

REPORT TO WHITESTONE MUNICIPAL COUNCIL

RE: Response to Oct 7, 2022 report submitted to Council by John Jackson, Planner, "Draft Plan of Subdivision, STO Networks" (Keene subdivision)

Submitted by: Lake Wah-Wash-Kesh Conservation Association (WWKCA), Planning and Development Committee (PAD)

Date: October 17, 2022

Introduction and recommendations

The Planning and Development (PAD) Committee of the Wahwashkesh Conservation Association (WWKCA) has reviewed the report to the Municipality of Whitestone dated October 7, 2022 prepared by planner John Jackson (the "Planner")`, in respect of the "Draft Plan of Subdivision, STO Networks" (the "Keene subdivision"). This "Planner's Report" was a follow up to a Council meeting held July 19, 2022, intended to address a number of the issues that were raised by members of the public and WWKCA. The Report lacks empirical evidence to support claims which appear to be opinions. The planner provides opinions in areas outside of his purview (eg septics, lake capacity, etc) and is reviewing his own previous work in this new report. Further, he does not address many deficiencies we noted in his original report.

Recommended Plan of Subdivision Conditions:

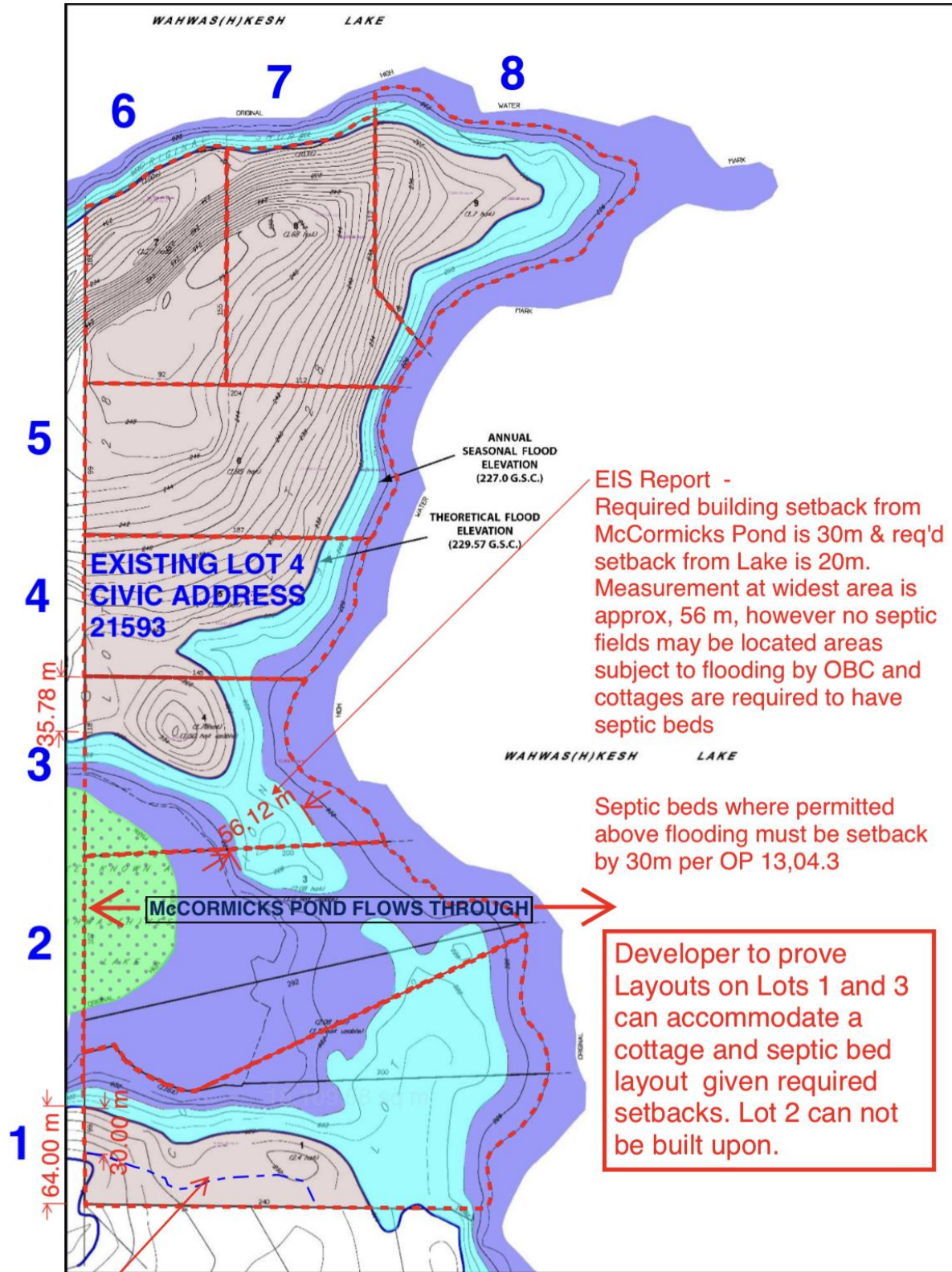
Based on our review of available reports and information, we make the following recommendations for council to consider when reviewing the matter at the October 18, 2022:

- **Lots 2 and 3 should be eliminated because of flooding and because of required setbacks from the environmentally sensitive McCormicks pond:** Lots 2 and 3 are fully/almost fully submerged floodlands bordering on the environmentally sensitive McCormick's Pond (see picture below). OP 17.10.7 directs development away from areas of Atlantic Coastal Plain Flora. And Section 12.01.1 of the OP states that "new development will only be permitted where it can be carried out without negative impact on fish habitat." We recommend these lots be eliminated and the lands be deeded to the Municipality (or MRNF as per precedent from the Longhorn development) or these lots are merged into proposed lots 1 and 4.
- **Appropriate setbacks from environmentally sensitive wetlands needs to be defined by environmental expert:** In order to protect McCormicks Pond and its related floodlands, Appropriate setbacks/buffer zones need to be established for the areas bordering McCormicks pond. Setbacks should be at 229.57 m elevation or beyond and must be established by an environmental expert. We note from the Environmental report prepared by FRI Ecological Services stated that a 30 m setback was recommended for areas bordering McCormicks Pond.
- **No building/structure/dock/sewage system on any floodlands:** Given the environmental sensitivity of these lands, there should not be any development on the floodplain portions of any lots. We recommend the Council adopt a restriction on /structures and docks within land underwater ie. 229.57m. Ontario Planning Act, Provincial Policy Statement (PPS) 2.2.2 Development and site alteration shall be restricted in or near sensitive surface water features and sensitive ground water features such that these features and their related hydrologic functions will be protected, improved or restored.
- **Septic and site buildable area:** Each lot must have a suitable location (above 229.57m) for a class 4 subsurface sewage disposal system in accordance with the Ontario Building Code

8.7.2.1(1) and Ministry of Environment and Energy (MOEE) requirements. Under the Ontario Planning Act, Provincial Policy Statement (PPS) 2.2.1 g) which requires “Planning authorities shall protect, improve, or restore the quality and quantity of water by ensuring consideration of environmental lake capacity where applicable”

- **Minimum buildable area (MBA) and shoreline requirements:** Any lot bordering McCormicks Pond and it's flood lands, must have MBA of 0.6 hectares (above 229.57m) and 100 m of shoreline (at 224m). It appears that the current lot 3 (previously lot 4) is approximately 0.49 hectares, before shoreline buffer is considered/deducted, and does not meet the minimum requirement.
- **Suitable, usable and private parking (for minimum 2 vehicles/lot) and adjacent docking facilities** must be secured prior to any lot being registered in the subdivision. **New evidence is now available to make a sound decision regarding parking. It is now known that the parking is not used, it's location is not conveniently near docking/loading facilities. This cannot be deemed to comply with the Whitestone parking, docking and boat launching policy, as per Section 9.02.2 of the OP, that the developer provide “appropriate” private parking.**
- **Site plan control:** pursuant to S41 of the Ontario Planning Act and Section 16.02.11 of the OP, site plan control should be imposed on each lot.
- **OLS Survey:** an Ontario land survey with detailed; topographic, frontage measures (above 229.57 m) and net developable acreage (above 229.57 m) and other elements from the Longhorn subdivision precedent (see below) must be provided.
- **Elements from the WWK Longhorn Subdivision development draft Plan of Conditions should be applied as conditions of approval for this subdivision:** this included elements required prior to plan approval which should also be included for the Keene development including:
 - 100 year flood elevation identified on the final plan by an Ontario Land surveyor,
 - the final plan accurately delineated the shoreline, shoreline road allowance with dimensions and bearings
 - The plan showed the vegetation line along the waterfront and extended vegetative cover
 - Contour plan to a level of accuracy of .5m and with a contour interval of 1.0m commencing at the 100 year flood level
 - Showed a contour elevation
 - Showed lots on the revised draft plan having one location for a class 4 subsurface sewage disposal system in accordance with standard MOEE requirements on each lot as well as a suitable building envelope
 - The revised draft plan was to be further revised if necessary so that all development, including buildings, structures and sewage systems were located outside of the 100 year flood elevation
 - That an O.L.S. surveyor accurately depicted the final lot frontages and areas on the final plan prior to Final approval

