

# November 15, 2010

## Public Hearing

7:30 p.m. Main Hall, Bryan Memorial Town Hall

**MEMBERS PRESENT:** Mr. Abella, Mr. Averill, Mr. Fitzherbert, Mr. Owen, Mr. Reich

**ALTERNATES PRESENT:** Mr. DuBois, Mr. Shapiro, Mr. Wyant

**STAFF PRESENT:** Mrs. Hill

**ALSO PRESENT:** Ms. Klauer, Mr. Klauer, Atty. Fisher, Mr. Szymanski, Mr./Mrs. Federer, Mr. Solley, Mr./Mrs. Frank, Mr. Wadelton, Mr./Mrs. Benn, Mr. Wilson, Mr. Collum, Mr./Mrs. Peacocke, Mr./Mrs. Minor, Mr./Mrs. Martino, Ms. McGarr, Mrs. Middlebrook, Ms. Giampietro, Mrs. Lasar, Mrs. Condon, Mr./Mrs. Solomon, Ms. Purnell, Mr. Mustich, Mr. Dutton, Mr. Williams, Mr. Parker, Mr. Payne, Residents, Press

Mr. Owen called the continuation of the Public Hearing to order at 7:30 p.m. and seated Members Abella, Averill, Fitzherbert, Owen, and Reich. Mr. Reich stated that he had listened to the October 25th tape. Mr. Owen read the list of documents submitted since the 10/25/10 session of the hearing and asked the applicant to review the changes to the plans made since that time.

Mr. Klauer spoke briefly about the following revisions. 1) Lot Coverage: To compensate for the increase in lot coverage due to Atty. Zizka's opinion that the grass paver emergency access to Dorm #1 must be counted as coverage, Dorms #7 and #8 were removed as well as the driveway access to the northeast end of the main building. Mr. Klauer did not agree with Atty. Zizka's opinion, but said he had made the changes anyway. The resulting coverage is 9.46% if the emergency access is not counted and 9.89% when it is counted. 2) Building Elevations: Elevations for all four sides of the main building were submitted. Mr. Klauer stated this building would be smaller than the main buildings for the other schools in Town. 3) Landscaping: Mr. Klauer said he had worked with Mr. Sabin, landscape architect, to propose additional screening so the buildings would not be visible from the roads or from other properties. 4) Traffic: Mr. Klauer stated the Commission had not required a traffic study for a previous approval in 2004 for a school with 200 students. Mr. Szymanski, engineer, said a revised traffic analysis had been submitted. This had assumed a 2% growth rate and that all vehicles would leave the site in the same hour. He had determined that it would not be possible to notice a difference in traffic when the school was in operation.

Mr. Klauer addressed the administration of the school noting that schools come in all shapes and sizes, that at John Dorr Nature Lab, for example, the longest class is 10 days, and said the Commission had previously approved schools for adults at 101 Wykeham Road.

Mr. Szymanski said he expected a letter of approval from the Fire Marshal who had reviewed the plans twice. His only concern had been the location of the proposed hydrants. Mrs. Hill will refer the final plans to Mr. Etherington.

Mr. Klauer did not see the need for the Commission to have its own consultant review the application. He noted that Land Tech had a few minor comments for the Inland Wetlands Commission and the building plans would be reviewed by the Building Official.

Mr. Owen asked if all overhangs that extend more than 2 feet had been included in the lot coverage calculations. Mr. Szymanski said they had.

Mr. Owen noted the parking philosophy in the current Regulations was to require the fewest number of spaces to do the job. However, he stated that since the applicant was proposing only 103 parking spaces, he had to understand that this would limit the activities, which could be conducted on the property. He asked whether there was room for more parking on site. He said that treating the emergency access as a driveway in terms of lot coverage would make it available for additional parking.

Mr. Owen summarized Atty. Zizka's previous communication, which stated that the applicant did not have to prove what he is proposing is a school, but this was with the understanding that if approved, the permit would be for a school only and any other activities would not be allowed. Other activities would become enforcement issues. He said how the proposed use would operate on the property was an important issue as that would impact parking and traffic.

