

## **July 23, 2008**

Special Meeting – Public Hearing

**MEMBERS PRESENT:** Mr. Bedini, Mrs. D. Hill, Mr. LaMuniere, Mr. Picton, Mr. Thomson

**ALTERNATES PRESENT:** Mr. Bohan, Mr. Wadelton

**STAFF PRESENT:** Mr. Ajello, Mrs. J. Hill

**ALSO PRESENT:** Mr. Klauer, Mr. Szymanski, Atty. Fisher, Mr./Mrs. Federer, Mr. Carey, Ms. Connolly, Mr. Caroe, Mrs. Branson, Mr. Lyon, Mr. Solley, Mrs. Addicks, Mrs. Wildman, Mrs. Condon, Atty. Kelly, Ms. Eldridge, Mr. Ewing, Mr. Peacocke, Mrs. Clark, Mrs. Freeman, Atty. Maresca, Atty. McTaggart, Mr. Ben, Mr. Templeton, Mr. Solomon, Mr. Charles, Residents, Press

### **Wykeham Rise, LLC./101 Wykeham Road/#IW-08-31/Site Development for Inn**

Mr. Picton called the Public Hearing to order at 7:02 p.m. and seated Members Bedini, Hill, LaMuniere, Picton, and Thomson. Mr. Bedini read the legal notice published in Voices on 7/9 and 7/20/08. Mr. Picton noted the list of documents in the file and reported on the number of communications, for and against, sent in by the public. He explained the Commission would restrict its consideration and review to matters that affect wetlands and watercourses and asked the public to save unrelated comments for other commissions.

Atty. Fisher introduced Mr. Szymanski, applicant's engineer.

Mr. Szymanski gave a brief summary of the project proposed on the 26.9 acre property, which was previously used as a school. He noted the location of the seven existing buildings, tennis courts, driveways, parking areas, and stormwater management system. He said that the existing stormwater management system had been installed prior to the adoption of the inland wetlands statutes and currently pipes surface flows without treatment directly to Kirby Brook. Using Map EC.2 by Arthur H. Howland & Assoc., dated 7/15/08, he reviewed the plans for a 54 room inn consisting of two main buildings, cottages, a restaurant, lobby, spa and fitness area, and "associated housing." Mr. Szymanski stated that all of the existing buildings would be demolished and the one at the east corner of the site rebuilt as a poolhouse at the other end of the property. The existing stormwater system and all existing pavement would be removed and replaced. The tennis courts, which are now only 5 ft. from wetlands would be removed. Cottages would be constructed in that general area, but would be a minimum of 40 ft. from the wetlands.

Mr. Szymanski described the proposed stormwater management system in detail. It would consist of multi stormwater treatment devices to provide many opportunities for treatment prior to the discharge of the runoff into Kirby Brook. For example, the roof leaders and pavement runoff would flow to a rain garden designed to handle the first 1 inch of rainfall. The overflow would be directed to a grass lined swale with check dams to slow the velocity and allow the suspended solids to settle. The swale would empty into the wet bottomed detention pond where more solids would settle and wetlands vegetation would be planted for nutrient uptake. From there stormwater would leave the basin by a rip rapped apron and swale and flow into Kirby Brook. Mr. Szymanski explained the proposed system would ensure there would be no increase in the peak flow of runoff, which was important because an increase in peak flow could lead to downstream erosion and capacity problems.

Mr. Szymanski stated the new driveways installed would be surfaced with porous asphalt. He noted, however, that to be conservative, the use of this surface had not been considered in the drainage calculations. He described the benefits of using this material on the driveways noting it would act as an infiltration basin, store stormwater and allow it to slowly infiltrate, allow suspended solids to settle, and

remove heavy lead from the runoff. He detailed additional environmental benefits and noted that 30 pages of stormwater runoff information and calculations had been provided with the application. Mr. Szymanski cited what he termed, two “key” development calculations. First, impervious surfaces would be reduced 20% within 50 feet of wetlands. Currently 41% of those surfaces are within 100 feet of wetlands. Second, development within 50 feet of wetlands would be reduced by 50% and would be reduced by 80% within 100 feet of wetlands. He stated that the sensitive environmental development proposed would provide both short and long term protection for the property. He noted a significant planting plan was proposed and that some of the existing lawn area would be replaced with buffers planted along the wetlands to provide for greater infiltration of stormwater and removal of nutrients. He also stated that the Bell Hill Road access would be removed.