Pictured below is a coloured version of the “subdivision redline” included with the Planner’s report dated October 7, 2022. Flooding occurs across the proposed Keene subdivision over proposed Lots 1, 2, 3 and into 4. The flooding of environmentally sensitive McCormicks Pond, including the Type 1 Fish Habitat, is likely to impact fish habitat, contrary to Section 12.01.1 of the OP which states that “new development will only be permitted where it can be carried out without negative impact on fish habitat.” The Report does not deal with this issue.



EIS Report -
 Required building setback from McCormicks Pond is 30m & req'd setback from Lake is 20m. Measurement at widest area is approx, 56 m, however no septic fields may be located areas subject to flooding by OBC and cottages are required to have septic beds

Septic beds where permitted above flooding must be setback by 30m per OP 13,04.3

Developer to prove Layouts on Lots 1 and 3 can accommodate a cottage and septic bed layout given required setbacks. Lot 2 can not be built upon.

← 30m setback line for built structures and septic beds

WWKCA/PAD COMMENTARY ON PLANNER'S REPORT AND OTHER ANALYSIS:

The WWKCA and PAD Committee are not anti-development. We are however determined to ensure that any development is responsible, respects environmentally sensitive lands and complies with all relevant legislation, regulations and policy.

This submission should be read in conjunction with our PowerPoint submission provided for the July 19, 2022 Council meeting in Whitestone.

The Planner's Report lacks empirical evidence to support claims. The report provides commentary on some of the areas raised as concerns by the public but in many instances does not cite sources or provide the written commentary of government agencies who establish the policy/regulatory framework or who are the approval authority. Further, it does not address a number of deficiencies we noted in the original report.

Some of the areas that are not supported by empirical evidence, expert opinions or regulation include statements in respect of

- References in the Planner's report to septic systems, requirements of governing statutes and regulations including the Ontario Building Code (eg leaching fields and areas subject to flooding) and the Official Plan (OP) (see examples below) as well as The Provincial Policy Statement 2020.
- conclusions related to adequacy of docking or lake capacity.
- References to flood levels eg "many think... the flood elevation... is extreme".

Septic Systems

The Planner's Report is written by a Planner, not an expert in septic systems and not qualified to state opinions about the safety of septic systems below the flood elevation. The Planner states he has been advised that "should tile fields become subject to flooding on a spring freshet condition, these concerns are intermittent and not fatal." This is problematic on many levels:

- The OBC 8.7.2.1 (1) states "...a leaching bed shall not be ...in or on an area subject to flooding".
- The Planner states that concerns are "not fatal". Is this the standard we wish to apply in protecting the health of our lake and those who use it?
- The North Bay Mattawa Conservation Authority (NBMCA) has a level of jurisdiction over septic systems in Whitestone.
- re: Phosphorus: The item in the Michalski report, attached and referred to in the Planner's Report, that attributes dissolved oxygen deprivation to algal decomposition is without any supporting evidence. Michalski states it, but gives no reason to believe it. In fact, he gives reasons to disbelieve it, since it relies on there being much algae to decompose, and no algae blooms are recorded.

As can be seen by the picture above, lots 1, 2, and 3 are impacted by flooding from McCormicks Pond. **Lots 2 and 3 should be eliminated because of flooding and because of required setbacks from the environmentally sensitive McCormicks pond and lack of area for an approved septic.**

In order to protect McCormicks Pond and its related floodlands, appropriate setbacks/buffer zones need to be defined by environmental expert for the areas bordering McCormicks pond. Setbacks should be at 229.57 m or beyond and must be established by an environmental expert.

