

## Inland Wetlands Commission

MINUTES  
Special Meeting  
July 31, 2018

6:30 p.m. main level meeting room

MEMBERS PRESENT: Mr. Bennett, Mr. Davis, Mr. LaMuniere,  
Mr. Papsin, Mr. Wadelton

ALTERNATES ABSENT: Mr. Kassis, Mr. Matthews

STAFF PRESENT: Mrs. Hill, Ms. Hodza

ALSO PRESENT: Ms. Allard, Mr./Mrs. Solomon, Mr. D. Solomon  
Residents

101 Wykeham Rise, LLC./101 Wykeham Road/#IW-18-04/Inn

Mr. Wadelton called the meeting to order at 6:35 p.m. He announced the public hearing had been closed and so there would be no comments taken from the public. He noted the purpose of the meeting was not to argue for or against the application, but to give the commissioners the opportunity to express their concerns and to raise questions regarding issues about which they were not comfortable.

Mr. Papsin thought the first issue to be discussed should be whether the application should be considered as a new application or as a modification of the previous permit. Mr. Bennett responded this issue had been settled. He explained the current application was not a modification because the original permit had expired; it was a new application. He said the new application relied on all the information generated in support of the original application, noted the previous permit had been granted based on that information, and explained the question was whether the current application should be considered *de novo*. Mr. LaMuniere stated per Atty. Olson's advice, the basis for deciding whether this should be considered *de novo* was whether there were significant changes to the application that would justify a reversal of the previous decision. Mr. Davis agreed, adding the Commission now had the opportunity to review all of the new information submitted and decide whether it significantly altered the application. Mr. Wadelton noted, for example, that new stormwater data had been submitted and said the Commission would have to decide whether having that new information had a major impact on the application.

Mr. Davis raised the question regarding which technical opinion the Commission should rely on, the intervener's engineer or the

engineer hired by the Commission. Mr. Wadelton noted that any two engineers will have different approaches to the same problem and that each commissioner must decide for himself who is the most credible. He said Land Tech was not necessarily more credible just because it had been hired by the Commission.

Mr. LaMunier noted two peer reviews had been completed and both concluded there had been no significant changes. He said the information reviewed was so technical that he had to base his opinion on that of the Commission's expert. That expert opinion, he said, was that the proposed revisions to the original permit did not materially change the proposal or the potential for impact to the wetlands and did not materially change the design of the application. Therefore, he concluded that although many small changes had been introduced and some incorporated, all were minor and in total did not result in major changes to the application. He said if no significant changes had been made, the Commission's attorney had advised that it could not reverse its approval. Mr. Papsin agreed.

Mr. Wadelton noted that matters such as the design of the septic system, which would be approved by the Health Dept. and the DEEP, and road width required by the Fire Marshal were not under the Commission's jurisdiction.

Mr. Davis said he was somewhat concerned about the effect that the increase in traffic will have as was pointed out by the intervener. Mr. Papsin compared the situation to that of wild trout streams stocked by the state. He said, yes, there will be an increase in traffic, but noted the state still stocks the streams along major highways. He thought Mr. Trinkaus's opinion was too extreme. Mr. Bennett noted Mr. Trinkaus had asked the Commission to accept the worst case scenario, but had not supplied objective data in support.

Mr. Davis asked about the intervener's argument that the emergency access over the septic system would be used for more than emergencies and the traffic would crush it, ultimately resulting in impacts to the down slope wetlands. He thought the Commission should make its determination on what the applicant has told it and not necessarily on what the intervener thought would occur. Mr. Bennett noted if the septic system was damaged so it did not function properly, that would be a health code violation. Mr. Wadelton asked if anyone had submitted data regarding why the septic system would not work properly if the access was used for more than emergencies.

Mr. Wadelton explained that all development will have adverse impacts, but said the Commission must determine whether they are

significant, and if significant, exactly what the impact will be and why it is significant.

Mr. Davis asked about the water supply. He noted the Commission had been told by the applicant there would be a pipe installed under the bridge so that the ground would not have to be disturbed, but that Aquarion had said it did not know at this time how the water would be supplied. Mr. Wadelton said more excavation had been required under the original permit, but that Aquarion had moved the water mains since then so there would be less soil disturbance, less chance of sedimentation, and less need for erosion controls.

Mr. LaMuniere brought up the question of non point source pollution. He said that although the Commission had not requested data on this, it was clear there would be an increase in the use of parking areas. He said Mr. Trinkaus said the additional parking and traffic would increase the potential for non point pollutants such as gas, oil, etc., which would find their way into the ponds and then into Kirby Brook. He said that Mr. Allan, on the other hand, thought that 90% of these pollutants would be treated in the pond forebays before reaching Kirby Brook. Mr. LaMuniere suggested the Commission ask the applicant to replace the impervious parking areas with pervious surfaces. Mr. Wadelton said it was too late for the Commission to make that request. Mr. LaMuniere stated Land Tech had concluded the non point source pollutants would be absorbed by the stormwater management system. Mr. Papsin read from Land Tech's 7/25/18 letter, which said the site plans include best management practices to deal with non point source pollution.

