

September 22, 2008

Public Hearing – Regular Meeting

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

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./Mrs. Talbot, Mr. Brown, Mr. Mustich, Mr. Ross, Mr. Cornet, Mrs. Greene, Mr./Mrs. Kaylor, Mrs. Addicks, Mrs. Hardee, Mr. Solley, Atty. Fisher, Mr. Klauer, Mr. Szymanski, Mr. Mitchell, Mr. Goodin, Mr./Mrs. Tagley, Mr. Field, Mr./Mrs. Haas, Mr. Showalter, Mr./Mrs. Federer, Mr. Parker, Atty. McTaggart, Atty. Hill, Ms. Giampietro, Mr. Fairbairn, Mr. Horan, Mrs. Talbot, Mr. Carey, Ms. Rodin, Dr. Ewing, Mr. Picton, Mrs. Wildman, Mr./Mrs. Condon, Mr. Miller, Mr. Peacocke, Mr./Mrs. Solomon, Mr. Collum, Mrs. Collum, Mr. Moore, Mr. Adams, Mr. Caroe, Mr./Mrs. Minor, Mr. Lyon, Mr. Pappas, Mr. Wool, Mrs. Duus, Ms. Forese, Mr./Mrs. Rickart, Mr. Behnke, Mr. Mitchell, Mr. Beaver, Mr. Huneter, Mr. Doherty, Mr. Clark, Press, Residents

Mr. Owen called the Meeting to order at 7:30 p.m. and seated Members Abella, Averill, Fitzherbert, Friedman, and Owen for both the Public Hearings and Regular Meeting.

PUBLIC HEARING

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

Mr. Owen called the Hearing to order at 7:31 p.m. Mrs. Friedman read the legal notice published in Voices on 9/10 and 9/17/08. Mr. Owen then listed all of the documents in the file.

Mr. Talbot and Mr. Brown, architects, presented the map, “Addition and Renovations to the Residence of: Weston and Karen Thorn,” by Peter Talbot Architects, Mr. Neff, Mr. Bertaccini, and Mr. Sabin, revised to 8/12/08.

Mr. Wyant arrived at this point.

Mr. Talbot reported that the Health Department, Inland Wetlands Commission, and Zoning Board of Appeals had approved the plans and he noted the Special Permit was a requirement to ensure the water quality of Lake Waramaug would be preserved.

The existing conditions were compared with the proposed renovations.

Mr. Talbot addressed the requirements of Section 6.5 and 13. 6.5.1 a and b: Landscaping and Stormwater Management:

Two large Norway spruce, several other trees, and invasive barberry would be removed and the cut trees replaced. Mr. Talbot stated that the installation of a level spreader or infiltration system would result in more impact to the site than if it continued to use the existing sheet flow to handle runoff. The natural buffer would be maintained between the house and the lake. Using the site plan, he described Mr. Sabin's landscaping plan.

6.5.2 a and b: Minimizing Impervious Surfaces and Post Development Runoff:

Mr. Talbot noted the proposed addition was only 104 sq. ft.

13.1.B 2 and 3: Harmony of Development with Neighborhood:

Mr. Talbot noted the residential use of the property had not changed for 127 years and that the proposed design would retain the building's lake cottage character.

13.1.B 3 and 4: Fire Access and Rural Road Network:

There would be no changes concerning fire access or the existing road.

13.1.B.5:

The renovation resembled the existing structure as closely as possible. Mr. Talbot pointed out on the site plan, which section would be added and what work was renovation.

13.1.B.7 and 8: Preservation of Natural Features, Nuisance:

Mr. Talbot noted that the natural features of the property would be protected, down lighting would be installed, lighting would not be placed in trees, and there would be no nuisances.

Mr. Owen read the 9/22/08 ZEO Report.

Mrs. Friedman asked about post development runoff.

Mr. Talbot noted that Mr. Neff, engineer, and Mr. Sabin, landscape architect, had addressed this requirement. He said a silt fence would be installed, part of the footprint of the house nearest to the lake would be eliminated and the addition would be built on the side away from the lake, and since only 104 sq. ft. would be added, any additional runoff would be minimal in terms of flow across the property and impact to the lake and wetlands.

There were no comments from the public.

MOTION: To close the Public Hearing to consider the Special Permit Application: Section 6.5 submitted by Mr. Thorn for an addition and renovations to the dwelling at 228 West Shore Road. By Mr. Fitzherbert, seconded by Mr. Averill, and passed 5-0.

Mr. Owen closed the Public Hearing at 7:45 p.m.

Wykeham Rise, LLC./101 Wykeham Road/Special Permit: Sections 13.9 and 4.4.1/Inn/Con't.

Mr. Owen reconvened the Hearing at 7:46 p.m. He read the list of documents submitted at the last session of the Hearing and since then,

noted two faxes that were received late and were not on the list, and said that all documents were available for review by the public. Mr. Owen read a statement summarizing the issues before the Commission, clarifying the Regulations, explaining the Commission's jurisdiction, etc. His complete comments are included as an addendum to these minutes. Mr. Owen asked Mr. Szymanski, engineer, to summarize the revisions, except those pertaining to the Wetlands Commission, made to the plans since the last meeting.

