

December 8, 2010

7:00 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: Atty. Olson, Mr. Allan, Mr. Klauer, Mr. Sabin, Mr./Mrs. Solomon, Ms. Purnell, Mr. Neff, Atty. Kelly

Mr. Bedini called the Meeting to order at 7:08 p.m. and seated Members Bedini, Bohan, LaMuniere, and Wadelton and Alternate Cheney for Mrs. Hill.

MOTION:

To add the following subsequent business not already posted on the Agenda:

V. New Applications:

A. Spring Hill Farm, LLC./69 Whittlesey Road/#IW-10-39/ Application for Exemption for Wine Room, Bathroom, Shower, Septic System,

B. Gordon/180 West Shore Road/#IW-10-40/Renovation of Drainage and Walkway, Stonewall, Landscaping.

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

MOTION:

To change the order of the Agenda to consider Other Business/Wykeham Rise, LLC. first to accommodate those present.

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

Wykeham Rise, LLC./101 Wykeham Road/Request to Amend Permit #IW-08-31

Mrs. D. Hill noted that she and the two unseated Alternates would not participate in the deliberations although there was disagreement about whether they may or may not do so. She said the Commission had opted to err on the side of caution.

Mr. Wadelton made a motion to approve the amendments to Permit #IW-08-31 and submitted a lengthy written opinion (*Attached*) dated 12/8/10. He did not read his statement for the record, but said his reasons for supporting the amendments were all noted, and that he would like the Commission to reconsider some of the original conditions of approval.

Mr. LaMuniere said he would like the opportunity to study Mr. Wadelton's statement. He said he would type up his comments for the file (*Attached*) and that he had reviewed all of the data. His comments for the record included the following: 1) He cited the purpose of the 1974 Inland Wetlands and Watercourses Act to balance the need for economic growth and use of the land with the need to protect the environment and the ecology of the land. 2) He disagreed with Ms. Purnell's concern that the membership had changed significantly since the consideration of the original application. 3) He stated the Commission can not rely on speculative evidence to support a denial; any evidence must show conclusively that the proposed activity is likely to impact wetlands and/or watercourses. 4) He said he thought the proposed stormwater management facilities would be effective. He did not think the proposed system would cause irreversible damage to and/or irretrievable loss of wetland or watercourse resources. He noted he had been concerned about the impacts of seasonal high groundwater and about whether the basins were undersized, but after reviewing the consultant's report, he had concluded they had been sized to adequately handle the stormwater runoff. 5) He noted driveway #1 had been originally located in the upland review area, and he appreciated that this driveway had been largely

removed from this area. 6) He noted that several buildings originally proposed in or partially in the upland review area had been removed. 7) Regarding the lot coverage issues raised by Ms. Purnell and her concern that increases in lot coverage would impact wetlands and watercourses, Mr. LaMunier stated that lot coverage was a zoning issue and that a large percentage of the driveway surface would be constructed of pervious material. 8) He did not agree that the proposed erosion and sedimentation control measures were bound to fail, noting that these are often modified, even in small projects, as the job progresses and would have to be closely monitored. 9) He noted that Ms. Purnell had pointed out many proposed amendments that the applicant had not included in the detailed written list of amendments that had been requested by the Commission; the most significant of these being a proposed increase in the area that could be disturbed at any one time from 3 acres to 5 acres. He noted that Mr. Szymanski favored the revision to 5 acres, Mr. Allan had endorsed it, and the DEP would have to approve it, but said he still thought the construction sequences and monitoring requirements and how they relate to the construction timetables should be reviewed in detail for errors and inconsistencies. 10) He was glad the contractors consulted regarding the construction timetables had endorsed daily inspections, but he emphasized that there would be stricter monitoring needs if the Commission increased the area that could be disturbed to 5 acres. 11) He said he believed the proposed revisions could be approved in a revised motion of approval.

Ms. Cheney said she had found answers to all of her questions in the correspondence between Land Tech, Mr. Szymanski, and Ms. Purnell.

Mr. Bohan agreed with Mr. LaMunier's points.

Mr. Bedini reviewed a written statement dated 12/8/10 (*Attached*) that he had prepared. He said he found no evidence there would be either short term or long term adverse impacts to wetlands or watercourses, feasible and prudent alternatives had been addressed, the quality of the water flowing from the property into Kirby Brook would be improved, and the Commission's consultant had no conflict of interest. He stated that based upon the record he did not think it likely that the proposed revisions to Permit #IW-08-31 would pollute or impair wetlands or watercourses.

Mrs. Hill recommended to the Commission that it put off a decision on whether to increase the maximum area that could be disturbed during construction until it had more accurate information upon which to base its decision. She noted that based on the construction timetable submitted by Mr. Szymanski, it had been concluded the site work could be accomplished in one construction season, but she said that based on her review, the timetable was unrealistic, making it likely construction would extend into a second season.

Mr. LaMunier said he was not necessarily against increasing the maximum disturbed area to 5 acres, but said he did not know if even with four crews working, the site work could be completed in one season and he wanted the EO to check the timetables.

Mr. Bedini asked if the Commission could vote on all but that one proposed revision. Atty. Olson asked whether the "application" was complete. She said the Commission had the option of tabling the motion to allow staff time to review the information in the record to determine whether a decision could be made at this time.

Mr. LaMunier noted the timetables had been submitted late in the process and he was not comfortable with them. He questioned whether they were realistic and said he did not have so much of a concern about whether 3 vs. 5 acres would be disturbed at once as he was about whether the site work would last more than one year. He said more information was needed.

Mr. Bedini stated that if the applicant found he needed to make changes to the timetable approved by the Commission, he would be required to come back and request another revision. He said the

Commission had to vote soon and so had no time to research the record.