Flood levels and cottages on stilts

The concern raised regarding the use of stilts to achieve floor level elevations for cottages was not the use of stilts per se but the fact that, due to the low lying land in several of the lots, areas under the cottages would be routinely flooded by water potentially for extended periods.

Flooding occurs across the proposed Keene subdivision over proposed Lots 1, 2, 3 and into 4. **The flooding of environmentally sensitive McCormicks Pond, including the Type 1 Fish Habitat, is likely to impact fish habitat, contrary to Section 12.01.1 of the OP which states that “new development will only be permitted where it can be carried out without negative impact on fish habitat.”** The Planner’s Report does not deal with this issue.

Some cottages on the lake are on stilts and are subject to flooding underneath. These were built to pre-OP standards and should not be taken as examples. The Planner’s Report does not provide objective evidence and uses examples of buildings in place before WWK became part of the organized municipality of Whitestone and the current OP and building bylaws were established.

Further, WahWashKesh is the only lake in OP mentioned under 12.05 Hazard Lands for its unique extreme flooding that can occur anytime throughout the season. The Planner refers to the “summer static dam height” and the outline on the newly submitted “Subdivision redline” picture (note this is not a proper survey) leads the reader to believe that spring is the only time septic beds will flood. This is not true.

The lake varies throughout the season and as a result of weather patterns. For example, in September 2021 the lake level was 4.6 ft above the dam. In September, septic leaching beds will be full and the lake water will be warm encouraging microbial growth while cottagers are swimming and using the lake as their water source creating a (public health issue.). Residents rely almost exclusively on lake water for water supply. Flooding of septic fields and tanks risks fecal e coli contamination of lake water.

It can no longer be assumed that cottage owners will not use their property during flooding (and therefore not use their septic systems), as (1) cottagers frequently (often starting on the May 24 long weekend) use their cottage during the so called “spring freshet” which can last well into June and even longer, and (2) as mentioned above the water levels can fluctuate significantly at any time.

The Planner’s Report mentions that 3 to 4 meters annual flood tends to be the norm but 5.57 meters, based on the 100 year flood, “is believed by many to be extreme”, and many think this is extreme is irrelevant. The Planner seems to ignore the fact that the current OP governs. The Province is the governing body that establishes regulations - not the purported “many” referred to in the report. Second, all design professionals know that design parameters are based on expected peaks, whether it be snow or wind loading or water level. No professional ever designs to the average. Safety factors are mandated in all engineering design standards. The Council could put the municipality at risk of litigation by following certain advice found in the Planner’s Report.

Public docking infrastructure

As stated in OP section 9.02.2, new roads are required except in this case, in which circumstance the municipality can approve the subdivision for “water access lots provided that Council is satisfied that appropriate facilities for car and boat trailer parking, docking and boat launching are available exclusively for the proposed waterfront access development” .

The WWKCA and the PAD committee have repeatedly contended based on extensive experience that the public docks are currently over-capacity, entirely contradictory to the report’s statement that “It turns out that the existing water access facilities, including public and private marinas are adequate to accommodate current access needs.” On what basis does the planner make this claim? There is no empirical evidence used to support the Planner’s claims. Our claims are based on our regular attendance and use of the public docks and parking. Many cottagers us both private and public docking, and others rely solely on public docking.

The Planner makes no provisions to ensure the new properties will use private docking and launching and will not add to the capacity issues of the public docks. The Planner further suggests that public docking is suitable, contrary to the OP.

Car Parking:

It is not reasonable to assume that the proposed private car parking will ever be used for parking. It has no adjacent private docking, and is 700 metres away from public docking. It is even further away from a private marina. **New evidence is now available to make a sound decision regarding this parking. It is now known that the parking is not used, it’s location is not conveniently near docking/loading facilities. This cannot be deemed to comply with the Whitestone parking, docking and boat launching policy, as per Section 9.02.2 of the OP, that the developer provide “appropriate” private parking.**

Lake Capacity:

We do not agree with the Planner’s conclusions on WWK lake capacity to “simply calculate the amount of frontage... on the lake...and divide by 100 meters”. The Planner does not base his conclusion on any current science (refers to the 1970s), or empirical examples or the intent of the OP and the fact that the proposed development borders on Type 1 Fish Habitat. However, his following statement “To answer the question of capacity on Wahwashkesh or any shield lake is dependent upon the performance standards in combination with any biophysical concerns (habitat protection, physical constraints, etc.)” does suggest that habitat protection and physical constraints need to be considered. However, the Planner does not take any of these into consideration.