Using the colored map, "Presentation Map," dated 9/22/08, he briefly outlined several changes. The application to the ZBA for a variance for lot coverage was withdrawn and a corresponding decrease in the proposed coverage to 9.99% was made.

Mr. Szymanski stated this had been possible by reducing the proposed intensity of the use. The number of rooms was decreased to 44, six buildings were removed, the two main buildings, spa and restaurant, were connected by a corridor, and 14 rooms were included as part of the main structure. He noted that Mr. Hunter, appraiser, Mr. Beaver, landscape architect, and Mr. Mitchell, traffic engineer, were present to answer questions.

Questions and comments from the public were taken.

Mrs. Talbot did not think that consideration of the application should continue because "resorts" can not be legally built without 500 ft. of frontage on a state highway and the proposal does not comply with the eight Special Permit criteria. She was also concerned that due to the current economic crisis, the applicant would apply for changes such as condos. She stated there would be a quantifiable increase in the traffic using the unsafe road and she did not think that the proposed cutting of trees to improve the sight lines at the exit would address the problem of the dangerous curves on Wykeham and Bell Hill Roads. She also noted that approval would mean two years of construction in the residential neighborhood, would reduce property values in the area, and that the inn would not be in harmony with the character of the neighborhood.

Mrs. Hardee stated that bad traffic is a fact of life throughout Washington and she supported the proposal.

Mr. Tagley noted that he was familiar with the safety hazards along Wykeham Road especially the turn from Town onto Sabbaday Lane, and asked if there were Zoning Regulations that would require that the dangerous curves be addressed. He noted his concern about additional traffic on the road, its speed, the steep grades, and the dangerous curves. He asked how the Town regulations compared with the state regs for sight lines and asked how the Commission would alleviate these problems if the project goes forward.

Mrs. Wildman voiced her support for the application, saying it is a permitted use. She also compared it with previous controversial applications such as Devereux School and Washington Pizza, noting it would prove good for the Town just as each of these previous uses had been.

Mr. Wool noted that the increase in tax revenues generated by the new inn would be offset by the decrease in the surrounding property values and the increase in Town services. He did not think it right that the applicant was applying to the Town commissions simultaneously. He questioned why the issues of whether an inn was allowed on this property and whether the deed restrictions would prohibit it had not been addressed first.

Mr. Cornet asked if it was known what amount of traffic would be generated if the property reverted to a school. He said it might be the same as for the inn. Mr. Owen said this was not known.

Mr. Behnke opposed the application. He said the applicant had filed an incomplete application in an attempt to rush through the Town commissions before ambiguities in the Regulations were resolved. He urged the Commission to deny it because it is incomplete and require that a new complete application be submitted. He said the applicant did not listen to the neighbors' concerns about traffic, noise, and lot coverage. He urged the Commission to hold the applicant strictly accountable to all of the requirements of the Regulations.

Mr. Clark, an abutting property owner, said the applicant was addressing the concerns of both the neighbors and the Town and recommended approval.

Mr. Doherty read a letter from Mr. Fore, former manager of the Wykeham Rise property, who was unable to attend the hearing. Mr. Fore wrote that the proposal was a significant commercial operation that was incompatible with the surrounding residential district. He was concerned about the decrease in the nearby property values that would result if the application was approved. He asked for a conservative interpretation of the Regulations, saying that approval would set a dangerous precedent that could affect all residential properties in Town.

Mr. Peacocke said the proposed 103 parking spaces was an unrealistically low number, noting the function room had only 7 allotted spaces. He thought there would be parking overflows and asked how these would be handled as there could be no parking along Wykeham Road. He also noted there was no separate parking lot for the restaurant. He pointed out that fire access, especially for cottage #1, which was at least 350 ft. from the driveway, had to be addressed.

Ms. Forese said the proposed inn would improve the Town's economy as the Mayflower Inn had by increasing tax revenues and providing jobs. She was not concerned that the proposed inn would detract from the Town's rural character. She defined that character as the community of people who come together to help one another and said these were the people who support the application.

Atty. McTaggart represented the Ewings. She noted she had previously submitted an opinion letter regarding Section 13.9 and wanted to make sure it was included in the record. She reviewed several sections of the Zoning Regulations: 13.1.B.1, which states the Special Permit must be consistent with the objectives of the Plan of Conservation and Development, 13.1.B.2, which gives the Commission the authority to look at the intensity of the use, and 4.1, which lists the kinds of development intended for the R-1 District that retain the rural character and natural beauty of the Town.

