

# February 14, 2012

7:30 p.m., Land Use Meeting Room

**MEMBERS PRESENT:** Mr. Abella, Mr. Fitzherbert, Mr. Reich, Mr. Solley, Mr. Werkhoven

**ALTERNATE PRESENT:** Mr. Wyant

**ALTERNATES ABSENT:** Mr. DuBois, Mr. Shapiro

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

**ALSO PRESENT:** Mr. and Mrs. Federer, Mr. and Mrs. Solomon, Mrs. Benn, Ms. Giampietro, Ms. Purnell, Mr. Oskandy, Atty. Fisher, Mr. Klauer

Mr. Fitzherbert called the Meeting to order at 7:30 p.m. and seated Members Abella, Fitzherbert, Reich, Solley, and Werkhoven.

## **Consideration of the Minutes**

**MOTION:**

To accept the 1/23/12 Public Hearing – Regular Meeting minutes as written.

By Mr. Werkhoven, seconded by Mr. Reich, passed 5-0.

## **New Application:**

### Corbo-Volpe/40 Nettleton Hollow Road/First Cut:

Mrs. Hill explained what a “first cut” is and reviewed the application for completeness. She noted the application form was complete, the fee paid, the Health Dept. and Inland Wetlands Commission had approved it, the mandatory conservation easement form had been signed, Mr. Neff, engineer, had completed the residential density form for each lot and had determined that the property division qualified as a first cut, frontage requirements had been met for each lot, an A-2 map showing site development feasibility had been submitted, and the property had an existing driveway cut. Her one question was why the proposed boundary line between the two lots showed neither iron pins nor monuments to mark the corners and angles, and did not note the metes and bounds. She recommended a condition of approval that these be indicated on the final map to be filed on the Town Land Records. The map, “Proposed Site Development Plan,” by Mr. Neff, dated 6/23/06 and revised to 9/16/11 was reviewed. It was noted that under the Regulations the two lots could share a driveway. In response to a question regarding the proposed lot sizes, Mrs. Hill explained that both lots exceed the minimum soil based zoning requirements.

**MOTION:**

To approve the application submitted by Mr. Corbo and Mr. Volpe for a first cut at 40 Nettleton Hollow Road per the map, “Proposed Site Development Plan,” by Mr. Neff, dated 6/23/06, revised to 9/16/11 subject to the following condition: that the map to be filed on the Land Records be updated with both monuments or pins shown at the corners and angles of the boundary line between lots #1 and #2 and that the metes and bounds for this boundary line be specified.

By Mr. Fitzherbert, seconded by Mr. Abella, and passed 5-0.

## **Pending Application**

Wykeham Rise, LLC./101 Wykeham Road/Special Permit: Section 4.4.10/School:

Mr. Fitzherbert noted that the public hearing had been closed and Alternate Wyant could not participate in the deliberations. He took a non binding poll of the commissioners to find out how they were inclined to vote after having heard all of the testimonies presented at the hearing and having read all of the documents in the file. Mr. Abella, Mr. Fitzherbert, Mr. Reich, and Mr. Werkhoven were inclined to approve the application, while Mr. Solley said he had issues that he would like to discuss.

Mr. Fitzherbert noted the deliberations would follow the format on the form, "Special Permit Action," that the commissioners had used to help prepare for the discussion and evaluate the application. This form is attached.

Points #1 - #16:

Mr. Fitzherbert explained these were matters handled by staff and the basic application requirements had been satisfied. Mrs. Hill said she was not completely satisfied at this point and would suggest some conditions of approval.

#7 – meets driveway requirements for slopes:

Mr. Werkhoven asked whether the 17% sloped section of the service access to the pump facility met the required driveway standard. Mr. Fitzherbert noted this access did not fall under the definition of driveway.

