

November 5, 2008

Special Meeting

November 5, 2008

10:00 a.m. Land Use Meeting Room

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

ALTERNATE PRESENT: Mr. Wadelton

ALTERNATE ABSENT: Mr. Bohan

ALSO PRESENT: Mr. Szymanski, Mr./Mrs. Federer, Mr. Rogness, Mrs. Hardee, Atty. Fisher, Mr. Klauer, Mr. Brinton, Mrs. Solomon, Mr. Caroe, Mr. Charles, Mrs. Wildman, Residents, Press

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

Mr. Picton called the Special Meeting to order at 10:02 a.m. and seated Members Bedini, Hill, LaMuniere, Picton, and Thomson. He stated the purpose of the Meeting was to discuss draft motions and to act on the application. To be thorough, he asked that both motions, one to approve with conditions and one to deny, be read into the record before either was made.

Mr. Picton stated that he had a six page motion to deny and an introductory statement to read.

Mrs. Hill said she assumed the draft motion of approval with conditions was the same motion she had reviewed last week. Mr. Ajello said it was not because both Land Tech and Atty. Zizka had reviewed it and had required changes. Mr. Picton asked if there were substantive changes. Mr. Ajello said there were none and that he had attached the Hydro Technology's letter regarding the procedure for water quality testing.

Mrs. Hill read the 11/3/08 draft motion of approval.

Mr. Picton read an introductory statement to his motion of denial. He voiced his concern that the Commission was not acting in a consistent manner in its review of this application and he feared that this would undermine its effectiveness in the future. He then made the following motion.

MOTION: To deny Application #IW-08-31 submitted by Wykeham Rise, LLC. for site development for an inn at 101 Wykeham Road for the following reasons:

Procedural:

1. Successive changes including late submissions up to the day before the hearing concluded did not allow for adequate review of the project in its entirety. Lack of sufficient information provided in a timely manner.
2. The timing of changes and the information processing during the application review put other interested parties at an unfair disadvantage to the applicant for the purposes for which a public hearing is provided. Failure of due process.
3. The required meaningful consideration of feasible alternatives to the final proposal was not provided or made possible by the applicant, and therefore not conducted in a meaningful way by the commission. Given the types of feasible alternatives which are available, discussed later, the commission is not allowed to approve the application under this one condition.

1. There is a likelihood of Adverse Impact on Wetlands and Watercourses:

Numerous construction activities which are “regulated activities” under definition 2.34 of our regulations, due to their potential for adverse impact, are proposed to be concentrated within the “regulated area” defined by section 2.35 of the regulations, on land within 100 feet of wetlands and watercourses. Additionally, many of the other construction and earthwork activities outside of the 100 foot review area are also regulated activities under the second paragraph of Section 2.34 of the Regulations, due to significant grades and the large area of disturbance, and the scope and duration of construction.

The likelihood and degree of particular risks for regulated activities depends on factors which include but are not limited to:

The nature and scope of each activity, the physical characteristics of the site including slope, soil, hydrology, and vegetative cover of the land, the suitability and completeness of design in relation to site conditions; and the likelihood of success in implementing protective measures, restabilization, and long term maintenance according to the plan.

The plan calls for up to 5 acres of exposed soil at a time, in each of three main construction phases. Significant slopes and drainage conditions requiring intensive management prevail on the entire lower construction site. This increases the likelihood of adverse impacts to wetlands and watercourses in comparison to construction sites of smaller size which we have evaluated on less significant slopes.

For example, on and surrounding the locations of 2 bedroom cottages 1 and 2, and duplexes 1, 2, and 3, both pre and post construction grades of 25% to 35 % prevail. Post construction grades up slope from cottage unit 1 approach 40% at one location immediately below the area to be massively regraded at the main parking and main building facilities. The 5 dwelling units mentioned are sited closest of all the units to wetlands; 4 of them are on the 50 foot zoning setback line. Below these new units the remaining undisturbed buffer to wetlands is anywhere from zero to 40 feet wide, depending on the nature and extent of construction activities which may be required to carry out the plan in this area. Quads 1, 2, and 3 also have similar site planning characteristics, with steeper slopes immediately adjacent and within the construction envelope, with 20% to 30% slopes prevailing.

