

# TOWN OF DURHAM

## **Planning and Zoning Commission**

P.O. Box 428

Durham, Connecticut 06422-0428

### **MINUTES OF APRIL 15, 2009, MEETING**

#### Present

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

#### Absent

Alternate: Mark Laudano

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

#### 1. Approval of Agenda

Motion by Dave Foley, seconded by Tom Russell, to approve the agenda of the April 15, 2009, meeting as presented. Motion carried unanimously.

#### 2. Public Session

Diana Cruise addressed the Commission regarding a continuing problem with Greenland Realty on Old Mountain Road and dust control. She stated that during the past few weeks, the town of Wallingford has been hauling dirt in, three trucks at a time. She indicated that she has raised this issue with Geoffrey Colegrove/the zoning enforcement officer numerous times without remedy. More recently, the Greenland Realty property owner has been also hauling in material and stockpiling it all in back of the building; she is concerned because, in all likelihood, it will eventually be hauled out.

George Eames stated that there are requirements in the regulations (and in the approved site plan) for dust control.

Diana Cruise stated that she would like the Commission members to view not only this problem, but the berm that was created in front of her house (which she described as a “total disgrace”). The trees planted were not the proper ones, the deer have decimated them.

George Eames indicated that he would have Geoffrey Colegrove follow up on these issues.

Rick Parmelee thanked the members of the Commission for their generosity in serving on the Commission and in listening to members of the public on issues without time constraints, in contrast to other groups in town. He also commended the integrity of the members of the Commission for turning out in full force, including alternates, who were not seated and unable to vote because all regular Commission members were present and seated. Finally, in reflecting on the next item agenda, the application of Hobson and Motzer, he stated that while he was not familiar with their particular business prior to the company’s appearance before the Zoning Board of Appeals, he supported their efforts and considered them to be an asset to the community.

3. Hobson and Motzer, LLC, Site Plan Review for Addition to Existing Building,  
30 Air Line Drive

Frank Dworak, chairman of the company and a managing partner with H&B Realty, LLC, addressed the Commission. As Geoffrey Colegrove had not yet arrived (at a meeting of the Middletown Common Council for Midstate Regional Planning Agency), this agenda item was tabled until later in the evening.

4. Ed Barrett, Altered Rides, Site Plan Review for Upholstery, Restoration, Restyling  
Seats, Sewing, Fabrication of Seats and Interior of Motor Vehicles, Installation of  
Seats and After Market Products, Light Manufacturing of Automotive and Motorcycle  
Seating, Audio Video Entertainment, Truck Lettering and Sign Painting, Pinstriping,  
Dealer Services Sunroofs, Convertible Tops, and Woodworking Business, 41A  
Commerce Circle

Ed Barrett addressed the Commission. It was clarified that the correct language in the application and agenda was light *manufacturing* of automotive and motorcycle seating (not light *management*). He has filed an actual application detailing all the uses noted on the agenda. He will be required to obtain a permit from the State of Connecticut, but this cannot transpire until the Planning and Zoning Commission has first approved his application.

Richard Eriksen stated that while a total business plan was not necessary, he did suggest a more detailed account of the business that would explain specifically what he will be doing—while limiting activities to light manufacturing. He indicated that a copy of the repairs permit would also be desirable. Tom Russell noted that the Planning and Zoning

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Commission must first approve the application before the state will issue licensing/permits.

Dave Foley stated that without the application present (in Geoffrey Colegrove's possession), he thought that the Commission should table approval of the application until the following meeting.

#### 5. Payment of Bills

Motion by Tom Russell, seconded by Cathy Devaux, to approve payment of the following bill:

- Absolute Advantage – \$344.15 (minutes 4/1/09)

Motion carried unanimously.

#### 6. Approval of Minutes

Motion by Ralph Chase, seconded by Frank DeFelice, to approve the minutes of the April 1, 2009, meeting as submitted. Motion carried, 8-1, with all in favor with the exception of Tom Russell (in abstention).

Motion by Ralph Chase, seconded by Dave Foley, to recess the regular meeting for the public hearings at 8:00 p.m. Motion carried unanimously.

### **PUBLIC HEARING**

1. Applicant/Owner: Connecticut Horse Cremation, LLC  
Request: Proposed Zoning Text Amendments to Sections 02.12.01., 02.09.01., 07.01.03., and New Section 12.05.04.04

#### Present

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

George Eames, Chairman, opened the public hearing. Mike Geremia and Stuart Keating, both alternates, were present but not seated.

