

November 24, 2009

Public Hearing – Regular Meeting

6:00 p.m. and 7:00 p.m. Land Use Meeting Room

MEMBERS PRESENT: Mr. Bedini, Mr. Bohan, Mrs. Hill, Mr. LaMuniere, Mr. Wadelton

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

ALSO PRESENT: Atty. Speck, Mrs. Hardee, Mr. Szymanski, Mr./Mrs. Solomon, Ms. Purnell, Mr. Charles, Mr. Adams, Mr. Parker, Mr. Boling, Mr. Sonder, Mr. Trinkaus, Mr. Papsin, Mr. Riefenhauser

PUBLIC HEARING

Wykeham Rise, LLC./101 Wykeham Road/#IW-09-39/Affordable Housing, Con't.

Mr. Bedini reconvened the public hearing at 6:07 p.m. and seated Members Bedini, Bohan, Hill, LaMuniere, and Wadelton. He noted there was one new document in the file, the 11/23/09 final review letter from Land Tech.

Mr. Szymanski, engineer, briefly reviewed the consultants' letter, noting he had revised the plans according to Land Tech's recommendations as well as per a request made by Mr. LaMuniere for additional erosion controls. Mr. Szymanski stated the plans as drawn would have no long or short term impacts on the wetlands.

There were no questions or comments from the Commission.

Ms. Purnell noted she had written a review, which dealt with larger issues regarding the proposed development such as impervious cover, the change from seasonal to year round use of the property, and the repercussions of on and off site wetlands impacts. She also stated that the soil characteristics on site were problematic and she questioned whether the proposed stormwater basins would function properly.

Mr. Szymanski responded, and made the same point several other times during the discussion, that all comments were supposed to have been submitted by November 3rd. He read Section 10.06 of the Regulations aloud. He stated that since submission of this document was at the end of the statutory time limit, neither the applicant nor the Commission's consultant would have an opportunity to respond. He also stated the applicant would not grant an extension. He asked that the commissioners not read Ms. Purnell's review.

The Commission was not sure how to proceed. While Section 10.06 states it may refuse to receive any information if there is not sufficient time for the applicant, commissioners, and staff to review it, the public hearing was still open and its purpose was to receive input from the public. A very lengthy discussion ensued. The commissioners also considered whether to continue the hearing to a special meeting date so they could consult with the Commission's attorney.

Ms. Purnell urged the Commission to accept her document, saying it should be the Commission's intent to ensure the best decision possible as once a property is developed it is developed in perpetuity. She thought the present configuration of the proposed development would result in permanent impacts to Kirby Brook. She also noted the commissioners did not have to send her review to a consultant, but could render a decision on their own based on their training and expertise.

Mrs. Solomon stated that substance should be more important than a procedural point and so thought the Commission should consider Ms. Purnell's review. She and Mr. Parker thought to be considered a valid public hearing, the public's comments had to be accepted. Mr. Szymanski stated the proposed development was downhill from the Solomon property and so would not impact it.

It was noted that Section 10.06 states the Commission “may” refuse to accept information late in the process, not that it “shall” refuse to accept it.

Other comments made during the discussion included:

Mr. LaMuniere thought the Commission should follow its Regulations, close the public hearing, and not accept Ms. Purnell’s review.

Mr. Ajello said to accept Ms. Purnell’s review at this time would “taint” the process and leave the Commission vulnerable to legal action.

Mr. Bedini questioned whether if accepted at this late date, it would be proper for the Commission to consider the content of the document. He thought her review must be accepted because the public hearing was still open. Mr. Wadelton thought at this point the public could comment only on information already in the record.

Ms. Purnell suggested the Commission had not “picked up” on the fact that the soil types on site are severely restricted as far as septic capabilities.

Mr. Szymanski noted the septic plans had been submitted to Land Tech who had confirmed it had no concerns about the septic system. Mr. Bohan and Mr. Wadelton agreed with Mr. LaMuniere that the Regulations should be followed and it would not be fair to the applicant to accept Ms. Purnell’s letter at this time.

Mrs. Hill favored continuing the hearing to a special meeting date so that Atty. Zizka could be consulted.

Ms. Purnell did not think the Commission could disallow a document presented while the public hearing was open.

Ms. Purnell submitted her document dated 11/24/09.

MOTION:

To close the public hearing to consider Application #IW-09-39 submitted by Wykeham Rise, LLC. for affordable housing at 101 Wykeham Road unless there are comments from the public on anything already in the file.

By Mr. Wadelton, seconded by Mr. Bohan, and passed 3-2. Mrs. Hill and Mr. Bedini voted No because they wanted to leave the hearing open to allow the Commission time to consult with its attorney regarding the proper procedure to handle the receipt of Ms. Purnell’s review.

