

**CHESHIRE INLAND WETLANDS AND WATERCOURSES COMMISSION
SPECIAL MEETING
MONDAY, DECEMBER 19, 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, Earl Kurtz and Thom Norback.

Members Absent: Will McPhee.

Staff: Suzanne Simone.

I. CALL TO ORDER

Chairman de Jongh called the special meeting to order at 7:30 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, Earl Kurtz and Thom Norback.

IV. DETERMINATION OF QUORUM

Chairman de Jongh determined there were enough members present for a quorum.

VII. COMMUNICATIONS

- 1. Milone and MacBroom, Inc. Engineering and Soil Scientist Report
Re: Assessors Lot 62-4, 509 Mountain Road**

This item was reviewed.

Handed Out Tonight

- 2. Photos**

Ms. Simone said handed out at tonight's meeting were a series of seven photographs taken of the site.

3. Email from Ryan McEvoy

Ms. Simone stated received this afternoon is an email from Ryan McEvoy regarding erosion control observation report.

VIII. INSPECTION REPORTS

1. Written Inspections

Ms. Simone stated there was a summary for the suspension.

2. Staff Inspections

Ms. Simone stated there was a staff inspection of the site today.

IX. ENFORCEMENT ACTIONS

A. Unfinished Business

1. SHOW CAUSE HEARING

SC 12/06/16

Calling of Bond #2014-007

House 2 Home Construction c/o Mr. Edward Barnett

509 Mountain Road

Assessor's Map 62, Lot 4

Ryan McEvoy, PE from Milone and MacBroom was present on behalf of the applicant. Edward Barnett the applicant was also present.

Chairman de Jongh said we had a discussion at the last meeting there was a bond that was posted for the sedimentation and erosion controls and we have a decision to make as to whether or not because those sedimentation and erosion controls were not put in whether or not we want to call the bond on this so I open that up for discussion at this point.

Ms. Simone stated there were three documents relative to the erosion controls – there's the letter from Ryan McEvoy dated December 15 where he states the conditions of the silt fence and erosion controls found on that day; if the Commission wants to read that into the record; then also there's a follow up observation dated today as well as the pictures from her visit at the property.

Chairman de Jongh read into the record a report from Bill Root, Soil Scientist c/o Ryan McEvoy, PE of Milone and MacBroom dated December 15, 2016:

“At the request of Mr. Edward Barnett of House 2 Home Construction, we visited this site on Monday, December 12, 2106, late afternoon. Photographs are attached. We found that the slope in the rear of the site has been partially stabilized with erosion control matting. The fill slope along the rear of the house includes encroachment into the non-encroachment area, with silt fence and hay bales installed along the non-encroachment line along the areas downslope of the proposed rain garden and proposed leaching fields. There are two small trees in the vicinity of the future rain garden that have been removed within the non-encroachment area, downslope of the erosion controls. The wetland boundary is west of the limit of disturbance. The remnants of the wetland flags are still visible on trees/shrubs although they may not be visible in the photographs. The original silt fence includes built up sediment and is in poor condition/ the recently installed silt fence adjacent to the original silt fence is not toed into the grade behind the house. There is evidence of siltation beyond the limits of the non-encroachment line; however, there does not appear to be any siltation in the wetlands.

We recommend that the fill along the rear of the house be regraded to allow the erosion controls to be reinstalled along the non-encroachment line. Once the slope is reestablished and erosion control has been properly reinstalled, all exposed slopes graded at 2:1 must be reinforced with erosion control matting. Any accumulated siltation beyond the existing erosion controls must be removed by hand. Upon removal of accumulated sediment, we recommended that two native species be planted in the areas where the small diameter trees were cut in the non-encroachment area and native shrubs be planted in the areas disturbed within the non-encroachment line behind the house. Alternatively, the applicant is willing to offer the installation of a segmental block retaining wall behind the house and upslope of the non-encroachment line, which will lessen the height of the slope. This will also have the added benefit of providing a more defined limit of disturbance. This wall, if desired, would have to be constructed upslope of the replaced erosion control measure in the approved location, and the proposed vegetation would remain.

