

August 25, 2008

Public Hearing – Regular Meeting

August 25, 2008

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

MEMBERS PRESENT: Mr. Averill, Mrs. Friedman, Mr. Owen

MEMBERS ABSENT: Mr. Abella, Mr. Fitzherbert

ALTERNATES PRESENT: Mr. DuBois, Mr. Shapiro

ALTERNATE ABSENT: Mr. Wyant

STAFF PRESENT: Mr. Ajello, Mrs. Hill

ALSO PRESENT: Mr./Mrs. Federer, Atty. Hill, Atty. McTaggart, Atty. Fisher, Mr. Lyon, Mr. Caroe, Mrs. Minor, Mrs. McDonald, Mr./Mrs. Kaylor, Mr. Klauer, Mr. Szymanski, Ms. Klauer, Mr. Goodin, Mr. Carey, Mr. Parker, Mr./Mrs. Peacocke, Ms. Connolly, Mr./Mrs. Solomon, Mr. Charles, Mr. Solley, Mr. Surnow, Mrs. Cooper, Ms. Forese, Mr. Picton, Mr./Mrs. Ullram, Mrs. Greene, Mr. Mnuchin, Mr./Mrs. Talbot, Mr./Mrs. Benn, Mr./Mrs. Rickart, Mr. Thorne, Residents, Press

Mr. Owen briefly remembered John Allen, past Zoning Commission chairman, who died on August 21, 2008.

PUBLIC HEARING

Wykeham Road, LLC./101 Wykeham Rd/Special Permit: 13.9, 4.4.1/Inn

Mr. Owen reconvened the public hearing at 7:34 p.m. and seated Members Averill, Friedman, and Owen and Alternates DuBois and Shapiro for Mr. Abella and Mr. Fitzherbert. He then read the list of documents that had been submitted since the last meeting and noted the file was available for inspection by the public.

Mr. Owen asked for comments and questions from the public.

Mrs. Talbot read her 8/25/08 letter, which included the following points: The R-1 district where the property is located is intended for residential and agricultural uses, not a commercial use that will impact the rural character of the Town. The Zoning Regulations require, and have required in the past, inns to have 500 ft. of frontage on a state highway. The application does not meet the standards of Section 13.1.B of the Regulations.

Atty. Hill, representing the Federers, noted the list of documents read by Mr. Owen included only one of the letters he had submitted at the

last meeting. It was noted the letter had, indeed, been received and would be added to the list.

Ms. Connolly read portions of her statement dated 8/25/08. She noted that the Special Permit application may not be approved unless all of the provisions in Section 13.1.B.2 of the Zoning Regs are met and she explained how it does not comply with the standards for location, type, character, size, and intensity of use. She said that Wykeham Road was not designed to handle the proposed increase in traffic. She said the intensity of use of the Wykeham Rise School could not be compared with the inn proposal because the school had 100 acres when it was operating, whereas the proposed inn has far less. She also noted that when compared to the existing Mayflower Inn, the proposed inn would have double the number of rooms on half the acreage.

Mr. Rickart spoke in opposition to the application and read his statement dated 8/25/08, which addressed traffic concerns and the 8/14/08 Traffic Study by Arthur Howland and Assoc. He included these points. In order to approve the application, per Section 13.1.B.4, the Commission must find that the existing rural street network is adequate in width, grade, alignment, capacity, and sight lines to accommodate prospective traffic. He said although the Traffic Study concludes there will be no traffic impacts resulting from the proposed development, the study relies on data that is not representative of the traffic that is generated during the school year, accident data cited is incomplete, it is not known whether the formulae used in the study take into account the traffic patterns that result from events, the capacity analysis incorrectly maintains there will be no increase in traffic volume traveling onto Wykeham Road from Bell Hill Road, and the local roads are inappropriate for the nature of traffic that would be generated by this project. He also pointed out that the Traffic Study did not address the change in the nature of the traffic that would use the Town roads should the inn be approved. He found the proposal inappropriate for the Town's existing street network.

Ms. Brooks spoke in favor of the application, urging the Commission to look at its "macro cosmic effects" such as keeping local farms in business. She thought the Town needs a balance of commerce and rural so that the downtown businesses are supported.

