

# October 27, 2011

6:30 p.m. Land Use Meeting Room

**MEMBERS PRESENT:** Mr. Bedini, Mr. Bohan, Mr. LaMuniere, Mr. Wadelton

**MEMBER ABSENT:** Mrs. Hill

**ALTERNATE PRESENT:** Mr. Papsin

**ALTERNATES ABSENT:** Ms. Cheney, Mr. Martino

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

**ALSO PRESENT:** Atty. Olson

**ALSO PRESENT AFTER THE EXECUTIVE SESSION:** Mr./Mrs. Solomon, Ms. Purnell, Mr. Sabin, Atty. Kelly, Mr. Neff, Mr. Oskandy, Atty. Andrews, Mr. Farnen, Mr. Aston, Ms. Scadari, Residents

Mr. Bedini called the Meeting to order at 6:32 p.m. and seated Members Bedini, Bohan, LaMuniere, Wadelton, and Alternate Papsin for Mrs. Hill.

**MOTION:**

To enter Executive Session to discuss Brown/ 127 West Shore Road/Unauthorized Work Along Shoreline/Proposed Settlement.

By Mr. Wadelton, seconded by Mr. LaMuniere, and passed 5-0.

**MOTION:**

To close the Executive Session.

By Mr. Wadelton, seconded by Mr. Papsin, passed 5-0.

The Executive Session ended at 7:00 p.m. and a short recess was taken.

Mr. Bedini reconvened the Regular Meeting at 7:08 p.m. and noted again that Members Bedini, Bohan, LaMuniere, and Wadelton and Alternate Papsin were seated.

**MOTION:**

To change the order of the agenda to put the Rumsey Hall School Application #IW-11-34 as A under Pending Applications and Brown/127 West Shore Road as B.

By Mr. Wadelton, seconded by Mr. Papsin, and passed 5-0.

**MOTION:**

To add the following subsequent business to the Agenda:

V. New Applications; A. Fenwick/ 168 Romford Road/#IW-11-42/Pond Restoration.

By Mr. Wadelton, seconded by Mr. Papsin, and passed 5-0.

**MOTION:**

To change the order of the agenda to consider the Minutes under Other Business.

By Mr. LaMuniere, seconded by Mr. Wadelton, and passed 5-0.

## **Pending Applications**

Rumsey Hall School/201 Romford Road/#IW-11-34/Reconstruct Student Center and Dining Hall:

Mr. Farnen, headmaster, Mr. Aston, engineer, and Ms. Scadari, business manager, were present. Mr.

Aston briefly responded point by point to Milone and MacBroom's 10/25/11 review. C1. No problem.

C2. Mr. Aston agreed that the monitoring well was for the septic system and would have to be

relocated. C3. Mr. Aston said he would discuss this point with Mr. Sanford because the way the stormwater detention system had been designed, there is an outlet at the bottom so there is no way it could fill up. C4. Mr. Aston said Milone and MacBroom had not yet seen all of the construction specifications. C5. Mr. Aston was not sure what Milone and MacBroom wanted for maintenance accessibility and so said he would discuss this point with Mr. Sanford. C6. The stockpile location was already indicated on the plans. C7. Mr. Aston agreed to submit a flood contingency plan. C8. Mr. Aston said the matter of the 4 inch PVC pipe needed investigation, but would either be relocated or removed. C9. Mr. Aston was not sure that the removal of vegetation was a good idea as it would destabilize the riverbank and could possibly be detrimental to the adjoining wetlands. C10. Mr. Aston agreed and said he would move the construction fence to the other side of the trees. C11. Mr. Aston acknowledged a technical error with the silt fence line on the plans and said this would be corrected. C12. Regarding the need for test pits to confirm that blasting will not be required, Mr. Aston said he had hoped to do all of the test borings at one time to save money, but could do the septic borings first if that was required. C13. The required computation sheets will be forwarded to Milone and MacBroom. C14. Mr. Aston said the installation of a swirl concentrator stormwater unit would be possible, but since he was trying to maintain the grades along the existing edge, he would discuss alternatives with Milone and MacBroom. Mr. Bedini noted that when the applicant has submitted revised plans, the Commission will schedule a site inspection and might have additional questions or suggestions at that time. He asked for the revisions in writing by the next meeting and advised Mr. Aston that he could contact Milone and MacBroom to discuss its review.

**MOTION:**

To change the order of the agenda to move C under Enforcement; Brown/127 West Shore Road/Unauthorized Work Along the Shoreline up to B under Pending Applications.  
By Mr. Wadelton, seconded by Mr. Papsin, passed 5-0.