We have prepared a graphic depicting the limit of existing sediment and erosion control, site photographs, and a plan depicting how the segmental block retaining wall could be configured.”

Chairman de Jongh stated that letter was from Ryan McEvoy and Bill Root.

Dr. Dimmick asked if the report that came in from the town engineer was going to be made part of the record.

Ms. Simone said yes- we can make that part of the record.

Chairman de Jongh stated on December 16, 2016 there was a report from the town engineering department – the subject was House to Home construction violation 509 Mountain Road.

Chairman de Jongh read the report into the record:

“We have reviewed the report from Milone and MacBroom dated December 15, 2016, made a site visit and offer the following comments: 1. we concur with the report regarding the status of the site conditions, and the conceptual alternative remedies are worth evaluating. However, given the current encroachments, steep fill-slopes, and the difficulty of performing remedial earthwork and/or wall construction within the confines of the nearby foundation and wetlands without further encroachment we recommend that a restoration plan be prepared, which is predicated upon a field topographic survey with a one-foot contour intervals and spot elevations.

2. Several measurements taken using an electronic level on the existing slope ranged between 62 to 74 percent (roughly 1.5:1 slope ratio) which is too steep to be permanently stabilized by grass (see pictures). Simply removing the encroachments from the toe without shifting the top of the slope closer to the house (by regrading 2:1 as suggested) will result in even steeper slopes. Without a plan and/or a consulting engineer’s supervision and certification of compliance the end result may not be as expected.

New grading plans for the two alternatives that show the existing and proposed disturbance limits within the regulated area, slope stabilization methodology (vegetative or riprap), wall height, and the yard space that will remain after the grading is complete could provide better information on which to base decisions. 3. A wall (if required)

should be designed by a professional engineer and appropriate fencing should be considered at the top of the slope or top of wall depending upon what's proposed."

Chairman de Jongh said so that's the information that we have in regard to the situation.

Dr. Dimmick gave his copy of the engineering report to Ryan.

Chairman de Jongh said before we get into a discussion as to what's happen since our meeting on December 6, he did just want to go back and remind the Commission what it was that we requested at the end of that conversation we had – we had discussed the idea between suspension and revocation of the permit and it was agreed by this Commission that for the time being the application would be suspended.

Chairman de Jongh said what we said as a Commission we had decided the following: 1. cease and desist all construction on the site; 2. Immediate proper installation of erosion controls including the back filling of silt fence and expansion of erosion control blanket coverage; 3. Immediate compliance with ongoing monitoring and inspection of the condition and integrity and adequacy of the sedimentation and erosion controls will be made by a qualified party on a regular basis either weekly or after significant rainfall of 1/2" or greater whichever is sooner until all disturbed areas are stabilized; said parties shall be independent of the contractor. All reports shall be submitted to the contractor and Commission staff either within 3 days of inspection or prior to the next storm event whichever is sooner. All breaches or deficiencies shall be forwarded to a contact individual as defined below immediately after inspection – the costs of said inspection shall be borne by the applicant; 4. A soil scientist report defying the quantity and extent of soil migration beyond the non-encroachment area as established in permit 2014-007; 5. An engineer's report evaluating the site grading and compliance with permit 2014-007 and the long term stabilization of the slope.

Chairman de Jongh said this (information) was part of the conversation we had at the last meeting.

Chairman de Jongh said on December 15, 2016, the permit holders engineer supplied the report that was just read into the record which included among other things indicated the erosion controls were not installed properly and were not adequate to secure the site – the

engineer's report lacked information regarding the verification and compliance with permit 2014-007 and the soil scientist report lacks information regarding the quantity and extent of soil migration into the upland review area.

Chairman de Jongh continued by saying on December 16, 2016 the permit holder picked up the suspension letter and noticed of the December 19, 2016 meeting; the permit holder also indicated that he was out at the site that day repairing the silt fence.

