

TOWN OF DURHAM

Planning and Zoning Commission

P.O. Box 428

Durham, Connecticut 06422-0428

MINUTES OF JULY 15, 2009, MEETING

Present

Members: Ralph Chase, Cathy Devaux, George Eames, Richard Eriksen,
Jim Kowolenko, Gene Riotte
Town Planner: Geoffrey Colegrove
Alternate: Stuart Keating

Absent

Members: Frank DeFelice, Dave Foley, Tom Russell
Alternates: Mike Geremia, Mark Laudano

The meeting was called to order by George Eames, Chairman, at 7:30 p.m. Stuart Keating was seated on the Commission in Frank DeFelice's place.

1. Approval of Agenda

Motion by Gene Riotte, seconded by Ralph Chase, to approve the agenda of the July 15, 2009, meeting as amended to reflect the addition of:

- 1) Tilcon Minerals (item 11)
- 2) G. Caturano – withdrawal of application
- 3) Greenland Realty (item 12)
- 4) Connecticut Horse Cremation (item 13).

Motion carried unanimously.

2. Public Session

Diana Cruise wanted Commission members to be aware of the truck washing and roll-off dumpster on site at Greenland Realty on Mountain Road. According to the 2001 minutes, the applicant had stated that he had materials/equipment for appropriate dust control; this has not been done. In 2003, it was noted that there would be no truck-washing activities

at the site as these existed for the company in two other towns. In 2006, the Commission stipulated that there be no mechanical repairs or truck washing on the site, yet there has been/continues to be truck-washing on the site—as recently as last Wednesday. Further there was a roll-off dumpster on the site.

Diana Cruise asked that the Commission address these problems.

George Eames stated that he had talked with Geoffrey Colegrove within one hour of the phone call and when he visited the site, the only evidence was dampness on the ground.

Mrs. Cruise provided photographs that attempt to illustrate the problem. She stated that for five years, trash has been hauled onto the site—this was not supposed to transpire either. She stated that this is not fair to the residential neighbors.

Motion by Richard Eriksen, seconded by Jim Kowolenko, to issue a cease-and-desist order against Greenland Realty for violating the permit—the following activities will cease:

- 1) truck washing
- 2) rolloffs on site
- 3) trash hauling to/from site

Motion carried unanimously.

3. Mark Kauffman, Site Plan Review for Hot Dog Cart, 13 Middlefield Road

Josh Kauffman addressed the Commission; he is the son of Mark Kauffman. He described his plans to place a hot dog cart on the grass near Route 17 at the upper entrance to 13 Middlefield Road. Marianne Corona, the property owner, has granted permission for him to use this site seasonally—or until there is a tenant in the former medical building. He described the operation; his hours will be from 10 a.m. until 2 p.m. He will keep the site clean and remove all garbage. An A-frame sign would be mounted by the road. There are plenty of parking spaces (formerly serving the medical building) for customers to park and not stop along Route 17.

Richard Eriksen stated that a similar operation was contemplated several years ago, raising a host of issues:

- What qualifies as a restaurant
- Drive-ins are prohibited (because of traffic and trash generated)
- Impact on the rest of Main Street if such an operation were approved
- This appears not to be a permitted use
- There are no restroom facilities
- Such a use competes with existing restaurants in town, which pay taxes and conform to regulations and sanitation standards

Richard Eriksen stated that while it is up to the Commission, he is opposed.

Josh Kauffman noted that his parents have the permit to have a cart at Allyn Brook during baseball games (the past seven years).

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Richard Eriksen stated that he is in favor of entrepreneurship, but if this were permitted, then anyone wishing to have a cart could do so.

Cathy Devaux pointed out that this would not be year-round and parking shouldn't be a problem.

Geoffrey Colegrove stated that the proposed location for this cart is probably the safest one in town based on traffic patterns.

Stuart Keating stated that he doesn't see this as a problem, having worked in construction for 35 years—he has stopped at these stands frequently. The operators generally keep these areas well-policed and clean. He suggested the Commission might provide a 60-day approval, then the Commission would revisit the operation.

It was noted that the regulations do not permit a food cart specifically and drive-up facilities are not allowed as part of restaurants. It was reiterated that if the use tables don't allow an activity, the activity cannot be approved unless there is an amendment to the regulations.

Geoffrey Colegrove noted that in some towns (i.e., Middletown) these applications are dealt with by the health department and the consumer protection office (they issue permits). In Hartford, there are even specific spaces that are regulated and for which permits are issued.

In Durham, Geoffrey Colegrove stated that the Commission has, over time, assumed jurisdiction over the permitting of these carts. A site plan is required.

Richard Eriksen queried the appropriateness of the property owner leasing the site to Josh Kauffman when there is no restaurant approved on the current site plan.

