

## **Attachments #2 and 3 to the minutes of November 23, 2009**

The following two documents, submitted by Mr. Averill at the Zoning Commission meeting of November 23, 2009, were not included when the minutes were posted on December 2.

### **ATTACHMENT #2**

#### **DEFINITIONS: Inns and Resorts**

Inn - A commercial facility for the housing, and perhaps feeding, of transients.

-Shall have no more than 20 guest rooms.

-Inns with dining/drinking facilities shall be located on state roads with 500 ft. frontage.

-Dining/drinking facilities shall be primarily for the use of Inn guests; size of each shall be limited to 50 persons as per state fire code square footage requirements.

-Dining/drinking facilities, administrative office (front desk), housekeeping facilities, and a minimum of 40% of the guest rooms shall be contained within a single structure.

-All guest rooms not contained in the main structure, must be contained in other structures. Said structures shall be clearly subordinate to the main structure.

-A separate, single-family dwelling unit for exclusive use by inn owner or full-time inn manager may be allowed at the discretion of the Zoning Commission.

-Separate banquet/meeting facilities are disallowed. (See "Resort")

-Recreational facilities, such as (but not limited to), swimming/wading pool, tennis/squash courts, spa/health club, etc. are disallowed. (See "Resort")

-Separate commercial activities, (ie "gift/pro shops") are disallowed, except for sales of toiletries, Inn souvenirs, post cards, etc. sold at front desk.

- Resort -A commercial facility for transient guests where the primary attractions are recreational and banquet/meeting facilities and activities.
- Shall have a minimum 500 foot frontage and be located on a state road.
  - Shall have a maximum 50 guest rooms.
  - May have separate dining and drinking facilities. Dining/drinking facilities shall be contained in the same structure.
  - Guest rooms may be in separate individual structures, (i.e. “cabins”)
  - Recreational facilities such as, (but not limited to) swimming/wading pools. Tennis/squash courts, spa/health club, etc. are allowed.
  - Separate banquet/meeting facilities are allowed. Said facilities shall be limited to 150 people max. occupancy per state fire code.
  - Separate retail commercial activities limited to 1 gift/pro shop are allowed.

### **ATTACHMENT #3**

#### **In regard to the letter, dated November 11, 2009, from Matthew Klauer to David Owen, Chairman, Zoning Commission, Washington, Ct.**

I wish to thank Mr. Klauer for his efforts to bring to light the history of the hospitality industry in Washington. I also wish to thank Mr. Klauer for helping to illustrate that his proposed project at Wyckham Rise is not allowed by current zoning regulations.

To wit:

In Exhibit A of Mr. Klauer's letter, there is a list of several of the hospitality houses that were in business in Washington at around the turn of the 19th century. Nowhere in this exhibit is the word “inn” used in small case letters. The word “hotel” is used four times, the term “motels” is used once, and the term “large resort” is used once. I agree with Mr. Klauer that his project at Wyckham Rise is indeed consistent with these descriptions. Although some of the establishments use the word “Inn” in capital letters in their name, their description as hotels, motels, and resorts in small case letters is the true description. Hotels, motels, and resorts are not allowed in Washington as per the Regulation 2.3.2.

Exhibit B is a copy of a communication, undated, to The Weekly Star for publication on April 2, 1990, regarding the approval by the Zoning Commission, for a school and an inn at Wyckham Rise. As the school was devoted to the hospitality industry the “inn” was an educational adjunct to that function. The requirement in the approval for “a minimum of 5 rooms available to the public”, is no different than our

approval of a hockey rink at Rumsey Hall with the stipulation that time at the rink be made available to the public. Such an approval would not allow a private ice rink business to be built.

Exhibit C cites a list of signatures in favor of Mr. Kauer's project at Wyckham Rise. I wonder how many signatures Mr. Klauer would have collected if he had also asked if approval of his project would allow the construction of a similar facility next door to where the signatories lived?

If the Town of Washington wishes to go back into the hospitality business, so be it. Let us revise our Zoning Regulations and, most important, define the terms. What we should not do is to allow uses in the R-1 zone that are prohibited by our regulations, i.e. hotels, motels, resorts, restaurants, taverns, health clubs, and gift shops to sneak around our regulations under the nebulous, undefined umbrella of an "inn".

Thank you

Ralph Averill

11/23/09

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## November 23, 2009

Posted: December 2, 2009

**Present:** David Owen, Ray Reich, Gary Fitzherbert, Ralph Averill, Lou Abella

**Alternates Present:** Andy Shapiro, Alternate

**Absent:** A.J. DuBois Alt., Harry Wyant Alt.

**Staff Present:** Janet Hill, Shelley White

**Others Present:** Residents, Press

Mr. Owen called the meeting to order at 7:30 pm.