Mr. LaMuniere said the timelines and construction sequences had to be reviewed for consistency especially if there would be four crews working at once. He recommended the motion of approval be rewritten to include the requirement that a very defined work schedule be worked out at the pre construction conference.

Mr. Bedini noted the commissioners appeared to be in agreement that the proposed revisions could be acted on without a new application, and so he suggested that conditions of approval be discussed.

Mr. Wadelton reviewed the eight conditions of approval placed on the original permit and recommended the following changes: 1) In the second condition he thought Land Tech's recommended language should be used to refer to "a qualified professional in erosion and sedimentation and stormwater management" rather than "Land Tech." 2) He thought requiring the Commission's qualified professional to inspect the construction site three times a week was excessive and unjustified since the plans already called for the applicant to have his own erosion control expert on site and to have back up materials stored on site for use in case of an emergency. He thought the WEO should conduct these inspections. Mr. LaMuniere noted this was a very large project and questioned whether the WEO would have the time to devote to it considering all of his other responsibilities. Mr. Ajello agreed that three inspections per week was too many, said he was confident he would do a good job managing the site, and endorsed Mr. Wadelton's comments. He noted, too, that there was a clause that stated that in the event of a serious situation, the EO could call in a qualified erosion control expert. 3) Mr. Wadelton also objected to condition #4 requiring water quality testing because he thought it made no sense and was so vague as written that it was not enforceable. 4) He supported increasing the area that could be disturbed at any one time to 5 acres because he said the job would get done faster and overall there would be less chance of pollution.

Mr. LaMuniere noted the proposed project was very complex, and the increase to 5 acres would make sense if it shortened its duration, but a more realistic construction schedule than what was submitted was needed. He agreed with Mr. Wadelton that the water testing requirement was vague and said it was unlikely it would identify any pollution problems emanating from the site.

Ms. Cheney agreed the water testing requirement should be deleted and the area of disturbance increased to 5 acres.

Mr. Bohan noted the more land that is opened at once, the faster the job would get done, so he supported the increase to 5 acres.

Mr. Bedini said he also supported the increase to 5 acres and Mr. Wadelton's comments about water testing. He stated he was not comfortable turning over all of the monitoring to the WEO due to the rest of his workload, the complexity of the job, and the frequency of on site construction meetings. He thought the WEO should be involved, but that the Commission should have a professional erosion control expert responsible for overseeing the project.

Discussion continued regarding the conditions of approval and the following revised motion was agreed upon:

MOTION:

To approve the request by Wykeham Rise, LLC. to amend Permit #IW-08-31 for 101 Wykeham Road per the plans revised to 11/17/10 and with the following changes to the original conditions of approval: A cash performance bond of \$50,000 shall be submitted by the applicant prior to the onset of demolition and construction to be held by the Town of Washington throughout the construction and subsequent monitoring periods. These monies may be used by the Town to secure the site in the event that mal performance or neglect by the applicants or their agents creates a risk of adverse impact on

inland wetlands or watercourses. If the Town uses any bond funds pursuant to this condition, the applicants must, within 15 calendar days, replenish or restore the bond to the full \$50,000 amount before construction may continue.

2. A qualified professional in erosion and sediment control and stormwater management shall on behalf of the Commission, monitor job site conditions for any unanticipated erosion and sedimentation risks and to confirm compliance with application details and the use of best management practices. The applicant shall be responsible for all of this qualified professional's fees for these services and shall, no later than the date of commencement of construction, submit to the Commission a cash bond, which shall be held by the Town and which must be maintained in the amount of \$5,000 throughout all phases of construction and monitoring. The Town shall pay the professional's fees from the bond and the applicants shall replenish the bond to the full \$5,000 amount within 15 calendar days. The professional will issue a report to the Land Use Office, with a copy to the applicants after each site inspection, generally according to the following guidelines: Consultant's Inspection Schedule: Twice per month – during general construction phases and periods Seasonally – post construction and throughout the monitoring period At any time – at the request of the Land Use Enforcement Officer or because of mal performance, neglect, or serious weather situations Also, the Wetlands Enforcement Officer shall inspect the site once per week.

3. The site shall be monitored according to schedule for two (2) full years after the end of construction, and until the disturbed areas of the site are fully stabilized, whichever is later. The site shall not be deemed to be fully stabilized unless the Commission makes a specific finding to that effect. Long term maintenance of the stormwater management system shall comply with the maintenance schedule provided by the applicants as described on Sheet SES.1 of the site development plans. A log of maintenance activities shall be submitted annually to the Land Use Office in December. All wetland mitigation plantings, buffer plantings, and stormwater pond plantings shall be monitored for three (3) growing seasons. Dead plants are to be replaced by the applicant as needed during the monitoring period.

4. Weekly reports by the erosion control professional noted in the construction sequences shall be submitted to the Land Use Office throughout all construction phases. A rain gauge shall be installed on site and rainfall amounts recorded in the weekly erosion control reports.

5. At the time of the pre construction meeting, construction managers shall deliver detailed and specific construction sequences to the enforcement officer and to the Commission's consultant. These sequences should adhere to the approved sequences in the file and be augmented by more specific description and timing.

6. Any proposed change in the approved plans and/or the supporting documents must be reviewed by the enforcement officer prior to implementation. The enforcement officer may authorize minor changes or reductions in the scope of regulated activities provided that any such changes shall be reported to the Commission immediately and further provided that the Commission may require a permit modification for such changes if it finds that they may have a previously unanticipated impact on wetlands and watercourses. Any substantial changes such as changes in location, enlargements, modifications to septic due to DEP review, or changes that may in any way impact wetlands and/or watercourses must be approved by the Commission prior to implementation.

7. During the demolition and construction, unstabilized or unvegetated site disturbance shall be limited to 5 acres at any one time.

