

September 9, 2008

Public Hearing

7:00 p.m.

Main Hall, Bryan Memorial Town Hall

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. Olson

ALSO PRESENT: Mr./Mrs. Federer, Dr. Ewing, Mr. Klauer, Atty. Hill, Mr. Parker, Mr./Mrs. Solomon, Mr./Mrs. Rickert, Mr. Szymanski, Mr. Owen, Mr. Goodin, Mr. Carey, Mrs. Minor, Mr. Solley, Mrs. Carter, Ms. Giampietro, Mrs. Talbot, Mr. Charles, Ms. Eldridge, Residents, Press

Wykeham Rise, LLC./101 Wykeham Road/#IW-08-31/Site Development for Inn

Mr. Picton reconvened the Public Hearing at 7:05 p.m. and seated Members Bedini, Hill, LaMuniere, Picton, and Thomson.

He noted there was a long list of new documents submitted since the last meeting and urged everyone to review the file. He noted the 9/8/08 letter from Atty. Fisher, which asked that Mr. Picton recuse himself. Mr. Picton stated that he had discussed this matter with the Commission's counsel, he would not recuse himself, and he would not discuss the matter further on the advice of counsel.

In order that everyone have an opportunity to be heard, Mr. Picton suggested that first the applicant make a 15 minute presentation, then the commissioners ask questions for 15 minutes, and finally public comments be taken for 15 minutes. After that there would be further rounds. He urged everyone to be brief.

Atty. Fisher stated that the applicant would need a least a half hour to rebut the points raised by Mr. Goodin at the last meeting.

Mr. Picton asked for an outline of the new plan first. He asked what changes had been made to the plan.

Atty. Hill objected. He said the public had not had an opportunity to review the revised plans and so could not comment on them as they had just been filed this afternoon.

Atty. Fisher said he was prepared to request an extension of the Public Hearing and Mr. Szymanski said he had already done so in a letter of transmittal.

Atty. Hill asked the Commission to recognize his client, Mrs. Federer, as an intervener.

Mr. Picton responded that the Commission was aware that Mrs. Federer had filed a petition for intervener status.

Mr. Szymanski, engineer, noted that the revisions reduced lot coverage and impervious surfaces. He listed other significant changes to the plans, which included:

- 1) reduction in the number of rooms from 54 to 44,
- 2) removal of six buildings total including the two quad buildings in the SW portion of the site, the two quad buildings to the north, and the buildings to the west of the lobby and to the ESE of the spa,
- 3) connection of the restaurant and spa buildings and the location of guest rooms in the new portion of building,
- 4) reduction of all driveway grades to below 10%,
- 5) relocation of the outflow pipe for detention pond #2,

- 6) catch basin at the NE corner of the property will discharge to a grass lined swale for added treatment to the runoff before it reaches the wet pond,
- 7) addition of rip rap to the outlet at Kirby Brook,
- 8) reduction in disturbance to the eastern part of the property, and
- 9) increase in the area to be left with natural vegetation near the spa and to the west of the lobby.

Mr. Picton asked for a written list of the changes.

Mr. Szymanski said they were all discussed in the narrative he had just submitted.

Mr. Picton said that although there had been many revisions, he did not think a new application was required because they all resulted in a reduction in the scope of the project.

Mr. LaMuniere noted that he had not had an opportunity to study the new material, but asked several questions.

1) Regarding the area where the buildings would be removed in the east and west portions of the site, how much would this diminish the activity required within the wetland setback? Mr. Szymanski said he would address this later.

2) Did the applicant submit the DEP septic permit transfer letter as he said would be done? Mr. Szymanski said he had the transfer certificate, but still had to apply to DEP. He said the DEP would not review the plans prior to local approval.

3) Mr. LaMuniere noted that Dr. Klemens had raised valid points about the removal of invasive plants on 10% slopes. He asked what technique would be used to remove invasives from the slopes above the streams.

Mr. Szymanski said the Didona planting plan provided guidelines for the method of removal for each type of invasive plant. He added that the plan also specified how each native plant would be planted and provided for on site monitoring by the landscape architect.

Mr. LaMuniere noted it was important for bank stabilization that the root systems remain in place.

Mr. Szymanski said they would.

4) Mr. LaMuniere asked how the pervious pavement would function in the winter and during thaws and where the runoff would go. Mr. Szymanski referred to the information packet on porous asphalt that he had already submitted. He said tests by UNH had shown that porous asphalt needs less sand and salt and that runoff would first run into the pavement because the matrix would not freeze and then eventually would infiltrate into the ground.

