development.

In terms of the plantings that were to have taken place on the Cruises' property, Attorney Milardo indicated that the minutes clearly reflected that arborvitae was to have been placed on the Cruises' property. He suggested that this not being reflected on the site plan was an error that should have been caught in review prior to approval.

Attorney Milardo summarized his remarks, indicating his position that the Commission should not be acting on pending applications without a proper foundation (i.e., clarity regarding the status of Mountain Road). He cautioned that the Commission exercise care in reviewing the Greenland and Arrigoni applications/sites.

3. Pat DiNatale, 8-24 Review, Mattabessett Ridge

Pat Benjamin reviewed a map of the property to be donated to the town of Durham. Approximately 13.02 acres are proposed for donation. This is the balance of a subdivision that was presented at the previous meeting.

The Inland Wetlands Commission will review the application at their meeting on December 12.

The Conservation Commission has already reviewed the proposal; the property owner is in the process of obtaining an appraisal of the property. The town will bear the cost of the appraisal in exchange for the donation of the property.

Brian Ameche asked for a map of the 13 acres to see how fits in with the balance of the property.

Motion by Richard Eriksen, seconded by Ralph Chase, to approve acceptance of the 8-24 review of the 13.02-acre parcel, Pat DiNatale, subject to successful completion of ongoing negotiations regarding conveyance to the town of Durham. Motion carried unanimously.

4. Greenland Realty, LLC, Update of Progress, 10 Mountain Road

Attorney Joan Molloy addressed the Commission. She indicated that all outstanding issues on the site had been completed; Geoffrey Colegrove concurred that a recent site visit demonstrated compliance with the site plan (recently modified).

The only issue remaining is the matter of trees being planted on the Cruises' property. Attorney Molloy suggested that this is a civil matter on which there is not yet resolution. She has asked William Cruise for a copy of the landscape architect's plans.

To Jan Melnik's question regarding the lights at the back of the building remaining on and pointed in such a direction to be visible by neighbors, Attorney Molloy stated that she would investigate this situation.

Jan Melnik also asked the status of the temporary certificate of occupancy and her recollection that it was to have been rescinded. Geoffrey Colegrove indicated that the temporary certificate of occupancy was never rescinded.

Attorney Molloy indicated that some of the dead trees have been replaced.

The garage door on the end of the building has been removed; ultimately, the exterior siding will need to be replaced to provide a match to the existing building color.

The removal permit runs through March 31, 2006, with hours of operation specified as Monday through Friday, 8 a.m. until 4 p.m. When screening is to be performed, it must be located at the easterly side of the site. Progress is being made with regard to removal of some materials from the site.

Sandy Kovak asked about the previous representation (August 6, 2003, meeting) that any screening of materials would occur on one week per month from 8 a.m. to 3 p.m. with no activities on Saturday and Sunday. The new permit replaces that.

Richard Eriksen stated that it was important, in light of previous problems, that all information be placed on the map.

Motion by Dave Foley, seconded by Ralph Chase, to recess the regular meeting for the public hearings at 8:08 p.m. Motion carried unanimously.

PUBLIC HEARING

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

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

Town Planner: Geoffrey Colegrove

Alternates: Gene Riotte, Jackie Snow

Chairman George Eames read the call for the continued Public Hearing from the Legal Notice. Attendance was taken and all members present were seated on the Commission. Jackie Snow was seated on the Commission in Dian O'Neal's place. Gene Riotte was present but not seated on the Commission.

Attorney Richard Carella addressed the Commission on behalf of the applicant and asked Pat Benjamin, a licensed civil engineer, to present the site revisions to the Commission. Pat Benjamin explained that most of the revisions were minor (adding a sand layer under the plastic liner of the detention basin, for instance). Drainage revisions were revised and submitted to address the engineering comments. He explained there will be three buildings with a total of 22 units. The traffic on the road, when the units are finally developed, will be about 88 trips per day (four trips per each of the 22 units). This will resemble the highest activity of excavation traffic (wherein there will be between two and 40 trucks per day on the road). He stated that traffic on the road will be similar, both during and after excavation.

Pat Benjamin then described the physical site and need for removal of material to accommodate one 225-foot long building. In order to create a satisfactory platform, the amount of excavation proposed is necessary.

Attorney Carella stated that it is clear that the proposed plan meets the regulations for the design development district.

To Jim Kowolenko's question about how long it will take to remove the 70,000-75,000 cubic yards of material, the reply was two to three years.

