

TOWN OF DURHAM

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

MINUTES OF NOVEMBER 7, 2007, MEETING

Present

Members: Ralph Chase, Frank DeFelice, George Eames, Richard Eriksen, Dave Foley,
Jim Kowolenko, Tom Russell
Town Planner: Geoffrey Colegrove
Town Engineer: Brian Curtis
Alternates: Brian Ameche, Mike Geremia

Absent

Members: **Dian O'Neal**, Gene Riotte
Alternate: Mark Laudano

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

1. Approval of Agenda

Motion by Ralph Chase, seconded by Tom Russell, to approve the agenda of the
November 7, 2007, meeting as presented. Motion carried unanimously.

2. Public Session

Joseph Pasquale congratulated those Commission members re-elected to their positions,
noting that it was not an easy job they have serving in this capacity. He then

presented a question regarding the previously approved application that Attorney John Corona has referred to for the property currently owned by Silver Eagle Development.

To George Eames' query as to the nature of the question (and Joseph Pasquale's reason for not waiting until the public hearing later in the evening), Joseph Pasquale stated that his question does not relate to the current application before the Commission, but, rather, the previously approved application.

George Eames indicated that the former application was approved about seven years ago and then extended in about 2004 for an additional five years.

Joseph Pasquale asked if the application was still valid, citing Section 6 of the Zoning Regulations (06.09), suggesting that it would be null and void.

Geoffrey Colegrove advised that the General Statutes of the State of Connecticut provide for a five-year extension.

Joseph Pasquale again referenced 06.09 of the Zoning Regulations, "Commencement of Construction":

Construction of an approved site plan for Special Exception shall begin with two years from the date the notice of approval appears in a newspaper having general circulation in the Town of Durham. The Planning and Zoning Commission may grant one extension of time, not to exceed one year, if unusual circumstances prohibit the start of construction during the two-year period from the date of issuance of the Special Exception. If construction has not started within the prescribed time **period, the Commission's approval for the Special Exception shall become null and void.** Construction shall mean the laying of footings, foundation or slabs and the diligent progress toward project completion. All work shall be completed within five years of the start of construction.

Joseph Pasquale asserted that the regulations would appear to clearly apply in this case and that the application would be null and void.

Richard Eriksen stated that, under the circumstances, he would like a legal opinion from Attorney Thomas Byrne. Ralph Chase concurred.

Dave Foley asked what the point of the exercise would be, given that there is a new application in front of the Commission. He said that whether or not the previous approval was null and void is irrelevant.

Joseph Pasquale stated that the previous application was filed under the earlier regulations (40,000 square foot maximum). The Commission noted that the current application was also filed while the 40,000 square foot maximum was in place.

Joseph Pasquale also stated that if the Commission were to deny the present application, his concern is whether or not the applicant would have the right to construct the buildings previously approved under the earlier application. His question becomes a valid one *if* the present application is ultimately denied.

George Eames asked that Geoffrey Colegrove obtain an opinion from Attorney Thomas Byrne in this matter. He will also seek clarification that there is just one application pending for the property (the one currently before the Commission); two applications for **the same property can't be considered**.

Geoffrey Colegrove reiterated that the Commission did vote on the previous application and approved the extension in a subsequent vote (2004).

Attorney John Corona stated that at the time that the Commission granted the extension, Geoffrey Colegrove did consult with Attorney Tom Byrne; what was extended was the time to complete an approval already in place.

Brian Ameche noted that if Joseph Pasquale is correct and the citing of Section 06.09 was correct, then the renewal that was granted was not in accordance with the regulations. Furthermore, it would appear that the 24-month period has already expired. He suggested that the Commission needs to pay closer attention to what the rules actually are. He recommended that the Chairman, George Eames, have a conversation with Attorney Tom Byrne immediately and ask the right questions and get the right answers; he added that it **was his opinion that the Commission was on "thin ice" right now**.

3. Zoning Enforcement Officer's Report

Geoffrey Colegrove **reported that a site walk of Bryan Esparo's property at Bailey Road** was held by a subcommittee of the Commission. Richard Eriksen, one of the members in attendance, stated that the subcommittee scheduled the site walk at the urging of the **Commission's counsel**, Attorney Tom Byrne, in order to observe firsthand the condition of the site and to begin to inventory equipment on site that would be permitted. The issue stemmed from neighborhood complaints over the past few years that are the subject of a home occupation permit for an office: that a construction company was being operated from the property. Based upon observations at the time of the site walk, Richard Eriksen stated that it was questionable, in his mind, as to whether or not there was a violation of the home occupation permit; it was not definite that the construction company was being operated from the property, although many previous representations/photographs presented before the Commission in the past would certainly make it appear that this was the case.

There is a cease-and-desist order currently in place against the home occupation. Richard **Eriksen stated that he would like an opinion from the Commission's attorney as to how to prevent the reemergence of a construction company in the future**. He would also like some means by which to revoke a home occupation permit if there is a violation or to

have a mechanism in place so that if there is a future violation, it can proceed directly to an injunction. He did state that from previous presentations, it certainly did appear that the home occupation permit had been violated in the past.

Geoffrey Colegrove indicated that one of the action items during the site walk was to develop a list of permitted equipment. During the site walk, two sanders and an unregistered pickup truck were observed (Mr. Esparó stated that the truck would be removed by Friday; he was not certain about the sanders). Geoffrey Colegrove added that, from his point of view, the property was the cleanest it has been in a number of visits he has conducted over the recent years. There was some equipment near the access road to the property; this was being used to cut trees down in an area adjacent to a wetlands. There was a flatbed truck and a bobcat/backhoe piece of equipment being used; otherwise, the site was devoid of most construction equipment.

Bryan Esparó has asked about installing a tennis court instead of a paddock; he will need permission from the Inland Wetlands Commission for this activity.

Geoffrey Colegrove stated that the cease-and-desist order can be left in place and an opinion can be sought from Attorney Tom Byrne regarding not pursuing an injunction at this time or about revoking the home occupation permit. However, revoking the permit does not address the activity that had been in violation as the permit was for the home office use only. The office use has never been the problem; rather, it is the use of the property as a construction yard and the ancillary traffic that are the concerns.

