

# TOWN OF DURHAM

## Planning and Zoning Commission

P.O. Box 428

Durham, Connecticut 06422-0428

### MINUTES OF JANUARY 17, 2007, MEETING

#### Present

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

Town Planner: Geoffrey Colegrove

Alternate: Frank DeFelice

#### Absent

Member: Dian O'Neal

Alternates: Brian Ameche, Mike Geremia

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

Frank DeFelice 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 the January 17, 2007, meeting as amended to reflect the deletion of Vincent Baker, request for special permit for earth excavation and road construction, Old Blue Hills Road and Higganum Road. Motion carried unanimously.

#### 2. Public Session

Diana Cruise advised that trucks were hauling dirt onto the site. Ralph Chase and Jim Kowolenko added that the material resembles screened loam. Geoffrey Colegrove was asked to investigate this matter.

Diana Cruise also asked about the status of the investigation of the lights on at Murphy Pool. Geoffrey Colegrove stated that the lights are on at all times. A cease-and-desist order will be issued.

### 3. Zoning Enforcement Officer's Report

The signs not in compliance at the Hitchin' Post Café on Route 17 have been removed; the one sign that is permitted is there and in compliance. It was not necessary to issue a cease-and-desist order in this situation.

Geoffrey Colegrove stated that there were still problems with Brian Esparo's property being out of compliance; he is in violation of a home occupation permit with snow plows at the property as well as the operation of a construction business/equipment on the site. Geoffrey Colegrove will start a series of letters (delivered by sheriff); after two letters, if there is not a correction of the problems, Attorney Tom Byrne will be notified to issue a cease-and-desist order. Brian Esparo will be reminded that the home occupation permit allows for the office for the construction business only and no storage of equipment or plows on the site (except his own personal truck/plow).

Geoffrey Colegrove reported on the matter with Patrick Bufford, Augur Lane. He appealed to the Zoning Board of Appeals on the basis that he had submitted information to the town hall and was told that he didn't need a permit for the pup tent-style shed. There was a meeting a week ago; there is one other building on the property that does comply with the regulations.

### 4. Greenland Realty, LLC, Request to Release Erosion and Sedimentation Control Bond

A letter was received from Brian Curtis/Jacobsen Associates regarding the follow-up inspection of Greenland Realty. Details include the following:

- 1) embankment cuts along southerly and southwesterly areas of the gravel parking area have been graded to a 2:1 slope and stabilized with wood chips
- 2) the one dead pine tree along the westerly property boundary buffer planting has been replaced
- 3) the catch basin on the west side of the driveway to the northwest of the building has been uncovered and provided with a low block headwall to retain the embankment
- 4) a stone-lined drainage swale has been constructed north of the parking area on the north side of the building to direct surface runoff to the detention basin
- 5) the wood chip erosion control berm has been reestablished to the northeast of the earth stockpile area at the north end of the site

According to the town engineer, all items have been addressed and release of the \$11K bond is recommended.

Dave Foley stated that he was uncomfortable with this recommendation, given the newest stockpile of dirt on the site. He asked about transferring the bond (or a portion thereof) to cover this piece of work. That is not allowed (the David Lavigne/Troutlily Road matter was noted as an example). Dave Foley reiterated the point that the site is not in compliance.

Geoffrey Colegrove stated that the owner had applied to the Commission to remove the original stockpile to bring the site into compliance; however, the Planning and Zoning Commission denied Greenland Realty the permit to remove that material. The matter is now in court.

Dave Foley stated that the erosion and sedimentation control plan is for the entire site plan and that there is still a problem on the site with the possibility of erosion from the newest infraction.

Ralph Chase asked why these issues weren't addressed in the October 16, 2006, inspection report.

Geoffrey Colegrove stated that he was in agreement that there are currently inadequate controls for erosion and sedimentation on the site.

The Commission agreed to consult with the town engineer regarding what is appropriate to keep for a bond for the balance of erosion and sedimentation controls for the site.

