# November 24, 2008

***PLEASE NOTE:***
***When these minutes were originally posted on Decenber 5, 2008, three attachments were inadvertently left out. They have now been added.***

**Public Hearing – Regular Meeting**
7:30 p.m. Land Use Meeting Room

**MEMBERS PRESENT:** Mr. Abella, Mr. Averill, Mr. Fitzherbert, Mrs. Friedman, Mr. Owen

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

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

**ALSO PRESENT:** Mr. Klauer, Atty. Fisher, Mr. Carey, Mrs. Wildman, Mr. Worcester, Mr. Surnow, Mr. O'Neill, Mrs. Hardee, Mrs. Addicks, Mr./Mrs. Peacocke, Mr. Appleyard, Mr. Adams, Mr. Papsin, Mrs. Condon, Mrs. Weber, Atty. Hill, Mr./Mrs. Federer, Ms. Giampietro, Mr./Mrs. Rickert, Mr./Mrs. Solomon, Mr. Charles, Residents, Press

**PUBLIC HEARING:**
**Donovan/53 Kinney Hill Road/Special Permit: Section 13.11.3/ Detached Accessory Apartment**

Mr. Owen opened the Public Hearing at 7:32 p.m. and seated Members Abella, Averill, Fitzherbert, Friedman, and Owen. Mrs. Friedman read the legal notice published in Voices on 11/12/08 and 11/19/08.

Mr. Owen read the 11/24/08 ZEO report and listed the documents in the file.

Mr. O'Neill, architect, was present. He noted that site constraints and environmental issues had generated the proposed pod construction and floor plan. He presented floor plans, A1.01, revised to 9/10/08 and a model of the proposed dwelling. Both a 1000+ sq. ft. accessory apartment and an approximate 400 sq. ft. guest quarters were proposed. These were connected to the main portion of the house by open screened porches with radiant floor heat. Mr. O'Neill thought this should qualify as one house as all of the components were connected by one continuous roof. He also thought the guest quarters should not qualify as an apartment because no kitchen was proposed, although it had a full bath and separate entrance. He stated, too, that Mr. Donovan had submitted a letter that he would not rent out either space while he owns the house.

Mr. Ajello did not think the guest quarters could be considered an accessory apartment because it was less than the miniumum required size

of 400 sq. ft.

Mr. Owen questioned whether it was possible to have a detached accessory apartment in the middle of a house.

Mr. Ajello read Section 21.1.2, the definition of attached accessory apartment, and said he did not think the proposed apartment met this definition because it did not share a common wall with the main dwelling. Mr. O'Neill said it did because the screened porch was heated space. Mr. Owen disagreed because the screened porch was open.

Mr. Fitzherbert asked if the guest quarters could be used as a separate residential unit. Mr. O'Neill said it was a caregiver space with no kitchen and that it was separated from the apartment by the screened porch to provide some privacy.

Mr. Fitzherbert asked for the combined sq. footage of the guest quarters and apartment. Mr. O'Neill responded it was 1700+ sq. ft., which was too large for a single accessory apartment.

Mr. Fitzherbert and Mrs. Friedman thought the plans represented a 1700+ sq. ft. apartment. Several alternate reconfigurations that might comply with the Regulations were noted. These included enclosing the screened porch between the house and apartment with glass so it would qualify as an attached apartment and including the second screened porch in the sq. footage of the guest quarters so it would be large enough to qualigy as a detached apartment, relocating the guest quarters to the porch area between the house and apartment, and detaching the guest quarters from the rest of the building.

Mr. O'Neill said the applicant wanted to keep the house as designed, but Mr. Owen noted the Regulations had to be applied. Mr. Ajello did not think a variance could be applied for as there was no hardship.

Mrs. Weber, adjoining property owner, asked to see a map that would show the location of her property in relation to the proposed house. The map, "Site Plan," AO.01, dated 8/9/08 was reviewed. Mr. O'Neill noted the proposed house was only 17 feet tall and Mr. Ajello said it would not be seen from the Weber property.

Mrs. Friedman stated she was not ready to vote as the proposal was unlike anything the Commission had ever seen.

Mr. Averill did not understand how the guest quarters could not be considered part of the accessory apartment.

Mr. Abella did not think the Regulations allowed the house as proposed.

Mrs. Friedman and Mr. Owen thought that Mr. Ajello's suggestion to enclose both porches so that 1) the apartment could be considered attached to the house and 2) the second porch could be added to the guest quarters to bring it beyond the minimum sq. ft. for a detached apartment could work. As proposed, the Commission did not think there was sufficient attachment without enclosing the porches and so the current proposal could not be approved.

Mr. O'Neill said he would consult with the owner and with Mr. Ajello to try to resolve the problems.

MOTION: To continue the Public Hearing to consider the Special Permit application: Section 13.11.3 submitted by Mr. Donovan for a detached accessory apartment at 53 Kinney Hill Road to 12/15/08 at 7:30 p.m. in the Land Use Meeting Room, Bryan Memorial Town Hall. By Mrs. Friedman, seconded by Mr. Abella, and passed 5-0.

At 8:10 p.m. Mr. Owen continued the hearing to 12/15/08.

This public hearing was recorded on tape. The tape is on file in the Land Use Office, Bryan Memorial Town Hall, Washington Depot, Ct.

**REGULAR MEETING**

Mr. Owen called the Meeting to order at 8:11 p.m.

**Consideration of the Minutes**
The 10/27/08 Regular Meeting minutes were accepted as corrected. The date on the header should be 10/27/08 throughout. On page 5, the 2nd line from the top should read, "…referral had been made, and the report received…."

MOTION: To accept the 10/27/08 Regular Meeting minutes as corrected. By Mr. Fitzherbert, seconded by Mr. Owen, and passed 5-0.

The 10/28/08 Special Meeting minutes were accepted as corrected.
Page 1: 7th line from bottom: Change "transfer pads" to "transformer pads."
Page 2: First word: Change "he" to " Mr. Szymanski."
Page 2: 2nd paragraph from bottom: Add sentence: "Mr. Etherington had judged the 16 ft. driveway width as sufficient for equipment access."
Page 3: 2nd paragraph, 2nd line: Clarke is the correct spelling.

MOTION: To accept the 10/28/08 Special Meeting minutes as corrected. By Mr. Fitzherbert, seconded by Mr. Averill, and passed 5-0.

The 11/10/08 Special Meeting minutes were accepted as corrected.
Page 11: 1st paragraph under Section 13.9: End of 12th line: Add: "the only affected applications in memory concern the Mayflower Inn."
Page 12: 1st paragraph: last line: Delete the entire last sentence.
Page 12: 2nd paragraph: 2nd sentence: Change it to: "He said that Atty. Zizka had told him that he was drawn to Atty. Hill's interpretation, but could not say that Atty. Fisher's interpretation was wrong."

MOTION: To accept the 11/10/08 Special Meeting minutes as corrected. By Mrs. Friedman, seconded by Mr. Owen, and passed 5-0.

**New Applications**

**Devereux Glenholme School/81 Sabbaday Lane/Special Permit: Section 4.4.10/Performing Arts Center:**

Mr. Owen read the 11/24/08 ZEO Report. Mr. Worcester, architect, showed on the map, "Property Plan," by Mr. Worcester, dated 8/19/08, where the art center addition had been previously approved and where a new separate art center was now proposed. It was noted the proposed location was hundreds of feet from any property lines.

MOTION: To schedule a Public Hearing to consider the Special Permit: Section 4.4.10 submitted by Devereux Glenholme School for a performing arts center at 81 Sabbaday Lane on December 15, 2008 in the Land Use Meeting Room, Bryan Memorial Town Hall; immediately following the first hearing, which begins at 7:30 p.m. By Mr. Owen, seconded by Mrs. Friedman, and passed 5-0.

**Conlon/6 Valley Road/Special Permit: Section 13.11/Detached Accessory Apartment:**
Mr. Owen read the 11/24/08 ZEO Report and noted that the applicant had requested the public hearing be scheduled for the January meeting. Mrs. Friedman noted that the required variances and Inland Wetlands Commission approval had not yet been obtained and that the Commission normally waits until the application is complete to schedule a hearing. She recommended that the Commission wait until its December meeting to determine whether the application was ready for a hearing. Mr. Owen noted the hearing could be scheduled at the applicant's risk.