Regarding the proposed rain gardens, Mr. Papsin said he disagreed with Mr. Trinkaus's opinion that they would not function properly. He said the applicant's plans included six pages of planting plans that will help with mitigation and also noted the ponds would be fully planted. He said he had counted at least 1000 plants in the rain gardens alone and a total of 12,000 plants were proposed. He did not think the pollutants would reach Kirby Brook. He thought the Commission should rely on Mr. Allan's opinion that the rain gardens would work.

Mr. Wadelton cited each of the professionals' qualifications and said they should be considered when deciding who is the more credible.

Mr. Davis referred to point #6 in Land Tech's 7/25/18 letter to the Commission and asked if final water supply approval should be made a condition of approval. Mr. Wadelton and Mr. Bennett noted the issue was whether Aquarion would be able to supply all of the water needed. Mr. Davis asked if the location of the water line was

indicated on the plan. Mr. Papsin said it was. Mr. Wadelton said the applicant would be foolish to build without an adequate water supply and said that could be considered when the amount of the bond was set. Mr. LaMunier asked if the Commission thought the water supply should be finalized before the start of construction. Mr. Wadelton said that was not the Commission's concern.

The issue of feasible and prudent alternatives was briefly discussed. Mr. Wadelton stated the Commission is mandated to consider them if it determines there will be significant impacts. He added that anyone may claim there are feasible and prudent alternatives, but unless the Commission determines there are significant impacts, the applicant is not obliged to consider them. He did not think the Commission could know what the best solution was, so should consider whether the proposal was reasonable, whether it would protect the resource, whether it would give the property owner reasonable use of his land, and whether the impacts were reasonable.

Mr. Wadelton noted there had been changes made since the permit was first approved, but said each time they had been unanimously approved by the Commission. It was noted the original permit had been approved by a 3-2 vote.

Mr. Wadelton said the original approval included a condition requiring water quality monitoring, but said it was an "absurd" requirement that no one could give a reason for.

Mr. LaMunier again raised the issue of the use of the emergency access, noting the intervener had stated it would be used for service to the pool and for the tented events. He thought the question remained whether it would be over used or used only for emergencies. He thought it would probably be over used. He said the Commission should require an unambiguous statement from the applicant that it would be used only for emergencies. Mr. Wadelton said this could be a condition of approval. Mr. LaMunier said this was important because too much traffic over the aging septic system could impair its function and cause septic effluent to leach down into the wetlands. Mr. Davis thought it would be impossible to know exactly how the emergency access would be used. Would large mowers cross it? Would it make a difference if large equipment used it in wet weather? He thought the Commission should assume it would be used for emergency access and to bring food to the pool house. Mr. Wadelton thought the Commission must believe it would be used as indicated by the applicant. Mr. Bennett agreed, saying if it is misused and that results in adverse impacts, that is when the Commission would get involved. Mr. Papsin agreed with Mr. LaMunier that use of the access for emergencies only should be a condition of

approval. Mr. Bennett asked if it was identified as an emergency access on the plans and Mr. Papsin said he thought it was.

Mr. Bennett noted one of the changes proposed was the addition of emergency landings and gathering areas. He said the gathering areas were grass and the landings were relatively small concrete pads and he thought neither would cause significant impacts. Mr. Papsin noted also a change in a 5' X 20' parking space was proposed and that many of the changes had been required by the building code.

Mr. Davis asked whether the clean up of the debris from the fire should be made a condition of approval. Mr. Wadelton said there is asbestos in the debris and so it must be treated as hazardous material and removed by an asbestos abatement specialist. Mr. Papsin thought this matter was significant enough that it should be made a condition of approval.

Mr. LaMuniere referred to Mr. Allan's 7/25/18 report, which recommended several conditions of approval. Points #1. g, h, and i, #3 and #4a were specifically referenced.

Mr. Wadelton explained the intervener process. First, the intervener was required to submit a verified plea with specific allegations about areas for which the Commission has jurisdiction and second, it is up to the intervener to substantiate all claims. He said he had reviewed the entire document and to the best of his knowledge, all of the claims had been addressed by Towne Engineering.

Mr. Wadelton asked the commissioners to write up their thoughts for the next meeting. He said this should include justification to support action for or against the application. He asked the commissioners to think about reasons for denial and conditions of approval. The application will be taken up at the end of the August 8 meeting to give the commissioners adequate time for discussion.

The meeting was adjourned at 7:40 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

*Janet M. Hill*

Janet M. Hill  
Land Use Administrator