Richard Eriksen stated that he, personally, was “feeling a little abused and didn’t like to play this game.” While he cited his respect for Mr. Esparó’s right to develop his property, he has no right to conduct a construction company from the property.

Jim Kowolenko, a subcommittee member who was on the site walk, stated that it is difficult to assess the situation. Obviously, if any homeowner is having work done on their property, contractors will bring equipment to a site to perform the work. Therefore, it is very difficult to determine what exactly has been happening at this property with equipment and employees.

Bryan Esparó stated that he is using Ozick Drive and is very comfortable there. But he stated that he “will not be told who can and cannot come to his house and work and what piece of equipment will be used to perform work on his property.” He stated that this is not fair and is not a restriction imposed on others in town. He expressed frustration with the number of photographs that have been taken of his property over the past few years. He is tired of being harassed and reiterated that he is not running the company from his home. His intent has been to improve the property, something he is entitled to do and which has even been commented on favorably by neighbors.

Bryan Esparó also stated that he pays \$15,000 a year in taxes. His taxes have increased from \$10,600 to \$15,000, reflective of the improvements he has made to the property. He

also indicated that he does not need a home occupation permit as he can use the space at #18 Ozick Drive for running his business.

Brian Ameche reminded the Commission that with winter coming, the snowplow part of Mr. Esparo's business had been a previous problem each winter.

Bryan Esparo commented that he "takes it personally when people tell him that his place looks the cleanest it has ever been." He characterized his property as a work in progress, one that will be superb when he is done with it. He believes the curb appeal of his place outranks other properties in town. He stated that when he finishes a construction job out of the area, if there are 2x4s, for instance, he will bring them home for possible use in his own house.

Ralph Chase, a member of the subcommittee, concurred with the previous remarks of Richard Eriksen. He stated that they had observed the property during a very small window of time; at that time, there did not appear to be a violation, in contrast to what has been previously presented to the Commission.

George Eames recommended keeping the cease-and-desist order in place covering the construction equipment/violation of home occupation permit for six months. Next May, if Mr. Esparo wants to come back to the Commission to have it released, that can occur, provided there has been no construction company activity on the site.

Richard Eriksen stated that the construction activity to complete erection of the barn on the site should continue.

If any of the previous activities on record should reoccur, then the Commission should have its attorney seek an injunction.

Motion by Ralph Chase, seconded by Brian Ameche, to provide six months' probation with cease-and-desist order still in place for Bryan Esparo, Bailey Road, subject to there being no construction activity related to the business. Motion carried, 8-1, with all in favor with the exception of Dave Foley (in abstention).

4. Dolphin Days Learning Center, Request for Modification to Site Plan, 9 Ozick Drive

Jim Sibilias of Dolphin Days addressed the Commission. He stated that the approved site plan called for four-foot bollard lighting on the walkway and both sides of the bridge. They would like to replace this with small, low-voltage landscaping lighting—generating significantly less wattage.

Ellen Sibilias stated that the original plans called for a three-foot landscaping berm along Mountain Road. However, this was not on the site plan and the contractors inadvertently installed all of the shrubs/trees without the berm. Photographs were distributed. The intent was to block view of the parking lot (which has not been used at all; it is strictly for

overflow parking when needed). Even with a berm, though, the view from the nearest house into the lot will not be blocked with landscaping because of the considerable difference in elevation.

Geoffrey Colegrove stated that he had contacted Frank Magnotta about placing the berm on the plans; it was Frank's error that the mylars were filed without the detail requiring the berm included.

Cindy Tyrseck, owner of the house across from the parking lot, stated that she felt a berm would help with obscuring views, especially of traffic along Route 68. She added that while the property (Dolphin Days) and bridge are "very nice," the view from her house is hurt by their construction, in particular, the tree-clearing. She acknowledged that the owners of Dolphin Days were entitled to remove trees; however, the net impact is that she can now see every car on Route 68 and that her property value is diminished.

Ellen Sibilias replied that they had not cleared trees between the parking lot and Route 68 and that there would have to be a "Berlin Wall constructed" in order to block the view of Route 68 from Cindy Tyrseck's house.

Cindy Tyrseck asked for consideration of planting a strip of spruce trees along the bottom of her property to help block the view, if it is determined that the berm will not be constructed. The Sibilias were not willing to undertake this step.

Geoffrey Colegrove stated that there is a bond in place to cover any landscaping requirements on the applicant's site.

After some discussion, there was general agreement among the Commission that enhanced vegetation (additional plantings) would be preferable to digging up the new plantings, adding a berm, and then re-planting. It was recommended that taller trees be installed on both sides of the gate as well as new trees/shrubs (coniferous: white pine, spruce, or evergreen) being planted in two staggered rows, ten foot on center; the new plantings should not be disturbed. In the long run, this plan will be more effective for buffering the site than a three-foot berm would be.

The Sibilias were asked to bring a modified site plan back before the Commission (next meeting: December 15) showing the location of the proposed new plantings and the actual number of trees to be planted.

Motion by Jim Kowolenko, seconded by Frank DeFelice, to approve the change in lighting to low-voltage lights along the bridge/walkway of Dolphin Days, Route 68, from previously approved bollard lights. Motion carried unanimously.

Motion by Ralph Chase, seconded by Mike Geremia, to recess the regular meeting at 8:17 p.m. for the public hearings. Motion carried unanimously.

PUBLIC HEARING

1. **Applicant:** **MaryBeth Edwards and Walter Cihocki**
Application: Request for a Zoning Text Amendment to Section 05.01.01.01. #23 of the Durham Zoning Regulations

Members: Ralph Chase, Frank DeFelice, George Eames, Richard Eriksen, Dave Foley, Jim Kowolenko, Tom Russell

Town Planner: Geoffrey Colegrove

Town Engineer: Brian Curtis

Alternates: Brian Ameche, Mike Geremia

George Eames, Chairman, read the notice for the continued public hearing. **Brian Ameche was seated on the Commission in Dian O’Neal’s place. Mike Geremia was seated on the Commission in Gene Riotte’s place.**

Jan Melnik read into the record the letter from the Commission’s counsel, Attorney Thomas Byrne, providing recommendations for adapting the regulations to permit consideration of such an application. Ralph Chase commented that he liked Attorney Byrne’s suggestion.