MOTION: To schedule a Public Hearing to consider the Special Permit application: Section 13.11 submitted by Mrs. Conlon for a detached accessory apartment at 6 Valley Road on January in the Land Use Meeting Room Bryan Memorial Town Hall; immediately following the second hearing; hearings begin at 7:30 p.m. By Mr. Owen, seconded by Mr. Fitzherbert, and passed 4-1. Mrs. Friedman voted No because the required variances and Inland Wetlands permit had not yet been granted.

**Pending Application**
**Wykeham Rise, LLC./101 Wykeham Road/Special Permit: Sections 13.9 and 4.4.1/Inn:**

It was noted that all of the commissioners had read Atty. Zizka's 11/24/08 letter received this afternoon. Mr. Owen said his goal was not to vote on the application at this meeting, but to have an idea by the end of the meeting which way the Commission would vote so that a draft motion could be reviewed by Atty. Zizka before the next meeting. He asked the commissioners for their thoughts about the application.

Mrs. Friedman had circulated her reasons for denial at the last meeting, but said she had revised it and had added reason #14. She passed out the revised document. (Attached-Addendum 1) Lot coverage was discussed. 1) Use of Flexi-Pave: Mrs. Friedman read #13 from her document, in which she state that the applicant had not informed the Commission until 10/28 that he proposed to use Flexi-Pave for the walkway surfaces, that the Commission had not determined that this material fit its regulatory language concerning pervious materials, those walkways, then, should count as coverage, and therefore, the application exceeded the maximum 10% lot coverage allowed. Mr. Owen thought that Flexi-Pave was a pervious material that should not be counted as coverage due to the phrase, "such as" in the definition of lot coverage, meaning that not every material that could be exempt was listed. . Mr. Owen asked what evidence was there in the record to show that Flexi-Pave was not similar to the materials listed in the definition. Mrs. Friedman said its porosity, look, feel, appearance, and the fact

that it was not a natural material made it different. Mr. Shapiro agreed, saying that it might be a better, even more porous material, but it was different than the natural materials listed. Mr. Fitzherbert agreed with Mr. Owen and said a porous material that is good for the environment should not be excluded from the list. Mr. Abella suggested a condition of approval could require that natural materials such as pea stone or gravel be used for the walkways. Mrs. Friedman did not think the Commission should be pressured into making an 11th hour determination about whether Flexi-Pave qualified as a material appropriate to exclude from the lot coverage calculations. Mr. Averill agreed. 2) Overflow Parking: Mr. Owen noted that whether the 55 overflow parking spaces should count as lot coverage was a "huge" concern for him and he summarized Atty. Zizka's comments in his 11/24/08 letter. He asked whether the purpose of the Overflow Parking Plan was to demonstrate there would never be any parking along Wykeham Road or if it more accurately reflected the intensity of the proposed use. He noted that according to Atty. Zizka, the Commission would have to determine whether those parking spaces would likely be needed on a regular basis because Zizka did not think that grass surfaces that were used only during "unusual circumstances" should count as lot coverage. Mr. Shapiro thought that due to the capacity of the proposed facility there was reason to believe that extra spaces, maybe not 55, but a "good number," would be necessary to accommodate vehicle parking. He thought there that absolutely there would be more vehicles using the facilities than could be handled by the minimum 103 parking spaces proposed. Mr. Owen thought the Mayflower Inn was a similar use with a similar number of parking spaces, which have adequately served it, and so asked what would be the basis for requiring more parking at Wykeham Rise. Mrs. Friedman objected to the comparison to the Mayflower because she said that the Commission had been advised not to compare them. Mr. Owen noted that when figuring the number of required parking spaces for the various functions proposed, Mrs. Friedman had used more seats than the applicant had specified. Mrs. Friedman said she had used the capacity numbers that were determined by the Health Dept., Fire Dept, and Building code; sources, she said, that could not be discounted. Mr. Owen asked if she had used comparable numbers when reviewing the Mayflower parking. Mrs. Friedman said the current application had to be considered on its own. Mr. Owen thought the number of parking spaces would be a natural limit for the number of vehicles. Mrs. Friedman disagreed, pointing out, for example, that both the GW Tavern and Rumsey Hall School have a limited number of parking spaces and rather than limiting the number of vehicles, it just moves the parking out along the roads. Mr. Fitzherbert stated that the Health Dept. computes the maximum capacity, but this is seldom reached. He said the business plan itself, not the Health Dept. maximum figures should be used to compute the number of parking spaces required. Mrs. Friedman stated that even if the Health and Building code numbers for the main building were cut in half, 238 spaces reduced to 119, the 56 parking spaces provided near this building by the applicant would still be inadequate. Mr. Shapiro said these figures suggest that the overflow spaces would be used on a regular basis. Mr. Averill questioned per Zizka's letter, what the dividing point was for parking from time to time vs. on a regular basis. Mr. Fitzherbert agreed there would be overflow parking at certain times, but said it was not possible to determine how often. Mr. Shapiro noted that according to Zizka's letter, the Commission could not limit the ownership of the property to a single entity and suggested that if there were separate owners in the future, the number of parking spaces needed could increase. Mr. Owen said the Commission could not speculate on future use. Mr. Fitzherbert said it would be a future enforcement issue. Mrs. Friedman pointed out that the Commission had been counseled in Zizka's 11/6/08 letter to be careful about approving anything that would rely on enforcement to make it work. Mr. Ajello noted that the current lot coverage is .2% under the maximum allowed, so if they were found to be needed, 7 to 12 spaces could be added within the allowable limit. Mrs. Friedman stated that her concerns about the inadequacy of the parking provided would not be resolved with the addition of only 12 spaces. It was agreed there was a dramatic difference of opinion regarding the adequacy of the proposed parking.

The scale and intensity of the proposed use were discussed. Mr. Owen and Mrs. Friedman thought the key question to be addressed was whether the proposed size, scale, and intensity of the proposed use were appropriate for the proposed location. Mr. Averill said that even

though the size of the operation had been reduced three times, it was still very large. He questioned whether it was an appropriate use for a country lane and noted that many trees along Wykeham Road would have to be cut, which would work against the preservation of the area's rural character. He did not think the scale of the main building was appropriate for the area, calling it "Six Flags Over Washington," and said it was not a country inn, but a destination resort. He also did not think the parking and entrance were adequate. Mr. Abella said he was comfortable with the proposal, noting that buffering was proposed. Mrs. Friedman stated there was too much development on too small a site. She did not think the coverage numbers provided were credible. She said the proposed use did not meet the residential district definition in Section 4.1 and noted that if approved, the property values in the area would go down. She said the Town's citizens were counting on the Commission to uphold its Regulations; an enormous responsibility that should be taken seriously. Mr. Fitzherbert stated that the overall project met the 10% lot coverage standard. He agreed with Mr. Averill that the main building was very big, but said that it and the other buildings proposed were positioned so that they would not be as visible as the existing buildings. He said that the purpose of Zoning is to encourage the most appropriate use of land in Town and he could not imagine a more appropriate or less intensive use than that proposed. He noted the applicant had addressed concerns as they had been raised and that 250 letters of support had been received. He said the proposal meets the criteria for a low intensity use as an inn and that it is not a destination resort. Mr. Owen again stated that he was concerned with the size and the scale of the proposal. He referred to a 2003 ZEO Report regarding the Mayflower spa, which called the Mayflower a relatively low intensity use that was screened from the road and did not generate much noise or traffic. He compared this to The Gunnery School, which he considered to be a high intensity use generating both noise and traffic. He stated that since there had previously been a school at 101 Wykeham Road, the neighbors knew when they purchased their properties that there was the potential for another high intensity use on this property. Mr. Owen noted that the Zoning Commission had approved larger buildings in the past. He said the proposed main building would be sited and landscaped in such a way to reduce its visual impact. Mr. Shapiro stated that it was not just the one large main building that was large, but also pointed out that the other buildings proposed were larger than most of the existing buildings in the neighborhood. Mr. Owen agreed, but said they would be set back from the road. Mr. Owen suggested an inn would be self regulating because patrons would not stay at an inn that generated nuisances. Mrs. Friedman noted that the Regulations state there shall be no nuisances such as noise or light at or beyond the property line and the applicant had not demonstrated that this would be accomplished. Mr. Owen said there was a difference between a nuisance and noise. Mrs. Friedman thought this was not relevant because the Regulations state there shall be no noise at or beyond the property line. Mr. Fitzherbert did not think this matter should be considered, saying the Commission had never discussed it before. Mrs. Friedman cautioned the Commission not to interpret the Regulations differently than they are written. For example, she said the Regs state that the existing rural road network must be adequate to accommodate the proposed traffic; not that the town road should be improved to accommodate it. Regarding property values in the area, she noted the Commission had received three reports from appraisers that they would decrease, and she did not see how these could be ignored.