Brown/127 West Shore Road/Unauthorized Work Along the Shoreline/ Restoration Plan:

The plan, "Proposed Shoreline Restoration," Sheet L3, by Mr. Sabin, revised to 10/26/11 was reviewed. Atty. Kelly noted that Sheet L-2 had also been submitted. He summarized that prior to the executive session Mr. Sabin had drawn Sheets L2 and L3 and had written the 10/26/11 "Environmental Summary," which detailed the restoration offered as settlement of the enforcement matter. Sheet L2 was specifically for the restoration of the shoreline wall area and Sheet L3 identified buffer plantings and work beyond the shoreline restoration as mitigation. Atty. Kelly presented photos to the Commission. Mr. Sabin answered questions and explained the details of Sheet L3. Atty. Olson asked the commissioners whether any of the information presented by Mr. Sabin or Atty. Kelly had changed their minds about their discussion while in executive session about the proposed restoration plan. It had not. Atty. Olson said the Commission was prepared to approve the plan, L3, with the 10 conditions discussed in executive session. (See the attached conditions dated 10/26/11.) Atty. Kelly responded that he was not authorized to accept conditions and he asked the Commission to vote so that his client would know this was a valid offer. Atty. Olson said this was not necessary, but agreed the Commission would act. Mr. Bohan asked what would happen if Mr. Brown did not approve the conditions. Atty. Kelly said the matter would then go to trial.

**MOTION:**

To offer in consideration of resolving Brown/ 127 West Shore Road/Unauthorized Work Along the Shoreline; the Commission is in agreement regarding the "Proposed Shoreline Restoration with Enhanced Buffer Planting," Drawing L-3, dated 10/11/11, by Dirk Sabin with the conditions of approval spelled out in the document, "Conditions of Approval of Proposed Shoreline Restoration Plan, L-3," dated 10/26/11.  
By Mr. Wadelton, seconded by Mr. Papsin, and passed 5-0.

Atty. Kelly asked if there would be an opportunity to negotiate the conditions of settlement if his client had any objections. It was noted there was not much time in which to settle before the date of the trial management conference, but Mr. Bedini said it would be possible to schedule a special meeting on Tuesday, November 1, if necessary.

Atty. Olson left the meeting.

Coleman/112 Walker Brook Road/#IW-11-37/Replace Pipe, Install Swale:

Mr. Oskandy, engineer, submitted the signed conservation easement form, the USGS topo map, and a letter dated 10/17/11 from Mr. Coleman. The plan, "Improvement Location Plan," by Arthur H. Howland and Assoc., revised to 10/28/11 was reviewed. The proposal was to replace the existing outlet pipe for the man made pond and to install a grass lined swale with a rip rapped pad on the other side of the property behind the poolhouse. Mr. Bedini asked if the construction sequence had been revised. Mr. Oskandy pointed out that it had been amended per Mrs. J. Hill's comments and the concerns that had been raised by the Commission. These additions were noted in red on the plan.

**MOTION:**

To approve Application #IW-11-37 submitted by Mr. Coleman to replace the pipe and install a swale at 112 Walker Brook Road South in accord with the drawings, "Improvement Location Plan," by Arthur H. Howland and Assoc., dated 9/30/11 and revised to 10/26/11; the permit shall be valid for 9 years and is subject to the following conditions:

1. that the Land Use Office be notified at least 48 hours prior to the commencement of work so the WEO can inspect and approve the erosion control measures,
2. that the property owner give the contractor copies of both the motion of approval and approved plans prior to the commencement of work, and
3. any change to the plans as approved must be submitted immediately to the Commission for reapproval.

By Mr. Wadelton, seconded by Mr. Papsin, and passed 5-0.

Getnick/237 West Shore Road/#IW-11-38/Correct Erosion of Existing Swales:

It was noted there had been no unresolved issues when this application had been considered at the last meeting.

**MOTION:**

To approve Application #IW-11-38 submitted by the Getnicks to correct the erosion of the existing swales at 237 West Shore Road with reference to "Proposed Repairs to Drainage Swales," Sheets 1 and 2, by Calabrese Engineering, dated 10/5/11; the permit shall be valid for 9 years and is subject to the following conditions:

1. that the Land Use Office be notified at least 48 hours prior to the commencement of work so the WEO can inspect and approve the erosion control measures,
2. that the property owner give the contractor copies of both the motion of approval and approved plans prior to the commencement of work, and
3. any change to the plans as approved must be submitted immediately to the Commission for reapproval.

By Mr. Wadelton, seconded by Mr. Papsin, and passed 5-0.

The Gunnery School, Inc./22 South Street/#IW-11-40/Athletic Fields:

Atty. Andrews represented The Gunnery and submitted additional copies of the plans and colored copies of the soils mapping documents. Mr. Bedini explained the Commission had been advised by two consultants that the proposed construction was under its jurisdiction. It was reported that Milone and MacBroom had estimated the cost of a full review would be \$4,000 to \$5,000 and that Land Tech's estimate had been \$3500. Mr. LaMunier noted that Land Tech had reviewed The Gunnery's previous

application for the driveway and so was familiar with the property. Mr. Bedini stated that while both firms were skilled, Land Tech's estimate was lower.