Atty. McTaggart noted the proposed coverage was below 10%, but said that given the location of the property, the Commission should consider whether this was too much. She also urged the Commission to consider whether the size, scale, and proportion of the proposed development would impact the neighboring properties. She noted the plans had not been available when she had checked on Friday afternoon and so asked that additional time be granted so they could be properly reviewed and responses submitted for the record. Having briefly reviewed them today, she noted that the size, scope, and intensity of the uses accessory to the proposed inn take up so much square footage, that they could be considered primary uses. She noted that many traditional New England inns have small restaurants, but the other associated uses are supposed to be accessory to the inn. She thought the public use of some of the proposed facilities would "outweigh" the primary use of the operation as an inn.

Mr. Tagley asked what the difference was between an inn and a resort, what the restrictions were for each, and at what point an inn would become a resort.

Mr. Owen said that those questions were a concern of the Commission. He noted the Regulations list inns as a permitted use, but do not provide a definition.

Mr. Miller noted that because the Regulations allow inns only in residential areas, to him that implies that they must be moderate, small scale operations suitable for a residential area. He said the proposed use was anything but modest. He noted that tourist homes (Section 13.9 governs tourist homes and inns) have no bars, restaurants, or fitness centers. He asked the Commission to consider what the Regulations mean by “inn” and whether the proposed use is consistent with what was intended.

Atty. Hill noted the revised plans had not been submitted in time to allow him to review and comment on them. Mr. Owen said the revisions were made in response to questions and criticisms made by the public at the last meeting.

Mrs. Friedman stated the plans were also revised because the applicant had decided not to apply for a lot coverage variance. She said that she, too, found the plans had not been available for review as the applicant had promised they would be.

Mr. Owen said that the applicant had nothing to gain by delaying submission and that the public hearing would be continued so that everyone would have an opportunity to submit comments.

Atty. Hill gave examples of what he said was a “credibility gap” in statements made by the applicant. He also stated that he had previously raised objections to the application under Section 8-2h of the state statutes and advised the Commission that it had to settle that matter; it could not ignore it. He said the statute compels the Commission to deny the application.

Mr. Owen said the Commission was continuing to consider the application on the advice of its attorney and the question would not be resolved this evening.

Atty. Hill asked Mr. Owen to consult again with the Commission’s counsel.

Mr. Mitchell, traffic engineer, gave a lengthy presentation on his peer review of Arthur Howland & Assoc.’s previously submitted traffic study. He submitted his report, “Wykeham Rise Traffic Impact Study,” dated 9/20/08. He explained several reasons why his findings differed from the original report submitted. These included

- 1) the number of proposed rooms had decreased and
- 2) the first report had considered all of the proposed uses as though there would be no interaction, when in fact, many users would come to the inn and use more than one of its facilities.

He briefly explained how he used traffic counts, data bases, and statistical projections to formulate his reports. He determined that all levels of service for Wykeham Road would be at level A or B and that the proposed inn would cause no decrease in the service ratings. He said he had considered impacts on road capacity, the ability of the roadway to handle traffic, etc. and said Wykeham Road was not close to capacity in any instance.

Mr. Owen noted that almost all roads in Washington would probably be at the A or B service level. He said it would be interesting if Mr. Mitchell could compare the level of expected traffic use for the inn with school use or other use of the property.

Mrs. Friedman pointed out that the proposed function room had not been included in the study and that the Commission had been told it would be used by the public as well as people staying at the inn so that would add to the peak hour traffic.

Mr. Mitchell responded that events in function rooms typically happen after peak hours and that a room with a capacity of 50 would not have much impact on traffic.

Mr. Owen asked what the function room would be used for.

Mr. Klauer said for meetings and retreats, but not necessarily for weddings.

Mrs. Friedman asked how the capacity of the function room had been computed and whether the 50 person capacity was a reliable figure.

Mr. Szymanski stated that the function room complements the restaurant and that the two function as one unit. He also stated that the 50 person capacity was what the applicant was proposing and there weren't any enforceable criteria for establishing that number.

Mrs. Friedman noted the maximum capacity of the function room was an important consideration because it would affect the number of parking spaces required.

Mr. Szymanski circulated his 9/22/08 letter to Mr. Owen. It compared the capacity and the number of parking spaces at the Mayflower and the proposed inn. He argued that the Town had approved less than 100 spaces at the Mayflower, while Wykeham, with significantly less sq. footage, was proposing 103.

Mrs. Friedman pointed out that the Mayflower spa had been approved for guests only, not for use by the general public.

Mr. Szymanski stated that whether the Mayflower spa is open only to guests or not, the parking functions without complaint and can be used for comparative data.

Mr. Mitchell addressed questions about the sight lines, noting that the one way traffic had been reversed to enter at the east and exit at the west. The advantages were that the exit would now be more aligned with Golf Course Road, creating more of an intersection and the sight lines would improve. He said the Town would have to regrade in the right of way on the opposite side of Wykeham Road to establish the proper sight lines.

Mrs. Friedman asked how the regrading would impact Kirby Brook. Mr. Mitchell said it was on the other side of the road. Mrs. Friedman asked who would approve the work.

