

# June 25, 2012

**Present:** Mr. Fitzherbert, Mr. Reich, Mr. Solley, Mr. Werkhoven, Mr. Abella

**Alternates Present:** Mr. Wyant, Mr. Dutton, Dr. Kraparo

**Staff Present:** Shelley White, Janet Hill, Mike Ajello

**Others Present:** Atty. Andrews, Atty. Williams, Atty. Marcus, Atty. O'Hanlon, Ms. Zelenko, Mr. Bedini, Mr. Smith, Land Surveyor, Mr. Owens, Architect, Ms. Crumrine, Mr. Buck, Dr. Sachs, Mr. Jancski, Ms. Evans, Mr. Meehan, P.E., Mr. Goodin, P.E., Mr. Peck, Ms. Farmer, Press, Residents  
Mr. Fitzherbert called the meeting to order at 7:30 p.m.

## **PUBLIC HEARING(S)**

Seated: Mr. Fitzherbert, Mr. Werkhoven, Mr. Reich, Mr. Abella, Mr. Solley

### Coleman/112 Walker Brook Road/Special Permit: Section(s) 3.11.3/Detached Accessory Apartment:

Ms. Hill read the legal notice published in Voices on Wednesday, June 13 and Sunday, June 24, 2012 and the list of documents in the file.

Mr. Owens, Architect, and Mr. and Mrs. Coleman were present. Mr. Owens submitted the list of surrounding property owners, presented the drawing titled Sketch Plan//Floor Plan Elevations, prepared for Coleman Poolhouse, by Halper Owens Architects, LLC, sheet Z001 dated 5-11-12 and described the exact location of the property. He stated that it is a single family dwelling with a detached garage with a studio on the upper level, a small shed, tennis court, pool and detached pool/guest house that functions as a detached accessory apartment. Mr. Owens stated that the proposed plan is to demolish the existing 900 sq. ft., 1 bedroom detached accessory apartment and and replace it with a 1,200 sq. ft. accessory apartment. The proposed floor plan consists of the 2 bedrooms, a powder room, a bathroom, a living space with kitchenette, covered porch (not included in the 1,200 sq. ft. calculation) and a bilco door on the outside that would be the only access to the unfinished basement. The proposed structure would not be more that 24 feet in height and would share the driveway with the main 3,336 sq. ft. dwelling. Mr. Owens and the Commissioners looked at the drawing and discussed the shared driveway, parking and access to the proposed accessory apartment. He stated that there are no neighbors within 400-500 ft, the closest property line is approximately 260 ft. and the architecture is transitional and is in keeping with the primary dwelling. The existing septic for the existing pool/guest house will be used for this new structure. Mr. Owen stated that there is a studio above the garage. Mr. Coleman stated that the property is approximately 43 acres.

There were no further questions from the public.

### **Motion:**

to close the Public Hearing for Coleman/112 Walker Brook Road/Special Permit: Section(s) 3.11.3/Detached Accessory Apartment,  
by Mr. Reich, seconded by Mr. Abella, passed by 5-0 vote

Seated: Mr. Fitzherbert, Mr. Reich, Mr. Abella, Mr. Wyant, Alt., Dr. Kraparo, Alt.

Mr. Solley and Mr. Werkhoven, Dutton recused themselves.

The Gunnery, Inc./22 South Street/Special Permit: Section 4.4.10/Athletic Fields: Ms. Hill read the list of additional documents submitted to the file since the last Public Hearing on May 21, 2012.

Mr. Fitzherbert stated that the public would hear a response from the intervenors to the applicants response to the intervenors. He requested that the speakers keep their responses factual and brief.

Atty. O'Hanlon stated that his clients, the Sterns (abutting property owners), regret that they could not attend this public hearing tonight. Atty. O'Hanlon stated that they have several speakers tonight and their reports have been submitted to Ms. Hill. He submitted photos of the 3-D model, 2 letters from area brokers regarding impact on the value of surrounding properties, copies of documents that were emailed to Ms. Hill, peer review of acoustics report done by The Gunnery, letter from Atty. Hanlon to the Zoning Commission dated June 25, 2012. (all submitted documents are on file in the Land Use Office) Atty. O'Hanlon stated this letter outlines a significant concern that they have as a result of the last hearing where the applicants handed out C.V.'s for the Land Tech person and the Conservation District employee and suggested that the Zoning Commission could take the reports from these professionals as an adequate review of the drainage and soil sedimentation measures for this application. He stated that the Zoning Commission has a duty under the Town of Washington Zoning Regulations to look at the site plan very carefully and the review of the Zoning Commission's site plan is very different from what the Inland Wetlands Commission did. Atty. Hanlon stated that the ZC study of the site plan is much more comprehensive, detailed and it considers factors that the IWC never had the duty or opportunity to consider.

