

TOWN OF DURHAM

Planning and Zoning Commission

P.O. Box 428
Durham, Connecticut 06422-0428

MINUTES OF NOVEMBER 4, 2009, MEETING

Present

Members: Ralph Chase, Frank DeFelice, George Eames, Richard Eriksen,
Jim Kowolenko, Gene Riotte, Tom Russell
Town Planner: Geoffrey Colegrove
Alternates: Mike Geremia, Stuart Keating

Absent

Members: Cathy Devaux, Dave Foley
Alternate: Mark Laudano

The meeting was called to order by George Eames, Chairman, at 7:30 p.m. Mike Geremia was seated in Cathy Devaux's place. Stuart Keating was seated in Dave Foley's place.

1. Approval of Agenda

Motion by Ralph Chase, seconded by Gene Riotte, to approve the agenda of the November 4, 2009, meeting as presented. Motion carried unanimously.

2. Public Session

Diana Cruise, Mountain Road, addressed the Commission. She stated that Quality and Muzzy Trucking had been at the Greenland Realty property on Monday, October 26, from about 8:30 a.m. until 5:45 p.m. moving heavy pieces of equipment. She reported that the light in her dining room shakes and rattles with the vibration from the site. These trucking outfits have been hauling dirt every day onto a huge pile already established on the property. She characterized the activities as those of a construction company.

There is a trash business registered as Transwaste, Inc. with the State of Connecticut at

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10 Mountain Road (dirt transfer station and trash transfer business).

Geoffrey Colegrove advised that he had learned Greenland Realty is working on a Department of Transportation job on I-91. According to Diana Cruise, her husband says that Greenland “has a lot of work.”

Ralph Chase went to the site following Mrs. Cruise’s phone call and took a photograph from Ozick Drive looking over to the site.

Richard Eriksen expressed frustration with the applicant’s actions; for many years the Commission has been attempting to resolve site problems and have the applicant comply with the approved site plan. He said that he was personally offended and thought that Mrs. Cruise and the entire town of Durham would be within their rights to also feel offended. He added that two piles of dirt were never approved; he intends to take this up with the Inland Wetlands Commission also.

Geoffrey Colegrove stated that one pile of dirt is there because the Commission will not allow its removal (doesn’t comply with site plan).

The Commission determined that there would be *no* public hearing at the next meeting that Attorney Joan Molloy is able to attend on behalf of Greenland Realty. Instead, the Commission will ask Attorney Molloy to go through all of the permits and conditions of site plan approval in a detailed presentation.

Richard Eriksen suggested that perhaps a cease-and-desist order be issued if ongoing activities are found to be inconsistent with what the Commission approved.

Frank DeFelice indicated his recollection that the original site plan approval was for a landscaping business *not* a trucking business.

Geoffrey Colegrove noted that the site had been operating without a certificate of occupancy some years ago; Attorney Tom Byrne had thoroughly reviewed the record and found that the original site plan approval provided for a trucking company/materials with stockpiling on site of such items as soil, stone, mulch, etc. (i.e., landscaping materials). Other requests have been made and granted since the original site plan approval. He said it would take at least ten hours to go through and develop a package. The Commission authorized him to proceed in developing this package for each Commissioner (as opposed to asking the applicant’s attorney to do it).

Jim Kowolenko stated that the use of all the heavy equipment is not in concert with the Design Development District nor its original intent; the zone was created to fit in harmony with the adjacent residential neighbors. He also said that the types of heavy equipment on the site have nothing to do with a trucking company.

Geoffrey Colegrove stated that the original site plan approval permitted an area for

stockpiling soil. Screening was also part of the original approval.

Frank DeFelice stated that he recalled during a site walk Attorney Molloy stating that no vehicles would be stored outside and that there was a landscaping business. Ralph Chase concurred.

George Eames read Attorney Joan Molloy's letter of October 23 in which she withdraws the pending application because of time limitations and her schedule constraints. She submitted a new application; the Commission has 65 days in which to hold the public hearing. Again, Attorney Molloy will be asked to come before the Commission to review the entire history of site plan approvals and permits.

Fred Serle, 608 Wallingford Road, addressed the Commission. He inquired of the tax collector how the town might benefit from taxes on the vehicles (if they are allowed to be parked at the Greenland Realty site). The vehicles must be on the property at least 184 days before taxes can be levied. He stated that with regard to the proposed filling station, Greenland is the only beneficiary of that.

