

**PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING
MAY 22, 2012**

Place: Room 206, Town Hall

TIME: 8:00 P.M.

PLANNING & ZONING COMMISSION MEMBERS ATTENDING:
Conze, Hutchison, Cunningham, Spain, Voigt

STAFF ATTENDING: Ginsberg, Keating
RECORDER: Syat
CHANNEL 79

Chairman Conze opened the meeting at 8:00 P.M., and read the first agenda item:

PUBLIC HEARING

Amendment of Special Permit #42-H/Site Plan, Parklands Office Park, LLC, 3 Parklands Drive. Request for modifications to Site Plan and Special Permit to: 1) construct a 460+/- square foot terrace; 2) relocate Dumpster with associated fence/screen; and 3) revise the previously approved landscaping plan. The subject property is at the terminus of Parklands Drive, and is shown on Assessor's Map #35 as Lot #34 in the DOR-5 Zone.

Mr. Conze noted that the applicant has written an e-mail asking if this item be opened tonight and immediately continued to June 5, 2012 at 8 P.M. in Room 206 at Town Hall. Chairman Conze then read the next agenda item:

Continuation of Public Hearing regarding Coastal Site Plan Review #271, Flood Damage Prevention Application #307, The Tokeneke Association, Inc., Cross Road Causeway, Pound Gut Seawall, Arrowhead Causeway. Proposing to: a) repair an existing stone masonry and concrete causeway at Cross Road at its intersection with Scott Cove, which is adjacent to the properties shown on Assessors Map #65 Lot #8A (4 Cross Road), and on Assessor's Map #67 as Lot #87 (22 Searles Road) and Lot #88 (1 Coves End Road) in the R-1 Zone; b) repair an existing stone masonry seawall and causeway adjacent to Pound Gut, which is adjacent to the properties shown on Assessor's Map #67 as Lot #65 (2 Contentment Island Road), Lot #47 (31 Edgehill Drive), and Lot #85 (28 Searles Road) in the R-1 Zone; and c) repair an existing stone masonry and concrete causeway located at the junction of Arrowhead Way and Tokeneke Trail, which is adjacent to properties shown on Assessor's Map #69 as Lot #21 (36 Tokeneke Trail), Lot #41 (33 Tokeneke Trail), and Lot #20 (71 Arrowhead Way) in the R-1 Zone; and perform related site development activities within regulated areas. *HEARING OPENED ON MARCH 27, 2012 AND WILL BE CONTINUED AGAIN UNTIL MAY 22, 2012.*

Mr. Tim DeBartolomeo from Roberge Associates Coastal Engineers, LLC, was present on behalf of the applicant. He noted that the application really consists of a maintenance project on three different sites within Tokeneke area. Tokeneke Brook flows to the intersection of Searles Road and Cross Road: there is a weir at Site A and Site C is at the upper reach of Scott's Cove. He noted that the overall concept is that a December 2010 inspection was done and that the existing walls require a lot of maintenance and repair. He then reviewed each of the three sites, one by one.

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First, Mr. DeBartolomeo reviewed the proposed work at the Arrowhead Way/Tokeneke Trail causeway. He showed photographs and noted that the walls require repair. He then showed photographs of the deteriorated mortar work. There is 160 feet of wall to be repaired, part of which has partially collapsed. The work consists of power washing, scraping out bad mortar and refurbishing. The intent is to restore with fresh mortar and appropriate stone. They are also adding a safety rail. They are not trying to change the hydraulics. The tide gates are in need of repair. As part of this project, there will be partial road closures and there is not a lot of room for staging. The work will be done by land equipment and hand labor. They might bury the existing cable line and as part of the work, they will rake out the water and at the end of the project, this will look like a new wall. Mr. Conze then asked whether a storm would breach this wall. Mr. DeBartolomeo responded that it would. Mr. Sam Fuller of the Tokeneke Association explained that some of the neighbors are concerned with the aesthetics of the proposed guard rail and that they will be adjusting the plans accordingly. The wall will be stone faced, not concrete. Mr. Conze noted that as-builts of the guard rail will be needed. Mr. Fuller also noted that the cable railings now at the Cross Road Causeway will be replaced with a different design.