**MOTION:**

To select Land Tech as the consultant to review The Gunnery's application.

By Mr. Wadelton, seconded by Mr. LaMuniere, and passed 5-0.

It noted that a site inspection and a public hearing would be scheduled after the engineering review is received.

**Oberndorf/151 West Shore Road/#IW-11-41/Restore Shoreline Wall, Replace Dock:**

Mr. Sabin, landscape architect, submitted photos of the shoreline with survey stakes to depict the linear footage of the wall to be restored. He reported that subsequent to the site inspection, the contractor proposed a different dock configuration due to the shallow water and he submitted a revised dock plan dated 10/25/11. Mr. Papsin asked if this would require a change in the anchor block. Mr. Sabin said there would be no change at the shoreline. Mr. LaMuniere asked for the plans for the in-water anchors. Mr. Sabin said he did not have them, but he could have the contractor submit them as a condition of approval. Mr. Ajello noted for the record that the site of the dock is an old build-out into the lake and he said there could not be any additional build-out. Mr. Sabin agreed there would be no further build-out and offered to take offset dimensions from the existing road pavement before any construction begins. Mr. Ajello said he would take the measurements.

**MOTION:** To approve Application #IW-11-41 submitted by the Oberndorfs to restore the shoreline wall and replace the dock at 151 West Shore Road per the plans by Mr. Sabin, "Revised Dock per Tucker," dated 10/25/11 and "Cross Section Oberndorf Dock Wall Renovation," undated; the permit shall be valid for 9 years and is subject to the following conditions:

1. that the Land Use Office be notified at least 48 hours prior to the commencement of work so the WEO can inspect and approve the erosion control measures,
2. that the property owner give the contractor copies of both the motion of approval and approved plans prior to the commencement of work, and
3. any change to the plans as approved must be submitted immediately to the Commission for reapproval.

By Mr. Wadelton, seconded by Mr. Papsin, and passed 5-0.

**New Application**

**Fenwick/168 Romford Road/#IW-11-42/Pond Restoration:**

Mr. Sabin, landscape architect, submitted the plans, "Site Plan," not signed or dated, two plans entitled "Fenwick Pond," dated 10/19/11, and the USGS topo map. He noted the location of the property. He explained that 10 years ago beavers had plugged the outlet pipe under the berm and had raised the pond level. This season the pipe was unplugged, a leak developed, and the pond level dropped 3 feet. The proposal is to create a more permanent pond outlet with a new stone lined weir at the northeast corner of the existing berm, plug the existing pipe with hydraulic cement so it will not leak, fill in the settled sections of the berm where the old pipe is located, and restore the pond to the size it was when the beavers lived in it. Also, two silt deposits totaling approx. 67 cubic feet at the bottom of the intermittent streams feeding the pond would be removed and used to fill in the settled berm areas. Mr. Ajello advised Mr. Sabin to contact the DEEP Dam Safety Dept. A site inspection was scheduled for Tuesday, November 1, 2011 at 5:00 p.m.

At 8:25 p.m. the Commission took a 5 minute recess.

## **Other Business**

Wykeham Rise, LLC/101 Wykeham Road/Request to Amend Permit #IW-08-31/School:

Mr. Bedini recused himself.