#4 – meets lot coverage requirements:

Based on his experience with Rumsey Hall School, Mr. Solley thought the pump house service access would be used more often than indicated by the applicant and so should be included in the lot coverage calculation. Mr. Fitzherbert said that based on his school experience the pump house could be checked on foot; it did not have to be accessed by a vehicle. Mr. Solley asked what material would be used for this access. Mrs. Hill said the Inland Wetlands Commission had required grass pavers. Mr. Solley asked what the Commission's legal counsel advised about the lot coverage calculation; was what must be included determined by material or by use? Mr. Fitzherbert noted that grass pavers were pervious and did not have to be counted for coverage. Mrs. Hill said Atty. Zizka had advised that grass pavers did have to be counted for lot coverage, giving the emergency access to dorm #1 in the first Wykeham University application as an example, but said she thought in the past the Commission had decided this access did not meet the definition of driveway and that was the issue here.

#16 – has adequate landscaping and buffering:

Mrs. Hill said she did not think the location of the 86 car parking lot so that it was visible from the road was in keeping with the character of the neighborhood and the residential district and so recommended that evergreen trees be planted for screening between the lot and Wykeham Road. Mr. Abella agreed. Mr. Reich noted that Mr. Szymanski, engineer, had agreed to add these. Mr. Fitzherbert noted some evergreens had already been added at the upper driveway entrance. He thought the existing vegetation along the road was fairly dense, but Mr. Werkhoven did not think it was and pointed out that what was already there was deciduous. Sheet PL.1, revised to 1/4/12 was reviewed. Mr. Fitzherbert noted the landscaping plan had been done by a professional and thought it had been designed both for appearance and so the cars could not be clearly seen. Mr.

Werkhoven, Mr. Solley, and Mr. Abella thought evergreens should be used to fill in the areas between the proposed vegetation on the north side of the driveway. Mr. Fitzherbert said they would continue to discuss buffering later in the meeting with the goal to draft a condition to make the parking lot less visible from Wykeham Road.

#12 – meets zoning height requirements:

Mrs. Hill explained that because maximum building height is measured from the pre existing grade and the buildings proposed were the maximum height permitted, she thought it important that benchmark elevations for each building be established in the field prior to the commencement of work per Section 11.7.2.3. Mr. Ajello agreed, noting the site would be regraded as the project progresses. It was the consensus this would be made a condition of approval.

#4 – has Health Department approval:

The applicant has not yet received the required state approval. Mrs. Hill did not think a condition regarding septic approval was necessary because the Regulations are very clear concerning this issue.

Condition to require as-builts:

Mr. Ajello said he thought this was a good idea. Mrs. Hill recommended the Commission make the same condition as it had for the first Wykeham U. Special Permit application.

#4 – meets lot coverage requirements:

Mr. Solley noted the applicant's final lot coverage calculation was 9.89%, but that the neighbors' consultant had calculated it was over 10%. He voiced his concern that the applicant had created maximum building needs, which had then required him to "back into minimum safety requirements" due to the lot coverage regulations. He urged the Commission to hire its own consultant the next time there is a question about coverage because he thought the Commission was not well versed in dealing with plan details. Mr. Fitzherbert said the Commission would consider this in the future. Mr. Reich asked what would happen if it was found the applicant had gone over the 10% coverage allowed. Mrs. Hill responded that Atty. Zizka had advised that if, for example, the Building Dept. required additional coverage to meet the ADA requirements, the applicant would be required to come back to Zoning for approval for these changes. Mr. Ajello said the applicant could apply for a variance, but he thought there was enough coverage left to accommodate minor changes. Mr. Fitzherbert noted that because this was a Special Permit, any change would have to be approved by the Commission.

Having discussed the first 16 points, it was noted that so far it was the consensus to draft conditions concerning the following: 1) evergreen screen for the parking lot, 2) benchmark elevations, and 3) as-built requirements.

The commissioners then discussed whether the application met each of the Special Permit standards per Section 13.1.B.

13.1.B.1 – consistent with the Town POCD:

All agreed it complied.

13.1.B.4 – street is adequate:

All agreed it was adequate.

