Inland Wetlands Commission

MINUTES Special Meeting – Public Hearing June 20, 2018

7:00 p.m. Upper Level Meeting Room

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

ALTERNATE PRESENT: Mr. Matthews

ALTERNATE ABSENT: Mr. Kassis

STAFF PRESENT: Mrs. Hill

ALSO PRESENT: Atty. Olson, Mr. Szymanski, Ms. Purnell, Mr. Boucher, Mr. Maynard, Mrs. Branson, Mr. and Mrs. Solomon, Mr. Bedini, Ms. Hodza

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

Mr. Wadelton reconvened the public hearing at 7:00 p.m. and seated Members Davis, LaMuniere, Papsin, and Wadelton.

Mr. Wadelton noted the 5/30/18 letter from Mr. Barnet, which expressed Mr. Barnet’s opinion that the Commission must consider the current application on a *de novo* basis. Mr. Wadelton noted that based on information from the Commission’s attorney, this opinion was incorrect and he asked Atty. Olson to summarize her position.

Atty. Olson referred to her 6/19/18 response. While she agreed the current application is a new application, she said that based on case law that does not change the scope of the review. She read from her letter that CT courts have made it clear that administrative agencies may not reverse themselves unless either a change of condition has occurred since the prior decision or other considerations materially affecting the merits of the subject matter have intervened and she added that this applies to Inland Wetland applications. She explained it is the applicant’s burden to establish that the application is substantially the same as the previous application and that it is complete and stands on its own merits. So, she said while the current application is a new application, the Commission is properly considering what has changed since the original application and whether there have been substantial changes, which might result in overturning the previous decision. She noted the Commission has the right to ask for all the documentation it needs to make this decision, as does the public, who may also submit documentation.

Mr. Wadelton read his memo to the Commission, dated 6/20/18, which addressed his interpretation of Section 10.06 of the Inland Wetlands and Watercourses Regulations regarding the 15 day requirement for submission of all supporting documentation by the applicant. He wrote that this section does not intend or require specific time constraints on the written submission of responses by the applicant to testimony submitted by an intervener, its expert witnesses, or to third party reviews and that per this section, the Commission has the discretion to receive or refuse information submitted at a later time depending on whether there would be sufficient time to review it. The three seated commissioners agreed with this opinion.

Mr. Matthews noted the current application was not submitted by the same party as the original was, nor was the property owner the same. He asked Atty. Olson whether the application having been filed by a different applicant for a different property owner impacted her opinion. Atty. Olson said this did not change her opinion because the Commission would make its decision based on the particular regulated activity proposed. She noted the Commission could not overrule its decision without just cause. Mr. Matthews thought the identity of the permit holder would make a difference due to his reputation, undertakings, and other considerations. Atty. Olson said it was clear that change in ownership was not one of the legal reasons the Commission could overturn its previous decision. Mr. Matthews referred to Section 8.05 and asked if a written statement regarding the change in ownership had been filed. Mrs. Hill said it had not been required because this was a new application; the ownership had not changed since it had been submitted.

Mr. Szymanski, engineer, read through his letter dated 6/12/18 (received 6/20/18) to respond to the 6/8/18 engineering review by Land Tech. He said for the most part Land Tech identified a few revisions to the previous plan, but said they were minor and would not result in any impacts to the wetlands or watercourse. Mr. Szymanski said he had revised the plans in response to requests made by Land Tech; 1) the grass paver emergency gathering area to the east of the main building should be located to the southwest to move it outside of the 50 ft. wetland setback, 2) additional silt fence should be added down grade of the grass paver emergency access areas east and west of the building, and 3) the limits of disturbance and silt fence locations shown on the erosion control and construction sequence plans should be modified to reflect the changes to the site development plan.

Mr. Szymanski then responded to each of the points raised by Land Tech. Pond #1 - 1) Regarding Land Tech’s concerns about the steep slope of the stormwater piping, Mr. Szymanski stated the pipes had been previously approved by Land Tech, he had proposed no revisions, and so asked the Commission whether this concern had to be addressed. Atty. Olson responded that this was a new application and so the issue should be addressed. Mr. Szymanski said the drainage layout had been revised according to the recommendation. 2) Regarding the functioning of the emergency spillway, Mr. Szymanski said the width of the spillway had been increased to 16 feet and he felt there was no likelihood of a complete failure due to clogging. 3) Regarding Land Tech’s concern that some stormwater runoff from 100 year storms would by pass the driveway catch basins, Mr. Szymanski stated he had reevaluated the drainage calculations for the entire site and had implemented modifications such as adding drainage structures, converting manholes to catch basins, and converting some single CBs to double catch basins. Pond #2 – 1) Regarding concerns about the width of the grass paver spillway, Mr. Szymanski said, in response he had doubled the width of the spillway. 2) The drainage layout was revised per Land Tech’s recommendations; the slopes of the pipes in the upper portion of the drainage system were flattened.