Mr. Szymanski noted revised plans had been submitted to Land Tech and he asked for a continuation of the public hearing so the applicant would have time to respond to Land Tech’s anticipated review.

Mr. Picton noted Mr. Szymanski’s calculations confirmed that the proposed development would occupy all unrestricted areas and said that was an issue because there was no additional land for reconfiguring alternate layouts. He said the proposal included a 67% increase in building footprints, a 9% increase in impervious surfaces, and a 13% increase in the size of the development envelope. He said although he respected the Commission’s engineering consultant, he thought it was important to solicit advice from an environmental/wetlands ecology consultant such as Mr. Klemens. He said the applicant had presented little data on the ecology of the wetlands and so he had recommended at the last meeting that Mr. Klemens be hired.

#### **Public comments were taken.**

Ms. Eldridge asked how much lawn was proposed. She noted the existing lawns are close to the wetlands and she asked whether the fertilizers and chemicals used to maintain them would reach the wetlands through stormwater runoff. Mr. Szymanski noted there was a large amount of existing lawn and that some of it closest to the wetlands would be removed and a buffer planted. He said both the buffer and the proposed stormwater management system would treat any fertilizers used on site.

Mr. Picton asked for the total post development lawn area. Mr. Szymanski referred to page 4 of his 7/17/08 letter, which stated the existing lawn area is 10.45 acres and the proposed lawn and buffer area is 11.2 acres. He said he would provide figures for lawn area only.

Mr. Picton stated the Commission must be assured that the buffer would function adequately throughout the year to handle all lawn chemicals.

Mr. Ewing noted the complexity of the proposed stormwater management system and asked what maintenance it would require and how the Town would be assured the required maintenance would be done, especially if there was a change in ownership. Mr. Szymanski stated that Sheet SES.1 included a maintenance plan for each stormwater management measure. He explained that so many measures were proposed to act as backups in case any one part of the system failed. He noted in the maintenance schedule that a maintenance and monitoring report would be submitted to the Town on the condition of all parts of the system, stabilization of the area, need for cleaning of the sumps and for sediment removal, function of all parts of the system, etc. Mr. Ewing asked if this could be required by deed restriction. Mr. Szymanski said it was usually required as a condition of Inland Wetlands approval, but said a deed restriction could be considered.

In response to a question by Mr. Peacocke regarding the phasing of the project, Mr. Szymanski said that limiting the disturbed area during construction to only 2 acres at any one time would affect the function

of the construction process and would increase the duration of construction to three years. He said that 5 acres of disturbed area was needed for an efficient construction operation and he proposed additional erosion and sedimentation control measures to compensate for the increase. He detailed these measures to be implemented on the downhill side on Sheet SES.1. Mr. Szymanski noted that in addition to Inland Wetlands approval, the Ct. DEP would review the specifications and the phasing of the general construction and would discuss other possible stabilization methods. He said the DEP would not issue its permit until it was fully satisfied there would be no wetlands impact due to the construction process. He also noted that the DEP would send inspectors to the site.

Mr. Picton noted the DEP reviews all projects having over 1 acre of disturbed area.

Mrs. Clark asked about the existing septic system. Mr. Szymanski pointed out the location of the septic system at the south end of the property. He explained which portions of the system would be replaced and noted the applicant had already received a transfer of the DEP septic permit.

Ms. Connolly noted the applicant had stated the property would be better off ecologically once the project was completed, but she wondered how this could be true, given the enormity of the increase in the footprints of the buildings and the increase in intensity in the use of the land.

Mr. Picton noted the ecological analysis should not be limited to stormwater management. He asked for the acreage of natural area that would be lost, especially upgrade of wetlands.

Mr. Szymanski said septic use had to be considered. Previously the culinary school had a large amount of waste and nutrients, but the proposed restaurant would be on a smaller scale. He said that calculations for the inn's waste water had to show that it would meet drinking water standards for phosphates and nitrogen. He also noted the septic system would be sized so that it has a built in safety factor.