Fred Serle also expressed concern with some of the activities at the DiNatale site across the road. He said he does not object to repair centers, but if these are going to be permitted, they should have hours of operation similar to other businesses (car repair businesses) in town (i.e., not operate after 9:00 p.m.). He said that on a recent Friday evening, there was drag racing until 11:15 and, on occasion, noises from drag racing and big semi-tractor trailer rigs until 1:00 a.m. The site seems to serve as a hangout.

After some discussion, it was agreed that the public hearing for the special permit application of Pat DiNatale would begin on December 16 (after newly elected Commissioners have been sworn in and can participate).

3. Thomas Russell, Request for Release of Bond, New Haven Road

Tom Russell recused himself from the Commission at 7:54 p.m.

Geoffrey Colegrove advised that he had reviewed the files; a bond in the amount of \$7,500 had been posted. This provided for the following work: landscaping, seeding of exposed slope, planting of trees.

He stated that he had inspected the property and while there were a few rivulets into the woodchipped area, the majority of the grass has taken hold. Some of the plantings are different from the site plan, but they are comparable species. The slope averages around 13%, under the 15% that was approved for the driveway. There has been no erosion. Release of the bond was recommended. Mike Geremia stated that the site looks good from the road.

Motion by Richard Eriksen, seconded by Jim Kowolenko, to release the \$7,500 bond for

Tom Russell, New Haven Road, in its entirety. Motion carried unanimously.

Motion by Ralph Chase, seconded by Gene Riotte, to recess the regular meeting for the public hearing at 8:01 p.m. Motion carried unanimously.

PUBLIC HEARING

1. Applicant: Connecticut Horse Cremation
Owner: DiNatale Rentals, LLC
Request: Request to Modify Conditions (#6 and #9) of a special permit previously approved to allow large animal incineration
Location: 593 Wallingford Road

Present

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

Town Planner: Geoffrey Colegrove

Alternates: Mike Geremia, Stuart Keating

George Eames, Chairman, opened the continued public hearing and read the legal notice. Mike Geremia was seated in Cathy Devaux's place. Stuart Keating was seated in Dave Foley's place.

George Eames read into the record the modifications desired. The two primary changes are to increase the timeline for the mandated air-quality testing from "within the first 30 days" to one year of operation and to not require veterinarian-certification of the absence of infectious or communicable disease in the corpses of the horses.

Attorney John Corona addressed the Commission. He noted that Jeff Blaschke and Dominic Gambardella, the applicants, were in attendance. He cited the reason for extending the date of the mandatory testing was two-fold: there have been changes in the state regulations with the June 1, 2009, passage of language that includes human and animal crematoriums. He distributed an Environmental Program Fact Sheet and suggested that the entire regulation of air quality could be left up to the state. However, the applicants are certainly willing to comply with the Commission's request of a test. One reason for shifting from 30 days to a year is because of the financial impact. The test itself is not inexpensive (can run between \$7K-\$10K) and with fairly steep start-up costs over a lengthy period of time, this places quite a demand on the applicants.

Attorney Corona stated that he knows everyone wants to ensure the system is functioning properly. He believes that the information presented demonstrated the reliability of the

equipment. In addition, the manufacturer is on site for one week training the operators. Because of their guarantee, it is in the manufacturer's interest to ensure the system is working properly. While there are tests done during the installation and set-up of the equipment, these are not the same as the independent air quality tests required by the Commission.

Attorney Corona was unable to predict exactly what the state will do in terms of monitoring and testing; however, these do fall under their purview now. The equipment does generate a paper trail of reporting data; this will be provided to the town sanitarian. That data measures burn temperatures, start-up time, running time, etc., but not opacity sensing in the stack.

To concerns about how a problem would be handled (for instance, if there was the visibility of emissions or odors), that would be a zoning issue and immediate action could be taken.

Frank DeFelice noted that the original idea behind the testing was to give the public the confidence that this system is running as cleanly as possible within the standards that the manufacturer has specified.

Attorney John Corona clarified that the language is very specific about what can be cremated (no municipal waste; shoes must be removed from horses first). A license must be obtained from the State of Connecticut.

After some discussion back and forth, it seemed to be agreeable to extend the timing of the air quality test to being within the first 90 days (instead of the 30, as was originally approved, but not the one year that the applicant sought in the modification request).