#### 13.1.B.4 – driveways create no hazards:

Mr. Abella thought the one way driveway was a good idea. Mr. Solley asked if one way traffic had been “set in stone.” Mr. Fitzherbert said yes, it was indicated on the map and was on the record. Mr. Werkhoven noted there were “bad spots” all along Wykeham Road. Mrs. Hill responded that the applicant had added a traffic management plan to address traffic safety concerns during construction. Mr. Reich, Mr. Abella, and Mr. Werkhoven did not think the proposal would result in undue congestion on Wykeham Road. Mr. Solley asked when would the Bell Hill Road entrance be made unusable and asked if it would be used for access by construction vehicles. Mr. Ajello said it would not and that its removal was covered in the construction sequence on Sheet SEQ.1. All agreed the application complied with this section.

#### 13.1.B.5 – lot is sufficient:

Mr. Abella and Mr. Reich thought the lot met the standards. Mr. Solley noted that the original property had been 50 acres, but some had been sold off with the close of Wykeham Rise School. He thought that the amount of development proposed on the remaining 27 acres with its 15% slopes in a residential neighborhood was too much. He compared the size of the entire proposed development to the size of New Preston including Rt. 47 and said the size of the proposed main building was equivalent to the area of Bryan Plaza. He suggested this project was the largest the Town had experienced short of the rebuilding after the Flood. He stated the Zoning Commission’s duty was to protect neighbors from the over development of parcels in Town and said this application was “excessive” in its overall size and coverage. Mr. Abella thought the site was adequate even though the project was large and said the proposal was within the allowable lot coverage. Mr. Werkhoven thought the construction of Shepaug was a larger project. Mr. Fitzherbert said the Commission’s job is to review the existing Regulations, which have well defined purposes, and to determine whether the application complies. He said the property had accommodated a large number of children and adults in the past and had hosted large functions that had not been detrimental to the neighborhood. He said the property had not been maintained for the past 10 to 15 years and so what was proposed would result in a property that was kept in better shape. Mr. Fitzherbert, Mr. Abella, Mr. Reich, and Mr. Werkhoven thought the application complied with this section.

#### 13.1.B.6 – landscaping is suitable:

Mr. Fitzherbert noted the commissioners had already discussed a condition to add appropriately placed evergreen screening. Mr. Reich said the applicant had understood that landscaping was a major issue and had been willing to make adjustments. Mr. Reich, Mr. Abella, Mr. Werkhoven, and Mr. Solley thought it complied.

#### 13.1.B.7 – conservation of natural features:

Mr. Reich thought the application complies. Mr. Fitzherbert noted a new drainage system was proposed. Mr. Abella thought a lot of effort had been put into this matter. Although he said he had no particular concerns, Mr. Solley noted the drainage system would require aggressive maintenance to function properly. Mr. Fitzherbert said maintenance of the drainage system had been adequately addressed in the plans. Mr. Reich and Mr. Abella agreed.

#### 13.1.B.8 – will not create a nuisance:

Mr. Abella said the buffering was good and the applicant put a lot of effort into its lighting plan. Mr. Reich said that noise and lighting had been adequately addressed. Mr. Solley noted the pool and poolhouse were only 60 to 70 feet from the boundary line and although their use would be

seasonal, could be noisy for neighbors. He asked if there would be any recourse for neighbors who complain about noise. Mr. Ajello said he had no authority to enforce noise regulations, but that if it was extreme, it could be reported to the police. He noted there were many pools in Town that were closer to property lines. Mr. Solley asked if there was a lighting plan for the pool area. No one recalled, but Mr. Werkhoven pointed out that there was a large evergreen buffer between the pool and the adjoining properties.

#### 13.1.B.3 – adequate for fire and emergency access:

Mr. Fitzherbert noted the Fire Marshal had approved the plans. Mr. Reich thought this section was in compliance.