Seated: Mr. Owen, Mr. Reich, Mr. Fitzherbert, Mr. Averill, Mr. Abella

### PUBLIC HEARINGS

There was no Public Hearing Scheduled for this meeting.

### REGULAR MEETING

**Consideration of the Minutes**

The October 26, 2009 Zoning Commission Regular Meeting Minutes were considered:

**Motion:**

to accept the Zoning Meeting Minutes of October 26, 2009, as submitted, by Mr. Owen, seconded by Mr. Fitzherbert, by 5-0 vote.

Mr. Owen welcomed Mr. Reich to the Zoning Commission, congratulated Mr. Fitzherbert and Mr. Shapiro and thanked Ms. Friedman for her years with the Zoning Commission. Mr. Owen thanked Steve Wadelton for his volunteer work in the Land Use Office.

Mr. Owen read a statement he composed, dated November 23, 2009 (attachment #1) regarding "several misconceptions concerning zoning-related matters".

**New Application(s)****Mahan/54 Sunny Ridge Road/ Special Permit: Section 13.11.3/Detached Accessory Apartment:**

The Commission looked at the Property/Boundary Survey, prepared for Christopher Mahan, 54 Sunny Ridge Road, dated June 2009, by T. Michael Alex and reviewed the November 23, 2009 Administrative Report. There was a discussion regarding the shared driveway indicated on the survey. Several Commissioners thought the proposed driveway configuration was not a shared driveway as required per Section 13.11.3.h.

**Motion:**

to schedule a Public Hearing on December 28, 2009 to consider the Special Permit Application submitted by Mahan/54 Sunny Ridge Road/Section 13.11.3/Detached Accessory Apartment, by Mr. Owen, seconded by Mr. Abella, by 5-0 vote.

Public Hearings begin at 7:30 pm and this will be the second hearing on December 28th.

**Lake Waramaug Country Club/22 Golf Links Road/Special Permit: Section 6.4.13/ Construct Storage Shed:**

Ms. Hill distributed a spec sheet for the ESD Waste 2 Water, Inc., Chemical Storage Buildings, which showed there were containment provisions in case of a chemical spill. There were no other issues raised in the 11/23/09 Administrative Report. It was noted the purpose of the building was to store pesticides.

**Motion:**

to schedule a Public Hearing on December 28, 2009 to consider the Special Permit Application submitted by Lake Waramaug Country Club/22 Golf Links Road/Section 6.4.13/Construct Storage Shed, by Mr. Averill, seconded by Mr. Abella, by 5-0 vote.

This will be the third hearing scheduled on December 28th.

### **Other Business**

#### Revision of Zoning Regulations/Eating and Drinking Establishments in the New Preston and Depot Business Districts by Special Permit:

A Public Hearing has been scheduled for the December 28, 2009 at 7:30 pm.

#### Possible Revision of The Zoning Regulations/Section 12.14 Re: Special Exceptions for Generators and Other Noise Generating Equipment:

Ms. Hill stated that the ZBA should have draft language for the December 28th Zoning Commission Meeting.

#### Possible Revision of the Zoning Regulations/Section 13.9/To Allow Inns on Town Roads:

Ms. Susannah Gray of Washington, CT read and submitted a written statement dated 11/23/09 to the Zoning Commission (on file in Land Use Office) requesting that both Mr. Reich and Mr. Fitzherbert recuse themselves from any discussion regarding the revision of Section 13.19. Both Mr. Fitzherbert and Mr. Reich said they had no conflict of interest. Mr. Averill stated that it was his opinion that a discussion regarding section 13.9 should not proceed without a definition of what an Inn is in the Town of Washington Zoning Regulations. The Commission discussed the possibility of creating a subcommittee to discuss the issues of defining inns and whether to allow them on town roads.

#### **Motion:**

to form a Subcommittee, consisting of Mr. Averill and Mr. Fitzherbert, to have preliminary discussions about the possibility of revising Section 13.9 and adding a definition of “Inn” in the Zoning Regulations and report back to the Zoning Commission, by Mr. Owen, seconded by Mr. Abella, by 5-0 vote.

Mr. Owen reminded the Commissioners that the meetings of this subcommittee must be publicly noticed and minutes must be taken.