Mr. Szymanski said he had met with Mr. Smith of the Town Highway Dept. and since it would be in the upland review area, the Inland Wetlands Commission would have to approve the regrading.

Mr. Owen asked for a written report from both the Board of Selectmen and the Highway Dept.

Mr. Averill asked who would maintain the sight line.

Mrs. Federer asked whether any use of the property would require a sight line.

Mr. Owen thought there would be a sight line requirement for any use.

Mrs. Federer asked him to clarify “any use.”

Mr. Owen said the sight line requirement could apply to other applications.

Mr. Mitchell explained sight line requirements are not dependent on the volume of traffic, but apply when more than two houses are served by an entrance/exit.

Mr. Mitchell submitted a letter dated 9/22/08 in response to the comments made by Mr. Rickart at the last meeting.

Mr. Shapiro asked if Mr. Mitchell could supply the number of average trips to/from the inn on a weekday vs. on a Saturday. Mr. Mitchell said he would submit this at the next meeting.

Mrs. Friedman stated that the issue of sight lines was not only relevant at the access, but also for the numerous roads and driveways off Wykeham Road.

Mr. Mitchell said the amount of traffic that would be added by the inn would be so small that it would not impact those situations. He said the existing sight lines along Wykeham Road weren't wonderful, but that it was not the applicant's responsibility to rebuild the road.

Ms. Rodin noted that Mr. Mitchell had stated that the traffic generated by the inn would have no impact on Wykeham Road. She disagreed, saying that incremental increases would have dangerous impacts. She pointed out there would be an impact to the area due to the type of vehicles serving the inn such as delivery, garbage, and maintenance trucks, their large size, and noise from service trips made in the early hours.

Mr. Owen explained that the traffic report did not claim there would be no impact to the area, only that there would be no change in the level of service rating.

Atty. McTaggart noted that headlights would shine into the bedroom windows of the Ewing house as cars used the revised exit. She thought if the sight lines could be improved for the previous plan, there would be less impact on the neighborhood.

Mrs. Talbot noted the left turn onto Wykeham Road from Bell Hill is dangerous and that there had not been much traffic when Wykeham Rise was a school with six teachers and boarders.

Mr. Peacocke said he was shocked that the level of service rating addressed only delays. He said the type of traffic must be considered because the number, noise, and size of the vehicles would change the character of the neighborhood.

Mrs. Minor noted that all vehicles traveling on the narrow roads in the area exceed the maximum speed limits.

Mr. Rickart said that he had not had time to review the newly submitted materials. He noted that two major changes had been made to address concerns raised at the last meeting. These were the reversal of the direction of the one way traffic and the work to improve the sight lines. He asked the Commission to carefully consider whether these were, indeed, improvements. He noted the volume of material to be excavated to improve the sight lines had not been provided and suggested that it might require a separate Special Permit and the consent of the adjoining property owners. He thought the applicant still had not provided sufficient data to resolve the sight line problems at the Golf Course Road intersection where, he said, there was no sight line. He did not think it made sense to put the entrance at the upper/north end because traffic coming down the hill would have to stop before making the left hand turn into the inn and the traffic traveling at normal speeds would come down around the corner and have no time to avoid hitting the stopped vehicle from behind. He did not think the size and scope of the proposed improvements adequately addressed the problems. He concluded that per Section 13.1.B.4 the existing Town roads must be adequate in width, grade, alignment, capacity, and sight lines to handle the proposed traffic and said anyone who drives these roads knows they are not appropriate for the proposed commercial enterprise. He said this section alone provided ample grounds for denial.

Mr. Collum stated that he grew up on Wykeham Road, was very familiar with the traffic on it, and said there would be no greater problem with traffic for the inn than there had been for the school.

Mr. Owen asked what the rationale was for the reverse of the one way traffic. Mr. Szymanski responded that in considering Mr. Goodin's review he felt it was prudent to "flip" the traffic direction to provide better sight lines with less impact to the road. He said he would provide additional analysis about queuing on Wykeham Road for the next meeting.

Mr. Parker asked the commissioners to drive down Bell Hill and make the left turn onto Wykeham before the next meeting and then consider the back up of cars as they stop to turn left into the inn, deliveries, employees, increase in the volume of traffic, and poor sight lines.

Mrs. Friedman noted the most recent data submitted by the applicant listed the proposed lot coverage as 6.65%.

Mr. Szymanski said that figure did not include pervious surfaces, which would bring it to 9.99%.

Mrs. Friedman strongly recommended the Commission hire a professional to confirm what had been calculated as lot coverage and that everything that should be included had been included. She said she had asked for a list of everything that was and was not included and for a colored map to make it clear, but this had not been provided. She said the questions of whether the access to the detention pond should count as coverage, whether there was enough parking provided, and the proximity of the parking spaces to the facilities served, etc. were critical because the coverage was 9.99%.