Mrs. Peacocke noted that the square footage of the footprint of the main building had been revised upwards. Mr. Klauer stated the footprint had not been enlarged, but the coverage calculation had been adjusted to include the balcony overhangs.

Mrs. Peacocke noted two dorms would be removed, but asked what the total number of dorm rooms would be. Mr. Klauer said it would remain at 61.

Mrs. Peacocke read her letter dated 11/15/10 in which she raised many issues. These included the following concerns. She noted Mr. Klauer had previously stated that Wykeham University would not be accredited. She said it was unlawful in Ct. for a university to operate without accreditation and this made the proposed use contradictory to the Regulations and unlawful. She said the applicant had said the Swiss Hospitality Inst. had been unaccredited, but she pointed out it had been a "two year accredited college in hotel management." She also corrected statements by the applicant that the SHI had offered classes to the general public in addition to its proposed 120 students, saying it had offered classes to American high school graduates and older foreign students only. She did not think that the proposed 60+ double occupancy rooms made sense as there would also be day students and the total student population could not exceed 120. She noted there were three lecture halls with a total capacity of 309 proposed, plus other facilities which, when used to capacity, could accommodate "hundreds." She noted the applicant had stated Wykeham U. would share its facilities with other schools and asked that this intention be clarified. She compared the traffic to the proposed school to that generated by the previous school on the property, saying at the Swiss Hospitality Inst. there had been only 71 students enrolled, first year students could not have cars, and only 6 students commuted. She asked if students would be offered financial aid, saying this was important to know because if so, there were accessibility and diversity standards that must be met. She was concerned that the applicant was including uses not permitted in the district as part of the school operation. These included an inn, recreational area, and restaurant. She asked whether non students would be permitted to use the school facilities. She questioned whether education was the primary use if a student could lodge at the school for 24 hours but enroll for only one 45 minute class. She disagreed with Atty. Zizka, saying the Commission should not look at the proposed school as an enforcement issue, but should determine whether all of the proposed uses are permitted uses. Mr. Owen read from the 9/10/10 and 11/4/10 communications from Atty. Zizka on this issue. He noted who would be permitted to use the facilities such as dorm rooms, recreational facilities, and dining room, was a legitimate concern of the Commission.

Mr. Parker interrupted with what he called a point of order. Mr. Owen stated this was not a point of order, but allowed him to read a statement for the record. Mr. Parker asked that previous information and statements dated 7/26/10 from Mr. Baldwin be included in this file and he asked for the recusal of Members Fitzherbert and Reich. Mr. Owen explained it was up to each member to determine whether or not he should participate. Mr. Fitzherbert and Mr. Reich said they would not recuse themselves.

Mr. Owen noted there were many seats available in the main building and questioned whether they could all be occupied at the same time. He said there was a limitation on the number of people that could be accommodated at one time due to the limited number of parking spaces proposed.

Mrs. Peacocke noted that when it considered the inn application, the Commission had been so concerned about the number of parking spaces proposed that an overflow parking area had been proposed. She said the Commission had not said at that time that the limited number of parking spaces proposed for the inn would limit its operation.

Mr. Fitzherbert asked whether 120 students would be the total enrollment or the number allowed at any one time on campus. Mr. Klauer said it was the total enrollment.

Mr. Averill asked if the internet users would have access to the facilities on campus and if non married couples would also have access.

Mr. Minor read the 11/10/10 letter from Mr. Gendron. Mr. Gendron objected to the broad definition of “school,” said the applicant provided contradictory information, and complained that although the applicant was not sure of the need for the school, an “oversized, maxed out” facility was proposed. He said that to disallow how the property would be used would ignore the issue of whether it was appropriate for the neighborhood. He noted the physical characteristics of the proposal look like an inn/spa, not a school. He also asked that a detailed business plan be submitted.

Mr. Minor said he encourages schools, and would encourage this one if it was scaled down to an appropriate size for the property.