Chairman de Jongh said on December 9, 2016 staff visited the site and observed that the erosion control blanket coverage had not been expended as discussed by the Commission at the December 6, 2016; additionally silt fence had was in poor condition in areas where soils was accumulating along some of the sections of the compromised silt fence.

Chairman de Jongh said on December 19, 2016, the permit holders engineer submitted an erosion control report indicating that the erosion control netting had been added to the site and some erosion control failure still exist.

Chairman de Jongh said from our meeting on December 6 to today, he thought they were pretty clear that we were appreciative of the cooperation by the applicant and the desire to try to correct the situation but staff went out to the site this morning and as her pictures show a lot of what we asked for wasn't done.

Chairman de Jongh said he'd open up the floor to Mr. Barnett and Mr. McEvoy to try to explain what didn't happen, why it didn't happen and go from there.

Mr. McEvoy addressed the Commission. He said he wanted to clarify a couple of things – as you can see from his report he did note that the erosion control matting has been increased as of Friday.

Mr. McEvoy showed where on the site photos – he showed the continuation of the erosion control matting around the slope – around the bend - around the non-encroachment line.

Ms. Simone asked that be described – and show where that is.

Mr. McEvoy said this is the report from the 15th and as of this morning – as of Friday he observed that the erosion measures expended further then where it had been previously shown.

Mr. McEvoy said page four of his report from last week, the erosion control matting was place in accordance with the limits that were on the approved plan however it was suggested by the Commission he needs to extend that.

Mr. McEvoy said subsequent to that on Friday, that erosion blanket was extended around the corner a little further then where it is in the photo you are looking at and the photo staff took today – shows it extended around the corner – around the bend beyond where it was previously – the color of the matting is a different color then what was there before.

Ms. Simone said it did appear to her as though it was soil – granted there is some snow cover – but in some areas as we go towards where you have the compromised silt fence its clear you have no matting here – looking north (on the photos) – picture four of her pictures taken today.

Mr. McEvoy stated he (Mr. Barnett) didn't extend the erosion blankets north – he extended them around the corner on the south side.

Ms. Simone stated north is the area where it gets closest to the wetlands so the area where there's the non-encroachment which looks like it's right on the corner – looks like it's on contour 180.

Mr. McEvoy agreed – in this area here he'd agree there wasn't any erosion control blanket extended (point to the photo where there was no erosion blanket); he said on this site where the slopes are a little steeper he did have some.

Mr. McEvoy said as we go through this process he thought there was going to have to be certainly going to have to be attention paid to this but in fairness to the applicant he did do some work to try to toe in the slope of the silt fence that he placed along the bottom of the slope and he did in fact extend erosion control matting – perhaps it needs a little more – but from what he observed there was an increase in the amount of matting.

Chairman de Jongh said he met on the 6th and he thought it was clear as to what the Commission's intent was – yet this work wasn't done

until the 16th – is there a reason why he waited 10 days – is there a reason why 10 days past before the work was done.

Mr. McEvoy said he'd have to defer to the applicant but he thought it was his understanding that the cease and desist did not cover those items but that was not the case.

Mr. McEvoy said he did want to make it clear that he did enhance the erosion controls out there – we have started the inspections per the approval and the applicant is willing to make ongoing attention to the amount of detail to the erosion controls.

Mr. Norback asked with current conditions i.e. the frozen ground – the matting – is it used effectively on uneven frozen ground with various rocks and stumps – he was just wondering – he guessed it was just an informational (question).

Mr. McEvoy said the matting is best works in a situation with vegetation has taken hold within the matting itself – as a preventative measure it certainly does help to stabilize the soil where it is in contact with the soil; it's used in conjunction with other erosion control measures but mainly it's most effective when top soil is placed and vegetation has taken hold but it certainly does help stabilize the slope.

Dr. Dimmick asked if this was the type of matting that could be pinned from place to place to help hold it.

Mr. McEvoy stated yes – it is and its pinned along the slope.

Dr. Dimmick said in his experience in his yard he could still get a pin down the ground is not frozen to that point.