Mr. Wadelton read his six page statement, "Opinion Statement for Discussion: Wykeham Rise LLC Application for Modification to the Permit – Wykeham University," dated 10/26/11 (*attached*) and Mr. LaMuniere read his 10/26/11, "Note for the File." (*attached*) Mr. Papsin and Mr. Bohan agreed with these statements, which are on file in the Land Use Office. Mr. Wadelton stated that if the Commission were to consider a motion of approval, he would want to include the seven conditions for the previously approved modification to Permit #IW-08-31. He read these seven conditions of approval. Mr. LaMuniere asked for a copy of the conditions and said he would like an opportunity to review them. Mr. Papsin suggested a condition be added to prevent the rain gardens from being converted to lawn. Mr. Ajello said he had been assured several times that if the rain garden plants died, they would be replaced, but agreed an additional condition requiring the indefinite life span of the rain gardens would confirm this. Mr. LaMuniere stated he was concerned due to the steep grades about the cuts required for the construction of driveway #2 and thought erosion control blankets should be used. Mr. Ajello said there would be many people on site to monitor the construction and the erosion controls, identify any problems, and address them. He said that Land Tech had not been concerned. Mr. LaMuniere noted the change in the recent rainfall pattern and said since the entire hillside would be exposed, the applicant had to be ready to deal with all erosion problems. He said he was not sure that the conditions Mr. Wadelton had read covered this issue. Mr. Ajello said they did. Mr. LaMuniere said he would like to have an erosion control specialist on site every week. Mr. Papsin said this had been recommended by Land Tech. Mr. LaMuniere said this was such an important motion that he wanted the time to read it and to modify and strengthen the conditions for this proposed amendment. Mr. Wadelton stated the Commission could require additional inspections after any rain event. Mr. LaMuniere questioned whether the conditions could be reused, especially after the changes that had been made to the construction sequence and said he would like more time to review them. Mr. Wadelton said discussion could continue at a special meeting or after a recess, but said he was satisfied with the seven conditions, which were based on his previous recommendations for changes to the original permit. Mr. Papsin said he was OK with the conditions. Mr. Wadelton noted that if the amendment request was not approved, these seven conditions of the previous amendment would still be in force. Mr. LaMuniere said, for example, he would like the erosion control specialist to participate in the pre construction meetings. He said he had mentioned this at the public hearing and Mr. Szymanski had agreed to it, but it was not on the plan. Mr. LaMuniere said he did not want to delay the vote if the other commissioners were ready and would abstain. Mr. Wadelton said he could not abstain at this point and that if only three commissioners voted, a unanimous vote would be needed. Mr. LaMuniere asked if the Commission was legally required to have the motion in a formal form in order to review it. Mr. Wadelton said the motion had to be complete because it could not be added to afterwards. Mr. Ajello said that Mr. Wadelton had worked on the conditions of approval two years ago and Mr. Wadelton said they had been approved at that time 5-0. Mr. LaMuniere said again that he would like time to study the conditions, he had not expected the vote would be tonight, but he would agree to vote on them with the two small modifications that had been discussed. Mr. Papsin asked if a condition about the rain gardens would be added. Mr. Ajello stated this could be added, but long range enforcement, even if the condition was filed on the land records, would be very difficult.

## **MOTION:**

To approve the request by Wykeham Rise, LLC. to modify Permit #IW-08-31, the permit is valid for 9 years from the original date of approval in December 2008 subject to the following conditions:

1. that the Land Use Office be notified at least 48 hours prior to the commencement of work so the WEO can inspect and approve the erosion control measures,

2. that the property owner give the contractor copies of both the motion of approval and approved plans prior to the commencement of work, and
  3. any change to the plans as approved must be submitted immediately to the Commission for reapproval, and
  4. that all of the previous seven conditions will still apply, however, that #2 and #5 have been modified according to the copy entitled, "Motion to Approve Wykeham University #1 with Conditions, Dec. 8, 2010," and its dated and initialed this evening, 10/26/11.
- By Mr. Wadelton, seconded by Mr. Bohan, passed 4-0.  
Mr. Bedini had recused himself.

Mr. Wadelton asked the commissioners if the reasoning in the two documents read into the record was the reasoning for the approval. All agreed it was.

Mr. Bedini was reseated.

105 West Shore Road, LLC./105 West Shore Road/Request to Amend Permit #IW-11-17/Addition of Stonewall and Pillars:

Mr. Neff, engineer, presented his plan, "Driveway Relocation Plan," revised to 10/20/11, which added a decorative stonewall and pillars to the lower part of the driveway. The stonewall would be 130 ft. long, 2 ft. high, and 1.5 feet wide and the pillars would be 3 ft. X 3 ft. and 4 feet high. Mr. Neff said all of the work would be done within the original limit of disturbance. It was the consensus these could be constructed without impact to the water resources.

**MOTION:**

To approve the request submitted by 105 West Shore Road, LLC. to amend Permit #IW-11-17 to add stone walls and pillars at 105 West Shore Road with reference to the driveway location plan prepared by Mr. Neff, dated 5/27/11 and revised to 10/20/11, Sheet 1 of 1, subject to the following conditions:

1. that the Land Use Office be notified at least 48 hours prior to the commencement of work so the WEO can inspect and approve the erosion control measures,
2. that the property owner give the contractor copies of both the motion of approval and approved plans prior to the commencement of work, and
3. any change to the plans as approved must be submitted immediately to the Commission for reapproval.

By Mr. Wadelton, seconded by Mr. Papsin, and passed 5-0.

**Enforcement**

Chatfield-Scheller/19 Tinker Hill Road:

There has been no response to the second citation mailed on 7/29/11. Mr. Ajello will send another letter.

Doherty/214 Calhoun Street:

The erosion controls are in good condition.

Getnick/237 West Shore Road:

Mr. Ajello gave permission for temporary rip rap if the swale repair work can not be done before the winter.

Lake Waramaug Country Club/22 Golf Links Road:

The cattails in the sediment basin will soon be thinned out. Stones will not be deposited in the trench because they would make periodic cleanouts more difficult.