Mr. Szymanski agreed to submit the list of what was and what was not included and to provide a map showing what was being counted as lot coverage.

Mrs. Friedman asked how the cottages not served by the driveway would be accessed in winter. She thought there could be liability issues.

Mr. Szymanski said he had met with individuals from the fire dept., the Fire Marshal, and would soon meet with the emergency services coordinator regarding emergency access. He said the cottage farthest from the driveway was approximately 450 ft. away, but that was only one unit out of 44. He said it would be quite a walk to the four cottages, but that the permeable paver walkway met ADA standards.

Mrs. Friedman asked how these cottages would be accessed by emergency vehicles.

Mr. Szymanski stated they have four wheel drive and that an ambulance could either jump the curb or wheel in a gurney.

Mrs. Friedman asked if a written approval of the most recent plans had been received from Emergency Services.

Mr. Szymanski said it was expected soon. Also regarding emergency preparedness, he said there was a stair chair available, all of the buildings would be “totally sprinklered,” and there would be a 45,000 gallon storage tank on site, dry hydrants in the ponds and Kirby Brook for water supply to fight fires.

Mr. Szymanski noted that concerns about the capacity of the Judea Water Company system had been raised, but that Mr. Black had stated there would not be an adverse impact on this system due to the installation of the 45,000 gal. storage tank. One or two new wells would be drilled in the Judea well field to increase the capacity for domestic use.

Mrs. Friedman asked if the access to the detention pond was included in the lot coverage calculation.

Mr. Szymanski said it was not, but if the Zoning Commission thought it should be, the grass pavers would be deleted from the plans.

Mr. Owen said he had discussed this matter with Atty. Zizka who did not think this access would be included in the definition of coverage, but if the Commission had a problem with grass pavers, which had been added at the suggestion of Mr. Goodin, they could be removed.

Mrs. Friedman said traveled surfaces count as lot coverage and frequency of use is not addressed.

Mr. Owen read the definition of “lot coverage” and “driveway” and noted “traveled surface” was not defined.

Mrs. Friedman asked for a breakdown of the square footage of all of the areas used to calculate the number of parking spaces required. She noted that in the previous plans there had been 18 spaces for patrons and staff for the 3000 sq. ft. restaurant and bar. An enlargement of OSD.1 was reviewed.

Mr. Szymanski stated that the combined area of the bar with portion of the balcony, restaurant lobby, mezzanine, and restaurant was 4800 sq. ft. and 29 parking spaces had been provided. It was noted the function room was 2090 sq. ft. and 7 spaces had been provided. Mr. Szymanski explained that the spa would have 6875 sq. ft. with 2 spaces required for every 1000 sq. ft. He said he was comfortable with the low number of spaces provided because people already staying at the inn would be using the spa. He noted the fitness center would have 3,055 sq. ft.

Mrs. Friedman noted there were also many offices proposed and asked where the parking for those employees was located.

Mr. Szymanski stated that at the Mayflower spa, the offices had been included in the total sq. footage.

Mr. Owen stated that the parking regulations took into account both users and staff. He said their goal was to move away from the old philosophy of providing asphalt parking for the maximum conceivable use and to design instead for normal usage. He said it was assumed that at times there would be parking overflow on the grass areas.

Mr. Szymanski said he had been conservative when he computed the required parking and had provided 42 spaces for the main building.

Mrs. Friedman was concerned that the function room would not be limited to 55 and that there would not be adequate parking when the restaurant was full.

Mr. Szymanski said the worst case scenario would not often occur.

Mrs. Friedman asked where busses would park; the response was that busses would not be allowed. It was noted there would be a limo service drop off.

Mrs. Friedman asked about the driveway width. Mr. Szymanski said it would be 12 ft. wide in the sections that were one way and 16 to 18 ft. wide elsewhere. He said the Mayflower has driveways the same width.

Mrs. Friedman noted that parking was proposed along some of the driveways so she did not know if the proposed widths were adequate.

Mr. Szymanski said the Fire Marshal would review the driveway widths.

Regarding the reversal of the one way traffic, Mr. Fitzherbert said he was concerned about headlights shining into the Ewing's bedroom windows and about the Bell Hill turn onto Wykeham and the left hand turn into the inn when traveling down Wykeham. He noted this area is very slippery in the winter. Mr. Szymanski said he would examine these concerns.

Mrs. Greene reported that contrary to the traffic consultant's view, there is a "huge" increase in the volume of traffic when school is in session and evenings when there are activities at the high school.

There was a brief discussion about what date the hearing would be continued to. Atty. Fisher submitted a written request that the Public Hearing be continued to October 20, 2008.

Mr. Szymanski noted Mr. Mitchell could not attend on 10/20 and asked the commissioners to submit questions in writing as soon as possible so that Mr. Mitchell could have responses prepared ahead of time.

MOTION: To continue the Public Hearing to consider the Special Permit Application: Sections 13.9 and 4.4.1 submitted by Wykeham Rise, LLC. for an inn at 101 Wykeham Road to Monday, October 20, 2008 at 7:30 p.m. in the Main Hall, Bryan Memorial Town Hall. By Mr.