By Mr. Wadeldon, seconded by Ms. Cheney, and passed 5-0.

Mr. Bedini unseated Ms. Cheney and seated Mrs. Hill.

Consideration of the Minutes

MOTION:

To accept the 10/13/10 Regular Meeting minutes as written.

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

The 11/16/10 Public Hearing minutes were accepted as corrected.

Page 3: 2nd paragraph: first line: Change: "consulting engineer" to "wetland and soils specialist."

Page 3: 2nd paragraph: line #4: Change: "sediment basin" to "rain garden."

Page 6: 2nd line from bottom of page: Change: "has" to "as."

Page 7: #9 at end of first paragraph: Change "Mr. Szymanski" to "he."

MOTION:

To accept the 11/16/10 Public Hearing minutes as corrected.

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

The 11/23/10 Public Hearing-Regular Meeting minutes were accepted as corrected.

Page 2: 2nd paragraph: last line: Change: "resume" to "CV."

Page 4: 4th full paragraph: End of 2nd line: Change to: "...the appearance of, or there may be a conflict of interest...."

Page 4: End of 4th full paragraph: Add: "Mr. Ajello said there was no evidence in the file of any significant impact to the Bantam River."

Page 6: Under Kohn: Delete that a site inspection will be scheduled.

Page 7: Under Leary: Add: that the septic fields are located across the street from the house.

Page 7: Under Lodsins: Note: It was a box trailer that was removed.

Page 8: Top paragraph: third to last line: Change: "he" to "...because Mr. Ajello is the enforcement officer...."

MOTION:

To accept the 11/23/10 Public Hearing-Regular Meeting minutes as amended.

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

New Applications

Spring Hill Farm, LLC./69 Whittlesey Road/#IW-10-39/Exemption/Wine Room, Bathroom, Shower, Septic System:

Atty. Kelly and Mr. Neff, engineer, represented the property owner. The map, "Barn Septic System Plan," by Mr. Neff, dated 12/4/10 was reviewed. Mr. Neff explained the barn complex was existing, but has no facilities for the farm workers. He noted the proposed septic tank and leaching fields would be 200 feet or more from the Shepaug River and at least 100 feet from any wetlands, but 100 feet of piping was proposed within 100 feet of the wetlands. Mr. Neff explained that the construction of an accessory building on an existing concrete slab was also proposed. This 19' X 21' structure would house the bathroom facilities and the storage tanks for the wine processing system on the first floor with storage above. He noted both were farm related uses. Atty. Kelly listed the current agricultural uses on the property and presented an aerial photo that showed the location of the existing barn. He pointed out an existing farm road between the proposed building and the river and said it did not slope toward the river in this area. Mr. Neff said the slope was less than 2%. Mr. Neff noted the construction sequence was on the plan and that authorization from the owner was included with the application. Mrs. Hill said she would like to schedule a site inspection. Mr. LaMuniere noted there would be only minor disturbance within the 100 ft. setback. Mrs. J. Hill asked the applicant to provide a signed

mandatory conservation easement form for the file. Mr. Papsin asked why the piping could not be moved slightly further away from the wetlands. Mr. Neff said it would still be very close to the wetlands and that moving it would not improve the function of the septic system. It was the consensus that an agricultural use was proposed and that it qualified as an exemption. Mrs. Hill thought the \$60 state tax was required for exemptions. Mr. Ajello said he would find out.

MOTION:

Regarding Application #IW-10-39 by Spring Hill Farm, LLC. for a wine room, bathroom, shower, and septic system at 69 Whittlesey Road, to find in favor of an agricultural exemption, noting it is not necessary to require a permit.

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

Gordon/180 West Shore Road/#IW-10-40/Renovation of Drainage and Walkway, Stonewall, Landscaping:

Mr. Sabin, landscape architect, presented his plan, "Proposed Site Repairs and Improvements," dated 12/6/10. He listed the proposed activities, which included renovation of the exterior of the building and of the drainage, expansion of the parking area, removal of some trees, repairs to an unsafe stairway, installation of a permeable step stone walkway and a 4' X 6' shed, shoreline work, and landscaping. He noted that the area under the existing building would be inspected for wave and ice damage and that some of the existing concrete along the shoreline would be replaced with boulders. He said some of the shoreline would be kept in a natural state. Mr. Sabin also said that renovation of the dock was planned. Mr. Bedini asked him to submit a list of the materials that would be used. Mr. Martino asked if the existing stonewall was dry. Mr. Sabin responded that it was mainly dry and that the owners did not intend to completely rebuild it. Mr. Sabin submitted the DEP form. Mr. Ajello asked the applicant to submit a more detailed map so it could be determined whether the property is located within 500 feet of Warren. A site inspection was scheduled for Wednesday, January 5, 2011 at 4:00 p.m.

Other Business

Kohn/Couch Road/Complaint Re: Erosion Problems:

Mr. Ajello reported that he had asked Mr. Kohn for more information about what work he thought had been done upstream that may have caused the erosion of the streambank on his property, but to date he had not responded. Mr. Ajello thought it unlikely that any activity on the Montessori School property had impacted the streambanks. He noted the main branch of the brook follows Couch Road into Warren. Mr. Ajello said there did not appear to be any wetlands violation and he would so inform Mr. Kohn.

Enforcement Report

Chatfield-Schellerer/19 Tinker Hill Road/#IW-10-V01/Unauthorized Clearing:

Mr. Ajello circulated photos taken of the site on 12/3/10 and 12/8/10, which showed the inadequacy of the silt fence against the cleared hillside. He said he told the owners several times to double the silt fence. Mr. LaMuniere noted that at the last meeting, Mr. Ajello had been directed to issue a \$250 fine if the proper silt fencing had not been installed by the following week. Mr. Ajello said he had not done this due to problems with the mailing and receipt of the first fine. He thought the owners should be given 30 additional days in which to pay the first fine now that they had finally received that notice, before he sent out the second fine. The commissioners did not agree, saying that the violation had been ongoing for months and the owners were aware they are in violation and are responsible for maintaining the proper erosion controls. Mr. Bedini noted they had been informed that an erosion control plan was required whether or not the lot would be developed. He asked Mr. Ajello to move

forward with getting the proper erosion controls installed and issuing the second fine as quickly as possible.

