

November 23, 2010

Public Hearing – Regular Meeting

6:00 p.m. Land Use Meeting Room

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

ALTERNATES PRESENT: Ms. Cheney, Mr. Martino, Mr. Papsin

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

ALSO PRESENT: Mr. Sabin, Mr. Szymanski, Mr. Klauer, Atty. Olson, Mr. Allan, Ms. Purnell, Mr. Charles, Mr./Mrs. Peacocke, Mr. Eskers

PUBLIC HEARING

Wykeham Rise, LLC./101 Wykeham Road/Request to Revise Permit #IW-08-31/Con't.

Mr. Bedini reconvened the Public Hearing at 6:04 p.m. and seated Members Bedini, Bohan, LaMuniere, and Wadelton and Alternate Cheney for Mrs. Hill. Mr. Wadelton read the list of documents submitted since the last session of the hearing.

Mr. Szymanski, engineer, noted that at the last meeting he had handed out an 8 X 11 sheet showing an alternate for driveway #1 from station 550 to 850 and this had now been incorporated into the site development plan revised to 11/17/10. He noted the revised plans also included additional screening at the SW corner of Dorm #1 at the request of the neighbors and a revised limit of disturbance line in the vicinity of wetland flag #14.

Mr. Szymanski presented his letter dated 11/23/10 in which he addressed the issue of how the construction schedule would be impacted if the current condition that limits the total disturbed area at any one time to 3 acres was increased to 5 acres. He asked whether the 3 acres of “unstabilized and unvegetated” areas referred to in condition #8 of the 2008 permit included the unvegetated sediment basin and haul road. He concluded that if the area that could be disturbed at one time remained 3 acres, the project would require a second construction season and it would increase the cost of the project. He said the contractors he consulted noted that it was important that the erosion and sedimentation controls be properly designed, the construction site be monitored daily, and that spare maintenance materials be kept on site.

Mr. Szymanski noted he had also responded by letter to Ms. Purnell’s latest comments.

Ms. Purnell submitted her letter dated 11/23/10 in response to Mr. Szymanski’s letter submitted on 11/19/10. The points she raised including the following: 1) She asked that the entire Swiss Hospitality Institute Health file be incorporated by reference into the file. 2) She submitted a series of photos showing wells and springs located behind the main building and stated that the site development plan did not indicate their actual locations. 3) She stated that 3 acres of forest would be removed per the proposed plan and she submitted colored maps showing the extent of the existing forest versus the forest that would remain after construction. 4) Surface and shallow subsurface flow would be intercepted by the proposed driveway and underdrains and directed away from the wetlands and watercourse on the adjoining property. 5) She stated that no calculations had been submitted to indicate how this interception of water would impact the timing or amount of water flowing to Kirby Brook. Ms. Purnell also submitted an updated resume.

Mr. Szymanski asked if Ms. Purnell thought wells met the definition of wetlands. Ms. Purnell stated the

three wells located behind the main building were springs and there would be drainage issues to address when the applicant “removes” them. She also stated there were seeps, water breakouts, and springs across the entire site and that some would interfere with the work proposed such as the installation of porous pavement.

Mr. Szymanski asked Ms. Purnell to clarify the statements in her letter regarding a potential conflict of interest for Land Tech Consultants. Ms. Purnell summarized this paragraph in her letter and a brief discussion followed. Mr. Bedini noted it made sense for the Commission to use the same consultant for this review as it had for the first review.

Mr. Szymanski noted Ms. Purnell’s assertion that the property owner could have corrected the direct impacts to Kirby Brook during the past two and a half years he has owned the property and she did not understand why the Commission had not issued an enforcement order. He asked why the Commission had not issued an enforcement order while she was a commissioner. Ms. Purnell responded that before the applicant had taken over the property, no evidence had been submitted to show the level of degradation of Kirby Brook. Mr. Szymanski disagreed, saying the Swiss Hospitality Inst. plans showed all impervious surfaces draining into Kirby Brook.

In response to Ms. Purnell’s concerns about the steep slopes on the site, Mr. Szymanski noted he knew of no towns that prohibit development on steep slopes.