Seitz/104 Blackville Road:

A small rip rapped pad will be installed on the stream bank.

Mr. Ajello noted that the Dept. of Dam Safety had sent three notifications that local dams are in need of repair.

Mr. Bedini noted that no executive session was needed at this time, but that if further negotiations were needed for the settlement conditions for Brown/127 West Shore Road, a special meeting could be scheduled after the site inspection on Nov. 1.

### **Consideration of the Minutes**

The October 12, 2011 Regular Meeting minutes were accepted as corrected.

Page 10: The motion to close the hearing was not seconded by Mr. Bedini. It was Mr. LaMuniere.

Page 13: The application number for Coleman is #IW-11-37, not 39.

### **MOTION:**

To accept the 10/12/11 Regular Meeting minutes as corrected.

By Mr. Wadelton, seconded by Mr. Papsin, and passed 5-0.

Consideration of the Oberndorf site inspection minutes was postponed until the next meeting.

Mr. Papsin reported that he had completed his commissioner training.

**MOTION:** To adjourn the Meeting. By Mr. Papsin.

Mr. Bedini adjourned the Meeting at 10:00 p.m.

### **FILED SUBJECT TO APPROVAL**

Respectfully submitted,

Janet M. Hill, Land Use Administrator

\*\*\*\*\*

### **S.L. Wadelton**

#### **Opinion statement for discussion: Wykeham Rise LLC application for modification to the permit – Wykeham University**

Now that the public hearing has closed, it would be useful to remind ourselves that what we are dealing with is an application to modify an already approved permit. Throughout the hearing process, very little attention was paid to the specifics of the modifications by the members of the public. They instead chose to question the validity of the two underlying permits, attempting to show that the commission was negligent in our duties and left many unanswered questions and therefore should require a new permit application, where they could once again bring up a long list of issues already thoroughly discussed, evaluated and acted upon. There were also claims that the commission violated its own regulations and therefore invalidated the entire proceedings.

That being the situation in which we now find ourselves, I believe that it would be helpful to revisit those previous applications and some of the processes we went through in deciding to approve them both before we begin deliberations on the actual details of the application before us.

#### **I. Controversy over the actions of this commission in applying section 10.6 of the Washington Inland Wetlands Commission Regulations.**

Claims have been made that:

*“The applicant again directly violates § 10.06 of the WIWC's regulations and once again puts the public*

*at a disadvantage”*

and also that:

*“ this public hearing (is) fundamentally flawed due to the repeated procedural violations.... ”*

I choose to believe that this contention is due to nothing more than an incomplete reading of the entire section, rather than intentionally selecting only those portions that support a personal agenda. In order to clarify this issue for the members of the public I believe that it is necessary to consider the entire Section 10.6 of the IWC regulations:

*If a public hearing is to be held on any application for a permit, all documentary evidence in support of the application shall be filed with the Agency and available for public inspection no less than fifteen (15) days prior to the day of the hearing or any reconvening thereof. All other persons wishing to present documentary evidence in the proceeding should file such evidence on or before the date on which the public hearing is commenced.*

*Nothing in this Section shall prohibit the Agency, in the exercise of its discretion, from receiving evidence from any person at a later time.*

*However, the Agency may refuse to consider any information and documentary evidence, including but not limited to any proposed modifications to the applicant’s site plans or regulated activities, that is submitted after the aforesaid dates if it determines that the Agency’s members, staff or consultants would not have sufficient time to review such information or evidence properly or thoroughly before the public hearing is closed.*

Please note the following two points:

1. The commission has the authority at its sole discretion to waive the time requirements for the submission of any materials from the applicant.
2. The commission may refuse to consider materials *“if it determines that the Agency’s members, staff or consultants would not have sufficient time to review such information or evidence properly or thoroughly before the public hearing is closed.”*

I direct your attention to the fact that the word “public” is not included in that paragraph of the regulation.

There is no evidence anywhere in the record that the commission has ever violated this regulation going all the way back to the original application for an inn, and I therefore request that my fellow commissioners give this issue no further consideration, since the claim is totally without merit.

## **II. Contention that the public is always at a disadvantage and having to play “catch up”**

The public had the opportunity to begin to familiarize themselves with this application at the same time as the commission. I am referring to the official site visits held by the IWC. By law, these visits are special meetings of the commission, and as such must be properly noticed in the Town Clerks office, posted on the town website, and must also be open to the public. All of these requirements were satisfied.

At each of these site visits, the applicants’ engineer was present with complete sets of plans and documentation, ready and willing to describe all aspects of the proposed project, and answer specific questions from the commission about those plans. Any discussion among the members of the commission during these visits however, is not allowed. The members of the public are welcome to view the same documentation, and walk over the same ground at the same time as the commission members. Additionally, to the best of my knowledge, there are no restrictions barring the public from discussing the project among themselves while on-site. I am amazed that not a single member of the public chose to attend any of the last three site visits, and therefore, as with the claim that the commission violated regulation 10.6, any claims of the public being at a disadvantage or having to play



catch-up is also clearly without merit.

