

**CHESHIRE INLAND WETLANDS AND WATERCOURSES COMMISSION
REGULAR MEETING
TUESDAY, DECEMBER 6, 2016
TOWN HALL 84 SOUTH MAIN STREET
COUNCIL CHAMBERS AT 7:30 P.M.**

Members present: Robert de Jongh, Charles Dimmick, Dave Brzozowski, Kerrie Dunne, and Thom Norback.

Members Absent: Earl Kurtz and Will McPhee.

Staff: Suzanne Simone.

I. CALL TO ORDER

Chairman de Jongh called the meeting to order at 7:31 pm.

II. PLEDGE OF ALLEGIANCE

All present recited the pledge of allegiance.

III. ROLL CALL

Ms. Dunne called the roll.

Members in attendance were Robert de Jongh, Charles Dimmick, Dave Brzozowski, Kerrie Dunne, and Thom Norback.

Chairman de Jongh stated the Commission needed to add an item to the agenda; a permit for the application at 509 Mountain Road:

Motion: To add the item at 509 Mountain Road under new business on the agenda.

Moved by Dr. Dimmick. Seconded by Mr. Norback. Motion approved unanimously by Commission members present.

Motion: To bring the item regarding 509 Mountain Road before the Commission discusses enforcement actions.

Moved by Dr. Dimmick. Seconded by Mr. Brzozowski. Motion approved unanimously by Commission members present.

IV. DETERMINATION OF QUORUM

There were enough members present for a quorum.

V. APPROVAL OF MINUTES - Regular Meeting – November 15, 2016

Motion: To approve the minutes of the November 15, 2016 regular meeting with corrections:

Pg. 3 L20 delete “are”; L39 “the” to “he”; pg. 5 L12 “with” to “where”; pg. 6 L45 “of” to “on”; pg. 14 L34 “we” to “be”; And: Pg. 11 L16 change “Ms. Dunne.... she said she respected his (Dr. Dimmick’s) opinion” to Ms. Dunne.... she said she respected his (Matt Ducsay’s) opinion.

Moved by Mr. Norback. Seconded by Mr. Brzozowski. Motion approved unanimously by Commission members present.

VI. APPROVAL OF 2017 MEETING DATES

Motion: To approve the 2017 meeting dates (first and third Tuesday of each month unless otherwise noted).

Motion approved by consensus of Commission members present.

VII. COMMUNICATIONS

Ms. Simone reviewed the following communications:

- 1. IWWC App. # 2016-033 Extension Request - VCA Cheshire Animal Hospital, 1572 South Main Street**

This communication was reviewed.

- 2. Correspondence from Lawrence Levinson, P.C. Re: 1430 Highland Ave. Transfer of Ownership**

This communication was reviewed; and is under new business on the agenda.

- 3. Permit Transfer Request by Early Childhood Education, LLC for 1430 Highland Avenue**

This communication was reviewed.

4. **Staff Communication w/Attachments Re: Request for Determination 2016-035, Wallingford Rd./Tamarack Rd., Site Plan – Driveway**

This communication was reviewed; and is under new business on the agenda.

5. **Correspondence from Dennis Waz, City of Meriden
Re: RFD 2016-035, Wallingford Rd./Tamarack Rd., Driveway**

This communication was reviewed; and is for the application stated above.

6. **Engineering Comments Re: IWWC App.#2016-034, Higgins Rd., Site Plan – House**

This communication was reviewed; and is under unfinished business on the agenda.

7. **Show Cause Hearing: Permit #2014-007**

This communication was reviewed.

8. **Staff Communication w/Attachments Mountain Road, Permit #2014-007**

This communication was reviewed; it's the staff communication regarding the show cause item noted above.

Added to the agenda:

9. **Ms. Simone said before the Commission tonight is the transfer application for the permit 2014-007 which the Commission added to the agenda.**

VIII. INSPECTION REPORTS

1. **Written Inspections**

Ms. Simone said the written inspections were for the property on Mountain Road.

2. **Staff Inspections**

Ms. Simone there were staff inspections of Academy Road – the erosion controls are still in place; and Waterbury Road is something that she is still looking into – a property right next to the Ten Mile River and that she'd have more information at the next meeting.

IX. ENFORCEMENT ACTIONS

Chairman de Jongh said the next item is one which was added to our agenda tonight – and that is a request for a transfer request.

Chairman de Jongh read the request to transfer into the record:

“Dated: December 5, 2016

To whom it may concern:

I, Whitney Watts, would like to request a permit transfer for 509 Mountain Road, Cheshire, CT 06410. This property was sold to Connecticut Yankee Construction to Edward Barnett approximately one year ago.

Thank you,

Whitney Watts

December 5, 2016

To whom it may concern:

I, Edward Barnett, accept the permit transfer for 509 Mountain Road, Cheshire, CT 06410 from Connecticut Yankee Construction and Whitney Watts.

Thank you,

Edward Barnett”

Motion:

That the Cheshire Inland Wetlands and Watercourses Commission, having considered the factors pursuant to Section 10 of the Inland Wetlands and Watercourses Regulations of the Town of Cheshire, Commissioners' knowledge of the area, previous site visitations, and

after review of written information provided by the applicant on this request for permit transfer finds the following:

1. That a previous CIWWC permit, CIWWC Permit #2014-007, was granted, with stipulations, to Connecticut Yankee Construction for site plan on May 6, 2014
2. That the inland wetland regulations allow permit holders to request to the Commission a transfer of permit ownership to another party.
3. That on December 6, 2016, Mr. Whitney Watts, representing Connecticut Yankee Construction, requested permit #2014-007 be transferred to Mr. Edward Barnett, who submitted a letter accepting the request to transfer.