Rosen/304 Nettleton Hollow Road/#IW-08-V2 and #IW-10-V03/ Unauthorized Work in the Streams and Clearing:

Mr. Bedini noted that Atty. Olson had advised the Commission that it did not have to prove adverse impact to the stream to take this matter to court, that the fact that the work had been done without permits was reason enough. Mr. Ajello will discuss the violations one more time with Mr. Rosen and if there is no satisfactory progress, it was the consensus that the Commission would begin enforcement proceedings. It was agreed the Commission should "follow through" in this case.

Administrative Business

MOTION:

To approve the 2011 Calendar as submitted.

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

MOTION:

To adjourn the Meeting. By Mr. Bedini.

Mr. Bedini adjourned the Meeting at 9:45 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,
Janet M. Hill, Land Use Administrator

******* ATTACHMENTS *******

TO: The Seated Members of the Washington, CT Inland Wetlands Commission

RE: Application to amend permit #IW-08-13, Wykeham Rise, LLC.

DATE: December 8, 2010

PLEASE NOTE: Following is my own opinion regarding the above referenced application, and does not necessarily represent the position of any other member of the commission, nor is it to be considered in way to represent the official position of the Commission.

As we begin to deliberate on the approval or denial of the application to revise IW-08-31, I believe it is important to the interests of the public and the applicant, as well as to the commission, that we revisit just what our responsibilities are, and the extent as well as the limits of our authority.

There will be impacts from this project, and it is possible that some might even consider them to be potentially harmful to the wetlands resources. This is true of every application! If there were never possible impacts to consider, there would be no need for a commission. The mere existence of harmful impacts alone is not sufficient reason to deny an application, or insist on modifications in all cases. The bar is set higher than that, and the question we, as a commission must consider is not whether there are potential impacts, but rather

"Are the impacts (if any) of the proposed application sufficient to offset the applicants' rights to the reasonable use, enjoyment and development of his property."

There were harmful effects inflicted on the environment by everyone that drove here this evening and to each of the public hearing sessions, but we all did it because we made a conscious decision to place a

higher value on our rights, convenience, and comfort than on the damage we caused. As individuals we are all free to make these decisions many times a day in all aspects of our life. In the case of land use decisions, however, we are required by law to thoroughly consider, evaluate, and balance the competing interests of total protection of the wetlands and watercourses vs. property rights fairly, intelligently, and consistently.

In Ms Purnell's letter of Nov 10 to the commission, as well as the previous letter of October 27 there are many references quoting the commission's own regulations as well as the "Inland Wetlands and Watercourses Act" concerning our responsibilities to preserve and protect the wetlands resources. Missing from all of those references however, was the section of the Wetlands Act, where under Section 22a-36, "Inland Wetlands and Watercourses. Legislative finding." the legislature tells us that part of their intent in passing the act was for:

"... providing an orderly process to balance the need for economic growth of the state and the use of its land with the need to protect it's environment and ecology ..."

This balance was also addressed by the Commissioner of the CT DEP, from whom this commission legally derives all it's authority, as well as by a representative from Region 1, EPA, in their speeches at the recent CACIWC meeting, where they both stressed the need to continue vigorous protection the environment while also addressing the "... need for supporting sustainable communities" while also "providing for reasonable economic growth and development....".

With careful consideration to all of the above, I will now address the following issues, as they apply to this specific application.

LOT COVERAGE

The first issue I will address is the subject of lot coverage, since I believe that it is the most straightforward of all the issues to consider. There was a great deal of discussion concerning the magical number of 10% lot coverage, debating the possible impacts resulting from changes in the overall plan as small as +/- 0.01%. It is important for the commission, and even more importantly, the public, to remember that the 10% maximum coverage is a regulation of the zoning commission, and not a hard and fast wetlands commission requirement. It is certainly reasonable to accept that impacts, be they harmful or benign, will begin at 1% of coverage and continue to increase up to the level of impacts resulting at 100% of lot coverage. It is also reasonable to consider that a given application may come before the commission where 5% or less lot coverage would be unacceptable, while another application comprising 80% coverage or more would be perfectly acceptable. What the commission must decide in any given application therefore is:

Is the percent of lot coverage for this particular application, as designed, great enough to result in an unacceptable level of harmful impacts to the wetlands and watercourses?

Concerning the changes proposed by this application for a revision to a permit that was already approved by this commission, it is my opinion that the record clearly shows, through the testimony of qualified experts, specifically Mr. Paul Szymanski, Licensed Professional Engineer, and Mr. Chris Allen of Land-Tech Consultants, the commissions' own consultant, that the small increase in coverage proposed will have very little, if any, impacts, and therefore should be of no further consideration by the commission.

THE INTERVENOR

This application has a member of the public who properly filed for status as an intervenor under the Environmental Protection Act of 1971, and I personally would have welcomed an intervenor that actually took an active part in the proceedings, providing qualified expert evidence to support the

specific allegations she made as they apply to the specific application under consideration that:

“... the regulated activities for which Applicant seeks a permit (or seeks to revise a permit) from the Commission involves conduct which has, or is reasonably likely to have, the effect of reasonably polluting, impairing or destroying the public trust in the air, water, or other natural resources of the state, in one or more of the following respects”

The petition then lists various allegations, enumerated under #4 (a) through (g) of the “Petition for Intervention Under General Statutes Section 22a-19(a)”.

