

# August 13, 2008

## Public Hearing – Regular Meeting

5:00 p.m. Main Hall and Land Use Meeting Room

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

**ALTERNATES PRESENT:** Mr. Bohan, Mr. Wadelton

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

**ALSO PRESENT:** Atty. Strub, Mrs. Federer, Atty. Hill, Mr. Goodin, Mr. Carey, Mr. Boling, Mr. Lyon, Mr. Charles, Atty. Fisher, Mr. Klauer, Mrs. Canning, Mrs. Minor, Mr. Szymanski, Mrs. Carter, Mrs. Cooper, Mrs. Solomon, Mr. Parker, Ms. Eldridge, Ms. Giampietro, Mr. Neff, Mrs. Walker, Mr. Forese, Mr. Klein, Mr. Charles, Ms. Barbieri, Atty. Herbst, Mrs. Auchincloss, Mrs. Coffee, Ms. Marquis, Mr. O'Neill, Mr. McNamara, Mr. Slaymaker, Mr. Wilson, Mrs. Bradley, Mrs. Friedman, Mr. Tavino, Residents, Press

## PUBLIC HEARING

### Wykeham Rise, LLC./101 Wykeham Road/#IW-08-31/Site Development for Inn/Con't.

Mr. Picton reconvened the Public Hearing at 5:06 p.m. and seated Members Bedini, Hill, LaMuniere, Picton, and Thomson. He reviewed the list of documents submitted to the file since the 7/23/08 hearing and urged everyone to review the file.

Mr. Picton reported that the 8/11/08 review by Dr. Klemens and two follow-up letters had been received. He said this report pointed out 1) where additional or more complete data was needed, 2) concerns about development in this proximity to wetlands, 3) questions that need to be addressed, and 4) further work to be done by both the Commission and the applicant.

Mr. Thomson asked if Ms. Chase, the applicant's environmental consultant, had had an opportunity to review and respond to the report. Mr. Picton said the report had been forwarded to the applicant's engineer as soon as it had been received.

Mr. Bedini thought the report was well done and that the Commission should follow Dr. Klemens' advice.

Mr. LaMuniere agreed that Dr. Klemens had raised points that should be clarified, but thought Ms. Chase should have an opportunity to respond.

Mr. Picton noted the Commission had routinely asked applicants not to develop within the 100 ft. upland review area and had been successful unless there were no alternatives or no risks to the wetlands. He said two reasons for this objective were 1) science and experience had shown that natural buffer areas contribute to the function and ecological stability of the wetlands and watercourses and 2) construction disturbances in the upland review area increase the chance of adverse impacts to wetlands. He pointed out all of the proposed construction activities within 100 ft. and within 50 ft. of the wetlands and watercourse on this property, noting there were 20 structures and facilities that would require soil disturbance and regrading, including 9 buildings, proposed within 100 ft. of wetlands and half of these within 50 ft. of wetlands. He asked the commissioners to keep the objectives of the Commission in mind when reviewing the proposed layout. He submitted a list of the activities proposed within 100 ft. of wetlands and said he favored a careful review of the application in light of these activities.

Mrs. D. Hill asked if the applicant had submitted information since the last meeting. She noted the

Commission had asked for a copy of the septic certification from the DEP, for any conditions associated with it, and for a plan for the use and restriction of chemicals and fertilizers on site.

Mr. Szymanski, engineer, stated that the above two points made by Mr. Picton were too broad because the specific activities and the measures to protect the resources proposed in each application should be judged on their own merits. He also said that although activities were proposed within 50 and 100 ft. of wetlands, the existing conditions on the property should be taken into consideration. He listed several structures such as the Boyd dorm, tennis courts, and west parking area that are in or near wetlands and that would be either demolished or moved farther from wetlands. He added that improvements to the stormwater management system would be made if the application was approved. He said he would provide a copy of the approved transfer of the DEP septic certificate and said the applicant had submitted calculations to the DEP to show that the proposed use was within the parameters of the former operation. He also said he would draft deed restrictions regarding the use of chemicals and fertilizers.

Regarding Dr. Klemens' report, Mr. Szymanski said he had not received it in time to have prepared his written response and so asked that the Public Hearing be continued so that he would have the opportunity to do so. Points he made in response to Dr. Klemen's report included the following:

- 1) Many of the concerns raised by Dr. Klemens are not under the jurisdiction of the Inland Wetlands Commission.
- 2) Ms. Chase was a competent professional who would submit her own response to the criticism of her environmental report.
- 3) The small vernal pool pocket in the SW portion of the property was not important to the Commission's review of the overall project.
- 4) The property is over a mile away from any threatened or endangered species.
- 5) Both the developed area and the amount of impervious surfaces within 50 feet of wetlands and watercourses would significantly decrease under the proposed plans.
- 6) The natural woodland acreage on site would significantly increase from 5.04 acres to 7.43 acres.
- 7) He did not think Dr. Klemens had reviewed all of the information the applicant had submitted on porous pavements.
- 8) Mr. Szymanski said he had done conservative drainage calculations, which did not take a lot of credit for the proposed pervious surfaces.
- 9) Per the landscaping plan by Didona, the invasives would be removed by hand and so their removal would likely have little impact on the wetlands and watercourses.
- 10) The proposed development within 50 ft. of the wetlands and watercourses would impact them, but the key consideration should be whether the proposed activities would make adverse impacts more likely than under the existing conditions.
- 11) The specific stormwater management plans for the site provide zero increase in peak runoff for all storm events.
- 12) The applicant did not have to offer mitigation, but did so in a good faith effort. Examples given were providing a buffer of vegetation along Kirby Brook and installing rain gardens.
- 13) The activity proposed in the vicinity of wetlands flags #39 and #40 would not improve the wetlands, but could not be moved farther away because there were required setbacks from the septic area. The driveway would be within 25 to 30 feet of the wetlands, but extra protective measures would be implemented.
- 14) Other improvements to compensate for activity within 50 ft. of the wetlands included moving some of the walkways now within 5 ft. of wetlands to 40 ft. away, taking up a service driveway and replanting the area, and removing two pipes, which are now causing erosion into the brook.
- 15) Overall the amount of impervious surfaces would increase on the property, but would decrease within 100 feet of wetlands.
- 16) Land Tech had only one outstanding issue and the applicant would soon address it.