Mr. Bennett arrived at 7:30 p.m.

3) Land Tech recommended that the applicant provide hydraulic grade computations and profile for the lower portion of the drainage system to ensure the catch basins would operate efficiently during a 25 year storm event. Mr. Szymanski said these would be provided if made a condition of approval. 4) Regarding Land Tech’s concern that some of the surface flows of 100 year storms would by pass both the upper portions of the drainage system and the catch basins and flow directly out to Wykeham Road, Mr. Szymanski stated he had added double catch basins and had made revisions similar to those made for #3 under Pond #1.

 Mr. Szymanski next addressed Land Tech’s application review and its responses to the intervener comments. 1) Land Tech concurred with the intervener that the most current rainfall amounts should be used per NOAA Atlas 14 and Mr. Szymanski stated the drainage plan had been revised as requested. 2) It was noted Land Tech determined the use of different methodology for routing the sediment fore bays and designing the swale was appropriate. 3) Land Tech found the calculated times of concentration were used and appropriate. 4) In response to Land Tech’s recommendation that the applicant address the potential reduction of stormwater volume to Kirby Brook, Mr. Szymanski responded this was due to the net decrease in impervious surface on the site. 5 and 7) Land Tech agreed with the intervener that the culverts at the access driveways should be evaluated for capacity and flow. In response, Mr. Szymanski submitted drainage calculations, which showed the downstream culvert had more than adequate capacity for a 100 year storm, but that the easterly culvert was not impacted by the proposed project and so no calculations for it were submitted. 6) Mr. Szymanski said he provided pond report support information as requested. 8) Regarding Land Tech’s concerns about the construction entrance, Mr. Szymanski extended it further into the site and added temporary water bars as requested. 11) Land Tech said the applicant should provide data to show the provided groundwater separation distance at the rain gardens. In response, Mr. Szymanski referred to his 10/5/2011 and 12/6/2010 letters, which reported on the soil permeability tests that had been conducted and stated that the tests indicated that the subgrade soils have adequate infiltration capacity. 12) Land Tech requested a maintenance schedule for the basins and Mr. Szymanski said he provided one. 13) Regarding Land Tech’s opinion that the Fire Marshal must review and approve the plan, Mr. Szymanski said the Fire Marshal had previously approved the driveway layout and there had been no changes. 14) Mr. Szymanski stated the generator fuel source would be diesel and would be contained within the building. 15) Mr. Szymanski agreed the designation of a person to oversee the installation of the erosion controls could be made a condition of approval. 16) Land Tech had requested a temporary haul road be added to the plans and Mr. Szymanski said this had been done. 17) Mr. Szymanski reported the earthwork volume was approximately 25,800 cy3 net cut. 18) It was noted the dumpster pad was not shown on the plan because the refuse would be handled inside the building. 19) Providing the information requested re: the proposed mowed paths, Mr. Szymanski said mowed paths were all that was necessary for the golf cart service that would be provided for the pool house. 20) Finally, regarding Land Tech’s concerns about the proposed stockpiles, Mr. Szymanski enlarged the stockpiles and included additional locations as requested. He submitted his letter dated 6/12/18.

 Mr. Wadelton seated Mr. Bennett and advised him to listen to the audio of the portion of the hearing he missed.

 Mr. Davis asked Mr. Szymanski if he would have done all of the calculations requested except that he had “built in” other means to address this issue and Mr. Szymanski said this was so.

 Mr. LaMuniere referred to sheet SEQ.4 and asked how material would be transported to the poolhouse without harm to the septic system. Mr. Szymanski said sheet SEQ.3 now showed the location of the haul road, which goes around on the west side of the leaching fields and would be removed upon the completion of construction.