The existing rural road network was discussed. Mr. Owen referred to Atty. Zizka's 11/24/08 letter, which cautioned the commissioners against using personal experience to judge road capacity, but said it could be used when considering congestion and safety hazards. He then read Section 13.1.B.4 of the Zoning Regulations. Mr. Owen noted that the issues of congestion and traffic hazards had been brought up when the proposed entrance-exit had been discussed. Mrs. Friedman noted the 17.5 foot wide driveway had been one way, but was now proposed for two way traffic, that it had balustrades along both sides, and that it entered Wykeham Road at a sharp angle that made entering and exiting even more difficult. Mr. Shapiro said this was especially true when driving down the hill and trying to make a left turn into the property. Mr. Owen noted there was a diagram from the applicant's traffic consultant, which showed the turn could be maneuvered with two vehicles in the driveway. Mrs. Friedman and Mr. Shapiro noted this report referred to passenger vehicles only. She said the turn into the

driveway was impossible if one of the vehicles was a truck or a van; that the vehicle would have to exit into the oncoming traffic before the truck could make the turn in. Mr. Owen noted the conflict of opinion and said the proposed entrance-exit was less than ideal. Mr. Fitzherbert agreed the proposed entrance-exit was not ideal, but said he was not concerned about delivery trucks because since they would make a wide turn, they would have to wait until there was no vehicle stopped in the driveway, waiting to exit. He stated that the sight lines were adequate. His one concern was the 3 or 4 nights a year when there would be icy conditions on Wykeham Road, which would make it dangerous for vehicles coming down the hill to stop to wait for vehicles to pull out of the entrance before turning in. Mr. Shapiro thought there could be traffic backed up on Wykeham Road. Mr. Owen noted that the traffic engineer had said that even during the peak hour, two vehicles trying to pass on the driveway would be an infrequent occurrence. He noted that he had never seen traffic back up at the Mayflower entrance even though the state road carries more traffic than Wykeham Road. Mrs. Friedman did not think this was a fair comparison because the Mayflower driveway is at a right angle to the road and the entrance is much wider. She stated the proposed entrance-exit was dangerous. Mr. Ajello asked Mrs. Friedman why she had not considered the driveway unsafe when the property was used as a school. Mrs. Friedman responded that it had been for one way traffic at that time. Mr. Wyant thought that both entrances had accommodated two way traffic. Mrs. Friedman said the Commission's goal should be not to create a problematic situation. Mr. Fitzherbert thought there was no traffic congestion on Wykeham Road. He said it would be good if the entrance could be improved, but it was manageable as is. Mr. Owen stated that the proposed tree cutting and sight line improvements along Wykeham Road were necessary to correct an existing situation and would be required whether or not the application was approved.

Mrs. Friedman noted the Commission had not yet addressed the inadequacy of the proposed loading dock. She said its driveway was very narrow, there was no room for vehicles to turn around, delivery trucks would be required to turn around to back in to use it, and if two delivery trucks showed up at the same time, one would have to back into the parking lot and wait there.

At 10:01 p.m. the Commission took a short break. Mr. Owen Reconvenend the Meeting at 10:12 p.m.

Discussion of the loading dock resumed. Mr. Ajello pointed out there was another loading dock near the kitchen at the other end of the building that would also be used. Mrs. Friedman again stated that delivery trucks would be driving into and/or backing into the parking area to be used by guests and this was not a safe situation.

Mr. Abella said again that he thought landscaping and buffering were very important and that a condition of approval to require it was necessary to protect the neighbors. Mr. Owen noted that the Commission had not yet reviewed the landscaping plan.

Mr. Averill said that after listening to the discussion this evening, he had the same concerns as he stated earlier; he thought the nature of the proposed establishment was too much for this location. Mr. Owen responded that inns were not alien to Washington, that they were addressed in the Plan of Conservation and Development, that they had a long history in Washington, and that the Mayflower Inn and other inns had been considered good for the Town and consistent with rural character. Mrs. Friedman noted that it would be unrealistic for the Commission to approve this application with the Mayflower Inn in mind, because if approved, there would be nothing to prevent it from becoming a standard Holiday Inn and no guarantee that it would become Mayflower II. She said the question to consider is whether the proposed use is appropriate for this location. Mr. Shapiro agreed with Mr. Owen that inns have a long respected and friendly history in Washington, but shared Mr. Averill's reservations about the size of the proposed inn. He said he would feel differently if only 20 rooms were proposed, but that this inn was 50% larger than the Mayflower and is not situated on a state road with institutional uses around it like

the Mayflower. The proposed inn, he said, would be built to a scale that was hard to comprehend and would be placed in the middle of a residential area. He did not consider it to be a compact and quiet country inn. Mr. Owen said there were arguments to be made for both points of view, especially considering that the applicant had tried to conceal the inn and make it fit in.

Mr. Owen again brought up the issue of the overflow parking, which he said at first he considered to be a "fatal blow," but after reading Atty. Zizka's letter, he was rethinking this matter. Mr. Shapiro noted that Zizka's letter addressed Section 15; Parking, but that lot coverage was a separate issue. He referred to the definition of lot coverage, which includes all parking areas whether paved or not. He noted that in this definition there is no such thing as overflow parking, so regardless of the requirements of Section 15, the overflow area would count as coverage. He noted the final plan shows 158 parking spaces. He said the definition of lot coverage does not address how often they are used or whether they are only for overflow; all parking spaces count as lot coverage, if only because the Regulations say they do. Mr. DuBois stated that an intense commercial use had been applied for and the Commission should not make any excuses that would allow it in this residential neighborhood where it doesn't belong. Mrs. Friedman explained that the overflow parking discussion is not about pavement as everyone on the Commission agrees that additional pavement should not be required. She said that the 103 parking spaces proposed were not enough and it did not matter whether the overflow spaces were used weekly or monthly, the Regulations state that they count as coverage. She thought that the fact that the applicant submitted the overflow parking plan at the 11th hour was proof that he did not think the proposed 103 spaces were adequate. She agreed with Mr. DuBois that all kinds of compromises had been made to squeeze the proposed facility in on this site. Mr. Owen said it was disturbing that the overflow parking was located on the part of the property that was most visible from Wykeham Road. Mr. Abella noted the overflow parking plan had been submitted in response to the Commission's concern that there would be parking along Wykeham Road. Mr. Owen noted that if the overflow parking plan had been presented to prove there would never be parking on Wykeham Road, that was one thing, but if it was a better representation of the intensity of the proposed use, that was another. He again read the portion of Zizka's 11/24/08 letter regarding parking determination. Mr. Shapiro again objected that Atty. Zizka referred only to Section 15 and did not consider lot coverage. Mr. Owen said Atty. Zizka did refer to Section 21.1.37, Lot Coverage, in the beginning of his letter. Mrs. Friedman questioned what Atty. Zizka meant by "during unusual circumstances." How do you measure that, and how do you enforce what you can't define, she asked. She said Zizka had made it clear in his 11/6/08 letter that this kind of reasoning would not hold up if it could not be verified. Mr. Shapiro noted that this question should be considered in the context of this application. He said an established use was not being discussed; the Commission was trying to decide within its regulatory framework whether the proposed parking was adequate. Mr. Owen agreed that the commissioners must judge whether the proposed parking spaces were adequate for the proposed use. Mr. Abella said there had never been a parking problem at the Mayflower. Mrs. Friedman said the two could not be compared because valets could triple park at the Mayflower, whereas, the proposed parking for Wykeham was all along the driveways where it was not possible to double park. She also suggested that if the Commission were to receive the application from the Mayflower today, more spaces would be required. She said that when the spa had been added, ultimately 31 parking spaces were added. She noted, too, that the parking at the Mayflower had been grandfathered; the Commission had never approved the existing number of spaces for the inn. She agreed that the Commission must decide whether the proposed parking is adequate for the proposed use. Mr. Fitzherbert said it had been a mistake for the applicant to come back with a revised plan for more parking. He said when there are special occasions the inn would take care if it by offering valet parking or by parking cars off the premises. Mr. Abella agreed that many high end inns use valet parking.

Mr. Fitzherbert thought the applicant had responded to 95% of the concerns raised and that the proposed use was the best possible use for the property. He said the inn would be an outstanding asset to the Town, that 250 people had written to support it, that it would provide 60

career and entry level jobs, and had the economic support of all of the businesses in Town. He did think the driveway could be improved, but suggested that once approved, the applicant could apply for changes to the plan. He did not think the overflow parking was a reason to deny the application.