Discussion then ensued regarding issues discussed at previous meetings: that it is not practical or feasible to have a veterinarian certify as to the animal's health; this could delay the process for several weeks, not a desirable situation. Ralph Chase noted that this would be contradictory to the whole purpose behind the idea of incineration. Stuart Keating concurred. Jim Kowolenko pointed out that the Commission had been informed that when the animal dies, disease dies along with it.

The Commission discussed, instead, being provided with details by the animal's owner as to the cause of death.

Mike Pych, Wheeler Hill Drive, addressed the Commission. He was not able to clearly understand the regulations of the State of Connecticut. He wanted to ensure that the facility would be permitted by the state. Attorney Corona indicated that this was included in the language of the special permit.

Daniela Kowal, Skeet Club Road, addressed the Commission. She asked if the machine would be tested periodically going forward (stating that a new machine might not be a

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problem, but what about in 10, 20, or 30 years?).

Attorney Corona responded that he did not know what the state might require in the future with regard to air quality issues. However, the operator will be subject to whatever testing the state requires.

Joseph Pasquale expressed concern with the possibility of the town losing the future right to air testing; he wanted to ensure this was not the case.

The Commission noted that there will continue to be oversight by the Department of Health.

Geoffrey Colegrove clarified that the applicant for this public hearing was Connecticut Horse Cremation; DiNatale Rentals is the property owner (the agenda omitted mention of Connecticut Horse Cremation).

Motion by Ralph Chase, seconded by Stuart Keating, to close the public hearing of Connecticut Horse Cremation/DiNatale Rentals, LLC, request to modify conditions (#6 and #9) of a special permit previously approved to allow large animal incineration, 593 Wallingford Road. Motion carried unanimously.

Motion by Mike Geremia, seconded by Frank DeFelice, to reconvene the regular meeting at 8:41 p.m. Motion carried unanimously.

4. Connecticut Horse Cremation/DiNatale Rentals, LLC, request to modify conditions (#6 and #9) of a special permit previously approved to allow large animal incineration, 593 Wallingford Road

Motion by Ralph Chase, seconded by Jim Kowolenko, to approve the request of Connecticut Horse Cremation/DiNatale Rentals, LLC, request to modify conditions (#6, #9 and #15) of a special permit previously approved to allow large animal incineration, 593 Wallingford Road, per the attached language (*bold/underscored type depicts areas of change made in this modification*):

Conditions:

Each and every condition attached to this special permit is an integral part of the special permit and inseparable from it. Should any of the conditions attached hereto be found by a court of competent jurisdiction on appeal to be void then, in that event, the special permit granted herein is void and of no legal effect.

- 1) The operation of the facility will be conducted in accordance with the above summary at all times. All manufacturer specifications for operation and recommendations for maintenance will be adhered to.
- 2) No emissions waste, or other byproducts of operation shall be permitted to cause a nuisance or unreasonable annoyance to surrounding property owners. No odor or particulate matter shall be

permitted outside the property line of the parcel on which the use is located. Any liquid or solid waste generated by the facility as a result of cleanup, maintenance, equipment repair or unclaimed animal ashes shall be disposed of in accordance with applicable state and local regulations or ordinances.

- 3) No signage indicating the use shall be placed at the site or on any vehicle used in the operation of the business except as may be required by law.
- 4) The Town of Durham Health Department or any successor office or authority may order temporary suspension of incineration operations during periods of extreme atmosphere conditions where such official determines such conditions may reasonably result in the transmission of odors, particulate, or other byproducts of incineration off-site. Such officials shall consult the Conn. D.E.P. air quality information in making a determination to temporarily suspend the operation of the incinerator. Such officials may inspect the facility at any time during business operations.
- 5) Written records of all incinerator activity and maintenance shall be maintained at the facility and shall be available to the Durham Health Department or any successor office or authority during business operations.
- 6) Within the **first 90 days** of operation, the applicant shall furnish the Durham Health Department with at least one air quality testing report prepared by a professional air quality testing laboratory. The purpose of this report shall be to provide confirmation that all manufacturers' emission specifications and any applicable local or state emissions requirements are met. In the event the report determines that such specifications or requirements are not met, no further incineration shall occur until subsequent testing confirms that such specifications and requirements are met. Thereafter, the Durham Health Department or any successor office or agency shall require such testing at least once each calendar year to confirm operation is within specifications and requirements.
- 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 providing the special permit is amended by the Commission to reflect such changes. The applicant is obligated to make application for such amended special permits if such changes are enacted within 90 days of such effective date.
- 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. Any materials removed from the site shall be handled and transported by persons licensed to perform such work.
- 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. **DELETED: The facility shall not accept animals with communicable diseases or open wounds causing loss of body fluids. A licensed veterinarian shall certify that the animal does not have an infectious or communicable disease. ADDED: Prior to the incineration of an animal, the applicant shall obtain a written statement from the person seeking disposal of the animal certifying that, to the best knowledge of such person, the animal did not have a communicable disease at the time of its death.** Certifications shall kept on the

premises and available for inspection during normal business hours by the Durham Health Department or its successor.

