

July 28, 2010

Public Hearing – Regular Meeting

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

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

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

STAFF PRESENT: Mrs. Hill

ALSO PRESENT: Mr. Kyte, Mr. G. Klauer, Ms. Klauer, Mrs. Minor Mr. M. Klauer, Mr. Smith, Mrs. McDonald, Ms. Johnson, Mrs. Swigart, Mr. Caroe, Mr. Fowlkes, Ms. McGuire, Nina Johnson, Kelly McGuine, Mr. Adams, Mr./Mrs. Tomczyk, Ms. Field, Mr. Schoellkopf, Mr./Mrs. Manning, Mr. Adams, Clarissa Matthews, Mr. Matthews, Ms. Adams, Patricia Matthews, Ms. Craparo, Mr. Thomson, Mr. Duncan, Mr. Collum, Mr. Solley, Mrs. Wildman, Mr. R. Wyant III, Mr. Peterson, Mr. D. Solomon, Mr./Mrs. Solomon, Mr. Markert, Ms. Bishop-Wrabel, Mr. Dexheimer, Mr. Neff, Mr./Mrs. Benn, Tammy Rill, Mr. Charles, Mr. Baldwin, Mrs. Payne, Mrs. Middlebrook, Mrs. Hardee, Mrs. Addicks, Mr. R. Templeton, Mrs. Clark, Mr. Boling, R. DellaPietra, C. DellaPietra, Mr. Novak. Stacey Matthews, Mrs. Fisher-Bruzzi, Mrs. E. Johnson, Ms. Root, Zack Goodyear, Julie Goodyear, Mr. McGowan, Marie Swanson, Barbara Cheney, Mr./Mrs. Tagley, Mrs. Sandals, Mr. Davenport, Zen Rill, Ms. Fulton, Ms. Staggen, Phil Dutton, Mr./Mrs. Boyer, Mr. Somersett, Tammy Wyant, Mrs. Friedman, Mrs. Giampietro, press, and others who either did not sign in or whose handwriting was illegible

PUBLIC HEARING

Revision of Washington Zoning Regulations/Sections:

2.3.6: regarding approval of applications requiring installation or modification of sewage disposal systems and deletion of current language re: septic approval in Sections 13.6 (renumbered), 13.10, 13.11.2.d, 13.11.3.d, 13.14.7, 13.15, and 13.17.5 as they will now be covered under 2.3.6; 4.4.1, 5.4.9, 6.4.14: addition of “Inn” and specific Special Permit standards as a use permitted by Special Permit in the R-1, Farming and Residential, R-2, Washington Green, and R-3, Lake Waramaug Residential Districts; 4.4.1, 4.4.6, 4.4.14, 5.4.1, 6.4.1, 7.4.5, 7.4.12, 8.4.5, 8.4.12, 9.4.8, 10.4.5, 13.14, 13.14.3, 15.2: Deletion of “Tourist Home,” “Room and Board Establishment,” and “Boarding House” from uses permitted either by zoning permit or by Special Permit in all Zoning districts and from the “use” column in the parking requirement chart and Addition of Inn as a use permitted by Special Permit in the B-1, New Preston and B-2, Washington Depot Business Districts; 13.5 (and renumbering of following sections): Addition of new section regarding the continuance of a Special Permit upon the conveyance of the property and/or change in lessee; 13.9: Deletion of Special Permit Standards for Inn and Tourist Home; 21.1.10: Deletion of definition of “Boarding House” and addition of definition of “Bed and Breakfast Establishment;” 21.1.30 (and renumbering of following sections): Addition of definition of “Fitness Facility;” 21.1.38: Addition of definition of “Inn;” 21.1.65: Addition of definition of “Spa;” 6.4, 12.1.2, 13.17: minor deletions to make language consistent throughout the text

Mr. Owen reconvened the Public Hearing at 7:35 p.m., seated Members Abella, Averill, Fitzherbert, Owen, and Reich, and reviewed the list of proposed revisions. He then briefly explained the correct procedure for the seating of alternates and noted Mr. Reich was seated for this

session of the hearing because he had listened to the recording of the portion of the last session that he had missed. Mr. Owen read the list of documents submitted at and since the last meeting and included those that had just been submitted this evening.