### **III. Submissions by experts**

Whenever there is uncontested testimony by a recognized expert the Commission is required to accept that experts report as fact, and will therefore give it great weight in the deliberations prior to a vote. On the other hand, when there are opposing qualified experts who present somewhat different opinions during the public hearing, we have one of those rare situations where I believe that all of the attorneys involved in this issue to date would be in complete agreement. That is the fact that each commissioner individually is completely free to decide which expert opinion to accept.

In making that determination however, each commissioner has many factors to consider that must be evaluated in a fair and impartial manner. These factors include, but are not limited to:

- \* The academic credentials and experience of said expert.
- \* Whether or not the person submitting a peer review appeared at the public hearing to allow questions from the commission and/or cross examination by his peers representing the applicant.
- \* Did he or she actually visit the site under review in the process of preparing the report.

And probably what I believe is the most important consideration of all:

- \* Were there any significant concerns identified that were not answered to the commissions' satisfaction by either the applicants or the commissions own experts.

Throughout all of the proceedings from the original application and leading up to this evening's discussion we have received a great deal of information submitted by at least 6 qualified experts to consider. To refresh everyone's memory they are Ms Jodie Chase, Dr Michael Klemens, Mr. Chris Allan, Mr. Gooden, Mr. Aubrey and Mr. Szymanski

Considering the qualifications of the three engineers, all have the required educational credentials, are licensed to practice by the State of Connecticut , and with no evidence to believe otherwise all are equally competent professionally. As to the various plans for development of this site by Mr. Szymanski, and the peer reviews of his plans most recently performed by Mr. Aubrey, and also the peer review by Mr. Gooden in the previous application for a modification, there is one underlying concept that we need to keep in mind, and that is Engineering is most definitely an art as well as a science.

When an engineer develops a plan attempting to satisfy as closely as possible his clients vision, he is governed by professional standards, guidelines and best practices, and as long as none of those many requirements are violated, he is free to rely on his training and experience in applying them to the job at hand, designing what he believes, in his professional opinion, is the best solution for each of the many problems and challenges arising from the physical features of the site. If the applicant had selected Towne Engineering, it is not unreasonable to believe we might be evaluating a peer review done by Mr. Szymanski.

The two engineers would undoubtedly have different but equally valid solutions to many of the issues they faced. What this commission must consider is

- a.) Do the proposed solutions of the applicants engineer conform to all accepted standards?  
and
- b.) Has the firm doing the peer review raised significant issues or questions showing the likelihood of significant adverse effects to the wetlands and watercourses that were not adequately answered by the applicant to the commissions satisfaction?.

My answers here are "Yes" to question "A", and "No" to question "B".

The comment has been made that this is the biggest development project in Washington since the flood of 1955, implying that the commission should somehow deal differently with this application than other less complex projects. While the statement may be true, and might be a valid topic of discussion with the zoning and planning commissions, it is totally meaningless in the Inland Wetlands deliberations. Here, size really does not matter. What does matter is if the commission members believe that the size and scope of the project is within the capabilities of the engineers involved to carry out this project successfully, does the proposed project provide adequate safeguards to protect the wetlands resources, and whether or not each commissioner feels that they are up to the job of fully and fairly evaluating all of the documentation and verbal testimony presented to them.

It is my opinion that the firm of Arthur H. Howland, Inc. is more than equal to the task, and I also have full confidence in the knowledge, abilities, and commitment to the sworn duties of my fellow commission members to deal with this and all other applications that come before them in a thorough, impartial, and professional manner.

Having covered the engineering considerations of this proposal, it is also necessary to look at the environmental considerations in the reviews carried out by Ms. Chase, Mr. Allan, and also the review by Dr. Klemens.

Beginning with the application for the Inn, the initial review was carried out for the applicant by Ms Jodie Chase, Founder and President, Chase Ecological. Ms Chase's credentials include a Bachelor of Science, in Natural Resource Conservation, a Master of Arts in Wetland Ecology, and she is also a Certified Ecologist, Certified Professional in Soil Erosion and Sediment Control, and is Certified by the U.S. Environmental Protection Agency in Habitat Evaluation Procedures.

Additionally, that application was reviewed by the commissions own consultant, Mr. Chris Allan, Senior Associate, Land-Tech Consultants, Inc. Mr. Allan's credentials include a B.A in Biology, and an M.E. in Environmental Studies. He is also a Certified Soil Scientist, Professional Wetlands Scientist, a Certified Professional in Soil Erosion and Sediment Control, and a Registered Sanitarian.