There was no public comment.

Motion by Jim Kowolenko, seconded by Tom Russell, to close the public hearing of Mary Beth Edwards and Walter Cihocki, request for zoning text amendment to Section 05.01.01.01. #23 of the Durham Zoning Regulations. Motion carried unanimously.

PUBLIC HEARING

2. **Applicant:** **Silver Eagle Development Trust, LLC**
Application: Request for a Special Permit for the Construction of 3 Retail Buildings, Main Street

Members: Ralph Chase, Frank DeFelice, George Eames, Richard Eriksen, Dave Foley, Jim Kowolenko, Tom Russell

Town Planner: Geoffrey Colegrove

Town Engineer: Brian Curtis

Alternates: Brian Ameche, Mike Geremia

George Eames, Chairman, read the notice for the public hearing. **Brian Ameche** was seated on the Commission in **Dian O’Neal’s** place. **Mike Geremia** was seated on the Commission in **Gene Riotte’s** place.

Frank DeFelice read into the record a brief statement referencing Attorney John Corona’s request of him at the last hearing. Frank DeFelice stated that Attorney Corona had suggested he recuse himself because a competing parcel of property in town is under the ownership of his family. Frank DeFelice acknowledged that while his wife’s family does own several parcels of land in town, there is no similarity between that property and the proposed development currently before the Commission. He stated that when properties owned by family members are the subject of matters before the Commission, he always recuses himself. In this case, he stated that should the application for Silver Eagle fail to be approved by the Planning and Zoning Commission, he would not want to saddle taxpayers with the cost of defending his innocence and that, therefore, he would recuse himself from the public hearing on this application.

Attorney John Corona addressed the Commission on behalf of the applicant. He first discussed the traffic capacity of Route 17 and the comments made at the previous hearing by Rich Handley—who spoke as an individual and not a representative of the Department of Transportation, where he is employed. Attorney Corona took umbrage with the remark that the roadway improvements, as proposed, were a “bandaid fix to the traffic problems on Route 17.” He stated that roughly \$1 million in improvements was proposed as part of the application.

Attorney Corona then presented a visual example of the existing traffic scenario on Main Street using a vase partially filled with colored water. He added increments of water to reflect the growth in traffic with each major project initiative in town (i.e., the DiNatale complex at the south end of town, the Grippo’s-Mobil-Subway-Dunkin Donuts at the north end of town, and so forth). Using the analogy of capacity of the vase to capacity of Route 17, the vase is just about filled to the brim. The addition of the Silver Eagle project at the north—represented by additional water being poured into the vase, thus causing it to overflow—will exacerbate existing problems on Route 17. Attorney Corona’s point was that while that might be the proverbial straw to break the camel’s back, it is not exclusively because of Silver Eagle that traffic on Route 17 is a problem—it is an already existing traffic problem that Silver Eagle did not create. Nor, in his opinion, does the full weight and cost of a remedy fall solely to Silver Eagle. However, the Department of Transportation and the State Traffic Commission require that any new development not make an existing situation worse. Hence, roadway improvements are proposed to help ameliorate the situation.

George Eames stated that no Commission member had asked the applicant to fix the roads. Attorney Corona responded that he had been asked about correcting the alignment of Route 147 with Haddam Quarter Road.

George Eames indicated that he had talked with Representative Ray Kalinowski about that matter and that he would be getting back to the Commission with some information.

Attorney John Corona stated that he had talked with the director of the State Traffic Commission. Although the Haddam Quarter Route/Route 147 intersection is on the SLOSS list, there are no plans underway to make any of those improvements at the present time.

Michael O'Brien, who owns Silver Eagle, contacted the owner of the property adjacent to Haddam Quarter Road (where the billboards appear) about purchasing it; however, there was no commitment and no willingness to sell the property. Attorney Corona also stated that he had gone to the Board of Selectmen in their role as traffic authority for the town of Durham. He stated that the Planning and Zoning Commission will need to recognize that the traffic issues are not within the control of the applicant or the town, for that matter, as these are state roads (Routes 147, 17, and 68).

It is not likely that there will be any resolution of the Haddam Quarter Road/Route 147 realignment issue before the close of the public hearing. George Eames stated that he would await a report on that matter from Ray Kalinowski.

Vahid Karimi, the project's traffic engineer, addressed the Commission. He stated that traffic improvements to Routes 17 and 147 cannot be made without the permission of the State of Connecticut Department of Transportation and the State Traffic Commission. The Routes 147 and 17 intersection is a problem area now and with the increase in ambient traffic—even without the Silver Eagle project—there will be failure very shortly.

Richard Eriksen commented that part of the charge of the Planning and Zoning Commission is to consider safety and welfare in the town of Durham, which would include traffic issues. Attorney John Corona concurred, stating that improvements to the state roadways could be a condition of approval, but falls outside the purview of the Planning and Zoning Commission to require.

Vahid Karimi stated that he had examined the corridor study undertaken by Midstate Regional Planning Agency in 1988 with particular review of the Route 17 corridor. He pointed out that Route 17 was designated as a scenic highway from the south end of town at Route 77 to about 125 feet from the Talcott Lane intersection. Any work completed along the roadway would be done with consideration for the cultural and historical resources of the town. As an arterial roadway, Route 17 carries a great deal of traffic from local roads onto state highways. There are already a number of accidents and collisions at key intersections along Route 17. There had been consideration of a bypass route as well as relocation of Haddam Quarter Road, consolidation of curbcuts, programs such as ride sharing/carpooling, intersection improvements, and a widening of Route 17. Since the completion of the study in 1988, traffic has increased significantly. An additional free lane in the southbound direction of Route 17 coming into town is essential and part of the plan with the Silver Eagle project. It will help to improve the overall level

of service and mitigate development traffic impact on the area. The west side of Route 17 will be widened to two lanes for a distance of about 600 feet, with proper taper length; all widening proposed will involve right-of-way property and not impact sidewalks. Widening continues for a short distance in a southerly direction after the traffic intersection. There will be no disruption to business, although several utility poles might require relocation. Traffic signal reconstruction is also planned at Route 17/Route 147 and at Route 17/Route 68.