Mr. DeBartolomeo said that Cross Road now has an old railing that will be replaced. The work at Cross Road is essentially the same as Arrowhead Way/Tokeneke Trail. There will be no change to the culvert and no change to the hydraulics. There is now vegetation growing into the mortar of this wall. He said that the Cross Road area never drains completely. Therefore, there will be some underwater work and/or coffering. Work will also consist of re-pointing the wall and chinking. Mr. Hutchison asked if there will be any widening of the road. Mr. DeBartolomeo responded that they were not asked to look at that as part of this project.

The third area to be worked on is at Pound Gut. Mr. DeBartolomeo said that they could not find any culvert here. They will be leaving the wall as a dry-laid structure. They will be increasing the number of weep holes and improving the grading. The wall near Searles Road is badly deteriorated and some regrading is needed. Scuppers will be larger and higher. Eighty-two feet of wall will come out completely and there may be underwater work requiring sectioning off of the area, since this area does not drain completely.

Mr. Conze asked how soon they will complete this work. Mr. DeBartolomeo responded that they may do the work in stages, and they are looking at doing the work in a two to five year period. Mr. Ginsberg then noted that this project has received approval from the State of Connecticut DEEP and he then read aloud the May 22, 2012 e-mail from Kristal Kallenberg, stating that this project has received DEEP approval and is consistent with coastal policies. Mr. Hutchison then asked about sequencing and phasing and possibly getting a logistics plan to staff once final construction details are known. Mr. DeBartolomeo agreed that that would be appropriate, and said that the Commission can include that as a condition of approval.

Mr. Ed Barksdale, who lives in Tokeneke, noted that there is currently a controversy related to the height of the railing in the Arrowhead Way/Tokeneke Trail section. Neighbors want the height as-is, as they fear that the new rail could impair sight lines. Mr. Ginsberg added that any guard rail which may be required would not be a zoning requirement, but rather, might be a Building Code requirement. Mr. DeBartolomeo said that he understands the neighbors' line of sight concern, and

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they are working together on an acceptable solution. He said that an open railing in this area will work.

There being no further questions or comments from Commission members or the general public, Mr. Hutchison made a motion to close the public hearing on this matter. That motion was seconded by Mr. Spain and unanimously approved.

At about 8:35 P.M., Chairman Conze then read the next agenda item:

Continuation of Public Hearing regarding Business Site Plan #146-C/Special Permit, Anthony's Coal Fired Pizza, 319 Boston Post Road. Proposal to install additional parking with related landscaping and stormwater management; to install outdoor dining on a proposed terrace in front of the existing restaurant; and to perform related site development activities. The subject property is located on the north side of Boston Post Road, at the northeast corner formed by its intersection with Birch Road, and is shown on Assessor's Map #13 as Lots #1 and 2, in the SB-E and R-1/2 Zones. *PUBLIC HEARING OPENED ON APRIL 24, 2012.*

Architect Nick Aivalis noted that this public hearing has been continued from April 24, 2012. He said that parking is a priority of this application, and overall they are proposing to gain nine on-site spaces. He explained that previously, Centro had 80 seats within the restaurant. There are now 51 seats in the restaurant and 10 at the bar, which totals 61. When they have the patio in use, they will be subtracting 4 seats in front of the patio door, thus bringing the interior seating capacity to 57. If they were to add 20 seats on the patio, that would bring the capacity to 77 seats. Mr. Aivalis noted that they almost have an agreement in place with the owners of the dry cleaners across Birch Road. Their lawyers are currently reviewing the agreement. This would allow them to gain 10 additional spaces for employees. Mr. Aivalis explained that they proposed to use the outdoor patio from mid-April to mid-October and there will be landscaping around the patio. He said that the outdoor speakers have been disconnected completely and permanently. Mr. Aivalis explained that the patio would be enclosed with a railing. The residential area on Birch Road is shielded, as the outdoor dining will have an awning over it and the existing restaurant building behind it. They believe that a proposed split rail fence along Birch Road will help control pedestrians. Mr. Cunningham noted that vehicles can see people crossing Birch Road under current conditions, and that visibility should not be reduced.