At the close of that first public hearing Ms Chase and Mr. Allan were both asked if in their professional opinions, the plan were carried out as proposed, would there be any reasonable likely risk of significant adverse impacts to the wetland and watercourses. They both answered with an unqualified "No".

There was a peer review of Ms Chases' findings by Dr. Michael Klemens who holds a doctorate in conservation biology and ecology, along with posts at the Bronx Zoo and appointments at several universities. Although obviously a highly qualified individual to carry out such a review, and his report was given a great deal of consideration by the commission, there are certain troubling details surrounding the selection of Dr Klemens, and his subsequent report.

First of all the commission already had selected Land Tech as their consultant. Dr Klemens was unilaterally selected as an additional consultant by the chairman at that time who had already written to the zoning commission requesting that the application for the Inn be denied, and during the IWC hearings was twice requested in writing to recuse himself by the applicant's attorney. All contact with Dr. Klemens was solely with that chairman and the commission has no record of what instructions or guidelines were given to Dr. Klemens prior to beginning his review.

The second thing I find troubling is that Dr Klemens wrote his report in his office in the Bronx, never actually visiting the site. Additionally, since the chairman felt it important enough to have this review done, it is curious that he did not feel it was important enough to have Dr. Klemens attend the hearing where he could be questioned by the commission members. And finally, throughout his entire report, Dr Klemens used only words or phrases like "may", "might", or "could possibly" when indicating potential impacts. At no point did he refer to any aspect or feature of the plan and claim that it was

likely to have a significant adverse effect, and that is the standard that must be satisfied if the commission is to decide against any feature of the project or to deny the application.

As a result of these issues it is not difficult to understand why the majority of the commission discounted Dr. Klemens findings in favor of those by Ms Chase and Mr. Allan, in a 3 to 2 vote that has been described as close in a divided commission. One "No" vote was by the chairman which by now should surprise no one, and the reason given for the second "No" vote was the commissioner felt that there was not enough consideration given to reasonable and prudent alternatives. Three other members disagreed. Hardly the evidence of a seriously divided commission that some would have you believe.

Since then Land Tech has made several additional reports, evaluating the proposed changes and modifications to the previously approved permits, as well as responding to the concerns, questions and opinions presented by both the commission and members of the public.

In my opinion, Mr. Allan has answered every relevant question or concern to my satisfaction. Additionally, I believe that each successive modification to the original approved application has resulted in a net reduction in scope and even greater protections and safeguards for the wetlands and watercourses. I find that the record does not support the argument that there are still important questions and issues that need to be addressed with regards to runoff, drainage, erosion control, or pre treatment of the waters either within the site or leaving the property and their possible adverse impacts.

#### **IV. Claims of the inevitable failure of the Erosion Control System, and the resulting adverse effects to the wetlands and watercourses.**

Statements have been made that all erosion control measures are subject to failure, and on a site as complex and challenging as this, such failures will result in unacceptable damage to the wetlands. I fully agree that erosion control measures can and do fail frequently on many development sites, and in some cases do have highly undesirable effects.

The possibility of likely failure of these control measures on any given application however is not in itself reason to deny that application. What the commission must evaluate is whether or not the proposed measures follow accepted standards and current best practices, do the members feel that these are adequate, and is there an effective plan to monitor and inspect these measures, or do additional conditions need to be placed on the permit. Additionally, In making such a determination the commission also needs to consider what backup plans the developer has in place to deal with the likely failures in an effective and timely manner.

Since they are already a matter of public record, and will most likely remain in force under this recent application for modification should it be approved I will not read the 7 conditions as they currently exist. I do however have a copy of them here should the commission members wish to review and discuss them. My personal opinion is that the plan as proposed along with the inspection, monitoring, and reporting schedules, and with the requirement for an erosion control specialist to be on site during construction, as well as the requirement to maintain an additional supply of erosion control materials provides a comfortable level of assurance that any failures will be noticed, acted upon and corrected almost immediately after they occur.

All of which brings us to the current question before us, and that is an application to modify an approved permit. Each commissioner must decide if this is indeed only relatively minor modifications or is it extensive enough to require a new permit application.

Should any member of the commission feel that a new application is needed then I encourage them to make a motion to deny, which we will then discuss and vote on.

On the other hand, if the other members feel as I do that this is indeed a reasonable modification proposal, then we must satisfy ourselves with an answer to only one question. Do these modifications in and of themselves present the likelihood of significant adverse impacts to the wetlands and watercourses of the Town of Washington.

Having made my thoughts and opinions known, I look forward to the comments from the rest of the commission. Thank you for your attention and consideration.