According to Vahid Karimi, the level of service at the intersection of Routes 17 and 147 is a D/E. This is projected to deteriorate to a level of service F in the next year, even without the addition of the Silver Eagle project. With the roadway improvements installed as proposed, the level of service will improve to B/C. The applicant is making a reasonable commitment to mitigate traffic and improve safety issues at the key intersections of Routes 17/147 and Routes 17/68.

While widening of Route 68 had been discussed at the previous hearing, this idea has been abandoned out of consideration of the historic landmarks at that intersection. However, both Vahid Karimi and Attorney John Corona pointed out that it is quite likely that in the future such widening by the state will occur in that area. The applicant is making no physical recommendations for that intersection at the present time; signal adjustments are proposed to alter timing.

The lights at the two intersections of Haddam Quarter Road/Route 17 and Routes 147/17 will be synchronized, retimed, and adjusted to conform with state standards.

To Jim Kowolenko's question, Vahid Karimi clarified that all widening that is proposed comes from right-of-way land that is owned by the state.

Middlefield Road (Route 147) does not have any physical changes proposed, according to Attorney John Corona.

To queries regarding tractor-trailer traffic in the vicinity of the project and making deliveries to new stores, Attorney John Corona responded that truck traffic would function much as it does now with deliveries all over town.

Truck traffic into/out of the site will be via the entrance/exit onto Route 147 only. Ralph Chase stated that such a traffic plan would be achieved with great difficulty for trucks.

Attorney John Corona pointed out that the State Traffic Commission and Department of Transportation can do nothing without the approval of the local Planning and Zoning Commission. This can be a condition of approval if the Planning and Zoning Commission so deems.

Brian Ameche asked the background traffic levels and levels of service that presently exist at the major intersections (Routes 147 and 17 as well as Routes 17 and 68) along

with Maple Avenue where it intersects Route 147. He also asked how much traffic this project would add as a percentage of overall volume. Brian Ameche also asked if the percentage of volume would have an impact on level of service at any of the other intersections in town that are not proposed to be addressed in this project.

Attorney John Corona indicated that the majority of traffic coming to the project will be along Route 17, from the north and south, as well as via Route 68. About 15% are expected to use Maple Avenue to Route 147 to access the site.

Dave Foley provided anecdotal details about the traffic on a Saturday morning stacked up along Maple Avenue waiting to turn onto Route 147 heading west; there is considerably more traffic than the 50 cars per hour that were noted in the traffic study. In addition, that is an especially dangerous intersection. A three-way stop at the intersection should be explored.

Discussion followed regarding possible turning patterns. Traffic from the south on 17 coming to the project will likely use the light at Route 147 to turn left, then enter the project with a right-hand turn from Route 147.

Ralph Chase expressed concern with delivery vehicles being required to use Route 147 only for access/egress to the site; turns onto Route 147 from the project driveway will be very difficult, especially during times of day that school buses are traveling Route 147.

Vahid Karimi described the adequate lines of sight in both directions along Route 147 as well as adequate turning radius on Route 147 for a tractor trailer to turn into and out of the site. Designs must meet state standards and requirements.

The public hearing was opened.

Laura Borhman, Parmelee Hill Road, addressed the Commission; she asked about the traffic considerations along Route 147, given the heavy bus route traffic to and from Memorial School.

Susan Good asked about traffic patterns for cars leaving the project and wishing to proceed north on Route 17. Because the Route 17 access is for right-turn (southerly) traffic only, traffic will need to leave via Route 147 and then turn north on Route 17. The other option will be traffic that does leave via the Route 17 access and then turns left on Haddam Quarter Road to go via Arbutus Street back to Middletown. She expressed concern with the potential volume of this traffic on Haddam Quarter Road, suggesting the impact to the side roads might be greater than along Route 17.

Patricia Hill, Winsome Drive, addressed the Commission. She asked about the impact to buildings along Route 17 where the roadway would be widened as well as to the recently installed sidewalks and lighting. She also explained that it was frequently difficult to pull out of Winsome Drive now onto Route 17, given the traffic.

Diana McCain, Skeet Club Road, stated her impression that the project would affect most of the roads in town in one way or another. She said that the attitude of the developer seems to be, "this is going to be a problem and this is how much we can do to fix it for you." She suggested that if the project faces insurmountable obstacles, perhaps the project doesn't go forward. She also noted that levels of service in terms of letter grades mean almost nothing to the majority of people in attendance. She asked for specific numbers—how many more cars would be traveling on Route 17 and through the key intersections and how large an increase would it be over what is currently in existence. She also suggested that the Commission undertake its own traffic study. Additional matters she thought should be explored would include an independent study of impact, including the representation that there will be 140 full- and part-time jobs created—however, what will the impact be to existing business and the net gain in jobs (if losses are projected). Further, she stated her opinion that the annual municipal expense of \$26,700 against the revenue increase of \$164,000 was likely to be much higher because of the need for an additional trooper. Finally, she stated that if the Commission cannot fund such an independent study, perhaps the applicant could be asked to provide more sufficient information or at least pay for the cost of independent examination of these issues.

Marianne Corona addressed the Commission; she owns the parcel at the corner of Routes 147 and 17 where the gas station and former doctor's office/autobody company are located. She pointed out that the intersections of Route 17 and 147 are very dangerous. With the current location of the underground gas storage tanks at the gas station, Marianne Corona stated that to widen Route 17 ten feet in the direction of the gas station could be problematic. There is a huge water problem in that area. She stated that she would like to work with the Commission/developer in perhaps determining a better access (i.e., Winsome Drive, though presently a private drive).

Marianne Corona also discussed the problems with traffic along the sharp corner of Route 147. Previous discussions of tractor-trailer traffic along Route 147 further west were found to have had severe limitations for traffic because of safety concerns. She also stated her impression that the Route 147 access to the site is worse than one on Route 17.