Mr. Hutchison asked whether there was any concern with overflow parking along Birch Road. Mr. Aivalis responded that they have not seen vehicles parked on Birch Road and that the awning canvas proposed above the outdoor dining may help minimize the noise. Mr. Spain asked about the outdoor patio use in the winter. Mr. Aivalis responded that patrons will not be allowed to access through the patio to get into the building in the winter time. The area will be completely unused. Mr. Cunningham confirmed that the five spaces are proposed to be added to the northwest corner of the property and four more spaces are proposed through reconfiguration on site and they are now asking for ten spaces across the street for staff parking. Mr. Conze noted that the Commission may need to continue the hearing to allow any written agreement about parking to be made part of the record in this matter. Mr. Spain mentioned that the Commission could alternatively make a written agreement a condition of approval, which would allow parking on the dry cleaners property.

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Mr. David Smith of 26 Birch Road explained that the area along Birch Road is a residential neighborhood. He believed that this is the only restaurant with outdoor seating in a residential neighborhood in Darien. He said that noise carries in this neighborhood and such an approval for outdoor dining would be unprecedented. He asked the Commission to consider all safety aspects of the Birch Road and Boston Post Road corner.

Mr. Terry Bock of 7 Birch Road explained that he lives three houses in on the left hand side of Birch Road. He said that he echoes Mr. Smith's concerns. Mr. Bock said that Anthony's Coal Fired Pizza has a standalone bar business and a significant take out business, thus there is more traffic now than there was when the restaurant was Centro's or Harper's. He violently opposes outdoor seating at this site and noted his concern about safety, landscaping and potential future tenants. He said there have been three recent issues with management at the site: 1) outdoor speaker issue; 2) using the parking to the rear when they were not supposed to; and 3) new areas of lighting both inside and outside. He is greatly concerned about the safety and the staff crossing the street from the dry cleaner property. He then distributed three photographs showing the sight line concerns and believes that something needs to be done on the dry cleaners side of the street. He believed that split rail fence may not be enough. He wants to understand the proposed landscaping and enforcement of maintenance of the landscaping. He asked what would happen if Anthony's Coal Fired Pizza left the premises. Would the future tenant need to reapply for the outdoor dining? Mr. Hutchison noted that the Planning & Zoning Commission might be able to re-evaluate the outdoor dining after a couple years. He asked whether a split rail fence would help manage pedestrians. Mr. Bock believed that a split rail fence with landscaping could not hurt the situation. Mr. Ginsberg noted that the maximum fence height along the road could only be four feet. Mr. Cunningham added that such a fence might help funnel pedestrians toward the sidewalk along the Boston Post Road and stop people from parking on Birch Road.

Mr. Jim Brown echoed the concerns previously mentioned this evening by neighbors and explained that he lives at 5 Birch Road. He said that noise is a huge concern. There is also concern about staff parking behind the dry cleaners across the street. Mr. Hutchison asked whether a crosswalk would be needed crossing Birch Road. He said that such a decision would be for the Police Department to make. Ms. Missy Amly of 6 Birch Road explained that the management of Anthony's Coal Fired Pizza has been negligent. They left the lights on in the kitchen on all night and they currently have 5 A.M. garbage pickup. Mr. Jeff Joyce of 4 Birch Road said that he is concerned with the plans and not in favor of this proposal. Ms. Mary Kinneen of 3 Birch Road said that she agrees with her neighbors. She then showed photographs of the area. She said that she has many concerns, including parking behind the dry cleaners. She said the area is loud now and outdoor seating and music would be an issue. There is now car noise from the area. Mr. Hutchison noted that there is a greater parking demand, which is probably related to the take out business. Mr. Hutchison acknowledged that the volume seen now might be the busiest that the restaurant will have because it is new and still somewhat of a novelty. Mr. Bock explained that the neighbors experience thus far is not good with the restaurant. He believed that outdoor seating will add noise and the proposed parking just gets closer to the neighbors. Mrs. Carrie Bock of 7 Birch Road echoed the concerns of her husband. She said that she does not approve of outdoor seating for 20 people. She also noted that the outside speakers are still up.

