Inland Wetlands Commission

MINUTES Regular Meeting July 11, 2018

7:00 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: Ms. Hodza, Mrs. Hill

ALSO PRESENT: Atty. Olson, Mr. Allan, Mr. Szymanski, Ms. Purnell, Mr. Maynard, Mr. Boucher, Mr. Trinkaus, Mr. Bedini, Mr. Rogness, Mr./Mrs. Solomon, Mr. Barnet, Ms. Allard, residents

PUBLIC HEARING

101 Wykeham Road, LLC./101 Wykeham Road/#IW-18-04/Inn/Con’t.

Mr. Wadelton reconvened the public hearing at 7:00 p.m. and seated members Bennett, Davis, LaMuniere, Papsin, and Wadelton. It was noted for the record that Mr. Bennett had listened to the audio of the portion of the hearing he had missed.

Representing the applicant, Mr. Szymanski, engineer, commented on two remaining open items from Land Tech’s 6/8/18 report. 1) Responding to recommendations in that report, he stated that hydraulic grade line computations had been submitted, some single catch basins were increased to double, and several pipes at the rear of the main building had been increased in size. 2) Mr. Szymanski said that he had not provided calculations for the upgrade culvert because the proposed project would not impact the flows to that culvert.

Mr. Maynard, engineer for the intervener, briefly reviewed some of the points raised in his 7/11/18 letter to the Commission. He stated that the proposed activities would have a direct impact on the wetlands and watercourse. Although he said the revised stormwater management report (SMR) and updated pond reports he needed to determine the overall ultimate impacts had not been submitted, he made the following points. 1) The outlet calculations, which are tied to the peak rainfall rates, do not account for the trash racks, the current plans don’t show trash racks on all outlets for ponds #1 and #2, and the plans dated 7/2/18 cannot be constructed as proposed. 2) The required pipe sizes had been underestimated due to the use of an incorrect Manning’s n value. This would result in higher outlet velocities. 3) The ponds will act as temporary sediment basins during construction, but it is not known what temporary outlet structures will be in place at that time. His concern was that there needs to be an emergency outlet in place during construction so that emergency breakouts of stormwater will not damage the embankment. 4) The stormwater management plan does not analyze the culverts below existing driveways #1 and #2, nor does it include calculations for the entire watershed for those culverts; only the onsite drainage area was used. 5) The SMR includes many errors. For example, 25 year storm event data was used for the outflow calculations, which means the flows for 10 year storms were miscalculated and the outlet protection measures are undersized. This will result in erosion and sedimentation impacts to the wetlands and watercourses. 6) Regarding a scour hole discharging directly to Kirby Brook, the pipe is proposed at only half the depth required and so the stormwater velocity will not properly dissipate before reaching the brook and wetlands. 7) The pre development area of 44.61 acres does not match the post development area of 44.35 acres. They are supposed to be identical. 8) The calculations utilized for the rain gardens were incorrect, resulting in their being undersized.

Mr. Maynard made the following points regarding Pond #1. 1) As proposed this pond will be excavated 20 feet into grade and into the groundwater table. So during construction, dewatering will be required, but no dewatering basins to handle silt and the sediment laden water are proposed.

Mr. Maynard also stated the plans contain many errors and irregularities. For example, on Sheet PL.1, the original plans showed a proposed water main and even though the plans have been revised and the water main moved to a different location, the plans still include work associated with the original location. The state DEEP has not approved the proposed septic system change of use. He maintained that locating the proposed catch basins, storm drain pipes, etc. so close to the existing septic system could result in partially treated effluent collecting and then discharging into the ponds. He added that the proposed access roads are too narrow to accommodate emergency vehicles and that any upgrade work would directly impact the wetlands.

There were no questions from the commissioners.

Representing the intervener, Mr. Boucher of Towne Engineering, Inc., presented the chart, “50 Year Design Storm (Volume.)” He compared pre development with post development stormwater runoff and found that based on the latest revisions to the plans, there would be a 41+% increase in the amount of stormwater from the site. He said reanalyzing the watershed made a big difference. He also noted that since the 6/20/18 public hearing, the SWR and plans he had received from Arthur Howland and Assoc. via Google drop box had differed from the set of plans revised through 7/2 that had been hand delivered. He said Towne Engineering still had not received a complete set of plans to review; only portions of the plans. Regarding Mr. Maynard’s comments on scour holes, Mr. Boucher stated he had kept track of rainfall since 2013 and could verify that smaller storm events do occur and should be designed for. He stated that based on the 2 year storm event data, at the northwest discharge point for Pond #1, the discharge would be 1705 gallons per minute and that only a scour hole was proposed; there was no level spreader proposed to protect the wetlands. He pointed out there was already a 3 to 4 ft. wide and 3 ft. deep scour channel at wetlands flag #27 and said the flow would increase and intensify causing further impacts.