Mr. Abella agreed. He stated the proposed inn fit in and was in character with the area and with the community. He said again that landscaping and buffering were key. He said he had looked at other large facilities in Town, this one was not unique, and this one would have less impact than the others.

Mr. Wyant agreed with Mr. Fitzherbert and Mr. Abella. He noted that the Fire Dept. and Ambulance Service had approved the driveways, and that based on his experience in the excavation business this looked like a good plan. He did voice his concern about buffering, however.

Mr. Owen stated that parking had not been an issue for him until the overflow parking plan had been submitted. He believed it had been submitted in a misguided attempt by the applicant to respond to the problem of parking along the street. He said that Atty. Zizka's letter was helpful, but if approved, a condition regarding parking would have to be included and the Commission would have to be vigilant in enforcing it. He noted that every application has enforcement issues, although with this application there would be a critical mass at a point when there would be too many cars. Mr. Ajello said he would be comfortable with a condition of approval that the .2% of coverage remaining be reserved for future parking so that it could not be used up with additions during construction. He said he had faith in the applicant's parking numbers. Mr. Owen stated there was extensive documentation in the file about the applicant's intent regarding parking and he agreed that since the coverage was now .2% below the maximum permitted, there was room to add more parking spaces. Mr. DuBois thought the Commission had to work with the plan submitted, and noted that that plan included overflow parking. Mr. Owen said there were different interpretations of that plan and if the application were approved, it would have to be made clear in the motion how that plan was to be viewed. Mr. Fitzherbert agreed and said if it was made clear how the overflow parking plan should be viewed, the applicant would have to come up with a specific plan for extra parking, adding that the whole driveway could be used for parking for special events. Mrs. Friedman thought this line of thinking was absurd, that Atty. Zizka's letter was being misinterpreted, and that this concept was being used to justify inadequate parking. She thought that the parking regulations were being manipulated to rely on double parking in the driveways and/or taking cars off site. She said the Regulations state there must be adequate parking on site.

Mr. Owen passed out his paper, "Possible Conditions of Approval." These were briefly discussed. (Attached – Addendum 2) Condition #1: Mr. Ajello thought this one was great. Mr. Owen noted there was a document in the file from the Selectmen that they would prefer more modest improvements to Wykeham Road than those asked for by Mr. Goodin. Condition #5: Mr. Owen said this was a trade off; that allowing construction work on Saturday would shorten the overall duration of the project. Condition #8: Mrs. Friedman complained that this condition contained no guidance. Mr. Owen said the application would still have to comply with the Zoning Regulations and the Commission would make the determination whether it did comply or not. Condition #9: Mr. Owen said this condition was offered by the applicant, but he thought it was unusable. Condition #11: Mr. Owen said this language was taken directly from the Regulations. Condition #12: Mr. Owen said this condition was taken from Atty. Zizka's letter. Mrs. Friedman thought it was difficult to understand. Mr. Owen said that the Commission could not legally require that the property never be subdivided because it can not lawfully prescribe the ownership of any property. Mrs. Friedman asked why the condition that no mechanical equipment be allowed on any roof had been omitted. Mrs. Hill explained that this had been a condition of approval for the Montessori School Special Permit and that she thought it would help to preserve the residential character of the neighborhood. She suggested it could possibly be reworded to say no equipment would be allowed on the

highest roofs. Mr. Abella suggested mechanical equipment be required to be placed behind bushes. Antennae, ventilation ducts, kitchen vents, etc. were discussed. Mr. Ajello said the applicant specified that the buildings would be "green" and have a country look so he trusted that the mechanical equipment would not be placed in viewable areas. Mr. Fitzherbert asked if this condition would mean that solar panels could not be placed on the roofs. Mr. Ajello said that if the roofs were covered with unsightly equipment, fewer people would come to the inn. Condtion #3: Mrs. Hill voiced her concern that before this condition could be implemented, the Commission would have to review the landscaping plan to ensure it was adequate. Mr. Owen noted that Atty. Zizka had written that approval of the landscaping plan could not be delegated to the neighbors. Condition #12: Mrs. Hill asked Mr. Owen to check again with Atty. Zizka as she remembered there had been a condition that a deed restriction be filed to require that all of the components of the Mayflower Inn remain under one ownership. Mrs. Friedman agreed that this had been so and said it was an important issue, especially since the applicant was dependent on "crossover" parking and if the different functions were owned and operated by different owners, it would undermine this concept. Mr. Owen said he would ask Atty. Zizka to elaborate on his response. Conditions #2, #4, #6, and #9: Mr. Ajello said these were not needed because they were well described in the application. Mrs. Hill said it would do no harm to include them because 1) the applicant had not submitted a single form on which all of the proposed activities were listed, 2) the application documents filled two storage boxes, making it difficult to find specific provisions of the application, and 3) having these conditions detailed in the motion of approval would make it easier for future staff and owners to know what requirements were part of the application. Mr. Owen agreed. Condition #11: Mr. Ajello questioned whether a bond was needed as he knew of no reasons other than environmental concerns for the posting of a bond. Mrs. Hill noted the Zoning Commission had required a $75,000 bond for the Montessori School in addition to the bond required by the Inland Wetlands Commission. She noted the Inland Wetlands bond would cover only those matters under that Commission's jurisdiction and said there were other matters such as demolition, erosion outside of wetlands, and landscaping that should be covered by a bond.

Mr. Owen asked if all of the Commissioners were available to attend the December 15th meeting, at which time he intended the Commission would vote on the application. All said they would attend. Mr. Owen said he would send Mrs. Friedman's revised reasons for denial to Atty. Zizka for review and asked Mr. Fitzherbert to draft a motion of approval that would also be reviewed by Atty. Zizka.

Mr. DuBois circulated a paper he had written with reasons to deny the application. (Attached – Addendum 3)

**Privilege of the Floor**

Mr. Owen asked that only matters having nothing to do with the Wykeham Rise, LLC. application be brought up at this time.

Mrs. Federer asked if the Mayflower spa permit restricted spa use to guests of the Mayflower Inn and said she believed the answer was, yes. Mrs. Hill said she thought this was not a condition of the spa's approval because the applicant had specified it would be used only by guests of the inn as part of his application. Mrs. Federer noted the Mayflower is soliciting members for the spa. Mr. Owen noted this is an enforcement issue and asked Mr. Ajello to enforce the Special Permit.

**Enforcement**

Mrs. Friedman noted the signs, including internally lit signs, at the Citgo Station and Deli in Marbledale are still a problem. Mr. Ajello said

he had spoken to the owner previously about signs, but would do so again.

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

Mr. Owen adjourned the Meeting at 11:28 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,
Janet M. Hill
Land Use Coordinator

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**ADDENDUM # 1**

**To:** Members of the Washington Zoning Commission
**From:** Valerie Friedman, Washington Zoning Commission
**Re:** Reasons for voting against the application for the Wykeham Rise Inn
**Date:** November 10, 2008 (revised November 24, 2008)

I have spent significant time evaluating the changing applications for the Wykeham Rise Inn. I conclude that there are at least fourteen (14) compelling reasons why this application should be denied.

**[1] The application exceeds 10 percent lot coverage.**
The applicant's addition of 55 parking places to its site plan reflects a much more realistic appraisal of the applicant's parking needs. It adds almost a third of an acre to lot coverage. That pushes the previous 9.8 percent coverage above the permitted maximum of 10 percent. Therefore, the application must be denied.

On 10/28/08, at the end of the final extension of the public hearing, the applicant submitted OSD.1 dated 10/16/08, labeled "Overflow Parking Plan." This plan adds 55 parking spaces. It disperses them across a grassy area on the eastern portion of the property, without delineating any driveway(s), which will obviously be needed for cars to access these spaces.

Both these 55 parking spaces and the necessary access to them qualify as lot coverage. Our regulations state: "Driveways, parking areas, and parking lots are included in the lot coverage calculation, whether or not they are paved." (21.1.37).

Not to count these parking areas, as well the access to them, as "lot coverage" would require the Commission to read into the language of Section 21.1.37 an unstated and unquantifiable exception for overflow parking, which expands or contracts at the whim of the applicant. This is not what the plain language of our regulation permits; it makes no reference to the frequency with which a "parking area" is used. Even if overflow parking were permitted, there would be no realistic way for the Commission to monitor or control it.