#### 13.1.B.2 – in harmony with orderly development of Town and neighborhood:

Mr. Fitzherbert said there were two sections to consider; Town and neighborhood. Mr. Reich said that what now exists on the property is disorderly and unharmonious. He noted that harmony is in the eye of the beholder, but said almost anything would be more orderly than what now exists. Mr. Fitzherbert noted the vote for the first Wykeham U. application had been 4-1; the vote against due to the large size of the main building. He agreed a large school building was proposed and that if it had been proposed where the existing main building is now located, it would have been out of character. However, he said because it had been moved back it was less obtrusive. He said proportion was not a factor from any direction off the property. He also said it would not have a visual impact from Wykeham Road and not much of a visual impact from Bell Hill Road. He noted a large amount of screening was proposed. Mr. Fitzherbert stated he was not concerned with size, scale, proportion, or appearance, and while he preferred the design of the inn, school buildings were large and functional and were not often architectural gems. Mr. Abella said schools are an integral part of the community, the property had previously been used as a school, and there was adequate vegetative buffering. Mr. Reich said he was not impressed by any design feature of the buildings, but noted it was a school. Mr. Solley thought the relocation of the buildings was a good idea. He said “Wykeham III is a cheapened rendition of Wykeham I architecturally.” He thought the ugliest part of the project was placing the parking lot at the front of the property, noting that from a design standard, parking should be hidden. He noted additional buffering would be a condition. He stated that the eyesore condition of the property was the applicant’s fault and he hoped there would be an attitude for proper care in the future. He thought the volumetric change that was applied for with such a large campus with maximum lot coverage was not in harmony with the neighborhood. He said he realized that schools were the Town’s main industry, but questioned why the applicant could not start on a smaller scale to show viability before building out to the maximum permitted. He asked where was the contingency plan for the use of the property should the school be built and then fail. Mr. Fitzherbert agreed that the Commission had no knowledge of the applicant’s business plan, but said that was not under its jurisdiction. Mr. Solley noted that should it fail, the public would ask why the Commission had allowed such a large development to be built. Mr. Fitzherbert said the same question could be raised for any school in Town. Mr. Reich said that even if it failed, there would be a sizable increase in the grand list. Mr. Fitzherbert said that was not the Commission’s concern. Mr. Reich said when the project was completed it would be nicer than what was there now. Mr. Werkhoven said that while he had concerns about the size, the Commission had to act on what was before it, and that it was within the bounds of the Regulations. He asked if the building plans were finished plans. Mr. Ajello said they had been drawn in “engineering style” and that his interpretation was that Mr. Szymanski had stated that the material of the main building would be in keeping with the dorm buildings. Mr. Werkhoven pointed out there was a big discrepancy between the main building and the dorms. He said it would be “a big load

off his mind” if the main building was like the dorms. He said he had the same concerns as Mr. Solley regarding what would happen if the school failed. Mr. Fitzherbert said that architecture and style were issues the Commission would discuss in the future. Mr. Fitzherbert stated the Commission also had to determine whether the proposal was in harmony with the orderly development of the Town, whether it would hinder the appropriate development of adjoining properties, and whether it would impair their value. Mr. Reich thought it was the current condition of the property that would bring down surrounding property values. Mr. Werkhoven said in this case he did not agree with the argument that property values would be decreased. He noted that education has been the biggest industry in Town and that property values have increased. Mr. Fitzherbert said there had never been any evidence of property values going down in Washington due to the Special Permit process. He thought Washington was immune to declining property values and that this was not a legitimate argument. Mr. Reich likened the situation to the one 30 years ago when people predicted dire consequences should the Commission approve Washington Pizza. Mr. Fitzherbert did not think construction of the school would hinder the development of adjoining properties. Mr. Abella said that property values in Washington do not go down due to construction. He said Washington is an excellent place to live and the school would be a plus for the Town. Mr. Reich said that the public should be pleased the Commission was doing what it could to address the eyesore there now. He saw the approval of the application as a positive measure. Mr. Solley noted the conflicting opinions by the various appraisers regarding whether the school would lead to a decrease in property values and so said he was neutral on this topic.

Other possible conditions of approval were discussed.