Mr. Trinkaus, engineer for the intervener, submitted his report dated 7/10/18. First he spoke about water quality impacts of non point source pollutants, which included litter, total suspended solids, nutrients, metals, hydrocarbons, thermal impacts, and pathogens. Site specific comments he made included the following points. 1) Regarding specific impacts to the property, Mr. Trinkaus also noted the existing eroded channel and said since the plans call for a design to accommodate a 50 year storm event, the runoff from smaller sized storms will run through and result in further erosion. 2) He stated that using a common method to determine pollutant loads, 2,000+ lbs. of suspended solids and 113 lbs. of petroleum hydrocarbons would be generated from the site per year. 3) He advised the Commission that test holes had been done for only two of the proposed rain gardens. He stated per the 2004 CT DEP Stormwater Quality Manual, at least 3 feet of separation is recommended between the bottom of the garden and the level of the groundwater to ensure the rain garden will function properly. He said there had been no infiltration testing and the applicant had not proven the systems would infiltrate at all. 4) No maintenance plan had been submitted for the rain gardens, which, he said, should be an integral part of the stormwater management system so they would function as designed. 5) No calculations were submitted to prove the runoff captured in the wet ponds would infiltrate and be treated to remove pollutants. 6) The proposed wet ponds are only 4 feet deep, which will result in the water warming faster and impacting Kirby Brook, a cold fisheries stream, when it is discharged there. 7) The minimum size watershed to provide adequate flow to maintain a wet pool is 25 acres. He said doing any work upgrade of the wet ponds could impact the groundwater, which would be the only other flow to the ponds. He said no data on the amount of groundwater available for the maintenance of the permanent pools in the wet ponds had been submitted. 8) The proposed scour hole would not protect the wetlands; a flared rip rapped pad was needed to disperse the flow so it would not be so concentrated and erode the channel into the wetlands. 9) No aquatic shelves were proposed for the wet ponds. 10) There had been no assessment that non point source pollution would be reduced upon completion of the project. He concluded that water quality impacts were not addressed in the application and therefore, there would be adverse physical impacts to the aquatic system due to activities in the upland area.

Mr. Szymanski listed the revisions proposed to the original approval, asked Mr. Boucher how they would specifically impact the wetlands, and noted that the proposed increase in the size of the scour hole had been based on recommendations from a previous Towne report.

Ms. Purnell, intervener, noted her experience serving on the Long Island Sound Study Watersheds and Embayments Group and other non profit local watershed groups. She said she continues to be concerned about the incremental increase in impacts from changes to the plans over the years and about pollutant loads and thermal impacts and so hired Mr. Trinkaus to address these matters. She said she was not sure the Commission was aware of the amount of impervious surface proposed and so provided comparisons between the Wykeham Rise School, the inn approved in 2008, and the current proposal. She said that Wykeham Rise School had 25,000 sq. ft. impervious cover for buildings, and 50,000 impervious cover due to pavement. The 2008 inn had 46,000 sq. ft. of building coverage, 25,500 sq. ft. of impervious pavement, and 37,000 sq. ft. of pervious coverage, had utilized LEED guidelines, and had been promoted as a low impact development. She noted the current proposal has eliminated the pervious pavement. She said the inn as now proposed has over 100,000 sq. ft. of combined roof and impervious pavement coverage. In comparison, she said the PaliHouse plans had a much smaller footprint for both buildings and roadways. She noted that in his reviews, Mr. Allan had made comparisons to the 2012 Wykeham plans, but said she did not think he knew about the smaller Palihouse plan, which the then WEO had said was a vast improvement, and which had been approved by the IWC in 2015.

Mr. Szymanski stated he had read Land Tech’s review and most of the comments made had been related to areas where he had not made any changes. He read from Atty. Olson’s 6/18/18 memorandum, specifically the section stating that commissions may not reverse themselves unless there has been a change in conditions or there has been a change in other considerations affecting the matter.