Mrs. Freeland asked where the septic reserve area was and whether there would be adverse impacts to neighboring properties. Mr. Szymanski explained the DEP would have to sign off on the septic system and reserve area and that its use would be overseen by multiple agencies who would ensure its proper design and function.

On behalf of the Federers, Atty. Maresca summarized the 7/23/08 letter from Mr. Goodin, engineer, who had only the opportunity to review the original submissions and not the revisions, and so asked that the hearing be continued. He raised the following questions/issues at this time: 1) Was adequate information submitted regarding the feasibility of using the existing septic system and 2) Since the stormwater management system was highly dependent on soil conditions, he recommended appropriate soil testing and analysis. Mr. Ajello said he would submit these issues to Land Tech for review.

Atty. McTaggart represented the Ewings. She asked if the DEP had transferred the septic certificate and whether it had any conditions. Mr. Szymanski said he would submit a copy for the file. Atty.

McTaggart then noted that the engineered plans called for joining the roof, driveway, and pavement drainage at one point and she asked whether keeping them separate to prevent them from mixing with cleaner water had been considered. Mr. Szymanski noted the roof runoff would be directed to a rain garden and would be joined with the separate road runoff later. They both then flow into the swale for additional treatment time. Atty. McTaggart asked if restrictions on the use of fertilizers and lawn chemicals had been considered throughout the site; not just next to the wetlands. Mr. Szymanski agreed to put together a plan to address this concern. Mr. Picton thought the plan was a good idea, but asked how it could be enforced in perpetuity. Atty. McTaggart suggested a deed restriction. Atty. McTaggart then asked what materials would be taken on and off the site. Mr. Szymanski stated that by design, nothing would be taken off the site so that Wykeham Road traffic and pavement conditions would not

be impacted. Crushed stone would be trucked on site as well as top soil, if needed. He said that the applicant would ensure that no invasives were brought in with the top soil.

Ms. Eldridge asked how much of the property was wetlands. Mr. Szymanski pointed out the wetlands on the 40 scale site development map and said there were 2.8 acres of wetlands covering 10.5% of the site. He reviewed the existing watershed and the existing vs. proposed infiltration capabilities of the property. Ms. Eldridge worried the proposed detention pond would attract mosquitoes and that the pesticides used to control them as well as the fertilizers and chemicals used for lawn maintenance would impact both the environment and the neighbors. Mr. Szymanski explained that until six years ago the existing lawns had been maintained and that lawn runoff plus all the runoff from impervious surfaces had flowed and now flows directly into Kirby Brook impacting it on a daily basis and causing downstream erosion. He said the proposed stormwater management system would improve the existing situation.

Ms. Eldridge noted there would be more people using the property and more development. She asked if the Town could accept this drastic change to the imprint of the land. Mr. Picton said the Commission's consultant would address these issues.

Mr. Szymanski spoke briefly about the state's NEMO program and referred the public to the state website to learn more about the impact to water quality as the percentage of impervious surfaces increases. He said approximately 12% coverage by impervious surfaces was proposed here with multi treatment measures to keep the impacts down. He said the proposal was a large scale one for Washington, but it would not be so in other towns, which allow up to 40% impervious surface coverage.

Mrs. Ewing noted the "horrific" amount of coverage by buildings proposed, which, she said, was not in keeping with the scale of Washington. Mr. Szymanski assured her that many Town commissions would be reviewing the proposal.

Ms. Connolly asked how the porous asphalt proposed in this project works and if it would impact the surrounding roads. Mr. Szymanski noted the porous surfaced driveways would be separated from the Town roads by Kirby Brook and said it would have no impacts to either Town roads or to neighbors. Mr. Picton asked about porous asphalt when used on sloped surfaces. Mr. Szymanski said that stormwater on the uphill side could bleed out on the down slope. He noted he had worked with UNH on this problem and so had proposed checks down the hillsides to slow the flow and allow for more infiltration.