Motion by Richard Eriksen, seconded by Jan Melnik, to refer the bond issue to Brian Curtis/Jacobsen Associates for Greenland Realty in the matter of the erosion and sedimentation bond release and have the town engineer review the entire site (known to be out of compliance because of now two unauthorized stockpiles) and ask the town engineer to recommend an amount for a bond appropriate to secure these areas; table the bond release request. Motion carried unanimously.

##### 5. Continuation of Public Session

Paul Freska addressed the Commission. He is interested in turning his residential property at 447 Main Street into commercially zoned property, if possible. The new M&M garage has been constructed across the street from his house and the values of residential properties in the vicinity have gone down, according to him. He stated that he had dropped the asking price of his house by \$50K, but there are still no offers or interest in the past year that he has been trying to sell his home. He also discussed the future impact of Lino's expansion on the residential properties. He described the nuisance factor of dumpsters being emptied at 3:30 a.m. and the significant growth of traffic on Main Street since he moved to town in 1995.

Geoffrey Colegrove stated that he had advised Paul Freska that he should determine if others are interested in changing the zone in the vicinity and that a joint letter could be filed listing all of the properties interested in a potential zone change. A sign would need to be posted and a public hearing could be held. Abutters should be notified. Information that would need to be included on the application would be property owner, address, parcel number, lot number, and interest in changing from farm-residential to commercial.

It was noted that the support of adjacent property owners would be desirable; to try to change a single parcel is not feasible (spot zoning).

Ron Matyjas, 437 Main Street, addressed the Commission. He is also interested in a change of zone for the east side of Main Street. He stated that some type of transitional zone could be desirable, in particular with possible concerns by the residents of Oak Terrace (running parallel to Main Street at the north end of town).

Geoffrey Colegrove stated that the zoning regulations do not currently provide for a transitional zone. All applications for commercial uses are by special permit. He stated the property owners could file for a regulation change that would allow for a mixed use/transitional use. A zone change is the simplest way to proceed; it is more complicated to apply for a regulation change that would include a newly created zone. A public hearing would be required in any event.

Ron Matyjas also stated that he was concerned with the lighting on the new garage; he had been informed that full cut-offs would be used for fixtures. The wall paks do not appear to be full cut-offs. Geoffrey Colegrove will investigate this matter.

Motion by Ralph Chase, seconded by Dave Foley, to recess the regular meeting at 8:04 p.m. for the public hearings. Motion carried unanimously.

## **PUBLIC HEARING**

1. Applicant/Owner: DR&G Club, LLC and JRD Development, LLC  
Location: CT Route #79  
Application: Request for a Special Permit for an Active Adult Community

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

Town Planner: Geoffrey Colegrove

Alternate: Frank DeFelice

Chairman George Eames read the call for the Public Hearing from the Legal Notice. Attendance was taken and all members present were seated on the Commission. Frank DeFelice was seated on the Commission in Dian O'Neal's place.

Attorney John Corona addressed the Commission. For the record, he stated that a letter had been received from Harry Hall regarding fire protection for the site. He then provided a copy of the presentation delivered by Don Klepper-Smith at the previous hearing (a photocopy of the PowerPoint slides from that presentation).

Since the last hearing, the applicant had appeared before the Conservation Commission. A letter was sent by Adam Moore from the Connecticut Forest and Park Association regarding the relocation of Mattabesett Trail on the site and the idea of creating informal parking on the site for hikers. This would be in the same area as the 13 acres proposed for donation to the town for a senior center.

A meeting has been held with the Senior Citizens Committee; there is some uncertainty about the cost of developing the site and the committee has asked for a window of five years to consider the donation. Attorney Corona stated that his clients believe a three-year window of consideration time is reasonable, but that five years is excessive. He explained that the applicant is not interested in placing that portion of the property under conservation easement because of the potential to construct additional units in the event the town declines the donation.

Richard Eriksen noted concerns with a project of this sort not contributing more than the minimal 10% open space; in other towns, projects of this kind generally encumber considerably more space in open easement/conservation protection. It was noted that there are no real requirements in the regulations for property of this sort.