Mr. Picton read the 8/12/08 letter from Land Tech.

Mr. Szymanski said that in considering alternatives, the proposal was an alternative to the existing site conditions and was an improvement over the existing conditions.

Mr. Szymanski did not think the applicant should have to address concerns other than those required per state statute. Mr. LaMuniere noted the Commission is responsible for analyzing the impacts on wetland dependent species. Mr. Picton noted the Commission would consult with its attorney regarding its jurisdiction.

Mr. Szymanski said he would study Dr. Klemens' report more closely and then respond further.

Atty. Fisher cautioned the Commission that

- 1) it could not regulate activities within 100 feet of wetlands unless there is a strong likelihood of adverse impact and
- 2) Dr. Klemens' report focused on impacts to wildlife, which is not a standard by which the application should be evaluated or judged.

Mr. Picton asked Atty. Zizka to explain the Commission's jurisdiction regarding animals in and near wetlands. Atty. Zizka said that when the Commission considers wetlands, it may consider all life in the wetlands, but not outside the wetlands, but that if it can be shown that a biological community in the wetlands will be impacted by an activity in the upland review area, that may be considered. He said it was fair for Dr. Klemens to ask if wetland plants would be impacted by sedimentation or erosion, but for plants in the upland review area, unless the nature of the plant itself could impact the wetlands (spreading roots vs. stalk as opposed to native vs. non native) it was not under the Commission's jurisdiction. He also stated that an animal that comes and goes in the wetlands is not a criteria that may be used to judge applications.

Mrs. D. Hill noted that the applicant had referred to the 50 ft. setback for structures and she stated that this is a zoning, not a wetlands, setback requirement.

Mrs. Cooper said it did not make sense to her that species that come and go in wetlands could not be considered. She gave the example of birds that bring in essential pollen for wetlands plant species.

Mr. Goodin, engineer, had been hired by the Federers, adjoining property owners, to do a peer review of the site development plans. He noted that approximately 15 acres near wetlands and Kirby Brook would be disturbed and so considered this a significant project. In his review he said he used the Town regulations, the 2002 CT. DEP Erosion and Sedimentation Guidelines, and the 2004 Ct. Stormwater Quality Manual. In short he found the applicant's plans were

- 1) incomplete,
- 2) did not meet the Town regulations, and
- 3) did not meet the sound engineering practices detailed in the 2002 DEP Guidelines and the 2004 Manual referenced above.

The points he made included;

- 1) Ms. Chase was wrong in her report when she stated the proposed activities would have no direct impacts to wetlands. Two examples given were the proposed removal of the gravel parking lot and grading near wetlands flag #14.
- 2) Section 7.5.A.1 of the Wetlands Regulations require the wetlands to be delineated every 50 ft. in the field, but said this had not been done as there had been no flagging done along Kirby Brook.
- 3) A soil scientist had not signed the plans.
- 4) Per Section 7.5 a written description of the current water quality of the brook was not provided.
- 5) The proposed 2 detention ponds and 26 rain gardens, the measures to be implemented for pollution and water quality control, do not meet the design standards for pollution renovations. For example, Mr.

Goodin stated the 2 detention ponds were not deep enough to allow the fines to effectively settle; a depth of 6 feet is required. He referred to Sheets D5 and NG3 of the site development plans. He also stated that no testing had been done in the vicinity of the proposed detention ponds to determine the existing water table, and that this could affect the growth the of wetlands plants proposed by Ms. Chase. He noted no aquatic benches had been proposed to ensure their survival.

Mr. Picton asked Mr. Goodin to address the proposed excavation of the basin proposed within 14 feet of wetlands. Mr. Goodin said the applicant had not provided water table information and so it could not be determined whether water would bleed out of the hillside and cause downhill impacts. He said the basin was not designed properly and that due to “overdeveloping” the 2002 DEP Guidelines could not be met.

Other points raised by Mr. Goodin included:

6) The discrepancy between the water quality volumes and what is shown on the plans must be resolved.

7) There are fish in Kirby Brook that Ms. Chase did not analyze and which could be impacted by the thermal effect of the water proposed to be directed into the brook.

8) He noted the effectiveness of the water quality protection measures were linked to the maintenance of the basins and he did not think the recommendations for maintenance and inspection in the 2004 state Manual had been followed. He said long term maintenance plans were essential, but had not been adequately provided per the 2002 Guidelines.

9) He stated that the rain gardens had been improperly designed and that a soil permeability test should be done for each.

Mr. Picton asked the public for questions and comments.