Mr. Solley said he felt strongly the property should not be issued a liquor license. He said the applicant had stated he did not want one and noted it was not necessary for this venture. Mr. Fitzherbert said he had no problem with no liquor license, but questioned whether this could be enforced or made a condition of approval. Mr. Solley said the state could complain to the Commission if it had a problem with such a condition. Mr. Reich did not think this was an issue the Zoning Commission could address and did not think a university could be granted a liquor license. Mr. Solley said the university was non accredited and for profit, so he believed it could apply for one. Mr. Fitzherbert noted there were many colleges who opened taverns on campus for good reason. Mr. Reich said this was an issue to be solved without participation by the Zoning Commission. Mr. Solley said there was no other entity that could impose such a condition and that the applicant had already said he'd go along with it. Mr. Abella asked if it would mean that no wine could be served with dinner. Mr. Fitzherbert said it would mean only that liquor could not be sold on the premises. Mr. Werkhoven asked if there would be a teaching restaurant with a limited seating capacity. Mr. Fitzherbert stated there would be cooking classes. Mr. Abella noted there could be classes about wines. Mr. Solley said he proposed a condition that said only that there could be no liquor license. Mr. Werkhoven said he had no problem with that. Mr. Reich objected. Mr. Fitzherbert agreed it could be a condition. He asked if the school could serve wine as part of a meal. Mr. Solley said that was not his concern. Mr. Abella noted the school might want to serve liquor at a Christmas party. Mr. Fitzherbert asked Mr. Solley what concern he was trying to address. Mr. Solley explained that during the process the issue had been raised regarding uses on site and what uses were ancillary and to what. He said a school was proposed, but there were many more bedrooms than classrooms and that the classrooms could be considered the subordinate use. He was concerned that if alcohol was served under a liquor license the operation could become an inn under the guise of an educational experience. He said the condition would be a check that the

applicant seemed fine with. He thought the Commission should draw the line between a school operation and what some of the public feared it would morph into. Mr. Fitzherbert said the idea of any association of an inn with this school was foreign to him. He saw no reason for a bar on campus, but no reason not to serve wine with a meal. He asked if under the law a license was needed to serve wine with a meal. Mr. Solley again proposed the condition that there be no liquor license and said this was the only way to prevent this facility from selling liquor. Mr. Abella thought if liquor was sold it would become a restaurant. Mr. Solley said dining for students and faculty would be approved, but that the applicant had never applied for a bar. Mr. Abella noted that schools sometimes serve liquor for specific functions. Mr. Fitzherbert asked Mr. Solley to explain, without referring to the inn, why he thought the condition was needed. Mr. Solley responded that a school was proposed and it did not need a liquor license. Mr. Werkhoven said the condition would help prevent it from becoming something that had not been approved. Mr. Fitzherbert noted if there were unintended consequences resulting from not having a liquor license the applicant could come back to the Commission. Mr. Solley said the educational experience and the need for a liquor license were incongruous. Mr. Ajello suggested the following language: No liquor license shall be sought for the general sale of alcohol. He said this would still allow peripheral uses. Mr. Reich said he had a problem that the intent of the condition was to prevent the changing of the school to an inn. Mr. Solley again said that the sale of alcohol did not mix with the use as an educational facility. Mr. Reich asked why Mr. Solley was settling on liquor only; why had he not proposed a condition there could be no summer carnivals, for example. Mr. Fitzherbert noted that during the presentation the applicant had stated he would not seek a liquor permit so the Commission would be agreeing with what the applicant had already proposed. Mr. Reich agreed to the condition.

Mrs. Hill asked if the Commission had any concerns about outdoor loudspeakers. Mr. Fitzherbert said that would fall under noise and if the school received a complaint about noise it would address it so it would not happen a second time.