There is no indication of concerted planning to design a wetland buffer of width and functionality suitable to the terrain and the proposal, only the clear indication that units were located to conform to the zoning minimum 50 foot setback line and the site was then engineered according to that objective. The configuration and condition of buffer areas affect the physical characteristics of wetlands and watercourses by influencing surface and ground water conditions, thermal and light conditions and other physical properties related to the character and function of wetlands and watercourses. Buffers of a given width are less effective for many of these purposes as the slope of the land increases. The conditions of this site plan call for a degree of care beyond that which is evidenced, not limited to engineering for runoff but including the design of fully functional buffers, siting structures and earthworks conservatively for wetland protection, and investigating alternative site designs which would pose less potential for adverse impact on wetlands and watercourses.

2. Failure to demonstrate convincingly that the project will be carried out and maintained without adverse impact, both short and long term, to wetlands and watercourses.

The ultimate unqualified success of engineered solutions as the primary response to risks generated by the plan is dependant on a host of human and natural contingencies which can be unpredictable and unmanageable, based on studies in the record and the experience of the wetlands commission.

Uncertainty about the standards used, completeness, adequacy, execution, and consequences of the engineered solutions to wetlands protection:

Successful implementation of a properly engineered design is acknowledged by all the engineers

submitting information to the file to be critical to the protection of the resources for this site plan. The commission's engineering consultant specifically stated what we already know from our regulations; that it is up to the commission to decide whether the plan was likely to be accomplished successfully and safely, and whether there were feasible and prudent alternatives that were more likely to protect wetlands and watercourses, and whether the feasible and prudent alternative analysis had been conducted properly.

There are questions raised by the intervenor's engineer at the public hearing as to which standards and methods should apply in order for this to be a fail-safe design, the adequacy of the facilities proposed, and the underlying premises of the design, and the completeness to which the site and development conditions have been addressed in the design. In cases where there are no more conservative alternatives to accomplish either the proposed use or an alternative reasonable use of the property, the wetlands commission may be in the position of relying entirely on one or the other engineered solution to protect the resources. But the risks inherent in reliance on a debatable engineered solution, as raised at the hearing, are unacceptable when an inherently less risky approach to site planning and development is available on which to base the engineered protection. See the discussion of feasible and prudent alternatives.

Uncertainty about the effects of the development on wetland and watercourse biological character and function:

The commission's wetland consultant and the intervenor's engineer raised concerns about the completeness, relevance, and usefulness of the applicant's environmental report .

The response by the applicant and their environmental consultant was that the developer's timetable did not allow for a more complete study, but the consultant concluded that, even assuming the conditions in the wetland and watercourse systems were of the highest quality, then based on the development design, there would be no adverse impact. This creates uncertainty about how would anyone be able to make use of the limited environmental data provided using this starting assumption.

Without detailed ecological assessment for the range of biological and physical parameters of the wetlands as well as watercourses, how will changes in plant and animal populations and other physical properties within wetlands and watercourses post development even be recognized, so that the contributing factors might be dealt with after the fact, if we had failed to evaluate those conditions and factors before development due to the insufficient data presented? If the stream after development no longer supports fish, perhaps due to thermal and chemical impacts from the development, there will be no data on which to base a solution, much less a preventive measure which could have been imposed at the time at which the commission must decide on the application.

The applicant's environmental consultant was asked how animals which move from wetland to wetland will be affected by such changes as a 14 foot deep detention basin located between and in close proximity to two wetland areas, and what impact such changes might have on wetlands character. The consultant deferred the question to the project engineer, who responded that as a legal matter this was outside of the wetland commission's jurisdiction. On questioning, the environmental consultant did acknowledge that the population of both plants and animals, including transient animals, does affect the character of wetlands and watercourses, and that the presence of silt fences (and presumably other impediments such as deep basins) in and near wetlands could change the population numbers and diversity of animals in wetlands, thus affecting wetland composition and character. But an answer to the question on this impact was still not provided, and the consultant still concluded that there would be no impact.

We are not only lacking sufficient data on environmental impact, we are presented with findings which would tend to mislead us into thinking they were sufficient and conclusive, when they are not.

Uncertainty about the effects of construction and excavation and stormwater management on the supply and quality of surface and ground water to wetlands and watercourses.

Concerns raised by commissioners and the intervenor's engineer about these issues have not been fully addressed.

It has not been determined how the water which warms up in the detention basins and is then flushed out during a heavy runoff event will affect the habitat conditions in the stream, and how this flush of warm water may contribute to habitat stress all the way downstream.