Dave Foley asked if an A2 survey, as required, has been done on the site (it has). To the question of who owns the property to the east, it belongs to Ms. Kovach/Mr. Dingwell. In preparing the A2 survey, Mountain Road is considered to be a town road.

William Cruise asked if it is possible, on a property less than 10 acres in size in the design development district, to build on only five acres (with about five being in wetlands). He also stated that while the town had allowed about \$48,000 to put pipes under the road, cost overruns to divert to the brook ran up the cost to \$78,000. He is concerned that two vehicles cannot pass on the road. If Mountain Road is a town road, William Cruise stated that the town should build a 30-foot wide road with a five-foot snow bank; 40 feet might be necessary for two trucks to safely pass. He asked who would be paying for this (suggesting the limited use by taxpayers' for their investment). He also referenced the drainage already performed along the road by the town. Water is diverted in the wrong direction and continual "dress-up" is required by the town with each rain event.

William Cruise spoke favorably of the Arrigoni family, but questioned the wisdom of excavating and removing as much material as is proposed. He did suggest that at \$10 a ton, there is ample funding available for the developer to pay for whatever is required.

Pat Benjamin stated that the wetlands had been flagged by a biologist and certified soil scientist and comprise about one acre of the entire site.

Richard Eriksen suggested continuing the hearing—provided an extension is granted—because of the unknown status of the road. In addition, he stated that the Commission needed to consider the appropriateness of what has been proposed (both from a removal standpoint and a construction standpoint).

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

PUBLIC HEARING

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

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

Alternates: Gene Riotte, Jackie Snow

Chairman George Eames read the call for the continued Public Hearing from the Legal Notice. Attendance was taken and all members present were seated on the Commission. Jackie Snow was seated on the Commission in Dian O'Neal's place. Gene Riotte was present but not seated on the Commission.

Attorney Richard Carella addressed the Commission and asked that all comments, evidence, and exhibits from the immediately preceding hearing be included in this hearing and vice versa.

Because more than 1,000 cubic yards of material is proposed for removal, a special permit is required. Attorney Carella explained that about 75,000 cubic yards of material will need to be excavated and about 70,000 cubic yards removed in order to prepare the site for the proposed three buildings. He acknowledged that this is an extensive amount of excavation, screening, and removal. He stated that at the previous public hearing, the applicant had demonstrated that alternatives were examined as a way of minimizing the amount of material to be removed. However, no feasible alternative existed, a fact that he stated was confirmed by the town's engineer.

Sandy Kovach, 89R Mountain Road, addressed the Commission. She asked why the hearing would be going forward without there being an established road.

George Eames explained that because the hearing was properly noticed and the Commission had voted previously to continue the public hearing, it was appropriate to continue with discussion. He agreed that the status of the road would need to be determined.

Sandy Kovach stated that the Arrigonis have never approached them nor tried to discuss plans with them. She is concerned about the potential damage from blasting six days out of seven. Her well is located very close to the property lines.

Pat Benjamin indicated that blasting and crushing would likely take from 90 to 120 days per year. In terms of well proximity, the septic systems are far enough away from this site to meet the health code requirements. The uses, as proposed, are allowed in the design development district. Further, there will be no storage of toxic chemicals. The detention basin for stormwater runoff will be lined with plastic plus six inches of sand and a three-foot foam layer on top.

Pat Benjamin described the watershed on the site. When built as designed, there is a change to the small subwatershed because of a diversion of water. The total flow to Mountain Road is reduced.

All neighbors' property was taken into account in the planning of all activity for this site.

Dave Dingwell, 89R Mountain Road, asked why the crushing and screening would need to take place on the site. He added that the noise from crushing operations is unreasonable. He suggested that this type of mining operation, if approved, sets a dangerous precedent for doing anything in Durham.

William Cruise indicated that his property includes a brook at the back with water running to the west. He expressed concern about the water from behind the barn.

Pat Benjamin stated that he had looked at the direction of drainage. There is a zero increase in discharge post-development. He explained the site details. There is no runoff from this property to the Cruises' property.

Dave Foley reiterated the point that an A2 survey had been developed with the town of Durham owning property to the east and north of this site.

Tom Russell asked if preblast surveys of the surrounding homes would be conducted prior to blasting. Pat Benjamin responded affirmatively. All requirements of blasting and the insurer would be followed, including preblast surveys, picture-taking, speaking with residents, asking permission to photograph basement walls and foundation walls, set up of seismometers, etc. He stated that blasting within 25 feet of 200-year-old houses is done successfully.