Mr. Federer asked what the chemical composition of porous asphalt was compared to the asphalt normally used and how would it degrade. Mr. Szymanski noted he had submitted specifications for the file. He explained that with the exception that it had no fines, it had the same composition and broke down in the same way as regular asphalt.

Atty. McTaggart noted the regulated area for the original application had been 9 acres. She asked for the size of the proposed area to be disturbed under the revised plans. Mr. Picton said the development envelope was 4.10 acres and Mr. Szymanski said he would review the application to confirm that figure.

Mr. Ben said he had researched septic system issues and voiced his concern about whether the local hydrology could accommodate a 54 room hotel with spa and restaurant using 12,000 gallons of water a

day. He noted the contaminants from the septic system for this commercial use could pollute the neighborhood. He thought a public septic facility might be required to properly protect the public. Mr. Picton advised Mr. Ben that the supply of water from wells and community water systems was not within the Commission's jurisdiction, but the flow of nutrients into the wetlands was. Mr. Szymanski explained that one DEP requirement is that all waste is properly treated and he again stated the DEP would carefully review the septic system, which it had previously approved for heavy commercial kitchen use of 10,500 gallons per day.

Mr. Ben asked if the proposed porous pavement would allow the growth of weeds, which would require the use of herbicides to control. Mr. Szymanski said it would not.

Ms. Eldridge asked if any market research had been done to determine whether this community could support a spa-restaurant-hotel of this size. Mr. Picton noted this was not a wetlands issue except for the maintenance of the facility if it were abandoned. He asked how the Commission could be assured of perpetual maintenance and suggested a bond might be considered. Atty. Fisher noted that approval would go with the property, not the owners, and that any conditions of approval would bind all future owners unless a change in the permit was applied for and granted by the Commission.

Mr. Ben asked how Washington's standards differ from those in other towns. Mr. Szymanski stated that Washington had no specific drainage requirements, but that to be conservative, the applicant provided a stormwater management system designed to accommodate a 100 year storm event. He said there would be no increase in the peak flow for a 25 year storm.

Mr. Templeton suggested that instead of a substantial bond the developer might grant the Town executory interest so that if a future owner failed, the Town could take over the property. Although the owner could not be required to do so, he thought if the owner offered it, this would give many residents piece of mind.

Mr. Picton said he would consult with the Commission's attorney about the possibility of a bond.

Atty. McTaggart noted that the DEP's 2004 Ct. Stormwater Manual provides towns with guidelines for best management practices and that those proposed by the applicant are typical of those proposed in other towns. Mr. Szymanski noted all of the devices proposed were detailed in both the 2004 Stormwater Manual and the 2002 State Guidelines for Erosion and Sedimentation Control, although in the application they are site specific.

Mr. Ben noted there are significant slopes on the property and asked what the required cuts and fills would be and what type of fill material would be brought in from off site. Mr. Szymanski said the detention pond would be dug 10 to 12 ft. deep and the maximum cut into the existing grade between the two major buildings would be 12 feet. Materials to be trucked on site would include rip rap and processed gravel, filter fabric, and crushed stone. Mr. Picton asked for an analysis of the slope in the development envelope so that the Commission could better understand the erosion risks. He asked that this include the slopes to be stabilized. Mr. Szymanski agreed to provide this information, although he said it would be labor intensive.

Mr. Picton asked if there were questions or comments from the commissioners.

Mrs. D. Hill said she was concerned about the demolition of the existing buildings. Mr. Szymanski said this was covered in the construction sequence on Sheets SEQ.1-4 and RM.1.

Mr. LaMuniere asked if the access road on the east side of the property would be removed. Mr. Szymanski said it would be removed and replanted and that he would place a note on the plans that it would not be used during construction.

Mrs. D. Hill asked if the wetlands lines had been revised on the new plans. Mr. Szymanski said they had.