Jan Melnik read into the record a letter from Hugh Curley in support of the application. He referenced an existing equine crematorium in Dover, New Hampshire, that is in

proximity to a restaurant, a veterinary hospital, and a planned hotel. He suggested that the economic impact to the community would be favorable and recommended approval.

Attorney John Corona addressed the Commission on behalf of his clients, Jeff Blaschke and Dominic Gambardella. They are seeking to amend the heavy industrial zone use table to allow for a large animal incineration facility. The application builds on information and knowledge acquired since the last application process. The term “incineration” has been substituted for “cremation.” Animals will be limited to those which are hooved, but catering to horses. Attorney Corona stated that the language proposed also provides for limiting such uses to sites that are at least ten acres in size and with direct access to a state highway. It is proposed that the business be located at least 500 feet away from any existing dwelling.

Attorney Corona noted that although the technology would allow such a business to be safely located right within a neighborhood, the applicant is hoping to create a ‘margin’ that makes people comfortable with the proposed facility. He reflected on not reviewing the entire history of the application as this is a new record, but thought it worthwhile to review some of the details.

George Eames noted that pertinent information should be made part of the record through the public hearing process. However, minutes from the previous meetings/public hearings are accessible to the public as well as to members of the Commission.

Attorney Corona stated that the business operators are proposing to offer a better solution for burial of horses in Durham as well as the surrounding area. Theirs is a more environmentally friendly solution. He then explained the process—from the point a client calls, the company provides all transportation (no clients will visit the facility, the company transports all animals) to the point of delivering ashes back to the client in a 13”x13”x13” box. Animals will be transported in a sealed vehicle that prevents any seepage and removed from the vehicle once fully enclosed in the facility. The only preparation required prior to incineration is if a horse has steel shoes (they would first be removed). The process takes about three hours (depending upon the animal’s size).

The process is carefully monitored with a paper record available for viewing by the Commission. The incineration process includes a secondary burn chamber that results in clean burning with no smoke or odor. The system makes less noise than that of a diesel truck. Dwellings outside the 500-foot distance will not hear the operation. The operation uses state-of-the-art equipment from an experienced, leading manufacturer. Similar systems are in use in California, the state with the toughest EPA and emission standards in the country. There has been virtually no negative impact on the communities or neighborhoods in which they are operated. The operation is discreet and provides for an addition to the tax base in town. The manufacturer, Pen-Ram, is so confident about the machine that they guarantee to refund the purchase price if it does not comply with the regulations. Testing is done by an independent, third party (for emissions, particulate,

opacity of smoke, etc.). Material submitted for the record includes five letters to the town sanitarian, Bill Milardo, from others users of these machines in different locations.

Attorney Corona stated that several sites have been explored; however, these are not subject of the present application before the Commission. The application is to revise the text of the regulations to create the possibility of pursuing such a business in the heavy industrial zone.

It was noted that in the event of a power failure, there is a backup generator and a refrigerated unit to store animals if more than one is picked up in a day. In terms of the operation, there will be the owner and two other employees; the impact on traffic in the area will be negligible. If the business is successful, there might be one to two trips with animals per day using an oversized, dually wheeled pickup truck. There will be no signage on the building, in the industrial park, or on the truck out of respect for the neighbors. The applicants are very conscious of the concerns of the community. They believe the business will be successful and that the agricultural town that Durham is can support such a business.

Jeff Blaschke is OSHA material-certified through a 40-hour material handling course and annual 8-hour refresher courses. The business has also hired a veterinary consultant, Stacey Gallup, for use if there is any question about the condition of the horse that has died. There are very few communicable diseases between humans and horses (rabies being the exception). Any advertising that might exist will feature a post office box only and not the business's physical address.

Attorney Corona referenced an article from the November 22, 2008 *Hartford Courant* in which several other facilities in the state are noted for providing animal cremation services. He added that the town sanitarian has pointed out that it is far more optimal to incinerate a horse than to bury it in the ground near the water table. Incineration is not inexpensive, at least \$1,500; yet there are an increasing number of people desiring this service out of respect for the animal and the environment.

Frank DeFelice noted that newspapers typically require an address when running an ad; however, any advertising is likely to be trade-journal specific (not the *Hartford Courant*, for instance). He also noted that he would like the specifications for the unit to be included and a letter from the veterinary consultant.