Atty. O'Hanlon stated that the first speaker would be Mr. Jancski, Landscape Architect. He stated that at the last Zoning Meeting the counsel made an inflammatory remark that Mr. Jancski's computer generated depiction of the site was a fantasy. Atty. Hanlon cited previous jobs that Mr. Jancski has worked on and stated that the Commission will notice how accurate and helpful his analysis is and he submitted Mr. Jancski's report to the Commission.

Mr. Jancski submitted copies of the slide show titled Landscape Architectural Analysis, by Jancski Landscape Architect LLC (on File in the Land Use Office) and stated that his presentation is in response to some of the new information that was brought up at the last meeting. He explained the method of how the 3-D model as well as the perspectives were prepared using the applicants site plans. Mr. Jancski stated that they are to scale. He displayed Exhibits 1A-1K and discussed the visual impact of the proposed athletic fields from Judea Cemetery Road and Plumb Hill Road and bird's-eye views of the site and surrounding properties pre and post development. Mr. Jancski stated that he does not feel that the existing deciduous trees would provide sufficient screening because half of the year they would not have leaves. He stated that all the trees in the models created were roughly 75 ft. tall to use the same height as the applicants renderings. Mr. Jancski stated that this entirely deciduous young forest that makes up this hillside is not an adequate screen and the conditions of a special use permit require an effective screen. Mr. Jancski stated that he would like to address the scale of this proposed project to the surrounding properties because it is one of the standards that must be met for a special permit. He stated that the proposed fields are grossly out of scale and the bird's-eye view renderings show this.

Mr. Jancski discussed Exhibits 2L-2Q and displayed Exhibit 2M Slope Analysis which depicts how steep slope are being created and increased on the project site. He stated that these 3-D

renderings were produced using the numbers from the applicant's site plans and show that the slopes are much steeper than one can determine by looking at the 3-D model. Exhibit 2N-Steep Slopes Downhill of Fields depicts the view from level spreader #3 and 46' of vertical slope. Mr. Jancski stated that he does not feel that the proposed seed mix would take on such a steep slope. He displayed Exhibit 2O-Steep Slopes Uphill of Fields and stated there is a 32' Elevation change from the bottom of the steps to the upper parking lot and these are 40% slopes, which is considered steep and exceeds a lot of the industry standard guidelines for turf. Mr. Jancski displayed Exhibit 2Q-Precedent Photos of Planted Slopes Adjacent to Recreational Areas. He stated that these photos show unsuccessful erosion control material and plantings on steep slopes.

Mr. Jancski stated that the 3R-3V show visualizations of pre and post development and the impacts to trees at and beyond the proposed limited area of disturbance. He stated that they believe that an additional 80' tree clearing and limit of disturbance will be required beyond what has been proposed by the applicant. He stated that more tree loss and clearing would result in a greater visual impact and this visual impact would not be in compliance with the special permit standards in the Zoning Regulations. Mr. Reich asked what percentage of Mr. Jancski's calculation is covered by construction. Atty. O'Hanlon stated it would be an additional 3-4 acres. Mr. Jancski stated that the 15-16 acres of L.O.D is his testimony because he believes there will be additional clearing due to access for construction vehicles and root disturbance of trees. Mr. Jancski stated that the reason Exhibit 2P – Steep Slopes uphill of Fields looks much steeper than the 3-D model it is at a different scale and that a 2.5:1 slope is very steep. Mr. Reich stated that if the slope degrades it would ruin the fields and that would be self defeating on the part of the applicant.