Mr. Surnow supported the application, saying that the applicant has been willing to address concerns that have been raised, the project would be LEED certified, the existing buildings are in decay, existing impacts to the wetlands would be corrected, the tax base would be increased, and there would be employment opportunities created for residents.

Mrs. Benn read her 8/25/08 letter against the application. She said the operation of an inn on a Town road digressed from the historical interpretation of the Zoning Regulations, the proposal was a commercial use that included a restaurant and bar in the residential zone, the inn would increase noise, density, and traffic, and it had not been established there would be an adequate water supply. She noted that questions had been raised about the proper planning and design for access by emergency vehicles. She thought that approval of the application would establish a precedent for commercial uses in residential zones and would result in a decrease in property values and would compromise the quality of life in the neighborhood.

Mrs. Peacocke stated she had not received notification of the application per Section 2.3.4 of the Regulations. She referred to the uses permitted by Special Permit in the R-1 District and noted that the business uses listed were all small scale. She said that a country inn or tourist home differed from the proposed spa/resort. She pointed out that fitness centers and function rooms were not listed as permitted uses and that the proposal did not comply with the spirit of the Regulations. She also stated the proposed inn would detract from the Town's rural character, which the Commission had the duty to preserve.

Mrs. Cooper noted the proposed inn would not be affordable nor would it provide jobs for residents. She said the Commission had always interpreted its Regulations to require that inns have frontage on state roads and so did not think the application should be grandfathered. She noted that the Swiss Hospitality Institute had not been permitted to open a restaurant on this property and that if the application was approved, the Mayflower Inn would apply for Wykeham Road access, too. She said the proposed inn would be the largest in Litchfield County and would change the character of the area. She advised the Commission that there are poor sight lines all along Wykeham Road and said she knew of four accidents there that were not included in the Traffic Study.

Ms. Forese spoke in favor of the application. She said if another school used the property it would generate a lot of traffic and it would be tax exempt. She did not think it fair to compare the bar proposed at the inn with J.D. Tucker's because the guests staying at the inn would not drink and drive. She informed the Commission that she has been an EMT for 17 years and that the accidents she had encountered were due either to inexperienced drivers or poor weather conditions; not poor sight lines. She thought the proposed inn was the best case scenario for the property.

Mr. Caroe heartily endorsed the application and spoke briefly about the traffic generated by the Wykeham Rise School from 1966 to 1972.

Mr. Parker spoke against the application. He stated the firm that did the Traffic Study has a financial interest in the application and that the study considered the proposed operation a hotel, not an inn. He said that the three hours covered in the Traffic Study do not correlate with the hours for peak hotel traffic. He thought the operation of an inn at this site would impact the value of the surrounding homes. He suggested that once the inn was approved it could be sold to a national restaurant or hotel chain. He asked that construction vehicles be banned from Wykeham Road as they had been during the construction of the Mayflower spa. He concluded that the Commission should deny the application because it should protect the residential districts.

Mr. Owen noted that the amended regulation, which was effective on 7/15/08, requires frontage on a state highway, but still allows inns in the residential districts.

Mrs. Peacocke noted that an inn, a place to stay and have a meal, is permitted in the residential districts, but a resort with a spa and leisure facilities is not. She opposed a large scale commercial development in the residential district because it was not in keeping with the neighborhood or the Regulations.

Mr. Benn made five points. 1) He suggested the Town would be better served if the property were subdivided; the taxes would be nearly the same, but the impacts to the neighborhood would not be as great. 2) He agreed the existing buildings were going to ruin, but pointed out it was the property owners who had neglected them and that the property owners could restore them. 3) He thought the new resort would be a competitive threat to the Mayflower. 4) He said the property owner had invested a lot in the property, but only 5% to 10% of the total cost of the project. 5) He expressed his concern about the adequacy of the water supply in the area and asked if any engineers had researched this matter.

Ms. Rodin read portions of her letter dated 8/25/08 in which she urged the Commission to look at how the applicant had reduced lot coverage; not by reducing the number of buildings, but by removing the tennis court, decreasing the width of the driveway, eliminating walkways, etc. She also noted that a section of the driveway has a 12% grade, which exceeds the 10% permitted for commercial driveways.

