

September 8, 2011

Special Meeting

5:30 p.m. Land Use Meeting Room

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

ALTERNATES PRESENT: Ms. Cheney, Mr. Papsin

ALTERNATE ABSENT: Mr. Martino

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

ALSO PRESENT: Mr. Szymanski, Mr. Klauer, Atty. Fisher, Mr. Allan, Mrs. Solomon, Ms. Purnell, Ms. Giampietro, Mr. Bent, Residents, Press

Public Hearing

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

Mr. Bedini called the public hearing to order at 5:35 p.m. and seated Members Bedini, Bohan, Hill, LaMuniere, and Wadelton. Mr. Wadelton read the legal notice published in Voices on 8/24/11 and 9/4/11 and the 9/8/11 list of documents in the file.

Mr. Szymanski presented the map, "Overall Site Development Plan," by Arthur H. Howland and Assoc., dated 7/8/11 and revised to 9/7/11. He then discussed point by point the 8/31/11 review letter to Mr. Bedini from Mr. Allan of Land Tech Consultants, Inc. He noted that he had responded in detail to Mr. Allan's report in his 9/7/11 letter to Mr. Bedini and said all of the revisions in the 9/7/11 plans that had been made in response to Mr. Allan's 8/31/11 review had been clarifications. Both of these letters are available in the Land Use Office, Bryan Memorial Town Hall.

Mr. Bedini asked the commissioners if they had any questions. Mr. LaMuniere said Mr. Szymanski's letter and the modified plans had just been received today and he had not yet had time to review them.

Mrs. Hill asked for clarification regarding revision dates. Mrs. J. Hill explained that this was actually the second request for a revision of Permit #IW-08-31.

Mr. Bedini asked the public for comments.

Ms. Purnell said she had prepared written comments based on the information in the file two weeks prior to the opening of the public hearing. She stated the documents submitted by the applicant today were in violation of Section 10.06 of the Inland Wetlands Regulations. She said the late submissions put the public at a disadvantage and said she did not think the Commission could continue with the hearing.

Mr. Bedini said it had taken the applicant time to respond to the report from the Commission's consultant and that it was difficult to make the process fair to all.

Ms. Purnell stated the proposed revisions to the permit were significant and so a new application should be required. She said the Commission had made an error when it approved Wykeham University as a permit revision. She questioned their accuracy and whether it was possible to implement the proposed work schedule and construction sequence according to the plan presented. She noted the site is very constrained and she compared it to other previous large developments in Town, which, she said, all had required daily monitoring and all had serious erosion problems in spite of the monitoring. These issues are detailed in her letter to the Commission dated 9/8/11, which is on file in the Land Use Office.

Ms. Purnell next raised the issue of transparency, citing what she thought were potential conflicts of interest that should have been disclosed to the Commission.

Ms. Purnell questioned why the Commission would waive the predevelopment quarterly water quality monitoring requirement that had been a condition of approval for the original permit. She reminded the Commission that the public relies on it to protect the Town's wetlands and watercourses and that erosion and stormwater management and the appropriateness of the proposal for the site were wetlands issues under the Commission's jurisdiction.

Mr. Wadelton said he had dealt with the issue of dropping the water quality testing in his 7 page memo to the Commission, written at the time the first request to revise Permit #IW-08-31 was considered. He noted he would be happy to listen to Ms. Purnell refute it.

Ms. Purnell complained that the Commission had squelched public participation in the past and had acted in an arbitrary and inconsistent manner. She noted that she had not been able to submit her letter at the last session of the Wykeham Terrace hearing because it was felt it might "taint" the proceedings, but tonight new information from the applicant had been accepted.

In response to Ms. Purnell's comments (detailed in her 9/8/11 letter and charts), Mr. Szymanski stated that the current culverts at 101 Wykeham Road were not undersized and had been only half full during Hurricane Irene, that it would be impossible for the developer to function if only 3 acres could be disturbed at any one time, that a multitude of stormwater treatment measures had been proposed for the site, and that he had worked previously with many members of the Commission and staff, but acted in a professional manner and had no conflicts of interest.

It was noted that the plans submitted tonight would be referred to Land Tech, Inc. for review.

Mrs. Solomon noted the frustration that she and other neighboring property owners have with the application review process and asked the commissioners not to take any shortcuts with this review due to the complexity of the project. She, too, questioned why the Commission waived the water quality testing requirement, saying that the applicant had not asked that this be done. Regarding enforcement and monitoring of the project once work has begun, she said that the WEO already has a full schedule and so the neighbors would be more comfortable with "significant" monitoring by an outside professional.

Mr. Bedini explained that the Commission reviews all information submitted and does not take shortcuts.

Mr. Wadelton said the water monitoring requirement had been a condition of approval by previous commissioners who were "well intentioned," but who "did not know what they were doing" and who had overstepped their authority. He said the cost to the applicant would not be justified because the information that could be obtained could not relate back to the Wykeham Rise project. He thought this condition was "almost punitive." Mrs. Hill said she had not agreed with the Commission when it voted to waive this condition.

Mrs. Solomon thought the Commission should let the applicant represent itself. She also said that although the Commission has the right to deny an application because it is incomplete, it seemed to her that the Commission no longer placed the burden of proving the application is complete on the applicant. She said some neighbors were hiring an engineer to review the plans.