Brenda Eddy, Main Street, stated that she resides across the street from Mrs. Corona's property. In the winter, the corner of that property floods from what she believes are underground springs. The corner at Routes 147 and 17 becomes extremely icy and this is a major concern. If the road is widened ten feet in the direction of the gas station, she asked what would happen to the water/icing problem.

Mal Pearce addressed the Commission as a member of the Durham Public Safety Committee. He indicated that two years ago, counters were put on the major highways in Durham. The count on Route 17 is about 17,000 cars a day through Durham.

Campbell Barrett, 220 Main Street, addressed the Commission. His property is at the corner of Routes 68 and 17. He stated he was pleased to hear that the plan to widen Route 68 near his property was abandoned. He noted it was an extremely busy intersection now. To add traffic to that area will make it even more dangerous. He has three small children. He queried the statements made earlier that the Department of Transportation was not going to be making changes to this intersection *at this time*; he asked what this could mean down the road.

Joseph Pasquale, Parmelee Hill Road, addressed the Commission, stating the presentation was somewhat confusing between what was said at the first hearing about improvements and what was being discussed this evening. In terms of traffic increases as a result of the project, he expressed concern with the velocity of traffic. He asked the number of additional cars that will be coming into Durham. He also questioned the “funnel effect” from widening southbound Route 17, then narrowing to a single lane.

Carol Kopylec addressed the Commission concerning the amount of time it takes to turn left onto Middlefield Road from Maple Avenue. She believes there is too much traffic on that road to ignore it, particularly with the unsafe corner.

Joanne Schaller, Sand Hill Road, addressed the Commission asking about the water problem at the site and the traffic. She questioned how one police officer in town could possibly handle the likely increases in accidents in town.

Joseph Pasquale reiterated questions about the proposed improvements related to the project, noting that in the first hearing, improvements of \$1.2 million were mentioned at multiple intersections—now, just one intersection is proposed for improvements. Additionally, there have been concerns of traffic along Maple Avenue for years. He suggested that the \$1.2 million improvement is “being dangled as a carrot” before the town, but noted concern that there will only be contributions to the existing traffic problems. He also noted a concern that there is no commitment that any of what is proposed will ever happen. He stated that the applicant is seeking approval for a project that will have a major impact on the community. In citing the corridor study, Joseph Pasquale stated nothing ever happened as a result of that, how might this be different?

Donia Viola addressed the Commission. She stated she had moved to town 32 years ago, when there were 2,600 families in town; now, with more than 5,000 families, she is concerned with the increased traffic throughout the entire region. She suggested compromise was in order, that the town needed to have commercial establishments to help with the tax base. She expressed concern with the fact that the speed limits are not followed in town. She added that her objection to the proposed application was not on the basis of traffic, but because of the big-box concept, which she thought to be way out of line. She recommended that the developer be asked to conduct and pay for a study that includes traffic counts.

Attorney Corona stated that the Planning and Zoning Commission has, in recent years, approved commercial applications for Durham Auto Center; Dunkin' Donuts, Subway, and a convenience store at Grippo's service station, Adams Commons, Durham Village, and Pat DiNatale's new building at the south end of town. All have added traffic to Route 17 and the roadway network in Durham. He stated that the proposed project would also, without question, add traffic to the road network in Durham. However, the Planning and Zoning Commission zoned the property at the north end of Main Street as commercial for a specific reason. He also reiterated that regardless of whether or not this application goes forward, traffic improvements will be necessary to Route 17 and some of the other state highways. The proposed plan includes improvements that will help with the traffic problems. He reminded the Commission that the statutes stipulate that a project not make an existing traffic pattern any worse. While the applicant does not have contractual responsibility to the town of Durham, the plans cannot be executed without the permission of the state (DOT and STC).

Attorney John Corona also indicated that the STC and DOT review the proposed plans using their own models and experts; they do not simply rely on applicant-provided data and studies. He also stated that Brian Curtis, the town's engineer, had provided a peer review of the entire site plan package, including the traffic impact study. A memorandum of understanding would be provided relative to the highway improvements. This commitment would be augmented by a financial commitment in the form of the developer posting a bond for all off-site improvements. The widening of Route 17 as proposed has been designed to minimize impact to businesses. Engineering guidelines and standards will be conformed to in construction. All work will be performed within the state highway right-of-way areas.

In terms of incremental volume, Attorney Corona stated that there will be an additional 3,000 vehicles per day (1,500 cars entering and 1,500 cars leaving the site each day). Approximately 20% of this traffic is already going by the site. Brian Ameche referenced the report distributed, clarifying that of the 2,200 site-generated trips, about 1,700 will be new trips. Daily traffic is not the real concern, it is when there is peak traffic volume (i.e., Friday afternoons from 4 to 5 and Saturdays).

Vahid Karimi explained that Route 17 is the primary arterial roadway. Route 147 is considered a minor arterial capable of carrying up to 10,000 vehicles per day; the current count is 7,000. It is expected that there will be minimal impact to Route 147. An objective of the project is to ensure that as traffic is added to local roadways, functional classifications of each roadway are maintained. He then recapped the planned widening of Route 17 as well as improvements in drainage and relocation of utility poles. New traffic lights are also proposed that will be synchronized in the area of the Haddam Quarter Road/Route 17 intersection so that cars do not have to stop twice. There will also be timing improvements to the signal at Route 68. Bonding will be required for the off-site improvements. The Department of Transportation will develop an independent estimate of exactly what the off-site mitigation work and costs will be. Traffic patterns

were again reviewed; the estimate of incremental traffic on Haddam Quarter Road will be roughly 30 vehicles during peak hours.

Campbell Barrett asked about the process if the Commission were to approve this application and the state then requires additional roadwork (i.e., widening) at the Routes 68/17 intersection. Attorney Corona explained that if the state directs a different method of improving traffic on Route 17 than what is proposed, the applicant would not need to return to the Planning and Zoning Commission. However, if there are any changes required to access/egress on either Route 17 or Route 147, then the applicant would need to return to the Planning and Zoning Commission. As far as Routes 68 and 17 are concerned, it is quite likely that the state will eventually require widening—but it could be anywhere from two years to ten years or more from now and is completely out of the hands of the town.