Mr. Owen read the 7/20/10 supplement to the Planning Commission's 6/21/10 report, in which the Planning Commission corrected what it considered to be misinformation presented at the last session of the hearing and reiterated that Planning found the proposed inn regulations were not consistent with the goals of the Plan of Conservation and Development.

Mr. DuBois read his prepared statement dated 7/16/10 and Mr. Shapiro summarized his memorandum dated 7/25/10, both against the proposed revisions regarding inns. These are included as Addendums A and B to these minutes. Mr. Abella then read his prepared statement in which he said he did not support the proposed inn regulations because they were not consistent with the Plan of Conservation and Development.

Mr. Owen read from What's Legally Required by Atty. Zizka, which explained that although the Zoning Commission is required to consider the Town's Plan of Conservation and Development, it is not legally bound by it. He then read his statement, dated 7/26/10, in which he detailed his reasoning for finding the proposed inn regulations were consistent with the POCD and his reasons for supporting their approval. This document is attached as Addendum C

Mr. Averill voiced his frustration that there was still no general agreement on the meaning of the word, "inn." He said to him it means a very small hostel type of place with a maximum of 10 to 15 rooms "and not much else;" an operation similar to the old Cogswell Tavern.

Mr. Owen asked for public comments. These remarks are briefly noted below. Most of the statements were submitted in writing and are in the file and available for review.

Ms. Bishop-Wrabel 1) read Section 4.1 of the Zoning Regulations, the purpose of the R-1 District, 2) asked the Commission to consider the letters submitted based on their logic and relevance to the issue in question rather than by their numbers for or against, 3) referred to Mr. Matthew's 7/23/10 op ed piece in the Litchfield County Times, which noted that the Zoning Commission is not the economic development comm., and 4) said she thought preservation of the special character of the Town would attract more people and business and enhance the tax base more than approval of the proposed inn regulations would.

Mr. Baldwin raised a point of order, asking that Mr. Fitzherbert and Mr. Reich recuse themselves until it is determined whether they have a conflict of interest. In a statement dated 7/26/10 he raised four questions concerning the alleged conflicts of interest and asked that all of the Commission minutes from 12/15/08 through 6/28/10 and any other relevant information be included for the record. He also submitted many sheets of copies of newspaper articles and emails for the record.

Mr. Owen noted 1) the decision to recuse oneself is a personal one made by the commission member and 2) the Zoning Commission would not investigate this matter.

Mrs. Payne, Chairman of the Washington Conservation Commission, read that Commission's 7/8/10 memo to Zoning, which said Conservation had voted 4-1 that the proposed inn regulations were not consistent with the POCD or the Natural Resource Inventory Report.

She said the dissenting vote was because the statement against the proposed regulations had not been strong enough in that commission member's opinion.

Mr. Tagley referred to the letter he had submitted from Atty. McTaggart and Atty. Strub dated 7/23/10 and said his attorney was present to answer any questions. There were no questions. Mr. Tagley spoke against the proposed inn regulations saying the most important concern was the commercialization of the R-1 zone in which most of the Town's residents live and where they have invested in property.

Mr. Manning spoke in detail against the proposed inn regulations emphasizing three main points: 1) they would permit large scale commercial development in locations where it should not exist, 2) they fail to provide adequate limitations on inns and their adjunct businesses, and 3) there are far more appropriate solutions to the problem of existing institutional properties than the current proposal. He said if inns were to be permitted in the residential districts they should have to comply with the same regulations that other businesses in these districts must adhere to. In closing, he stated that governance should rest on institutions and not "fallible individuals susceptible to the passions of the moment."