Ms. Simone said so Ryan, in your report dated today, you talk about recently installed silt fence has been toed into the slope – are you referring to the second line of silt fence that's closest to the house.

Mr. McEvoy stated yes – because of the fact there was snow present and there was frost – he did tug on a number of places to see if it was loose at all – it seemed like it more in place then perhaps what it was a few weeks ago – although as he mentioned with snow present and the frost it was somewhat difficult to tell exactly to the extent it was toed in.

Ms. Simone asked if he was able to inspect the original silt fence – the one that's compromised – that has the soil tipping over the top of it – were you able to get down there and inspect that.

Mr. McEvoy said that one where he noted is located along this particular non-encroachment marker – it's noted there is an accumulation of sediment along that that needs to be removed.

Ms. Simone asked if he was able to walk along the original silt fence and inspect that.

Mr. McEvoy stated yes – that is the silt fence that the material has tilted it over a little bit and the installation of the newer silt fence right up slope of it or adjacent to it does help to stabilize that somewhat but ultimately what we are proposing is to go in there reestablish the slope as it was part of the approved plan and remove any accumulated sediment around the previously installed erosion controls.

Chairman de Jongh said the thing he is having difficulty dealing with is that we had a dramatic change the weather in the last ten days and he thought it was pretty clear that this Commission was more than will to work with Mr. Barnett to try to get this taken care of – if you will we were trying to give him the benefit of the doubt – and that's the reason why we choose to not revoke the permit – so maybe we weren't clear it needed to be done as soon as possible but he thought the implication or the inference was pretty clear that we were concerned about the fact it had not been done the right way to begin with – and the admonishment that we discussed here by this Commission would have compelled someone to kind of do it sooner than later - and the fact that ten days went by and not only did it change the entire topography from being able to work with it – to pull soil back, etc. you're going from 40 degree weather to 20 and below that will chill factors – it's going to be very hard now to try to get this back and to ensure that the sedimentation and erosion controls can be properly installed because now you are working with frozen fabric.

Mr. Norback said to that point – he doesn't know if Mr. Barnett owns the excavation equipment but what was needed to be done was not hand work – he asked if he (Mr. Barnett) was in control of that machinery – he said in any industry your only as good as your relationships and could he get an excavator out there the next morning.

Mr. Norback said he was just suggesting - without your own equipment it's hard to get someone to do something like that let alone the challenges of frozen tundra out there.

Mr. McEvoy said he's speaking for the applicant on this and he may be wrong - based on the discussion at the previous meeting - the intent was to upgrade the erosion controls as necessary and then come to the Commission to discuss to how best to proceed with respect to fixing what was wrong.

Mr. McEvoy said he didn't believe it was our understanding he (Mr. Barnett) needed to fix that slope issue now - he thought that would be part of the ongoing discussion as to how to remedy the situation.

Ms. Simone said Mr. Chairman she did believe that was what discussed - that item one was to cease all work and item number two was to immediately secure the site and repair the erosion controls; so the question at hand is that was ordered on December 6th and it wasn't done until December 16th; there was good weather between the 6th and 16th - the 16th it was freezing cold so the question is - to repair the silt fence she doesn't know what equipment would have been required - this is work that could have been done by hand and backfilled the silt fence by hand - so the question at hand is why did it take ten days - what was the thought process.

Mr. Barnett said quite honestly he would never take for granted - he realizes how serious the situation that you guys have asked him to do - and he immediately thought you didn't want any work done until the soil scientist and Ryan got out there to tell him exactly what to do - he didn't want to take it upon himself - or course he went out there immediately and tried to toe as much of the silt fence that was there and put in blankets on both sides of what was there previously - so he added 30' - 35' of blankets in total if you add up both sides.

Mr. Barnett said he had a cease and desist - he took people off his job - there's \$10,000 worth of lumber there - he realizes how serious this is - he said he immediately used Ryan and Milone and MacBroom to tell him exactly what to do - he said he was not going to take it upon himself to get in there with an excavator and pull things away - he said if we met a week ago, he still wouldn't have done anything without his engineer telling him exactly what to do so he apologies for not getting the work done sooner but he is pretty confident that there's nothing else that is happened there - he toed it in as much as

he could and added as many blankets as he could without getting a piece of equipment in there.

