

## December 27, 2010

7:30 p.m. Land Use Meeting Room

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

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

**ALTERNATE ABSENT:** Mr. DuBois

**STAFF PRESENT:** Mrs. Hill

**ALSO PRESENT:** Mr. Gladding, Mr. C. Woodruff, Mr. Klauer, Mr. Hileman, Mr./Mrs. Peacocke, Mrs. Boyer, Mr./Mrs. Solomon, Mr. Solomon, Mr. Charles, Mr./Mrs. Federer, Ms. Giampietro, Ms. Klauer, Residents, Press

Mr. Owen called the Meeting to order at 7:30 p.m. and seated Members Abella, Averill, Fitzherbert, Owen, and Reich.

### Consideration of the Minutes

The November 22, 2010 minutes will be considered at the next meeting.

The November 15, 2010 Public Hearing minutes were accepted as corrected.

Page 2: 5th paragraph: 4th line: Change: "he had to understand..." to "the applicant had to understand..."

Same paragraph: 5th line: Change to: "...the activities that could be conducted..."

Same paragraph: last line: Change: "would" to "...might make it available..."

Page 3: 26th line: Add: "in her opinion" to read, "These included, in her opinion, an inn..."

Last line: Change: "questioned whether they could" to: "...and he assumed they would not all be occupied at the same time."

### MOTION:

To accept the 11/15/10 Public Hearing minutes as corrected.

By Mr. Averill, seconded by Mr. Reich, and passed 5-0.

### Pending Application

Wykeham Rise, LLC./101 Wykeham Road/Special Permit: Section 4.4.10/School:

Mr. Owen asked the commissioners for their thoughts about the application.

Mr. Abella stated the application complied with the Special Permit standards and that he would vote to approve it based on criteria such as lot coverage, parking, and useage.

Mr. Averill said he had many issues with the application, but the main one was the proposed main building was much too large and did not fit in with the locale.

Mr. Fitzherbert noted that the current application for the school was separate from the original application and must stand on its own. He said the property had been used as a school for many years and that a school was an appropriate use based on the Zoning Regulations, Plan of Conservation and Development, and history of the Town. He added that it was difficult to find reasons to deny it and that he found no problem with its size because he said it was small compared to the other schools in Town.

Mr. Reich said he supported the application and he gave credit to the good faith and intent of the owners.

Mr. Wyant stated that all of his questions had been answered during the hearing and that if he had a vote, he would approve it.

Mr. Shapiro said he had problems with the application, especially with the size and scale of the main building. He said the applicant had been asked to address this issue before the hearing began, but in his opinion had not justified the building, which was too large for the property and the neighborhood. He did not dispute the use of the property as a school, but thought what was proposed was more than a school and was primarily an inn. He asked that if the application were approved, that conditions of approval include provisions to limit or diminish those areas where the school could be used as an inn. He also noted previous advice from Atty. Zizka that if numerous conditions were necessary to make a use acceptable, and if these conditions were too difficult to enforce, then the use, in this case, the school, might not be appropriate.

Mr. Owen made the following points. If the application is approved as a school it would have to operate as a school or the operation would be stopped, the main building is large, but smaller and more attractive than other schools in Town, there was not a lot of parking, but it was sufficient and would constrain what could be done at the facility, since the property was a school for decades, it could not be argued that the presence of a school on the property would diminish surrounding property values or create a nuisance, the proposal was consistent with the POCD and the Zoning Regulations, decades of experience with a school located on the property had demonstrated that the roads are adequate to handle the traffic that would be dispersed throughout the day, suitable landscaping had been proposed, conservation and protection of natural features had been addressed, and all other standards in the Regulations had been met. He thought the Commission should approve the application with the following conditions: 1. All modifications to approved drawings must be approved by the Zoning Commission or its authorized agent. 2. As-built drawings shall be submitted to the Zoning Commission upon completion of foundations, and again upon completion of framing. As-built drawings must be approved by the Commission or its authorized agent before commencement of further construction. The Commission may, at the expense of the applicant, submit such drawings to a professional for evaluation. 3. Outside construction may take place only between 7:00 a.m. and 5:00 p.m. Monday through Friday, and between 8:00 a.m. and 4:00 p.m. on Saturday and Sunday. No blasting, no operation of heavy equipment, and no site work are permitted on Saturday or Sunday or before 8:00 a.m. Monday through Friday. 4. A performance bond, in the form of an irrevocable letter of credit from a financial institution with offices in Connecticut, in an amount to be determined, in consultation with the Commission's attorney, by an engineer approved by the Commission and paid for by the applicant, shall be secured before disturbance of the site begins.

Mr. Shapiro asked if the Commission was comfortable with the notion that non student spouses could stay overnight at the school. Mr. Owen noted that pertained to the question of whether or not what was proposed was a school. He said he would not know how to make such a condition and he would not want a list of "controls" that could not be found in the Regulations. Mr. Shapiro thought the limitation of non student spouses was very important because to the extent they were allowed, the property would not be used as a school.