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

At 11:11 p.m. Mr. Owen continued the Public Hearing to Monday, October 20, 2008 at 7:30 p.m. in the Main Hall, Bryan Memorial Town Hall.

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

REGULAR MEETING

Mr. Owen called the Meeting to order at 11:12 p.m.

Consideration of the Minutes

MOTION: To accept the 8/25/08 Public Hearing-Regular Meeting minutes as submitted. By Mrs. Friedman, seconded by Mr. Owen, passed 5-0.

Pending Application

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

MOTION: To approve the Special Permit Application: Section 6.5 submitted by Mr. Thorne for an addition and renovations to the dwelling at 228 West Shore Road. By Mrs. Friedman, seconded by Mr. Fitzherbert, and passed 5-0.

Other Business

Ross/24 Wilbur Road/Preliminary Discussion/Clarification of Uses Permitted in Woodville Business District:

Mr. Ross noted that the Zoning Regulations state that no restaurants are permitted in the Woodville Business District. He asked what the definition of “restaurant” was and whether he would be permitted to have a market-deli in his new commercial building. Section 10.4 of the Regulations was reviewed. It was noted that 10.4.1.a excludes restaurants and fast food establishments and that there was one existing restaurant that pre existed the regulation located in this District. The commissioners briefly discussed the possibility of amending the Regulations to permit restaurants in the Woodville District and it was the consensus to do so. Mrs. Friedman will draft specific language to be discussed at the next meeting.

New Applications

Geurts/46 June Road/Special Permit: Section 13.11/Detached Accessory Apartment:
A Public Hearing was scheduled for October 27, 2008 in the Land Use Meeting Room.

Donovan/53 Kinney Hill Road/Special Permit: Section 13.11.3/ Detached Accessory Apartment:
The commissioners briefly reviewed the floor plans, "Proposed Plan," Sheet A1.01, by Steven Harris Architects, LLP., revised to 9/10/08. One 1104 sq. ft. detached apartment connected to the main part of the dwelling by an unheated breezeway was proposed. A separate bedroom with full bath and a separate entry was connected to the proposed apartment by another unheated breezeway. The commissioners questioned whether this bedroom could become a second detached apartment and whether the proposed 1104 sq. ft. apartment was subordinate in size and scale to the rest of the dwelling.
A public hearing was scheduled for October 27, 2008 in the Land Use Meeting Room.

Other Business

Revision of the Zoning Regulations/Section 12.14, 12.14.3, 12.14.5/Generators, Air Conditioners, Pool Filters, and Other Noise Generating Equipment:

The revisions agreed upon at the last meeting will be sent to the local councils of government and to the Planning Commission to review along with the proposed revisions regarding restaurants in Woodville when that language has been finalized.

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

There was nothing new to report. Mr. Ajello stated that Wykeham Rise, LLC. had agreed to post a 2 sq. ft. sign and would apply for a larger sign later if the Regulations were amended. He noted that additional traffic signs would also be needed there.

3/3/08 Letter from Mr. Talbot/Creation of Parcels:

Mr. Ajello reported that research is pending.

Administrative Procedures/ZEO Reports:

Due to the late hour Mrs. Friedman said she would not discuss this in detail, but said she would bring up at a future meeting the lack of detail in the ZEO reports.

Mr. Ajello said the Commission should instruct him about what it wants included in these reports.

Mayflower Spa:

It was noted that the Mayflower is actively promoting a public health club, while the application approved stated it would be for use by guests only.

Mrs. Friedman read sections of the 7/23/03 letter to the Commission from Mr. Owens that is in the Mayflower Spa file.

Mr. Ajello did not think this letter was clear and said just because there were no parking spaces for "outsiders" it did not mean the applicant had agreed there would be none.

Mr. Fitzherbert remembered that the Commission had asked the Mayflower if the spa would be open to the public and had been told it would

not, but that the Commission had not been concerned about this issue at the time.

Mrs. Friedman said it was clear the spa was to be used exclusively by guests of the Mayflower Inn. She said she would research the file and listen to the tape of the hearing before the next meeting.

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

Mr. Owen adjourned the Meeting at 11:40 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,
Janet M. Hill, Land Use Coordinator

ADDENDUM

Mr. Owen's statement summarizing the issues before the Commission, clarifying the Regulations, explaining the Commission's jurisdiction, etc.

I'd like to begin this session of the Wykeham Rise public hearing by attempting to summarize, organize, and frame some of what we've heard so far. I'd like to highlight what a few key issues, and I'd like to do it now, before we go any further, so that commissioners, the applicant, and members of the public can have a chance to amplify, add to, or correct my impressions, either tonight or at the likely further continuation of this hearing.