Ralph Chase asked the reason for including language about the size of the lot (minimum of ten acres) and, specifically, if there could be other activity on the parcel. Attorney Corona stated that there could be other buildings on the site—they are not envisioning a “single building in an island of 10 acres.” By creating the 10-acre requirement, this affords a certain mass with setbacks (compared to the other application where buildings were very close). In addition, because there are very few parcels in the heavy industrial zone that are at least 10 acres in size, this avoids a proliferation of other similar businesses.

Geoffrey Colegrove stated that the regulations permit multiple buildings in commercial/industrial zones (multiple principal structures, unlike the farm-residential zone, which is limited to one principal structure).

Jan Melnik read into the record a letter from Attorney Steven Byrne concerning the Cushing v Durham Planning and Zoning case (lawsuit filed following previous crematorium application/action of Commission). All parties agreed to an extension of 120 days on that case and the Commission's counsel urged that the current application be considered (as the current litigation has, in effect, been stayed pending outcome of this application).

Joseph Pasquale, Parmelee Hill Road, stated that he attends all meetings of the Commission and is interested in hearing concerns of residents in that neighborhood. He asked why a crematorium, if being considered in Durham, would be limited to only large animals. If there is concern about economic development, he suggested that cats and dogs should be considered as well. He asked why section b of the language references only odor and smoke, but says nothing about toxic emissions. He noted that by limited the project to 10 or more acres, he could identify only four potential sites in town (Tilcon, Leonard Lumber, Permatreat, and DiNatale's site with rental storage units). He suggested that the language should follow that established in the State of Connecticut.

Rick Parmelee addressed the Commission, stating that he was born and raised in Durham on a large farm with many animals. He is concerned about the lack of guidelines from the State of Connecticut, noting his belief that this is something for which there should be some oversight at the state level. However, he praised the commendable aspects of the application and the proposed business operations. He added that he did not have a problem with considering the operation on a 24/7 basis as there is no noise, it is fully enclosed, and will have no impact on traffic. He did query how it will be ascertained that the animals are disease-free.

George Eames noted that a veterinary consultant has been retained to assist in this matter.

Cindy Turcik, 9R Mountain Road, addressed the Commission. She asked if the DiNatale site were selected, would such a business be permitted to operate from one of the storage areas.

George Eames indicated that, in all likelihood, a separate facility would be constructed. However, the subject application is not site-specific (other than the parameters provided: heavy-industrial zone, greater than 10 acres, etc.).

Attorney John Corona stated that he had previously apprised the Commission that the current legislature had indicated that no action would be taken on regulating animal crematoria during this legislative session.

To the question regarding toxins, Attorney Corona indicated this was dealt with during the last application process—there are no standards that can be applied, but it can be addressed through the special permit process. In terms of possible sites, he noted that he did not have a comprehensive inventory of sites and that in addition to those already discussed, there could certainly be other possibilities. He stated that the current state statutes deal only with human crematorium and would not be a standard for this operation. With regard to disease, Attorney Corona stated that when a horse dies, it is not always possible to know exactly why—but experts have indicated that virtually no disease that a horse *might have* exists after the host dies and, therefore, transporting the dead animal carries a risk factor approaching zero. He countered with the question—would it be a better choice to leave the animal above ground in an open field or to bury it in the ground and risk contamination of groundwater?

In terms of the DiNatale site, Attorney Corona indicated that businesses currently do operate from the rental units and some on the site are quite large. The proposed operation could be housed in one of the existing buildings or in a building constructed specifically for this purpose. He added that it is difficult to negotiate any business arrangement for a use that is not (yet) legally permitted in a particular zone. That is what transpired the last time—the opportunity/location being considered previously ‘disappeared.’

Dave Foley stated his impression that the units approved as part of the DiNatale project were for the storage of materials and not the operation of businesses.

Geoffrey Colegrove indicated that they are considered industrial storage buildings—but that there are activities currently that ‘do more than storage.’ He doubted that if this use were approved and the DiNatale site were selected that it would be in an existing building; the proper power requirements would be likely to dictate construction of a new building. There have been some compliance and code issues (including fire and building codes) in the present units because of the limited utilities available.

Discussion followed regarding the previous application, pending lawsuit, and the present application. Geoffrey Colegrove indicated that if this application is approved, the first application becomes moot. The whole matter with the current lawsuit being put ‘on hold,’ as agreed by all parties, allows for this application to supplant the previous approval. It is an assumption—but the sentiment is, if the Commission votes favorably on this application, the other suit will be dropped (this per agreement of the two attorneys, Mike Dowley and Tom Byrne). Geoffrey Colegrove added that, if approved, this language would technically become a substitute for the original amendment.