Atty. Williams stated that he was wondering when Mr. Jancski was asked to prepare this additional material and what deadline was given for its completion. Atty. O'Hanlon objected to this question because he does not think it is relevant. Atty. Williams stated that it is not privileged information to ask somebody when they were asked to do something and it is entirely relevant to the applicant's claim that it is entirely unfair for them to be presenting all kinds of new material that is supposed to be responding to the 'so called' new material that the applicant submitted when it is just putting the applicant in the position to have to respond again. He stated that the applicant completed their responsive material in 8 or 9 days. Mr. Fitzherbert stated that in the Zoning Regulations the Town of Washington holds the applicant responsible to submit material 15 days before the public hearing and other people can bring things in the day of the meeting. He stated that he thinks this is very flawed and will possibly require a revision in the future. Mr. Fitzherbert stated that he understand Atty. Williams question but it doesn't make a difference when they were asked to do this according to our regulations.

Atty. Williams asked if Mr. Jancski used the same additional limit of disturbance on these exhibits as he with his first analysis. Mr. Jancski stated that he did. Atty. Williams asked what the height of the ground surface perspective was being shown for this eye-level view in the Plum Hill Road View. Mr. Jancski stated that it was approximately 15 ft. - second floor level. Atty. Williams asked if the report that was handed in this evening by Mr. Jancski on page 6 there is a section regarding post development impacts and storm water drainage which expresses his opinion regarding how the storm water design may effect the wetlands and the watercourses downhill of the limit of disturbance. He asked if Mr. Jancski is a licensed professional engineer. Mr. Jancski stated that he is not a licensed professional engineer. Mr. Fitzhebert asked that this questioning end. Atty. Williams stated that he is gathering information to help the applicant's response because this is a completely new opinion. Atty. Williams asked if Mr. Jancski is a Wetlands Scientist. Mr. Jancski

stated that he is not and that he is a registered landscape architect in the State of Connecticut.

Ms. Evans stated that she is a Certified Professional Wetlands Scientist, Certified Professional Erosion Sediment Control and a Certified Professional for Stormwater Quality. She stated that she believes that at the May 21, 2012 Zoning Meeting Mr. Klein misrepresented her approach to the issues and in so doing, minimized the potential negative environmental impact that this project presents. She stated that as she understands Section 13 of the T.O.W Zoning Regulations the environmental protection standard for a special permit is a significant part of what the Zoning Commission must consider. Ms. Evans stated that she is very familiar with the forests of Litchfield County and does not have a problem with the way The Gunnery has depicted the type of forest that is on this site but she disagrees with Mr. Klein that because there is no natural diversity database record for this property or adjacent to this property that there is no concern regarding protective species and State listed species inhabiting this site. She stated that attached to her letter to the Zoning Commission dated June 25, 2012 (on file in the Land Use Office) is a County Report of Connecticut Endangered, Threatened and Special Concern for Litchfield County and she identified at least 14 species that could inhabit the upland on this site. She stated that she feels that there is ample reason to do a biological survey on this property as part of the initial site planning. Ms. Evans stated that it is her opinion that construction of the athletic fields will result in a change in distribution and abundance of wildlife on the site and there is potential for impact to protected species based on this application.

Ms. Evans stated the 40% and 50% slopes show that there will be a significant change in topography on the site and taking 12 acres of trees off a site like this probably means 2500 trees will be lost and this would change the hydrology and the character of this site. She stated the side slopes that are below the fields are the steepest slopes and they are immediately 'upslope' from very steep sloping, undisturbed parts of this site and she feels that there will be a change in drainage and the quality of the runoff leaving this site after the project is built. Ms. Evans stated that 'short sections' of slopes that Mr. Klein referred to measure 800 linear feet, which she does not feel is a short section of slope and she feels that these proposed slopes will have significant impact on the forest down slope and the wetlands and watercourses. She stated that she does not believe the applicant's proposed seed mix will take on these steep slopes and it is her opinion that this plan will have a significant adverse impact on the property and adjacent properties.