 Ms. Purnell, intervener, questioned Mr. Wadelton’s interpretation of Section 10.06, which, she said had been implemented to give the both the IWC and the public adequate time to review and comment on newly submitted material. Mr. Wadelton answered that if substantial changes to a plan were made, the Commission would be required to add time for public review, but that did not apply to the current situation. He said the appliciant’s response to Land Tech’s review was not required to come in 15 days prior to the hearing. Ms. Purnell asked if in his opinion the current application under review was complete. Mr. Wadelton said, essentially it was. Ms. Purnell noted that at the start of the hearing the intervener had informed the Commission of information missing from the application, which made it impossible for her to do a complete review and then submit her report for the record. She noted, for example, that the 2012 calculations had to be redone because data such as precipitation values had changed since the original approval. She compared the Commission’s current review process to the lengthy rigorous analysis done in 2008, noted the 2008 data was now outdated, and also noted that the CT DOT lags behind in adopting best management practices compared to other states. Mr. Wadelton asked her to avoid comparisons with other states. Ms. Purnell again asked Mr. Wadelton if the Commission required the applicant to submit a full and complete application prior to the start of the public hearing and whether he believed this had been done. Mr. Wadelton responded, to the best of his knowledge, yes. Ms. Purnell said she thought his current interpretation of Section 10.06 differed from its original intent. Mr. Wadelton noted there have been different interpretations of this section and that was the reason for his memo. Atty. Olson thought discussion of the interpretation of Section 10.06 was not relevant to the consideration of the application unless Ms. Purnell thought she was somehow prejudiced by the IWC exercising its discretion. She asked Ms. Purnell to discuss instead, what her concerns were. Ms. Purnell noted although she had just received the requested data yesterday, she was making an effort to provide a thorough critique, but she could not complete a comprehensive analysis in such a brief time. She said she had requested the data in April, but now had less than 24 hours to review it and to respond. Mr. Wadelton said for the record, his interpretation of Section 10.06 was as of this evening and not as of the start of the public hearing when the Commission believed it had all the information necessary for a complete application.

 With regard to Atty. Olson’s opinion regarding whether the application was *de novo,* Ms. Purnell stated the prior application approved by the Commission was similar, but not identical to the current application and there had been many reiterations. She asked Atty. Olson why her guidance to the IWC on this matter differed from her advice to the Zoning Commission in January 2013. Atty. Olson said she did not have the context of the opinion to the Zoning Commission being referred to, but said that had been for a different application with different standards of review and had nothing to do with this application. Ms. Purnell disagreed, saying it was relevant. Atty. Olson responded that it was up to the IWC to decide in its discretion, whether this was a substantial change and *de novo* application. Mr. Wadelton said the Commission would follow the advice of its attorney and if Ms. Purnell would like to bring in an attorney with an opposing opinion, the IWC would listen to those arguments. Ms. Purnell asked the record to show that in 2008 the Zoning Commission had denied an application for a 44 room inn; a smaller, less intensive inn with accessory structures, and that in 2013, Atty. Olson, who was in attendance at that Zoning meeting, allowed the Zoning Commission, with no mention that it could not go back and reverse a previous decision, to approve an inn application with a more intensive use than the one it had denied.

 Ms. Purnell addressed Land Tech’s report and its statement on page 2 that the plan modifications are minor in scope and would not impact the wetlands. She said, while she agreed, it was important that the Commission understand that that refers only to the modifications and not to the overall plan. Mr. Wadelton said the Commission did understand. Mr. Szymanski asked where in Land Tech’s review did it refer to requirements and not recommendations. Ms. Purnell responded that she could not speak for Land Tech, who, she said, should have attended the hearing to respond directly to her questions. She stated that was the intervener’s right.

 Ms. Purnell noted that at the last session of the hearing the extent of the proposal and changes to the plans having to do with the intensity of use had been discussed. She submitted a letter dated 6/20/18 in which she detailed the proposed uses.

 Ms. Purnell noted Land Tech had erred when it had referred only to the Commission’s 2012 approval because the IWC had also approved a permit revision in 2015, which had lessened the impact to the site as it proposed a smaller main building and the elimination of the three cottages. She reminded the Commission that the enforcement officer had stated this 2015 plan was a “vast improvement” with “lesser impact.” She said the 2015 plan should be considered as a feasible and prudent alternative.