Mr. Caroe spoke in support of the proposed inn regulations, referring to the recent exhibit at the Gunn Museum, which traced some of the history of inns around Lake Waramaug, and urged the Commission to take the "strategic step" of approving the revisions, which would improve employment prospects for families and lodging opportunities, which would, in turn, promote tourism.

Mrs. Giampietro, said she did not oppose small inns in Town, but agreed with Mr. Averill that the definition of "inn" had to be discussed further.

Ms. Fulton supported the proposed revisions. She also referred to the exhibit at the Gunn Museum, listed approximately ten inns, which had been located on town roads in the past, and she said she trusted the Zoning Commission would use the Special Permit process to protect the community from improper development.

Ms. Staggen(?) spoke against the proposed revisions. She said they would make all residential communities vulnerable to large scale commercial development, which would change the character of the Town. She said this would be contrary to the POCD and that the Zoning Commission should protect the community, not private interests.

Mr. Peterson spoke in support of the proposed inn regulations. He included the following points: the concept of what rural character is has changed over the years, before the adoption of Zoning there were many inns on town roads in Washington and he listed the names and locations of several, appropriate development that encourages the development and maintenance of local businesses should be encouraged, the character of a town is its people, and none of the Zoning commissioners had been "bought and paid for."

Mr. Averill asked Mr. Peterson how many rooms the inns on town roads that he had just listed had. Mr. Peterson responded they had between six to fourteen rooms.

Mrs. Tagley did not support the proposed revisions. She stated that emotions and economics should be kept out of the discussion and the impact the revisions would have on the entire town is where attention should be focused. She thought opening the whole town to commercial

development was “dangerous” and reminded the Commission that not long ago it had rejected tennis courts at the Washington Club and a sculpture park because they would violate the serenity of the R-1 District.

Mrs. Stacey Matthews supported the proposed inn regulations, saying that while she understood the fears expressed about losing the Town’s rural character, these same fears had been raised by Morris residents when the Windvian Inn had been proposed, but it had not impacted the rural character. She was concerned that the Wykeham Rise property would be allowed to deteriorate. So also noted the Mayflower Inn was an “excellent addition to the community” and said the inn that was not being discussed would raise property values in Town.

Mrs. Boyer expressed her opinion that the proposed inn regulations were drafted because some commissioners felt that the denial of the Wykeham Rise Inn had been unfair. She thought that if the owner had made the sale contingent upon permit approvals this townwide controversy would not have occurred and that “manipulating a commission for a single special interest” is not the way things are done in Washington, Ct. She suggested that affordable and senior housing would be suitable uses for the Wykeham Road property. She hoped the issue would soon be resolved so the townspeople could heal.

Ms. Klauer noted that opponents to the proposed inn regulations have voiced concern the revisions would permit unlimited commercial development because such a broad definition of “inn” was proposed. But she thought meaningful limitations were impossible because one definition could not fit all possible locations. She stressed that the Special Permit criteria require all applicants to meet standards of scale, appearance, proportion, and character based on the particular site where the activity is proposed. For example, she explained how a certain type of inn may not be appropriate for the Calhoun-Ives historic district, but would be appropriate for the old Birches Inn site in New Preston. She said the Special Permit process requires that each application be considered on a case by case basis. She also urged the commissioners to act according to the vote outcome in the November 2009 election.

Mr. P. Dutton stated that before the Commission had clarified the regulation, inns had been permitted on both town and state roads since 1939. Many in the audience said this was not true. When asked to “set the record straight,” Mrs. Hill noted that in 2003 when the Mayflower Spa had been approved, the Commission had required access from the state highway, requiring a deed restriction that the two properties, inn and spa, must forever be joined and use the one access from the state road. Mr. Dutton noted that since the 1940’s there had been only one inn application in Town.