Therefore, the Commission grants the permit transfer request of Connecticut Yankee Construction to transfer CIWWC Permit #2014-007 to Mr. Edward Barnett, said transfer permit to hereafter be referred to as CIWWC Permit #2014-007A, with the following stipulations:

1. Any changes or modifications to the plans as presented will require subsequent Cheshire Inland Wetlands and Watercourses Commission review and approval.
2. That all conditions and stipulations of CIWWC Permit #2014-007 granted, with stipulations are incorporated by reference as though fully set forth herein to the extent they are not in conflict with the present permit transfer grant.

Moved by Mr. Norback. Seconded by Ms. Dunne. Motion approved unanimously by Commission members present.

1. **SHOW CAUSE HEARING** SC 12/06/16
Notice of Violation/Cease and Desist Order
Connecticut Yankee Construction c/o Mr. Whitney Watts
House 2 Home Construction c/o Mr. Edward Barnett
Unauthorized Activities in a Regulated Wetland Area
Mountain Road
Assessor's Map 62, Lot 4

Chairman de Jongh explained that there are a number of issues that we have and we'll allow the applicant to address this Commission – but there are a number of issues that we are concerned with and staff has sent out a timeline of items related to this applicant.

Chairman de Jongh said he's briefly run through the items:

On May 6, 2014, this Commission issued Permit #2014-007 to Connecticut Yankee Construction for the development of the house on Mountain Road.

On April 5, 2016, the Commission made a determination on Mr. Edward Barnett's request for proposed modification of house configuration and found that the modification did not require an additional permit.

On May 23, 2016, Mr. Barnett posted an erosion control bond in the form of a cashier's check in the amount of \$1,825.00 for the cost of materials and installation of erosion controls shown on approved map.

On June 28, 2016, staff met with Mr. Barnett in a preconstruction meeting, per stipulation #3 set forth in permit #2014-007: which says review of the permit stipulations, including the continued monitoring of erosion controls and reporting, thus complying with stipulation #3.b of Permit #2014-007.

On July 6, 2016, Ryan McEvoy provided the only written report to Commission Staff completing stipulation # 3.e of Permit #2014-007.

On July 7, 2016, staff emailed Mr. Barnett informing him that stipulation #3 had been complied with and the building permit was signed; additionally, in the same email Mr. Barnett was reminded that ongoing inspections were required. Mr. Barnett acknowledged receipt of the email and replied "will do".

On November 1, 2016, staff emailed Mr. Barnett to remind him of the requirement; on the same day Mr. Barnett acknowledged receipt of the email and replied "will do".

To date, stipulation #4 of permit #2014-007 has not been complied with.

On November 17, 2016, Commission Staff, Suzanne Simone, visited the site and found erosion controls buried and non-functioning. Additionally, the grade was not stabilized; posts installed to establish the non-encroachment area had been knocked over by the eroding slope material, including soil and rocks.

Chairman de Jongh stated pictures of that area have been provided to Commission members.

On November 29, 2016, in accordance with the town regulations requiring cease and desist orders be issued and show cause hearing held within 10 days of the issuance of the order, the cease and desist order was issued to Mr. Whitney Watts and Mr. Edward Barnett. The order, in part specified the “halt of all construction activities”.

On December 6, 2016, staff and himself (Chairman de Jongh) visited the site and observed four men framing the house, framing which was not installed on November 17, 2016: per staff photos.

Chairman de Jongh said he called Mr. Watts and Mr. Barnett to reiterate the halting of all construction activities. At 12:20 pm staff inspected the site and the workers were not on site. Some site improvements had been made, although staff has identified areas that need attention. Photos have been made available to members tonight.

On December 6, 2016 Mr. Watts submitted a request to transfer the permit to Mr. Barnett, complete with the required application fee.

Chairman de Jongh said he also needed to point out that in our conversation today with Mr. Barnett he had mentioned that he had not received the certified mail copy of the cease and desist order yet he had called staff last Friday and indicated that he was aware of the cease and desist order.

Chairman de Jongh stated for the record he was giving Mr. Barnett a copy of the cease and desist order.

Mr. Barnett accepted the copy of the cease and desist order handed to him by Chairman de Jongh.

Chairman de Jongh stated there are clearly issues that have come up on this site.

Ms. Simone explained that on November 17, 2016 she did go out to the site and pictures were sent to the Commission in the mailing; on those photos it shows where silt fence had been buried by other eroding soil and rocks that had gone into the upland area.

Ms. Simone stated looking at the plans for this project the Commission had allowed the upland review area to be reduced from 50' to in one area being about 10' away from where the silt fence was to be located which is generally in the area where you see in photo 1.

Ms. Simone said photo 2 you get to see a wider shot of that - there's erosion going down the steep embankment.

Ms. Simone said photo 3 gives you a view of the steepness of the grade and that the soil was not secure in anyway and you can see that material had been pushed over and as well as eroded - the silt fence is all but gone in much of this area - there's an indication of the approximate location of wetlands but then again there are not immediately located in the field.

Ms. Simone said photo number 4 shows a close up of the same that erosion control conditions.

Ms. Simone said in accordance with the regulations and speaking with the Chairman the notice of violation was sent out on November 29, 2016 - it had to be there within 10 days of the next Commission hearing and she and the Chairman went out to the site today and those photos were handed out at the meeting tonight - it shows the condition of the house has changed - that framing has taken place and that people are actively working out there.

Ms. Simone stated there were changes to the grade that it seems to be in a terraced type of condition - the erosion control blanket is in place however there are still deficiencies and things that need to be addressed to secure the site so photos two and three show at the top

of the newly terraced area and then you will see that it still has a steep grade going down; so there's two rows of silt fence; the one at the bottom still appears to be comprised in photo number 4 where it looks like it's not anchored properly so any material can still wash into that area.