Gail Gorton, Haddam Quarter Road, addressed the Commission. She questioned the numbers being described for incremental traffic on Haddam Quarter Road. Attorney Corona explained that the 30 cars an hour were anticipated for the peak hour, not every hour.

Brian Curtis, the town engineer, indicated that the State Traffic Commission would not approve a project unless it maintains the current levels of service. Without the improvements as proposed at the intersection of Routes 147 and 17, the level of service would drop from poor to unacceptable (F); the STC will not approve traffic increases unless there is assurance that the level of service at intersections will not worsen.

Brian Curtis also stated that with a certain amount of traffic at the Route 68/Route 17 intersection, there could be a drop in the level of service to unacceptable; however, no improvements are proposed.

Vahid Karimi responded that because of the cultural and historical issues in that area, it is recommended that the signal timing optimization will mitigate the traffic problems from increased traffic due to the development in that location. To Brian Curtis's specific query regarding the level of service being maintained at E at Routes 68/17, with the timing of the traffic signal, Vahid Karimi indicated that this was the case. Without the signal optimization, it would drop to an F, but the retiming of the signal will bring the intersection back to a no-build situation. Brian Curtis stated that it will ultimately be the decision of the state on the required improvements at the Routes 68/17 intersection.

There is also a possible concern with stacking of traffic along Route 147, especially during the afternoon rush hour. It may be that the STC requires a signal at the intersection of Route 147 with the new access driveway into the project. This would, again, be the decision of the STC to make.

Brian Curtis referenced the traffic report, which indicates about 3,500 new trips per day (325 per hour).

Pat Doherty explained that the developer placed counters on the road prior to preparing the traffic report. He also stated that the peak hour of traffic generally doesn't occur with the time that school buses are on the surrounding roadways. In terms of tractor trailer truck deliveries to the site, for a 40,000 square foot grocery store, about three to four tractor-trailer truck deliveries would be expected daily with smaller box trucks likely making additional deliveries to the grocery store and the other two smaller stores on the project. Truck deliveries will be timed to be during non-peak hours to be most efficient. No traffic signal is proposed at Winsome Drive; the nature of the roadway would not appear to require it. Because it is not a town road, there has been no examination of combining access through that roadway.

Pat Doherty also addressed drainage concerns. There will be less drainage overland from the proposed development than exists currently. What drainage there is will ultimately discharge into the existing pipe network. Widening of the roadway will meet the standards for cross-sections, slope, etc. The project site itself has been designed for convenient truck access and circulation with islands strategically placed to discourage illegal movements. Proper turning radiuses have been accommodated. Should the DOT require any modifications, these will be engineered into the plans.

Brenda Eddy asked why Route 147 was not proposed for widening, given the additional traffic and truck traffic in that area. Pat Doherty stated that the traffic volumes do not warrant widening of Route 147.

Bill Smith, 147 Cream Pot Road, indicated the difficulty likely to be faced with truck traffic and the additional backup of cars on Route 147 in both directions. He suggested a stop light be considered for the intersection of the new driveway with Route 147.

Kerry Querns, Middlefield Road, asked about the volume of traffic going in either direction along Route 147.

Patricia Hill, Winsome Drive, questioned the view from her property toward the proposed building. She also asked if a generator would be running at all hours of the day and night behind the proposed store, thus disturbing her quiet country living. She expressed concern with the garbage collected behind a grocery store and the presence of rats and mice.

Attorney John Corona explained that her residential property was adjacent to an industrial zone and overlooks a commercial zone.

Pat Doherty explained that buffering is incorporated in the plans, helping to screen the view of the proposed project. From discussion during the site walk, there will be additional enhancements made to the buffer—increasing the height of the area behind the retaining wall to get increased height for the plantings/screening. There is also 50 feet of green space between the properties.

Patricia Hill also asked about lights being on in the parking lot all night long. Pat Doherty said that the lights would accompany the hours of operation. She also mentioned concern with the lot being used as a gathering place for “boom boxes, drugs, and liquor.”

Because the Inland Wetlands public hearing is not scheduled until November 19 and due to the likelihood that the Planning and Zoning Commission would cancel its regularly scheduled November 21st meeting (the night before Thanksgiving, which the Commission did cancel later in the meeting), Attorney John Corona said that there would be no objection to continuing the hearing to the December 19th meeting (in light of wetlands issues); a letter to that effect regarding an extension would be provided. He noted that the applicant had additional information that would be presented at that time.

Marianne Corona asked that the traffic along Route 147 be more closely examined.

Joseph Pasquale asked when the presentation would be concluded, noting that it has now spanned two hearings and was continuing to a third night. Attorney Corona stated that at an initial meeting, Mr. Pasquale had asked that the hearing be kept open as long as possible to allow everyone to make their comments. He cited the statutory provisions for extensions allowed for hearings.

Jan Melnik read into the record a letter for Neil and Gloria Nilson, 75 Middlefield Road, expressing their concerns given proximity to the project. These included well contamination and subsequent responsibility for repair, noise from the loading dock behind the grocery store, light, the dangerous curve in Route 147 with increased traffic, and property devaluation.

Pasqualino Aparo, Parmelee Hill Road and owner of Lino's, addressed the Commission, stating that his small business (2,000 square feet) has deliveries from two to three tractor-trailer trucks per day; he suspected a 40,000 square foot grocery store would have even more.

Pat Doherty explained that the majority of goods delivered would be coming from a common warehouse. However, Pasqualino Aparo stated that such products as chips, breads, Coca-Cola, and other products are delivered daily by the vendors.

Joseph Pasquale questioned the number of tenants for the project, stating that he has heard conflicting numbers (two and three). Attorney John Corona stated that there may be three or even more tenants; nothing has been finalized at this point. George Eames noted that the applicant is not required to state how a structure will be divided, provided the uses comply with the use table.

Dave Foley asked for a copy of the traffic report. The applicant will provide the Commission with revised information in the next few days (15 copies).