Mr. Meehan, Engineer, stated that the reason why the 3D model and Exhibit 2P show different perspectives of the site and that from the bottom of the hill to the top of the hill is equal to a 6 story building. He stated that he has served on a Zoning Commission and always hired experts for technical information and recommended that the Town of Washington Zoning Commission hire experts as well. Mr. Meehan stated that the Zoning Commission need only to weigh all the testimony in the plans against the regulations and vote accordingly. He stated that the applicant made the following assertions: 1. That the Zoning Commission doesn't have the statutory authority to review the soil erosion and sedimentation control plans and that belongs to the CT DEEP. Mr. Meehan stated that this goes against the language in chapter 124 section 8-2 in the CT General Statutes. 2. The applicant is using the letter from Mr. Hayden of the Northwest Conservation District reviewing the plans requested by the Town of Washington Conservation Commission as an approval from the NCD. Mr. Meehan stated that this is wrong and that the intervenors report will show that Mr. Hayden agrees with them. 3. The applicant asserted that the application need not be reviewed for wetlands compliance because Land Tech has done a review for the IWC. Mr. Meehan stated that their report will show that this is also not the case. 4. Mr. Meehan stated that the

intervenors pointed out that the application was incomplete in certain areas and lacking a lot of detail and the applicant asserted that the plans that were submitted for review of the Zoning Commission were preliminary and weren't contract documents. He stated that the site plan should show the final project that is to be development and to confirm that the natural resources of the Town of Washington would be protected and the site plans must comply with the Zoning Regulations. 5. Mr. Meehan stated that the applicant cited section 12.12 of the Zoning Regulations as a rationale for why the Zoning Commission need not review this particular regulation for this application because it had already been reviewed by the IWC. He stated that chapter 12.12 requires a soil and sedimentation control review of any property that contains no regulated wetlands and nothing in the chapter excuses the applicant from review of properties that do have regulated wetlands and nothing recommends an adoption of a review that the IWC does of a wetlands resource. Mr. Meehan stated that the applicant is essentially saying ignore chapter 13 and 14.

Mr. Meehan stated at the risk of "breaking the firewall," the wetlands regulations section 19 states "Nothing in these regulations shall obviate the requirements for the applicant to obtain any other assents, permits or licenses required by law or regulation by the Town of Washington, the State of Connecticut, Federal Government and so on and so forth." He stated that the Town of Washington Zoning Regulations give the Zoning Commission the authority and the responsibility to uphold them "they all flow to you through the State Statutes right to your regulations and right to your responsibility and if you view these plans as we have, against the regulations...you will see that you have to deny it."

Mr. Goodin, P.E stated that he reviewed the rebuttal letters dated May 21, 2012 by the applicant to his original report and he feels that they did not address any of the concerns that he had in his report except for the concern regarding Health Department approval and the applicant stated that it was in the file. He stated that he did not see it in the original file but it is in the file now. He stated that the applicant addressed other concerns that he did not ask about and "they talked in circles or they said simply that it wasn't the jurisdiction of this commission." Mr. Goodin stated that his report (on file in the Land Use Office) has a section that addresses jurisdiction of the DEEP and Zoning Commission. He stated that the applicant states that many of Mr. Goodin's concerns would be reviewed by the DEEP and he stated that that is incorrect "when you submit a general permit for the DEEP it's a simple registration" which is mailed and put in a folder. "They do not have to review it, they can, but they typically do not review it." Mr. Goodin stated that it is the DEEP regulations, not guidelines, that state that a general permit is permissible for a project if this Commission approves it and the erosion sedimentation control plan and then the DEEP does not need to review it. He stated that if the erosion sedimentation control plan and the drainage calculations are not approved by the Zoning Commission "then the DEEP regulations State Statutes requires that they submit an individual permit and what is not done by this Commission has to be done by DEEP." Mr. Goodin stated that when the applicant says that this would be taken care of when they get to the DEEP is "a fallacy and it cannot be done." He stated that he spoke to Mr. Hayden of the Northwest Conservation District, he submitted all of his plans and application to him and told him his concerns about the plans for the proposed athletic fields. Mr. Goodin stated that Mr. Hayden looked at his concerns and the first thing he said was that his "letter could not be used by the Planning and Zoning Commission to make any decisions or any assertions on this project." He stated that Mr. Hayden stated that he wrote his letter and that it was generic and done for the Conservation Commission and that it should not be used to address Mr. Goodin's concerns and that "he would have to be hired by the Town to look at the Zoning Application, to look at his

guidelines, to look at the picture in it's entirety." He specifically said that "this Commission should not and can not use his report as part of their deliberation as part of this project."

Mr. Goodin stated that he spoke to Mr. Bartoz who wrote the engineering section of the Land Tech review and he said that report was specifically for the IWC and should not be considered as part of the Zoning review. He stated that he asked Mr. Bartoz some specifics about the slopes and Mr. Bartoz stated that he would have to be hired to answer those questions.