Stephen L. Wadelton  
Vice Chair, Inland Wetlands Commission  
Town of Washington, CT  
October 26, 2011

\*\*\*\*\*

## **NOTE FOR THE FILE**

### **Additional comments on Wykeham Rise, EEC/101 Wykeham Road/Request to Amend Permit #IW-08-31 (WU2)**

1. I am well aware of the many concerns that people have regarding the possible impacts which the construction of a large educational facility on the applicant's property might have on their homes and neighborhood. However, as I stated during our public hearing meeting of 09/28/11, some of these concerns extend beyond the WIWC's primary responsibility, i. e., to consider the potential effects such a project might have on the property's wetlands and watercourses. The WIWC has tried to discharge this responsibility to the best of its abilities for a long time, in fact from the day the first Wykeham Inn application came up for its tumultuous and harshly contested review, which lasted from June to December 2008. I mention this because during the subsequent review of the first amendment to the Inn application (WU 1), allegations were made that the handling of the Inn application by the WIWC had been flawed, partial and unfair to the public. Some of these allegations surfaced again during the current review of WU 2. Having been a full participant in the appraisal of the Inn application and having spent many hours reviewing stacks of related documentation or listening to a protracted, highly charged technical debate, I believe these allegations to be unfounded and that they should not influence the review of WU 2. The Inn application was finally approved because a majority of the Commissioners concluded, on the one hand, that the careful implementation of the project would not have an adverse impact on the property's wetlands and watercourses and, on the other hand, that a Motion to Deny tabled at the time contained too many conjectural statements and technically unsubstantiated assertions regarding the project's possible deleterious effect on these wetlands and watercourses.

2. It is not necessary to review here the many and detailed reasons why the WIWC unanimously approved WU 1. These are in the file. Succinctly put, the principle justification for that approval was the consensus among Commissioners that the storm water management system, which remained essentially unchanged from the one approved for the Wykeham Inn application, would continue to provide to a reduced development proposal adequate protection to the property's wetlands and watercourses and would, in fact, deliver cleaner water to Kirby Brook than the system currently in place.

3. With WU 2 we now have to decide whether additional modifications to the approved WU 1 -- some of which, such as the concentration of vehicle parking in one location along Driveway No. 1 that has warranted a modification in the design of Water Pond No. 1 — should allow the WIWC to approve WU

2 as an amendment or whether these modifications are significant enough to require a new application. Considering the extensive amount of technical information that has already been provided on this issue, both directly and as part of the discussion about the potential impacts or benefits of these modified WU 2 components, it is unlikely that a further quantum of significant new information on possible wetlands and watercourse adverse impacts would be generated as a result of a new application review. Most of the salient points regarding the capacity of the expanded storm water management system to handle these modifications, as well as the protective measures to be put in place against possible sedimentation, erosion and other related problems which may arise during the proposed development's construction phases, have been detailed in the public hearing material and gone over in written or oral technical exchanges during its proceedings. I would like to know what my colleagues' thinking is on this issue.

4. Mrs. Solomon and Ms. Purnell have stated that WU 1 should not have been approved as an amendment, and Ms. Purnell, in particular, has repeatedly requested a new application for WU 2. Additionally, Attorney Branse supports the same course of action based on a peer review carried out by Engineer Donald R. Aubrey. While Mr. Aubrey's extensive comments cover a lot of ground, I believe that the WIWC's consultant, Mr. Chris Allan of Land-Tech, in his letter of 10/05/11 has adequately responded to and largely refuted the technical points and allegations of data shortcomings raised by Mr. Aubrey. For the record I do not think that the ditch that runs along the gravel road on the western boundary of the property constitutes a watercourse. I would also like to mention that the farm road which originates east of Wetland Flag 49 was pointed out to the initial site inspection party for the Inn application by the applicant's engineer and was walked by some of its participants including myself.

5. I have reviewed the data pertaining to the WU 1 approval and carefully considered the exchanges of technical information between Ms. Purnell, Mr. Szymanski and Mr. Allan, as well as verbal exchanges among them or with members of the WIWC and the public during the public hearing meetings. On this basis I believe that the proposed implementation of WU 2, in spite of its modified site configuration but considering its proposed a) reduction in the number of buildings and modifications in some of their footprints and locations, b) concentration of parking in one area mitigated by an expanded storm water management system, c) significantly reduced intrusion in the URA from buildings and Driveway No. 1 and finally d) a detailed, much improved sequence of operations with corresponding tight and specific monitoring requirements, will have no detrimental impact on the wetlands and watercourses of this property. In spite of arguments to the contrary, I do not think, as I stated above, that new information - by this I mean information additional to that already at hand in the extensive amount of technical material generated during the WU 2 review — which might come to the fore in the appraisal of a new application would contribute significant new insights on possible adverse wetlands and watercourses impact.

6. If the WIWC votes to approve WU 2 as an amendment, I would want to review and contribute to the Motion of Approval resulting therefrom.

Charles LaMuniere 10/26/11