The use table could be amended (if approved) to a special permit for a seasonal/temporary vendor/hot dog stand.

Motion by Richard Eriksen, seconded by Ralph Chase, to approve the site plan review of a hot dog cart operation, 13 Middlefield Road, Mark Kauffman. Motion denied, 5-2, with all in opposition with the exception of Cathy Devaux (in favor) and Stu Keating (in abstention).

4. Tim Hollister, Esq., Request for Modification to Approved Site Plan for Athletic Field, Regional School District #13, Pickett Lane

A petition has been filed before the Inland Wetlands Commission requiring a public hearing, which will be held on August 10.

Attorney Hollister/Regional School District #13 has been invited to speak before the Board of Selectmen as the traffic authority. It was noted that the project features bleachers accommodating 1,000 seats, which have been proposed and the proposed track expansion will accommodate more current standards and possible non-school uses of the property.

George Eames asked if the school will be leasing out the property. Geoffrey Colegrove noted his recollection of a statement at a previous meeting (including Laura Francis, Mr. Webb, and Ron Melnik) that there was the expectation of “some income from the new facility.” In addition, District 13’s website details potential uses of the site (probably to garner support for the referendum).

It was agreed that the Planning and Zoning Commission would accompany the Inland Wetlands Commission on its August 8 site walk. Then the public hearing before the Planning and Zoning Commission would open on August 19.

Motion by Richard Eriksen, seconded by Gene Riotte, to require Regional School District #13 to hold a public hearing on August 19, 2009, before the Planning and Zoning Commission. Motion carried unanimously.

5. Pasquale DiNatale, Request for a Text Amendment to the Durham Zoning Regulations Section 07, “Industrial Districts,” Add Subsection 07.01.03. #25 to allow “Automobile and Equipment Service, and Public Garage, all without Sales as a Principal or Accessory Use” by Special Permit in the Heavy and Light Industrial Zones, Public Hearing Scheduled for the August 5th Meeting

Attorney John Corona addressed the Commission on behalf of Pat DiNatale. The public hearing is scheduled for August 5.

6. Tilcon Minerals, Renewal of Annual Application

Frank Lane was not in attendance. Geoffrey Colegrove stated that there are not many changes to the plan. This item was tabled to the next meeting.

7. Greenland Realty, Site Plan Review and Modification

Attorney Joan Molloy, Laughlin & Fitzgerald, 150 South Main Street, Wallingford, addressed the Commission on behalf of the applicant. She stated that she was more than willing to make a presentation this evening—or at a public hearing, if that is the Commission’s desire. Some communities do not require a public hearing when the modification is minor; others do.

Attorney Molloy stated that the use in question was originally proposed with the first special permit application, but then deleted from the site plan.

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The original plan did not clearly identify an outside storage area and the Commission subsequently decided not to allow the parking of vehicles outside. Most vehicles are stored in the building. Large equipment is typically kept on job sites; however, with the poor economy, there aren't as many jobs and, therefore, some of the equipment needs to be stored at the site that doesn't fit into the garage. The applicant would like to designate a very specific area to be used for exterior storage/parking. It has been located as far from the neighboring residences as possible.

Attorney Molloy stated that the applicant is also seeking to place a fuel tank area outside the building. One had been installed previously without a permit and was then removed. There hasn't been one on site for three years.

Richard Eriksen indicated that the modification to the plans was approved, with conditions, at the Inland Wetlands Commission. Rolloff trailers and debris on trailers were specifically prohibited.

Attorney Molloy stated that until this evening, she was not aware that there was an issue (she was given an opportunity to see the pictures presented by Mrs. Cruise). She will show her client the picture.

To Jim Kowolenko's question regarding how many vehicles will be stored, Attorney Molloy stated that they are not seeking a specific number; rather, it will be a designated area.

Gene Riotte asked if additional buffering or planting is proposed. Attorney Molloy indicated that the parking/storage area is located behind the building, which will serve as a buffer.

Geoffrey Colegrove noted that nothing in the design development district language indicates that a public hearing is required; however, that is the prerogative of the Commission.

Diane Cruise stated that since this item was inadvertently omitted from the agenda, neighbors should have an opportunity to know that the Commission is reviewing the matter.

Motion by Richard Eriksen, seconded by Ralph Chase, to schedule a public hearing for Greenland Realty on August 5, 2009. Motion carried unanimously.

8. Connecticut Horse Cremation, Request for a Special Permit for a Large Animal Crematory and Incineration Facility, 575 Wallingford Road

Attorney John Corona addressed the Commission on behalf of the applicant. He advised that the proposed application is for a 40' x 45' building. It is compliant with both the new Planning and Zoning regulations as well as the new statutes in that it is more than 500

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feet from a residential building and a residentially zoned property. The building will be a newly constructed, freestanding building.

The public hearing will be held August 5.