Brian Ameche stated that one requirements of the regulations, 12.05.03.01.03 (b), stipulates no washing-crushing or other forms of processing earth products is to be conducted upon premises unless within heavy industrial zone and not within 100 feet of any property. The next section indicates a separate application for screening and sifting be made before the Commission.

Jan Melnik queried, following up on Dave Foley's points about the A2 survey, the responsibility of the Commission to follow through on establishing status of Mountain Road (versus requiring the applicant to do so).

Attorney Carella indicated that earth excavation and removal is permitted in the design development district language (7.04.04.16) provided that there is compliance with 12.05.03.01.03 (b). He reiterated that this is not an ongoing earth product business but, rather, site preparation (albeit extensive). Crushing and removal is allowed in conjunction with the site plan application. It is not designed to be a gravel pit or quarry, only to allow development of the site to permit the construction of three buildings.

Richard Eriksen used the quacking duck analogy in speaking about the definition of quarrying; he asked what quarrying was, if it was not the removal of 75,000 cubic yards of rock or stone.

Brian Ameche referenced the 12.05 section on the design development district and stated that he believes it speaks for itself.

Motion by Richard Eriksen, seconded by Ralph Chase, to continue the public hearing of Arrigoni Enterprises, earth excavation and removal, Mountain Road, to the December 21, 2005, meeting. Motion carried unanimously.

Motion by Jackie Snow, seconded by Jan Melnik, to reconvene the regular meeting at 8:42 p.m. Motion carried unanimously.

5. Approval of 2006 Meeting Dates

Motion by Ralph Chase, seconded by Dave Foley, to approve the following meeting dates for 2006:

January 4 and 18

February 1 and 15

December 7, 2005

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March 1 and 15

April 5 and 19

May 3 and 17

June 7 and 21

July 5 and 19

August 2 and 16

September 6 and 20

October 4 and 18

November 1 and 15

December 6 and 20

Motion carried unanimously.

6. Election of Officers

Jim Kowolenko stated that he appreciated the efforts of several members on the Commission and specifically mentioned Gene Riotte as an alternate. He thought other members would do well if elected to serve as officers.

Motion by Jan Melnik, seconded by Jackie Snow, to cast one ballot to elect the existing slate of officers:

George Eames, Chairman

Richard Eriksen, Vice Chairman

Brian Ameche, Secretary/Treasurer

Motion carried unanimously.

7. Payment of Bills

Motion by Dave Foley, seconded by Ralph Chase, to approve payment of the following bills:

Absolute Advantage - J. Melnik - \$525.28 (minutes Nov. 16, 2005)

Attorney Thomas Byrne - \$2,925.00 (Hannah enterprises)

Midstate Regional Planning Agency - \$2,668.66 (November expenses)

Midstate Regional Planning Agency - \$159.70 (copies of zoning regulations)

Midstate Regional Planning Agency - \$152.40 (additional copies)

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

8. Approval of Minutes

Motion by Dave Foley, seconded by Ralph Chase, to approve minutes of the November 16, 2005, meeting as presented. Motion carried, 7-2, with all in favor with the exception of Tom Russell and Jan Melnik (in abstention).

Motion by Jim Kowolenko, seconded by Dave Foley, to approve minutes of the November 2, 2005, meeting as presented. Motion carried, 7-2, with all in favor with the exception of Tom Russell and Jan Melnik (in abstention).

9. Town Planner's Report

Geoffrey Colegrove indicated that a number of items were outstanding on Olde Yankee Way; until the town engineer has reviewed this, the Commission will not schedule it on the agenda. This matter inadvertently was brought before town meeting (for new road approval), but was stricken from the record.

Richard Eriksen launched a discussion of town roads and non-town roads. He expressed concern with future liability on the part of the town. While previous attempts to discontinue unused town roads have failed, he felt it worthwhile to bring up again.

Motion by Richard Eriksen seconded by Ralph Chase, to obtain a list and mapping of all town roads and questionable town roads in Durham. Motion carried unanimously.

Geoffrey Colegrove indicated that the application for a two-family house variance on Haddam Quarter Road was proceeding on December 8. An affidavit was submitted by neighbor Henry Coe that the house was a three-family dwelling since at least 1967. With the change in subdivision requirements (minimum two acres), the house would need significant added square footage to remain legal.

Under enforcement Richard Eriksen asked that the demolition materials being deposited at the intersection of Routes 68 and 157 be pursued; a letter will be sent to the Meadows regarding the violation.