Ms. Giampietro said that she had observed trout in Kirby Brook. She noted that Dr. Klemens had questions about the proposed detention pond location between two wetlands and asked the Commission to look into this matter. She said that Mrs. Cooper had had to leave, but wanted to know how the proposed pervious surfaces would function in the winter when the ground was frozen. She noted that the 11.3% coverage proposed would cause more impacts to the wetlands than would the 10% permitted coverage and noted both salt and fertilizers would run off into the wetlands.

Ms. Eldridge noted that some of the letters in support of the application were multiples from the same household and asked if this was permitted. Mr. Picton responded that all of the letters received were in the file, everyone was encouraged to read them, and not all of them related to wetlands issues.

Ms. Drubner stated the Wykeham Road community was against commercial development on a residential road and opposed to the Zoning Commission’s consideration of the application. Mr. Picton advised her that the Inland Wetlands Commission could only consider comments concerning the wetlands.

Mr. Goodin resumed his review of the rain gardens and detentions ponds, specifying throughout where the plans were incomplete and where additional calculations and testing were required.

10) He noted the area where Dr. Klemens asked if there was a vernal pool and said that all of the water now flowing there would be intercepted by the driveway. He said that no analysis had been provided regarding whether this would negatively impact the wetlands.

11) He thought the proposed outlet to the brook could be improved by increasing the length of rip rap and changing the angle of the pipe emptying into the brook.

12) Provisions for detwatering during the construction of the detention basins had not been provided.

13) Mr. Goodin found the proposed erosion control measures to be inadequate because there were no design calculations, site specific phasing was not included, the rain gardens had not been protected during construction, and additional sediment basins may be required.

14) He noted that the DEP had not yet approved the septic system and could not because the plans were only generic. He also stated that the state standards had been increased since the existing septic system had been installed in 1991. He said the apparatus to get to the septic system, connections, grease traps, pipe sizes, flow lines, etc. had not yet been designed.

15) He listed questions that the Commission should ask the applicant about volume calculations for the detention basin sumps, whether all of the proposed buildings were included in the stormwater calculations, and was there a specific fertilizer plan.

16) He stated that feasible and prudent alternatives had not been addressed and that the requirements of Section 9.2 of the Wetlands Regs had not been met. He advised the Commission that feasible and prudent alternatives plans should incorporate best management practices, include a plan where all proposed activity is outside the 100 ft. regulated area and there is no disturbance to the wetlands, include a plan where all activities are farther than 50 ft. from the wetlands and watercourses, provide for the relocation of detention pond #1 so that it is not near the vernal pool, and provide elevations so that the water and sewer line plans can be adequately reviewed. He passed out copies of his report, "Review of Wykeham Rise, 101 Wykeham Road, Washington, Ct., Wetlands Application," by Meehan & Goodin, dated 8/13/08 and noted that because there were so many outstanding issues and it was so late in the process, it would be difficult for all the parties concerned to review and respond within the statutory time requirements.

Mr. Ajello noted that the 35 days in which to complete the public hearing would end on August 27, so a 13 day extension would be needed if the hearing was to be continued to the next Regular Meeting on September 10.

Mr. Picton said he had many questions that he wanted the Commission's consultant to address and so asked Atty. Zizka if the commissioners could submit their written questions for the file between sessions of the public hearing. Atty. Zizka responded that per the Freedom of Information Act discourse between members, even a series of conversations not involving a quorum, was not permitted, but individuals could submit written questions as long as no dialogue between them took place.

Mr. Picton asked Atty. Zizka if the Commission could consider the application to be a new activity since all of the existing structures would be removed and new ones built, or whether what exists on the site now has to be used as the Commission's point of reference. Atty. Zizka responded that both the demolition of the existing structures and the construction of the new, as well as any site disturbances within regulated areas were defined as regulated activities and the Commission was entitled to consider their potential impacts as part of the overall application. He said the existing site conditions would be used as the baseline and that since the removal activities would not happen in the absence of the new, the application should be judged in its entirety. He noted that would include any mitigation proposed as compensation.

Mr. Picton said the Commission would discuss feasible and prudent alternatives and advised the applicant to work on these plans. He also noted the Commission had asked for a slope analysis and that this had not yet been submitted. He said the Commission wanted to know what the slopes were in relation to the wetlands and its buffers. He asked that it include a statistical analysis of the slopes, the risk of unforeseen events, all activities within 100 feet of wetlands and watercourses, and the extent of the upland review area due to the steep slopes. Mr. Szymanski said the Commission's consultant had said this data was "worthless." Mr. Picton again stated that the slope analysis and soil character information that had been requested would be reviewed in relation to the construction practices proposed.

Mr. LaMuniere asked Atty. Zizka whether activities proposed within 100 feet of wetlands could be approved if it was demonstrated that they would not negatively impact the wetlands. Atty. Zizka explained the courts do not consider the upland review area to be a zone of prohibition and so the

Commission would have to prove there was a likelihood of impact to the wetlands to deny an application.

Mr. LaMuniere said he thought Ms. Chase should be given the opportunity to respond to the criticisms raised about her report concerning 1) the physical impacts of the project on the two main wetlands and 2) the species present depending on the wetland habitat.

Mr. Picton asked if a consultant should be hired to continue the review and conduct an on site inspection, and if yes, should it be Land Tech, Dr. Klemens, or another firm. He noted that Dr. Klemens had referenced Mr. Goodin's preliminary questions and said the commission was now overwhelmed with technical data that it was not qualified to review.

Mr. Bedini said that only legal wetlands issues should be reviewed. Mr. Picton said the Commission's consultant could consult with Atty. Zizka to make sure the review stays within the legal jurisdiction.