Jan Melnik read into the record a letter from Attorney Steve Byrne providing an update on all issues presently being handled for the Commission. The details are reflected below:

July 2, 2009 (from Attorney Steve Byrne)

Dear Chairman Eames:

Please inform the Durham Planning & Zoning Commission of the status of the following appeals and other legal matters this firm is representing it in:

Hobson-Motzer – The attorney for H&M and I have agreed as to the form of a utility easement and deed restriction so that the planned expansion of the company's building can proceed. A copy of this document was sent to Geoffrey Colegrove as well as the health department for comment. Once an agreed upon document is in place, this matter can move forward to closure.

John Jackson – By earlier agreement, Mr. Jackson was given 3 months to bring his property into compliance with the zoning regulations. By compliance, it was understood that he would need to sell his Middletown property so that his Durham property would become his residence. Three months have passed and I have no information that this has been done. Therefore, the Commission should look at this matter again to determine if any further action is desired.

Cushing v Durham PZC – This matter is now before the court in the form of a stipulated judgment. If approved by the court, this judgment will resolve this appeal without fees or costs assessed to either party and an acknowledgment that it was resolved as neither party saw any benefit to having the matter tried by the court. This month should see the judgment approved and this appeal concluded.

Arrigoni v Durham PZC – The court has set a date of August 10, 2009, for a hearing on this matter. The hearing will take place at 2:00 p.m. at the Middletown Superior Court House. You and other commission members can attend this hearing if you wish.

Silver Eagle v Durham PZC – Silver Eagle has filed a petition for certification with the state Appellate Court to take an appeal of the trial court's decision. The trial court had dismissed the appeal finding that the Commission's decision was supported by the administrative record. We can file an objection to this petition as there is no automatic right to appeal a land use case to the Appellate Court. Our objection is due July 9, 2009, the rules giving us only 10 days to file an objection. A copy of the petition will be sent to Geoffrey Colegrove.

This sums up the status of the matters placed into our hands by the Commission. If you should have any questions, please feel free to contact me.

Very truly yours, Steve E. Byrne

On the matter of Silver Eagle, Attorney John Corona clarified that a two-week extension to July 23 had been provided for filing a petition on behalf of the Commission.

9. Town Planner's Report

With respect to side yards and rear yards, Geoffrey Colegrove stated that he will continue using his discretion and the drafted language developed previously as guidelines for his actions.

Regarding John Jackson, Main Street, Attorney Steve Byrne has been dealing with Mr. Jackson's attorney. The Commission will have Attorney Byrne send a letter to Mr. Jackson's attorney asking for the status of his compliance, given there has been no word and the three-month period of time provided has expired. If Mr. Jackson is still living in Middletown, then the Commission will go forward with enforcement action.

Gene Riotte noted that there is a new set of tenants living in the barn as well as two existing tenants in the house.

10. Payment of Bills

Motion by Ralph Chase, seconded by Jim Kowolenko, to approve payment of the following bills:

- Midstate Regional Planning Agency – \$4,894.82 (June expenses)
- Attorney Steve Byrne – \$1,687.50 (nine matters enumerated)

Motion approved unanimously.

11. Approval of Minutes

Approval of the minutes of the July 1, 2009, meeting was tabled.

12. Zoning Enforcement Officer's Report

Geoffrey Colegrove stated that the application for a structure at 2 Cherry Lane had been made under the flood hazard regulations; an engineering report will be referred to Nathan Jacobsen (as Brian Curtis resides next door). If requirements are met, a permit will be issued.

Stuart Keating asked if the business at the intersection of Tuttle Road and Route 68 has an approved permit; it does.

To a query regarding the Assistant Zoning Enforcement Officer, Geoffrey Colegrove reported that he is working out well.

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Joseph Pasquale asked about the letter from Attorney Steve Byrne read into the record, wondering if the Commission would be taking action on the Silver Eagle matter.

Geoffrey Colegrove indicated that Attorney Byrne would be responding on behalf of the town before the July 23 (extended) deadline.

Cathy Devaux noted that there is again a proliferation of temporary signs throughout town, including several stuck in the ground at the intersection of Maiden Lane and Route 17; these are obstructing clear view and are unsafe.

While Ed Grimes had resigned from the ZEO position, he will be asked if he is interested in resuming the sign-removal portion of the ZEO's job. While the state is supposed to maintain the state roads, the town crew can remove signs if they are blocking visibility.

Cathy Devaux and Richard Eriksen asked that Geoffrey Colegrove contact the State Department of Transportation regarding doing a sweep and cleaning out the current problem with temporary signage.

Motion by Stuart Keating, seconded by Cathy Devaux, to adjourn the meeting at 8:58 p.m. Motion carried unanimously.

Respectfully submitted,

Jan Melnik

7/22/2009