Mr. McGown, executive director of the Lake Waramaug Task Force and consultant for the Lake Waramaug Association, spoke at length against the proposed inn regulations for the R-3, Lake Waramaug Residential District. He stated the R-3 District is distinctly different in its character and features than the other residential districts in Town. He said in his experience as a planner, you have to deal with the proposed regulation as written and can not assume it can be adjusted to meet all circumstances. He said both the organizations he represents were concerned about the possibility of large commercial operations on the one winding, unsafe road around the lake. He said for years it had been Zoning’s policy not to allow inns around the lake; one reason for this being that the increase in traffic that would be generated would cause safety problems. He detailed the safety issues. He concluded by saying that if the proposed regulations were approved, the Task Force had voted to appeal the approval.

Mr. Somerset stated that when the Swiss Hospitality Inst. had operated on Wykeham Road, it had not caused an increase in traffic accidents there.

Mr. Markert noted the “enormous divergence of views” in the hall, advised the Commission it should bring the two sides together when modifying the regulations, and suggested it “back off” and reconsider the way the proposal was drafted.

Barb Cheney gave Mr. Owen letters of support from her and her husband, Dave, and asked him to read them aloud. Several other letters were submitted on behalf of people who were not able to attend the hearing, and were added to the file.

Ms. Tammy Wyant supported the proposed inn regulations because she said an inn would create jobs and revenue for the Town.

Mr. Tomczyk spoke in favor of the proposed inn regulations saying Washington has a long history of inns on town roads, the Special Permit process would ensure that each inn application would receive extensive study, the increased traffic that might result from an inn would increase the tax base, and create local jobs, and the common good must champion.

Mrs. Fisher-Bruzzi said that as an attorney she knew the Special Permit criteria would provide safeguards for the location of inns and she said inns were both the history and the future of Washington.

Mr. Fitzherbert noted the Town of Washington is made up of good people, said everyone has the right to express his opinion, and agreed with Mrs. Boyer that it would be good for all to get this issue resolved.

Mr. Owen noted there were two other matters addressed in the proposed revisions. 1) Section 2.3.6 regarding the approval of applications requiring approval or modification of sewage disposal systems. Mr. Owen noted that Mr. McGuinness of the NWCTCOG found the proposed revision to be redundant because this matter is governed by state law. However, Atty. Zizka said the proposed language has merit because a) it solves a problem with the current Regulations, which state a zoning application may not even be accepted until the Health Department has approved it; Mr. Owen noted to date the Commission has ignored this provision, b) it eliminates the problem when state approval of a septic system is involved; currently, the Commission can't accept the application until the state has approved the system, but the state won't approve the system until the local approvals are in place, and c) the proposed revision would give the Commission the authority to enforce compliance with the Health Code, which it would not have the ability to do otherwise. 2) Section 13.5 regarding continuance of a Special Permit upon transfer of the property or change of lessee. Mr. McGuinness had written that the proposed process was cumbersome and was not necessary because Special Permits go with the property, not with the owner. Mr. Owen said he had consulted with Atty. Zizka who had advised the Commission to withdraw this proposed revision and to revise those sections of the Regulations, which currently require Special Permits to be renewed.

Mrs. Minor stated she considered an inn to be an intimate place to spend the night and to get a meal and that it had no other “extras” and she had no problem with inns of this nature operating in Town. She questioned if inns were so important to the Town, why was the Mayflower in such a dire financial situation.

Mr. Averill stated that he was not opposed to small inns in Town, but said the proposed inn regulations would open up the entire R-1 District to taverns, restaurants, bars, gift shops, etc. under the name of “inn.” He thought just because something was called an inn did not make it one. He also noted that both the Conservation Commission and the Planning Commission had found the proposal to be inconsistent with the Plan of Conservation and Development, and therefore, he could not support it as written. He suggested the Commission redraft language to

include limitations. He worried about the precedent that would be set if regulations that did not include specific limitations were adopted and said limitations were needed to help keep the Commission out of court.