5) Mr. LaMuniere noted that Dr. Klemens had raised questions concerning Ms. Chase's environmental report, but Ms. Chase had not responded. Mr. Szymanski said she would respond now that the revised plans were complete.

Mr. Picton noted that since the last meeting he had submitted six pages of questions and comments for Land Tech to address in its review of the application and information pertaining to wetlands buffers and how they relate to wetlands functions. Also, he had highlighted one copy of the revised map to show the 50 and 100 foot setback lines and the limit of construction. He encouraged the commissioners to review it to see which activities were proposed in the regulated and upland review areas. He said he had also reviewed the slope analysis map and had drawn the 100 ft. setback line on it. He noted slopes were an important consideration because they affect the land's ability to accomplish wetland related functions and relate to impacts from construction and runoff.

Mrs. D. Hill asked if the Land Tech review had been received.

Mr. Ajello said, no, the review would include the new documents just submitted today.

Atty. Hill asked if Land Tech had been asked for input on the latest plans.

Mr. Ajello responded that Land Tech would receive the revised plans soon and would have its report

ready in two weeks.

Mr. Picton noted that the Commission expects an environmental review from Land Tech as well as an engineering review.

Mr. Ajello said this was clear to Land Tech and that Mr. Picton's questions had already been sent.

Mr. LaMuniere said the Commission expects Land Tech to comment also on both the Klemens and Goodin reports.

Mr. Picton said he expects Land Tech to respond to the applicant's plans and concerns and to questions raised by the public, the Commission, and all experts.

Atty. Hill expressed his dissatisfaction with the late submission of the revised plans so that the public had no opportunity to review them before the hearing. He said this was a new application and recommended the "old" one be denied and the applicant be made to reapply and begin the process again.

In the interest of giving everyone enough time to review new materials before the next session of the hearing, Mr. Picton asked for all new information to be submitted by 9/25, two weeks prior to the anticipated date of the continued hearing.

Atty. Hill argued that Section 47-42d of the CGS requires the Commission to deny the application. He submitted the following documents:

- 1) 8/13/08 letter to the commissioners re: Sections 47-42d of the CGS
- 2) Sections 47-42a of the CGS
- 3) Section 47-42d of the CGS portion of the map
- 4) portions of the map, "Property Survey Map with Topography," by Arthur H. Howland & Assoc., dated 4/16/08
- 5) "Conveyance and Assignment," Vol. 184, P. 0123, received by the Town Clerk on 2/2/05
- 6) "Declaration of Beneficial Ownership," and Exhibits A and B, Vol. 205, PP. 0714-0717, received by the Town Clerk on 7/28/08
- 7) Deed. Vol. 114, PP. 593-595, received by Town Clerk on 5/14/90
- 8) portion of map, "Overall Site Development Plan," OSD.1, by Arthur H. Howland & Assoc., revised to 7/16/08 with restricted area indicated.

He argued that per the definition in the state statutes, a conservation easement exists on the property and so the applicant was required to notify the holder of the easement of the activities proposed within the restricted area 60 days prior to the submission of the application. He said because the applicant had not complied with this requirement, the Commission should deny the application. Atty. Hill stated that the current septic approval is for a proposed use by the previous property owner, and not for the proposed inn. He said the applicant had not supplied any evidence that the proposed septic system was approvable by the DEP.

Mr. Goodin, engineer, submitted his letter dated 9/9/08, which concluded the plans were incomplete. He said he had not reviewed the revised plans. He briefly raised several points including:

- 1) the soil testing pits and data were not provided on the plans
- 2) the septic plans as submitted could not be approved by the DEP because they are incomplete
- 3) the proposed driveway was now closer to the wetlands
- 4) there was no design for the proposed water system.

Atty. Fisher said the plans had been revised in an environmentally sound way and should not be considered a new application because the potential impacts to wetlands had been decreased. He countered Atty. Hill's statements regarding the conservation easement and Section 47-42d of the CGS and said that ultimately the court would decide this matter.

Atty. Olson advised the Commission it could proceed with consideration of the application, it was not necessary to decide the issue of the conservation easement tonight, and that she would advise the Commission later in the process about the importance of this state statute.