Mr. Barnet read from Atty. Olson’s 6/18/18 memorandum, which stated the current application was not a renewal, but was a new application and so he advised the Commission it must review the application in its entirety and not just the latest modifications. He noted the Commission must not consider merely the changes proposed by the applicant, but also changes in circumstances, conditions, and anything else impacting the merit of the application. He pointed out there had been many changes to the plans since the permit was first approved in 2008 and referred to the approved Palihouse plan, which, he said, eliminated the three cottages and a portion of the driveway thereby reducing the impact to wetlands and resulting in a 12% reduction in impervious surfaces. He argued these buildings were no longer included in the recently expired permit. He stated the Palihouse plan was a feasible and prudent alternative with less impact to the wetlands, which was new information, and so by itself demanded the current application’s denial.

Mr. Allan, Land Tech, noted he had done several reviews for proposed projects on this property since 2008 and cited some of the materials previously reviewed. He said the current plan was similar to the one approved in 2012 and that the overall stormwater management and erosion control plans had not changed. He added that he had not been involved with the Palihouse application. He said he was satisfied with Arthur H. Howland’s reponses to Land Tech’s June review and had no additional concerns.

Mr. LaMuniere noted that Mr. Allan had had no chance to review the reports submitted this evening. Atty. Olson stated he could submit his comments the reports already submitted after the close of the public hearing.

Ms. Purnell noted for the record that Mr. Allan confirmed he had not been aware of the Palihouse plan or its 12% reduction in impervious cover. She complained that as the intervener she would not have the opportunity to comment on Land Tech’s report if it was submitted after the close of the hearing. She asked that the record show this was prejudice against her. A brief discussion regarding submission deadlines followed.

Ms. Purnell noted this was a new application and so submitted the following documents for the record: 1) “Preliminary Design of Subsurface Disposal Systems,” by Spath Bjorklund Assoc., Inc., dated July 1991 and revised to April 1993, 2) 6/10/08 IWC site inspection report, which she said was a much more substantive report because the Commission had inspected the entire property at that time, had looked at all of the wetlands on site, and had considered the wetlands and watercourses impacts and because it addressed a driveway proposed through wetlands, 3) “Wetland Assessment, Wykeham Rise, Washington, Connecticut,” by Ms. Chase, dated 6/11/08, 4) 8/11/08 report to the Commission from Dr. Klemens, 12/10/08 IWC minutes with attachment, and her resume.

Ms. Purnell made additional points, which included the following: 1) Intensity of use and traffic issues are relevant matters for the Commission’s review. 2) Two different engineers had concluded there will be significant impacts as a result of the proposed development. 3) Changes in impervious cover that the Commission had not been made aware of have been proposed. 4) Revisions to the plan to address changes in precipitation are still needed. 5) The pond reports have not been adjusted to include changes made to the outlet structures. 6) The application is still incomplete. 7) Deep test pit data for the seven rain gardens and the soil data still have not been submitted for the record and so she has not been able to review it. 8) The Aquarion water main is now located off the property and water service installation will have wetland impacts that have not been mentioned by the applicant. 9) This is a new application, not a renewal. 10) There have been many modifications made to the 2008 permit without the public being able to have input. 11) There will be adverse physical impacts to the wetlands and watercourse due to the project. 12)She said she did not want to deny the applicant the use of her property, but she would insist that the wetlands and watercourses be protected. She said the application lacked substantiation that they would be adequately protected.

Atty. Olson asked if the previously approved plans were in this record and available for Mr. Allan’s review. Mr. Szymanski said there was a time line and site development sheets in the binder, although not a full set. Ms. Purnell said that the full plans were not in the record and that was the reason she had provided information on extent of the proposed infrastructure and the Palihouse plan. Atty. Olson stated the last plans approved should be in the record for comparison.

Mr. Wadelton noted that each revision of the original permit had been considered by the Commission, named some of the past commissioners, and said, in every case, these had been approved. He reminded Ms. Purnell that she could have petitioned for a hearing for any of these modifications. Ms. Purnell disagreed. Ms. Purnell noted what she thought was a possible conflict of interest concerning one of the previous commissioners. Mr. Wadelton also noted the Commission would carefully consider all of the documentation submitted by both parties.