 Ms. Purnell stated it was evident at the last session of the hearing that the Commission was not aware of the size and intensity of the proposed use. She offered the following information, which, she said, had been presented to the Zoning Commission and which was on the applicant’s website. 1) The total floor area proposed is 110,500 sq. ft., which is double the size of the 52,000 sq. ft. original inn. 2) The total floor area of the proposed main building is 81,000 sq. ft., which is an increase of 31,000 sq. ft. over what was approved in the Settlement Agreement. Mr. Wadelton advised Ms. Purnell these were zoning issues. Ms. Purnell stated they had to do with the intensity of use. Mr. Wadelton asked her to show how they relate to impacts to wetlands and watercourses. Ms. Purnell said the number of vehicular trips a day would impact wetlands and watercourses as some vehicular emissions and debris are water soluble and would reach Kirby Brook. Mr. Wadelton stated that all development projects have impacts and that it is up to the Commission to determine whether they are acceptable and reasonable and within the property owner’s rights. Ms. Purnell said her intent was not to have the Commission deny the application, but her goal was to make sure whatever was approved, would protect the wetlands and watercourse. She said the Commission’s jurisdiction was to protect these resources and she urged it to “do it right” rather than approve a plan designed to the lowest common denominator. She continued to present information re: the proposed intensity of use, saying that the main building was now 10 ft. taller than what had been previously approved and could be converted to some future use, the three cottages each had a floor added, and the kitchen had been greatly enlarged. Mr. Wadelton advised Ms. Purnell the hearing was for inland wetlands concerns. Ms. Purnell responded that she was laying the basis of change, which relates to the number of people and intensity of the proposed uses. Mr. Wadelton said these were not wetlands issues; he wanted to hear about them only to the extent that they would impact the resources, and he asked to hear from her engineers, but only about matters that were not zoning issues. Ms. Purnell said she wanted the opportunity to develop the record because the IWC was not fully aware of all that is proposed. Mr. Wadelton asked her to get to the point because he did not want to waste the Commission’s time. Ms. Purnell stated she would defer to the request of the chairman, but noted this was supposed to be an open public hearing.

 Representing the applicant, Mr. Boucher gave his credentials for the record. In response to a question by Mr. LaMuniere, he said he had received plans from Mr. Szymanski via drop box late Monday night. He noted 17 sheets of the 26 total pages of plans contained revisions to 6/18/18. Mr. Wadelton asked if the revised plans had been submitted to the Commission. Mr. Szymanski said, yes. Mrs. Hill said this was not true as the Town computer did not have the ability to receive plans by drop box. Mr. Szymanski said he would submit paper copies. Since neither the Commission nor Land Tech had received the revised plans, Mr. Boucher requested the public hearing remain open.

 Mr. Boucher stated that one change in circumstance had been overlooked by the applicant. In the first set of plans the site was to be served by a water main on the property, but this had now been abandoned. He said there was now a water main on Wykeham Road, which would serve the property, and that the plans do not show how the water would be conveyed (over Kirby Brook) to the site. He said this must be addressed.

 Mr. Boucher stated by previous agreement, all service roads were to be 20 ft. wide; 16 ft. wide with 2 ft. wide reinforced slopes on each side. He noted, however, that the portion of the driveway over Kirby Brook appears to be only 17 feet wide. He said if the crossing is to be rebuilt this would be a significant activity for which an Inland Wetlands permit would be required as well as approval by both the Fire Marshal and First Selectman.

 Mr. Boucher referred to sheet OSD.1, dated 12/2/16 and revised to 6/18/18, regarding the location of the pumphouse. He said it was located based on the belief that the water main ran through the property and that this location was the most expedient way to connect it. But now that the water main had been abandoned, he said it was likely the pumphouse was located too far from the generator and so would require its own generator. He thought a feasible and prudent alternative was to move the location of the pumphouse to the old tennis court so everything could be served by one generator. He noted if there was a diesel spill at the current pumphouse site, it would immediately impact the wetlands.

 Mr. Boucher raised several other points, which included: 1) He questioned Mr. Szymanski’s plan showing the construction access going around the septic fields. He noted the plans call for the deposition of a significant amount of fill at the most western point where the driveway hooks and said it was not clear where the limit of disturbance would be or whether the fill was to be removed at a later date. 2) Mr. Boucher expressed his concern about stormwater management in the vicinity of wetland flag #27. He said an increase in runoff from 126,000+ to 182,000+ ft./sec was reported, but questioned whether a 2.5 to 3 ft. wide and 3 ft. deep swale, which was not shown on the plan, was adequate to handle this increase. He said not only would the velocity increase, but also the amount of runoff, and said there was no narrative to address how the swale would be impacted. 3) Mr. Boucher noted Mr. Szymanski had reported that Land Tech had reviewed the separation distance between the groundwater level and rain gardens, but said he had not received the information on the soil testing and permeability. He wanted the opportunity to review these. 4) He asked that the record show there was no provision on the plans for the storage of equipment or materials such as sand and salt to be used for maintenance of the driveway. He also noted Mr. Szymanski’s 6/12/18 letter spoke about the use of golf carts, but said there was no provision for their storage. 5) Mr. Boucher was concerned about the 24 ft. draft head of the dry hydrant, stating it should not exceed 15 ft. and would be better at 10 ft. He asked if there was a more prudent location.