Mr. Szymanski said he had provided slope analysis information for pre and post construction on the property. Mr. Szymanski responded to many of the points raised by Mr. Goodin in his 8/13/08 report. He stated there would be minor activities associated with the wetlands in the eroding area north of flag #14. The existing pipe would be removed and restoration work conducted per Land Tech's recommendations. Also, the gravel parking lot on the west side of the property and the walkway in front of the main building would be removed and the areas restored, and 1,000's of sq. ft. of lawn would be restored to natural vegetation. He noted that additional mapping of soils had been addressed by the soil scientist.

Mr. Picton noted the steepest slopes were concentrated around the construction sites within 100 feet of the wetlands.

Mr. Szymanski stated the northern two thirds of the site is within the upland review area and so the majority of the activities proposed were located there. He said, however, that a phased construction sequence was proposed to ensure there would be no short term adverse impacts from the proposed grading and that all the 2:1 slopes would be seeded and reinforced with erosion control blankets for long term stability.

Mr. Picton said that half the post construction slopes within 100 feet of the wetlands would be greater than 20% and the challenge would be to manage the construction next to the wetlands so that the impacts were controlled.

Mr. Szymanski asked if the Commission had ever requested a water quality analysis from any other applicant as he wanted Wykeham Rise, LLC. to be treated fairly and consistently. He said the Mayflower Inn and Spa have three times the area of impervious surfaces than does the proposed inn, yet an analysis had not been required for the spa application.

Mr. Picton stated a detailed analysis had been required for the Montessori School, both pre and post construction.

Mr. Szymanski agreed, then, to submit a water quality analysis.

Continuing with his response to Mr. Goodin's concerns, Mr. Szymanski stated that the state guidelines were for reference only and urged the commissioners to read the preface of each state manual. He said both advise that sites should be judged on their own merits. He detailed the "ideal" method he used to determine whether there would be impacts to Kirby Brook, explaining that this is based on total removal of suspended solids and other pollutants and takes into consideration 10 years of rainfall data as well as on site conditions. He found that detention pond #1 would remove 93% of suspended solids and detention pond #2 would remove 89% and that an average of one cubic yard of material would leave each pond each year. He agreed to submit the test pit and soil data, depth to the water table, and other information requested by Mr. Goodin.

Regarding the proposed aquatic plantings, Mr. Szymanski stated the plans were by a certified landscape architect who determined that aquatic benches were not necessary. Mr. Szymanski explained that the proposed stormwater discharge into Kirby Brook would not be warmer than the current discharge due to the increased shade that would be provided and the mixing of the runoff with the cooler high groundwater in the detention ponds. He noted information on the snow melt and the use of salt and sand had already been provided. Mr. Goodin had suggested that hydrodynamic separators be provided for the catch basins at the entrance and exit, but Mr. Szymanski said this was not a feasible and prudent alternative and so he had provided deep sump catch basins instead.

Mr. Szymanski addressed the issue of the proposed rain gardens. He said it was reasonable to design

them to accommodate the first inch of rainfall and that their infiltration rates would be two times the existing rate on site. He noted they would be constructed last so there would be no chance that construction machinery would run over them. He did not think pretreatment was necessary because the rain gardens would primarily handle roof runoff.

Mr. Picton asked if the proposed permeable pavement would function the same in the field as in the lab.

Mr. Szymanski said he was confident it would, but Mr. Picton noted there were different slopes and weather conditions at this site than at UNH where the surface had been tested.

Also in response to Mr. Goodin, Mr. Szymanski said he would move the discharge pipe downhill so that it would exit more in the direction of Kirby Brook, he had added additional dewatering details, he had modified the check lists to include the inspection of the detention ponds during the first year and once a year thereafter, and he added long term maintenance and fertilizing plans and temporary sediment basins in the area of cottage duplex #2 and elsewhere.

Mr. Szymanski said he had met with the DEP regarding the septic system and said there would be less septic flow from the proposed inn than there had been for the previous use on site. He said the DEP would not approve the septic plans if there were downhill impacts on wetlands and adjoining properties and if there were any revisions required by the DEP, the plans would have to be reviewed again by the Inland Wetlands Commission.

Feasible and prudent alternatives were discussed. Mr. Szymanski stated that if there was no development proposed within 100 feet of wetlands, it would not be possible to access the site so that alternative had not been explored. He explained he had studied each portion of the property and had tried to keep activities in each as far from the wetlands as possible and had tried to ensure there would be a significant decrease in adverse impacts to all resources. He suggested the minor clearing needed to improve the access was "fair" since so much of the property would be restored to natural conditions. He pointed out these areas on the site development plan.