As a procedural question, Diana McCain asked about duplicate sets of material being available at the town clerk's office as well as the land use department. Bob Melvin stated that all material relative to infiltration system and stormwater management should be available at the Town Hall. Geoffrey Colegrove will verify that all materials are at the Town Hall; Midstate Regional Planning will create a master list of all documents.

Marianne Corona suggested Commissioners drive behind the Stop & Shop in Middletown to examine how a loading dock area can look and see how garbage is handled.

Motion by Ralph Chase, seconded by Dave Foley, to continue the public hearing to December 19th, 2007, of Silver Eagle Development Trust, LLC, request special permit for construction of three retail buildings, Main Street. Motion carried unanimously.

Motion by Dave Foley, seconded by Mike Geremia, to reconvene the regular meeting at 10:33 p.m. Motion carried unanimously.

5. Vincent Baker, Request for Extension for Filing Mylars, Old Blue Hills Road

A request was made by the applicant's attorney in July for a second 180-day extension on the filing of mylars for this project. A 3% fee is outstanding (\$30,600) and the mylars cannot be signed and endorsed until that fee is paid. Through a paperwork mishap, the request did not surface until recently—more than 180 days have passed since the original approval of the Commission; the fee has still not been paid. Therefore, a new application will have to be submitted.

6. Thomas Russell, Request for Release of Bond 767 and 759 New Haven Road

Tom Russell recused himself from discussion. Geoffrey Colegrove indicated that this item was on the agenda inadvertently—release of a bond was previously addressed. There is still a bond being held for site restoration; no request has been made for release of that bond.

7. Frederick Dahlmeyer, Request for a Proposed 2-lot Subdivision, New Haven Road, Public Hearing

Geoffrey Colegrove stated a letter had been received from the Dahlmeyers indicating approval for holding the next public hearing on December 5, 2007 (it was to originally have been held on November 21).

Motion by Ralph Chase, seconded by Mike Geremia, to suspend the meeting of November 21, 2007, with the Dahlmeyer application scheduled for a hearing on December 5, 2007. Motion carried, 8-1, with all in favor with the exception of Frank DeFelice (in abstention).

8. Mary Beth Edwards and Walter Cihocki, Request for a Zoning Text Amendment to Section 05.01.01.01. #23 of the Durham Zoning Regulations

George Eames stated that he had spoken with the Commission's counsel, Attorney Tom Byrne, and that the Commission had reviewed Attorney Byrne's letter indicating that the Commission could choose to go in several different directions as deemed appropriate for the betterment of the town as well as public health, safety, and welfare. He stated that Attorney Byrne had expressed concern about changing the regulations to include retail as that could open a number of the 18 buildings in the special district to future retail use applications, comparing this to "opening a can of worms in the future." George Eames cautioned the Commission that once you make an exception like this, you have to make it for all other applications before the Commission.

Attorney Byrne stated that the Commission could choose to go either way (vote up or down) because courts are sympathetic to Commissions and would not reverse any decision that the Commission made, given that the subject application is in the Historic District and Main Street residential area. George Eames stated that he does not deem it proper that the Commission approve this change in the regulations and recommended that the Commission turn down the request for a change at this time.

Jim Kowolenko stated his opinion that what Attorney Tom Byrne had written was "pretty good," that the Commission could amend two sections and then define what specialty shops are.

George Eames then asked Brian Ameche for his opinion.

Brian Ameche stated that when the issue first came up, he had spoken at length against the idea, comparing it to opening a Pandora's box, introducing retail into the Main Street Historic District neighborhood. He cited concern with definitions and terms that are not clear with regard to proposed uses. In his judgment, this is an "all or nothing decision," and until the community makes a clear distinction about what it wants to see in the Historic District/Main Street residential neighborhoods, he did not feel it was prudent for the Commission to commercialize it. He stated his agreement with George Eames to oppose the application.

Ralph Chase stated that using the language that the Commission's own counsel has provided, the Commission can move carefully forward. He noted that the building needs to be used and preserved and that he didn't see any difficulty with using the specific language that Attorney Byrne references.

Tom Russell concurred with Ralph Chase, stating that the language provided by Attorney Byrne would allow the Commission to control each application.

George Eames stated that he was not denying that the Commission could follow Attorney Byrne's language, but he questioned the wisdom of allowing retail in the historic residential district.

Jim Kowolenko stated that it was ludicrous to think that retail would be likely to go into all 18 buildings in the special zone; some are churches and some are town buildings. The proposed application would enable preservation of an important building.

Brian Ameche stated his opinion that to move favorably on the application before the Commission would be arbitrary and capricious and would not represent good planning. The Commission should not be responding to individual requests. He pointed out that Attorney Byrne mentions the difficulty with enforcement because of the possible interpretations of the retail uses.

Jim Kowolenko stated that most of the buildings that could be subject to this regulation change existed before zoning and that good planning would be determining how to make them still useful and not "throw roadblocks up." The Commission has an opportunity now to make a decision for the future.

Dave Foley agreed that planning involves using what is already existing in the town of Durham. The situation the Commission faces is a number of "oddball pieces of property" in town—the job of the Commission is to figure out a way to use them. Attorney Byrne has stated that the Commission can "pretty much do as we want" using changes in the regulations. He had advocated for sending this proposed language to Attorney Byrne for a final review. However, he stated that, as it exists presently, he could not approve the regulation. But he implored the Commission to amend the appropriate sections quickly so that they could deal with these applications on a case-by-case basis. Probably only six or seven of the 18 buildings in the special zone would be likely to be candidates. The Commission has got to figure a way to use them appropriately and incorporate them into the fabric of the town. He stated his opinion that retail use is not a *persona non grata*—rather, in a controlled situation, it could be a good thing. He used examples of Durham Market, the Dari-Serv, and Brenda's Feed as being interspersed in the middle of residential and being perfectly appropriate. He said his recommendation was that the Commission follow Attorney Byrne's advice and do so quickly.

George Eames noted that Brenda's Feed is actually zoned commercial and that the Durham Market predated zoning. Dave Foley noted that, nonetheless, they exist harmoniously with residential uses.