Mike Geremia asked a technical question regarding the filing of the application; Geoffrey Colegrove stated that the application was properly filed/signed by the town clerk.

Geoffrey Colegrove indicated that the current application does not require referral to other agencies as the language is less restrictive than previously approved.

Frank DeFelice suggested that the distance from existing dwellings should be 1000 feet, not 500 feet.

Motion by Tom Russell, seconded by Gene Riotte, to close the public hearing of Connecticut Horse Cremation, LLC, proposed zoning text amendments to Sections 02.12.01., 02.09.01., 07.01.03., and New Section 12.05.04.04. at 9:03 p.m. Motion carried unanimously.

### **PUBLIC HEARING**

2. Applicant/Owner: Karen Patterson and Timothy Gastler  
Request: Request for a Proposed 6-lot Subdivision, CT Route #147 and Snell Road

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

George Eames, Chairman, opened the public hearing. Mike Geremia and Stuart Keating, both alternates, were present but not seated.

Attorney John Corona addressed the Commission on behalf of the applicant; the subject application will serve to settle an estate. There are two houses already on the site and a large portion of the project will be retained for nursery farming. The project is adjacent to the Middlefield industrial park and also adjoins the transfer station facility. The project creates lots around the existing houses and adds five new houses.

The project engineer, Pat Benjamin, described the 45-acre property, which includes a 125-foot wide power easement. A lot will be reconfigured around Alan and Karen Patterson's existing house. He detailed the lots and acreage:

- Lot 1 — 2.37 acres on Route 147
- Lot 2 — 2.99 acres on Route 147
- Lot 3 — 7.2 acres
- Lot 4 — 7.2 acres
- Lot 5 — 5.45 acres
- Lot 6 — 19.63 acres

Lot 3 has 200 feet of frontage on Old Indian Trail's right-of-way. Lots 4 and 5 have 200 feet of frontage on Snell Road's right-of-way.

House, well, and septic locations were reviewed for all lots. A common driveway will be used to access Lots 1 and 2.

The town engineer wants to formalize drainage and the driveways are required to be paved, with catch basins added. A temporary sedimentation basin during construction of driveways is also required.

Once the Planning and Zoning Commission has approved the application, a curb cut permit will be sought for the two lots on Route 147. Rather than separate driveway entrances for Lots 3, 4, and 5, one driveway curb cut will be created at the corner of Snell Road with appropriate sight lines. The first portion of the driveway will be paved, then divide off into gravel driveways with 4-5% slopes.

All revisions as desired by the town engineer are acceptable and either have been made/will be made (just received a few days earlier).

Attorney Corona stated that a minor issue for a pipe was addressed with the Inland Wetlands Commission. The Conservation Commission reviewed the application and made no comment.

Language will be developed for maintaining the common driveway with shared maintenance by those using it.

Richard Eriksen asked the status of the water supply, particularly for the two homes proposed for Route 147 (and the potential for contamination by the leachate plume from the landfill site). The Pattersons currently have a well. There is protection because a permit is not granted for home construction until a satisfactory well is drilled.

The water system stops at the Dill house adjacent to this site. It might be to the advantage of everyone to connect additional houses. However, the current water system is 'maxxed out'; it was a stopgap measure when originally implemented. The State is looking to drill a second backup well, but needs an infusion of money not currently available. Lot owners might be well served to put the money they would otherwise have put into well-drilling into a public water system "as a contribution." Attorney Corona pointed out that these lots are being reserved for children with no immediate intention of doing anything. The Patterson well continues to be fine and no one necessarily knows where the leachate plume might extend to over time. The town would have the responsibility to hook up water supplies for these houses *if* the wells were to become contaminated. Again, building permits are not issued without proof of potable water.

The town sanitarian does recommend connection to the public water system if that is feasible.

Frank DeFelice suggested a 50-foot strip be developed to provide future access to Lot 6 and to have a second means of egress/access for public safety/fire protection. Attorney Corona noted there is no intention for development of Lot 6, it is intended for agricultural purposes.

Rick Parmelee wished the applicants well in their quest, adding his hope that if the project goes through and houses are constructed, there won't be complaints about proximity to power lines. Because some of the parcel does abut the landfill, he suggested it might be advantageous for the town to buy the land.