No answer was provided as to whether the excavation of a 14 foot deep basin within about 15 feet of a wetland would change the groundwater level in the wetland, by changing the groundwater gradient and drawing subsurface water toward the basin and lowering the water level in the wetland. The side slopes of the basins are a point of contention between engineers; there is no confirming data on whether the steeper excavated basin slopes proposed adjacent to wetlands will slump and destabilize wetland soils, and whether basins will have to be redesigned accordingly.

Water will be diverted from its presently dispersed flow over significant areas of relatively undisturbed and naturally vegetated portions of the watershed. It was asked but not well established how runoff will be renovated in a manner equivalent to the natural condition, after traversing development surfaces and structures and reworked areas, by the reworked soil and plantings of the necessarily smaller surface area of engineered stormwater management facilities. It was not determined how these facilities will perform this function in the winter, when the ground is frozen and the plants are dormant, in comparison to more natural watershed conditions on undisturbed soil, which exist now and would exist in more substantial wetland buffers if they were designed for this purpose in a way which reflected site conditions.

It was not clear how effectively infiltration will occur through permeable paving on sloping surfaces into subsoil compacted by construction equipment in its upper foot or 18 inches.

These are only a sampling of questions raised by the commission and the public about the heavy reliance on this suite of engineering measures to protect wetlands and watercourses.

Uncertainty about the likelihood of satisfactory execution and compliance: adequacy of proposed means of monitoring and enforcing the conditions of the plan:

The record includes the results of a study on compliance with provisions for buffer protection, which reflects the commission's own experience in Washington: Regulations and various kinds of written constraints on land use and stated objectives for wetlands protection are commonly violated. Written documents are not equivalent to effectively implemented, long term compliance program, which is subject over time to many natural, human, and economic variables beyond the ability of the town land use department to control.

If the site development were planned for a lower level of risk and immediacy for wetland impacts, the likelihood of success in this area would be greater. As presented, the site plan is crowded with development criteria alongside provisions for wetland protection in such close proximity to the wetlands that the protective measures themselves present some of the most proximate risks to wetland protection. The plans are, accordingly, almost indecipherable in places. This will present in the hands of a large and various collection of construction and site development workers a more likely plan for failure than success with this crucial aspect of the project. Providing more separation to wetlands would increase the likelihood of success.

Future activities associated with or reasonably related to the proposed activities which are made inevitable by the proposed activity and which may have an impact on wetlands and watercourses:

Additional necessary regulated activities were added to the plan throughout the review and public hearing process, up to very near the end of the public hearing, as the need became apparent to the applicant, and because there are a number of open questions about the details of the plan, the changes are likely to continue.

Requirements for water storage facilities were added to the regulated area late in the public hearing after the interveners brought to light the water company's requirements for storage and the planning for these facilities has not been developed in detail, according to comments by the intervener's engineer. The uncertainty about the need for a septic reserve area was brought to light by the intervener's research on the existing septic design. A plan which the intervener's attorney stated for the record came from the DEP files shows a reserve area designated to remain free of development changes. The site plan shows fill and road construction in this area. Final design may require a reconfiguration, but the site plan has already been designed with no extra space the area of the septic system, the road, and several guest units sited on or above steep slopes close to wetlands.

Other changes are considered likely by the intervener's engineer for access, parking, and sightlines. Landscaping and the accompanying use of chemicals and fertilizers as the project evolves will have an effect of on wetlands and watercourses which is undeterminable at this point.

Changes during the evolution of a project can sometimes be accommodated if the development fits comfortably on the site with room for options as they became necessary. This site, by contrast, was planned for maximum development from the beginning. There is little room for necessary modifications after approval, which would almost certainly involve new regulated activities, depriving the public and the commission of the chance to fully evaluate and comment on the entire proposal and its impacts.

3. Inadequacy of proposed mitigation:

The thesis that the proposed development is an improvement on existing conditions as far as wetland protection is concerned because old structures are to be removed does not serve as mitigation for the new risks created with the proposed development.