Ms. Simone asked if he used the excavator to toe in the silt fence.

Mr. Barnett stated no.

Ms. Simone said so the question of that you were waiting for Ryan to tell you what to do – to use the excavator – the bigger question is it was just discussion from the Commission on the 6th to secure the site and fix the erosion controls – we were all in agreement – they weren't working – they were not installed correctly – they were severely compromised – so the work that you did.....

Mr. Barnett said it is not saying on the 16th when he saw you – the only thing he did on the 16th is add more blankets – he went out before that and secured the fence and worked on the fence and tried to do as much as he could to make sure nothing would go through there – but as far as adding blankets he did that on the 16th.

Ms. Simone said but you didn't need equipment to do that – you did that by hand. She said she was just sorting of questioning the statement that you were waiting for Ryan to tell you what to do so you could get an excavator out there – when this was not about what Ryan was going to tell you.

Mr. McEvoy said that gets involved with actually excavating out the slope or fixing any encroachment issues – he thought that was a separate issue then what we are talking about.

Ms. Simone said what we are talking about were the 5 points that the Commission ordered on December 6th - #2 being to immediately repair the erosion controls – there was never an expectation from this Commission through their order to do anything with the slope; just to explore the slope and evaluate to see if it complied with the permit was the only mention – that was the only expectation dealing with the slope at this point.

Chairman de Jongh said the issue before us at this point is whether or not we call the bond because the S&E controls while they have tried to repair what they have – there's a problem in terms of encroachment into the non-encroachment area so we as a Commission need to decide the next course of action with regard to calling that bond – it that something we want to do and then we can take on the second

issue – he said he didn't know if there were any there comments that either Mr. McEvoy (or someone else wanted to make).

Mr. McEvoy said the sediment and erosion controls that are in place and given the conditions of the site presently – there's limited or no risk of any ongoing erosion issues – attention to the details – yes certainly but at this point with the conditions, the ceasing of the work at the site; and the continued monitoring of the S&E control measures – he didn't see any risk of failure of those moving forward.

Dr. Dimmick asked Mr. McEvoy if the statement he just made – are you able to state your professional reputation on saying there will not be a failure of the erosion controls that will encroach further on to the protected zone.

Mr. McEvoy said he is stating that the erosion controls, if properly maintained as things go along and we have been retained by the applicant to conduct ongoing weekly monitoring – all he is trying to say is that the erosion controls are in place; if maintained and continue to be maintained should be able to prevent any continued erosion into the non-encroachment area.

Chairman de Jongh said he had to go back to a comment that was just made about on-going weekly monitoring – he said he went back to the minutes of 2014 when this application was permitted and one of the things that was told to this Commission was that there would be weekly monitoring given to staff; there would be pre-construction meetings; making sure the S&E controls were in place, etc., etc. and here we are two years later and what are we talking about – it's the S&E controls on this and we have not had any kind of reports coming from you or the applicant relative to the proper installation of the S&E controls - and he did not believe the statement; he said he was not questioning his professional integrity – he was refuting a statement that was made to us tonight as well as the promise that was made back in the 2014 approval - that we were supposed to get those things and they haven't happened in two years; and the only time something seems to happen when all of a sudden staff goes out and realizes there's a problem and now he are having fire sale on trying to get stuff done.

Dr. Dimmick said he might also point out at that the April 1, 2014 meeting, you said no slope would exceed 2:1 and you have the town engineer going out and having field measurements of 1.5:1 is certain places on the slope.

Chairman de Jongh said there have been some things that have gone on with this application that have simply that (a) haven't been followed and (b) have left us shaking our heads wondering why.

Mr. Norback said regarding the reports not coming in since 2014 – was there disturbance shortly after that permit was granted – or is the disturbance recent – when was the foundation put in 2014.