Ms. Simone stated the rain garden has not been created yet which was not something that was required but it needed to be done right now at this point but it's an area that's still wide open – you can see that it's not really secure; material can still wash down into that area.

Ms. Simone explained that photo 6 gives you a good idea of what that terrace slope now looks like; you can see that the erosion control blanket doesn't cover the entire area – and the silt fence does appear not to be installed properly.

Dr. Dimmick asked staff if those new contours were approved.

Ms. Simone stated she can't tell in general – if they actually match the plan – that's something the Commission could ask the Engineering department to look into.

Ms. Simone said they could look at the site plan out – she said in general it showed it was going to taper down but whether or not it actually meets those limits she didn't know off hand; she could just casually observe the area.

Mr. Norback asked if she would say the new contours being terraced are effective.

Ms. Simone said she would say it's an improvement but it appears as though the silt fence is not properly installed at the toe of that slope and there still work that needs to be done.

Chairman de Jongh said he thought the surprising thing that staff and he saw when they went out to the site today – first of all that there were workers on site working on the property when in fact the cease and desist order had been issued; stipulating that all work should cease.

Chairman de Jongh said second of all when we went out to the site what we noticed was that while the slope had been improved – there was no way – there was no indication as to what the toe of the slope should have been or where the end of the slope should have been

and whether the non-encroachment markers should have been installed; clearly the proximity from the wetlands was very, very close and he didn't know how much of the erosion matting – how much of that may have been beyond the area that was permitted in the original application - we have no way of telling – he stated it was very frustrating this morning when they went (with what they saw).

Chairman de Jongh said he didn't know if the applicant had any comments.

Mr. Barnett addressed the Commission.

Mr. Barnett said first of all, after he received your phone call today, he went back to the job site and the independent framers who came today were not supposed to be there and they aware of that so as soon as he talked to you he got that back (to them).

Mr. Barnett said he wasn't going to make any excuses at all about the cease and desist order that came – the first he heard of it was on Friday so any work that had been done previous to today – he said he called Suzanne and make sure he apologized and made sure these guys were right off the site as of today – they were not supposed to be there.

Mr. Barnett said second of all – he absolutely understands your (the Commission's) concern – the silt fence is actually doubled so there's original silt fence there and then when you see something that doesn't look like it appears to be tended its actually another silt fence inside that other one.

Mr. Barnett stated he wasn't going to make any excuses to you guys about the conditions – he said obviously you had a job to do and you do it; he said the difficult part for him here is that he could get to a point where he could install the erosion control blankets after the footing was put in – when the foundation was put in around that corner – he said you can see he is starting to work on the pond area and trying to get around that and make sure that nothing got into the wetlands area which he was very confident minus a few rocks that had hit the silt fence at a certain point.

Mr. Barnett said yet again the two things – every single marker was marked by Milone and MacBroom; the foundation was pinned; from this standpoint – from moving forward he tried to follow the exact print to solidify the hill but he'd do whatever you guys would like him

to do to make it better – it's a difficult site and there's nothing in the wetlands – again that's no excuse for not making it as good as possible.

Chairman de Jongh said he thought the challenge for us was we knew it was a difficult site to begin with and we made an exception which we do on occasions when we feel that there is an ability for the property to be developed – we have always been trying to work with an applicant so its win-win for both sides; so we granted an exception to allow you to be closer to the wetland then we would ordinarily want – we typically want a 50' buffer – there was no way you'd get 50' on that property.

Chairman de Jongh said from the middle of last year until November we had asked for ongoing monitoring of those sedimentation and erosion controls and short of the one report from Ryan McEvoy which was in July we heard nothing and that was a clear stipulation – in the permit the expense was going to be the applicant's (whether it be Mr. Barnett or Mr. Watts) and that was clearly requested because we knew it was a challenged site – the problem we are faced with now – is that we have absolutely no idea as to what the permitted end of that property was because of the erosion that's taken place – we have no way of knowing – the only way to know that is to have a soil scientist go out and determine what was the original soil – what was filled and give us a line of demarcation.

Mr. Barnett said as far original posts that are there – nothing's moved.

Chairman de Jongh said he didn't see any posts when he was out there today.

Ms. Simone looked at the photos and noted she saw a post that was tipped forward.

Mr. Barnett stated there's 5 (posts) - that's one has always been tipped forward because that is exactly where it needed to be placed – Milone and MacBroom placed the marker there – it was on an angle and its almost at the point where he has to get around the corner to work on the retention pond but everything else is there – there's 5 posts that never moved and it didn't rain this year for 7 months so he's very confident that nothing moved – the only activity that happened is as we moved and had to excavate the portion where we had to put the footing in – that slope didn't exist – he said he

couldn't put erosion control on something that he wasn't done with and that was only in the last 3 weeks that he could get to the point where he could solidify that bank – seed it and put erosion controls otherwise nothing has gotten through there and some rocks have come as we excavated – he said they have only had two instances of rain.

Mr. Norback said he had a question – he said the Chairman had indicated that the only way to identify whether the area that had been filled is over wetland soils or not because now it's been compromised for the lack of a better term – it seems that more importantly from the Mr. Barnett's perspective is not so much that identification but the distances as represented on the map that he was bound to respect – he said he was going to say the wetland soils were arbitrary but had been approved is the distances on that – so he thought it was more appropriate that we are discussing measurements rather than soil types.

Chairman de Jongh said he thought they were saying the same thing but he thought the difference is that we can't make that determination – it can only be made by the soil scientist relative to what that distance was.