Ed Grimes will also check on the flashing red Lotto sign as well as excessive building signage at the Little Rooster.

Jim Kowolenko suggested that the Commission review what businesses are allowed in the design development district to avoid future problems. He also suggested that we perhaps consider a maximum for excavation and removal of materials (we already stipulate a special permit be sought for anything over 1,000 cubic yards). It was generally the consensus that the current language does provide a trigger for a special permit application with anything over 1,000 cubic yards.

Brian Ameche asked Geoffrey Colegrove to provide the site plan of the property on Stagecoach Road (inadequate lines of sight) at the next meeting. The one-lot subdivision was approved in the 2000-2001 timeframe. Owners of record have been contacted. No certificate of occupancy will be issued until the property meets the subdivision requirements.

Regarding the erosion concerns along Powder Hill Road (Signature Gordon), Richard Eriksen recommended that the certificates of occupancy be deferred.

Motion by Richard Eriksen, seconded by Dave Foley, to hold off on issuing two certificates of occupancy for two new lots (one on Old Powder Hill Road and one on the new road off Powder Hill Road) until a meeting regarding fire department issues, erosion concerns, etc. resolves outstanding problems. Motion carried unanimously.

10. Miscellaneous

The Commission's counsel, Thomas Byrne, was in attendance to meet with the Commission. He stated that with special permits, the Planning and Zoning Commission has considerable leeway in terms of a decision to grant or not, taking into account whether or not an operation is appropriate for the location. Even if the applicant satisfies all standards as presented in the regulations, the Commission can still turn down the application if it is not in an appropriate location. However, the Commission does not want to prejudge any application. A hearing must first close, then deliberations can transpire over 65 days. Once all the facts are in (regarding the Arrigoni application), the Commission will be in a better position to assess.

Attorney Byrne indicated that after viewing the property and being present at the public hearing, the site and proposed work is a lot different than what he had envisioned. Geoffrey Colegrove indicated that a major dilemma is whether or not the activity as proposed is mining of bedrock or preparation of site. Attorney Byrne indicated that what is proposed is clearly preparation of the site. However, there is no definition of quarry in the regulations; it needs to be determined how this fits into the regulations. He also noted that the Commission's previous dilemma on a quarry situation concerned a single-family home and driveway—very different than what is being contemplated this evening. He urged the Commission to continue to collect information from all parties, close the hearing at the appropriate time, then make a decision.

Considerable discussion ensued regarding Mountain Road. If the regulations require access to a town road, even with a preexisting lot of record, Attorney Byrne indicated that the town cannot be expected to absorb the cost of road development. Rather, the applicant might simply have to wait until such time as a road is naturally improved. Alternatively, an applicant could petition for construction of a road or build a road itself.

While, over time, the town has made a habit of contributing to the improvement of town roads, Brian Ameche stated that this has always been done on a case-by-case basis.

Attorney Byrne stated that if Mountain Road is determined not to be a town road, there is no need for the town to do anything. If it is a town road, then the town has a responsibility to maintain it in a safe condition.

The discussion before the Commission now is whether or not it is a town road, whether or not it was ever abandoned. Again, if the road was abandoned, there is no obligation for the town to do anything.

Attorney Byrne added that nonconforming lots are not protected against changes in regulations (i.e., requirements for access to a town road); however, nonconforming uses are protected (in other words, vacant land is not protected). He also stated that the burden is on the applicant, and not the Commission, to prove that it is a town road and prove that there is frontage on a town road. The applicant always has the burden of demonstrating compliance with the regulations.

It is important for Attorney Ken Antin to get back to the Commission with his findings/interpretation before the close of the public hearing.

Gene Riotte noted that Spruce Hollow is a town road and wondered if this would that satisfy the town road access/frontage requirements. The regulations do indicate access is necessary.

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To the issue of confiscation of property, the only way this would be relevant is if an applicant were denied *all* use of their property.

Everyone discussed the fact that most of the easy, obvious development in town has been completed. Now more difficult parcels are being proposed. Attorney Byrne indicated that the Commission can write and include a definition of quarrying in the regulations and define what constitutes it as opposed to site preparation activities. The hope would be that everyone interprets things the same way.

It was generally agreed that a moratorium would not be appropriate.

Motion by Ralph Chase, seconded by Dave Foley, to adjourn at 9:40 p.m. Motion carried unanimously.

Respectfully submitted,

Jan Melnik
12/14/2005