We note that, under the Ontario Planning Act, Provincial Policy Statement (PPS) 2.2.1 g) which requires “Planning authorities shall protect, improve, or restore the quality and quantity of water by ensuring consideration of environmental lake capacity where applicable”.

Excerpts set out below:

2.2 Water

2.2.1 Planning authorities shall protect, improve or restore the quality and quantity of water by:

- a) using the watershed as the ecologically meaningful scale for integrated and long-term planning, which can be a foundation for considering cumulative impacts of development;*
- b) minimizing potential negative impacts, including cross-jurisdictional and cross-watershed impacts;*

- c) evaluating and preparing for the impacts of a changing climate to water resource systems at the watershed level;
- d) identifying water resource systems consisting of ground water features, hydrologic functions, natural heritage features and areas, and surface water features including shoreline areas, which are necessary for the ecological and hydrological integrity of the watershed;
- e) maintaining linkages and related functions among ground water features, hydrologic functions, natural heritage features and areas, and surface water features including shoreline areas;
- f) implementing necessary restrictions on development and site alteration to:
 1. protect all municipal drinking water supplies and designated vulnerable areas; and
 2. protect, improve or restore vulnerable surface and ground water, sensitive surface water features and sensitive ground water features, and their hydrologic functions;
- g) planning for efficient and sustainable use of water resources, through practices for water conservation and sustaining water quality;
- h) ensuring consideration of environmental lake capacity, where applicable; and
- i) ensuring stormwater management practices minimize stormwater volumes and contaminant loads, and maintain or increase the extent of vegetative and pervious surfaces.

25 | Provincial Policy Statement, 2020

2.2.2 Development and site alteration shall be restricted in or near sensitive surface water features and sensitive ground water features such that these features and their related hydrologic functions will be protected, improved or restored.

Mitigative measures and/or alternative development approaches may be required in order to protect, improve or restore sensitive surface water features, sensitive ground water features, and their hydrologic functions.

Deficiencies noted in our July 19, 2022 submission were ignored by The Planner:

The following deficiencies noted in our July 19, 2022 submission were ignored by the Planner in his October:

Concerns with the proposal and Planner's Report

- Development "Survey" done when water low and ignores impact of fluctuating water levels - developer says some buildings will have to be on tall columns to be above the waterline
 - Several lots do not have sufficient required municipal zoning area when flooded in spring
 - Septic/grey water systems potentially under water and don't meet OBC requirements
 - The Planning Report is misleading as it concludes that the proposed subdivision meets the criteria. Lots 2&3 do not meet the criteria for septic/greywater, buildable area and Lots 1 requires detailed verification for same. Water-Access Lots 1&2 have no approved docking areas according to the Enviro. report.
 - The planning report notes that parking and docking has been secured. No "boat launching and docking arrangements" have been secured that are "available exclusively for the proposed waterfront access development ...OP 9.0.2" (see Planner's report page 8)
 - Note error by planner: some of the pond areas are incorrectly included in the lot area of lots 2,3,4
1. Questions regarding content, completion and accuracy. Review generated 25 questions to be answered for compliance - eg :
 - vertical survey benchmarks/topographic lines to be confirmed
 - soils information included that requires confirmation

- lot areas/frontages require correction - some include lake and McCormicks Pond as calculated lot area
- Official Plan requirements for lake impact not provided
- Suitability for septic systems not confirmed
- Contour plan 'purple plan' - confirm all topographic levels, usable site area considering high water
- Hydrogeological survey not submitted per OP 8.03.2.2
- Storm water management plan report not submitted per OP 8.03.3

Certain lots may not meet the OP requirements.

See excerpt below from our July 19, 2022 submission. Useable area above 229.57m . Accordingly we recommend:

- **OLS Survey:** an Ontario land surveyor, detailed topographic, frontage measures (above 229 m) and net developable acreage (above 229 m) must be provided.
- **Site plan control:** pursuant to S41 of the Ontario Planning Act and Section 16.02.11 of the OP, site plan control for should be imposed on each lot.

2. Planning Report - Scaled Analysis