Mr. Averill agreed with Mr. Shapiro and said what was proposed was a resort, but he did not know how to enforce its use as a school.

Mr. Fitzherbert also said he agreed with Mr. Shapiro, but thought this was an honest application and that at face value, a school was proposed and the applicant would be held to it. He said he hoped the school would meet the needs of Washington residents, for example, that it would offer adult education. He noted, too, that the Town has fully supported schools in the past and that schools often conduct activities, such as soccer camps, that were not included in their original permits.

Mr. Reich was concerned about the Commission's willingness to consider the micromanagement of the project. He said he was willing to let the market determine at least in part what would go on there and thought the applicants would live up to the permit because their reputation would be at stake.

Mr. Abella agreed with the points made by Mr. Owen and suggested a condition to require adequate buffering be included in the approval. Mr. Owen stated that a landscaping plan was already part of the application.

Mr. Shapiro was concerned about people who might stay at the school when they no longer qualified as students and how the Commission would know if this was occurring. Mr. Owen responded that what was described in the application was a school. He said, for example, that Rumsey Hall did not stop being a school when he plays tennis there. He thought Town residents would report any problems that arose.

Mr. Reich noted that the Commission was not concerned about who attends activities at the other schools in Town. He noted the other schools operate camps and other functions that are not technically school related.

Mr. Owen said there was no course catalog, but the Commission had a description of the proposed school. He stated that hypothetical problems could not be considered.

Mr. Shapiro said he did not question the applicant's honesty, but thought that what was described was both a school and "something else."

Mr. Averill agreed with Mr. Shapiro. He said he was not opposed to a school at this site, but that the specific school proposed was too big and not appropriate for the location.

Mr. Reich said he was not bothered by the size. He said if the applicant could not fill it, it would be a small operation like Wykeham Rise had been.

Mr. Averill stated that it was his duty as a Zoning commissioner to preserve the rural character and to keep the neighborhood in tact. He said the proposed school would impact the surrounding area because its size was totally inappropriate and out of character with the neighborhood. He also did not think it was a good business plan to start operations at the maximum intensity allowed.

Mr. Owen disagreed, saying the neighborhood had grown up around the Wykeham Rise School, the Zoning Regs permitted schools in the R-1 District by Special Permit, and the POCD supported schools as a principal industry in the Town. He did not think a school would be bad for this neighborhood or for any other neighborhood in Washington or that it would adversely impact property values.

Mr. Fitzherbert said he agreed with Mr. Averill's statement regarding the duties of the Zoning commissioners.

Mr. Reich noted there are 400 people on campus when the Gunnery School is in full operation and yet it fits in with the Town. He did not believe Wykeham University would be nearly as intensive a use as the Gunnery.

Mr. Fitzherbert made a motion to approve the application with Mr. Owen's four conditions of approval. He read these conditions again.

Mrs. Hill noted that the work schedule presented to the Inland Wetlands Commission had included crews working on twenty-three Sundays during the first construction year and three holidays. After a discussion, the commissioners concluded that only interior work, no outside site work or blasting, could be done on Sundays and holidays and the condition was so amended.

Mr. Averill asked if the purpose of the performance bond was to complete the project if the applicant "goes broke." Mr. Owen said it was to protect the public health and safety, guarantee proper erosion and sedimentation controls, etc.

Mrs. Hill recommended condition #1 be amended to require approvals for changes to approved plans be obtained prior to their implementation and the commissioners agreed.

#### MOTION:

To amend the conditions of approval for the Special Permit application: Section 4.4.10 submitted by Wykeham Rise, LLC. for a school at 101 Wykeham Road to add "prior to implementation" to the end of Condition #1.

By Mr. Owen, seconded by Mr. Fitzherbert, and passed 5-0.

#### MOTION:

To approve the Special Permit application: Section 4.4.10 submitted by Wykeham Rise, LLC. for a school at 101 Wykeham Road per the "Site Development Plan for Wykeham University," 25 sheets, by Arthur H. Howland and Assoc., revised to 11/17/10 subject to the following conditions:

1. All modifications to approved drawings must be approved by the Zoning Commission or its authorized agent prior to implementation,
2. As-built drawings shall be submitted to the Zoning Commission upon completion of foundations, and again upon completion of framing. As-built drawings must be approved by the Commission or its authorized agent before commencement of further construction. The Commission may, at the expense of the applicant, submit such drawings to a professional for evaluation.
3. Outside construction may take place only between 7:00 a.m. and 5:00 p.m. Monday through Friday, and between 8:00 a.m. and 4:00 p.m. on Saturday and Sunday. No blasting, no operation of heavy equipment, and no site work are permitted on Saturday or Sunday, before 8:00 a.m. on Monday through Friday, or on Memorial Day, Fourth of July, and Labor Day.
4. A performance bond, in the form of an irrevocable letter of credit from a financial institution with offices in Connecticut, in an amount to be determined, in consultation with the Commission's attorney, by an engineer approved by the Commission and paid for by the applicant, shall be secured before disturbance of the site begins.