Atty. Fisher noted that the applicant would request an extension of the hearing because the ZBA had not yet acted on the lot coverage variance request.

Mr. Ajello announced that the date for the continuation of the Inland Wetlands public hearing had been changed to Tuesday, September 9, 2008 at 7:00 p.m.

Mr. Goodin, engineer, spoke on behalf of adjoining property owners who oppose the application. In short, he stated the plans submitted were incomplete and did not comply with the Regulations. His lengthy presentation included the following points. 1) On site traffic, quality of service, and sight line safety had not been addressed in the Traffic Study. 2. On map NG-2, dated 8/18/08 he pointed out that the grade for a 300 ft. section of the driveway was 12% and would require 6 additional feet of cuts and fills to bring it to the permitted 10% and short vertical curves, sight lines, and speeds should be covered. 3. On map NG-3, dated 8/25/08 he found there were no signs to direct one way traffic and no safe sight lines. 4. He found the two way driveway was unsafe because it was only 16 ft. wide with parking along both sides.

Mrs. Friedman asked how wide the driveway should be.

Mr. Goodin responded that state standards specify 24 ft. wide, although 22 ft. would be possible if there was no parking along the sides. He also questioned the safety of a 1500 ft. long cul de sac with a smaller than typically sized turnaround at its end.

Mrs. Friedman asked for comments from the Fire Marshal. Mr. Goodin said there was no report from the Fire Marshal.

Mr. Goodin reported there was no handicapped parking for the units; only for the restaurant and bar, and no parking lot for the spa. He recommended that a summary of all the uses and their sq. footage and the number of parking spaces proposed to serve each be submitted by the applicant.

Mr. Averill asked if the safety of the 16 ft. driveway could be improved by increasing its width. Mr. Goodin said it could be improved by either increasing the width or by decreasing the development.

Mr. Goodin continued. 6. He was concerned about many aspects of the plans such as the downhill slope of the driveway and the possibility of runoff freezing on the surface, the 300 to 400 ft. distance from the upper units to the parking lot and the grass path to this lot, which could not be served by golf carts in the winter, and long stairways and sidewalks elsewhere on site that were too long for reasonable emergency access. 7. The septic design was missing so many details that it was conceptual only and could not be reviewed at this time. He also stated that the existing leaching fields were not grandfathered by the state. 8. Regarding the proposed water system, he stated that the water lines "criss cross" underneath the rain gardens, the plans for the water pump house did not provide the needed pressure, the design was for domestic use, no emergency or backup information had been given, and there was no specific information in the letter from the water company. 10. He noted that according to the definition of "structure," there were many structures proposed within the 50 ft. wetlands setback, but no variances requested. 11. He thought the 26 rain gardens proposed as part of the stormwater management plan was a good idea, but said no calculations had been provided for size, depth, or water velocity and that soil permeability tests were needed in order to know if the gardens would function properly. He also stated that the small rain gardens required outlet pipes and that the gardens had not been properly designed to support plants. 12. He was concerned about the design for the two proposed detention ponds saying there were no

back up plans and soil permeability testing was required to determine whether they would be wet bottomed as planned. He said the plans did not indicate whether they would hit the water table or be constructed with a clay layer. He recommended that Ms. Chase further review the planting plans. 13. He recommended that the state erosion and sedimentation control guidelines be followed, noting the plans did not require an adequate number of inspections. He submitted his review, dated 8/25/08, noting he had too many comments to address them all at the hearing.

Mrs. Friedman asked Mr. Ajello if the paths to be used by the golf carts had been included in the lot coverage calculations. Mr. Ajello said that had not been addressed by the applicant and he was waiting to hear from the Fire Marshal. Mrs. Friedman asked if there had been a review by the Public Works Dept. Mr. Ajello said there was no written report. Mr. Goodin recommended this department and a traffic engineer be asked to review the plans because there are state Dept. of Transportation guidelines that must be met.

Mr. Goodin recommended that all of the engineering and design information be included on the plans so there will be no surprises.