First, we've received an unusually large number of letters in support of the application, and a smaller but still unusually large number of letters in opposition. These letters, along with comments made orally during the public hearing, have contained quite a bit of useful information, and I'm going to cite some of that information as I proceed, but I want to remind the commission and the public that zoning meetings are different from town meetings and that we make zoning decisions by applying our regulations and not by asking the audience for a show of hands.

This public hearing has been long and has covered a lot of ground, but the tone has been very civil. Nevertheless, there have been occasional lapses. For this application, as for all applications, I would urge the public and the commissioners to assume what is usually the case, which is that people don't invest large amounts of time, money, and personal aggravation in the hope of ruining the town. Furthermore, Washington is so small that neighbors can't cease to be neighbors simply because they disagree. It is possible to move toward a fair resolution without saying the kinds of things that can't be unsaid, especially when the people you say them to are people you are likely to run into at the grocery store several times a week for the rest of your life. I also want to disagree with those who have questioned the motivation of various neighbors in fighting the current application. Even if their objections are entirely personal, "Not in my backyard" is not a dishonorable position to hold, and there isn't anyone in town who doesn't hold it in one form or another on some issue or other, or wouldn't hold it if his or her backyard were the one in question. In fact, the zoning regulations themselves are really a compendium of not-in-my-backyard rules. If none of us cared about what went on in our backyards, we wouldn't have or need zoning regulations.

Mainly, I want to urge everyone, including the commission, to have faith in this process — or, if not faith, at least patience.

Certain of our regulations could probably use some explanation — for the benefit of myself and my fellow commissioners, as well as for the public. One opinion that has been expressed in this hearing, as well as elsewhere in town over the past few months, is the idea that inns have no place in a residential neighborhood in Washington. It is entirely reasonable to hold that opinion. It's even reasonable for a member of the zoning commission to hold that opinion, personally. But it is not possible for a member of the zoning commission to act on that personal opinion, in response to an application. That is because, according to our regulations, a residential zone is the only place in Washington where inns are permitted. Regulation 4.4.1 lists “Inn or Tourist home” as a use permitted by special permit in Washington's R-1 zone, which is the principal farming and residential district and which covers the vast majority of all the land within the town's borders. Not only are inns permitted in the R-1, they are not permitted in any of the town's six other zones, two of which are residential and four of which are commercial. Therefore, according to our regulations, a residential zone is where an inn does belong.

The fact that inns are permitted only in the R-1 zone does not mean that every application for an inn in the R-1 zone must be approved, however. An inn is what is called a “use permitted by special permit.” That means that an applicant must satisfy a number of requirements, enumerated in Section 13 of the regulations, that go beyond the requirements for what are called simply “uses permitted.” If you want to build a house in Washington — a use permitted — you need to file an application and satisfy the zoning enforcement officer that you have complied with the town's requirements, but you don't have to make your case at a public hearing. If you want to build an inn, by contrast, you have to meet the additional requirements I mentioned, and you have to endure a public hearing, and the decision must be made by the commission itself rather than by the zoning enforcement officer.

Several people have suggested during the current public hearing that the Wykeham Rise LLC application requires the zoning commission to “waive” its regulations. That is not the case. First of all, the zoning commission is not allowed to “waive” its regulations. Second, an inn is a permitted use, and is mentioned specifically in the regulations. What is true, however, is that special permits are one of a very few instances in where commissioners are allowed — in fact, required — to make discretionary judgments regarding appropriateness and compliance. Regulation 13.1.b.2, for example, states that an applicant seeking a special permit, in order to receive an approval, must satisfy the commission

that the location, type, character, size, scale, proportion, appearance, and intensity of the proposed use and any building or other structure in connection therewith shall be in harmony with and conform to the appropriate and orderly development of the Town and the neighborhood and will not hinder or discourage the appropriate development and use of adjacent property or substantially or permanently impair the value thereof.

There are no formulas, measurements, percentages, or other hard numbers listed in that requirement. Commissioners must make their own judgments as to whether or not an application meets those standards. Making such judgments does not constitute a waiving of the regulations; it's exactly what the regulations require. The regulations give the commission some guidance concerning how to do that, but commissioners still have to make a judgment.

Lawyers for various neighbors have raised a number of legal arguments suggesting that the commission was wrong to accept this application in the first place, and that it has been wrong to continue considering it. Most of those arguments concern interpretations of state law and therefore go far beyond the jurisdiction of any zoning commission, but I can tell you that it is the opinion of the commission's attorney — and therefore also the opinion of the commission's chairman — that the commission was correct to accept the application, and that the

commission is correct in continuing to consider it. Unresolved legal issues, if any remain at the end of this process, will be settled elsewhere. The commission must focus on the regulations.

It has been suggested several times by representatives of the neighbors that the commission should deny this application on the grounds that the applicant has made significant changes to the plan since the original filing. I want to remind everyone that the great majority of these changes have been made in response to criticisms offered by the same neighbors and representatives, or in response to questions raised by members of the commission. It would hardly be reasonable for a commission to raise questions about an application — especially a special-permit application — and then deny that same application on the grounds that the applicant had responded to the questions. One important purpose of any public hearing is to improve whatever plan is under consideration, by bringing it, in public, under the scrutiny of the commissioners, subjecting it to public criticism and comment, and giving the applicant opportunities to revise or remove elements that may be objectionable or noncompliant.