Mr. Conze then asked how many employees park on site now. Mr. Aivalis responded that ten employees now park on site. Mr. Conze then asked about the extra parking in the northwest corner

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of the property and the potential of a split rail fence with associated landscaping to help screen the cars to be parked. Mr. Aivalis acknowledged that they can certainly add landscaping in this area. Mr. Lenny D'Andrea explained that the plantings can be extended and that they can add more evergreens to the northeast corner of the property, behind the building. Mr. Spain noted that they could possibly also plant on neighbor's property, if they obtained permission from the neighbors. Mr. Spain also noted that the restaurant is generally busiest from 5-8 P.M. and then volume slows down till closing time, at about 11 P.M. He explained that if the Commission approves this, they could limit the hours of the outdoor dining so that it closes earlier, say 9 or 9:30 P.M. Mr. D'Andrea explained that they have offered a 10 P.M. closing for the outdoor dining area. Mr. Hutchison asked whether there is any parking lot lighting proposed. Mr. D'Andrea responded that there is not. Mr. Hutchison asked about the neighbor comments earlier this evening about garbage pickup being 5 A.M. He wondered whether that could occur closer to 10 A.M. Mr. Aivalis responded that they can try to adjust garbage pickup to minimize impact on neighbors. Mr. Aivalis also suggested revisiting the outdoor dining issue in a year or two, if the Commission were to grant approval. Mr. Spain noted that is a helpful suggestion. Mr. Aivalis also suggested having a bond for the landscaping, which would assure that it is properly maintained. Mr. Aivalis also suggested the potential of a three rail, split rail fence which would reduce the likelihood of climbing such a fence.

Due to the hour and other issues to be resolved on this matter, Mr. Conze suggested continuing the Public Hearing to June 12, 2012 at 8 P.M. in Room 206 of Town Hall. He wanted the architect to work on a landscaping plan along Birch Road and a time frame for the outdoor dining.

At 10 P.M., Chairman Conze then read the next agenda item:

Proposed Amendment to the Darien Zoning Regulations (COZR #2-2012) put forth by the Darien Junior Football League (DJFL). Proposing to modify subsection 405b(3) of the Darien Zoning Regulations to allow temporary lighting of outdoor recreational facilities to be up to thirty (30) feet high. The full text of the proposed zoning regulation amendment is on file and available in the Town Clerk's office and the Planning and Zoning Office for inspection.

Jim Coley, President of the Darien Junior Football League (DJFL) Board, said that for the past few years the Football League has been working well with the Town, the Commission, and the neighbors, to install temporary lights for evening practices for the young football players. The League has been very flexible and accommodating with respect to the installation and adjustment of the temporary lights and has utilized baffles to minimize noise intrusion by the gas-powered generators. They have participated in the installation of underground electrical lighting at the High School site and they have performed appropriate studies and follow-up reports as requested by the Commission. The temporary lights for practices have been used less frequently and less extensively than originally approved due to various reasons. Even though the temporary lights are a vast improvement, they do leave some dark spots on the field that need to be addressed. The current application is to allow the Planning & Zoning Commission to permit temporary lights to extend up to 30 feet in height to make it safer for the players that are practicing in the evening hours.

John Sini of the Darien Junior Football League explained that the application is a proposed amendment of Section 405b(3) to allow temporary lights to be up to 30 feet tall. The regulation also makes it clear that permanent light fixtures at recreation facilities would still only be allowed to be 20 feet tall. He

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said that this is in keeping with the Town Plan of Conservation & Development that notes that lighting at key recreation facilities should be considered, but that the site details and potential impacts of such lighting facilities need to be thoroughly investigated. He said that the Plan of Conservation & Development also notes that changes in the demographics will necessitate some changes in the Regulations as there are more young people in Town utilizing the recreation facilities. Mr. Sini said that the proposed amendment is important for the Town and it keeps control with the Planning & Zoning Commission because even if the Regulation is amended, an applicant must submit a Special Permit request to the Planning & Zoning Commission where the individual aspects of the lighting and its potential impacts can be evaluated before there is a decision to allow the taller light poles.