Mr. Picton favored hiring Dr. Klemens to continue the review. Mr. Ajello thought the latest documents should be sent to Land Tech.

Mr. Thomson stated that the Commission should verify that there are trout in Kirby Brook, that Ms. Chase should be given an opportunity to respond to Dr. Klemens' review, and that he did not think Dr. Klemens would have much more to contribute.

Mr. Picton pointed out that Dr. Klemens had asked pertinent questions, identified the scope of review needed for an ecological study of the site, and had found that Ms. Chase's report had not met the minimum standards required.

Mr. Thomson said he was not prepared to move forward until Ms. Chase's response was received and would agree to hire Dr. Klemens for the review only if the Commission paid for it. Mr. Picton disagreed, saying the applicant should pay for the review.

Mrs. D. Hill agreed with Mr. Thomson. She noted there were many questions, but said a lot of information had been presented and the commissioners had years of experience to use in reviewing it. Mr. Picton was not sure that kind of review would hold up in court, but Mrs. Hill thought it would.

Atty. Zizka noted that all the questions raised by the Commission and consultants had been asked in good faith for the proper evaluation of the application. He asked the Commission to consider what its Regulations require the applicant to provide and to determine whether the applicant provided it all. He noted it was getting late in the process to ask the applicant for additional information so advised the Commission to consider these questions:

- 1) To what extent is the need for additional information based on the applicant's failure to provide information required by the Regulations?
- 2) To what extent is the need for more information generated from the lack of response of the applicant to previous questions/requests?

He also noted that Dr. Klemens and Mr. Goodin had raised some questions within the Commission's jurisdiction. He said it would be reasonable for the Commission to request information on these issues and on previously requested information and information required in the Regs, to have the Commission's consultant review it, and to have the applicant pay for the review. If the information had not been previously requested or was not required in the Regs, it would be more difficult to justify payment by the applicant. He noted that although he was not in a position to evaluate how many questions had been raised in relation to specific regulation requirements, it did appear that many of Mr. Goodin's questions fell under Land Tech's background, and not Dr. Klemens'. He asked the commissioners if they thought Land Tech would be more capable to handle the broader range of questions asked by Mr. Goodin.

Mr. Picton asked how the question of the adequacy of the environmental review by the applicant would be handled. Atty. Zizka asked what the Regulations require for biological issues. If they require certain types of data and this was not submitted, he said Dr. Klemens might then be the best consultant to hire.

MOTION: To hire Dr. Klemens to continue his review of the application from an ecological perspective as it is related to wetlands, to get an estimate for the cost of his services, and to submit it to the applicant for advance payment. By Mr. Picton. There was no second.

MOTION: Regarding Wykeham Rise, LLC/101 Wykeham Road/ #IW-08-31/Site Development for Inn, to ask Land Tech to review and report on both the 8/13/08 Meehan and Goodin engineering report and the relevant engineering sections of the Klemens' 8/11/08 report, 8/12/08 letter, and 8/12/08 email and to ask Ms. Chase to review and report on all of the Klemens' documents. By Mr. Bedini, seconded by Mr. LaMuniere, and passed 4-1.

Mr. Picton voted No because he proposed a review by Dr. Klemens, not Land Tech.

Mr. LaMuniere made it clear that the Commission expected the applicant to respond in writing to the relevant points raised by Dr. Klemens as well as those raised by Mr. Goodin.

Mr. Thomson noted that the incomplete septic plans had been brought up a few times and that Mr. Goodin had recommended the Commission not proceed with its review until there was a "concrete" approval from the DEP. He asked if this missing documentation should, indeed, prevent the Commission from moving forward. Atty. Zizka cautioned the Commission against making a condition of approval that the DEP must approve the septic plans first.

Mr. LaMuniere asked if when the commissioners write their individual questions to be addressed by Land Tech, if they can send copies to all of the other commissioners. Atty. Zizka stated they should be submitted individually to the file and not circulated to the other members.

Atty. Fisher submitted a written request to continue the Public Hearing to September 10, 2008.

MOTION: To continue the Public Hearing to consider Application #IW-08-31 submitted by Wykeham Rise, LLC./101 Wykeham Road/Site Development for Inn to 5:00 p.m. on 9/10/08 in the Main Hall, Bryan Memorial Town Hall. By Mr. Picton, seconded by Mr. Bedini, passed 5-0.

At 8:24 p.m. Mr. Picton continued the hearing to 9/10/08 at 5:00 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. Picton called the Regular Meeting to order at 8:45 p.m. and seated Members Bedini, Hill, LaMuniere, Picton, and Thomson.

MOTION: To add the following subsequent business to the agenda: New Application: Geurts/46 June Road/#IW-08-46/Construct Single Family Dwelling. By Mr. Picton, seconded by Mr. Bedini, and passed 5-0.

Due to the late hour, the commissioners decided to take up Consideration of the Minutes at the end of the Meeting.