Section (h) of that document refers to the septic system, which is outside the authority of the commission and under control of the state DEP, and is therefore not a proper concern of this commission.

The only supporting evidence that was listed for these allegations were 3 documents, presented as general references, that were previously submitted and considered in detail by this commission for the previously approved application, and therefore have no relevance to the application for a modification of that approved permit. Each of these claims was addressed in detail by Land-Tech, in Mr. Allen’s letter of November 23, 2010. I believe that it was the responsibility of the intervener to provide a more vigorous defense of her claims by having other qualified experts challenge the findings of Mr. Allen. Since this did not occur, I must accept Mr. Allen’s report in total, and find that the intervenors’ claims are totally without merit, and give no further consideration to them.

REASONABLE & PRUDENT ALTERNATIVES

Since we are considering a request to amend a previously approved permit, we need to confine our findings only to those aspects of the permit that have been changed or modified in a substantial way from the original permitted activities. We also need to keep in mind that while cost to the applicant is not in itself a consideration in our determination of reasonable and prudent alternatives, we are permitted, and I believe must, consider overall economic factors.

In comments from the public, it was claimed that since reuse of the existing buildings proposed in a previously submitted application was considered reasonable and prudent by the applicant that the same should apply in this application and using the existing infrastructure was preferred to demolition and new construction. For me to determine that what was reasonable and prudent for an affordable housing project is therefore equally reasonable for an educational institution defies logic as well as economic reality.

The only significant change from the original approved plan requiring consideration of alternatives was the relocation of a driveway into part of the upland review area. This was done for reasons that were considered beneficial to the efficient operation of the proposed university. While I personally believe that the proposed relocation would have resulted in virtually no additional impact to the overall site, other commissioners expressed concerns, and the applicant modified his plan accordingly, even though it could potentially have adverse economic consequences, by increasing lot coverage and therefore limiting other possibly desirable design features in the application before the zoning commission.

This was typical of the cooperation on the part of the applicant throughout these proceedings. In virtually every case where the commission, Land-Tech, or Ms Purnell brought up valid issues of concern, the applicant readily agreed to modify the plan accordingly. It is my opinion therefore that all reasonable and prudent alternatives to the changes proposed in this application were considered and implemented where necessary.

PUBLIC CONCERNS / COMMENTS

Other than those of the intervenor, virtually all of the comments, concerns, testimony and supporting

evidence in the public hearing was provided by Ms Purnell. This consisted of a great deal of verbal presentation supported by large volumes of both digital and hard copy data and reference materials. While I believe that Ms Purnell asked many reasonable questions that needed to be answered, the majority of the issues raised had previously been considered in the original approved application. In reviewing all of the printed materials presented, one thing that I found unusual was that while many claims of impacts were made, and many “general references” were listed, in almost every case no specific part of any of those documents was cited in direct support of any claim as it related directly to this application.

As I have stated above under “Reasonable and prudent Alternatives”, several of Ms Purnell’s claims and concerns were considered valid, and were properly addressed by the applicant. As to the rest, I believe that they were answered completely to my satisfaction by Mr. Szymanski and/or Mr. Allen.

During the course of the hearing, it was suggested that the commission not rely so much on the opinions of experts, but should rather “Think outside the box”. While that may be desirable in the proceedings of other commissions, it is not acceptable in wetlands issues where we are dealing with complex and interrelated relationships of cause and effect. It is essential that we avail ourselves of as much input from qualified professionals as possible. Naturally, in the case of conflicting opinions from essentially equally qualified individuals, it is solely up to each individual commissioner as to which expert testimony to accept.

Since it might be helpful to the commission, and informative for the public to briefly consider the qualifications of the main participants in these hearings to more effectively weigh their comments and opinions in these proceedings, the following is provided:

Mr. Paul Szymanski

– Licensed Professional Engineer, State of Connecticut, President of A.H. Howland.

Ms Teresa Rosen Peacocke, Intervenor, Resident

– Prominent NY attorney, English Barrister, and distinguished law professor.

Ms Marguerite W. Purnell, and Mr Christopher Allen:

Ms Purnell submitted her CV to the commission for our consideration of her qualifications, while Mr. Allen did not submit his in these particular proceedings. In the interests of complete information and fairness, I have included part of Mr. Allen’s CV. Since Ms Purnell’s CV runs 5 pages and Mr. Allen’s consists of 3 pages, I have condensed them down to the essentials of formal degree-producing education, Licenses and Professional Certifications, and relevant publications:

Marguerite W. Purnell

Appearing before the commission as a concerned member of the public

* Education

Princeton University

- A.B. in Geology

- Additional course work at 4 other Universities

* Licenses and Professional Certifications:

- CT DEP Certificate – “Municipal Inland Wetlands Commissioner Training Program”

Christopher P. Allen

Senior Associate. Land-Tech Consultants, Inc.

Acting as Technical Consultant to the Inland wetland Commission.

* Education:

Yale School of Forestry and Environmental Studies

- M.E.S. Environmental Studies (Land Use)

University of Bridgeport

- B.A Biology (Environmental Studies)

- * Licenses and Professional Certifications

- Certified Soil Scientist

- Professional Wetlands Scientist #226

- Certified Professional in Soil Erosion AND Sediment Control #355

- Registered Sanitarian, Connecticut #317

- US Fish and Wildlife Service, Habitat Evaluation Procedures

- * Publications: (applicable to the issues being considered in this application)

- "The Use of Vegetation for Non-Structural Sediment Control". Co-Author

Public Works magazine, March, 1984, Vol.115, No. 3

- "The Application of Natural Systems to Protect the Aquatic Environment". Co-Author

Presented at WCSU, October 1984

- "Protecting Connecticut's Water-supply Watersheds: A Guide for Local Officials" Co-Author

Prepared for, and published by the Connecticut DEP, January 1993

I will leave it to each commissioner to evaluate the credentials above and use their best judgment in applying relative weight to the testimony and evidence presented by each of the principal participants in these hearings and in their deliberations.