Mr. Norback stated the distance is on the map so if the house has been located by an engineer which often times it is – when the foundation goes in often times you'll have a civil engineer go out and locate it as an as-built and so if we knew where that was then they would be able to have the ability to measure to the toe of the slope exists as opposed to identifying wetland soils which is not as relevant to the cease and desist order as the distances.

Dr. Dimmick started his problem is this – we have a clear stipulation that we put into the permit requiring regular monitoring and reporting and this has not been done – this is a clear violation of the permit – the stipulation was put in there for the very clear reason that this was a difficult site and despite being asked to do so the applicant has continued to ignore this particular stipulation which is a violation of the permit.

Mr. Norback stated he'd concur with that – his question is the actual location of violation – that was his only point – not that a violation has indeed occurred.

Chairman de Jongh said we have three choices to consider tonight

in terms of what we're going to do to move forward on this; the least penial on this is basically maintenance where the Commission doesn't find that the permit is in default and allow the work to continue – that's certainly one option.

Dr. Dimmick said Mr. Chairman that he finds that this permit is in default.

Ms. Simone said she wanted to make sure they get everything clear on the record.

Ms. Simone said right now, they are just in the show cause hearing just to determine whether the cease and desist order that was issued is correct.

Motion: That the Commission sustains the staff finding justifying the cease and desist.

Moved by Dr. Dimmick. Seconded by Mr. Norback. Motion approved unanimously by Commission members present.

2. **SHOW CAUSE HEARING** **SC 12/06/16**
Revocation of Permit #2014-007
Per Section 13.4
Connecticut Yankee Construction c/o Mr. Whitney Watts
House 2 Home Construction c/o Mr. Edward Barnett
Mountain Road
Assessor's Map 62, Lot 4

Chairman de Jongh said he was saying there were three options that they've got – the one is simply to allowing the site to be maintained and assuming that there wasn't any problem – but we just obviously found out there was a problem.

Chairman de Jongh said the other two options that we've got – one is suspension – where the Commission may suspend the permit – providing the permit holder the opportunity to do specific actions as prescribed by the Commission; the permit cannot then be reinstated until and unless – and those are words by the town attorney the Commission is completely satisfied – the Commission could require the permit holder to hire their own professionals which would work for the applicant; or we could do a revocation which is a repeal of the permit where the contractor or interested party would have to apply or reapply to the Commission again with a brand new application

and in this case the Commission would be hire their own experts paid for by the applicant to inspect the upland and wetland for impacts due to improper installation and maintenance up to the point or an engineer to review the function and sustainability of the slope and rain garden for example.

Chairman de Jongh explained the Commission can determine if there are questions that they feel comfortable having a professional answer; in the revocation the Commission could also stipulate additional bonding not just for the material and installation of the erosion controls but also for the ongoing monitoring and reporting.

Motion: That the Commission moved to revoke the permit per Section 13.4 of the regulations and initiate the process of revoking the permit 2014-007 giving staff the authority to take care of the proper paperwork.

Moved by Dr. Dimmick.

Seconded by Ms. Dunne.

Discussion:

Ms. Simone said in looking at the regulations – it does offer Mr. Barnett an opportunity to show that the permit or the conduct is in compliance with the permit and any and all requirements in order to keep the permit; she said just because that language is in there she just wanted to make sure Mr. Barnett has an opportunity to add anything.

Mr. Barnett said at this point he realizes there are things he has to do but nothing has changed as far as what was asked of him originally.

Mr. Barnett said you mentioned something in reference to the non-encroachment posts which are still in place.

Chairman de Jongh stated he did not see them when they were on the site inspection this morning.

Mr. Barnett stated there are 4 by 4 posts – they haven't moved; that is what he used Milone and MacBroom – they marked those out specifically for him; the silt fence is in front of those items and that's the area where they wanted to make sure nothing went beyond that.

Chairman de Jongh stated that was the purpose of the non-encroachment markers.

Mr. Barnett stated they (the markers) have never been moved – they have never been touched – there is nothing behind them and everything has been done by Milone and MacBroom; where they marked them and put them in – he said Ryan came out originally....

Ryan McEvoy, licensed professional engineering with Milone and MacBroom stated he wanted to add one thing for the record. He stated he worked with Mr. Watt's originally on the permit application and again with Mr. Barnett to create the plan that was reviewed to see if additional permits were necessary for his house plan.

Mr. McEvoy stated he did go out to the site this morning to take a look and the posts are in place; he said he had a photo here just to clarify that pone item.

The Commission looked at the photo – on Mr. McEvoy's phone.

Chairman de Jongh said the only one they see in the photo that Suzanne took – its photo 6 of 6 and there's only one and the slope is beyond that.

Mr. McEvoy pointed to the location of the posts for Commission members.

Ms. Dunne said looking at photo 2 (and same with photo 4) – and for the record – that this is one of the posts.

Mr. McEvoy stated that was correct.

Ms. Simone said she did want to mention that in the cease and desist order that was sent it does not indicate that the reason Mr. Barnett is before the Commission is because the non-encroachment posts are missing – it's just that their positioning made it obvious to her that there had been movement of the soil which caused them to tip which is what she saw with the silt fence – she is talking about one post in particular.

Ms. Simone stated Mr. Barnett received his permit in July – they have never received the monitoring and for all we know the silt fence had never been monitored; when she went out there on November 17,

2016 this was the state – this was the condition it was in – as shown in the photos – so one is lead to believe that this was the condition for a good long while based on the amount of debris that has moved – the rocks and the complete obliteration of the silt fence so that’s what precipitated the order.

Ms. Simone said that she understood there was dialog about the non-encroachment posts but that was not the fine point on this order.

Chairman de Jongh said he understood – and appreciates the engineer’s point and again to Suzanne’s points the issue was the visual of those posts leaning with the debris.

Mr. Barnett said it’s just one and that’s the way it was put it in.