The public hearing was closed at 7:15 p.m.

This public hearing was recorded on tape. The tape is on file in the Land Use Office, Bryan Memorial Town Hall, Washington Depot, Ct.

REGULAR MEETING

Mr. Bedini called the Meeting to order at 7:22 p.m. and seated Members Bedini, Bohan, Hill, LaMuniere, and Wadelton. There was no subsequent business to add to the agenda.

Consideration of the Minutes

The 11/10/09 Regular Meeting minutes were accepted as corrected.

P. 3: First motion: Change: Mr. “Charles: to Mr. “LaMuniere.

P. 3: Third motion: Mrs. Hill noted the minutes were correct, but said she should have said she was recused rather than that she was abstaining.

P. 4: Straw Man, LLC.: Insert new first sentence: Mr. Wadelton recused himself.

P. 4: Straw Man, LLC.: Second line: Insert: "owner" after: "Ms. Canning."

P. 4: Straw Man, LLC.: 10th line from bottom of page: Change: "required" to "submitted" to read, "... soils report would be submitted."

P. 9: Administrative Business: First line: Change: "Mrs. Hill" to: "Mrs. J. Hill."

MOTION:

To accept the 11/14/09 Public Hearing – Regular Meeting minutes as amended.

By Mr. Bedini, seconded by Mr. LaMunier, passed 5-0.

The Straw Man, LLC. 11/16/09 site inspection minutes were accepted as corrected.

P. 1: Add to Others Present: David Battista, P.E., Linda Frank, Conservation Commission, Atty. Jennifer Yoxall, and Peg Duus

P. 1: Add: Mrs. Hill did not participate in the portion of the site inspection on the other side of the stream.

MOTION:

To accept the Straw Man, LLC. 11/16/09 site inspection minutes as corrected.

By Mr. Bedini, seconded by Mrs. Hill, and passed 4-0. Mr. Waderton had recused himself.

MOTION:

To accept the Kott 11/16/09 site inspection minutes as written.

By Mr. Waderton, seconded by Mr. Bedini, and passed 5-0.

Pending Applications

Wykeham Rise, LLC./101 Wykeham Road/#IW-09-39/Affordable Housing:

This application will be discussed at the next meeting after the Commission has consulted with its attorney.

Straw Man, LLC./135 Bee Brook Road (Juniper Meadow Road)#IW-09-44/ Driveway and Bridge:

Mr. Waderton recused himself.

Mr. Charles and Mr. Boling, agents, and Mr. Trinkaus, engineer, represented the applicant. Mr. Trinkaus noted the 11/22/09 review by Lenard Engineering and Mr. LaMunier's written concerns and said he would provide a written response two weeks prior to the public hearing. The plan, "Wetland Crossing for Access Driveway," by Mr. Trinkaus, dated 10/12/09 was reviewed. Mr. LaMunier noted a vegetated swale sized for a 100 year storm was proposed to run in a northwesterly direction, but he worried that due to the heavy storms this area has experienced, there would be an erosion problem at the outlet into the wetlands. He asked if rip rap was needed. Mr. Trinkaus did not think this would be a problem because the driveway would not generate much runoff, a series of check dams would slow down the runoff from the hill, and the outlet into the wetlands was in a level area, which would also slow the velocity. He offered to install rip rap for extra protection. Mr. Sonder also expressed concern about the point of discharge saying the same wetlands would receive all the flow from the diversion swale as well as the underdraining. Mr. Trinkaus said there would be sheet flow to the wetlands; not a single discharge point, and that the groundwater in the underdrain already flowed in that direction. He also noted there were well drained soils on site. Mr. Sonder asked several of the questions raised in the Lenard report and Mr. Trinkaus assured the Commission he would address each in writing before the hearing. The soils report was briefly discussed. Mr. Charles stated two soils reports were already on file and he did not understand why they were not acceptable. Mr. Bedini responded that those reports were 10 and 20 years old, that areas can change in that length of time, and a report that ties all of the information and map together was required. Mr. Bedini noted a public hearing would be held because 1) a petition had been received and 2) given the steep slopes in the area there was a possibility there