The existing conditions are essentially stable with the primary notable exception of an eroding pipe outlet, which could easily be corrected voluntarily or as an enforcement item. The removal of nonconforming facilities which were built more than 50 years ago is itself a regulated activity, and the restoration of those sites to meet current wetland protection standards might serve as mitigation for the new disturbance of the site they currently occupy if the entirety of the new site disturbance conformed to our current standards and practices for wetland protection

However, even the claimed mitigation is questionable. For example, the site where the tennis court will be removed will be fully utilized by new development; a temporary sediment basin closer than 50 feet to wetlands, (this is not a water feature but a stormwater facility) two cottages within 100 feet of wetlands where none existed before, septic tanks and pump chambers crowding the 50 foot setback line, and septic lines along with two rain gardens within the 50 foot zoning setback. The next building up is to be removed from its location partly within the 100 foot regulated area line, only to put a line of new cottages even closer to wetlands, at the 50 foot setback line, along with site disturbance closer than 50 feet to wetlands. The old gravel parking area near wetlands will be removed only to be replaced with a deep detention basin which is not considered an ecological asset. The removal of the eastern main buildings downslope of wetlands will provide less benefit to the upslope wetlands than the offsetting loss of protection to wetlands downslope of new facilities on steeper slopes elsewhere. In other words, remediating old conditions which compromised wetland environments only to use gain that as a credit toward multiple new risks and compromises is not in the nature of mitigation for wetland impact risks.

4. Failure of the applicant to explore and present feasible and prudent alternatives to the proposed site plan which create less likelihood of adverse impact on wetlands and watercourses, and the clear availability of such alternatives:

In the case of an application for which a public hearing is held, section 8.13(a) of the regulations states that a permit shall not be issued unless the commission finds on the basis of the record that a feasible and prudent alternative does not exist.

Alternative development site designs which would be more likely to succeed in preventing damage to wetlands and watercourses were not explored by the applicant for the public hearing record, although they were requested during the hearing by the commission's environmental consultant, commission members, and the engineer consulting for the intervenor. The alternatives offered by the applicant included leaving the site as it is, and taking the buildings down and planting field grass. It was obvious that neither of these ideas present reasonable, or feasible and prudent, alternative development options from the perspective of the applicant, and that they were not offering these for serious consideration. If they did, the commission may well have preferred either to the proposal submitted, from a wetland protection standpoint.

The applicant was asked early in the public hearing to present alternatives which would keep all activities at the least out of the regulated area which includes the 100 foot upland review area adjacent to wetlands and watercourses. In the beginning of the application process, the portion of the site which is unrestricted by hard regulatory setbacks was almost entirely proposed to be occupied by the construction activities and construction envelope. The applicant stated that it had to be that way in order to accomplish his objectives, and that there were no viable alternative site designs. The feasible and prudent alternative then offered was to leave the site in its present condition, with decaying structures and outdated site facilities. The applicant rejected this alternative as not viable for their purposes, and no other alternative was submitted.

During the review and hearing, the applicant reduced the scope of the project and altered the layout so the lot coverage decreased from 17% to under 10%. Moving from an early plan which does not meet Zoning coverage requirements to one that does, according to the applicant's calculations, does not provide a feasible and prudent alternative to the final plan for which the Wetlands Commission must make this determination. Areas of land do exist on the site which appear more suitable for lower risk development than the areas proposed for development on steeper slopes closest to wetlands. These areas were proven as building sites in the earlier version of the plan. But when the coverage was reduced, buildings were removed from lower risk sites and the buildings on higher risk areas were left in place, which is at odds with the objective of considering alternative site plans which pose less risk to wetlands and watercourses.

The last change which related to opportunities for consideration of feasible and prudent alternatives was submitted a day before the last session of the public hearing, which did not allow enough time for considered analysis. Nonetheless, at that session, the applicant was again asked and given the opportunity to discuss alternatives, and specifically the use of those lower risk areas which were becoming more available throughout the redesign process up to the last day. The applicant merely reiterated that there were no alternatives other than the previously stated ones that the owner was not entertaining.

The types of alternatives which do exist on the site for this and other economically feasible uses, which would be less likely to create adverse impacts on wetlands and watercourses, include:

Keeping all development activities more than 100 feet from wetlands and watercourses and removed and separated from steep slopes leading to wetlands and watercourses. This could be done by:

Reducing the scope of the inn and resort development. Changing both the number and size of the residential units and facilities is still an available design option. For example, the size of two -bedroom guest units with a ground footprint of apparently about 1800 to 2400 square feet could be reconsidered. Other facilities are included which may not be needed for the success of a viable inn of some design on the site.

Using more compact siting of buildings and improvements; a closer village-type arrangement in the areas that are most suitable for development without unnecessary risk to wetlands and watercourses.