Mr. Goodin stated that the second part of his report reviews the concerns he has with the Land Tech review and that the Commission will find that Land Tech did not address his eight major concerns. He stated that the last part of his report are responses that the applicant gave to his concerns. Mr. Goodin stated that his first concern is the three level spreaders which he pointed out that the slopes downhill are much greater than the 5% maximum that the DEEP guidelines allow. He stated that Mr. Buck stated that they do not need to meet the downhill slopes because the design of the level spreaders are different than the level spreaders in the guidelines. Mr. Goodin stated that this regulation has nothing to do with the design of the level spreader and that it has to do with the downhill slope. He stated that Mr. Buck stated that since the proposed level spreaders are a different design, the DEEP could look at it and approve the alternative design. Mr. Goodin stated that the slope is still greater than 5%. He stated that Mr. Buck stated that the level spreaders installed at Rumsey Hall School on a steep slope appear to be working and that this is immaterial to this site.

Mr. Goodin referred to Exhibit 4W, Landscape Architectural Analysis, Gunnery School Proposed Athletic Fields, date June 25, 2012 and pointed out the Pre-Development Runoff Spread and areas of Diverted & Concentrated Post Development Drainage Runoff. He stated by doing this the applicant violated the erosion sedimentation control guidelines that say that whatever the limit of drainage is today, the same limit must exist post development because if it is not, a diversion of water is created and this would create runoff in three specific areas which would cause erosion. Mr. Goodin stated that the applicant did not address this issue in their comments.

Mr. Goodin referred to Exhibit 4Y, Landscape Architectural Analysis, Gunnery School Proposed Athletic Fields, dated June 25, 2012 and discussed the slope of 2 of the 3 specific areas downslope of the proposed level spreaders and stated that there are places in the section where the slope gets to be 30 and 40%. He stated that a level spreader is designed to have the water come out slowly but this has nothing to do with the 5% or less slope requirement.

Mr. Goodin stated that there would be a significant increase in storm drainage and detention would be needed. He stated that he pointed out that the applicant used the wrong soils type C for the drainage calculations and he submitted a copy of the applicant's soil scientist report that shows that the property is soils class B. Mr. Goodin stated that the applicant claimed to use soils type C to be conservative but that using the correct soils type would be conservative and these calculations would show an increase in runoff. He stated that the applicant had the soil scientist flag the land and sketched the property which showed some soil types on the property and the soil types are closer to soil type C and that is the soil type that the applicant used for their calculations. Mr. Goodin stated that this cannot be done because the guidelines say specifically that the USDA soil type must be used and if you do not use the USDA soils then a soil scientist must flag the uplands area in detail and he submitted a section of the guidelines (on file in the Land Use Office) that he states supports this. He stated that the applicant said that they used the wrong soil type and he stated that they only used soils type B for their calculations.

Mr. Goodin stated that the applicant's drainage calculations were incomplete because they used shallow sheet flow of 150' and 200' which drastically changes the outcome of the drainage calculations. He stated that the applicant submitted a copy of the TR55 by the USDA which says you can use up to 300' and this submission was done in June of 1986 and is outdated and obsolete because it has been changed to 100' maximum. Mr. Goodin submitted a TR55 worksheet for that same calculation (on file in the Land Use Office) that says to only use 100'.

Mr. Goodin stated that the applicant must design the stormwater pollution to provide for 80% removal of the TSS in order to prevent pollution of the downstream natural resources. He stated that Mr. Buck's response was that the plans do not have any provision for suspended removal solids because they are not required for runoff from grass areas and that if DEEP requires it they will do it. Mr. Goodin stated that it is required and there is nowhere in the guidelines and manuals that say that it is not. He stated that Mr. Reifenhauer stated that 80% removal of TSS is a goal and not a requirement which is incorrect and he read the words to the Commission so they could make their own judgement.