A great deal of the property is already protected as a consequence of being wetlands. There is a six-acre conservation easement over the northern slope of the property.

Pat Benjamin explained that if the applicant desired development of the 13 acres presently earmarked for donation to the town, a new application would need to be filed and the Planning and Zoning Commission would "get another bite of the apple" in terms of imposing conservation easements.

Attorney Corona stated that he believed the application to be sound, not terraforming, and that a good deal of the site is preserved with the development focused on the interior of the parcel.

Pat Benjamin described the topography adjacent to the property line that abuts the McLean's pond. Mr. McLean excavated a shallow pond in a wetlands area with a berm around the pond. He indicated he had spoken with the McLeans since the last hearing and was asked to protect the pond from any erosion and sedimentation problems. He then detailed the planned erosion and sedimentation controls, which include a line of silt fence plus two rows of hay bales. Only two acres of the proposed project property drain to the wetlands on the McLean property. There is not a high groundwater table in that area. The

silt fence, temporary detention basin, and two more rows of silt fence backed up by hay bales have all been approved by the town engineer.

Pat Benjamin then described the Phase I septic systems, the road itself, and the detention basin as well as Phases IA, II, III, and IV. Two primary septic fields have been designed by the consultant, Delta. All have been approved by the Department of Environmental Protection and have taken into account groundwater, streams, wetlands, and the McLean property.

Frank DeFelice asked the distance from the reserve septic area to the McLean pond. It is a distance of about 160 feet and there is a relatively flat (1%) grade. Pat Benjamin stated that the town engineer's comments had all been addressed. He then reviewed the highlights from the most recent memo from Brian Curtis:

A1 – synopsis of permits necessary to build.

A2 – ensure posted speed limits every 1000 feet, 20 mph; relocate stop signs and stop bar.

A3 – master landscaping plan submitted – determine if additional street trees are desired because of some areas of significant cuts and fills. A landscape architect was consulted. The applicant has looked at initial treeing along roadway access and augmented with street trees; in addition, each home has an individual landscape plan. Trees have now been added to plans for areas of where fill is. These include two-inch caliper maples planted 16-17 feet apart.

A4 – question on phasing plan – all three wells that are in Kings Court will be drilled as part of Phase I.

A5 – looking for construction cost estimate and 3% fee – this will be done.

B1-5 – these items were not included in the original review. The applicant will take care of all these issues (primarily housekeeping), which were not specifically reviewed before the Commission.

#### C Site Development Plans

C1 – drainage structures and pipes – polyethylene pipes with tight joints should be specified (Pat Benjamin stated that they are).

C2 – move storm drain outfall pipe – will be moved an additional 50 feet.

C3 – fire protection – a second tank will be added to the site and plans.

C4 – reserve leach field system – road would have to be temporarily relocated for about one week to construct reserve leach field system.

To a question raised at the earlier hearing regarding solar orientation, Pat Benjamin noted the five criteria which must be considered (house orientation, street/lot layout, vegetation, natural and manmade topographic features, and protection of solar access in development). The roadway system orients north to south with plenty of opportunity for sunlight to enter windows and reach rooftops. Although there are strict clearing limits, there will be adequate sunlight. Cells could be added to rooftops facing south.

Frank DeFelice asked if there are any plans for generators to get water to the homes in the event of a major power failure. Pat Benjamin stated, and Geoffrey Colegrove concurred, that for any property with more than 25 connections (as in this case), a generator is required.

Pat Benjamin reviewed the guardrail detail. It will be Core 10 metal beam guardrail with wood facing.

Richard Eriksen asked about the phasing of the project with regard to the fire protection tank. Attorney Corona stated that the tank must be in and accessible before a building permit can be issued for any of the buildings.

Because of the public water system, the State of Connecticut, DPUC, and state health code will prevail in terms of approval. Ultimately proper certifications will be provided by the State of Connecticut.

Attorney Corona distributed and reviewed language drafted for a potential motion of approval for the Commission's consideration.