Relocating units which are currently sited on and near slopes of 20 to 35% within 100 feet of wetlands. These units might be moved to the land made available late in the process by the deletion of the east driveway and the deletion of the units which were formerly located below the main existing parking lot. The use of this general area for guest units was demonstrated by the plans to be feasible at one point during the review. Some units might be relocated to the upper site which is farther removed from wetlands, on more moderate slopes, and with fewer drainage challenges.

Alternative development uses for the land include cluster or large lot type residential development which is oriented around ecological planning for protection and enhancement of wetland and watercourses and their integral natural systems.

This is not a comprehensive list of the wetland issues which are categorized and summarized here. These issues are more fully detailed in submissions to the public hearing record by commissioners, the public, and the intervener, notably in the submissions by the intervener's engineer.

By Mr. Picton, seconded by Mr. Bedini.

The motion to deny was discussed.

Mr. Bedini did not think that the consideration of feasible and prudent alternatives had been adequately covered. He stated that the changes to the application were due to Zoning and ZBA issues, and had not been done in consideration of lesser impacts to the wetlands. He read from the 11/5/08 letter from Atty. Zizka to substantiate his point.

Mr. Picton noted the Commission could not approve the application unless it had considered the feasible and prudent alternatives.

Mr. LaMunier said that while he appreciated the motion of denial, many of the points raised in it were speculative and the courts look for specific evidence of negative impact to wetlands. He agreed that building was proposed in a difficult location where carrying out the approved plan would be very difficult, but he disagreed that doing so would change the character and function of the wetlands. He said that three engineers had advised the Commission that if properly safeguarded, the project would not result in an adverse impact on the physical quality of the wetlands.

Mr. Picton thought there were arguments for both views, saying the Commission did not have to base its decision on such low standards.

Mr. LaMunier thought the Commission should work for a compromise between economic development and wetlands protection.

Mr. Bedini noted the plans call for the demolition and removal of 7 to 8 buildings and asked the commissioners if they were satisfied that wetlands protection during this phase of the project had been adequately addressed. He thought the Commission had concentrated on the proposed construction only and had not reviewed a work sequence for the demolition.

Mrs. Hill read Atty. Zizka's 11/5/08 letter to the Commission. She did not think it supported Mr. Picton's position because in it he stated there had to be a non speculative finding that there was a

reasonable likelihood of adverse impacts to wetlands. Mr. LaMuniere said he could cite several court cases, such as Toll Brothers, Inc. vs the Inland Wetlands Commission where Commission denials were overturned due to the speculative nature of the adverse impacts. Mr. Picton said the specifics of this application, no other, should be the basis of the Commission's decision.

Mr. Thomson reminded the public that the commissioners are all volunteers. He read a brief statement, which said he respected Mr. Picton for his knowledge and diligence and so it was difficult to be on opposite sides of such a complicated application. Mr. Thomson then said the Commission had hired consultants who had "admirably" served it and said he would rely on their expert opinion that the project would not have a negative impact on the wetlands and watercourses.

Regarding feasible and prudent alternatives, Mr. Bedini read from pages 63 and 66 of Atty. Zizka's, What's Legally Required, which, he said, was endorsed by the Ct. DEP. He referred to the section addressing CGS 22a-41(a). Mr. Picton agreed this section was relevant.

Mrs. Hill noted that the proposal was the applicant's plan and in her mind the applicant should be able to do what he wants while being required to protect the wetlands and watercourses. Mr. Picton agreed, but said when there were other ways to accomplish the same purpose, the feasible and prudent alternative should be required. Mrs. Hill responded that the Commission should not design for the applicant.

Vote: 2-3. Mr. Picton and Mr. Bedini voted for the motion to deny, Mrs. Hill, Mr. LaMuniere, and Mr. Thomson voted against.

Mrs. Hill made the draft motion of approval and Mr. LaMuniere seconded it. A lengthy discussion regarding conditions ensued.

Mr. Bedini said the \$30,000 bond required in condition #1 seemed inadequate because as much as 5 acres at a time would be disturbed. He also noted that in the past, the Commission had differentiated between the performance bond and the consultant's bond and said he thought the \$5,000 proposed for the consultant's bond was adequate.

Mrs. Hill questioned the proposed bonding procedure, noting that the Town had not done it this way previously. Mr. Ajello said he had consulted both the Treasurer and the Selectmen's Office. Mr. Bedini asked that the language addressing the required bonds be clarified.