As for myself, after listening to all of the verbal presentations, reviewing all of the printed and digitally supplied materials, and giving due consideration and respect to the qualifications of Ms. Purnell, Ms Peacocke, the applicants' engineer and the commissions own consultant, I am convinced that not only will this project – if implemented, monitored, and supervised as designed - not have any significant harmful impacts on the wetlands and watercourses of Kirby Brook, the Town of Washington, or the greater Housatonic River watershed, but will also greatly reduce the harmful effects to those same resources as presently exist on the site. I therefore respectfully recommend that the commission approve this application.

CONDITIONS

Although I sat through all of the public hearings and reviewed all of the documentation presented at the public hearings when the original application was approved, I was an alternate, and therefore not a voting member.

Eight conditions were attached to the permit, several of which I found to be troubling at the time, and would like to address them now. If we approve this application for modifications to the original permit, it is permissible to also review the conditions and either eliminate some, modify others, add additional conditions, or any combination thereof.

The existing conditions, and my opinion concerning them are as follow:

1. A cash performance bond of \$50,000

No issue

2. Land Tech Consultants ("Land-Tech") shall, on behalf of the Commission,

While I believe that any hint of possible conflict of interest exists is totally without merit, it is important that the commission avoid even the appearance of possibility of conflict, I agree with Mr Allen's comments (letter to Mr. Bedini, Dec 6, 2010) that "*Land-Tech Consultants*" be changed to "*a qualified professional in erosion and sediment control and stormwater management*"

Consultant's Inspection Schedule

- * 3 Times per Week – During construction phases and periods involving earth disturbance or drainage work *

I find this requirement to be not only excessive, unreasonable, and unnecessary, but also resulting in unjustifiably excessive costs to the applicant that border on punitive.

- First, the plan already requires that a qualified erosion control professional will be responsible for implementing and maintaining the controls.

- Additionally spare erosion control materials will be stored on site, available for immediate emergency use.

- Third, we have a competent, reliable, enforcement officer, part of whose job it is to perform this type of monitoring already on staff.

- Lastly, although I was disappointed by the relative lack of interest and low attendance rates by the public during the hearing proceedings for our commission, there was a much larger turn out of rather vocal concerned members of the public at each of the Zoning commissions hearings. This leads me to believe that should this application be approved by both commissions and go forward, there will be a large number of “unofficial inspectors” keeping a close watch on every aspect of this project, and they will be ready and willing to contact the ZEO/WEO any time something appears to go wrong. Mr Ajello will then be able to go to the site and require immediate corrections to the problem.

This requirement should therefore be removed from the set of conditions.

3. The site shall be monitored according to schedule for two (2) full years after the end of construction, and until the disturbed areas of the site are fully stabilized, whichever is later. The site shall not be deemed to be fully stabilized unless the Commission makes a specific finding to that effect.

No issue

4. The applicants shall conduct water testing and shall submit the results thereof to the Land Use Office according to the schedule proposed by Hydro Technologies Inc. and as described in its letter of September 24, 2008.

This condition, as written, is vague, basically meaningless, and in all probability unenforceable.

While to the uninformed, this sounds like a reasonable and desirable requirement, it does not stand up to close consideration, and was clearly added by a member of the commission, enforcing requirements involving a subject that they were totally unqualified to deal with.

While I make no claims to “expert status” I will rely on over 10 years experience in the field of water quality monitoring, developing automated methods for performing many manual wet chemical analytical tests, and working on site with State and Provincial government agencies throughout North America developing their water monitoring methods, procedures, protocols and specifications.

Before this commission decides to require monitoring, they need to provide explanations, rational, and justifications for the following, referring to the letter from Hydro Technologies, Inc to Mr Szymanski, September 24, 2008:

1. Quarterly, before construction (to get baseline data):

Kirby Brook, like all streams and watercourses, is a living, constantly changing organism. Depending weather events, the chemical makeup of the water can and will change daily, and in some cases hourly. If we were to rely on quarterly sampling events before construction, we would need to delay any work for several years to get enough data for a truly representative “baseline” of the “normal” chemical makeup of the stream.

2. Should we ultimately obtain a scientifically defensible “baseline”, then what? What standards are we going to apply as to acceptable maximum levels in excess of baseline, as to the levels that will trigger actions, and what actions are we going to take?

3. Hydro Technologies recommends testing for 12 separate parameters. Does any member of the

commission understand what the significance of any of these pollutants actually mean, where they might come from in the vicinity of the sampling areas, or what elevated levels might mean to the health of Kirby Brook?

4. Considering that contaminants can enter Kirby Brook below the 1st sample point at the corner of Bell Hill Rd and Wykeham Rd, through runoff down Bell Hill onto Wykeham and into the brook anywhere along the entire boundary of the Wykeham property, how will the commission prove that the excess pollution measured in any specific “snap shot” sampling event originated on the University property? Did it possibly come from a failing septic system across the road, or from one of the neighbors being a little excessive with fertilizers on their lawn?