#1 – one resident must be age 55 or older ... in the event of an unfortunate situation, there would be provisions to address the matter of a trailing spouse under the age of 55. Attorney Thomas Byrne will work to address this situation.

#2 – approval of the Department of Health – this is a multi-phased and stepped process that is currently underway and expected to take a great deal of time.

#3 – approval of the DEP and DWPCA is necessary to get public sewer system in place – a maintenance agreement with the town and bond for repair/replacement are needed. The applicant will arrange for a licensed operator for the system; the town will have to do virtually nothing.

#4 – conservation easement for four acres will be put in place.

#5 – no certificate of occupancy issued for any dwelling until all remediation standards applicable for lead are met.

#6 – no certificate of occupancy for any dwelling until radon levels in any given unit are within accepted standards/parameters – John detailed process that will be used.

#7 – no building permit for a dwelling until the building department determines plans demonstrate adaptability to meet needs of physically limited persons (but it is not a nursing home and not a handicapped-compliant facility).

#8 – satisfy all comments from town engineer.

#9 – receipt of encroachment permit from the Connecticut Department of Transportation for existing curb cut for proposed use – a technicality.

Ralph Chase noted that the Conservation Commission was very pleased with the proposed trail system.

To Richard Eriksen's query regarding street lighting, the only proposed lighting is at each intersection within the project, one light at the entrance, and one light at each cul de sac. There will be lighting over garage door openings and each door.

Decorative street lights will be used; they are not cut-off fixtures, but all are completely contained on the site.

In terms of signage, there will be one sign for the property that conforms to the regulations for residential signage. The property will likely be a gated community with a checkpoint or some physical barrier and an access card.

There are nine different architectural plans ranging from 1,800 to 2,400 square feet in size for each home.

Attorney John Corona stated that the applicants are seeking preliminary approval. With approval, the mylars will be filed and the Commission will be revisited to go through the punchlist. The town will have the opportunity to review all condominium documents and all other approvals received.

The Commission discussed providing a preliminary (not conditional) approval. Geoffrey Colegrove stated that with a preliminary approval, the applicant cannot build or sell anything, but it does allow them to proceed with seeking state approvals.

Frank DeFelice recommended that items 5, 6, and 7 be placed on the site plan.

Dave Foley recommended keeping the hearing open to ask any questions that might remain. Jan Melnik and George Eames stated that any questions could be addressed through staff. Richard Eriksen commented that if the hearing were not closed, an extension would need to be sought from the applicant.

Motion by Ralph Chase, seconded by Jan Melnik, to close the public hearing of DR&G Club, request for special permit for an active adult community, Connecticut Route #79. Motion carried, 7-2, with all in favor with the exception of Dave Foley and Frank DeFelice (in opposition)..

## PUBLIC HEARING

2. Applicant/Owner: Vincent Baker  
Location: Old Blue Hills Road  
Application: Request for a Proposed 10-lot Resubdivision

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

Chairman George Eames read the call for the Public Hearing from the Legal Notice. Attendance was taken and all members present were seated on the Commission. Frank DeFelice was seated on the Commission in Dian O'Neal's place.

Attorney Michael Wells, representing Vincent Baker, addressed the Commission and introduced Frank Magnotta to review the technical aspects of the plan. A letter was provided consenting to the additional extension for the public hearing.

Frank Magnotta described the large retaining wall at one of the culvert crossings and provided the Commission with a photograph. Voids in the concrete ultimately are filled with soil and allow for vegetation to grow. The wall is manufactured by United Concrete in Wallingford.

The driveway intersecting with Old Blue Hills Road has been shifted about 25 feet to the east away from the Tirado property. An evergreen buffer is proposed about 180 feet in length. Large white pines will be used. Large oak trees in the buffer area would not be moved; smaller trees would be thinned out and evergreens planted. A planting plan will be provided.

The driveway will encroach slightly on Lot #32, but a lot line adjustment from the Baker home property will occur to create a 40,000 square foot lot for Lot #32.

The Conservation Commission is considering a swap in the open space land to accomplish the lot line change.

