

# TOWN OF DURHAM

## Planning and Zoning Commission

P.O. Box 428

Durham, Connecticut 06422-0428

### MINUTES OF NOVEMBER 15, 2006, MEETING

#### Present

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

#### Absent

Member: Dian O'Neal  
Alternate: Jackie Snow

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. Brian Ameche  
arrived at 7:35 p.m. Dave Foley was seated on the Commission at 7:36 p.m.

#### 1. Approval of Agenda

Motion by Ralph Chase, seconded by Frank DeFelice, to approve the agenda of the  
November 15, 2006, meeting as amended to reflect tabling of item 8 (Greenland Realty,  
regarding erosion and sedimentation, tabled to a future meeting). Motion carried  
unanimously.

#### 2. Hitchin' Post Tavern, Discussion of Violation Letter Sent Regarding Portable Illuminated Sign, 980 New Haven Road

Geoffrey Colegrove stated that a letter had been sent to the Hitchin' Post Tavern along  
with a photo of the former Hot Rod Café showing that the illuminated temporary sign did  
not exist. There was a conflict on the part of the owner's attorney (Vin McManus);  
therefore, no one from the business was in attendance.

Ed Grimes, the Zoning Enforcement Officer, will speak with the owners of the Candy Store at the north end of Main Street (former Favorite Things site) about the flashing holiday lights. While holiday lights are permitted, they cannot be blinking.

## 2. Public Session

Dave Dingwell stated that he would like the opportunity to speak during the Distinctive Building agenda item later in the evening.

Diana Cruise noted that the spotlights at the back of Murphy Pool on Ozick Drive continue to shine all night; the bulbs face away from the property. A letter will be sent regarding this lighting problem.

Additionally, a letter will be sent to Mr. Ozick advising that the temporary and sandwich signs at the entrance of Ozick Drive will be removed if they are not taken down. There was supposed to be one common sign erected at this location.

## 3. Distinctive Building, LLC, Modification to Site Plan, 45R Ozick Drive

Rory Wilson was in attendance. There was a site walk held on the property. The conditions were reviewed in conjunction with a request for a site plan modification.

Rory Wilson stated that if the Commission is not agreeable to deleting pavement at the rear of the building altogether, he would be willing to use chip sealing in place of that pavement.

Geoffrey Colegrove stated that a primary concern was hours and days of operation during the construction period. The Commission definitely prohibits hours on Sunday, but would allow 7 a.m. to 5 p.m. on weekdays, and half a day (mornings) on Saturday. Numerous complaints have been received from neighbors stating that this has not been adhered to.

Rory Wilson explained the weather conditions that have caused delays; many construction activities are dependent upon the weather. He is trying to get conduit in before the ground freezes so that he can get power onto the site.

George Eames noted that the Commission sympathizes with this situation; nonetheless, rules and regulations must be abided by the applicant.

Rory Wilson noted that the regulations do not stipulate hours of operation during preconstruction/construction activities. George Eames responded that the Commission has pointed out its concerns a number of times. Richard Eriksen added that there appears to be no spirit of cooperation on the applicant's part.

Rory Wilson also stated that he had tried to accommodate the neighbors' concerns and tried to set up a meeting with the neighbors.

Geoffrey Colegrove indicated that there had been a meeting held the previous Monday with some of the neighbors, himself, and Jim McLaughlin; however, Mr. Wilson was unable to be at that meeting. He was contacted after the meeting and concerns were relayed regarding activities and hours of construction operations. Mr. Wilson was advised to contact the abutters and it was advised that he attempt to get things “squared away” in terms of reaching an agreement. Geoffrey Colegrove pointed out that the biggest concern is the backup beepers on trucks operating on Sundays. The neighbors are willing to live with the situation during the week and on Saturdays—but not Sundays.

Dave Dingwell advised that there had been phone calls back and forth, but without success. He also noted that the hours of operation are exceeding the 7 a.m. to 5 p.m. constraints. In addition, generators are running.

Dave Foley asked why the paving in the back was being proposed for deletion from the approved site plan. Rory Wilson explained that this was consistent with what had been done and approved at the Greenland site and the Nosal site. He added that there is a lot of settlement at the front of his property and that they have not yet been able to stabilize the soil; there appears to possibly be a spring underground. He would like to get it stabilized before paving.

Geoffrey Colegrove stated that the site plan hasn’t been addressed in terms of curbing; paving is key to managing the water on the site. The problem noted brings up an engineering question about whether this makes sense in terms of stormwater management. There was stormwater channeling that was part of the original engineering proposal. That question has not been addressed and Frank Magnotta, the applicant’s engineer, has not mentioned anything about this in his recent appearances before the Commission (on other matters).