Mr. Barnett stated the rest of the posts are straight up – never been affected – he said the real problem they had and it’s his responsibility – was when some rocks had hit a portion of the silt fence – that’s where the problem came from – he was aware of it and we got to a point where he was able to do the work that he did here – he said Ryan inspected what we had here in July and wrote the letter – he realized Suzanne reached out to him in reference in getting back to her – but they really never did anything until we started the site work which well above this until we had to get some vehicles around the area where the rocks hit the silt fence.

Mr. Barnett stated at no time did the silt fence fail – we had no rain.

Mr. Barnett said they had no rain – he said he is not making any excuses – he stands before you as someone who is responsible for all you see here and he is willing to do whatever he has to do to rectify it and make sure nothing happens.

Mr. Norback said he didn’t have the benefit of seeing Ryan’s pictures – the other 5 demarcation posts – how far off of the toe of the slope are they approximately.

Mr. McEvoy stated they are at the toe of the slope – approximately and the plan that we had basically had the silt fence and hay bales right along that non-encroachment line and the slope coming down from the back of the house with a small shelve going down to a 2:1 slope to the toe of the slope which is essentially at the silt fence non-encroachment area.

Mr. Norback said the photo they looked at with the post tipped over that's why it appears it was stapled to the post out of convenience.

Mr. McEvoy said the plan there and this is how it was originally how the S&E controls were done was that the silt fence wraps right around that post – that's the way it was originally.

Mr. Norback said so one can infer from that that is at least in that regard the toe of the slope in relation to the amount of encroachment area was considered and respected – the silt fence failed and was not monitored – that's really the crux here.

Ms. Dunne said and (there was no) reporting.

Dr. Dimmick said he would also point out that photos 4 and 5 taken today - it certainly appears to him that there is some material that moved past the lower silt fence into the non-encroachment area and that he sees places it looks as though there is soil over leaves which is a fact normally indicating material bypassing the silt fence in some fashion.

Dr. Dimmick said he thought a field inspection would be necessary by someone who is qualified as a certified soil scientist or otherwise able to verify what he is seeing in those photos.

Chairman de Jongh said he thought Dr. Dimmick's point is what he and Suzanne saw on the site today and caused some concern on their part – beyond the point of silt fences it looked like there was some impact in the area.

Chairman de Jongh said the other thing they noticed too while there was a blanket but on some part of it – when you take a look at photo 5 there's still sides of the slope that's unprotected; there's silt fence there but if there was a need to put a blanket on this one part that blanket needs to be put on the other part as well.

Chairman de Jongh said he guessed the question that we have to decide this evening is we have a motion before us for the revocation of the permit – and this Commission now needs to decide whether or not we will uphold that motion or deny that motion.

Dr. Dimmick said he would point out – there is a possibility to modify that motion and change the revocation to suspension.

Ms. Simone said the options are before the Commission; they can try one and if that fails (they can try another); the Commission does need to vote on one of the three options; renovation, suspension or to maintain.

Mr. Barnett said he would do anything that they asked him to do from the standpoint as far as the erosion control blankets – he said before he couldn't get to that area to do it – but if you would like him to wrap any area with erosion control blankets if it would help his cause he'd be happy to do that.

Dr. Dimmick said either way we need more information from a licensed professional of some sort before we let this continue.

Ms. Dunne said she was more inclined to suspension then having it revoked.

Mr. Norback said he was more comfortable with a suspension then revoking.

Motion denied; one member was in favor of the revocation – four members denied the motion for revocation.

The motion was denied.

Chairman de Jongh said when considering the suspension of the application- and just for clarification suspension would be the Commission may suspend the permit, providing the permit holder the opportunity to do specific actions, as prescribed by the Commission. The permit can then be reinstated or cannot be reinstated “until and unless” occurring to the town attorney phrase the Commission is completely satisfied; the Commission could require the permit holder to hire professionals, which would work for the applicant and that would be at the applicant's expense.

Motion:

That the Commission moved to suspend the application providing the permit holder specific actions as prescribed by the Commission; the permit could then be reinstated or cannot be then be reinstated unless and until the Commission is completely satisfied; the Commission could require the permit holder to hire professionals

which would work for the applicant and that would be at the applicant's expense.

Moved by Mr. Brzozowski. Seconded by Mr. Norback.

Chairman de Jongh asked if Mr. Barnett wanted to make any comments.

Mr. Barnett said all he could say is he takes total responsibility for the site and he will do anything your guys ask him to do to protect he wetlands.

Motion approved unanimously by Commission members present.

Ms. Simone offered to make a recommendation – she stated she believed the Commission has to come up with very pointed and specific requirements that Mr. Barnett is going to be ordered to do in order for the permit to become reinstated and that the permit is not going to be reinstated unless and until all of those measures are met to the satisfaction of the Commission; she said she believed that needed to be detailed on the record exactly what the Commission is looking for from Mr. Barnett.

Dr. Dimmick said considering the circumstances is it possible to lay out general rules now to be filled in at a later time because until we do a careful study of this we are not sure exactly what is needed to be done.

Mr. Norback asked if it was reasonable to address your concerns and frankly his – that if the Commission is requiring a professional engineer and soil scientist be involved with the identification process then could we without seeing his recommended repairs - cold we go out that far just saying as long as he adheres to the recommendations of that professional engineer.

Dr. Dimmick said we need to verify we agree with the recommendations of the engineer; that's the part that's got him at this stage.

Ms. Dunne said we should at least have a date that the report has to be submitted and then we would look at the report but work has stopped – is that not true.

Chairman de Jongh stated work has stopped.

Ms. Simone echoed that work has stopped.

Ms. Dunne said so that's clear – work has stopped until the investigation is done – the report is done and we received the report.