Andy Tirado, 190 Old Blue Hills Road, addressed the Commission. He asked about the buffer and maintenance responsibility. Geoffrey Colegrove indicated that a land swap

could be made to place the full buffer on his property, thus giving him the opportunity to handle maintenance after it is planted by the applicant.

Frank Magnotta has reviewed the fire protection with Harry Hall. Details will be available at the next meeting.

To Geoffrey Colegrove's query about the excavation, Frank Magnotta stated that it is expected that 1,000 cubic yards of material will be incorporated on the site; otherwise, a special permit would need to be sought for excavation and removal.

Motion by Richard Eriksen, seconded by Ralph Chase, to continue the public hearing of Vincent Baker, request for proposed 10-lot resubdivision, Old Blue Hills Road, to February 7, 2007, meeting. Motion carried unanimously.

Motion by Ralph Chase, seconded by Tom Russell, to reconvene the regular meeting at 9:24 p.m. Motion carried unanimously.

#### 6. 8-24 Review of Turkey Hill Road

A letter was received from the former town engineer at the time of this project, Wright-Pierce. Documentation has been submitted to the first selectman's office.

There is still construction occurring at the site. There are still additional details to be addressed; it is recommended that the first selectman meet with Brian Curtis and Kurt Bober to review the road before the Commission provides an 8-24 review approval.

#### 7. Kevin Walka, Request for a Proposed 3-lot Subdivision, Maple Avenue and CT Route #68, Owner: Teresa Mesick

Paul Lambert, Lambert Engineering, addressed the Commission on behalf of the applicant. He reviewed a history of the parcel that goes back to about 30 years when two lots were split out without subdivision approval. Teresa Mesick owns the remaining 5.12 acres. The Inland Wetlands Commission approved the application (no activities in a regulated area). The Conservation Commission is proposing a conservation easement; however, this might be handled as a fee donation to the town (additional parking for the skating pond along Route 68).

Paul Lambert stated that a soil scientist has flagged the wetlands—the entire westerly area of the parcel. There are two catch basins across the street from the parcel that discharge into a culvert under Maple Avenue and cross the subject property; however, a right-to-drain permit was apparently never sought or granted. The right to drain will be shown on the map. Geoffrey Colegrove indicated he would schedule a meeting between Kurt Bober and Paul Lambert to address this drainage matter.

The well location for the property can be moved so that the arc is almost entirely on the property and within the street right-of-way.

Some discussion followed regarding whether a conservation easement would be better for the proposed parking area or a fee conveyance to the town. For reasons of liability, it was recommended to the applicant that a fee conveyance would be a more prudent course of action.

Ralph Chase will obtain clarification from the Conservation Commission concerning a resolution of the open space/conservation easement. It would be about 50 feet by 100 feet.

Motion by Richard Eriksen, seconded by Jim Kowolenko, to approve the request for a proposed 3-lot subdivision, Maple Avenue and Connecticut Rt. #68; Kevin Walka; owner, Teresa Mesick, with a caveat that there be resolution of the open space conservation easement versus fee conveyance/transfer from Conservation Commission. Motion carried unanimously.

#### 8. Payment of Bills

Motion by Richard Eriksen, seconded by Jim Kowolenko, to approve payment of the following bills:

- Absolute Advantage — \$491.55 (minutes of 12/20/06)
- Absolute Advantage — \$40.79 (minutes of 1/3/07)
- Absolute Advantage — \$849.05 (transcription of 10/4/06 Dolphin Days hearing)
- Absolute Advantage — \$979.05 (transcription of 10/18/06 Dolphin Days hearing)
- Absolute Advantage — \$589.05 (transcription of 11/1/06 Dolphin Days hearing)
- Midstate Regional Planning Agency — \$4,859.15
- *Middletown Press* — \$1,004.09 (new charges)

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

#### 9. Approval of Minutes

Approval of the minutes of previous meetings was tabled to the next meeting.

Motion by Dave Foley, seconded by Jim Kowolenko, to adjourn the meeting at 10:02 p.m. Motion carried unanimously.

Respectfully submitted,

Jan Melnik