Jan Melnik read into the record Bill Milardo's letter, which stated that although wells for Lots 1 and 2 are located south of the landfill and on the highest elevation, the best approach would be to link to the Old Indian Trail Water system. The State regulations require that where a public water main exists within 200 feet of a property, connection to that public water system is required. Information concerning size/type of pipe located along Middlefield Road and the capacity of the Old Indian Trail water system is needed to determine if provision of public water to additional customers is required or feasible. If the Old Indian Trail water system is not capable of supplying water to the proposed lots, well permit exceptions could be sought from the Connecticut Department of Public Health. If well permit exceptions are granted, a well water testing/monitoring regimen should be developed. If contaminants are found, the installation of water treatment equipment designed to remove contaminants will be necessary.

Motion by Ralph Chase, seconded by Cathy Devaux, to close the public hearing of Karen Patterson/Timothy Gastler, request for a proposed six-lot subdivision, CT Route #147 and Snell Road. Motion carried unanimously.

Motion by Ralph Chase, seconded by Tom Russell, to reconvene the regular meeting at 9:37 p.m. Motion carried unanimously.

7. Hobson and Motzer, LLC, Site Plan Review for Addition to Existing Building, 30 Airline Drive

Jan Melnik read a letter from First Selectman Laura Francis into the record; she concurs with and conceptually supports approval of the Hobson and Motzer site plan review, pending review of the final easement language (for various utility easements) and documentation that adjoins the two sites as a single zoning lot by the town attorney prior to endorsement of the mylars.

The town engineer, Brian Curtis, has reviewed the documents as well and noted that the stormwater treatment area needs to be cleaned out on a regular basis. In addition, the detention basin must have an access point.

Attorney Steve Byrne reviewed the application on behalf of the Commission concerning the need for the utility easement (so electric, sewer, and stormwater services can pass under the public road from one parcel to the other) and a second document that would unite the parcels under single ownership so that one could not be sold or transferred without the other.

Motion by Richard Eriksen, seconded by Ralph Chase, to approve the request of Hobson and Motzer, LLC, site plan review for addition to existing building, 30 Airline Drive, subject to compliance of paragraphs 3, 4, and 5 of April 14, 2009, letter from Brian Curtis, town engineer, successful execution of zoning instrument to bond two parcels together as a single lot, and easement language for underneath road to accommodate utilities acceptable to town attorney. Motion carried unanimously.

8. Connecticut Horse Cremation, LLC, Proposed Zoning Text Amendments to Sections 02.12.01., 02.09.01., 07.01.03., and New Section 12.05.04.04

The Commission discussed Frank DeFelice's idea of requiring a distance of at least 1,000 feet from a dwelling instead of 500 feet. To extend to 1,000 feet might eliminate use altogether in town. Jim Kowolenko also suggested that small animals be permitted.

Dave Foley noted that by not allowing non-hooved animals, the site is precluded from becoming a mass disposal facility for animals from other areas of the state.

Geoffrey Colegrove stated that the proposed regulation has been tailored to minimize impacts on adjacent development.

Dave Foley stated he was much more comfortable when voting on an application when he knew precisely where it was to be located.

This language allows simply for an application to be presented for a specific site that meets the requirements.

Motion by Richard Eriksen, seconded by Ralph Chase, to approve the application of Connecticut Horse Cremation, LLC, proposed zoning text amendments to Sections 02.12.01., 02.09.01., and 07.01.03 and new section 12.05.04.04, effective May 10, 2009. Motion carried, 7-2, with all in favor with the exception of Frank DeFelice and Dave Foley (in opposition).

9. Karen Patterson and Timothy Gastler, Request for a Proposed 6-lot Subdivision, CT Route #147 and Snell Road

Motion by Dave Foley, seconded by Ralph Chase, to approve the application of Karen Patterson/Timothy Gastler, request for proposed six-lot subdivision, CT Route #147 and Snell Road subject to 1) placing Bill Milardo's letter (regarding water supply) on the drawings and 2) approval by town engineer of revisions to all engineering comments. Motion carried unanimously.

10. Proposed Zoning Text Amendments to Section 2 "Definitions" for Buildings, Yards, Structures, and new Section 05.02.(F) "Clearance and Height," Public Hearing Scheduled for May 6<sup>th</sup> Meeting

11. Town Planner's Report

Gene Riotte provided information from a recent Zoning Board of Appeals meeting on the Jackson matter.

A site walk will be held on May 9 at 9:00 a.m. at the Greenland Realty site.

Motion Ralph Chase, seconded by Dave Foley, to adjourn the meeting at 10:06 p.m.  
Motion carried unanimously.

Respectfully submitted,

Jan Melnik  
4/22/2009