There was a discussion among the Commissioners regarding how the definition of “inn” would be helpful before going forth with a possible revision to Section 13.9. Mr. Averill distributed some ideas that he wrote (Definitions: Inns and Resorts, attachment #2). He was concerned that words such as inn, tourist home, hotel, motel, resort, etc. are not defined in the Zoning Regulations. Mr. Averill read his letter dated 11/23/09 (attachment #3) in response to the letter dated November 19, 2009, from Mathew Klauer asking the Commission to reconsider its position regarding inns on town roads. In Mr. Averill’s letter he states that he thinks it is important that the Zoning Regulations are revised and most importantly, first, the terms are defined which would specifically state what is allowed or prohibited in an R-1 District.

Mr. Fitzherbert commented that he would not have voted for the change in regulation 13.9 and was sorry that he could not have been at that meeting because of serious health issues. He stated he was against the change and believes it was specifically targeted at a possible pending application. Mr. Fitzherbert stated that the Town Attorney had said that the original Wykeham Rise application was grandfathered under the previously written regulation. Mr. Fitzherbert stated that he thought it is important that the Zoning Commission be educated and trained to know and practice legally and ethically and stated that all property owners should be treated fairly. Mr. Owen stated that he felt members of the Zoning Commission interpreted the language and voted to revise Section 13.9 to best of their understanding. Mr. Shapiro stated that he

wanted to make clear that the decision to clarify Section 13.9 had been under consideration long before an application had been submitted.

#### Report on 9/26/09 Land Use Academy:

Ms. Hill distributed a summary of the legal matters that were discussed at the Land Use Academy Seminar.

### **Privilege of the Floor**

Mr. Fitzherbert stated that he visited 16 Church Street on three separate occasions.

Mr. Rob Parker mentioned that Mr. Fitzherbert voted in favor of the Wykeham Rise Application in December of 2008. He asked Mr. Fitzherbert what standards he considered when voting to approve the Special Permit for the Wykeham Rise Application. Mr. Fitzherbert stated he would not comment. Mr. Owen stated that this application is under litigation and did not think it was appropriate to discuss at this meeting.

Ms. Valerie Friedman asked if Mr. Owen could reread item #7 of his statement that he read previously and asked that copies be distributed. Mr. Owen read item # 7 concerning conflict of interest. It was noted that this statement is on file in the Land Use Office and will be published with the minutes on the Town of Washington Website. Ms. Peacock formally invited Mr. Fitzherbert and Mr. Reich “to reconsider the question of whether or not they should properly recuse themselves from any action of the Zoning Commission that relates to, directly or indirectly, the Wykeham Rise property.”

### **Communications**

Mr. Owen stated that Ms. Jane Boyer submitted a letter at the beginning of the meeting. Ms. Boyer stated that she did not think it appropriate to read now because the matter had already been addressed earlier in the meeting. Mr. Owen stated it would be in the file.

### **Enforcement**

#### Discussion/16 Church Street/Compliance with the Condition of Approval:

Mr. Owen read Mr. Ajello’s Zoning Enforcement Report, dated November 23, 2009 regarding this property (on file in Land Use Office). Mr. Ajello stated that the site is less cluttered and submitted photos of the property. Mr. Fitzherbert stated that on his visits he noticed residents had items on their back porches. He stated, from most angles, any toys and equipment on these porches are not visible from the road. He stated there is a storage area and it is being used. He stated the front of the buildings were “immaculate.” Mr. Kelly Boling, of 22 Church Street, stated “This project has been a better neighbor than I anticipated and I don’t see anything going on there that strikes me as a problem.”



Second, it has been said that the reason the former Texaco station in the Depot is vacant is that the Zoning Commission won't allow anything to be built there. That is not the case. In fact, the Commission made an extraordinary effort, a few years ago, to broaden the possibilities for all lots in the Depot, including that one, by significantly relaxing its requirements regarding setbacks, lot coverage, and parking. Those changes remain in effect, and they continue to enlarge the range of options for any potential developer in that district. The Zoning Commission has not received, much less turned down, an application for that site, and one of the reasons, presumably, has to do with the economics of profitably doing business in a low-traffic area—the same reason the gas station closed in the first place. In addition, there are complications involving state and federal requirements regarding the environmental remediation of contaminated soil. The difficulties faced by the owner of that property do not involve Washington's zoning regulations.

Third, it has been said that the Zoning Commission denied an application for a moderate-income housing development. I assume that the development referred to is Myfield, and I will remind everyone that the Zoning Commission has never denied a Myfield application or any other application for moderate-income housing. In fact, the Zoning Commission considered two Myfield applications, and approved both of them.