could be significant impacts to the wetlands and watercourse. Because of this, he advised the applicant that feasible and prudent alternatives must be considered. Mr. Sonder and Mr. LaMuniere pointed out areas where they thought there should be additional erosion control measures installed and Mr. Trinkaus again said he would respond in writing to all concerns. Mr. LaMuniere said he did not think the plans as submitted adequately protected the stream from impact from the bridge construction. Mr. Bedini asked Mr. Sonder if he had prepared a list of concerns to send with the application to the consultant. Mr. Charles said he thought Milone and McBroom's estimate was high and asked for a second estimate from another firm. Mr. Trinkaus stated that Lenard had done a very thorough review and suggested that he be given an opportunity to respond to it before the Commission decides whether a referral to Milone and McBroom is necessary. Mr. Charles thought this was fair, while Mr. Sonder objected, saying the Commission should follow through with the referral to Milone and McBroom now that the site inspection has been conducted and that it was not proper to think that the Bee Brook Condo Assn. has done all of the review work, so now no other engineering review is needed. Mr. Bedini said the Commission would wait for Mr. Trinkaus to address all of the concerns raised before sending the application to Milone and McBroom. After a brief discussion it was decided to schedule a public hearing on January 13, 2010 if the applicant would grant an extension of time in which to commence the hearing. Mr. Boling submitted the 11/24/09 letter to request the extension. Mr. Bedini noted that the January 13th date would give Mr. Trinkaus time to address the Lenard report and Mr. Sonder time to respond prior to the start of the hearing. Mr. Trinkaus said he would submit his response by December 16. Mr. Bedini noted this application would not be discussed at the December 9th meeting.

MOTION:

To schedule a Public Hearing to consider Application #IW-09-44 submitted by Straw Man, LLC. to construct a bridge and driveway at 135 Bee Brook Road (Juniper Meadow Road) on Wednesday, January 13, 2010 at 5:00 p.m. in the Land Use Meeting Room, Bryan Memorial Town Hall. By Mr. Bedini, seconded by Mrs. Hill, and passed 4-0. Mr. Wadelton had recused himself.

Kott/14 Wheaton Road/#IW-09-47/Addition to Existing Dwelling:

It was noted that Mr. Neff, engineer, is working on revisions to reduce the scope of the addition. This application will be discussed on December 9th.

New Applications

Long/243 Bee Brook Road/#IW-09-48/Addition to Existing Dwelling:

Mr. Szymanski, engineer, presented the plan, "Site Development Plan," by Arthur H. Howland & Assoc., dated 11/10/09. He explained an addition to connect the house and garage was proposed and pointed out the location of a wetland and watercourse and the rain garden proposed to handle the increase in runoff. Mr. Ajello asked if the stockpile area would be adequate. Mr. Szymanski said it would because all but the top soil would be trucked off site. Mr. Szymanski also said there would be regrading behind the addition and the reserve septic system would not be installed at this time, and he pointed out the limit of disturbance line. Mr. Bedini noted the addition would be 70 feet from the stream. A site inspection was scheduled on Wednesday, December 2, 2009 at 3:00 p.m.

Spring Hill Farm, LLC./69 Whittlesey Road/#IW-09-49/Driveway, Drainage System, Hillside Stabilization:

Mr. Riefenhauser, engineer, presented the plan, "Overall Site Plan for Proposed Driveway," 5 Sheets, by Smith and Company, dated 11/19/09. Sheet #2 was reviewed for details of the driveway crossing. The proposed driveway is 1300 feet long and would cross a small wetlands. Mr. Riefenhauser pointed out the location of the wetlands on the property and the current drainage flows. He indicated an alternate driveway route, but said the sight lines were not adequate there. Mr. Bedini asked if the

driveway would be paved. Mr. Riefenhauser said it would be 12 feet wide and paved. Due to the steep grades and severe erosion problems on the hillside, Mr. Riefenhauser proposed a series of plunge pools to slow the runoff and protect the slope from further erosion. A site inspection was scheduled for December 2, 2009 at 3:30 p.m.

Other Business

Discussion of 11/19/09 Letter from Mr. Kessler:

Mr. Wadelton read the letter and attached email. Mr. Kessler objected to the closing out of his permit when the Commission returned his entire bond. The Commissioners, however, thought if the bond was returned the permit should be closed and suggested Mr. Kessler could reapply when he was ready to proceed with the construction of the second dwelling. Mr. Ajello noted the original permit had been for activities on two separate properties and said that two separate permits should have been required; one for each street address. Mr. Bedini stated he believed the Commission had acted properly because a condition of approval of the original permit had been the posting of the performance bond. Mrs. Hill agreed that if Mr. Kessler was not finished with his proposed work, the bond should have remained in place. Mr. Bedini suggested a letter be sent to Mr. Kessler to explain that if he decides to build exactly what he applied for in the original application, the approval process would not be as lengthy as for the first permit or if he wants the permit to remain open, he must return all of the bond. The commissioners agreed to proceed in this way. Mr. Bedini said he would ask Atty. Zizka if this was a wise and legal approach.