Ms. Simone said her staff recommendation would be:

That evidenced in looking at the photos and having staff been out at the site that there are measures that need to be taken to secure that area; the area where the silt fence is failing; areas where the blanket is lacking – that's something that should be addressed immediately; have those measures undertaken then the Commission could ask for an engineering report, a soil scientist report but at least to secure the site in the event we have a storm event.

Mr. Norback said if the cease and desist order could be a little more specific; can't be just ask that there be no site disturbance – because carpentry is going to be a non-invasive or intrusive.

Dr. Dimmick said he was concerned suspension of the permit is a suspension of all work however in talking about needs to be done in terms of security of the site – we can order that- we can order an investigation be made by a professional and if it's found that materials have moved beyond the non-encroachment line that preparations be made and that these be taken care in an expeditious manner in a way that will not further injure the area of non-encroachment.

Ms. Simone said as presented to the Commission prior to any work being done.

Chairman de Jongh said he knew what Tom was trying to do – but the problem is...we can't do that.

Mr. Norback interrupted and said the building permit is directly related to the wetlands permit.

Chairman de Jongh said we can't loosen up the cease and desist order because that has been determined by the Commission that a violation did exist so we've suspended any activity – now what we need to do as Dr. Dimmick pointed out is to do what necessary to secure the site – unfortunately we only have one meeting in December so this is not going to be taken up until after the holiday.

Dr. Dimmick said unless we have a special meeting.

Chairman de Jongh said unless we hold a special meeting so we need to make sure that the site is secure – there were areas where that blanket needs to be installed where it doesn't currently appear as shown on photo number 5 and to Dr. Dimmick's point we need to determine whether or not there was any erosion beyond that secondary silt fence or in that area and that can only be done by a professional.

Dr. Dimmick said he was worried more about deposition than erosion beyond that silt fence.

Mr. McEvoy said that he just spoke to Mr. Barnett – based on the original design of the site – we'd be happy to provide a detailed report determining both the limits of disturbance – limits of fill and also the soil scientist review of the site conditions to see if there are any recommendations or any first and second recommendations to mitigate those impacts if they're found; he said they could do that in short order – probably within a week or two.

Dr. Dimmick asked if that included the integrity that existing erosion controls and necessity for more.

Mr. McEvoy stated of course – he said he thought that was something Mr. Barnett probably should consider doing on a weekly basis.

Mr. McEvoy said in terms of clarifying the where things are right now and what if any measures are needed to button up the site and if there has been any migration of materials what could or should be done; we can provide those recommendations.

Chairman de Jongh said he thought it was important to note for the record that it's clear that the applicant has recognized that there is a violation and has fallen on the sword if you will – that the error is purely his – he said he certainly appreciates the cooperation; we are not in any way trying to impose any harsh penalties on you (Mr. Barnett) and prohibit you from earning a living; he stated he did appreciate the cooperation.

Chairman de Jongh said we might be able to find some time to do a special meeting some time later on this month if we can get some of

the things taken care that the engineer has conveyed on the record tonight then we might be able to move this a little bit further.

Ms. Dunne asked when would this report be due this first one – she said she thought they needed a date.

Chairman de Jongh asked Ryan how long it would take to pull this stuff together.

Mr. McEvoy said by next week.

Chairman de Jongh said by December 16.

Ms. Simone asked if that would include the stabilizing of the site.

Mr. McEvoy stated of course – it will include limits of disturbance as being constructed; recommendation from the soil scientist and recommendations regarding site stabilization and upgrade of sedimentation and control measures.

Mr. Brzozowski asked if we should set up a schedule for inspections and reporting back as part of this – since it's a site that needs to be looked at.

Chairman de Jongh said he thinks they probably can but he thought most of the reporting should have taken place as the site was being readily.

Ms. Simone said while it's suspended someone is still monitoring the erosion controls.

Mr. Brzozowski said he knew it was a requirement before – maybe they have a professional firm report back.

Ms. Simone said yes and then the Commission could decide if the regular monitoring reports are not submitted to the Commission while this is suspended then they are not meeting the 'unless or until.'

Mr. Barnett said he wanted to add one thing – he said he has always Milone and MacBroom – they have been out there and they have done all the engineering; as they identify things that he has to do – is it all right if I do the work as needed.

Chairman de Jongh said he would have Ryan's office – Milone and MacBroom coordinate with staff so that we are aware of what's being done.

Mr. Barnett said he wanted to take care of this as expeditiously as he could.

Dr. Dimmick said that staff could communication with either Bob or himself as necessary for further advice.

Ms. Simone said even it its was adding to what was already called for in the permit then she was comfortable that an engineer could make that call if something is going to deviate and there is grading that needs to be done then that would require detailed conversations before any action takes place.

Chairman de Jongh said what he'd like to propose to the Commission is – if we could receive the information by next Friday which is the 16th of December – our next regularly scheduled meeting would have been December 20th.

Ms. Simone said that would not be enough time for staff review.

Mr. McEvoy said he's going to try to get it before that date; he asked about the calling of a special meeting.

Dr. Dimmick said it can be called for with 3 days' notice.

Ms. Simone state yes but with the holidays it might be difficult to find time.

The Commission talked about the scheduling of a special meeting.

Chairman de Jongh said we should just wait to see what the volume of information and then make a determination (at that time); we will try to get a special meeting called to be able to move this forward.