Mr. Federer read his letter dated 11/15/10. He was concerned that “students” would be permitted to sign up for a 45 minute course and then qualify as a Wykeham U student to use the school facilities. He asked how long a student would be entitled to stay on campus when registered for such a course and whether his spouse and children could stay as well. He asked what the school’s intention was regarding serving alcohol on campus saying this was in his mind a “critical determinant” in differentiating a spa/resort/inn from a school. He said he would welcome a legitimate school, but thought the current proposal was for a spa/resort by another name.

Ms. Purnell submitted an analysis of the Special Permit standards compared to the information contained in the application. This document was dated 11/14/10. She said she would provide it digitally so it could be emailed to the commissioners. She stated she was concerned about the size and scope and hoped it would be scaled down. She believed that all travelways were not included in the lot coverage calculations and the proposed development was maxed out in both coverage and height of the main building. She compared the volume of the existing structures to those proposed and found they would be 8 times larger in mass than what currently exists. She said she was concerned that this was not compatible with the neighborhood. She raised many concerns regarding the proposed stormwater management facilities and lot coverage. She questioned whether the proposed pervious surfaces were proposed in areas where the supporting substrata was adequate and

why some areas previously delineated as wetlands were no longer identified. She noted this would be the only school in Town without its own water supply and questioned whether adequate separation distance between the water and septic systems was maintained. She also questioned whether the two proposed 30,000 gallon water tanks could be buried as proposed due to the high groundwater and hydrostatic pressure in the area. She noted that per FEMA maps there were two flood plains downstream of the property and that any undersizing of the stormwater system could impact those downstream areas. She also stated that future DEP reviews could trigger the necessity for additional revisions to the plans.

Mr. Fitzherbert noted that the DEP usually takes part in the design of water systems. Ms. Purnell responded that DEP had no experience with this particular site. She stated there were wetlands, a large ledge outcropping, and high seasonal groundwater in the area proposed for the water system. Mr. Fitzherbert thought it would be unusual if the DEP determined the tanks could not be buried as proposed.

Mrs. Giampietro said she was concerned about impacts to Kirby Brook, she noted the property is not being maintained by the owner, and she suggested that might have some bearing on the future use of the property.

Mrs. Solomon read her letter dated 11/15/10. She noted the plans now showed that Dorm #1 would be expanded by 827 square feet and would house 14 rooms. She said this expansion was on the periphery of the property, close to neighbors, and in an area where steep slopes would make the proposed buffer ineffective. She said there were large gaps in the landscaping that the new buildings would be visible from adjoining properties for years. She noted most of the proposed development was close to the boundary lines, said the property was not an eyesore until the current owner purchased it, and concluded that the owner's disrespect for the neighboring community should be taken into consideration by the Commission.

Mr. Solomon also submitted a letter dated 11/15/10. He said he agreed with a statement by Mr. Owen that the Zoning Commission's task was not to solve the problem of the Wykeham Rise property, but to weigh the merits of the current application and determine whether the current regulations are being followed. Therefore, Mr. Solomon said it was critical to determine whether the factors that had led to the denial of the inn application have been cured by the current application. He stated that the occupiable square footage had increased over that in the inn application, and the number of guest rooms had increased to 61. He said the number of parking spaces had not increased, although there were more potential users. He added that the deletion of the 55 space overflow parking lot did not delete the need for it. He did not think the proposed use was appropriate for this particular site due to the "extraordinarily small margin of error" for lot coverage. He also stated that entrance/exit safety issues and sightlines had not been addressed and that the applicant could not landscape his way out of scope and scale issues.

Mr. Dutton submitted an article from the 11/10/10 New Milford Spectrum.

Mr. Parker read his letter dated 11/15/10 regarding the inadequacy of the floor plans and elevations submitted. He said they were a very small size, had no scale, and when comparing them to the proposed site plan, the elevations do not match up. He said using the plans submitted, it was impossible for the Commission to determine whether the proposed main building was in compliance with the maximum height requirement. He complained that the dorm rooms were suites, just as the inn had had and that they were not accurately labeled on the floor plans. He counted 44, while the applicant said there are 61. He said it was not good enough that the applicant stated the plans "appear" to meet ADA requirements and noted there was no ADA parking proposed at the pool. He noted that the main building, while having a

smaller footprint, was now actually larger in floor area because the wings now have three stories each. He said a conservative estimate of the occupiable square footage of the main building was 70,000, which was inappropriate for the residential zone. He noted that to address the problem of lot coverage, the applicant had removed the access to the laundry and garbage pick up rather than decrease the number of rooms. In conclusion, he stated that only 15% of the proposed square footage was allocated to learning opportunities and that 3 times more space was for luxury accommodations than was set aside for education.