Rory Wilson stated that he is trying to address this problem by creating berms along the front edge where the curbs will be. He hasn’t eliminated any of the leak-offs that were on the original plan.

Dave Foley indicated that he had a major issue with changing the runoff for the site; changing to an erodable, impervious surface will have totally different drainage characteristics. He is not comfortable with deleting the paving requirement without a thorough engineering review.

Geoffrey Colegrove stated that for some design district projects, requirements were waived on some paving, but in the case of Greenland, for instance, a detention pond was added; there was an engineering review when that change was made.

Tom Russell asked about provisions for dust control along the sides and back of the property if there is not paving, suggesting a bond be posted.

Frank DeFelice asked for clarification of the use of chip sealing on neighboring properties, wondering if that is acceptable (petroleum-based, sprayed chips) in a wetlands area.

Richard Eriksen stated that if the applicant puts in the binder course, followed by the chip sealing instead of a finish course of pavement, the process should work. However, Geoffrey Colegrove stated his uncertainty with this method; typically, chip sealing is used as an extra coat on a completely finished road and not in lieu of a final bituminous coat of pavement. Geoffrey Colegrove will verify what has been done at the neighboring sites for pavement.

In terms of dust control, Diana Cruise stated that Greenland had promised water trucks and sprayers—none of which has ever appeared; there is dust year-round from that property.

Rory Wilson stated that the tenants of his property would never accept chip sealing as a permanent road course; he will eventually pave the back. The chip sealing is proposed as temporary. He also noted that the site should be wet or frozen all winter—and not create a dust problem.

Geoffrey Colegrove stated that the applicant has indicated he might be ready for a certificate of occupancy in February; this creates a problem as there, of course, can be no paving at that time. Tom Russell noted that Tilcon typically shuts down anywhere from December 10<sup>th</sup> to December 24<sup>th</sup>. Plants in the state are only open to very large projects for the State of Connecticut (and not private contractors) in the winter.

George Eames reiterated that the hours of construction operation must be pinned down. The applicant has responded positively in the past, but continues to break the agreements.

Rory Wilson stated that he is past the point in construction where this would be a problem. He noted that his contractors added as much accelerator as possible in the concrete, yet still needed to work from 6 a.m. to 6 p.m. to get the floor set up out of necessity. The critical phases of work on the project are done.

Dave Foley asked that an engineering review of the proposed alternate to paving be conducted. He is not comfortable with approving an obvious engineering problem as the reason why the site can't be paved. He wants to see an engineer examine the problem and address the situation. Richard Eriksen concurred.

The application deadline had been reached with this evening's meeting, however. Geoffrey Colegrove suggested that the application could be turned down without prejudice—then a new application for modification could be pursued.

Gene Riotte stated that if there are significant water problems at the site, these must be resolved before the Commission can take action.

Rory Wilson stated that he is not altering the waterflow or runoff to any extent; it is all contained underneath the property.

Motion by Dave Foley, seconded by Jim Kowolenko, to deny the application for site plan modification of Distinctive Building, LLC, 45R Ozick Drive, without prejudice. Motion carried unanimously.

Frank DeFelice stated that the hours of construction activity need to be resolved. Tom Russell added that it had been agreed on the site walk that both the sides and back would be paved before winter.

Geoffrey Colegrove asked Rory Wilson to submit revised plans to him; he would then provide them to the town engineer, Brian Curtis, for engineering comments. Then the matter would come back before the Commission.

The Commission also discussed installing traprock or tailings; Rory Wilson stated that four inches of process would be installed and rolled on the entire site.

George Eames stated for the record that the Commission and Durham are “business-friendly.” However, the applicant or his engineer, in this case, dropped the ball. It is not up to the Commission to tell an applicant how to go forward. The Commission had clearly set its expectations during the site walk; instead, there have been many complaints and problems with the site.

#### 4. 8-24 Review for Development of Public Water System, White’s Farm

First Selectman Jim McLaughlin addressed the Commission. The site plans depict a booster station on a triangle of land between Maple Avenue and the Fair Road. The structure will be about 9 ½ feet high with a driveway from the Fair Road to service it. It won’t be visible from Maple Avenue. A chain link fence covered with black PVC will surround part of it; it will “sit” into the hillside.