Fourth, it has been said that the Zoning Commission denied an application for school playing fields. I assume that the reference is to a private-school property on South Street. I will remind everyone that the Zoning Commission has never denied, or approved, an application for playing fields on that site. Such an application was submitted, but it was withdrawn by the applicant in 2001, apparently in response to objections raised by neighbors. The one application we did act on for that site—for an environmental education center—we approved.

Fifth, it has been suggested that the town's 112 pages of zoning regulations are not always a reasonable basis for making zoning decisions. I would remind everyone that all zoning commissioners are bound by law and by their oath of office to apply those 112 pages of regulations in exactly that way. Zoning commissioners can seek to change regulations that seem to them to “defy common sense,” but they can't simply ignore or overlook regulations they happen to disagree with. If an application complies with the town's regulations, it must be approved; if it does not, it must be denied.

Sixth, I have heard the recent election referred to as a referendum on a particular decision by the Zoning Commission. I would remind all zoning commissioners that, by law, no zoning decision is made by referendum. A zoning commission is bound to adhere to its regulations, even when doing so may be unpopular, because property owners have a right to know what they can legally do with their property and to be confident that the regulations will be applied evenhandedly. When residents of the town, or members of the Zoning Commission, feel that existing regulations are inadequate or misguided or outdated, they can seek to amend them through the process described in the regulations and in the Connecticut statutes. That happens all the time.

Seventh, members of planning commissions, zoning commissions, and zoning boards of appeals are prohibited by state law from participating in the hearings or decisions of those same commissions in any matter in which they are directly or indirectly interested in a personal or financial sense. According to our attorney, Michael Zizka, a “personal interest” in such a decision “may include a close friendship or other association with the applicant. It may also include situations in which a member may gain a personal business advantage as a result of his or her actions on an application. Where a commission member is disqualified for one of the foregoing reasons, that fact must be entered on the records of the commission.” In addition, members of those three commissions are not allowed to appear for or represent others before any of those same commissions, whether they are paid to do so or not.



Eighth, it has been suggested that the town's zoning regulations are subsidiary to its Plan of Conservation and Development. This is a subject I have discussed at some length over the years with two of our attorneys, and I want to summarize those conversations briefly. The role of the Plan of Conservation and Development in land-use matters is established by state law, but is also circumscribed by it. The Zoning Commission must consider the Plan when adopting or revising regulations—and it must submit proposed regulation changes to the Planning Commission for review, and, if the Planning Commission recommends against adoption, the Zoning Commission can approve such changes only by a two-thirds-majority vote, which on a five-member commission means a vote of 4-to-1. But the Zoning Commission is not bound by the Plan of Conservation and Development—and if it were so bound it would often face an irresolvable dilemma because the Plan includes many elements that are, or can be, mutually exclusive.

Ninth, when citizens become members of a zoning commission, they sacrifice several rights, among them the right to freely discuss certain kinds of zoning matters with other people and, especially, with other members of the commission. Connecticut's Freedom of Information Act requires that almost all meetings of zoning commissions be conducted in public and recorded, and the courts have been very broad in defining what constitutes a meeting. If one member of a five-member zoning commission has a telephone conversation about a pending application with one other member of the commission, and then discusses the same application with a third member of the commission, those three commissioners can be considered to have conducted an illegal meeting, since a majority of the commissioners were ultimately involved, even though no more than two of them were in contact at any time. If such meetings are to take place legally, the public must be notified in advance, and a public record must be kept. Even two members discussing zoning matters can present a Freedom of Information problem. I asked our attorney if a two-member subcommittee of the Zoning Commission would be required to post notices and agendas, and keep minutes of their discussions, and he said yes—that even two members acting together in that way would be considered an “agency” for the purposes of Freedom of Information. The soundest course for all commissioners, I believe, is to save all such conversations for formal meetings and public hearings, to keep the decision-making process as transparent as possible to ourselves and to those we represent.

Tenth, decisions by zoning commissioners must always be made without bias or predetermination. I will quote from Attorney Zizka's own excellent book, “What's Legally Required?”—which I highly recommend to all members of the commission. He writes, “No member of any commission should publicly take a position on the granting or denial of an application before the application has been formally heard and considered by the commission. . . . Each commission member should avoid making statements that could suggest the member has made up his or her mind about an application before its merits have been fully considered. The purpose of this rule is to protect and preserve public confidence in the commission's ability to make a fair decision.” We should all take care to follow this advice, not only to maintain public confidence in our impartiality but also to increase the likelihood that, if we are subsequently challenged, a court will uphold the decision we made.

David Owen  
Chairman, Washington Zoning Commission