Mr. Goodin referred to Exhibit 4Z, Landscape Architectural Analysis, Gunnery School Proposed Athletic Fields, dated June 25, 2012 and stated that the applicant has said that they know they will hit ledge and will mechanically remove it. He stated that he has done two borings that reveal that ledge would have to be removed. Mr. Goodin stated that the contractor said that his first option would to remove it mechanically but he did not state what a second option would be and he feels the contractor will need a second option. Mr. Goodin stated that Mr. Towne stated that a good contractor knows to dig out an extra foot of ledge and that is industry standard. He stated that when the contractor hits ledge on a slope he should not dig it out an extra foot and put soil back on but leave the ledge or put rock on it. He stated that it is his feeling that the contractor will hit ledge on the fields and the Commission needs to know what they will do if hit ledge and how much ledge is going to be blasted. Mr. Goodin stated that the applicant has a construction schedule that runs from spring to fall and they are not allowed to go outside of that schedule and he believes that if there is an emergency they will just continue through with the project to meet the deadline and that the plans need this information to be able to get this done in one season without problems. He stated that at the top of the slope there is a drainage swale that cuts all the water that comes off the hill and comes around the construction job and goes around the stock pile but this is not on the plan and the applicant did not address the drainage during construction on the other side because there is not room to grade it. Mr. Goodin stated that this drainage swale has an outlet to very steep slopes of 10-15% slopes as opposed to the recommended 2% and that there is no way around the construction on these slopes. He stated that the reverse benches do not meet design standards and would not work. Mr. Goodin stated that the applicant's engineers contradict each other whether the the upper one is a reverse bench or not and they both say that the bottom one is a reverse bench and but are lacking details and are not designed to serve the purpose of a reverse bench which is to protect the slopes.

Mr. Goodin submitted his report for the record.

Atty. O'Hanlon stated that the guidelines are by Statute and that every Zoning Commission is required to apply the Soil Erosion and Sediment Control Act to the site plans and this Act has the DEEP come up with guidelines which are a publication binding on this Commission. Mr. Fitzherbert stated that normally guidelines are not binding. Atty. O'Hanlon stated that these are binding and the DEEP also came up with a stormwater quality manual which is binding on this

Commission as well.

Mr. Peck submitted a summary regarding the subdivision issue. Mr. Fitzherbert stated that the subdivision issue does not have an impact on the Zoning Commission because it is irrelevant. Mr. Peck stated that his clients, the Stern's, would welcome an appropriate residential use of the property. He stated that the subdivision plan should have been submitted to the Planning Commission and that it fails to comply with at least 16 parts of the subdivision regulations. Mr. Peck stated that the subdivision plan failed to address public health issues regarding septic systems and he feels that it doesn't have anything to do with economic reality and that the application does not meet 75% of the Special Permit Standards in the T.O.W. Zoning Regulations. He stated that there are more details in his report (on file in the Land Use Office).

Atty. Marcus, representing Ms. Zelenko, submitted an outline of comments to the Commission. He stated that this application is a fantasy and does not meet the Special Permit requirements of the T.O.W. Zoning Regulations. He stated that the applicant hasn't thought this plan out and if they did it is not shown on the plans. Atty. Marcus stated that it astounds him that the Commission did not require the applicant and the applicant did not think to submit a biodiversity study of the property that would address the threat to endangered species. He read his letter dated June 25, 2012 (on file in the Land Use Office) addressed to Mr. Fitzherbert, Chairman of the Zoning Commission and stated that his client joins in the concerns of Atty. O'Hanlon's client. Mr. Fitzherbert asked if the letter could be summarized. Atty. Marcus stated that he feels that this process is being rushed. He stated that Atty. O'Hanlon's letter discusses the jurisdiction of the Zoning Commission and the IWC. Atty. Marcus stated that the handling of this application has been problematic from the beginning as one member refuses to recuse himself and his client is concerned with objectivity. Mr. Fitzherbert stated that the Zoning Commission would like to hear new testimony.