## **Pending Applications**

### **Donovan/53 Kinney Hill Road/#IW-08-37/Single Family Dwelling:**

Mr. Neff, engineer, noted the footprint of the proposed dwelling had been slightly modified and he presented his revised plans, "Subsurface Sewage Disposal System," revised to 8/9/08. He also noted since the last meeting the Health Dept. had approved the septic plans and an erosion and sedimentation

plan had been submitted. Mr. O'Neill briefly recapped the proposal to construct the house on a platform supported by columns resting on piers, which would result in minimum impact to the site. He said preconstructed components would be delivered to the site so that construction time would be kept to a minimum. He showed photos of the debris to be removed from the property. Mr. O'Neill stated that only the garage would have a slab on grade. Mr. Picton asked if the grade and existing drainage patterns would be undisturbed. Mr. O'Neill stated there would be excavation by the road for the installation of the septic system, but on the north side of the garage there would be no disturbance to the natural runoff. Mr. Ajello asked where the crane would park. Mr. O'Neill said it would operate near the road from a level area north of the house. He noted that the garage foundation might not be installed until after the components had been delivered. Mr. Picton noted the 100 ft. setback line was not indicated on the map, but pointed out that earthwork and building was limited to the land farthest from the wetlands. It was noted the distance from the wetlands to the north end of the house was 57 feet. Mr. Picton asked how much natural vegetation would be left as a buffer around the wetlands. Mr. Neff said that 20 to 25 feet would remain, although after the work had been completed, the disturbed area could revegetate. Mr. Picton briefly discussed the alternative of moving the house back from the wetlands, and said if it was not moved back, for mitigation the buffer should be restored from the wetlands to as close to the house as possible. Mr. LaMuniere noted that due to the conditions on the property, the lot would not have been allowed today and he asked that as little activity as possible take place within 50 feet of the wetlands. Mr. Neff said the limit of clearing and limit of disturbance line would be 20 feet from the house. Mr. Picton noted that the natural buffer would limit long term impacts and the moderate slope nearer to the wetland and the fact that a full basement would not be put in would limit the short term impacts. He thought the nature of the house offset the impacts and noted a thorough construction sequence had been submitted.

**MOTION:** To approve Application #IW-08-37 submitted by Mr. Donovan to construct a single family dwelling at 53 Kinney Hill Road per the plans, "Subsurface Sewage Disposal System," by Mr. Neff, revised to 8/9/08 subject to the following conditions:

1. there shall be no clearing of the woodland buffer outside the limit of work area,
2. the work area within 50 feet of the wetlands shall be reestablished with native herbaceous vegetation (not lawn) to create a woodland transition buffer to enhance the function of the wetlands.

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

**Slaymaker/17 Sunset Lane/#IW-08-38/Reconstruct Dwelling:**

The map, "B100a Sketch," by Berkshire Engineering, revised to 7/24/08 was reviewed. Mr. Picton noted he had inspected the property on his own. Atty. Herbst noted the property is within 500 feet of the New Milford town line and so submitted a copy of the 7/3/08 letter with proof of certified mailing sent to the N. Milford Inland Wetlands Commission to inform it of the application. He noted that since the last meeting the roof drain location and outlet detail for the roof drain had been added to the map, a construction sequence including the demolition of the existing house had been submitted, and the limit of the lawn had been staked prior to the site inspection. Mr. Picton asked why the proposed house could not be located on the existing site so there would be less disturbance. Ms. Barbieri, landscape architect, explained that Mr. Slaymaker will live in the existing house until the new one has been completed. Atty. Herbst said this would require the driveway to be moved closer to the wetlands. Mr. Picton asked why the house could not be moved to the driveway side of the existing house. Ms. Barbieri said that was where the existing well was located and it was needed to serve the existing house while Mr. Slaymaker lived there. Atty. Herbst also noted there were 25 feet setbacks required by the Health Dept. for both wells and septic systems and a 50 ft. setback from the watercourse. Mr. Picton thought a different configuration would place the house on part of the site that had been previously disturbed. He also noted the proposed house was larger than the existing house. Ms. Barbieri said the area around the existing house had been graded and had been lawn for 60 years. Mr. Klein, soil scientist, stated that the



south end of the street had already been significantly altered and so building the new house on the footprint of the old or in the proposed location would have no appreciable long term impacts. He said, too, that the proposed erosion control measures were adequate for short term protection. Ms. Barbieri noted the application includes: 1) a restoration plan, a new septic system outside the wetlands, 3) a new well, and 4) a new house location moved forward to keep it close to the road. She said markers had been placed every 40 ft on site to mark where the property is to be restored and maintained as natural area and that as proposed, the impacted areas would decrease 32%. Mrs. D. Hill said she did not like to see any activity in wetlands, but thought the owner had the right to rebuild the house and that the proposal was an improvement. Mr. LaMuniere noted the Commission had specifically asked for information on the construction of the cellar since it would be built into the watertable. Ms. Barbieri said there was no dewatering information in the construction sequence. Mrs. D. Hill agreed with Mr. LaMuniere, noting that the site inspection minutes referenced the request for this information and she asked that it be added to the construction sequence. Ms. Barbieri agreed to do so. Mr. Ajello suggested that the line that drains the curtain drain had already been installed and this could be tied into. Mr. Picton asked where the water would be pumped to. Ms. Barbieri said a temporary basin would be dug and from there the water would be pumped into a pile of wood chips. Mr. Bedini said he was not at all pleased with the proposed location of the house in wetlands, but thought the Commission should have advised the applicant against this long ago. Mr. Picton asked when the existing house would be demolished. Mr. Slaymaker said it could not be demolished until he moves out. Mr. Ajello said a C of O would not be issued until the old house was gone. Mr. LaMuniere advised the applicant that the reforestation must be completed before the Finish card is submitted. Mr. Picton stated the revegetation/reforestation should be done early in the project. Ms. Barbieri said she would start with the restoration of the wetland meadow and would work on the woody plants when the house has been demolished.