Mr. Shapiro thought all of the commissioners were in favor of inns in Washington, but disagreed on what an inn is and where an inn should be allowed. He stated that the public had often referred to the Special Permit standards as strict requirements, but said they were only general guidelines at best. He suggested the Commission use the criteria on roads listed in the Natural Resource Inventory Report to determine which roads would be appropriate for large commercial development rather than approving regulations, which would open up the entire town to this kind of use.

MOTION:

To close the Public Hearing to consider revisions to the Washington Zoning Regulations (many various sections regarding conveyance of Special Permits at the time of property transfer or lessee, approval of applications requiring installation or modification of a sewage disposal system, and inns)

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

Mr. Owen closed the hearing.

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

REGULAR MEETING

Mr. Owen called the Meeting to order.

Consideration of the Minutes

The 6/28/10 Public Hearing – Regular Meeting minutes were accepted as amended.

Page 3: 2nd line in the paragraph beginning “Mr. Ecton Manning...” Change to: “Mr. Owen incorrectly confirmed that it was.”

7th line, same paragraph: Delete: “and other districts.”

7th line, same paragraph: sentence beginning at the end of the line: Change to: “Repeated decisions by the Zoning Commission have treated those amenities as customary features of inns.”

Page 4: 8th line in the paragraph beginning “Mr. Rex Swain...” Insert a period after “inn.” Begin the next sentence: “However...”

9th line in the paragraph at bottom: Change: “the application” to “an application.”

Page 5: 11th line in the first full paragraph: Change: “Mr. Owen stated... all the way through the end of the paragraph to: “Mr. Owen said that there had been a difference of opinion on the Zoning Commission as to the meaning of one element of an earlier version of the inn regulations. That version had stated that “frontage on a state highway shall be 500 feet.” Mr. Owen said that members of the Commission had believed that this requirement had prohibited inns without frontage on state highways, but that he had raised the point that grammatically, it did not say that but, as he read the requirement, merely specified what the frontage must be if the inn had frontage on a state highway. He said that no one else on the Commission had agreed with him but that Atty. Zizka had, and that after he had

communicated Mr. Zizka's opinion to the Commission the Commission had voted 4-1 to change the regulation to what a majority of commissioners believed was intended all along. Mr. Owen said that before this change became effective the Commission received an application for an inn, and, because of the timing, the changed regulation had not been in force for that application."

Page 8: 7th line in the paragraph beginning "Kelly Boling..." Change "POCD" to "comprehensive plan."

MOTION:

To accept the 6/28/10 Public Hearing-Regular Meeting minutes as amended.

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

New Applications

Sandals/25 River Road/Special Permit: Section 13.11.3/Detached Accessory Apartment:

Hearing from Mrs. Hill that the application was complete, a public hearing was scheduled.

MOTION:

To schedule a Public Hearing to consider the Special Permit application: Section 13.11.3, submitted by Mr. and Mrs. Sandals for a detached accessory apartment at 25 River Road on August 23, 2010 at 7:30 p.m. in the Land Use Meeting Room.

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

Davenport/51 Dark Entry Road/Special Permit: Section 13.16/Shop and Storage Use by Contractors and Building Tradesmen:

Mrs. Hill discussed two unresolved issues: 1) The applicant proposed 40,000 sq.ft. of outside storage, but only 5,000 sq. ft. is permitted per Section 13/16. Mr. Davenport presented a page from the Regulations that stated 40,000 sq. ft. of outside storage was permitted. Mrs. Hill said she would check this out. 2) Since outside storage is proposed, Mrs. Hill said approval would have to be obtained from the holder of the conservation easement. Mr. Davenport stated he had found there was a deed restriction on the property, not a conservation easement. Mrs. Hill said, then, this was not an issue. A public hearing was scheduled.