Straw Man, LLC./135 Bee Brook Road/#IW-09-49:

Mr. Charles noted the report from Lenard Engineering referred to documents it received from the Bee Brook Condo Assoc., which had not been submitted to the file.

Possible Impact of Subdivision on Rt. 109, New Milford on Walker Brook:

Concerned that jurisdiction over this project rests with New Milford and that the ongoing construction would adversely impact Walker Brook, Mr. LaMuniere recommended that a base line water quality study be completed. He said that testing two or three times a year as a protective measure would ensure that the brook would not suffer long term impacts. Mr. Ajello said the Town of New Milford should be responsible for getting base line data and ongoing monitoring. Mr. Bedini asked him to find out what the cost would be for water quality monitoring and said if the Commission decided to implement such an operation, it would inform New Milford it was doing so. Mr. Ajello will consult with the New Milford Health Department and Mr. Bernard from Hydro Technologies.

Enforcement

Andersson/35-45 Gunn Hill Road:

Mr. Ajello read the 11/23/09 letter from Atty. Fisher, which stated that due to this year's weather, the site had never dried out and so the required planting had not been done. He requested an extension of the deadline for planting to the spring of 2010. Mr. LaMuniere thought April should be targeted so the extension would not be so open ended.

Brown/127 West Shore Road:

Deposition papers have been received, but Atty. Zizka's office said it would notify the Commission if and when it must respond.

Lodsin/78 Litchfield Turnpike/#IW-07-V12:

Mr. Ajello and Mr. LaMuniere reported on their inspection of the property. They found additional equipment had been brought to the site. Mr. Ajello said he had taken photos.

Slaymaker/17 Sunset Lane/#IW-07-V14:

Mr. Ajello recommended that most of the bond be returned as the planting plan had been implemented except for a few trees that had died. He thought they should be replaced with trees more suitable for wet areas such as red maples and river birches.

Brose/213 Roxbury Road/#IW-08-V5:

Mr. Ajello will meet with Ms. Brose on Monday, November 30.

Enforcement Report

Slaymaker/17 Sunset Lane/#IW-07-V14:

Mr. Ajello said he had copies of invoices that showed what Mr. Slaymaker had paid for the plants. It was the consensus to return \$4000 of the \$5000 bond.

MOTION:

Regarding Slaymaker/17 Sunset Lane/ Violation #IW-07-V14: to return \$4000 of the performance bond and retain \$1000.

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

Delancy/79 Litchfield Turnpike/#IW-08-V6:

Mr. Delancy said he would submit an application to correct a violation for the 12/9 meeting.

Schein/245 West Shore Road/#IW-08-V7:

Mr. Ajello will forward the citation to Mrs. Schein's daughter who will be the new property owner. The new owner will contact Mr. Ajello about the required planting.

Angell/47 West Shore Road/#IW-09-V1:

The citation sent was returned marked, "undelivered." Mr. Ajello will check the mailing address.

Showah/311 Bee Brook Road/#IW-09-V2/Unauthorized Driveway:

Mrs. Hill asked if Mrs. Showah had contacted the DOT for approval of the driveway cut. Mr. Ajello said he would soon send a notice of violation. He said he had inspected the site and had seen standing water, a defined channel and banks, and water flowing into the wetland area.

Administrative Business

Wykeham Rise, LLC./101 Wykeham Road/#IW-09-39/Affordable Housing:

Mr. Bedini said he would consult with Atty. Zizka regarding the handling of tonight's public hearing and whether Section 10.06 is legal. Mrs. Hill stated that Ms. Purnell's letter had been submitted and was in the record and that the Commission could review it on its own if it did not refer it to a consultant. She noted, too, that Section 10.06 said the Commission "may" refuse documents submitted late in the hearing, not that it "shall" refuse them. Mr. Bedini noted the Commission now has 35 days in which to consider the entire record and to act on the application. He said Mr. Szymanski could complain that he did not have an opportunity to respond to Ms. Purnell's document, but added that he could have asked for an extension, but refused to do so. There was a discussion about when new information may be submitted at public hearings. Although the Commission tried to get all information in early so that all parties would have the opportunity to review it and comment prior to the close of the hearing, Mr. Ajello noted per state statute, no new information may be received after the close of the hearing except for clarification by consultants and staff. Mr. Ajello and Mr. Wadelton thought Ms. Purnell could have either read her letter or asked questions that Mr. Szymanski could have answered while the hearing was still open.

There were no other communications and no reason to hold an executive session.

MOTION: To adjourn the Meeting. By Mr. Bohan

Mr. Bedini adjourned the meeting at 9:36 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

By

Janet M. Hill, Land Use Administrator