MOTION: To approve Application #IW-08-38 submitted by Mr. Slaymaker to reconstruct the dwelling at 17 Sunset Lane subject to the following conditions:

1. there shall be no filling or change of grade other than what is shown on the plans revised to 7/24/08,
2. a bond shall be posted for the wetlands restoration plan before the permit is issued,
3. there shall be no filling or drainage within the footprint of the existing house, and all excess material shall be taken off site,
4. the existing house shall be removed, and
5. when the existing house is removed, the site shall be restored to a permeable, vegetated, natural grade surrounded by natural grade.

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

**Camp Windguage, LLC./24 Old North Road/#IW-08-39/2 Lot Subdivision and Wetlands Crossing:**

Mr. Boling and Mr. Charles, agents, noted the 8/5/08 environmental report by Mrs. Corrigan, which compared the possible driveway routes and found the western route was preferable. The map, "Plan of Development," by Arthur H. Howland & Assoc., dated 6/24/08 was reviewed. Mr. Charles said this map would be revised to reflect Mrs. Corrigan's comments and any Commission feedback. The two possible driveway routes were discussed and compared. Mr. LaMuniere favored the eastern route, which he thought would require cutting fewer trees, noting they have an important drainage function. Mr. Boling noted, however, that the eastern route would go through a botanically diverse area of wet meadow and impact what might be a vernal pool. Mr. Charles thought it was important to stay downstream of a valuable wetland rather than install the driveway upslope of it. He also noted there could be a social benefit in preserving the farm field for future use. Mr. LaMuniere pointed out another possible upslope driveway location that he thought would require less tree cutting. Mr. Boling noted the owners' goal is to preserve the existing Rossiter house and its surrounding historic agricultural

landscape and said it was currently hayed by the Solley farm. Mr. Ajello agreed with Mr. LaMuniere that the proposed crossing could be avoided and recommended the Commission refer the application to a consultant to review and determine the best driveway location. Mr. Picton noted that Mrs. Corrigan, a qualified biologist, favored the wetlands crossing. Mr. Boling briefly reviewed her report, which found there was little water, not much bio diversity, and not much potential for amphibians in the western route. Mr. Szymanski, engineer, reviewed the plans for the proposed box culvert at the western crossing. It was sized to accommodate more than a 100 year storm and would be buried one foot in the ground with wetland material to provide a streambed base. He noted the construction details were provided in the construction sequence. Mr. Picton said he did not think the impact of the proposed crossing would be substantial enough to warrant the disturbance of a natural agricultural area with a wet meadow. He noted the woodland and fields relate to each other and he hoped they would remain in tact. Mr. Boling stated that the property owner was working on a conservation easement to preserve the field. Mr. Bedini agreed the proposed crossing was the better alternative because it did not bisect the field or require unnecessary woodland cutting.

MOTION: To approve Application #IW-08-39 submitted by Camp Windguage, LLC. for a two lot subdivision with driveway crossing as proposed with the objective of keeping the varied and natural landscape in tact in an area of fields and wetlands that surrounds the original house. By Mr. Bedini, seconded by Mr. Picton, and passed 5-0.

**Brown/115 Shearer Road/#IW-08-40/Driveway Crossing:**

Mr. Wilson, engineer, reviewed his plan, "Driveway Wetland Crossing," 2 sheets, revised to 7/9/08. Mr. Picton noted there was no other way to access the back of the property without a more complicated wetlands crossing. He explained the width of the travel way would be 10 feet with 2 ft. shoulders in the conservation easement area and 12 feet wide with 2 ft. shoulders elsewhere. He pointed out the proposed silt fencing below the fill lines and "up road" of the disturbed areas. Mr. Picton asked about erosion controls along side of the wetlands. Mr. Wilson responded that he normally does not install silt fence in wetlands and he would do all of the filling on the other side. Mr. Picton asked Mr. Ajello if he was comfortable with the plans for the crossing on flat ground with no significant amount of fill. Mr. Ajello said he was. He said there was not enough flow on site to cause a problem and there would be hay bales available on site. Mr. Wilson noted a detailed construction sequence had been submitted. Mr. Picton asked if the side slopes would be stabilized as they were graded. Mr. Wilson said they would be.

MOTION: To approve Application #IW-08-40 submitted by Mr. Brown for a driveway crossing at 115 Shearer Road. By Mr. LaMuniere, seconded by Mrs. Hill, and passed 5-0.

**New Applications**

**Hochberg/15 Couch Road/#IW-08-41/Dredge Pond:**

Mr. Szymanski, engineer, represented the applicant. The map, "Pond Dredging Plan," by Arthur H. Howland & Assoc., dated 6/30/08 was reviewed. The previously approved drainage improvements along Couch Road were noted. Mr. Szymanski briefly explained the work to be done; dewatering of the pond, stockpiling of dredged material, and hauling it off site. He said the dewatering could be done in a day and the excavation of 450 cubic yds. in two to three days. Mr. Ajello asked if the sediment basin would be permanent. Mr. Szymanski he could leave it there, but since there was a good flow there, the current would eventually take it out. Mr. Picton asked that only accumulated sediment be removed and the pond not be deepened or enlarged. Mr. Szymanski agreed to remove only accumulated sediment, noting the side slopes would be 3:1 and would be left to revegetate naturally in the calm areas. Mr. Picton also advised Mr. Szymanski that only clean water should be pumped from the pond. Mr. Szymanski said this was specified in the construction sequence.