The applicant's addition of 55 parking spaces is an acknowledgement of the inadequacy of its prior provision for 103 parking spaces. While 103 spaces did satisfy the Commission's minimum parking requirements (15.2), it was never realistic. The original plans should have veered much closer to the 146 spaces permitted by Section 15.2.

That is so because the capacity and likely usage of the applicant's facilities far exceeds its understated estimates of proposed usage. For example, the restaurant/bar has 92 seats according to the Health Department (see 10/27/08 letter), not 78 as claimed by the applicant.. The function room that the applicant says it will limit to occupancy of 50 has a maximum occupancy, based on its size (2067 square feet), of 137 seated or 295 standing (see letters of 10/20/08 and 10/22/08 from the Fire Marshal and Health Department).

The applicant's self-imposed limitations on occupancy are not credible. Nor is it credible to believe that future owners of the property will adhere to them. And it is unrealistic to expect the Commission to enforce them or to revoke the special permit should they be violated. So much more parking was needed. Its addition, however, pushes the application over the maximum 10 percent lot coverage.

**[2] The proposed use is not located on a state highway, as was required by Section 13.9.3 when the application was then filed.** When this application was filed, Section 13.9.3 required that an inn be on a state highway and have 500 feet of frontage on it. The application does not meet that requirement and, therefore, should be denied.

It is now time for the Commission to go on record regarding what Section 13.9 meant before June 23, 2008. On that day, we voted 4-1 (Owen dissenting) to clarify 13.9 to explicitly require that an inn or tourist home be (1) located on a state highway and (2) have 500 feet of frontage on it. If that action truly clarified what had always been the Commission's regulatory intent, the current application does not satisfy Section 13.9.3, because it is located on a town road.

Chairman Owen believes the old 13.9 was ambiguous and required only that, if an inn was on a state highway, it needed to have 500 feet of frontage. Our counsel has advised us, "When courts look at ambiguous language in a regulation, they indicate that they are, generally, seeking to determine the intention of the commission or board that drafted it." (Attorney Zizka letter dated 7/28/08). Former Zoning Chairman Henry Martin's reply to Attorney Zizka stated that there was, in fact, evidence of a consistent intent on the Commission's part:

"The fact that the Zoning Commission has consistently applied the more restrictive interpretation [i.e., as embodied in the 6/23/08 clarification] over the years has some relevancy here.… I continue to believe that even though an ambiguity had been identified in the language of the regulation, it does not mean that the zoning commission must abandon the way it has interpreted this regulation. I agree with you that the issue of original intent is important here. The fact the zoning commission, when confronted with this ambiguity, implemented corrective action to eliminate it so that the more restrictive interpretation would clearly be operable is revealing. It sheds light on what the

zoning commission that was in effect when the original regulation was adopted may have been thinking." (Hank Martin e-mail dated 7/28/08)

In 2003 the Commission demonstrated its intent when it decided the application of the Mayflower Inn to add spa facilities. The applicant was required to state that access to the inn and spa would be only from the adjoining state highway (Route 47), and not from the adjoining town road, Wykeham Road.

**[3] The proposed use is not located on a state highway, as is now required by Section 13.9.**

Even were the Commission to decide that the prior version of Section 13.9 did not require an inn to be located on a state highway, the applicant would be required to limit its inn to a state highway. That is because the application is governed by the current Section 13.9, which requires frontage on a state highway.

The application does not qualify to be "grandfathered" under the prior Section 13.9. State law allows such grandfathering only if an application "is in conformance with the applicable zoning regulations at the time of filing" (CGS Sec. 8-2h). The application was not in conformance, since it exceeded maximum lot coverage (by 76%) at the time of filing and needed a variance in order to be approved. Therefore, it is subject to the current 13.9, which requires frontage on a state highway.

Counsel has advised the Commission that it is "most likely" that Connecticut courts would follow the "plain language" of Section 8-2h. Since the original application was not "in conformance," it would not be grandfathered. However, for practical, procedural reasons, counsel cautions that we not deny the application "solely" on the grounds of Section 8-2h (see Attorney Zizka's letter of 10/20/08),.

Therefore, we should ascribe as just one of several reasons for denying the application the fact that it was 1) not "in conformance" with applicable zoning regulations (like 10 percent lot coverage) when filed; 2) thus, the application was not grandfathered under any prior interpretation of Section 13.9; and 3) and it is, therefore, subject to the current language of Section 13.9, which its location on Wykeham Road clearly violates.

**[4] Wykeham Rise is not a use permitted in the R-1 district.**
By special permit, an "Inn or Tourist home" is allowed in the R-1 district. Wykeham Rise is neither. It is more of a destination resort than the kind of inn intended by section 4.4.1. Since Wykeham Rise does not qualify as a permitted use, the application should be denied.

Our zoning regulations do not define "inn." So, the Commission must decide whether the use proposed in this application is consistent with what section 4.4.1 intends. It helps to put this decision in a larger regulatory context:

All four business districts currently allow, by special permit. a "Room and Board or Bed and Breakfast establishment." A room and board

establishment is not defined. A bed and breakfast is limited to three guest rooms (13.14.6).

Three of our business districts allow, by special permit, a "Boarding house," which is defined as an owner-occupied structure that accommodates no more than ten persons (21.1.10).

No business district permits anything on a larger scale e.g., hotel, motel, resort, or, for that matter, inn. (Until 1972, hotels had been allowed in the business districts; and motels were allowed in the Marbledale and Woodville districts until 1978.)

Thus, in all business districts, no large-scale high-intensity accommodations are permitted. This limitation is instructive when we seek the intent behind section 4.4.1. It is improbable that our regulatory intent was to allow, in a residential district, a more intensive, commercial, larger-scale use than was allowed in a business district.

Janet Hill reported that it is not known why the definition of "tourist home" was deleted from our regulations in 1978. She goes on to point out, however, "It would seem logical that since inns are now included in the same Special Permit category with the same restrictions as tourist homes, they must have been considered operations of a similar size and intensity; the last definition of Tourist home being 'a private residence in which overnight accommodations are offered or provided for not more than ten transient guests" (see J. Hill's e-mail of 10/20/08).

All of these factors strongly suggest that what is intended by "inn" is a small-scale hotel, not unlike - in terms of accommodations - New Milford's Heritage Inn (20 rooms) and Homestead Inn (14 rooms). or New Preston's Hopkins Inn (13 rooms) and Boulders Inn (20 rooms), or Litchfield's Tollgate Inn (20 rooms), or Salisbury's White Hart Inn (26 rooms), per T. Peacocke's letter of 8/29/08.

Even the Mayflower Inn in Washington has only 30 rooms. True, it also has a spa, restaurant, bar, and tea room (restricted to guests of the inn). But those arguable expansions on the traditional notion of a small country inn are by no means determinative of the current application for several reasons:

- First, under our regulations governing Special Permits, "each use should be considered as an individual case" (13.1.A). Thus, the Mayflower does not set a precedent necessarily opening the door to bigger inns.
- Second, the Mayflower, like all Special Permits, was an "unusual case … that possess[es] special characteristics" (13.1.A), such as the fact that it was an established pre-existing use, which, most significantly, was located on a state highway (Route 47).
- Third, the Mayflower is set back unobtrusively from the state highway; its spa facility cannot even be seen from the road.
- Fourth, the Mayflower borders, in significant part, a large institutional use (Gunnery School), as opposed to the moderate-sized single-family homes surrounding the Wykeham Rise property.
- Finally, our regulation governing "Tourist Home or Inn" (13.9.1) begins by adopting Section 19-13-b29 of the Connecticut Public Health Code, which covers "Motels and Overnight Cabins," as part of the regulation. That Code provides in part:

Washing and toilet facilities. Adequate washing and toilet facilities shall be provided. If individual toilet and washing facilities are not provided in each rental unit, central facilities shall include separate toilets for men and women with at least one toilet seat for each fifteen men or fraction thereof, and at least one toilet seat for each fifteen women or fraction thereof….

If nothing else, provisions like this, adopted as part of our zoning regulations, suggest the basic rustic kind of accommodations that the Zoning Commission contemplated when it regulated tourist homes and inns.

If permitted, Wykeham Rise, under the guise of an "inn," would drop a stealth resort (an amalgam of a 44 room hotel, 92 seat restaurant/bar, 137/295 capacity function room, 11,000+ square-foot spa/fitness center, outdoor swimming pool with bar and grill, plus retail space) in the heart of a quiet residential neighborhood.