Atty. Fisher stated that Mr. Szymanski, engineer, would respond to all of Mr. Goodin's concerns in writing and submitted a request that the hearing be continued.

Mr. Szymanski made two comments. 1. He had difficulty reaching the Fire Marshal, but now had an appointment to meet with him to discuss emergency vehicular access and fire protection. 2) He had met with Mr. Smith, Public Works Dept., who had required that some trees be cut to improve the sight lines at the entrance and exit. Mr. Branson, forester, is working on a report regarding which trees should be removed.

Mrs. Friedman asked for the width of Wykeham Road at its narrowest point. Mr. Szymanski said he would look into this.

Mrs. Friedman asked what the difference was between the terms, "peak hour" and "peak period" referred to in the Traffic Study. Mr. Szymanski said he would provide the Commission with ITE guidelines and briefly explained the terms.

Mrs. Friedman noted the Traffic Study did not address construction vehicles. Mr. Szymanski stated they are not typically covered in this kind of report. Mrs. Friedman stated she was concerned because construction would be a lengthy process and poor sight lines and safety were problems on Wykeham Road. She thought the Commission should hire its own traffic consultant to deal with all the issues raised. Mr. Szymanski stated the inn would be no more of a traffic concern than Wykeham Rise School with 120 students, teachers, and visiting parents had been.

Mrs. Friedman noted the Traffic Study had been conducted when schools were not in session. She also noted the use of the inn would vary with the season. Mr. Szymanski agreed, saying that typically the summer months have the highest occupation.

Mr. Talbot questioned why the Commission was considering an incomplete application, saying both he and the Housing Trust had been advised that they could not submit their applications until they had Health Dept. approval. Mrs. Friedman read Section 2.3.6 and agreed that the Zoning Regs state applications shall not be accepted without Health Dept. approval. Mr. Ajello noted that this application requires approval by the DEP who will not begin its review until the local authorities approve it. Mr. Owen said that Atty. Zizka had advised the

Commission that it may not refuse to accept an incomplete application, although it may not approve an incomplete application. He will consult further with Atty. Zizka before the next meeting.

Mr. Talbot noted he had been advised regarding another proposal that nothing could be constructed in the septic reserve area, but that the current application proposed buildings in this area. Mr. Szymanski stated he had held preliminary discussions with the DEP and was preserving the septic reserve area.

Mr. Talbot again stated he thought it was a waste of the Commission's time and resources to review a site development plan that was not possible.

Mrs. Talbot said in her experience of driving on Wykeham Road, all of the trees could be cut down and there would still be problems with hills and speeding vehicles. She also stated she did not think the proposal, which includes a commercial bar, should be compared to use by a school.

Mrs. Friedman did not think Mr. Smith's (Town Highway Dept.) study of the entrance and exit addressed the whole Wykeham Road safety issue. She noted the Traffic Study concluded the operation of the inn would result in an increase of more than 600 trips per day, which she thought was an enormous increase. She thought the information before the Commission was inadequate and recommended it seek its own professional guidance.

Mr. Shapiro pointed out that one of the Special Permit standards the Commission must determine is met is whether the existing network of Town roads surrounding the project is adequate to safely carry the increase in traffic. He agreed with Mrs. Friedman that the Commission should hire its own consultant.

Mr. DuBois questioned whether the Commission should spend the taxpayer's money to review an incomplete application.

Mr. Averill read the last sentence of the report, that the anticipated increase in traffic would have no adverse impacts, and questioned the validity of this conclusion. He stated that his personal experience driving on Wykeham Road was valuable, that based on it he could come to a different conclusion about the impact. Mr. Averill also pointed out there were unresolved questions about deed restrictions on the property and so questioned whether the Commission was wasting its time reviewing an incomplete application.

Ms. Rodin asked the Commission to acknowledge that the application was incomplete.

Mr. Owen stated that the deed restrictions were not under Zoning's jurisdiction and should not hold up Zoning's review of the application. He also stated that the application was incomplete when it was submitted, but that Atty. Zizka had advised the Commission it could not refuse to accept an incomplete application.