By Mr. Fitzherbert, seconded by Mr. Reich, and passed 4-1.

Mr. Averill voted against the application because he thought the proposed main building was too large and that its size, scale, proportion, etc. were not in harmony with the orderly development of the neighborhood.

Mr. Owen suggested the Commission state its reasons for approval for the record and read his written statement dated 12/27/10. Mr. Fitzherbert, Mr. Abella, and Mr. Reich said they agreed with it; Mr. Abella adding that the proposed lot coverage was below the maximum permitted, the buffering was adequate, and a traffic analysis had been done.

**MOTION:**

That Mr. Owen's 12/27/2010 written statement regarding his reasons for supporting the Wykeham Rise, LLC. application for a school be made part of the record.

By Mr. Owen, seconded by Mr. Reich, and passed 5-0.

Mr. Averill read section 13.1.B.2 and stated he voted against the application because it was not in harmony with the orderly development of the neighborhood.

There were no new applications.

**Other Business**

Revision of the Zoning Regulations/Addition of New Section 2.4 Re: Public Hearing Submissions:

A copy of proposed Section 2.4 had been circulated prior to the meeting. Mr. Owen explained the proposed language had been recommended by Atty. Zizka and would require that supporting documents for applications be submitted so there is sufficient time for the Commission and its consultants to review them prior to the public hearing. He read the proposal and noted it had been taken directly from the Inland Wetlands Regulations.

**MOTION:**

To schedule a public hearing at the February 2011 meeting to consider the proposed revision of the Zoning Regulations to add a new section 2.4 regarding public hearing submissions.

By Mr. Owen, seconded by Mr. Abella, passed 5-0.

Possible Revision of the Zoning Regulations re: Excavation:

A sample revision of the current excavation regulations by Mrs. Hill, dated 12/27/10, was circulated and will be discussed at the next meeting.

**Communications**

The proposed calendar for 2011 was reviewed and approved as revised.

**MOTION:**

To approve the Zoning Commission calendar for 2011 as revised to have the December meeting on the 19th.

By Mr. Owen, seconded by Mr. Reich, and passed 5-0.

Mr. Shapiro volunteered to serve as the Zoning Commission's representative on the Plan of Conservation and Development subcommittee.

### **Privilege of the Floor**

#### Woodruff Complaint Re: Smith/35 East Shore Road:

Mr. Woodruff told the Commission that he had complained about numerous zoning violations on the Smith property three months ago, but no action had been taken. He conducted a lengthy review of the ZEO's 11/22/10 report in which Mr. Ajello had written about the complaint. Mr. Woodruff did not find that this report adequately addressed the problem. The alleged violations included a steel shed, stepping stone walkway, stone patio with built in gas range, 500 gal. gas tank on a concrete slab, and metal wood racks used as garden elements. He suggested the Commission conduct a site inspection and then order that the structures be removed. Mr. Owen noted the Commission usually handles enforcement matters through the EO and that the issues being raised were complex and would require a thorough review. Mr. Woodruff complained that while the EO has enforced other violations in Town, he had ignored the Zoning Regs in this case, saying the Regulations should be applied equally to all. Mr. Owen suggested a meeting between Mr. Woodruff, Mrs. Smith, Mr. Ajello, the Commission's attorney, and one commissioner be arranged. Mr. Reich agreed that such a fact finding meeting could be beneficial. Mr. Woodruff objected. Mr. Owen said he was sympathetic, but not prepared to state at this time that the structures discussed were illegal. He then suggested that the Commission consult its attorney on how to proceed. Mrs. Hill was asked to contact Mr. Woodruff when a response is received from Atty. Olson.

#### Also under Privilege of the Floor, Mr. Charles made the following points.

He found it problematic that in many cases enforcement was being done in the name of the Zoning Commission without the Commission being fully aware of the proceedings. He suggested a consultant such as Mr. Connor be asked to review the Commission's enforcement policies and thought it was a good idea that Atty. Olson would be consulted in the Smith case. Also, he noted the Commission had observed that education was the major industry of the Town, but questioned whether this was still the case. Regarding the Wykeham University application, he noted the Wykeham Rise School did not have the day to day traffic the University would have and that Wykeham Rise had owned 75 acres, much more than Wykeham Rise, LLC. now owned. He thought that a school use being "grandfathered" was not a "solid" or "knowledgeable" enough reason to have approved the application. Mr. Owen responded that the school use was not grandfathered; that schools were permitted by Special Permit in the district.

There was no Enforcement Report.

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

Mr. Owen adjourned the Meeting at 9:22 p.m.

**FILED SUBJECT TO APPROVAL**

Respectfully submitted,  
Janet M. Hill  
Land Use Administrator