Brian Ameche stated his opinion that the Commission needs to manage and control retail, not plan accidentally. Putting retail in this specific use opens up other opportunities for retail on Main Street. Does the Commission really want this to be a catalyst for a whole series of buildings on Main Street (to pursue renovation and have retail use)? He stated that the underlying question is how the residential neighborhood of Main Street should be—residential or a retail/commercial zone. He described it as the most important

residential neighborhood in town—but one with the “richest future possibility for taxes.” That discussion is at “the heart of the future of the town.”

Frank DeFelice concurred with Dave Foley’s points, noting that the Commission would also need to carefully consider parking. Dave Foley noted that an obligation of the Commission is to deal with the specifics—in some places a retail location might work, in others it might not.

Dave Foley added that he did not agree with the assertion about some of these buildings represented great tax opportunity; however, he agreed that the Commission needs to address how these properties are handled. He reiterated that Attorney Byrne has stated that the Commission has the ability to do what it wishes here and that it can be defended. He stated his opinion that the regulation in front of the Commission should be turned down—but that the Commission should immediately find a way to “do this” and follow their attorney’s advice. He added that his opinion would be for the Commission to modify the regulations, according to Attorney Byrne’s recommendations, thus giving the Commission the permission to “spot zone” as appropriate and selectively approve retail use in the few buildings falling into the special zone on Main Street.

Richard Eriksen reminded the Commission that what is being discussed is a regulation change and not the grange hall, per se. If the language change passes, then the grange hall use can be considered. At such time, parking and other considerations could then be considered on a site-specific basis.

Brian Ameche stated his opinion that, from a planning perspective, the grange hall is the most important civic site left in town; he added that he thinks it is where the senior center should go with the idea of pursuing parking behind it. He commented that the town once had the opportunity to purchase that parking for a dollar and didn’t. The grange hall creates a four-corner “civic heart” to the town.

Dave Foley stated that that is not what is in front of the Commission now (a proposal for a senior center) and it is not what the property owner is asking the Commission to consider. Unfortunately, because Attorney Byrne points out that the language, as proposed, is unenforceable, he feels it can’t be approved in its current state. He, therefore suggested following Attorney Byrne’s advice and amending Section 05.01.01.01 to give the tools to the Commission to say that such a use is acceptable at a particular location. It, of course, would not be just for the grange hall, but the handful of other buildings in the same category. He believed that if the language is not clear enough (such that the Commission’s own counsel can’t define it), then the Commission can’t approve it. However, he believes the Commission has an obligation to the town to get such a tool approved.

Jim Kowolenko stated that the very size of a structure (which cannot, by regulations, be expanded) limits what retail sales can take place.

Motion by Brian Ameche, seconded by Mike Geremia, to approve the application of MaryBeth Edwards and Walter Cihocki, request for a zoning text amendment to Section 05.01.01.01. #23, Durham Zoning Regulations, to “include retail establishments selling individually crafted, handmade candles, bath products, floral arrangements, seasonal ornaments, and decorations, unique wedding and layette items, and antiques (works of art and handicrafts that are at least fifty years old). Also, a workshop area for the creation of individualized silk and dried floral arrangements. Appropriateness of such business to be determined by a special permit application that is site-specific to any of the 18 properties appearing on the Main Street non-conforming list.” Motion denied, 8-1, with the exception of Jim Kowolenko (in abstention).

9. Payment of Bills

Motion by Mike Geremia, seconded by Ralph Chase, to approve payment of the following bills:

- Jan Melnik, Absolute Advantage — \$714.54 (minutes of Oct. 17, 2007, meeting)
- Midstate Reg. Planning Agency — \$5,211.02 (Sept. expenses)

Motion carried unanimously.

10. Minutes of Previous Meeting

Motion by Mike Geremia, seconded by Ralph Chase, to approve the minutes of the October 17, 2007, meeting as revised to reflect correction on page 2—the joint site walk was for Silver Eagle and an informational/public hearing for the Inland Wetland Commission. Motion carried unanimously.

11. Miscellaneous

Brian Ameche asked Geoffrey Colegrove to investigate what appears to be an internally lit sign at Dolphin Days. He also queried the nature of the business on Route 79, the Commission approved prepared foods versus the appearance of a deli operation (i.e., Boar’s Head meats). There was to be no food preparation at the site. Before a certificate of occupancy is granted, the Zoning Enforcement Officer should determine to see that it is in compliance with the approval. The applicants will be invited to the next Commission meeting.

Frank DeFelice recommended that the Commission form a subcommittee to address the issue of the matter turned down this evening—the 18 special buildings, including the grange hall. He stated that he agreed with the points made by Dave Foley earlier—these historical buildings are not going to go away and he believes that something can be done to help preserve them. He stated his understanding with the vote the Commission took given legal opinion, but believed the Commission should proceed with developing appropriate language to enable change. Mike Geremia concurred.

Richard Eriksen suggested starting the regular meeting a little early to allow for a workshop. Frank DeFelice recommended developing a concept of what appropriate uses might look like in these special buildings. For instance, parking should be considered as it relates to particular uses (differing needs for a lawyer's office versus a doctor's office).

It was agreed that the meeting of December 5, 2007, would begin at least half an hour early to allow for a workshop.

Jan Melnik stated that she had researched professional recording equipment, having secured recommendations from other town planning boards. She presented a proposal for a Marantz professional recording system (HB, Inc.), the same system that she is familiar with used by East Hampton. Richard Eriksen stated that the Commission frequently spends \$20,000 or \$30,000 on lawsuits, the least that can be done is to have an adequate recording system.

Motion by Brian Ameche, seconded by Richard Eriksen, to authorize the purchase of a Marantz professional recording system from HB., Inc., at a cost of \$1,886.00 to be purchased and owned by the Durham Planning and Zoning Commission. Motion carried unanimously.

Geoffrey Colegrove also indicated that he had information for alternative systems. The Commission was unanimously in favor of procuring a professional recording system, as discussed or of comparable quality.

Commission members then thanked Brian Ameche for his years of service to the Commission (he was not re-elected in the November 6 election).

Motion by Jim Kowolenko, seconded by Mike Geremia, to adjourn the meeting at 11:40 p.m. Motion carried unanimously.

Respectfully submitted,

Jan Melnik
11/14/2007