Atty. Marcus stated that the burden of proof is shifted to the intervenors to show how the application does not meet the Special Permit requirements. He stated that the Commission doesn't seem to be concerned of the enormity of this project because there has been no data requested of the applicant for deep holes and for more detailed testing of the site. Atty. Marcus stated that the Zoning Commission has chosen not to have a formal site inspection and would rely on the IWC report. He stated that there are some very complicated engineering issues and he is surprised that the Commission does not enlist the help of a professional and the Land Tech reports should not be relied on because the reports deal only with Inland Wetland issues. Atty. Marcus stated that the fact that the Inland Wetland Review is part of the record for this Zoning Application is flawed. He stated that his client has a problem with Mr. Buck's report dated May 21, 2012 where he says "that the Wetlands Commission did not find the Artel Engineering report concerning level spreaders on slopes in excess of 10% to be convincing." He stated that the IWC stated that this was more appropriate for the Zoning Commission to address. Atty. Marcus stated that this indicative of the generalities that are in the applicant's application. He stated that in his letter they have gone through 6 of the 8 requirements for a Special Permit. Atty. Marcus stated that he feels that the subdivision was brought up as a scare tactic. He stated the plan is not in harmony with adjacent properties and question the applicant's appraisal information. Atty Marcus stated that this application does not meet the 13.1.b.5 which is to show that the lot is of the proper topography for the proposed special permit use and if this approved the Commission would be allowing the applicant to not protect the natural features of the site and the Commission can not make a finding that this proposal will not create nuisance, noise, vibration, etc. He stated that the contractor said that this is a small job but when questioned about the construction details the contractor stated that



he had to defer certain questions because it wouldn't be known until they were actually working on the site. Atty. Marcus stated, "under all these circumstances it would be a travesty for this Commission to approve this application at this time." He stated that if the Commission reads the regulations, "this application is fantasy and it just doesn't belong here on this site."

Atty. O'Hanlon stated that they have a brief summary but would wait until after the Gunnery has a chance to respond to what they have presented tonight. Atty. Williams stated that they would defer and wait for the intervenors summary. Atty. O'Hanlon stated that they need to wait to give their summary after all the facts have been presented.

There were no further questions or comments from the public. Mr. Fitzherbert explained that the procedure is for the applicant to have the last word and asked if the intervenors were done. Atty. O'Hanlon stated that he wanted to wait until he heard The Gunnery's response to what was presented tonight because he and his client has the right to respond to anything new that they may present during their response. He stated that if the Gunnery does not have any new factual information that they need to present in their response to what was presented tonight then he was prepared to do their summary.

Mr. Fitzherbert stated that applicant and the Commission have a lot to read and that the Public Hearing would most likely not be closed tonight. Atty. Williams stated that there was a lot of new information presented tonight and a 5th night of hearing would be necessary. Mr. Fitzherbert stated that there were things put in the record tonight that were not part of The Gunnery's rebuttal and that the applicant must request a continuation in writing and submit it for the record. Atty. Williams asked for a break to discuss a possible Special Meeting date. Mr. Fitzherbert stated that they could take a break.

Atty. Williams submitted a request to continue the public hearing.

Dr. Sachs read her letter of opposition to the Zoning Commission dated on file in the Land Use Office).

Motion:

to continue the Public Hearing for The Gunnery, Inc/22 South Street /Special Permit: Section 4.4.10/Install Athletic Fields to Wednesday, July 25, 2012 in the Land Use Meeting Room at a Special Meeting at Bryan Memorial Town Hall at 7:30 pm,  
by Dr. Kraparo, seconded by Mr. Reich, passed by 5-0 vote.

## **REGULAR MEETING**

Mr. Fitzherbert called the Regular Meeting to order at 11:10 pm.

Seated: Mr. Fitzherbert, Mr. Reich, Mr. Abella, Mr. Solley, Mr. Dutton, Alt.

### **Consideration of the Minutes**

The minutes of the May 21, 2012 Zoning Commission Meeting were considered.

Corrections:

Pg. 3, 1st paragraph, 1st sentence should read: Mr. Powell stated that the height of the building

meets the current regulations and the existing building has an 11,000 sq. ft. footprint and the proposed building is about 16,000 sq. ft., which calculates to an approximate 30% increase in square footage.

Pg. 8-9, last paragraph on page 8, should read: Mr. Smith submitted...He stated that this drawing indicates how small the cuts and fills are for the proposed fields and how they would not exceed the depths of the test borings refusal for the following locations, which are the same general locations shown by the intervenors engineer at the previous session of the public hearing. He stated that at test boring B2, near the southwest corner of Field #2, the amount of cut necessary to achieve finished grade would be 3.5' and the test boring went down 20.0' without refusal. At test boring B3, in the middle of the south end of field #2, the cut would be 4.0' and the test boring went down 12.0' to refusal. At test boring B4, at the southeast corner of field #2, the cut would be just 0.92' below existing grade and the test boring indicated refusal at 5.0'. At test boring B5, in the vicinity of the proposed parking turnaround, or hammerhead, the cut would be 9.4' and the test boring encountered refusal at 6.0' so there is a 3.4' difference at this location. He stated that Mr. Towne would explain how they plan to remove the ledge in this area.