Mr. Fitzherbert noted there had been four conditions for the approval of the first Wykeham U. application and an additional three had now been proposed. There was a brief discussion regarding the language for the condition requiring buffering with evergreens. The following condition was agreed upon: The applicant shall, in addition to the proposed buffering, intersperse a sufficient number of evergreen trees with the existing and proposed vegetation to reasonably buffer the lower parking lot visibility from Wykeham Road. Mr. Ajello proposed and it was agreed the condition for the benchmark condition would be: Benchmark elevations for the building height shall be established for each building per Section 11.7.2.3 of the Zoning Regulations. The performance bond condition was discussed. Mr. Ajello noted the Inland Wetlands Commission had already required a \$50,000 cash bond. Mr. Reich asked what the Commission should be concerned about. Mr. Werkhoven explained that if the site was left in a disturbed manner the Town must be able to clean it up. Mr. Solley noted that a letter of credit was not the same as a cash bond and said in his experience the Town had always required a cash bond. The three types of bonds, cash, letter of credit, and surety, were briefly reviewed. Mr. Solley asked who would guarantee a letter of credit and if the money was needed for repairs on site, would the owner have a say in whether it could be used? Mr. Fitzherbert said, no, the bank would have control of the money. Mr. Solley asked if the Board of Selectmen had been consulted at the time the original condition had been written. Mrs. Hill said they had not been consulted. Mr. Ajello noted that the Inland Wetlands condition was included on the plans and the amount of \$50,000 had been determined based on the requirement that no more than 5 acres of the site could be disturbed at any one time. Mr. Solley agreed to leave letter of credit as written in the original condition, but recommended that Town

counsel be asked for his opinion. The commissioners agreed that the amount of the letter of credit would be determined later.

Mr. Fitzherbert asked if the Commission was ready to vote on the application with the seven conditions discussed above. Mr. Solley asked what would be the Commission's recourse if the conditions were not abided by. Mr. Fitzherbert said a cease and desist order would be issued. Mr. Ajello said the conditions would become part of the approval. It was also noted that inspection requirements were detailed on the plans.

**MOTION:**

To approve the Special Permit application; Section 4.4.10 submitted by Wykeham Rise, LLC. for a school at 101 Wykeham Road per the plans, "Site Development Plan for Wykeham University," 34 Sheets, by Arthur H. Howland and Assoc., dated July 8, 2011 and revised to 1/4/12 subject to the following conditions:

1. All modifications to the approved plans must be approved by the Zoning Commission or its authorized agent prior to implementation,
2. As-built drawings shall be submitted to the Zoning Commission upon the completion of the foundations and again upon completion of framing. The as-built drawings must be approved by the Commission or its authorized agent before commencement of further construction. The Commission may, at the expense of the applicant, submit such drawings to a professional for evaluation,
3. Outside construction may take place only between 7:00 a.m. and 5:00 p.m. Monday through Friday and between 8:00 a.m. and 4:00 p.m. on Saturday and Sunday. No blasting, no operation of heavy equipment, and no site work are permitted on Saturday or Sunday, before 8:00 a.m. on Monday through Friday, and on Memorial Day, Fourth of July, and Labor Day,
4. A performance bond, in the form of an irrevocable letter of credit from a financial institution with offices in Connecticut, in an amount to be determined in consultation with the Commission's attorney, by an engineer approved by the Commission and paid for by the applicant, shall be secured before disturbance of the site begins,
5. No license shall be sought for the general sale of liquor,
6. The applicant shall, in addition to the proposed buffering, intersperse a sufficient number of evergreen trees with the existing and proposed vegetation to reasonably buffer the lower parking lot visibility from Wykeham Road, and 7. Benchmark elevations for the building height shall be established for each building per Section 11.7.2.3 of the Zoning Regulations.

By Mr. Abella, seconded by Mr. Reich, and passed 4-1. Mr. Solley voted, No.

Mr. Fitzherbert thanked the commissioners for the time spent on processing this application.

**Enforcement**

Mr. Ajello briefly reviewed several of the items listed in his 2/14/12 report. He noted the Tax Collector would foreclose on the Lodsin property to collect back taxes. He said he had not yet received a response from Ms. Meade about her unauthorized kennel on Flirtation Avenue or from The Community Table regarding an improved parking plan. He circulated copies of a recent Waterbury Republican article concerning limits on searches of property for zoning violations. He also said that in the future the Commission should discuss Section 12.1.1 that states that no structure may be located within 50 ft. of a wetland, waterbody, or floodplain. He noted that fences

and walls are structures and are often proposed in these areas.

MOTION:

To adjourn the Meeting.

By Mr. Solley.

Mr. Fitzherbert adjourned the Meeting at 10:12 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Janet M. Hill, Land Use Administrator