Ms. Purnell said the monitoring was an issue of fundamental fairness; that previously all large projects had had water quality monitoring requirements. In comparison, she said this property was steep, has more erodable soils, is closer to a watercourse, and has seeps throughout it. She noted the Montessori School was supposed to have installed a water quality monitoring well, but that this had never been put in. She also thought the proposed work would intercept groundwater. She disputed the applicant's claim that the proposed work would result in better water quality in Kirby Brook, noting the property had not been used for 8-10 years and the grassed sections are currently meadow. She noted the Commission

had not required the property owner to correct an erosion problem that had been ongoing for three years. She concluded that water quality monitoring was imperative for pre, during, and post construction and said the Commission would already have 3 years of data if the condition of approval had not been waived.

Ms. Purnell said she was troubled by how accountability would be determined as the project goes forward due to its complexity and continued revisions. She noted that Mr. Allan of Land Tech had stated in his review that if all work was completed and installed per the plans, he believed there would be no adverse impact to the wetlands, but she asked how the Commission could be assured the plan would be carried out as approved and that it would be carried out without any changes.

Mr. Bedini said the Commission would take a closer look at oversight.

Ms. Purnell said again, that the project should be considered as a new application. She said it should require up to date data and documents, she said the current plans could not “fly” with the DEP, and she asked if the thermal impacts resulting from the expanded forebays had been considered.

Mr. Wadelton said he would look forward to reviewing the report from the neighbors’ engineer and said he hoped they would get it in on time.

Mr. LaMunier stated that the Commission could not reopen issues from the original application; it could only consider the impact of the proposed revisions. He said although it was clear that the public needs full access to all application materials and time to review them, input had to be cut off at a certain point.

Ms. Purnell stated that the Commission must consider all information presented. She said the Commission should assess whether the springs and seeps pointed out in the Wykeham inn application would be impacted, said the monitoring wells are not shown on the site plans, and said the Commission has not assessed whether wetlands on adjoining down slope property would be impacted. She also noted that some of the reasons on which the Commission had based its approval of the original application were no longer proposed, such as most of the porous driveway surface, the restoration of the driveway off Bell Hill Road, the green roof on the main building, and the greenhouse. She stated the inn had been approved for 44 rooms, while the university proposed 70, an increase in usage. She asked if the Commission had considered the impacts from the increase in the number of cars now that the porous pavement was gone.

Mrs. Solomon asked the Commission to make sure the latest proposal stands on its own merits.

Mr. Bedini said the public hearing would be continued to give everyone an opportunity to review the latest revisions. Atty. Fisher asked if Land Tech could get its comments in by the 9/14 meeting so that the Wetlands Commission could act before the next Zoning Commission meeting on 9/26/11. Ms. Purnell said that last minute comments from Land Tech would make it difficult for the public to review and comment on the report by the 9/14 meeting.

Ms. Purnell pointed out that per Section 10.06 of the Regulations, all material in support of an application is supposed to be submitted at least 15 days prior to the public hearing. This would mean that if the continuation of the hearing was scheduled for 9/28, the applicant’s response to Land Tech’s review would have to be submitted by 9/13.

MOTION:

To continue the Public Hearing to consider the request by Wykeham Rise, LLC. to revise Permit #IW-08-31 –school at 101 Wykeham Road.

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

Mr. Bedini said time of the Regular Meeting on 9/14 would be changed to 7:30 p.m. and continued the

hearing to 9/14/11 at 5:30 p.m. in the Land Use Meeting Room. The hearing was continued at 7:28 p.m.

Discussion Regarding Whether the Commission Wants Legal Counsel to Attend the Next Session of the Wykeham Rise, LLC. Public Hearing:

Regarding the submission of material for a public hearing, Mr. Wadelton stated the Commission could waive its Regulations if it thinks it reasonable.

MOTION: To enter Executive Session. By Mr. Wadelton,

There was a brief discussion. Mr. Bedini and Mrs. Hill did not think this was a legitimate reason to go into executive session. Mr. Bohan and Ms. Cheney thought there was no need. Mr. Wadelton spoke strongly in support and Mr. Ajello stated that Atty. Zizka had advised him that the Commission could go into executive session if there was a risk of litigation.

Seconded by Mr. Bedini, and passed 4-1.

Mrs. Hill voted No because she thought it was not necessary and there was not a legitimate reason for an executive session.

The Commission entered executive session at 7:37 p.m.

MOTION: To end the Executive Session. By Mr. Wadelton, seconded by Mr. Bohan, passed 5-0.

Executive session concluded at 7:45 p.m.

MOTION:

To invite the Commission's legal counsel to attend future sessions of the Wykeham Rise, LLC. public hearing and to contact the applicant for the appropriate bond to cover the cost of the Commission's legal representation.

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

Corbo/40 Nettleton Hollow Road/Request to Extend Permit #IW-06-34/First Cut:

It was noted that Mr. Corbo is now applying to Zoning for a first cut and that his IWC permit would expire before the next Zoning Commission meeting.

MOTION:

To grant Corbo Associates, Inc. a 2 year extension of Permit #IW-06-34 for a first cut at 40 Nettleton Hollow Road.

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

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

Mr. Bedini adjourned the meeting at 7:52 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Janet M. Hill

Land Use Administrator