MOTION:

To schedule a Public Hearing to consider the Special Permit application: Section 13.16, submitted by Mr. and Mrs. Davenport for shop and storage by contractors and building tradesmen at 51 Dark Entry Road on August 23, 2010 in the Land Use Meeting Room, to begin immediately following the first hearing of the evening, which begins at 7:30 p.m.

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

Klein/236 Tinker Hill Road (West Shore Road)/Special Permit: Section 6.4.6/Gate on the Lake Waramaug Side of West Shore Road:

Mr. Neff, engineer, represented the applicant. Mrs. Hill explained the proposed gate was only 5 feet wide and 3.3 feet high and that it had narrow pickets so you could view the lake through it. She said it would be up to the Commission to determine whether it would "unduly obscure the view of the lake from West Shore Road." A public hearing was scheduled.

MOTION:

To schedule a Public Hearing to consider the Special Permit application: Section 6.4.6, submitted by Mrs. Klein for a gate on the lake side of West Shore Road at 236 Tinker Hill Road on August 23, 2010 in the Land Use Meeting Room, this will be the third hearing, the first hearing begins at 7:30 p.m.

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

Swanson-Forese/41 Horse Heaven Road/First Cut:

Mrs. Swanson signed the mandatory conservation easement form to state there are no conservation easements on this property. Mrs. Hill reviewed her report dated 7/26/10, which noted all of the requirements for a first cut application had been submitted, including a variance for the width of the right of way and Inland Wetlands approval. The map, "Property/ Boundary Survey," by Mr. Alex, dated January 2010 was reviewed. Mrs. Hill recommended as a condition of approval that monuments or iron pins be required to mark the corners of the proposed boundary line between the two lots. Mrs. Swanson had no objection.

MOTION:

To approve the first cut application submitted by Mrs. Swanson and Mr. Forese for their property at 41 Horse Heaven Road subject to the condition that monuments or iron pins be set at the corners of the boundary line between the two lots.

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

Revision of the Washington Zoning Regulations-(See entire list of proposed revisions beginning on page 1):

Mr. Owen noted that a 4-1 vote would be needed to approve the proposed revisions regarding inns and that based on the discussion at the public hearing, he thought there would not be four affirmative votes. Mr. Abella and Mr. Averill said this was so. Therefore, Mr. Owen proposed to vote on each section of the proposed revisions; continuance of special permits, approval of applications requiring the installation or modification of sewage disposal systems, and inns separately. The commissioners agreed.

MOTION:

To withdraw all proposed revisions to the Washington Zoning Regulations concerning regulations governing the conveyance of Special Permits at the time of transfer of property or change of lessee.

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

MOTION:

To approve proposed revisions to the Washington Zoning Regulations regarding the approval of applications requiring the installation or modification of sewage disposal systems.

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

MOTION:

To deny the Zoning Commission's proposed amendments regarding inns.

By Mr. Averill, seconded by Mr. Abella, and vote: 2-3.

Mr. Shapiro noted that this motion and vote were confusing because they stated the proposition in the negative. Therefore, Mr. Averill and Mr. Abella rescinded their motion.

MOTION:

To approve the proposed revisions to the Washington Zoning Regulations regarding inns.

By Mr. Owen, seconded by Mr. Fitzherbert, and approved 3-2.

Mr. Owen noted again for the record that the 3-2 vote was not enough to carry the motion because a vote of 4-1 had been required to counter the negative report by the Washington Planning Commission. (This denial includes the associated proposed revisions regarding bed and breakfasts, tourist homes, fitness facilities, spas, boarding houses, and room and board establishments.)

Communications

Mrs. Hill noted a letter submitted to the Myfield, LLC/ Mygatt Road/Affordable Housing file regarding the transfer of the supervision of the affordable units from the Washington Community Housing Trust to a new company.

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

Mr. Owen adjourned the Meeting at 10:08 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,
Janet M. Hill
Land Use Administrator