 Mr. Maynard, engineer, noted Land Tech’s concern about possible clogging of the trash racks and Mrs. Szymanski’s statement that they would never clog. He said the drainage system connects to the wet ponds with their associated vegetation and to the rain gardens, and said the mulch used in these gardens, as well as leaves and sticks, could cause clogs, that this concern should be addressed, and the Commission should make sure the trash racks were properly installed.

 Mr. Szymanski responded. 1) Regarding the NOAA Atlas 14 stormwater bulletin, he said he was being told this is a requirement, so asked what section of the Regulations is referred to or whether this was a guidance document only. Mr. Maynard answered that based on the IW Regulations and the requirements for 50 year storm events, the plans had to be based on the current standards. Mr. Szymanski said the document addressed DOT projects, but that even though not required, he had made the revisions as requested. 2) In response to Ms. Purnell’s statements regarding feasible and prudent alternatives, he said these are required to be considered only when there is a probability of significant adverse impact to the wetlands or watercourse, but in this case, the Commission’s engineer had said there would be no impact. 3) Mr. Szymanski stated although the total square footage of the main building had increased, the footprint had not increased. 4) He said there would not be multiple trips per day on the mowed paths; the golf carts would be for handicapped use only. 5) The water main across Kirby Brook is still proposed and the diesel tanks to be installed are double tanks that will not leak. 6) The haul road plan does indicate the material to be removed. 7) Wetlands flag #27 marks the wetlands along Wykeham Road. 8) Regarding the rain gardens, Mr. Szymanski said he just quoted from Land Tech; he did not provide any additional material. 9) A professional company would be used for the driveway maintenance. If any change is proposed, Mr. Szymanski said he understood the applicant would have to apply. 10) He agreed the trash racks must be maintained and said that was why he had submitted a maintenance schedule. 11) Mr. Szymanski said the water main connection was shown on the site plan.

 Mr. Davis asked Mr. Szymanski to comment on the comments in the Towne report regarding snow removal and the use of salt and sand. Mr. Szymanski stated there would be no storage of winter equipment at this time. He added the Towne report said there were no pollutant removal or sand filters other than the sediment fore bays designed to limit the pollution, but said that was what Land Tech had previously approved.

 Ms. Purnell made some additional points. 1) She noted Mr. Szymanski stated that Land Tech had provided commentary on the separation distance between the rain gardens, but that what Land Tech had said was that there was no seasonal high water found in the pits that had been dug, but that was not the same as the 36” separation distance referred to. 2) She asked how food would get up to the pool for food service and for winter activities. Mr. Szymanski said able bodied people would walk up the hill and the food service would be by golf cart. Mr. Purnell confirmed then, what Mr. Szymanski had called an emergency access would actually be used on a daily basis.

 The continuation of the public hearing was discussed. Mr. Wadelton said he would like Land Tech to attend the next session of the public hearing. Because the hearing may not be extended past July 12, the hearing was continued to Wednesday, July 11 and the business that would normally have been considered at the July 11 regular meeting would be taken up at a special meeting scheduled for July 18.

 Mr. LaMuniere noted the proposed plan would clearly add traffic and so asked if it was Mr. Szymanski’s belief that the proposed stormwater management plan will handle all pollution, including the additional pollution resulting from the increased traffic using the driveways. Mr. Szymanski said it was. Mr. LaMuniere also asked if this included the increase in rainfall. Mr. Szymanski said the system as proposed would not adversely impact the wetlands. Ms. Purnell said that Land Tech had weighed in on that question, saying that they believed if everything on the plans was constructed as designed, they believed there would be no significant impacts. However, she added that Land Tech had not been aware of the increased intensity of uses proposed.

 At 9:00 p.m. the public hearing was continued to Wednesday, July 11, 2018 at 7:00 p.m. in the upper level conference room.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Janet M. Hill Land Use Administrator