Mrs. Friedman stated again that she thought the Commission should hire its own traffic consultant. She asked Mr. Owen if the Commission could vote tonight on the application and what would happen if the Commission did not grant the extension requested by the applicant.

Atty. Fisher asked the Commission to do what was fair and to allow the applicant an opportunity to address Mr. Goodin's report. He said it would be unfair to close the hearing and to vote to deny at this point. Mr. Owen and Mrs. Friedman agreed that both sides should be heard.

Mrs. Peacocke stated the burden of proof should be on the applicant. She said the application should have been complete at the time it was submitted and she objected to the back and forth arguments going on indefinitely.

Mr. Owen explained by state law there are time limits for the consideration of applications.

Atty. Hill noted that Mr. Szymanski had stated he would submit a written response within ten days and asked that Mr. Szymanski also provide him with a copy.

Mr. Parker noted that at the last meeting a copy of Mr. Goodin's letter to Mr. Etherington, Fire Marshal, had been submitted and he asked why the issues raised in it had not been addressed. Mr. Szymanski stated he had scheduled a meeting with Mr. Etherington.

Mrs. Cooper stated it was the consensus of the Commission that the traffic study did not address the sight line and safety issues along Wykeham Road and that these were significant problems. She noted that alone was a reason to deny the application and so asked why the hearing should be continued.

Mr. Owen stated the Commission wanted to hear the applicant's response.

MOTION: To continue the Public Hearing to consider the Special Permit application: Section 13.9 and 4.4.1 submitted by Wykeham Rise, LLC. for an inn at 101 Wykeham Road to 7:30 p.m. on September 22, 2008 in the Main Hall, Bryan Memorial Town Hall. By Mr. Owen, seconded by Mr. Averill, and passed 3-2. Mr. DuBois and Mrs. Friedman voted No because they thought there was sufficient information on the critical issues to make a decision.

At 10:40 p.m. Mr. Owen continued the public hearing to 7:30 p.m. on September 22, 2008 in the Main Hall, Bryan Memorial Town Hall.

This 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 Regular Meeting to order at 10:48 p.m.

Consideration of the Minutes

On page 2 of the 7/28/08 minutes, under Nichols Hill Group, 3rd paragraph, 4th and 5th lines, the volumes should be "cubic" feet, not "square" feet.

MOTION: To accept the 7/28/08 Public Hearings – Regular Meeting minutes as corrected. By Mr. Owen, seconded by Mrs. Friedman, passed 5-0.

Pending Application

Wykeham Rise, LLC/101 Wykeham Road/Special Permit: Sections 13.9, 4.4.1/Inn: The public hearing had been continued to 9/22/08 at 7:30 p.m. in the Main Hall, Bryan Memorial Town Hall.

New Application

Thorne/228 West Shore Road/Special Permit: Section 6.5/ Renovations and Addition to Existing Dwelling:

Mr. Owen read the 8/25/08 EO Report. Mr. Talbot, architect, presented the map, “Soil Erosion and Sediment Control Plan,” by Mr. Neff, revised to 6/12/08 and gave a brief review of the proposal. He noted the Inland Wetlands Commission had approved the application and the ZBA had granted variances for both the front yard and wetlands setbacks for the 104 sq. ft. addition. He explained that the existing encroachments would be reduced and there would be no increase in the amount of impervious surfaces on the property. He noted, too, that he had submitted a letter to address each requirement of Section 6.5. A public hearing was scheduled for 7:30 p.m. on September 22, 2008. The continuation of the Wykeham Rise, LLC. hearing was moved to the second item on the agenda.

Other Business

Tracy/47 Rabbit Hill Road/Request to Renew Special Permit: Section 13.16: Shop and Storage Use by Contractors and Building Tradesmen: Mr. Owen read the 8/25/08 EO Report. It was noted no complaints had been received about this business.

MOTION: To approve the request by Mr. and Mrs. Tracy to renew their Special Permit: Section 13.16 for Shop and Storage Use by Contractors and Building Tradesmen at 47 Rabbit Hill Road to September 23, 2010. By Mr. Owen, seconded by Mr. Averill, and passed 5-0.