Mr. Szymanski noted Ms. Purnell’s statement that the sediment generated by the construction site would be 10 X greater than that generated from the existing forest. But he stated that currently all of the sediment from the impervious surfaces is carried directly to Kirby Brook. He asked Ms. Purnell if she believed the impacts to Kirby Brook would be greater under the proposed plan. Ms. Purnell said she did because the sediment flowing into the brook now is from a stabilized site. Mr. Szymanski pointed out eroded areas that now empty into the brook. Ms. Purnell pointed out that these were limited areas compared to opening up a much greater disturbed area if the plans were approved. Mr. Szymanski noted that Land Tech had found there would be no adverse impacts to Kirby Brook as long as the erosion and sedimentation controls were maintained as proposed. Ms. Purnell said usually erosion plans are not carried out exactly as proposed and she referred to Mr. Allan’s statement at the last session of the hearing when he stated there are often changes made to approved plans. Mr. Szymanski stated that due to the size of the area to be disturbed, the DEP would require monitoring after all small storms. Ms. Purnell submitted the stormwater quality worksheet, which she signed and dated.

Ms. Purnell was concerned about the septic flow and possibility of contaminants reaching the wet pond. She stated given the locations of the septic system, leaching fields, and driveway, nitrates and effluent would be directed towards wet pond #1 and then into Kirby Brook.

Mr. Szymanski noted that only 1300 sq. ft. located northeast of the existing tennis court would drain directly into the brook.

Regarding the maps submitted by Ms. Purnell showing the extent of the forest pre and post construction, Mr. Szymanski said that much of the current lawn would be converted to meadow. Ms. Purnell stated that according to a letter to Mr. Picton in 2008 the proposed lawn area for the inn had been 10.45 acres, while it was over 11 acres for the current application. She also stated that while the septic area is shown as meadow on the plans, per the septic approval it may not be meadow.

Ms. Purnell said the applicant had not submitted easement information for the Judea Water Company, so the Commission did not know where those lines would be installed.

Ms. Purnell stated the Commission did not have the information it needs to make a decision concerning this request.

Mr. Charles stated that since so much information was submitted on November 19 and at tonight's hearing, the applicant should request an extension of the hearing to give the public the opportunity to review it all and to respond to the Commission. He said he thought the Zoning Commission would require additional parking and that would require additional changes to the site development plan. He also referred to the 11/11/10 letter from Mr. Sabin and Mr. Szymanski, which complained about the land use department, and asked them to state on the record who they spoke to in the land use office and what gave them the idea they would be quickly approved.

Mr. Bedini said that parking requirements were not under the jurisdiction of the IWC and if the Zoning Commission required further changes to the site plan, the applicant would have to come back to the Wetlands Commission. He also noted the applicant was under no legal obligation to ask for an extension of the hearing.

Mr. Charles responded that public hearings were held for the benefit of the public and so it should be given adequate time to review new material and participate in the proceedings.

Mr. Martino arrived at this point.

Mr. Charles said the Commission should have a list of two or three potential consultants so that when there is the appearance there could be a conflict of interest, an alternate consultant could be hired. Mr. Charles also said he thought the Commission had a poor record of monitoring projects to make sure they were built as approved and cited the Rumsey Arts Center and hockey rink as examples. Mr. Szymanski responded that he had volunteered to submit an as-built for all on site improvements.

Regarding conflict of interest, Mr. Sabin noted Land Tech Consultants had served the Town well for years and he did not think a professional engineer would do anything that would compromise such a long standing relationship with the Town.

Mr. LaMuniere noted the Commission was still waiting for Land Tech's review of Ms. Purnell's 10/27/10 letter and the two responses to that letter from the applicant. He asked that Land Tech address the issue raised by Ms. Purnell that the fluctuation of the groundwater table would impact the function of the sediment basins. He recommended that the hearing be closed and that the Commission wait for Land Tech's comments.

Mrs. Peacocke read her letter dated 11/23/10 in support of her petition for intervener status. She raised the question of feasible and prudent alternatives, especially, she said, in relationship to the Special Permit issued for the Learning Collaborative, an institution, which proposed 200 students in the existing, small scale buildings and the 2009 IWC permit for affordable housing, which also proposed to reuse the existing buildings on the property. She said it was obvious less than a year ago that the existing footprint and infrastructure could be reused, and therefore, there is a feasible and prudent alternative that could mitigate all of the concerns and impacts raised by Ms. Purnell. She noted there were serious issues regarding construction near the septic fields, changes to how the stormwater would be managed, etc.