Mr. Sini said that one criticism by a neighbor was that the Board of Education failed to participate in this application to amend the Regulations. Mr. Sini noted that only one applicant is necessary to request the amendment of the Regulations and that responsibility fell with the Darien Junior Football League. He said that the Board of Education did not participate in the request to amend the Regulations, but the Board of Education has voted to pursue their application for a request of a Special Permit for temporary lighting facilities that might be as tall as 30 feet (assuming that the Regulations are changed).

Mr. Sini said that within the past few years, more trees have been planted at the Darien High School to provide more screening for the benefit of the neighboring property owners. In 2010, with the permission of the Planning & Zoning Commission, the Darien Junior Football League and the High School tested, for a short period of time, the use of 30 foot lights to analyze any potential impact that they might have on the neighbors. He said that a subsequent test was performed in 2011 by the Darien Board of Education, but the DJFL did not participate in that latter test.

Mr. Andrew Dyjak of Musco Sports Lights, explained that mounting the light fixtures at a greater height actually reduces light spillage that would be directed at or reflected toward the neighbors. This is because the lights can be aimed downward more effectively. He said that as the height increases, the light spillage can be better controlled. He said that lights installation, either at 20 foot or 30 foot in height, need shields to properly direct the light and minimize the likelihood that neighbors would see the light source or have other glare problems. He submitted copies of a display board used to illustrate a generic version of how the light could be controlled better using a 30 foot tall pole versus a 20 foot pole. He also said that the use of temporary lights includes optometric designs that are not ideal. He said using shields or visors on lights that are only 20 foot tall only blocks light that is needed on the playing surface.

Mr. Dyjak said that increasing the height of the light is the most effective way of increasing the light on the field and reducing light spillage that might affect neighbors. He said that the difference between using a 20 foot pole and a 30 foot pole is not always a noticeable or measurable difference, but there is much less light spillage toward neighbors and more light on the playing field.

Mr. Sini said that the benefits of being able to use a 30 foot high light include better lighting of the playing surface which makes it safer for the participants on the field and less light spillage towards the neighbors. He said that in tests that were performed at the site, the amount of moonlight or ambient light at the property boundaries meant that there was no measurable or significant difference between light trespass created by the lights shining toward the field.

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In response to questions about how more light would make the playing field safer, Mr. Sini said that spreading out the players over a larger portion of the field means that it is less likely for unplanned contact and therefore, less likely for injuries.

Mr. Dyjak added that when the lights are mounted higher and shining more directly down onto the playing field, there is less reflected glare due to the angle at which the lights are directed.

In the discussion, it was noted that the use of 20 foot high temporary light poles has created a much safer practice area for the children. If taller light poles are permitted, more of the playing field would be within the properly lighted envelope and would become safer. Safety would be increased by using more of the playing field and spreading out the players over that greater area. Raising the lights up higher also improves the angle that the light is shining so that it is more like natural daylight and this increases safety for players within the League.

Mr. Spain said that the Regulations regarding lighting of recreation facilities address potential impacts on neighbors, but do not address safety of the users of the lights. Mr. Sini said that he hopes that the Commission does take safety into consideration in all of its decisions.

Mr. Cunningham said that in one of the letters from neighbors dated May 15th, it implies that the light bulbs are unshielded and therefore visible to the neighbors and thus the current practices have been in violation of the Special Permit. Mr. Ginsberg said that, in accordance with the Regulation, the source of the illumination (the light bulb filament) needs to be concealed and/or shielded. He said that there are no letters from the Commission or its staff to the applicants (the Board of Education or the Darien Junior Football League) regarding notices of violation.