Mr. Shapiro asked the applicant to clarify when instructions would be offered. He asked how the instruction would relate to the rate of occupancy of the dorm rooms.

Mr. Averill asked the applicant for a detailed curriculum and academic calendar, and written detailed mission statement and academic policy.

Ms. Purnell noted that laundry facilities were not shown on the plans and asked about the traffic this would generate.

Mr. Klauer responded to some of the above comments and questions: 1) Regarding who would be able to stay in the dorm rooms and use the facilities, he said many universities allow spouses to stay in campus housing and said schools often allow non students to use the facilities – Shepaug lets residents play on the tennis courts, the Primary School lets basketball leagues use the gym, the Gunnery has open skate times at the hockey rink, etc. He said the schools in Town grant large scale access to the public, whereas Wykeham University did not intend to do so. He stated that if students have family and take a course that requires them to stay overnight, then the family will have the option of staying overnight. 2) The number of students on campus at any time would be 120. 3) On line students would be separate and would not have access to the property. 4) Alcohol would not be served as Connecticut prohibits the sale of alcohol at schools. 5) Courses would be offered daily/year round from 7:00 a.m. to 9:00 p.m. 6) Mr. Klauer said he did not have the detailed written descriptions that Mr. Averill had asked for.

Mr. Owen asked about the accessway to pond #1, shown on the plan with grass pavers. He asked if the Inland Wetlands Commission had required it and if it was necessary. Mr. Szymanski responded that it was a best management practice.

Mr. Shapiro asked again if courses would be held even on holidays. Mr. Klauer said they would.

Mr. Fitzherbert asked him to clarify whether courses would be held on Christmas. Mr. Klauer said that on major holidays there would most likely be no classes.

Mr. Owen noted that boarding schools do not send students home on Sundays.

Ms. Klauer said that in the case of a class that was held the day before a holiday and would resume the day after the holiday, the student could stay in the dorm.

Mrs. Peacocke noted that Mr. Klauer had stated a student's family could stay in the dorm room, while Ms. Klauer had said his spouse or partner would be allowed to stay with him. Ms. Klauer clarified that a spouse or partner, but no children, would be allowed to stay with the

student in the dorm room.

Mrs. Peacocke asked if the applicant agreed that if a student attended a course on site there would be no reason why his family could not be accommodated in a local bed and breakfast or inn. She also asked, what was the relationship of the education being provided to the ability of a spouse or family being allowed to occupy a dorm room.

Mrs. Peacocke asked if it was still the case that if you signed up for one 45 minute course, you could stay overnight in a dorm. Ms. Klauer said this was so.

Mr. Parker again complained that the floor plans did not show 61 dorm rooms. Mr. Szymanski said he would submit plans to confirm the room count.

Mr. Federer noted that while Mr. Klauer had stated that no alcohol would be sold on campus because it was not permitted by the state, this did not preclude someone from applying for a liquor license or the revision of the state regs in the future. He asked for a guarantee that liquor would not be served. Mr. Owen said Mr. Federer was not in a position to make this demand, but that the Zoning Commission could decide to do so.

Mrs. Solomon noted that when asked at the Inland Wetlands meeting how many dorm rooms were proposed, Mr. Szymanski had advised Ms. Klauer not to answer.

Ms. Purnell addressed the travelway to pond #1. Although she agreed it was not likely that students would drive on it, she said the maintenance schedule called for it to be mowed monthly, it was the access to the potable water supply and for water for fire fighting and to the generator she assumed would be needed for the pump house. She said it would be used when repairs to the water system were needed and for delivery trucks. She said it should be included in the lot coverage calculations. Mr. Szymanski responded that the lawn mower would not compact the access, that the water system is monitored quarterly and the sediment would be removed from the pond only once a year, and that another water system he monitors has not needed repairs for 5 years.