Possible Revision to the Zoning Regulations/Section 12.14/Noise Generating Equipment:

Mr. Owen said he had discussed this matter with Mr. Sedito, ZBA chairman. He explained the problem is that Section 12.14.5 allows noise generating equipment to be located farther from the structure principally served than is specified in the Regulations if it can be demonstrated to the ZBA that doing so will have less noise impact on adjoining properties. However, the Zoning Regulations do not provide standards by which the ZBA can make this judgment. Mr. Owen said the ZBA had created its own standard that if the equipment was enclosed, it was OK, but said fences did not effectively block noise and this standard was not authorized by Zoning. He recommended that the Zoning Commission amend the Regulations to either provide standards the ZBA can use or go back to the original language that this equipment must be installed within a specific distance of the structure served. After a discussion, it was the consensus that the regulation should require noise generating equipment to be located within 25 ft. of the principal structure served and closer to the principal structure served than to any building line and pool equipment to be located within 50 feet of the pool and closer to the principal structure served than to any building line. Mr. Ajello asked in the case of generators, what was considered the principal structure. Mr. Owen stated it was the dwelling on the property as “principal” means “main.” It was noted that if generators and other noise generating equipment were required to be located within 25 feet

of the dwelling served, the homeowner would have an incentive to find a way to deaden the sound. Anything else would make it worse for neighbors who would hear the noise. Mr. Ajello pointed out that some homeowners prefer to locate the generator in the garage with the meter box and if the language were revised, it would mean a lot of wire would have to run between the two buildings. Mr. Owen said it was not the intent of the Zoning Commission to create loopholes and under the current regulation it clearly could not be demonstrated that allowing noise generating equipment farther than 25 ft. from the dwelling or 50 ft. from the pool would be less of a nuisance to neighbors. Mr. Ajello asked if the entire piece of equipment must be located within 25 or 50 feet of the structure served. Mr. Owen said, yes. The following revisions were agreed upon:

12.14.1: Change pool filters to pool pumps.

12.14.2: Change pool filters to pool pumps.

12.14.3: Change pool filters to pool pumps.

12.14.5: Eliminate the entire section.

Revision of the Zoning Regulations/Business Signs in Residential Districts:

At the last meeting Mr. Owen had circulated a sheet comparing the current Section 16.4 with proposed revisions. He thought businesses such as the Mayflower Inn and institutions such as the library need signs even though they are located in a residential district. He questioned what purpose would be served by prohibiting a narrow list of uses to have signs. Mrs. Hill made several recommendations, which she thought would help to preserve the character of residential neighborhoods. 1. Lighted signs should be prohibited. 2. She was not convinced that 4 sq. ft. signs were needed and suggested other hanging type signs in Town be measured to determine whether a smaller size would be reasonable. 3. She thought only the business name should be permitted on the sign; for example, "Smith Bed and Breakfast," not "Need a Room? Call 868-0000." This matter will be discussed again at the next meeting.

Due to the late hour, it was decided that all of the other possible revisions to the Regulations would be discussed at the next meeting.

Communications

The 3/3/08 letter from Mr. Talbot regarding the creation of parcels that had been discussed at the last meeting was briefly discussed again. Mr. Ajello said he had spoken with Atty. Zizka and would consult with other attorneys.

Enforcement

Commercial Lighting: Mr. Ajello said it was tough to control lighting in commercial districts under the current Regulations.

Meltzer/Rabbit Hill Road: Mr. Ajello noted there were four violations on this property; 1. an air conditioning unit had been installed in the front yard setback, 2. a shed had been rotated, 3. a stone patio had been constructed without a permit, and 4. a temporary construction access was being used permanently, which resulted in an increase in lot coverage. Atty. Kelly represents Mr. Meltzer. Mr. Ajello will continue to work on enforcement.

MOTION: To go into Executive Session p.m. to discuss a potential law suit. By Mr. Owen, seconded by Mr. Averill, and passed 5-0.

MOTION: To end the Executive Session. By Mr. Owen, seconded by Mrs. Friedman, and passed 5-0.

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

Mr. Owen adjourned the Meeting at 11:38 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted, Janet M. Hill, Land Use Coordinator