

# January 7, 2013

## Special Meeting

5:30 p.m. Upper Level Meeting Room

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

**ALTERNATES PRESENT:** Dr. Craparo, Mr. Dutton, Mr. Wyant

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

**ALSO PRESENT:** Mr./Mrs. Boyer, Ms. Purnell, Mr. Wadelton, Mr./Mrs. Federer, Mrs. Peacocke, Atty. Fisher, Mr./Mrs. Solomon, Mr. Averill, Mr. Charles, Mrs. Hardee, Mrs. Giampietro, Mr. Szymanski, Mrs. Radosevich, Mr. Papsin, Mr. Mustich, Atty. Smith, Press

Mr. Fitzherbert called the Special Meeting to order at 5:40 p.m. and seated Members Abella, Fitzherbert, Reich, Solley, and Werkhoven.

Proposed Settlement of Litigation/Wykeham Rise, LLC. v. Zoning Commission of the Town of Washington, et al./Superior Court, Judicial District of Litchfield, Docket No. LLI-CV-09-4007939-S./ Property Owned by Wykeham Rise, LLC., located south of Wykeham Road and west of Bell Hill Road in the Town of Washington. Subject matter of settlement involves the proposed use of the property for an inn, restaurant, and related commercial facilities:

Atty. Olson briefly reviewed the purpose of the meeting, which was to discuss the proposed settlement agreement and to decide whether the Commission would agree to its proposed terms and she explained the procedure that would be followed. She noted this was a proposed settlement to resolve pending litigation and not an application so the Zoning Commission was not compelled to receive public input, although it could decide to do so per counsel's recommendation. She also noted that a resolution of this appeal would also resolve several other current appeals with respect to Wykeham University, which had been approved by the Zoning Commission. She warned that alternates could participate in any public discussion, but could not participate or vote once deliberations began.

Atty. Fisher reviewed some of the history of the Wykeham Rise, LLC. inn application, its denial and appeal, and the settlement now proposed. He noted the agreement included the following provisions: the "physical plant" was identical to what had been approved by the Zoning Commission and the Inland Wetlands Commission as a school, the floor area of the main building had been reduced from what had been originally proposed for the inn, the traffic would be one way; enter from the west on Wykeham Road and exit to the east near Bell Hill Road, the overflow parking plan had been deleted, the number of parking spaces had been reduced from 103 to 100, the number of seats in the restaurant had been reduced from 80 to 68, the fitness building was reduced in size, the service road off Bell Hill Road would be decommissioned and restored to a natural state, there would be no amplified sound outside at any time and all non amplified sound outside would have to end 30 minutes after sunset, the outdoor lighting would comply with the Zoning Regulations, pool activities would be restricted, and there would be no construction or activities in the restricted conservation area at the southern end of the property. Atty. Fisher circulated copies of the proposed settlement.

Mr. Szymanski, engineer, reviewed the site development plans, "Site Development Plan for Wykeham Project," 32 sheets, by Arthur H. Howland and Assoc., dated 7/8/11 and revised to 12/17/12. He stated that the drainage system had been designed to handle 100 to 200 year storm events, that Land Tech had reviewed the plans for the Inland Wetlands Commission and had found them adequate to protect the wetland resources, and that the landscaping plan was the same as the one previously approved by the Zoning Commission.

Mr. Solley noted the lot coverage had been decreased by .5% and asked where the changes had occurred. Mr. Szymanski said the entrance to the main building had been reconfigured.

Mr. Solley asked if the conditions that had been imposed by the Commission when it had approved the university had been included in the plans. Mr. Szymanski said the property owner would be willing to do so. Atty. Fisher said he would suggest that they all be incorporated in the settlement agreement.

Mrs. Hill asked what architectural style was proposed. Mr. Szymanski submitted two renderings of the main building, which depicted a style that was neither the country/rustic design of the inn nor the austere/barracks design of the school. Mrs. Hill asked if the Commission could have any input concerning the architecture. Mr. Reich stated that both parties had already agreed to the revised architectural plans.

Mr. Fitzherbert asked for public comments.

Mr. Averill, New Preston Hill Road, asked how was it legal that the use as an inn, which had been denied by the Commission and which decision had not been thrown out by the court could return for consideration. He noted the Zoning Commission had approved a school, not an inn, which, he maintained, is in violation of the current Zoning Regulations. Atty. Olson responded that there were no guarantees in litigation, noting that the appellate court might not uphold the lower court's decision to uphold the Commission's denial of the inn. Therefore, both sides had agreed to negotiate and compromise and had come up with the proposed settlement plan.

Mrs. Giampietro, abutting property owner on Wykeham Road, asked about plans to widen and rip rap the entire north side of Wykeham Road. Mr. Szymanski stated that the improvements along Wykeham Road were no longer part of the proposal as they had not been included in the application for the school. He pointed out a 10 ft. wide area of rip rap for the emergency spillway that would be visible from the road.