There are many other considerations that I would be happy to discuss with members of the commission if they feel it would be helpful. But for now, unless the commission can provide reasonable answers to the above, and come up with a meaningful, scientifically valid monitoring program, and proven to be point source in origin, specifically the Wykeham property, while additionally come up with a plan of action to deal with those problems, we are greatly exceeding our authority, causing unjustified expenses to the applicant, and serving no benefit to anything but the corporate bottom line at Hydro Technologies. This condition should be removed from the application

5. Weekly reports by the erosion control professional noted in the Construction Sequences shall be submitted to the Land Use Office throughout all construction phases

Leave in place. Also, it further justifies removal of the requirement for 3 times per week inspection schedule

6. At the time of the pre construction meeting, construction managers shall deliver detailed and specific construction sequences to the Enforcement Officer and the Commission’s Consultant

No Issue

7. Any proposed change in the approved plans and/or the supporting documents must be reviewed by the Enforcement Officer prior to implementation

Fine as is – however unnecessary, since this applies to all projects whether or not it is spelled out in the “conditions”

8. During the demolition and construction unstabilized or unvegetated site disturbance shall be limited to 3 acres at any one time.

Ample testimony and evidence has been presented to show that by increasing the permissible area of disturbance to 5 acres will actually reduce construction, time, require less repetitive movement of the same material, make erosion and sediment control systems more effective, and result in greatly reduced possibility of adverse impacts occurring. It is therefore my position that the condition should be changed to increase the allowable area of disturbance from 3 acres to 5 acres.

Thank you for your consideration.

Respectfully,
Stephen L. Waderton
Vice Chair,
Washington Inland Wetlands Commission

**Inland Wetland Commission
Washington, Connecticut**

To: Wykeham Rise, LLC, 101 Wykeham Road, Request to amend Permit # IW-08-31 File
From: Tony Bedini, Chairman IWC
Date: December 8, 2010
Subject: My personal reasons for approval to amend the permit and comments.

I joined the Commission on February 26, 2003 as an alternate. Became a commissioner on November 30, 2005 and have served continuously since 2003. Was elected chairman on January 14, 2009 and am currently serving in that capacity.

I have made 5 trips to the subject property; three on organized site walks and two as an individual. I have been involved in all of the previous applications on this property since my joining the Commission. This includes studying all of the materials submitted for the file from the applicant, consultants, general public, engineers, intervenors and associated technical materials submitted relevant to the applications. On this particular request to amend the previously approved permit, I have read several times each document submitted by the applicant, our consultant Mr. Chris Allan of Land-Tech Consultants, Inc., Ms. Purnell an interested member of the public, Mrs. Peacocke, an intervenor and others. Have studied the maps and drawings submitted by the applicant and other materials submitted by the people mentioned above. All materials in the file have been reviewed. Although I have an engineering background I am not a professional engineer or have a degree in subjects relating to wetlands and watercourses, therefore I must rely on the information and arguments of the professionals involved, our regulations and State Statutes along with my experience gained over the years serving on the Commission.

To review here each and every point put forth by Ms. Purnell, Mrs. Peacocke and others opposed to this request for an amendment, would require an unreasonably long report the material for which is all covered in the reports of the applicant and consultant. Therefore, after careful review of the relevant information I have determined that there is no evidence of adverse impacts either short term or long term to the wetlands or watercourse on this property or downstream in Kirby Brook. In fact this project will cause a significant improvement in the quality of water entering Kirby Brook when compared to the present conditions. The prudent and reasonable alternatives have been addressed by the applicant and I am satisfied with their findings. I see absolutely no issue with the consultant having been involved in the previous applications, and rather find it an advantage in that he has become very familiar with all of the aspects of the proposed work, potential problems and the methodology used in the solution of those potential problems. He has offered several suggestions and they have been incorporated in the revised plans for the project. There are no conflicts of interests with the consultant inasmuch as he has not been selected or promised the position as the monitor for the project. In fact it has not been discussed at the Commission level or with the consultant.

Based upon the record, I do not find that the proposed activities are reasonably likely to have the effect of unreasonably polluting, impairing or destroying wetlands or watercourses.

Respectively submitted,

Tony Bedini
Chairman, Washington Inland Wetlands Commission

NOTE FOR THE RECORD

Final Comments on the Request to Amend Permit No. IW-08-13, Wykeham Rise LLC

1. I believe that three important factors must be taken into consideration when appraising this

application.

First, the 1974 Inland Wetlands and Watercourses Act states that the purpose of the Act is to preserve inland wetlands and watercourses “by providing an orderly process to balance the need for the economic growth of the state and its use of its land with the need to protect its environment and ecology”. In this case we are concerned primarily with a permanent watercourse and wetlands which are not pristine, and we are looking at a permit revision to allow for the construction of a for-profit, private educational facility as a successor to two such facilities that preceded it on the land.

Second, to understand the potential impact of the proposed revision, it is necessary to be familiar with the extensive documentation and proceedings generated by the public hearing held in connection with the first Wykeham Rise Inn application (WR 1). It is noted that two voting members and two alternate members, now voting members, were present at those hearings. The fifth voting member on the proposed amendment request has been familiarizing herself with the WR 1 documents and proceedings.

Third, when looking at any application material, IWCs cannot, as per the Connecticut Supreme Court’s decision, rely upon speculative evidence in the record to support a denial: “Evidence of general environmental impacts, mere speculation, or general concerns do not qualify as evidence”. (River Bend Associates, Inc. v. C & IWC 2004, subsequently supported by two Appellate court decisions in 2007.) Moreover, that evidence must show conclusively that any proposed activity is likely to impact or effect the physical characteristic of wetlands and watercourses. I mention the above because in the evidence provided against the permit amendment request, quite a few statements were speculative or overly generalized regarding short- and long-term environmental impacts so that they cannot be accepted as hard evidence. Moreover, they were frequently directed not at the proposed amendments but at the previously approved application.