Ms. Purnell noted that because the applicant had not submitted the latest revisions until Friday afternoon, she had had only one business day to respond to his latest comments. She also noted that because the application had been submitted "in a series of revisions" it had made it more difficult to review. She complained that she would not be able to review and comment on Mr. Szymanski's letter regarding the impacts on the construction schedule of a 3 acre vs. 5 acre limit of disturbance area because the hearing would be closed. She stated this was a major issue due to the difficulty of stabilizing the steep slopes during construction. She requested that the hearing remain open.

Mr. Szymanski said he would address feasible and prudent alternatives. He noted that the approved permit allowed three buildings in the upland review area near the tennis court, but these had been

deleted in the proposed revisions. He also noted that a good portion of driveway #1 had been proposed in the upland review area, but an alternative location was now proposed.

Mrs. Peacocke stated that the applicant had not addressed his 2009 assertion to the Commission that all of the existing infrastructure could be reused.

Mr. LaMuniere asked how the original area of disturbance compared with what was now proposed. Mr. Szymanski said there was a net reduction from the original application. Ms. Purnell said the original lot coverage had been 9.96 or 9.97% and 9.94% was currently proposed although that figure did not include A/C units or the service access to pond #1. Mr. Szymanski noted that pervious grass pavers and porous asphalt totaled 30,000 sq. ft. of the lot coverage.

There were no further comments from the public or questions from the commissioners.

MOTION:

To close the Public Hearing to consider the request by Wykeham Rise, LLC./101 Wykeham Road to revise Permit #IW-08-31.

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

Mr. Bedini closed the Public Hearing at 7:15 p.m.

REGULAR MEETING

Mr. Bedini called the Regular Meeting to order at 7:26 p.m. and seated Members Bedini, Bohan, Hill, LaMuniere, and Wadelton.

Consideration of the Minutes Mrs. Hill recalled that the 10/13/10 Minutes had not yet been considered. This matter was tabled until all commissioners had received a copy.

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

On page 5 under Schwartz, Mr. LaMuniere noted that in the 11th line, it was not Tinker Hill Road, but the driveway off Loomarwick Road from which most of the work site would be accessed. The only work to be accessed from Tinker Hill Road was the installation of the septic leaching fields.

MOTION:

To accept the 11/10/10 Regular Meeting minutes as corrected.

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

There were no new or pending applications.

Other Business

Wykeham Rise, LLC./110 Wykeham Road/Request to Revise Permit #IW-08-31:

It was noted that the Public Hearing had been closed, there would be no deliberation until the report from Land Tech had been received, and the Commission now had 35 days in which to act on the request.

Kohn/10 Couch Road/Complaint re: Erosion Problems:

The commissioners read the letter of complaint dated 11/6/10. Mr. Ajello said he had not yet inspected upstream of the Kohn property. It was noted the Kohn property is directly across Couch Road from the Hochberg property and the culvert referred to in the letter is just above the Hochberg driveway. It was the general consensus that water backing up from the Hochberg dam could not be the cause of any erosion problems on the Kohn property and it was more likely that activity upstream, runoff from Rt.

202, and/or heavy storms were causing the erosion of the streambanks. Mr. Ajello said that Mr. Kohn had not responded to his request for more information concerning what activities may have occurred on the upstream adjoining property that would have caused the erosion problem. Stormwater management was briefly discussed. Mrs. D. Hill referred to the requirement that post construction runoff may not exceed the amount of preconstruction runoff. Mr. Ajello said this was not included in the Regulations; it was only a guideline. Mr. Ajello will take photos of the site and a site inspection will be scheduled. Mr. Ajello will also consult with Mr. Kohn to learn what upstream activities he thinks have caused the erosion problem.

Enforcement

Beckett/23 Loomarwick Road:

There was nothing new to report.

Bowman/44 Plumb Hill Road:

There was nothing new to report.

Chatfield-Schellerer/19 Tinker Hill Road:

Mr. Ajello reported that there are still no erosion controls in place and the wood has been taken off site without permission, leaving the surface exposed. Perc tests have been scheduled. Once it has been determined whether the lot is buildable, either a site development plan or a restoration plan will be required. Mr. Bohan and Mrs. D. Hill noted that erosion controls must be installed immediately. Mr. Bedini said they must be installed by the middle of next week or the property owner will be fined an additional \$250. It was the consensus that the violation occurred over two months ago and immediate action was needed.