Mr. Solomon, abutting property owner on Bell Hill Road, noted that the proposed settlement had been agreed to by only two of the neighbors. He said he was associated with a group representing all of the neighbors and had been working on a settlement that would benefit both the neighbors and Wykeham Rise, LLC. He noted these conversations were ongoing and that appeals of other neighbors were still pending. He urged the Commission to wait until a settlement agreed to by all the neighbors had been reached.

Mrs. Solomon said the above group of neighbors had asked Wykeham Rise, Mrs. Peacocke, and the Federers to hold off going to Zoning until all of the neighbors had agreed to a settlement proposal. She also thought the Commission should not make a decision until it had a detailed plan before it so it would know exactly what it was approving.

Mr. Solomon said he had asked Mr. Klauer for a full detailed set of site plans and architectural plans that he could review, but that these had not been provided. He said the Commission was being rushed into acting on the settlement before it had all the details.

Mrs. Solomon added that this is a difficult piece of land and so the plans should be complete for everyone's protection.

Ms. Purnell, Old Litchfield Road, asked what the proposed lot coverage was. Mr. Szymanski said it was 9.39%. Ms. Purnell then asked for the size of the footprints for each of the proposed buildings. Mr. Szymanski said the approximate lot coverage of each building, which, he said, is not the same as the footprint, was: main building/24,000 sq. ft., fitness building/3600 sq. ft., poolhouse/1500 sq. ft., pump house/320 sq. ft., dorm #1/2700 sq. ft., and dorms #2 and #3/1800 sq. ft. Ms. Purnell asked if the accessways to the pool and to the pump house had been included in the lot coverage calculation. Mr. Szymanski said that based on Atty. Zizka's 2008 letter they had not been included.

Mrs. Peacocke, a party to the compromise, stated that the current settlement agreement took six months to negotiate, that it combined features of both the inn and school proposals, and that there was no present prospect of a negotiated settlement with all the adjacent property owners. She added that all litigation on this property would be brought to an end by the proposed compromise because once approved, Wykeham Rise, LLC. would relinquish all of its other permits. Atty. Olson agreed that the University appeals would be moot when those permits were relinquished.

Atty. Fisher confirmed that those permits would be given up if the settlement agreement was approved. He also noted the Solomons could have intervened during the appeals process, but had not done so.

Mrs. Radosevich, Shearer Road, said it was the responsibility of the Zoning Commission to protect the rights of all of the neighbors, not just those involved in the settlement.

Mr. Boyer, Nichols Hill Road, asked how the judge could approve a settlement that was not agreed to by all litigants. Atty. Olson explained that while Mr. Solomon had appealed Zoning's approval of Wykeham University, Wykeham Rise, LLC. would relinquish the University permits if the settlement comes to fruition. She said the Solomons had had the opportunity to become a party of the inn appeal, but had not done so.

Mr. Dutton asked what would prevent the Solomons from initiating new litigation should the Commission approve the settlement. He suggested that Mr. Klauer meet with the rest of the neighbors and incorporate their ideas into the settlement agreement so the Town would be protected from another round of litigation. Atty. Olson explained that provision could not be made a condition of approval; Mr. Klauer could not be forced to negotiate with anyone who was not a party to the suit.

Mr. Solomon said he would not back down.

Mrs. Solomon said there was a credibility issue and again said that details were needed.

Mrs. Boyer asked if the settlement was approved, could inns be located anywhere in Town. Mrs. Hill explained that unless the Zoning Regulations were amended, they could only be located on state roads. Ms. Purnell pointed out that the issue that had arisen in 2008 about whether the

Regulations required inns to be on state roads had never been settled. Mr. Fitzherbert said that was irrelevant.

Representing the Federers, Atty. Smith provided some background and stated the Federers had intervened early in 2009.

Mr. Reich asked how satisfied the Federers were with the settlement proposal and its "apparent vagueness." Atty. Smith said they were satisfied or they would not have signed it, but said his clients would support any conditions of approval the Commission thought were necessary.

It was noted that one of the conditions of approval the Commission had placed on the last Wykeham University Special Permit; evergreens were to be planted between Wykeham Road and the parking lot to help buffer it, had not been included in the proposed settlement plan and Mr. Dutton recommended this be specified as a condition of approval for the settlement. Mr. Wyant agreed, saying he wanted the landscaping to be done properly.

Dr. Craparo said she was satisfied with the proposed settlement now that she knew the interveners backed it wholeheartedly.

Hearing no other comments from the public, Mr. Fitzherbert noted that part of the meeting was closed and the Alternates could no longer participate in the discussion.