There will be an exterior light for emergency use. The Inland Wetlands Commission reviewed the application again; there are two crossings, one of which changed. However, the Inland Wetlands Commission approved the proposal.

Jim McLaughlin stated that there will be an external generator for emergency power. The Connecticut Water Company will be the servicing agent.

The Conservation Commission approved the plans at their recent meeting. No trees will be removed from the site.

There are negotiations between the First Selectman’s office and the Fair Association regarding an easement for the roadway and moving it onto the actual property of the structure.

Geoffrey Colegrove inquired about the area of paving; it appears to be larger than necessary. Jim McLaughlin will investigate this.

Motion by Richard Eriksen, seconded by Jim Kowolenko, to advise the Board of Selectmen of a favorable 8-24 review for the development of a public water system, White's Farm. Motion carried unanimously.

5. Vincent Baker, Request for a Proposed 10-Lot Subdivision, Old Blue Hills Road

The site walk was held on November 4, 2006. Neighbors of Vin Baker's property asked if the delineation of lots has been presented to the Commission. This is on the map on file and will be presented as part of the public hearing on December 20.

6. DR&G Club, LLC, and JRD Development, LLC, Informal Discussion of Active Adult Community, CT Route #79

A site walk is scheduled for December 9 and the public hearing will begin on December 20.

The Commission discussed having Attorney Thomas Byrne review the age restrictions and the condominium agreements themselves.

One of the management partners, James Benetto, stated that the community would be 55+ age-restricted and upscale. A lot of research has gone into the project. While the age 55+ and "no kids" restriction will be made as tight as possible, this can't be put into the documents (other than the age restriction).

Brian Ameche left the meeting at 8:27 p.m.

7. Payment of Bills

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

- Midstate Regional Planning Agency — \$4,255.74 (September expenses)
- Absolute Advantage — \$479.78 (minutes of 11/1/06)
- Attorney Thomas Byrne — \$1,125.00 (Greenland Realty)

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

8. Approval of Minutes

Approval of the minutes of November 1, 2006, was tabled until the following meeting.

#### 9. Town Planner's Report

Geoffrey Colegrove indicated that he had met with George Eames and Richard Eriksen to review preliminary information gathered regarding hours for construction activity. Language is presently being developed in Guilford that was disseminated to the Commission for consideration. There is also a possibility of creating an ordinance with decibel requirements in lieu of amending the regulations.

The Commission generally felt favorable about allowing construction hours of 7 a.m. until 5 p.m. weekdays, 7 a.m. to 12 noon on Saturdays, and no Sunday or holiday hours.

Frank DeFelice noted that contractors are typically hired for an eight-hour day on Saturdays; he suspects many people will violate this part of the language.

Jan Melnik recommended that there be subheadings created to separate residential from the rest of the language. The recommendation was also made to change "valid building permit" to and/or with the addition of "approved site plan."

The Commission will continue to discuss this language at the next meeting.

Geoffrey Colegrove stated that the Department of Environmental Protection is considering permits relative to air pollution for standalone wood boiler systems. Possible provisions would be separating distances to the nearest structure, height of pipe, etc. The building department and/or the Planning and Zoning Commission may consider trying to regulate or prohibit them. Geoffrey Colegrove will provide additional information for the Commission's consideration.

#### 10. Miscellaneous

Brian Curtis provided a letter to the Commission concerning the Greenland Realty site. He conducted a visit on November 1 and met with Fred Melillo. There is concern about the southerly and southwesterly embankment—it is nearly a vertical cut. The lower portion comprises exposed bedrock. It is unvegetated and subject to erosion. Originally, storage containment was going to be provided on site for materials. The slopes were to be backfilled from the top. Currently, Fred Melillo doesn't have approval to install concrete block structures.

These features must be stabilized to reduce the severity of the slope. Wood chips will be used in the process. Brian Curtis recommended that the bond not be released.

With regard to the Dolphin Day Care site, Geoffrey Colegrove reported that a certified letter was sent to Frank Magnotta, engineer for the site, about the proposed sign, hours of construction, and hours of operation approved at the recent Planning and Zoning Commission meeting.

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Brian Curtis reviewed and approved the conceptual design of the proposed bridge for the project. Details are to be submitted for approval prior to construction, however.

George Eames advised that alternate Jackie Snow had tendered her resignation from the Planning and Zoning Commission; she is relocating out of Durham.

Motion by Dave Foley, seconded by Ralph Chase, to adjourn the meeting at 8:49 p.m.  
Motion carried unanimously.

Respectfully submitted,

Jan Melnik

11/19/2006