Mr. Picton noted he had questions that he would send in writing to the Commission's consultants. Mr. Picton noted he had previously explained why he thought an additional consultant was needed to more broadly address the ecological concerns raised. He suggested Mr. Klemens, a highly qualified professional, be hired to do a biological function report with the goal of coming up with a plan to maintain the ecological integrity of the site as it relates to wetlands. He proposed that the applicant post a \$10,000 bond, which the Commission would hold to cover the estimated cost of this review. Atty. Fisher asked if the Commission had determined that Land Tech, the Commission's usual consultant, was not qualified to conduct this review. Mr. Picton responded that Land Tech's review was a good engineering review, but did not include adequate ecological comments such as addressing the ill effects of sprawl. Atty. Fisher noted that Mr. Allan of Land Tech is an environmental scientist and said he did not want the applicant to pay for duplicate efforts. While he said he was not critical of the engineering review, Mr. Picton said it was his strong opinion that a qualified biological review was also needed. A very lengthy discussion ensued regarding whether Land Tech or Mr. Klemens should be hired for the ecological review. Mrs. D. Hill and Mr. LaMuniere disagreed with Mr. Picton. Mrs. D. Hill said the site had already been developed and so the review did not require Klemens' level of expertise. Mr. LaMuniere noted that at the last meeting he had voiced his opinion that Land Tech should conduct the review. He noted he wanted a study of the incomplete Chase report to be included in this review and that he wanted cooperation between the applicant's engineer and the Commission's consultants. Mr. Picton called for an independent review. Mr. Bedini thought a thorough biological review by Mr. Klemens was a good idea. Mr. Thomson noted that the Chase report did not answer all of the Commission's questions so in that respect he supported the hiring of an additional consultant. However, he said he did not fully understand the process for hiring the consultant and noted this discussion was taking place in a public hearing, the purpose of which was to receive public comment. Therefore, he said he would abstain. Mr. Picton noted that if the Commission could not come to an agreement now about whether to hire Mr. Klemens, the discussion would have to be continued next month at the next session of the hearing. He asked the commissioners to review the file before the next meeting.

Mr. Solomon asked what the down side would be if another consultant was hired. For a project worth tens of millions of dollars he did not understand why the cost of hiring Mr. Klemens was being debated. He thought the outstanding issues were important and should be addressed.

A woman in the audience agreed, saying it would be to everyone's benefit to have additional ecological information.

Mr. Federer stated the hiring of a consultant is at the discretion of the Commission and he applauded the selection of Mr. Klemens.

Mr. Charles challenged the applicant to accept Mr. Klemens, saying if the proposal was as innovative as purported, his review should be welcomed.

Atty. Fisher again argued that Land Tech should be asked whether it has the expertise to conduct an ecological review and whether this review could be produced for less than it would cost for Mr.

Klemens to do it.

Mr. Picton noted that in order for Land Tech to complete such a review, the Commission would have to generate all of the questions it wanted answered. He did not think the Commission had the background to know all of the questions that should be asked.

Mr. Klauer asked that the process be competitive to ensure a well qualified professional would be hired at a competitive rate.

Mr. Thomson said he would change his vote and support the hiring of Klemens.

There were no other comments from the commissioners or from the public.

**MOTION:** To continue the Public Hearing to consider Application #IW-08-31 submitted by Wykeham Rise, LLC. to construct an inn at 101 Wykeham Road to 5:00 p.m. on Wednesday, August 13, 2008 in the Land Use Meeting Room, Bryan Memorial Town Hall. By Mrs. Hill, seconded by Mr. Picton, and passed 5-0.

At 9:25 p.m. Mr. Picton continued the Public Hearing to 5:00 p.m. on August 13, 2008.

This Public Hearing was recorded on tape, which is on file in the Land Use Office, Bryan Memorial Town Hall, Washington Depot, Ct..

### **Special Meeting**

Rubler/240 Wykeham Road/#IW-08-V1/Unauthorized Clearing

Mr. Picton called the Special Meeting to order at 9:35 p.m. and seated Members Bedini, Hill, LaMunere, Picton, and Thomson.

Atty. Kelly recorded the discussion for Mr. Rubler.

Mr. Ajello, WEO, reported on the situation to date. He had sent a notice of violation for unauthorized clearing to Mr. Rubler to an incorrect mailing address, but had subsequently spoken to Mr. Rubler and mailed the notice out a second time. He said he would not go forward with enforcement proceedings until the Commission had the opportunity to comment. He noted Mr. Rubler had a previous violation for clearing and drainage problems, for which the Commission was still holding a bond. He said the clearing had recently been extended to the other side of Wykeham Road. Mr. Ajello said he had inspected the site and had found wetlands issues down slope of the clearing and drainage issues at the roadside. He had contacted the Selectmen's Office to inform it of these drainage issues. Also, he said he had checked the Natural Resource Inventory Map and had determined there was a vernal pool in or near the area cleared.