Mrs. Solomon read the undated letter from Mrs. Giampietro, which provided examples of the applicant’s “history of non compliance” and asked the Commission to draft detailed and comprehensive conditions of approval and to require professional monitoring of the project. Later in the meeting Atty. Olson cautioned the Commission that whether or not the applicant paid her taxes was irrelevant.

Ms. Purnell noted that one condition of the 2008 approval required detailed water quality monitoring with quarterly tests, but in 2011 when it was learned those tests were not being conducted, the Commission had relieved the applicant of that requirement. She also noted that the Commission had required only a $50,000 bond for the project, which would disturb 11.7+ acres and was the largest in the Town’s history.

Mr. Wadelton said that if approved, the Commission would include conditions and would require a substantial bond.

Ms. Purnell noted that as a result of a preconstruction meeting held in February of 2015 with the wetlands enforcement officer, the Commission voted for a third party review of the project; that third party being Land Tech. Also noting that Land Tech was referenced in the 2008 motion of approval, she thought there was a “tiny inherent conflict of interest” that the third party reviewer would benefit in the long term when monitoring the project.

Ms. Purnell noted one of the conditions of the original approval was that only 3 acres could be disturbed at one time. Later the applicant had proposed this be increased to 5 acres, arguing that it would result in the work being done in only one construction season, and this request had been granted. She advised the Commission that the current plans call for the work to be done over 2 and possibly into a third construction season and so said there was no longer a rationale for increasing the size of the disturbed area at any one time to 5 acres. Mr. Wadelton responded, that if the application is approved, this matter will be considered as a condition of approval.

Ms. Purnell stated that Atty. Olson had advised the Commission that it was bound to approve the application and to essentially approve it as it had before. Atty. Olson said that was not an accurate statement and that her written opinion was in the record.

Mr. Rogness read his letter dated 7/11/18. He strongly recommended required monitoring of the construction and of the erosion and sedimentation controls by an independent specialist, that the size of the site disturbance be limited to 3 acres, and that a substantial bond be required as the estimated cost of the current clean up and remediation is $750,000 to $800,000. Mr. Wadelton stated that should the application be approved the site would be regularly inspected by both the wetlands enforcement officer and third party engineer or erosion control specialist.

There were no other comments from the intervener, her representatives, or from the public.

Mr. Szymanski closed with the following points. 1) Thermal impacts had been considered many times in the past and the plans revised, adding shade areas, for example, to address them. 2) Refuse would be promptly cleaned up on site and no animals except service animals permitted. 3) In response to concerns there would be an increase for erosion potential in the drainage area near pt. 400, he stated his reports showed a reduction in peak flow so although currently there is a direct point of discharge into Kirby Brook with no treatment, the plans now include treatment. 4) The rain gardens would not be removed because that would be a violation of the permit. He added that the gardens were not included in his model because he had done a conservative review, which had not considered the additional assistance they would provide. 5) He said some of the requirements the intervener said had not been met, such as aquatic shelves, were actually guidelines. He stated the 2004 Ct Stormwater Quality Manual was a guidance document only. 6) He said precipitation data was not required per the IW Regulations, but was the result of a 2015 CT DOT engineering bulletin for state road projects. He said he had taken the precipitation data into consideration anyway. 7) He said no soil data had been submitted because those parts of the design had not changed; the pond locations, depths, and widths, for example, had not changed. 8) He pointed out that this was the 99th day of the hearing and so the public had had adequate time to comment on the application. 9) He noted the bond and monitoring requirements were at the Commission’s discretion and said the applicant had no objections. 10) He said the statement by Ms. Purnell that there had been a pre construction meeting for the Palihouse permit was false and that the meeting had been with Mr. Black about water issues. He concluded saying that the applicant had provided all of the information the Commission had asked for and that he agreed with Mr. Allan’s findings that there would be no adverse impacts.

Ms. Purnell submitted Mr. Ajello’s 2/20/15 enforcement report, which reported on the Palihouse pre construction meeting.

Ms. Hodza, wetlands enforcement officer, asked about the possibility of the water service pipes having to cross over or under Kirby Brook. Mr. Szymanski said the plans had been revised to show the pipe attached to the existing culvert and the installation would not require interruption of the flow of Kirby Brook.

Mr. Wadelton thanked everyone for their participation. He explained that deliberations would begin at a future meeting after a motion and second to either approve or deny the application had been made. He noted the deliberations would be posted on upcoming agendas.

Mr. Wadelton adjourned the public hearing at 8:55 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Janet M. Hill Land Use Administrator