Ms. Simone said she just wanted to clarify for herself and for the record:

Mr. Barnett is being ordered to stabilize the site; to clean up what's there in the areas where it appears the silt fence is not staked to go ahead and do that; put up additional erosion control blankets – that's

something that's being ordered to do immediately; if Mr. Barnett wants to reinstate the permit then he will have to get an engineering report and a soil scientist report that will evaluate what has been done and proposing how to remediate if there is any impact; and also separate to that Mr. Barnett will have likely Milone and MacBroom issue weekly reports (or after a rainfall of 1/2" or greater) monitoring the integrity of the silt fence and erosion controls and correcting any deficiencies; per the original permit stipulations.

Motion approved unanimously by Commission members present.

Chairman de Jongh said that staff could put this together in a communication to both the applicant and his engineer.

Ms. Simone stated this is required to be sent certified mail with 15 days; she verified Mr. Barnett's address.

Mr. Barnett said that he could come to the office and pick up the letter.

Ms. Simone said he'd still have to sign for the letter.

Chairman de Jongh said so this portion of the show cause will be kept on the agenda and will continue to wait for the information.

3. **SHOW CAUSE HEARING** SC 12/06/16
Default of permit #2014-007
Calling of bond, postdate May 23, 2016
Connecticut Yankee Construction c/o Mr. Whitney Watts
House 2 Home Construction c/o Mr. Edward Barnett
Mountain Road
Assessor's Map 62, Lot 4

Ms. Simone said for the last section of the show cause hearing is the calling of the bond:

Motion: That the Commission moved to postpone action on this item to a future meeting.

Moved by Dr. Dimmick. Seconded by Mr. Norback.

Ms. Simone explained the process to follow regarding action on the bond. She said there is no requirement that the bond item needs to be handled in a certain time period.

Motion approved unanimously by Commission members present.

Chairman de Jongh stated we'll keep this item on the agenda and not take any action (at this time).

X. UNFINISHED BUSINESS

- | | | | |
|----|--------------------------------------|-----|----------|
| 1. | Permit Application | APP | 2016-033 |
| | Charles Nicholls/VCA Animal Hospital | DOR | 10/18/16 |
| | 1572 South Main Street | | |
| | Site Plan – Parking Improvements | MAD | 1/21/17 |

Mr. Norback excused himself from the meeting at 8:29 pm.

Ms. Simone noted that the applicant's engineer requested that this item be continued to the next meeting.

Ms. Simone stated the mandatory action date has been extended.

Chairman de Jongh said let the record show this has been extended.

- | | | | |
|----|--------------------|-----|----------|
| 2. | Permit Application | APP | 2016-034 |
| | Edward Lennon | DOR | 11/15/16 |
| | Higgins Road | | |
| | Site Plan – House | MAD | 1/19/19 |

Ms. Simone stated there is a draft motion to approve and it follows the previous permit that was issued that is now expired which calls for posting the non-encroachment line and following the erosion control and posting a bond.

Motion:

That the Cheshire Inland Wetlands and Watercourses Commission, having considered the factors pursuant to Section 10 of the Inland Wetlands and Watercourses Regulations of the Town of Cheshire, Commissioners' knowledge of the area, site visitations, and after review of written information provided by the applicant on this application and during the course of a public hearing, finds the following:

1. That this application is for the construction of a single-family residence on a residential lot created prior to the

establishment of the Cheshire Inland Wetlands and Watercourses Commission.

- 2. That the proposed house will be serviced by public water and sewer.**
- 3. That wetlands on the site are wooded, and have been classified in the 2003 application by the applicant's environmental consultant as not possessing annually-functioning vernal pool characteristics.**
- 4. That the property lies within the Willow Brook watershed.**
- 5. That the non-encroachment line is proposed generally 50' upland of the site's wetlands.**
- 6. That the proposed construction activities will not have a significant adverse effect on the adjacent wetlands and watercourses.**

Therefore, the Commission grants CIWWC Permit Application #2016-034, the permit application of Edward Lennon for site plan approval, as presented and shown on the plans entitled:

**"Improvement Location Survey
Land of Josephine H. High
184 Higgins Road, Cheshire CT
Dated May 16, 2016, Revised October 17, 2016
Prepared by Juliano Associates, Wallingford, CT"**

with the following stipulations:

- 1. Any lack of compliance with any condition or stipulation of this permit shall constitute a violation of the Cheshire Inland Wetlands and Watercourses Regulations, and an enforcement order shall be both issued and recorded on the Town of Cheshire Land Records.**
- 2. No changes or modifications may be made to the plans as presented without subsequent review and approval the Cheshire Inland Wetlands and Watercourses Commission.**

- 3. Prior to any clearing, grading, or other construction activities on the site, or the request for a Building Permit, the applicant shall:**
 - a. accurately stake and/or flag all clearing limits and permanently mark all non-encroachment lines. The location of non-encroachment lines shall be agreed upon by the applicant and Commission Staff. Work is to be completed by qualified personnel. The applicant shall notify Commission Staff so that Staff may inspect the site to verify all such areas have been properly marked. Staff may also insist on additional markings if field conditions warrant them.**
 - b. submit contact information with a 24-hour phone number for the individual with the responsibility and authority to receive notices of any breaches or deficiencies of sedimentation and erosion controls on-site, and to effectuate repair of any such breaches or deficiencies within six (6) hours of such notice from the sediment and erosion control inspector, or other appropriate staff of the Town of Cheshire.**
- 4. Per Section 12 of the Cheshire Inland Wetlands and Watercourses Regulations, a bond covering the costs of the sediment and erosion controls, as shown on the above-referenced plans, shall be filed with the Town Planner's Office prior to the commencement of construction activities. The amount of the bond shall be determined by the Cheshire Planning Office.**
- 5. Throughout the course of conducting permitted activities, and per Section 11.2K of the Cheshire Inland Wetlands and Watercourses Regulations, the applicant shall be responsible for ensuring the following:**
 - a) That all maintenance and refueling of equipment and vehicles is performed as far as practical from all wetlands and watercourses, at least 100' where possible. All oil, gasoline, and chemicals needed at the site shall be stored in secondary containment to prevent contamination of any wetlands or watercourses from possible leaks.**

- b) That all disturbed areas on the site not directly required for construction activities are temporarily hayed and seeded until the site is permanently stabilized.