Denscot Pool and Spa/269 New Milford Turnpike:

Mr. Ajello noted the Commission had not taken any action at the last meeting because some members had wanted to inspect the property. He stated that Mr. Meeker had submitted a sketch plan that proposed 1) plantings to "obstruct" the streambank, 2) addition of two spaces in the parking lot, and 3) a fenced outdoor storage area. It was noted that the proposal might have some problems when it goes before the Zoning Commission because there are side yard setbacks to consider, the fenced area is only 15 feet from the river, and the Commission may not approve the outdoor storage. Mrs. Hill noted the business had encroached closer to the river than the IWC had originally permitted. Mr. Ajello said he had sent a notice of violation, but said the Commission had not asked him to take any further action.

Ficalora/1 Green Hill Road:

Mr. Ajello reported that the cleanup was voluntary and that this was the last week of excavation.

Gordon/180 West Shore Road:

Mr. Ajello reported that he had handled the replacement of a clogged drainage pipe as an agent approval.

Lodsin/Litchfield Turnpike:

An acre of phragmites had been mowed and a trailer removed from the site. There was no soil disturbance.

Leary/164 West Shore Road:

The building has been demolished to the first floor level and the installation of the septic fields is nearing completion.

Rosen/304 Nettleton Hollow Road/#IW-08-V2 and #IW-10-V03:

There was a lengthy discussion regarding the two current violations on this property and what

enforcement action should be taken. Mr. Ajello reported that although he had spoken with Mr. Rosen, Mr. Rosen refused to pay the fine levied against him. It was noted that Mr. Ajello had not followed the procedures specified in the Town ordinance when he fined Mr. Rosen. After the commissioners were polled, it was decided that Mrs. J. Hill would consult with Atty. Olson about what the most effective enforcement procedure would be and that Mr. Ajello should wait until the Commission had this advice before following the procedures for citations per the Town ordinance. Mrs. Hill objected, noting that under the ordinance, citations are not specifically under the Commission's jurisdiction. She said the enforcement officer should follow the proper procedures because he is the officer assigned to do so and then he should report back to the Commission any action he has taken.

Other Business

Mrs. J. Hill reminded the commissioners about the Ethics training session to be held on 11/30/10 from 6:00 – 8:00 in the Main Hall.

Mr. Martino asked how the Commission would handle the petition from the intervener. Mr. Ajello noted that the 11/23/10 letter from Land Tech addressed the environmental claims made by the intervener in her petition. Mr. Bedini explained the Commission would address each one of her claims and determine whether or not each has merit when it acts on the request for revisions. He said if any were found to be relevant, the Commission could vote to deny on those grounds.

Mr. LaMunier noted that Atty. Branse had advised that when the Commission makes a decision it must state its reasons for the record. He asked if each commissioner was required to do so or whether it was the Commission as a whole that was required to state the reasons for the record. Mr. Martino asked if alternates were allowed to deliberate. It was noted there were two different opinions on that; Atty. Zizka felt strongly they should be included, but Atty. Branse had advised against it due to *Weiner vs. New Milford Zoning Commission*. Mrs. J. Hill was asked to check with Atty. Olson regarding that case and whether all of the alternates could participate in deliberations once the public hearing has been closed.

Mrs. Hill asked whether there would be one vote or two on the request by Wykeham Rise, LLC. Mr. Bedini said there would be two votes; one regarding whether the proposed revisions were significant enough to require a new application and if determined that an application is not needed, a second vote on whether to approve or deny the proposed revisions. He stated that if the Commission were to approve the revisions, it might want to condition the approval. He asked Mrs. J. Hill to consult with Atty. Olson about the proper procedure for crafting motions. Mr. Bohan noted the conditions placed on the original permit would still stand, but additional conditions could be placed on the revisions, if approved. Mr. Ajello passed out copies of the original motion of approval with the conditions for Wykeham Rise, LLC/Inn.

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

Mr. Bedini adjourned the Meeting at 9:22 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,
Janet M. Hill
Land Use Administrator