**[5] Wykeham Rise Inn is inconsistent with both the objectives of the 2003 POCD and the intent of the Zoning Regulations.**
Section 13.1.B.1 requires the Commission to make a finding that the proposed use is "consistent with the objectives of the Plan of Conservation and Development … and the intent and requirements of the Zoning Regulations…." But the proposed use detracts from both the preservation of "rural character" and the main regulatory purpose behind the R-1 district. Therefore, the application should be denied.

It is true that Zoning Commission decisions are not dictated by the Plan of Conservation and Development (POCD). Our regulations, however, require us to make a finding that a special-permit use conforms to certain "general standards." One of these is consistency with the objectives of the POCD as well as the intent of our own regulations (13.1.B.1).

There are three objectives in the current POCD: (1) preserve Washington's rural character; (2) enhance the community's village centers; and (3) guide and manage housing development (2003 POCD, pg. 2-6).

"Rural character," according to the plan, "is identified as being the Town's farming heritage, pastures, stone walls, fields and barns, single family residences dispersed through Town, pastoral open spaces, rural road system, lack of suburban style subdivisions, identifiable community centers…" (2003 POCD, pg. 3-1). "Residential development must be guided in ways to retain as much of our rural character as possible (2003 POCD, pg. 5-1)." Furthermore, according to the POCD's Existing Land Use Map, as well as its Conceptual Future Land Use Map, the Wykeham Rise property is to be for community facility/institutional uses (2003 POCD, pg. 1-7, 8-3).

The objectives of the POCD are preserved in our Zoning regulations, most prominently in the purpose for the R-1 Farming and Residential District: "It is intended that development in [the R-1] district, which covers most of the Town of Washington, will consist primarily of scattered residential, agricultural and related uses, open space, low intensity recreational activities, and other uses that will retain the rural character and natural beauty of the Town" (4.1)

This application is inconsistent with both POCD objectives and our regulatory intent because:

- It is neither an institutional nor a community-facility use.
- It represents an intense commercial use in the middle of a residential
- neighborhood, thereby detracting from, rather than enhancing, Washington's village centers.
- It significantly detracts from the town's key asset - rural character.

The POCD's objectives do reflect many of Washington's most carefully considered and cherished values. Zoning Commissioners are guardians of these values—the last line of defense for preserving a communal identity, which can be steadily encroached upon by granting applications like Wykeham Rise's. "The next ten years," warns the POCD, "may prove crucial for the longer term preservation of Washington's rural character" (2003 POCD, pg. 3-1).

**[6] The proposed use is not "in harmony with" nor does it "conform to the appropriate and orderly development of the Town and the neighborhood."**

Section 13.1.B.2 requires us to make a finding about "the location, type, character, size, scale, proportion, appearance and intensity" of the proposed special permit use and buildings associated with it: namely, that they are "in harmony" with their surroundings and conform to the "appropriate and orderly development" of both the Town and the neighborhood. The application does not meet this test and should be denied.

The "character" of the proposed use is clearly commercial—not residential or institutional. Its "intensity" exceeds what one associates with a typical country inn (see Points 3 and 4 above). It will generate a parade of trucks bearing daily deliveries and workers needed to clean the rooms, prepare the food, remove the trash, service the pool, maintain the spa, pick up and return the laundry, and groom the grounds, et cetera.

The size and scale of the buildings associated with the proposed use are striking:
one main building of 22,000 square feet (footprint) and another 13 buildings with footprints ranging from 1000 to 2400 square feet—larger than many of the homes in the neighborhood (see Teresa Peacocke's letter of 8/30/08). The main building is one large structure over 400 feet long and at the maximum height permitted by the zoning regulations. The main building has been aptly compared to the entire complex of buildings in the Depot from the bank on the west to Route 47 on the east. They are about equal in length (400 feet); however, Wykeham Rise's main building is one long continuous mass, while the buildings in the Depot are broken up by open spaces and, at the highest point, are only about half the height of the main Wykeham Rise building (see Eric Federer's letter of 10/20/08).

The character of the proposed use, as well as the size and scale of the buildings, will thrust a commercial enterprise into the midst of the surrounding homes, and disrupt the orderly development of this residential neighborhood. Wykeham Rise is also inappropriate for the orderly development of the Town. It opens the door for growing commercialism in the heart of Washington, the R-1 district. If the R-1 district suffers, the Town changes - for the worse.

**[7] The proposed use will hinder the appropriate use of adjacent property and substantially impair its value.**

Section 13.1.B.2 obligates Zoning Commissioners to take special care to preserve and protect the value of properties adjacent to the proposed use. This application should be denied, because there is substantial evidence that granting it will impair value.

The applicant's appraiser, Bruce Hunter, admits that he has no objective sales data to support his position that there would be no adverse

impact on neighboring properties (see Hunter letter of 9/22/08).

However, neighboring property owners, Eric and Wendy Federer, as well as the Estate of Virginia Risley, have submitted appraisals (The Landmark Appraisal Group, Andrew O'Hazo, Kloss Appraisal Services) to demonstrate that property values will be negatively impacted. According to Mr. O'Hazo's appraisal of the Federer property dated 10/17/08): "This development would substantially impair the value of your property located at 27 Bell Hill Road, Washington, CT….My opinion is based on the value of privacy to participants within the market for the value range of your property….This proposed commercial use will create noise levels and, notwithstanding the proposed screening, views which would not be consistent with the privacy desired by buyers within the upper-mid priced segment for this market area."

From the Kloss Appraisal Service 10/16/08 appraisal regarding the Federer property: "Given the fact that this facility will offer services during both the daytime and evening hours, traffic and related noise will be increased along Wykeham Road…. The valley location will exacerbate the projections of the sounds of the pool use and other outdoor activities…..Clearly, these impacts will adversely affect the quality of life of the current residents off Wykeham Road and Bell Hill Road….The impact of neighboring commercial development is an issue for prospective buyers…the prospective seller must discount selling prices…. Professionally I have found that 20% discounts to value are not uncommon to offset for these adverse influences….The proposed development will substantially and permanently impair the marketability and values of other properties in this area."

**[8] The critical issue of adequate access for fire and emergency services remains unresolved.**
Section 13.1.B.3 requires adequate access to all buildings "for fire protection purposes and other emergency services." The Fire Marshal's approval occurred a week before the applicant's submission of final plans. Those plans, both in appearance and effect, significantly narrowed roadway width. Under these circumstances, relating to the critical question of fire truck access, passage, and maneuverability, approval of this application would run an unnecessary risk.

In a letter dated 10/22/08, the Washington Fire Marshal approved the applicant's plan: "The site development plans (revised to 10-15-08) show all roadways and driveways to have adequate width and turning radii."

Since then, however, the plans on which the Fire Marshal based his approval have been significantly altered. The plans reviewed by the Fire Marshal (OSD.1 revised 10/15/08) show a contiguous walkway and driveway, both made of the same material, both at the same height, with no curbing to differentiate them, at a width of 21 feet (16-foot driveway joined seamlessly to a 5-foot walkway).

Following that approval, the applicant submitted plans on October 28, 2008, in which the walkway is no longer contiguous to the driveway. The applicant's October 28 revisions, which separate walkways from driveways, could negatively impact emergency access, given that the driveways are now narrower - 16 feet wide for two way traffic, with parking on one/both sides. This is narrower than the 18 feet that the Fire Commissioner has required in other recent applications.

**[9] The rural street network cannot safely carry prospective traffic because of inadequate sight lines.**
Section 13.1.B.4 requires, among many other things, that "the existing rural street network" have "adequate … sight lines to carry prospective traffic" generated by the proposed use. The record is replete with testimony from Wykeham Rise neighbors, as well as Zoning Commissioners, regarding the hazards created by poor visibility at the many turns and intersections along Wykeham Road. The application should be denied because of inadequate sight lines.

At the Zoning Commission meeting of October 20, 2008, Commissioner Valerie Friedman submitted photographs of sight lines at intersections along Wykeham Road (at Old North Road, Sabbaday Lane, Golf Course Road, Bell Hill Road, and Old Litchfield Road), which demonstrate poor visibility at all intersections. At that time, Friedman noted that there are also 29 driveways and 41 places for cars to enter and exit Wykeham Road on the 1.2 mile stretch between Route 47 and Old Litchfield Road.

The only attention to this important subject by the applicant is in Hesketh's letter (10/28/08), which states "there may be some isolated cases (along Wykeham Road) where sight lines are substandard," though the letter fails to include any specifics.