6. This permit grant shall expire on December 6, 2021.

Moved by Dr. Dimmick. Seconded by Mr. Bzozowski. Motion approved unanimously by Commission members present. Mr. Norback returned at 8:31 pm so he was present for the vote.

XI. NEW BUSINESS

1. CIWWC Permit Transfer APP 2014-028A
1430 Highland, LLC to Early Childhood Education, LLC
1430 Highland Avenue
Site Plan

Ms. Simone stated this was a transfer request; there is another business that has purchased the property and they would like to take over the responsibilities of the permit and move forward with what was approved by the Commission in 2014.

Motion:

That the Cheshire Inland Wetlands and Watercourses Commission, having considered the factors pursuant to Section 10 of the Inland Wetlands and Watercourses Regulations of the Town of Cheshire, Commissioners' knowledge of the area, previous site visitations, and after review of written information provided by the applicant on this request for permit transfer finds the following:

1. That a previous CIWWC permit, CIWWC Permit #2014-028, was granted, with stipulations, to Fifteen North Plains Industrial Rd LLC/Fourteen Thirty Highlands, LLC for site plan on January 20, 2015.
2. That the inland wetland regulations allow permit holders to request to the Commission a transfer of permit ownership to another party.
3. That an attorney representing the previous property owner Fifteen North Plains Industrial Rd LLC/Fourteen Thirty Highlands, LLC, requests the transfer of the permit

to the current property owner, Early Childhood Education, LLC.

Therefore, the Commission grants the permit transfer request of Fifteen North Plains Industrial Rd LLC/Fourteen Thirty Highlands, LLC to transfer CIWWC Permit #2014-028 to Early Childhood Education, LLC, said transfer permit to hereafter be referred to as CIWWC Permit #2014-028A, with the following stipulations:

1. Any changes or modifications to the plans as presented will require subsequent Cheshire Inland Wetlands and Watercourses Commission review and approval.
2. That all conditions and stipulations of CIWWC Permit #2014-028 granted, with stipulations are incorporated by reference as though fully set forth herein to the extent they are not in conflict with the present permit transfer grant.

Moved by Ms. Dunne. Seconded by Mr. Norback. Motion approved unanimously by Commission members present.

2. Request for Determination RFD 2016-035
Whitney Watts, Jr.
825 Wallingford Road/Tamarack Rd.
Site Plan – Driveway

Ryan McEvoy, PE of Milone and MacBroom was present on behalf of the applicant Whitney Watts.

Mr. McEvoy explained the property is currently known as 825 Wallingford Road – it's a 44-acre site – a very oddly configured property with the body of the property being located well to the south of Wallingford Road; he showed on the map the location of Wallingford Road.

Mr. McEvoy said a portion of this property fronts on what is the right of way for Tamarack Road and in 2013 Mr. Watt's got approval for a wetland crossing for a driveway in order to construct his house further to the rear; the wetlands that you see here what were represented in that original application approved by this Commission.

Mr. McEvoy said what we are seeking to do now and we've had numerous discussion with the planning department about this – is a driveway connection to the cul-de-sac to Tamarack Road.

Mr. McEvoy said there is a little bit of a history there which is more of a planning related item but the bottom line Mr. Watt's is going to be pursuing a couple of different applications with the Planning and Zoning Department in order to gain approval for that driveway connection; he fully intends on maintaining the existing gravel driveway which goes all the way up to Wallingford Road approximately 2500' from his house; this connection will provide for a much preferred means of access to an existing town road.

Mr. McEvoy said one of the discussions we are having with the fire department is the benefits for emergency access as well but those are mostly planning related – the reason why we are here for the request for determination is because of the roughly 40' section of driveway which we are seeking approval to construct lines outside of the 50' upland review area which is shown here in red (on the map); we are approximately 60' to 65' from the driveway location connecting through the town right of way on Tamarack Road on to the existing gravel driveway on Mr. Watt's property.

Mr. McEvoy said its' not much more complicated than that - from a construction perspective it a relatively flat stretch; there's about a 2' grade change from the road to the driveway and that's really about it.

Chairman de Jongh said so there's no activity at all in the upland review area – it's just adjacent to it.

Mr. McEvoy said and all the activity that is there currently – the crossing has been permit approved.

Dr. Dimmick said you have less than 1% slope between the new driveway connection and the upland review area.

Mr. McEvoy said it was a little bit more than that – maybe 4% or 5% - about a 2' grade shift.

Dr. Dimmick said he didn't see a problem.

Ms. Simone said for the record she asked Mr. McEvoy the location of wetlands shown on this was field verified in 2012.

Mr. McEvoy said yes – part of the original application – they were delineated by a soil scientist and field located by our survey department; this location is the accurate location as shown in the original permit application.

Motion: That the Commission determined no permit was required for this activity.

Moved by Dr. Dimmick. Seconded by Mr. Norback. Motion approved unanimously by Commission members present.

3.	Permit Application	APP	2016-035
	Whitney Watts, Jr.	DOR	12/06/16
	825 Wallingford Road/Tamarack Rd.		
	Site Plan – Driveway	MAD	2/09/17

Mr. McEvoy said on behalf of the applicant he requested the withdrawal of the application.

XII. ADJOURNMENT

The regular meeting was adjourned at 8:38 pm by consensus of Commission members present.

Respectfully submitted:

Carla Mills
Recording Secretary
Cheshire Inland Wetland and
Watercourse Commission