Mr. Bedini objected to the consultant's proposed inspection schedule in condition #2. He did not think inspections twice a month during construction phases and when earth was disturbed was often enough. Mrs. Hill agreed. Mr. Bedini recommended that the consultant inspect the site not less than every other day when the construction area was not stabilized and once a week when construction was halted or delayed and the site stabilized. He also recommended that the consultant be given more specific direction and that he be required to submit a short precise report to the Commission after each inspection. He asked who would determine whether additional site requirements were necessary and on what basis. He thought it would be confusing to have several people inspecting and to have both the EO and the consultant responsible for determining whether on site improvements were needed. Also regarding the reports, he asked what would happen to them, who would interpret them, and who would be the authority who could require work to stop.

Mr. Bedini commented that the language of condition #6 made him think that "things" could be changed in the field like hay bales to silt fence, but he was concerned that the use of the word, "augment" would result in more major changes being made in the field without Commission approval. He thought that any changes thought of in the field other than minor ones should be submitted to and approved by the Commission in the form of a request for modification of the approved plans.

Mr. Bedini asked if commissioners would have the right to inspect the site.

Mr. Bedini noted the large amount of demolition proposed, asked who and how this would be monitored, and whether Land Tech had approved it. Mrs. Hill said this was an “excellent” point. Mr. Ajello said the demolition was considered part of construction and would be discussed at the pre construction meeting. Mr. Bedini asked for more specific language.

In response to previous questions raised by Mr. Bedini, Mr. Ajello said the proposed inspection schedule had been reviewed and approved by Land Tech and that the water tests would be submitted to the Land Use Office and then turned over to Land Tech.

Mr. Picton also had a list of inadequacies in the motion. These included 1) a \$30,000 bond was insufficient, 2) the language was too vague regarding poor performance, long term seasonal inspections, the use of best management practices, and post construction conditions, 3) the proposed inspection schedule was insufficient for effective monitoring, 4) the pre construction meeting process was too vague, 5) there was no provision for requiring as-built plans at the completion of each phase, 6) the EO may have too much authority to recraft details; all site plan changes should come to the Commission for review and approval, 7) a more thorough documentation of existing wetlands conditions should be required prior to the commencement of work, and 8) clearing limits had not been discussed. He also questioned under what conditions and how work could be stopped.

Mr. Ajello said he had drafted the motion according to the directions he had received last week. Mrs. Hill agreed, but said changes were necessary.

Condition #1 was discussed and it was unanimously agreed to increase the amount of the bond to \$50,000 and to insert the word, “demolition,” in the second line to read, “...prior to the onset of demolition and construction....”

Mr. Thomson pointed out that Mr. Picton had previously refused to participate in the drafting of the motion of approval, to which Mr. Picton replied that he did not think a complicated motion should be crafted on “guess work.”

The monitoring schedule in condition #2 was discussed. Mrs. Hill agreed with Mr. Bedini that twice a month was not often enough. After a brief discussion, it was agreed to change the inspection requirement during construction phases and periods involving earth disturbance or drainage work to 3 times per week. Also after a brief discussion the inspection schedule was revised to require inspections 2 times per month during general construction phases and periods. Mr. LaMunier agreed that careful monitoring had to be required.

Mrs. Hill noted that 5 acres was a large area to have disturbed and so recommended a condition of approval that a 3 acre maximum area of site disturbance be allowed at any one time. Mr. LaMunier agreed that 5 acres was too large an area. The 3 acre limit was added as condition #8.

Mr. Picton recommended that vague language regarding unstabilized, unvegetated site disturbance be clarified. Mr. LaMunier said that rewriting of the construction sequence would be required. It was generally thought this could be handled at the pre construction meeting.

It was noted that condition #7 had previously been revised to include Mr. LaMunier’s request that any substantial changes to the plans such as changes to the septic system that might be required by the DEP shall be approved by the Commission prior to implementation.

MOTION: To approve Application #IW-08-31 submitted by WYKEHAM RISE, LLC. for site development for an inn AT 101 WYKEHAM RD, PER DOCUMENTS AND REVISIONS SUBMITTED THROUGH OCTOBER 9, 2008 subject to THE FOLLOWING CONDITIONS:

1. A cash performance bond of \$50,000 shall be submitted by the applicant prior to the onset of demolition & construction, to be held by the Town of Washington throughout the construction and subsequent monitoring periods. These monies may be used by the Town to secure the site in the event that mal-performance or neglect by the applicants or their agents creates a risk of adverse impact on inland wetlands or watercourses. If the Town uses any bond funds pursuant to this condition, the applicants must, within 15 calendar days, replenish or restore the bond to the full \$50,000 amount before construction may continue.