Mr. Picton asked Mr. Ajello if he had asked Mr. Rubler for a map of the regulated resources. Mr. Ajello said he had not. Mr. Picton noted this was an additional area of activity beyond what had been previously reviewed by the Commission and so specific information was needed on both where the resources were located and where the clearing was in relation to those resources.

Mr. LaMunere noted that trees had been cut on a very steep slope on the south side of Wykeham Road and that at least two were felled in the general area of the vernal pool.

Mr. Ajello suggested that the Commission examine whether the upland clearing on the steep slopes above the culvert affected the flow of stormwater.

Mr. Lyon, First Selectman, said the Town drainage had been impacted, and he noted this had caused new erosion. He said, too, that trees had been cut in the Town right of way.

Mr. Picton said he had observed eroded road gravel at the base of the hill on land that most likely develops into wetlands.

Mrs. D. Hill noted that the Assessor's Map shows a brook in this area.

Mr. Picton said it appeared likely there could be an adverse impact to wetlands and that Mr. Ajello had been justified in ordering the work to stop. Mr. Ajello reported that Mr. Rubler had stopped when he had been asked to do so. In addition to the mapping already requested, Mr. Picton asked for plans to restore the disturbed slope so that the wetlands would not continue to be impacted. Mr. Ajello asked that Mr. Rubler not pull out any stumps.

Mr. Ajello noted the damage that had been done by the "loggers." Mr. Picton was dismayed that they had removed the stumps to put in silt fencing on the steep slopes, noting it was preferable to have the stumps hold the hillside. Mr. Bedini did not think a silt fence and mulch would be adequate stabilization. He suggested that filter fabric also be installed. Mr. LaMuniere recommended that stabilization measures be implemented as soon as possible because rains were expected.

Mr. Picton advised Atty. Kelly that an application to correct a violation was required and that this would include a bond for a consultant to conduct a review. Mr. Ajello said the Commission was already holding a bond, but Mrs. D. Hill and Mr. Bedini noted that it was being held to ensure that other specific work was properly completed. Mr. Picton asked Mr. Ajello to contact Mr. Rubler to find out if he would be willing to post a second bond to ensure the correction this violation. If not, he asked Mr. Ajello to consult with Atty. Zizka to find out if the other bond could be used for this matter. He noted, however, that when Mr. Rubler makes his application to correct the violation, the Commission may collect consultant fees.

It was the consensus that the application should be submitted, a consultant hired, and the slopes stabilized as soon as possible.

Atty. Kelly asked for copies of all of the documents sent to Mr. Rubler. He advised the Commission that although Mr. Rubler did not agree that he had cut in a regulated area, he had scaled back his plans for clearing. He also noted that this was not a commercial logging operation because not enough board feet had been cut to qualify. Atty. Kelly stated the Commission had not yet determined that a violation had occurred and that it had not stated what the exact activity was or how many feet it was from a wetlands or watercourse. He said he had advised Mr. Rubler to hire a soil scientist and that these findings would be submitted to the Commission as soon as possible. He said the property owner would cooperate and that when the mapping had been completed Mr. Rubler would discuss with the Commission the issue of what is a regulated activity and what is not. Mr. Picton asked that the soil scientist investigate the soil types at the base of the steep slope and whether there were wetlands off the property that were likely to be affected by the work done.

Mr. Ajello briefly discussed with Atty. Kelly a new driveway that Mr. Rubler had installed off Nova Scotia Hill Road and a third access to the property across from Tompkins Hill Road.



Mr. Charles informed the Commission that the work done by Mr. Rubler had undermined the structural integrity along the side of Wykeham Road.

MOTION: To adjourn the Meeting. By Mr. Bedini.

Mr. Picton adjourned the Meeting at 10:15 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Janet M. Hill

Land Use Coordinator