Mr. Owen noted the Public Hearing could be continued to give the applicant an opportunity to address the questions raised/information requested tonight.

Mrs. Hill asked if the proposed walkway surfaces would meet the ADA requirements because if changes were needed, it could impact the lot coverage calculations. Mr. Szymanski said he would consult with the Building Official.

Mr. Szymanski also stated he would look into the proposed screening along the Solomon boundary.

Mr. Reich noted that several people had objected to the size and scale of the project and asked them what numbers would make the proposal acceptable to them, was downsizing critical, and would they provide specifics.

Mr. Averill asked if anyone was present to speak in favor of the application. Mr. Owen stated the matter would not be decided on the basis

of public opinion, that the Zoning Commission would make its decision based on the Zoning Regulations.

Mr. Payne asked to what degree the Commission would investigate the other schools in Town to ensure they were adhering to the same criteria as Wykeham U. He asked if the Commission made an annual review of all schools. Mr. Owen responded that the Commission looks at schools to the extent of the information presented at the Public Hearing.

Mrs. Peacocke said that Mr. Reich had raised an important question. She advised the Commission that all parties had continued to negotiate after the mediation efforts (on the denial of the inn application) had failed. She said that substantial agreement had been reached, and although it concerned the inn, the issue of size and scope was relevant to the property in general.

On behalf of the applicant, Atty. Fisher submitted his letter dated 11/15/10 in response to Mrs. Federer's 10/22/10 letter concerning restrictive covenants on the Wykeham property. In his lengthy response he detailed Judge Pickard's decision that determined these covenants were "null, void and of no legal effect because they were void at the time they were first conveyed in 1990." He provided a copy of Judge Pickard's decision and noted Mrs. Federer had appealed to the Ct. Supreme Court. Although this matter is in court, Mr. Owen noted that the Commission's attorney had advised it to proceed with consideration of the application.

Mr. Benn said he was not opposed to development if it was modest in scope and in keeping with the country nature of the area. He asked if the Commission would 1) require a 10% bond to protect the Town and neighbors against what they might have to suffer and 2) would the Commission require a thorough business plan. Mr. Owen stated the Commission could require a bond, although its attorney recommended an irrevocable letter of credit; the amount to be determined by an engineer. He noted the Zoning Commission had required a \$50,000 cash bond for the Montessori School. He explained that the school's business plan was not within the Commission's purview.

Mr. Owen asked for the following information from the applicant as soon as possible: 1) clarification regarding the number of dorm rooms proposed, 2) the detailed written academic calendar, curriculum, school policy, and mission statement requested by Mr. Averill, and 3) "a second look at the proposed screening."

Mr. Parker asked that the Commission also require elevations and floor plans with the proper scales and details so the public would be able to understand the proposal. Mr. Szymanski stated as far as scale relating to elevation, the maximum height was shown on the plans. He stated the plans had been done by Moisan Architects and he would submit larger and to scale floor plans. Mr. Owen noted that buildings higher than what Zoning allows are not permitted. Mr. Parker asked that every sheet contain a scale and the occupiable floor area as had been done for the inn application. He also asked when Moisan Architects had last been involved with the application. Ms. Klauer said it had been in 2008.

**MOTION:** To continue the Public Hearing to consider the Special Permit application: Section 4.4.10 submitted by Wykeham Rise, LLC. for a school at 110 Wykeham Road to Monday, November 22, 2010 in the Main Hall, Bryan Memorial Town Hall. By Mr. Owen, seconded by Mr. Fitzherbert, and passed 5-0.

The public hearings begin at 7:30 p.m. This will be the third hearing on the agenda.

Mr. Owen asked the applicant to get all material in as soon as possible.

At 9:42 p.m. Mr. Owen continued the Public Hearing.

FILED SUBJECT TO APPROVAL

Respectfully submitted,  
Janet M. Hill  
Land Use Administrator