Another feasible and prudent alternative, but one with more impact, he said, was to renovate the existing buildings. Instead, he said the applicant was trying to remedy the existing bad conditions by converting the parking lot to a pond, removing buildings near wetlands, removing the access to Bell Hill Road, providing for sheet flows to Kirby Brook rather than piping discharges directly to the brook, providing streamside buffers, and replacing lawn and disturbed areas with natural vegetation. He said all of these changes were to protect the wetlands and would be an improvement over the current conditions.

Mr. Szymanski stated he would prepare a written response to Mr. Picton's written concerns and would have Ms. Chase address Dr. Klemens' and Mr. Goodin's concerns.

Mrs. D. Hill noted that at the previous session of the hearing the applicant had said it would draft deed restrictions regarding the use of chemicals and fertilizers on site.

Mr. Szymanski stated that instead, he had submitted a chemical and fertilizer management plan.

Mr. Federer, adjoining property owner, noted regarding whether the proposed porous asphalt would work well on site, that the New Hampshire seacoast where it was tested is a more temperate climate than the climate here in Washington.

Ms. Eldridge noted there had been little discussion regarding migratory water fowl and asked if data had been submitted on disrupted and displaced bird life.

Mr. Szymanski said it was not the Commission's jurisdiction to consider wildlife outside the wetlands unless it is a wetlands dependent species.

Ms. Eldridge asked if the inn would promote fishing in the ponds or in Kirby Brook.

Mr. Picton noted the stormwater management plans were not designed for fishing.

Mr. Szymanski said that fishing had not been considered.

Because the revisions had been submitted earlier in the day and no one had had an opportunity to review them or to respond, Mr. Picton recommended that the hearing be continued to Thursday, October 9, 2008.

Mr. Picton asked that all comments be in by Sept. 25 so that everyone would have time to review and comment on them by 10/9. He said the objective was to complete the hearing and to close it on 10/9.

Mr. Ajello noted with a full extension it could be continued to 10/31.

Mr. Picton listed some of the issues/topics the Commission would consider in its deliberations: direct impacts to wetlands, functions of the wetlands and related characteristics, function of the riparian buffer, evaluation of the long and short term impacts of the project, management of the construction process and adequacy of erosion controls, and feasible and prudent alternatives. He suggested it would be such a daunting job to determine whether the application meets all of the criteria of the Regulations that both Land Tech and Dr. Klemens should be hired for follow up evaluations.

Mrs. D. Hill thought it was the Commission's job to evaluate its own applications.

Mr. LaMuniere agreed with Mrs. Hill, but said Land Tech's review and Ms. Chase's response to Dr. Klemens and Mr. Goodin were needed because the Commission could not evaluate the application until all of the information was in.

Mr. Picton said the Commission would not give up its responsibility for the decision, but needed technical input to help it evaluate the application.

Mr. Thomson thought the review by Land Tech and the response from Ms. Chase would be adequate.

Mr. LaMuniere reviewed the motion made at the last meeting that Land Tech review and report on both Goodin's 8/13/08 report and the relevant sections of Klemens' 8/11/08 report, and 8/12/08 letter and email and that Ms. Chase respond to the Klemens' documents.

Mr. Picton noted the majority thought a final review by Land Tech would be adequate and no further report from Dr. Klemens was necessary.

Mrs. Federer asked if Land Tech would respond to all of the information submitted at both the last session of the hearing and at this session and to all of the comments made in response to the information just submitted today.

Mr. Picton said, yes, this was the objective. He again asked that all comments be submitted by September 25 so that Land Tech could get its report to the Commission by October 9.

Mrs. D. Hill asked if the Commission could receive information from its consultant after the close of the hearing as long as it was not regarding a new topic.

Atty. Olson said it could.

Mr. Picton asked that all of the material submitted in the past, including the review by Ms. Chase, be forwarded to Land Tech.

MOTION: To continue the public hearing to consider Application #IW-08-31 submitted by Wykeham Rise, LLC. for site development for an inn at 101 Wykeham Road to 7:00 p.m. on Thursday, October 9, 2008. By Mr. Picton, seconded by Mrs. Hill, and passed 5-0.

At 9:14 p.m. Mr. Picton continued the public hearing to October 9, 2008.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Janet M. Hill

Land Use Coordinator