As our Commission Chairman and our counsel have advised, Commissioners are free to rely on personal experience and judgment in evaluating this application. Commissioners have been aided in this endeavor by testimony from Wykeham neighbors regarding their experiences in navigating the limited, and often deceptive, sight lines around each bend on Wykeham Road and the surrounding roads. Their testimony and personal experiences from years of driving these winding country roads teaches us that limited sight lines are inadequate to safely carry the prospective 500 to 700 daily car trips that Wykeham Rise will add to the rural street network.

**[10] The rural street network is not adequate to carry the greatly increased volume of prospective traffic.**
Section 13.1.B.4 requires, among many other things, that "the existing rural street network" have "adequate … capacity … to carry prospective traffic" generated by the proposed use. That network, including Wykeham Road and Bell Hill Road, is inadequate to carry the additional daily volume of 500 to 700 car trips that Wykeham Rise would generate. Therefore, the application should be denied.

Reports submitted by Arthur Howland (8/14/08) and Wykeham Road neighbor Arthur Miller (10/20/08) yield similar findings to the Hesketh report (10/20/08) regarding traffic volume: There will be a 50 percent increase in daily traffic - an additional 500 to 700 trips - along Wykeham Road due to the proposed use.

Hesketh's report (10/20/08) states, "The question of daily traffic is not considered relevant by traffic engineers for the purposes of determining impact of a development's traffic on the surrounding roadway system." So the two issues of most importance to those who utilize the road network around Wykeham Rise – sight lines and additional daily traffic – are given scant attention by the applicant's traffic engineers. They concentrated instead on "level of service" calculations, which estimate how many extra seconds a vehicle might have to wait at an intersection.

These sorts of calculations, however, are more appropriate for an urban area than for Washington. Here, our focus is more on the capacity of our winding country roads, with their blind driveways and inadequate sight lines, to accommodate 500 to 700 more car trips daily. Can

Wykeham Road and Bell Hill Road do that? And, if they are forced to, will they lose forever their identity and appeal as country roads? Commissioners know these roads well, have driven them often, and are in the best position to judge whether "the Town's existing rural street network…are adequate… (in) capacity and sight lines to carry prospective traffic…."

**[11] The property's entrance/exit creates "undue hazard to traffic" and "undue traffic congestion."**
Section 13.1.B.4 requires the applicant to make adequate provision for ingress and egress from the property so that "no undue hazard to traffic or undue traffic congestion is created." The narrow two-way entrance/exit at the westerly end of the property creates just such a hazardous bottleneck. Therefore, the application should be denied.

In its effort to reduce lot coverage below 10 percent, the applicant eliminated the easterly exit from the property and converted the westerly entrance to two-way traffic. No doubt, out of the same concern over lot coverage, the applicant chose not to widen the westerly entrance/exit to accommodate two-way traffic.

That entrance/exit is only 17 ½ feet wide and abutted on both sides by stone retaining walls. The natural tendency of entering/exiting drivers will be to veer toward the center in order to avoid scraping their vehicles against these stone walls According to Marc Goodin's report of 10/27/08, "It is 'practically' impossible for a car to enter the site when a car is leaving the site within that space. It is unsuitable and unsafe. In addition, the angle of the entrance/driveway access is 40 degrees from perpendicular to Wykeham Road, making it that much more difficult for traffic entering from the east."

Applicant's engineer states that the entry/exit can "handle vehicles up to 7 feet wide" (10/28/08 minutes, page 4). However, the obstacle to two-way passage is insurmountable if one or both of the vehicles is a garbage truck, UPS truck, or other commercial truck. As a result, cars or trucks trying to enter the property will be forced to stop on Wykeham Road; there they will wait for the car or truck leaving the property to exit onto Wykeham Road, before they can then enter. Cars or trucks stopped on Wykeham Road run the risk of getting rear-ended by oncoming drivers with inadequate sight lines. Traffic hazard and congestion that may result from this bottleneck will likely worsen at the dinner hour, check-out time, or whenever there is an event in the Function Room. Hesketh's claim that this turn "is not all that horrible" (10/28/08 minutes, p. 8) is not reassuring to a Commission obligated to prevent "undue hazard to traffic." (13.1.B.4)

**[12] The applicant has not confirmed that all nuisances will not extend beyond the property line.**
Section 13.1.B.8 requires that the proposed use "will not create a nuisance such noise … odors, bright lights [and] glare … at or beyond the property line." There is insufficient evidence in the record that such nuisances will be abated. Therefore, the application should be denied.

Glare from auto headlights is concern for neighbors, given the level of night-time activity (e.g., restaurant and bar patrons, function room events) that is likely. Both Wykeham Road neighbor John Ewing and Commission alternate Andy Shapiro spoke of the intrusion of auto headlights shining into their homes from Wykeham Rise (Ewing) and the Mayflower Inn (Shapiro).

Neighbors (Ewing, Parker) and past neighbor Karen Silk spoke of the property's amphitheatre-like terrain that enhances the transmission of sound. Ms. Silk commented (meeting 10/28/08) that although her current home is separated by 1000 feet of Steep Rock property, she still hears the children playing at Washington Primary School, and no one should underestimate the extent to which sound travels over long distances.

Noise from the pool area is of special concern to the neighbors. Mr. Klauer stated at the 10/28/08 meeting that "sufficient existing buffers will eliminate all noise from the pool," and that "he believed that the distance coupled with the buffer was adequate," but provided no support for these claims. The applicant has offered to limit use of the pool by children under the age of 14 (letter dated 10/27/08), but the letter is confusing about how the limitations would work. The Zoning Commission should not be involved with restrictions that are confusing and cannot be enforced, since the authority of the commission is undermined when enforcement cannot be guaranteed.

The applicant is relying on landscaping to minimize the nuisance impact on surrounding properties, but has not demonstrated that nuisances such as noise, lights and odor will not extend beyond the property line.

**[13] The applicant's proposed use of porous pavement for pedestrian walkways does not qualify for exclusion from lot coverage. Since the application, counting walkways, exceeds 10 percent lot coverage, it should be denied.**

At the last minute, the Commission was presented with the applicant's plan to use Firestone's Flexi-Pave, a porous pavement made from recycled tires, for all pedestrian walkways. While this apparently is a "pervious material," it has never been officially adopted by the Commission as fitting within our regulatory language, despite repeated opportunities for the Commission to do so. It should not be adopted now as merely an incidental part of this proceeding. Because Flexi-Pave walkways do not qualify for exclusion from lot coverage and bring lot coverage above 10 percent, the application should be denied.

Our regulations include pedestrian walkways in lot coverage "unless they are made of pervious materials such as gravel, pea stone, or randomly spaced stones set in grass" (21.1.37). Although Flexi-Pave would seem to be a pervious material, there is a legitimate question as to whether it is a pervious material that falls into the same category as gravel, pea stone or randomly spaced stones set in grass.

According to the product specs, Flexi-Pave is a "pour-in-place pavement system made from recycled tires," installed over a 4-inch base of graded aggregate. Suggested uses for Flexi-Pave include: dams, levees, canals, bridge embankments, traffic islands, noise barriers, median strips, courtyards, driveways, and sidewalks.

Such material appears to differ significantly from gravel, pea stone, and random stones set in grass, both in terms of appearance as well as utility. Ribbons of, say, "cypress brown" Flexi-Pave looping across Washington lawns will look and feel different from gravel, pea stone, or random stones. Nor will Flexi-Pave act like these rustic materials, considering that it is made of recycled tires, can be used for bridge embankments, dams, and other heavy duty uses, and its porous properties are not permanent. Given its look, feel, and life expectancy, Flexi-Pave has more in common with the pedestrian walkways that count as lot coverage under Section 21.1.37.

Most importantly, this proceeding is not the most appropriate one in which this Commission should decide whether or not to adopt "porous

pavement" like Flexi-Pave as an acceptable pervious material that does not count as lot coverage. That decision should come only after a full consideration by the Commission of the pros and cons of "porous pavement." We should not act now on the mere say so of a single engineer who, of course, happens to represent the applicant.

Do we want to see "porous pavement" proliferate in Washington? What impact will allowing "porous pavement" have on the size of developments that seek to maximize lot coverage? These and other questions deserve much fuller consideration than has been given, at the last minute, in this proceeding.

If we decide to approve the use of "porous pavement," that decision is important enough to merit amendment to our regulations (21.1.37) so as to include specific mention of "porous pavement" along with "gravel, pea stone, or randomly spaced stones set in grass." The Commission rejected the opportunity to do just that on past occasions, most recently earlier this year, raising issues of installation, maintenance and enforcement to justify that decision. We should not accomplish it now through the back door of reading into the phrase "pervious materials" a substance that we do not know enough about.