Pg. 10, 1st sentence should read: Mr. Buck stated that based on these findings they are certain that their drainage calculations are correct, the project is in Hydrological Soil Group C and it will produce a slight reduction in runoff.

Pg. 11, 3rd paragraph, 3rd sentence should read: He stated that the shallow fill for the grading below the proposed field would not have an adverse effect...

5th sentence should read: He stated that the Stormwater General Permit...are acceptable as long as there is provided technical backup and he believes that the plans provide this.

7th sentence should read: He stated that the entire area of fields is in the Group B area.

8th sentence should read: Mr. Klein stated that if the slit trenches are necessary they would increase the infiltration...

4th paragraph, 1st sentence should read: Mr. Klein stated that Ms. Evans...site does not meet any of the three criteria listed on the Connecticut Natural Diversity Data Base.

Pg 12, 1st full paragraph, 3rd sentence should read: Mr. Klein stated that the impact on the wildlife is inevitable and unavoidable...most common habitat type in the region.

Last sentence should read: (Mr. Klein's report addressed to Joseph P. Williams, Esq...

Pg. 16, under Pending Application(s) member Seated should be: Mr. Fitzherbert, Mr. Abella, Mr. Reich and Mr. Dutton, Alt.

Motion:

to approve the Zoning Commission Regular Meeting Minutes of May 21, 2012, as amended, by Mr. Solley, seconded by Mr. Abella, passed by 5-0 vote.

### **Pending Application(s)**

Seated: Mr. Fitzherbert, Mr. Reich, Mr. Abella, Mr. Solley, Mr. Dutton, Alt.

### Coleman/112 Walker Brook Road/Special Permit: Section 13.11.3/Detached Accessory Apartment:

The Commission briefly discussed this application. Mr. Dutton asked about the existing septic system. Ms. Hill stated that they have approval from the Health Department. There were no further comments from the Commission.

Motion:

to approve the Special Permit Application for Coleman/112 Walker Brook Road/Section(s) 3.11.3/Detached Accessory Apartment,  
by Mr. Abella, seconded by Mr. Reich, passed by 5-0 vote.

### **New Application(s)**

Lautier/56 June Road/Special Permit: Section 13.11.3/Detached Accessory Apartment:

Ms. Hill stated that there are some minor details and the applicant will need to apply for a variance but she feels that the Commission could set the Public Hearing date for this application.

Motion:

to schedule a Public Hearing on July 23, 2012 at 7:30 pm at Bryan Memorial Town Hall to consider the Special Permit application for Lautier/56 June Road/Section 13.11.3/Detached Accessory Apartment,  
by Mr. Fitzherbert, seconded by Mr. Solley, passed by 5-0 vote.

### **Other Business**

There was no other business to discuss.

### **Privilege of the Floor**

There were no further comments from the public.

### **Zoning Enforcement**

The Commissioners discussed the Zoning Enforcement Report dated June 25, 2012.

Smith/35 East Shore Road:

Ms. Hill stated that each member has a draft letter from Atty. Olsen to Ms. Smith. She gave a brief summary as to why this letter will be sent and if the Commissioners approve it. It was the consensus of the Commission that this letter should be sent.

Mr. Ajello briefly discussed the items on the Zoning Enforcement Report dated June 25, 2012 (on file in the Land Use Office) with the Commissioners.

### **Brief discussion from Mr. Fitzherbert**

Mr. Fitzherbert stated that the Commission needs to consult with counsel and they need to consider whether they need to hire a professional to come in. Ms. Hill stated that if the Commission has specific questions that they should be written down because if it is about a specific application it cannot be discussed at this time.

### **Adjournment**

Motion: to adjourn at 10.30 pm. by Dr. Kraparo, seconded by Mr. Solley  
Mr. Fitzherbert adjourned the meeting.

SUBMITTED SUBJECT TO APPROVAL:  
Shelley White, Land Use Clerk,