Mrs. Hill asked whether the proposal had been written concisely so the Commission would know exactly what it would approve and would be able to enforce it. For example, she asked whether the health club would be open only to customers or to the general public and said the original inn application had included specific details about when children could use the pool. Atty. Fisher responded that per the settlement agreement the spa would be open to guests only and Mr. Szymanski pointed out provisions regarding the pool and outdoor activities were included in the agreement.

Mr. Solley asked if the Commission had to make its decision quickly. He noted there were three new commissioners who would need time to review the plans and that a delay would give all of the neighbors the opportunity to come to an agreement with Mr. Klauer. Atty. Olson said that when it would act was up to the Commission, but warned the reason for any delay should not be to impose negotiation with the neighbors on Mr. Klauer. She also said that part of the time crunch was the tight briefing schedule in the appellate court and that the appeal had been pending for so long she did not know whether the judge would be inclined to grant an extension. Mr. Solley asked if the judge would rule on the proposed settlement without the Commission's approval. Atty. Olson said he could.

Mr. Reich asked Mr. Ajello if he was comfortable with the site plan and he responded that he was.

Mrs. Hill circulated the conditions of approval that the Commission had placed on its latest approval of Wykeham University, which, she said, most were standard for larger projects. These were reviewed by the commissioners. It was the consensus that #5, no license for the sale of liquor, would be deleted, and that #6, the provision for evergreen buffering of the parking lot, was necessary because this had not been added to the site plan. After a discussion, it was decided to retain all of the conditions as written except for #5.

Mr. Werkhoven asked about construction materials. Mr. Szymanski said the roofs would be asphalt, the retaining walls would be concrete or concrete faced with field stone, and the siding would be "typical hardy plank" horizontal clapboards.

Mr. Solley was still hesitant about approving the plans without more time for review. Mr. Reich and Mr. Werkhoven thought it was time for the Commission to act. Mr. Solley asked if staff would be comfortable enforcing the complete site plan. Atty. Olson said Mr. Ajello had said he was comfortable. Mr. Ajello noted, too, that the Inland Wetland Commission approval also had conditions, which included long term monitoring. Mr. Fitzherbert noted all parties involved were present and urged Mr. Solley to ask any questions he had. Atty. Olson said if the plans and architectural renderings were incorporated in the motion, it would be clear what was being approved.

Mr. Fitzherbert noted that any change to the approved plans would have to come back to the Commission for approval.

#### MOTION:

The Washington Zoning Commission hereby approves the Settlement Agreement received 1/7/13 per the plans, "Site Development Plan for Wykeham Project," by Arthur H. Howland and Assoc., dated 7/8/11 and revised to 12/17/12, 32 sheets, the architectural renderings, A and B, received 1/7/13, and the proposed conditions of approval with the exception of #5, received 1/7/13.

By Mr. Reich, seconded by Mr. Werkhoven, and passed 4-1.

Mr. Solley voted No.

Mrs. Hill asked if the other parties now had to agree on the conditions of approval. Atty. Olson said they were present and no one had objected.

#### Revision of the Zoning Regulations

Mr. Ajello's 1/7/13 list of potential amendments to the Zoning Regulations was circulated. Mr. Fitzherbert noted that staff had gone through the list and had picked out those that could be addressed easily. These were in bold font on the list. The commissioners will review them and they will be discussed at the next meeting.

Next, draft #10 of the proposed revision of Section 12.14; Generators, Air Conditioners, Pool Filters, and Other Noise Generating Equipment, was reviewed and discussed. Mr. Fitzherbert noted the ZBA had already had input on a previous draft. He said he would like this section to have enough flexibility to allow for common sense judgments regarding the placement of this equipment. He also asked if the Zoning Commission should have responsibility for people's health and whether it would be liable if it tried to regulate for safety. Mr. Solley stated the goal of the regulation was to have the person served by the generator to be the one most impacted, not his neighbor, and he also said the Building Code supercedes Zoning and so Zoning should not get into issues of liability. Mr. Werkhoven noted that pool filters do not make noise and should not be included in this section. The pros and cons of various possible setback requirements were discussed. Mr. Solley questioned whether the regulation should be the same for small lots as for large lots with accessory buildings. Mr. Fitzherbert did not think generator noise was a problem and so thought the application process for Special Exceptions for generators was too costly and time consuming. The commissioners will study the draft and discuss it further at the next meeting.

Mr. Fitzherbert said he had been studying the latest information on pervious surfaces and would forward it to all members. He noted water is a top concern and so said the Zoning Regulations should be revised to address how to more effectively prevent stormwater runoff from flowing onto other properties. Such measures as pervious surfaces, landscaping, and infiltration systems could be considered.

MOTION:

To adjourn the Meeting. By Mr. Reich.

Mr. Fitzherbert adjourned the Meeting at 8:22 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted

By Janet M. Hill, Land Use Administrator