Nevertheless, the special-permit process is not open-ended. The applicant, during tonight's session, can request another continuation, but the public hearing cannot, by state law, be extended beyond the end of October. Thus, the applicant has nothing to gain by dragging things out or by being incomplete. On the contrary. One way or another, by approximately a month from right now the public hearing will be over, and no further public input will be possible after that point, and the commission will then have 65 days in which to make a decision — unless the Inland Wetlands Commission has not acted by that time, in which case the time limit will be extended to 35 beyond the day when the decision of the Inland Wetlands Commission is made.

It has been stated by neighbors' attorneys, both here and before Inland Wetlands, that the zoning commission's decision to accept the Wykeham application was in violation of its own rules, since regulation 2.3.6 states

A zoning application, which involves the installation or modification of a subsurface disposal system shall not be accepted nor shall a zoning permit or Special Permit be approved unless it has been reviewed by the Town Health Officer, or his authorized agent and if required, the appropriate State Dept. and certified that the land is suitable for an on-lot sewage disposal system and that the proposed system is suitable to accommodate the proposed activity.

The town's land-use attorney and one of his associates have confirmed to me that the commission can't legally refuse to accept an application simply because it is incomplete. And the second requirement, that the state must act first, cannot be followed by this or any other applicant, because the state has made it clear to us, repeatedly, that it won't fully evaluate a septic plan until a final land-use decision has been made at the local level. That is doubly true in this instance, because, I believe, the state has now been contacted by two different sets of attorneys, for the applicant and for some of the neighbors, and is now certain to wait and see what happens locally before taking up the file. The DEP won't act until we have acted, no matter what our regulation says.

An attorney for one of the neighbors argued during the opening session of the public hearing that the proposed project is at odds with certain objectives enumerated in the town's Plan of Conservation and Development, and noted that the zoning regulations require special-permit proposals to be consistent with such objectives. I have discussed this issue at some length with our attorney, and would like to relay several points that he made to me. The first is that the role of the Plan of Conservation and Development in land-use matters is established by state law, but is also tightly circumscribed by it. The state requires every municipality to create and regularly update a Plan of Conservation and Development, but the state is far from clear or specific about how that plan is actually to be used, other than as a document to be regularly

revised. The Zoning Commission must consider the Plan when adopting or revising regulations but is not in any way bound by it — and if it were so bound it would often face an irresolvable dilemma because the Plan includes many that are or can be mutually exclusive, such as the desirability of maintaining the town's much-discussed rural character and the desirability of enhancing its tax base and local employment opportunities. The Plan also makes reference to a number of land-use concepts that do not, in fact, exist in the Town of Washington, either in its Zoning Regulations or in its local ordinances. For example, Washington has never adopted a demolition delay ordinance or created so-called gateway districts or commercial-district transition areas, even though those things are discussed at some length in the Plan. The usual practice by the parties in land-use matters, including not only applicants and their supporters and opponents but also members of the Zoning Commission, including myself, is to cite those parts of the Plan which support their own position and to ignore those parts which don't.

At the first session of the public hearing, a useful point was made by Valerie Cooper, a resident, who said — and I'm paraphrasing and editing a little — that the task of the commission regarding this application is not to solve the problem of the Wykeham Rise property — which is a large lot with numerous derelict buildings — but to weigh the merits of the application at hand. The merits of that application are not wholly unrelated to the nature of the property, because the special-permit regulations require us to consider any proposal in the context of “the appropriate and orderly development of the Town and the neighborhood” — but Ms. Cooper's point is still a very good one. By now, several years after the closing of both Wykeham Rise School and the Swiss Hospitality Institute, there are more than a few Washington residents, I suspect, who feel that just about any use of that property would constitute an improvement over the decaying mess that is there today. But the regulations are still the regulations. A desire to do something, however understandable that desire may be, does not outweigh the necessity to follow the rules — and that, I think, is one of the points that Ms. Cooper was making.

It is also a fact, nevertheless, that “large derelict property” is not a desirable use in the town of Washington, and certainly not a use listed in the zoning regulations. The Wykeham property was used, and relatively intensively, for more than a century, and sooner or later, one way or another, it will be used again, whether as an inn or as something else. Large derelict properties add no cars to local roads, and they use very little water, and they are extremely quiet, but they don't contribute to “the appropriate and orderly development of the Town and the neighborhood.” Just as it is not the job of the zoning commission is not to find a (merely) better use for the property than the current one, it is also not the job of the zoning commission to hold out for whatever its members might consider to be the best use. The responsibility of the commission is to determine whether the proposed use, the plan on the table right now, is allowed under the regulations.