**Bradley/188 Sabbaday Lane/#IW-08-42E/Dredge Ponds:**

Mrs. Bradley said she was requesting an agricultural exemption to remove vegetation from her two existing farm ponds. Mr. Forese, contractor, said he planned to remove plants and accumulated sediment and would not enlarge or deepen the ponds. The 30 to 40 c. yds. of dredged material would be spread elsewhere on the property. Mr. Picton asked that the water level of the pond on the stream be lowered enough before work starts so that water would not flow downstream until the sediments had settled. Mr. Forese pointed out on an aerial photo the locations from which he would operate the excavator. It was the consensus that this was a farm operation. Conditions of approval were discussed.

**MOTION:** To approve Application #IW-08-42E submitted by Mrs. Bradley to dredge two ponds at 188 Sabbaday Lane as an agricultural exemption subject to the following conditions:

1. the existing underwater side slopes of the ponds shall not be changed,
2. the ponds shall not be deepened or enlarged,
3. only vegetation within 6 feet of the shorelines shall be removed,
4. before excavation begins the water level of the pond shall be lowered enough so that the water will not overflow until the fines settle and the clarity of the water is restored. By Mr. Picton, seconded by Mr. Bedini, and passed 5-0.

**Walker/154 South Street/#IW-08-43/Install Swale:**

Mr. Ajello circulated his 8/13/08 Report. The map, "Resubdivision Map Prepared for Graham Wagensil," by Mr. Burnham, dated May 1983 and the sketch plan, "Richard Walker," no signature, no date, were reviewed. To solve the problem of runoff onto a neighbor's driveway, Mr. Swanson, contractor, proposed to deposit fill to create a berm where the runoff now flows and to install a grass lined swale to direct it through the woods to the stream. He said the swale would handle only driveway runoff and one roof gutter; runoff from the entire property would not be directed to it. Mr. LaMunier asked if the swale would be rip rapped at its end to slow the velocity of the water before the sharp drop to the stream. Mr. Swanson said it would. Mr. Picton asked if the swale was shortened, would the runoff flow towards the stream. Mr. Swanson said, no, it would still flow towards the neighbor's driveway. Mr. Ajello said he thought the proposed swale was the only solution and recommended that rip rap be installed. It was the consensus that the bottom of the swale should be spread with hay until it is stabilized. It was determined that a site inspection was not necessary, but commissioners could inspect the property on their own prior to the next meeting.

**Marquis/104 Blackville Road/#IW-08-44/Deck:**

Mr. Picton noted this was an after-the-fact application. Ms. Marquis submitted photos of the property and a portion of a survey map showing the location and size of the deck. It was noted the deck had been built on sono tubes over a stable, level area of the yard and was approximately 25 feet from the brook. Mr. Picton noted the deck did not extend to the drop off to the brook. Mr. LaMunier thought the installation of sono tubes would not have impacted the drainage on site and Mr. Picton said the streambank had not been disturbed nor had the wetlands habitat been impacted. Mr. Picton asked if the Commission would have approved the deck if it had been applied for and he thought the answer was, yes, because an adverse impact could not be found. Mr. LaMunier said there was no need to remove the deck because it had caused no impact. There was a brief discussion regarding whether this should be considered an "after-the-fact" or a "to correct a violation" application and it was agreed it should be to correct a violation. Mr. Picton asked Mr. Ajello to issue the lowest level of citation for a violation with no impact. The Commission will act on the application at the next meeting.

**Geurts/46 June Road/#IW-08-46/Single Family Dwelling and Workshop:**

Mr. Szymanski, engineer, presented the map, "Site Development Plan," by Arthur H. Howland & Assoc., dated 6/18/08. It was noted a previous plan for a house and septic system had been approved for the property. The revised plan was for a larger house slightly below the ridgeline and for a workshop building. Mr. Szymanski noted the location of an intermittent watercourse on the south side

of the site and noted the limit of disturbance would be kept 25 to 30 feet from it. Mr. Picton asked the applicant to consider how to ensure that a forested buffer will remain along the watercourse and whether it was necessary to erect a building within 100 feet of wetlands. He noted wetlands buffers help to maintain healthy ecosystems. A site inspection was scheduled for Thursday, August 21, 2008 at 2:00 p.m.

### **Other Business**

#### **Tavino/26 and 32 Flirtation Avenue/Request To Revise Permit #IW-06-54:**

Mr. Tavino, property owner, stated the 2006 permit was for a first cut and site development feasibility, but he proposed changes to the driveway and house sites. The map, "Site Development Plan and Details," by Mr. Tavino, dated 8/5/08 was reviewed. He proposed to shorten the driveway from 900 to 600 feet, change its route, install an underdrain, and move the driveway cut to the opposite side of the property. He said the proposed route would take the driveway farther from the intermittent stream on site. He also proposed to cut trees for a view. Mr. Picton asked if there were wetlands issues. Mr. Ajello said he was more concerned about possible erosion and sedimentation. Mr. Picton asked if the wetland buffer would be retained and if there were enough cross drains proposed so that the driveway runoff would not accumulate. Mr. Tavino pointed out that in a 500 ft. section of the driveway, there were six "bleedoffs" proposed. It was noted that an adjoining property owner had written a letter dated 8/13/08 expressing concerns about drainage being directed towards his property. Mr. Tavino stated his proposed changes would take runoff away from the O'Keefe property.

MOTION: To approve the request by Mr. Tavino to revise Permit #IW-06-54 for a first cut at 26 and 32 Flirtation Avenue per the plans, "Site Development Plan and Details," by Mr. Tavino, dated 8/5/08 subject to the WEO working out the details to protect the adjacent property owner. By Mr. Picton, seconded by Mrs. Hill, and passed 5-0.