**[14] The need for copious "conditions of approval," many of them difficult to enforce, raises serious doubt about the appropriateness of this use for this location.**

Two and a half pages of conditions have been proposed, most provided by the applicant. Many of these conditions seek to ameliorate problems related to the specific location on Wykeham Road and Bell Hill Road. Some of the conditions are not only difficult to enforce, but are also extremely important to making the proposed use acceptable. Because of these obstacles, the application should be denied.

Drawn largely from offers and promises made by the applicant, Commissioner Valerie Friedman has compiled a list of 28 "conditions of approval" (see 11/10/08 memo). A number of these conditions are extremely important to making this special permit use acceptable.

For example, several conditions relate to limiting occupancy levels for various facilities (restaurant, function room, etc.) within constraints self-imposed by the applicant. If such conditions are not met, there could be a cascade of adverse consequences - related to parking, traffic congestion, noise, etc. - that would make the use unacceptable in this location.

Similarly, the applicant's self-imposed limitation on children under 14 using the pool for only three weeks, if not met, could result in a noise nuisance that would make the use unacceptable.

Conditions like these are difficult, if not impossible, to enforce. We have discussed at length how unrealistic it is to expect our ZEO to police room occupancy levels or pool attendance. Practically speaking, we might as well forego these important conditions, because they are simply not susceptible to being monitored and enforced.

Some Commissioners have stated that it is the Commission's problem - not the applicant's - if conditions of approval are not enforceable. They contend that lack of enforceability is not adequate reason for denying the application.

Our counsel Michael Zizka disagrees: "The Commission should always be wary of conditions that do not allow for easy enforcement….[I]t is our recommendation that the Commission balance the need for the condition against the potential difficulty of enforcement when deciding whether to allow any special permit use. If a particular condition is considered desirable, but not essential, then the difficulty of enforcement may not be a valid reason to deny the application. However, if a difficult-to-enforce condition is deemed to be extremely important to make a special permit use acceptable, then the Commission should give more thought to the question of whether the use itself is truly appropriate at the particular location" (see letter of 11/6/08).

The sheer number of conditions necessary to make this application acceptable, as well as the likelihood that the conditions are unenforceable, should give all Commissioners pause. What are we letting ourselves in for, if it takes so many precautions to make this project work? Given enforcement concerns, how can this Zoning Commission and all future Zoning Commissions insure that this applicant and all future owners will comply with these conditions forever? Concerns raised by the numerous conditions of approval necessary to make this use acceptable require that the application be denied.

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## ADDENDUM # 2

**Possible Conditions of Approval**

1. Before construction may begin, safety improvements to Wykeham Road, as described in an undated letter from the Board of Selectmen, included in the file, shall be made at the applicant's expense. The safety improvements shall be those described by the Selectmen's letter as requiring "less disturbance in the Town right of way." These improvements shall create a 250-foot sight line in each direction from the entrance to the property — the Town's normal requirement for new driveways.

2. Before construction may begin, the applicant shall have received approval of its septic plan from the Connecticut Department of Environmental Protection.

3. Before construction may begin, all landscaping shall be staked in the field for approval by the Zoning Commission, per the statement of Mr. Beaver, the applicant's landscape architect, at the public-hearing session of October 27, 2008.

4. The existing access to the property from Bell Hill Road shall be eliminated and landscaped to prevent any vehicles from entering or exiting through it.

5. Outside construction shall take place only between 7:00 a.m. and 5:00 p.m., Monday through Friday, and between 9:00 a.m. and 5:00 p.m.

on Saturday.

6. The abandoned Wykeham Road entrance at the northeastern end of the property shall be used as emergency access only and shall be kept chained and locked at all other times.

7. The applicant shall submit as-built drawings, certified by a surveyor or an engineer, at the end of each of the four major construction phases enumerated in the proposal.

8. The "Overflow Parking Plan" in the proposal is understood by the Zoning Commission to demonstrate only that vehicles connected with the inn will never under any circumstances need to park on Wykeham Road, Bell Hill Road, or Golf Course Road, and not to represent the anticipated actual parking needs of the approved use.

9. Occupancy of the restaurant/bar shall not exceed 80 patrons; occupancy of the function room shall not exceed 50 patrons.

10. The grass pavers (shown on the site plan) creating an accessway to Detention Pond No. 1 shall be deleted from the site plan and shall not be installed.

11. A cash performance bond of [amount] shall be required, per Section 13.4, to cover the cost of site plan improvements. Details of the posting of this bond shall be coordinated with the First Selectman, and the money shall remain on deposit with the Town of Washington during construction and for one year after construction has been completed.

12. The Commission finds that the uses approved herein are acceptable solely because of the distances maintained from properties containing residential uses. Any change in the boundaries of the parcel may have the effect of allowing residential uses to be placed closer to the uses allowed herein, a result that could vitiate the factual bases upon which the uses were found to be acceptable. Therefore, this special permit is conditioned upon the maintenance of the parcel boundaries in their current location. Any change in those boundaries, whether by reconfiguration, lot line revision, or division (including subdivision) of the parcel, shall cause the special permit issued herein to terminate automatically unless, prior to such change, the applicant or its successor applies for and receives a modification of this special permit. The application for such modification shall be processed in the same manner as an application for a new special permit.

13. These conditions of approval shall be listed in the notice filed in the land records pursuant to Conn. Gen. Stat. § 8-3d.

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## ADDENDUM # 3

**TO:** Members of the Washington Zoning Commission
**FROM:** A. J. DuBois, Jr., Alternate to the Washington Zoning Commission

**DATE:** November 23, 2008
**RE:**Wykeham Rise Application

Let me say first, for the record, that I have reviewed carefully the minutes of each meeting regarding this application and have listened to the tapes of the meetings I was unable to attend.

People for whom I have the highest respect have said to me that this project is good for Washington, represents the highest and best use of the property and should be approved. They may well be correct, but we are each elected to these land use commissions to exercise our own best judgment about whether applications before us comply with the applicable regulatory provisions. In this instance, it is my opinion that this application does not meet the requirements for a Special Permit. I can not, in good conscience support putting this intense commercial use in this peaceful residential neighborhood. To do so would fundamentally alter the character of this neighborhood.

My opinion is based upon the following:

1. The application does not comply with Section 13.9 because it is not on a State road. Mr. Martin, prior Chair of the Zoning Commission has stated that the language of this section was consistently interpreted and applied to require tourist homes and inns to be on State roads. The current chair found the language ambiguous and the commission voted to clarify it, not to change it.

2. With the addition of the overflow parking spaces, the lot coverage likely exceeds the limitation of 10% found in Section 11.5.1.c.

3. Inns and tourist homes are permitted in the R-1 district by special permit. Although “Inns” are not defined, it is clear to me that the intent was that they be small scale country inns. Hotels and motels are not permitted in business districts. If a facility of this scale would not be permitted in a business district, then how could a reasonable person think that it should be built in a residential district?

4. This proposal is inconsistent with the Washington Plan of Conservation and Development objective of preserving our rural character. Section 13.1.B.1.

5. This proposed intense commercial use, and the size and scale of the buildings, is not in harmony with this peaceful residential neighborhood, and we have heard testimony that it will impair the value of adjacent properties. Section 13.1.B.2.

6. Despite the approval of the Fire Marshall, serious questions remain about the adequacy of emergency access. Section 13.1.B.3.

7. The increased volume of passenger and commercial truck traffic will create safety hazards due to volume and sight lines on these narrow winding country roads. Section 13.1.B.4.

8. Modification of the one way driveway to create one narrow two way entrance and exit is likely to create a traffic hazard on Wykeham Road. Section 13.1.B.4.

9. Despite the conditions reluctantly offered by the applicant, conditions which would be nearly impossible to enforce, I believe that there remains a significant likelihood of nuisance noise, lights, and odors extending beyond the Wykeham Rise property line. Section 13.1.B.8.

10. Finally, there is the issue that Selectman Nick Solley may have had in mind when he used the term “buffoonery”. Intentionally or not, the applicant has provided this commission with revision after revision of his plan. It is my understanding that the plan approved by Inland Wetlands is not the plan which is before us today, if for no other reason, than because of the change for overflow parking. The sum of these changes lends credence in my mind to the proposition that the original application was not in conformance with our zoning regulations at the outset and, therefore, that the applicant should not be entitled to the benefit of Section 8-2h.