2. Land Tech Consultants (“Land-Tech”) shall, on behalf of the Commission, monitor job site conditions for any unanticipated erosion and sedimentation risks and to confirm compliance with application details and the use of best management practices. The applicant shall be responsible for all of Land-Tech’s fees for these services, and shall, no later than the date of commencement of construction, submit to the Commission a cash bond, which shall be held by the Town and which must be maintained in the amount of \$5,000 throughout all phases of construction and monitoring. The Town shall pay Land-Tech’s fees from the bond, and the applicants shall, within 15 calendar days, replenish the bond to the full \$5,000 amount. Land-Tech will issue a report to the Land Use Office, with a copy to the applicants, after each site inspection generally according to the following guidelines:

Consultant’s Inspection Schedule

*** 3 Times per Week** – During construction phases and periods involving earth disturbance or drainage work
*** Twice per Month** – During general construction phases and periods

*** Seasonally** – Post-Construction and throughout the monitoring period

*** At any time** – At the request of the Land Use Enforcement Officer or because of mal-performance, neglect, or serious weather situations

Nothing in these conditions shall be deemed to prohibit the Commission from choosing a consultant other than Land-Tech to perform the services specified above. In such event, the term “Land-Tech,” as used herein, shall be deemed to refer to such other consultant.

3. The site shall be monitored according to schedule for two (2) full years after the end of construction, and until the disturbed areas of the site are fully stabilized, whichever is later. The site shall not be deemed to be fully stabilized unless the Commission makes a specific finding to that effect. Long term maintenance of the stormwater management system shall comply with the maintenance schedule provided by the applicants as described on sheet SES.1 of the site development plans. A log of maintenance activities shall be submitted annually to the Land Use Office in December. All wetland mitigation plantings, buffer plantings, and stormwater pond plantings shall be monitored for three (3) growing seasons. Dead plants are to be replaced by the applicant as needed during the monitoring period.

4. The applicants shall conduct water testing and shall submit the results thereof to the Land Use Office according to the schedule proposed by Hydro Technologies Inc. and as described in its letter of September 24, 2008.

5. Weekly reports by the erosion control professional noted in the Construction Sequences shall be submitted to the Land Use Office throughout all construction phases. A rain gauge shall be installed on site and rainfall amounts recorded in the weekly Erosion Control Reports.

6. At the time of the pre construction meeting, construction managers shall deliver detailed and specific construction sequences to the Enforcement Officer and the Commission’s Consultant. These sequences should adhere to the approved sequences in the file and be augmented by more specific description and timing.

7. Any proposed change in the approved plans and/or the supporting documents must be reviewed by the Enforcement Officer prior to implementation. The Enforcement Officer may authorize minor changes or reductions in the scope of regulated activities, provided that any such

changes shall be reported to the Commission immediately, and further provided that the Commission may require a permit modification for such changes if it finds that they may have a previously unanticipated impact on wetlands or watercourses. Any substantial changes, such as changes in location, enlargements, modifications to septic due to DEP review, or changes that may in any way impact wetlands and/or watercourses must be approved by the Commission prior to implementation.

8. During the demolition and construction unstabilized or unvegetated site disturbance shall be limited to 3 acres at any one time.

By Mr. LaMuniere, seconded by Mrs. Hill, and passed 3-2.

Mr. Picton voted No for the reasons specified in his motion to deny above. He said the motion to approve was not adequately drafted to verify protection of the wetlands and watercourse. Mr. Bedini voted No mainly because there are feasible and prudent alternatives that weren't explored to the extent required by law.

Mr. LaMuniere and Mr. Picton noted they had to leave at this point due to other appointments.

Mr. Thomson read his statement dated 11/5/08, which stated his reasons for approval. The most significant of these was that after evaluation of engineering and environmental reports he had concluded there would be no negative impact on wetlands and watercourses, in fact, the project would improve on site conditions.

Mrs. Hill noted she had given her reasons for approval at the last meeting and said Atty. Zizka's 11/5/08 letter confirmed her position concerning feasible and prudent alternatives.

MOTION: To adjourn the Meeting. By Mrs. Hill.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Janet M. Hill

Land Use Coordinator