- 10) The approval is for one Pennram model LLC-500 Long Life Crematory unit, additional units shall require an amendment to this special permit. Any substitution to the Pennram system shall require approval from the Commission.
- 11) The incinerator is permitted to operate Monday through Saturday from 7:00. a.m. to 7:00 p.m. only except for Connecticut Legal Holidays.
- 12) No liquid materials of any kind generated from the operation of this facility, except domestic sewerage, shall be discharged to the on-site septic system or any drain system that would allow such materials to enter the surface or ground waters of the State of Connecticut. Any materials, liquids, solids or gases used or generated in connection with the operation of this facility shall be handled and disposed of in accordance with the manufactures' recommendations, standards or regulations of the State of Connecticut or recommendations of the Durham Health Department or its successors.
- 13) The facility will operate within the parameters of the Durham Noise Ordinance.
- 14) The applicant shall maintain an inventory of spare parts to prevent downtime in any event as the result of a system failure.
- 15) The use shall comply with the Section 19-508-24, of the Regulations of State Agencies as the same may be amended as well as Section 22a.124.18 and 22a.174.22 of the Connecticut General Statutes and other applicable state statutes and regulations. **The use shall obtain a new source review air permit before beginning construction.**

5. Payment of Bills

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

- Absolute Advantage – \$380.01 (October 7, 2009, meeting minutes)
- Absolute Advantage - \$445.46 (September 30, 2009, meeting minutes)
- Absolute Advantage - \$536.66 (October 21, 2009, meeting minutes)
- Midstate Regional Planning Agency - \$7,924.14 (September expenses)
- Midstate Regional Planning Agency - \$7,814.97 (October expenses)
- Attorney Steve Byrne - \$475.00 (general costs)
- Attorney Steve Byrne - \$500.00 (easement review – Hobson-Motzer)
- Attorney Steve Byrne - \$537.50 (District #13)

Motion carried unanimously.

6. Approval of Minutes

Motion by Ralph Chase, seconded by Tom Russell, to approve the minutes of the October 21, 2009, meeting as distributed. Motion carried, 6-3, with all in favor with the exception

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of Stuart Keating, Frank DeFelice, and Gene Riotte (in abstention).

7. Town Planner's Report

Jan Melnik read into the record a letter from William Currin, Chairman of the Regional School District #13's building committee, dated November 2. Bill Currin commented on the efforts of the Planning and Zoning Commission in listening carefully to the application from the school district over the span of several months, asking inspired, questions, offering insight into the needs of Durham, and listening to suggestions about ways to make the project better. He stated that he was troubled by the current legal appeal—he believes all possible viewpoints had been taken into consideration. He stated that it was unfortunate that the Commission had to endure the rigors of litigation and time that could be used for other purposes. He also noted that it meant additional effort for the Commission along with financial demands on the Town of Durham as a whole.

Geoffrey Colegrove stated that three of the public hearings were especially lengthy and that it would be an expensive record to prepare. He has not had official notification from Attorney Steve Byrne yet, but has begun the process of assembling the record.

With regard to John Jackson, Main Street, Geoffrey Colegrove will advise Attorney Byrne to go forward with the next step in the legal process.

Al Johanson has been monitoring the situation on Clementel Drive; the dumpster should be removed by the end of the week.

Geoffrey Colegrove will research the original application and drawings that had been submitted for his approval for the new TD Bank sign on Main Street (it is internally illuminated, which is not permitted in the regulations).

Mike Geremia asked about Durham Fair booth signage (being lit); Geoffrey Colegrove indicated that, for three days, he tends to not get involved with the signage issues at the fair.

Geoffrey Colegrove was asked to investigate the activities of a trucking operation at the fair grounds; trucks are leaving and entering the facilities every day via Canfield Lane.

Motion by Ralph Chase, seconded by Stuart Keating, to adjourn the meeting at 9:05 p.m. Motion carried unanimously.

Respectfully submitted,

Jan Melnik
11/11/2009