Bob Brown of Hygenix explained that his firm conducted the testing in November of 2010. He said that it was a partially cloudy evening with a three-quarter full moon. This resulted in variable lighting conditions when they were using their measuring paddle at three locations, to the north, to the east and to the southeast of the football field that had temporary lights on 20 foot poles. He said that they started measuring the light readings as the sun was going down and then again after sunset, and then again after the temporary lighting was turned off. He said that the measurement of light spillage towards neighbors was very low and was variable due to the clouds and the ambient light of the moon. He said that the readings were in the range of one lux and that the standard for urban, pedestrian walkways was approximately 16 lux.

Mr. Brown explained that when they were using the light paddle or light meter, they were facing the light bulbs, but the lights were facing away from the neighbors. He said that there was a perceived problem of lights being reflected off of the High School building. He said that the light glare off the building is greater when the light fixtures were mounted at the 20 foot elevation compared to the reflection experienced when the lights were at the 30 foot elevation and directed in an inward, downward manner. He said the actual light measurements from the 20 foot pole versus the 30 foot pole, were virtually the same, but the perception of light glare was less noticeable when the lights were at a higher elevation.

Mr. Brown said that at very low levels of light, the differences in measurements are not significant. He said that the lights were on the east side of the football field and were facing west. The light readings were taken on the north, east and south sides of the football field. No readings were taken on the west

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side of the field (at which the lights would be directly facing) because that was the direction of the High School.

Mr. Spain that he was on Hummingbird Lane, toward the north, during one of the test events with a member of the Board of Education staff. They could see the reflection of the lights off the pond that is between the football field and the neighboring properties. He said that there are photographs taken by neighbors that show this reflected light. He said he is not sure how much this reflected light would impact the neighbors' quiet enjoyment of their residential properties for a few hours in the weekday evenings in November. He said the Commission had allowed the very temporary permit for the temporary practice lights and, in a sense, they were overlooking what might be considered a temporary direct violation of the technical aspects of the Regulations.

Mr. Sini said that this was the first time that any Commission member has shared with him or any members of DJFL the fact that there was a perceived glare problem after the adjustments had been made. Mr. Coley said that the shielding used on the temporary lights is what is generally commercially available. In response to a question, Mr. Brown said that a street light in a residential neighborhood would generally have a reading of approximately 12 lux.

Scott Overbeck explained that he has purchased the 16 Linda Lane property immediately adjacent to the football field at the High School and will be moving into that area at the beginning of June. He said that he is in full support of the proposal to amend the Regulations so that the temporary lights could be installed at a height of up to 30 feet, subject to a Special Permit from the Planning & Zoning Commission. He said that with more of the field being properly illuminated, then more of the field can be used in a safe manner by the participants. He said that this will be better for the youth and for the Town in general.

Mr. Sini said that, in addition to some neighbors being opposed to the request to amend the Regulations, there are some positive responses from some of the neighbors regarding temporary illumination of the play fields. Due to the late hour, the Planning & Zoning Commission concluded that it would necessary to continue the public hearing regarding this matter so that the neighbors would have an opportunity to express their opinions. The following motion was made: That the Planning & Zoning Commission continue the public hearing regarding this matter at 8:00 P.M. on June 12, 2012. A motion was made by Mr. Spain, seconded by Mr. Hutchison, and unanimously approved.

Due to the late hour, the following public hearing items on the agenda were opened and immediately continued to June 12, 2012 at 8:00 pm in room 206 of Town Hall. Those items include:

Special Permit Application #89-G/Site Plan, Darien Public Works Department, 126 Ledge Road
Special Permit Application #34-I/Site Plan, Woodway Country Club, 540 Hoyt Street,
Special Permit Application #173-A, KJD Properties, LLC, 841 Boston Post Road, and
Coastal Site Plan Review #233-A, Flood Damage Prevention Application #261-A, Mitchell Ross, 10 Nickerson Lane.

There being no further business, the following motion was made: That the meeting be adjourned. The motion was made by Mr. Hutchison, seconded by Mr. Spain and unanimously approved. The meeting was adjourned at 11:35 P.M.

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Respectfully submitted,

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Planning & Zoning Director

David J. Keating
Assistant Planning & Zoning Director

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