Mr. Ajello asked the commissioners if they were OK with the proposed limit of clearing. He said he was concerned about impacts to the upland review area. Mr. Picton asked him to look into the proposed clearing as well as the neighbor's drainage concerns.

Mr. LaMuniere left the Meeting and Mr. Bohan was seated.

#### **Pullaro/23 Calhoun Street/#IW-08-45/Septic Repair:**

The map, "Septic System Repair Plan," by Mr. Neff, dated 7/18/08 was reviewed. It was noted the new galleries would be installed close to Rt. 109 and 79 feet from Canoe Brook. Mr. Thomson asked if there were any feasible and prudent alternatives. Mr. Ajello said there were none. Mr. Picton asked Mr. Ajello to make sure the property was in conformance with the buffering required for the last permit approved for this site and that the plans submitted were complete. Action will be taken at the next meeting.

### **Enforcement**

Andersson/35-45 Gunn Hill Road: There was nothing new to report.

Rubler/240 Wykeham Road: Mr. Rubler will submit the required mapping and soils report.

Lodsir/78 Litchfield Turnpike: Mr. Ajello sent a letter of instruction as requested by the Commission.

Gruson/62 Frisbie Road: Mrs. D. Hill asked if the pond had been dredged. Mr. Ajello said he had not received a Start card.

### **Other Business**

Revision of the Regulations: Drafts are being circulated for review. Mrs. D. Hill noted that a definition of "regulated area" was needed. Mr. Bedini said the fine ordinance would be included for convenience

with the Regulations. Mr. Picton noted that he did not want to lose the detail provided in the current Regs.

Hiring of Consultant: The Selectmen's Office is continuing to work on this matter.

Grant Application: Mr. Thomson reported that upon further research, the invasive species project suggested by the Commission did not meet the criteria for the grant.

#### **Election of Officers for 2008-2009:**

MOTION: To elect Mark Picton as Commission chairman. By Mr. Thomson, seconded by Mr. Bedini, and passed 5-0. Mr. Bohan was seated for Mr. LaMunier.

MOTION: To elect Mr. Bedini as Commission vice chairman. By Mr. Thomson, seconded by Mrs. Hill and passed 5-0. Mr. Bohan was seated for Mr. LaMunier.

#### **Executive Session to Discuss Pending Litigation:**

It was decided not to go into Executive Session to discuss Andersson/35-45 Gunn Hill Road. Atty. Zizka will continue to confer with Atty. Fisher and Mr. Ajello and two commissioners will meet with Atty. Fisher on site to determine the limits of the restoration area. Mr. Bedini noted the Commission had previously agreed that the area within 50 feet of the stream should be restored. Mr. Thomson did not think the EO should be put in the position of both working on a resolution and then policing it. There will be no final agreement on the restoration requirements until the 9/10 meeting. Mr. Ajello noted that the interveners would also have to approve the agreement.

Mr. Bohan left the Meeting at 11:25 p.m.

#### **Consideration of the Minutes**

The 7/9/08 Regular Meeting minutes were accepted as corrected.

The spelling of "Szymanski" was corrected throughout.

Page 2: Town of Washington motion: Add: Application #IW-08-36.

Page 2: Under Wykeham Rise, LLC: 9th line: Change "debt" to "depth."

Page 2: The spellings of Chris Allan and Milone and McBroom were corrected.

Page 4: Under Slaymaker: 6th line: Change to: "...moved further out of the wetlands nearer the road..."

Page 4: Under Slaymaker: 8th line from bottom: Change: "proposed" to "proposal" and after "proposal" add: "to move and restore the leach field..."

Page 5: Under Fowler: The spelling of remediation was corrected.

Page 5: Under Lodsins: 3rd line: Change: "packet" to "communication."

Page 5: Under DiBenedetto: 2nd line: Change to: Mr. Picton asked for confirmation that no further cutting had been done.

Page 5: 5th line from bottom of page: Heading should be: Revision of the Regulations Subcommittee.

MOTION: To accept the 7/9/08 Regular Meeting minutes as corrected. By Mrs. Hill, seconded by Mr. Bedini, and passed 4-0.

MOTION: To accept the 7/23/08 Public Hearing – Special Meeting minutes as submitted. By Mrs. Hill, seconded by Mr. Bedini, and passed 4-0.

MOTION: To accept the following site inspection minutes as written:

Donovan-7/15/08,

Slaymaker-7/15/08,

Rubler-240 Wykeham Road,

Andersson-7/22/08, Brown-7/22/08, and Camp Windguage, LLC.-7/22/08.

By Mr. Picton, seconded by Mr. Thomson, and passed 4-0.

The 8/1/08 Special Meeting minutes were accepted as corrected.

Page 1: 8th line: Add: "if." He said if this was done....

Page 3: Mr. LaMuniere's reasons at the end of the motion: Change: the last word, "them" to "overall site drainage."

MOTION: To accept the 8/1/08 Special Meeting minutes as amended. By Mrs. Hill, seconded by Mr. Thomson, and passed 4-0.

MOTION: To try to reschedule the continuation of the Wykeham Rise, LLC./#IW-08-31 public hearing to a date other than the Regular Meeting date; either 9/17/08 or 9/9/08. By Mr. Picton, seconded by Mrs. Hill, and passed 4-0.

MOTION: To adjourn the Meeting. By Mr. Thomson.

Mr. Picton adjourned the Meeting at 11:40 p.m.

**FILED SUBJECT TO APPROVAL**

Respectfully submitted,  
By Janet M. Hill  
Land Use Coordinator