2. The major issue in the proposed permit amendment remains the assessment as to whether or not the storm water management system proposed for implementation will be effective in protecting the wetlands and watercourses on the property. There are other issues that I shall mention briefly below, but this is the key concern. After having reviewed the pertinent information generated during the proceedings for WR 1 and having carefully studied the technical exchanges among Ms. Purnell, the applicant’s engineer, Mr. Szymanski, and our consultant, Mr. Allan of Land –Tech Consultants, Inc., I believe that the proposed storm water management system as a whole, i. e., not only the storm water ponds, sedimentation basins and network of catch basins and pipes, but also the vegetated swales and rain gardens associated with proposed buildings will not cause, as our regulations state “irreversible damage to and/or irretrievable loss of wetland or watercourse resources”. In fact, that system will result in cleaner water flowing into Kirby Brook than it does at present and, based on the information provided, in a more controlled flow of water into the brook during major rain events. I mention this last point because I was concerned over the potential impact of seasonal groundwater level fluctuations on the capacity of Storm Water Pond No. 2 to handle major rain events, a concern shared by Ms. Purnell who considers the basin as undersized. On balance, I believe our consultant’s conclusion that the basin’s dimensions are adequate to handle such events is correct.

3. A contentious issue in the applicant’s initial revision proposals was the inclusion of new Driveway No. 1 directly into Kirby Brook’s 100-foot URA. We understand that this choice was motivated by the applicant’s need to minimize lot coverage by taking the most direct route to the property’s eastern entry point, but this is not an IWC concern, and we appreciate that Driveway No. 1 has now been largely removed from the URA. Similarly, it is noted that Dormitory Nos. 7 and 8 that were totally within the URA have been removed from the proposed permit amendment and that a similar building which was approved in the WR 1 application, two-thirds of which impinged on the URA, has also been removed.

4. Ms. Purnell raised a number of points regarding lot coverage calculations and the likelihood of

increased impervious coverage occurring in the future due to the nature of the proposed educational facility, fearing that such increases might in turn impact the handling capacity of the storm water management system. Such increases, should they occur, would be primarily a Zoning Commission issue, not an IWC concern unless they were severe enough to impact the wetlands or Kirby Brook. In this connection, it should be mentioned that Zoning regulations require that all driveways or areas used by vehicles be considered as part of impervious lot coverage calculations regardless of their composition. It should be noted that a major proportion of the driveways and parking areas proposed in this amendment will be made of grass pavers or pervious pavement, a fact which will contribute considerably to the direct infiltration of rain water into the substrata.

5. Ms. Purnell also surmises that the proposed sediment and erosion control measures are bound to fail at some point as such E & S measures always do in large-scale projects. The exchange between Ms. Purnell and Mr. Allan on this issue is informative if not conclusive, but members of the IWC already know that sedimentation and erosion control measures sometime need to be adjusted or modified during implementation, even for small projects. I do not agree with Ms. Purnell that the worst is always bound to occur for, if we push this argument to its logical conclusion, no large-scale project would ever be undertaken because it would be bound to go awry. I can name a number of complex applications, albeit not of the scale of the New Milford Walker Brook Farm Housing Development or the Washington Montessori School Project cited by Ms. Purnell, where erosion and sediment control measures remained stable and without major failures during project implementation.

6. The above considerations lead me to an important contribution of Ms. Purnell to the review of this application. She has pointed out that a number of modifications present in the documentation for the permit amendment had not been identified in Mr. Szymanski's letter of September 7, 2010, to the IWC even though the IWC had requested a detailed description of all such modifications. Chief among those was the fact that, although the Motion of Approval for WR 1 had specified that site disturbance would be limited at all times to three acres, the revision presented to the IWC was now using a five acre site disturbance limit. The reasons behind this omission elude me, but it has lead to an important discussion of the respective merits and potential impact on site conditions during construction of a three acre vs. a five acre limit of disturbance. In his letter of November 23, 2010, Mr. Szymanski understandably fully supports the five acre site disturbance limit as it would allow doubled up construction crews (four, if two contactors are working simultaneously) to carry out the majority of the site's excavation and construction activities in one year. This assumes that the weather will remain accommodating throughout the year and that no major unforeseen setback will occur during construction. Mr. Allan has endorsed this approach, stating that restricting soil disturbance to less than five acres as proposed in WR 1 would likely result in increased duration of soil exposure in each construction phase of the project, thereby increasing the risk of erosion and sedimentation problems arising during that time. However, given the complexity and intermeshing of the activities involved, I would like our Enforcement Officer (EO) to review the sequences of construction, detailed in sheets SEQ 1 to 4 to ascertain how they relate to the monthly construction timeline sheets attached to Mr. Szymanski's letter of November 27, 2010, inter alia, for congruence, overlap and overall timing. I am aware that a definitive sequence of construction cannot be advanced until the time of the pre-construction meeting if the IWC approves the proposed project amendment. I would also welcome our EO's views on this particular component of the application.

7. The above leads to the question of the monitoring of all activities proposed. I am glad to learn that the representatives of Moonlight Excavation LLC and Earth Movers endorse strict, daily and post-rain events of all sedimentation and erosion control measures should they be responsible for carrying out their respective portions of the project. This would clearly have to be part of – and in addition to – the IWC's own monitoring requirements. The Motion of Approval for WR 1 would need to be modified to

include changes in the site disturbance limit, revised timeline and monitoring requirements. Mr. Allan's comments in the last paragraph of his letter of December 6, 2010, are important, and his last suggestion should be included in the Motion.

8. In conclusion, I do not think that it is possible or necessary to review here all of the extensive exchanges of technical information on all the issues raised that have taken place among Ms. Purnell, Mr. Szymanski and Mr. Allan. I have touched mainly on those that I think have the most bearing on our responsibilities as an IWC. All this information is in the file as are the minutes of the public hearing. I have spent a considerable amount of time weighing this data, and in the final analysis, I conclude that the application presented is indeed an amendment to an approved permit and that the consideration of a new application is not warranted. I believe that we can approve the proposed amendments with some appropriate modifications in the initial Motion of Approval for WR 1.

Respectfully submitted,
Charles LaMuniere
12/8/10