Ms. Simone said they got their building permit in June 2016.

Mr. Norback said so that's when we'd start looking for the reporting – June 2016; not 2014 – he said he just wanted to clarify that.

Chairman de Jongh said thank you for the clarification – but we have seen nothing since June – so here we are 6 months later; the fact of the matter is that was certainly a requirement by this Commission and that was not followed through with.

Chairman de Jongh said he is extremely frustrating for him as he is sure for the other Commission members. He said we continue to try to work with applicants that come before us so that we are satisfied with the integrity of the property that we are trusted to be stewards of and the applicant that they can make a living; only to be refuted and come back and saying – “I apologize I didn't do it the way you wanted me to do it – give me another chance.”.

Mr. McEvoy said all he could state after discussions with Mr. Barnett and he is committed to have us to continue to do this moving forward – that's all I can say on the matter – what happened in the past unfortunately we can't undo that.

Ms. Simone asked who would be responsible for repairs – if you were to identify there were problems.

Mr. McEvoy stated Mr. Barnett.

Chairman de Jongh said so we still have the issue of whether or not the first item before us is whether or not we are going to call the bond.

Mr. Norback asked the slope that was deemed to be too steep at this point – was the intent of the applicant to leave that slope or was that for construction proposes – he said it doesn't seem like there was any top soil on it – was that intended to be the final slope that was not in

compliance – perhaps that is just a construction consideration in order to get machinery around the back – they may have just made it wider and steeper and then when they finish the final slope upon looking for a certificate of occupancy – he said he didn't know if that was final one and that's why it's not in compliance.

Mr. Barnett said the reason that the slope is where it is now is because we had to put the foundation and footing in – and get trucks back there to do what we had to do – now that that is done or course the slope is going to change – all he needs from Ryan is to let him know what the slope would be that's why he suggested a wall if that was appropriate – it would help the lot and the wetlands and obviously make the back yard as nice as possible and still not disturb the wetlands.

Mr. Barnett stated that side is worse right now – up until probably when the footing went in – up until that point nothing was disturbed – we had to in order to get trucks back there – that is the worst of what you see right now – and we had intended to address the slope now – in the course of construction that effected the silt fences is rocks that came out of the natural soil from the excavation; as we speak now it can only get better – it has only been this bad probably for a month and a half before that it was not effected at all – we had no rain for seven months.

Mr. Barnett said he was not going to make any more apologizes – all he wanted to do is make sure he did right by the wetlands and the environment and do whatever he has to do to do that.

Mr. Norback said from a logistic standpoint and his professional opinion – he said it would seem to him that we and the applicant best be served with that segmented wall – that will allow him to get a machine in there big enough to pull all of the suspect areas back put those blocks in there and then install new silt fence above them – that just seems it would be pretty close to bomb proof as far as having another insurgence.

Dr. Dimmick said while he in in agreement with Thom he didn't know if that was the immediate subject – the subject is whether or now we have to call the bond.

Ms. Dunne said looking at our list that we needed to have done tonight – we have a soil scientist report, an engineering report, he's working on fixing the silt fence – she wanted to go through the check list to

see where we are at – she said she has a feeling they have done some of the things but then she was hearing from the other side that they have not.

Ms. Simone said on December 6th the five items that were listed: #1. Cease and desist all construction on the site.

Ms. Dunne stated which they have done.

Ms. Simone stated yes.

Ms. Simone said #2 immediate proper installation of erosion controls including backfilling of silt fencing and expansion of erosion control blanket coverage.

Ms. Simone stated both Ryan's report today and her findings today indicate that there are areas that there is still weakness and if we were to get warm weather and rain you have areas where silt fence is folded over where loose soil is very likely that would continue into the wetlands.

Ms. Simone said #3 ongoing monitoring which he has complied with – two sessions of monitoring for two weeks.

Ms. Simone said #4 soil scientist report identifying the quantity and extent of soil migration beyond the non-encroachment area as established in permit 2014-007; the report dated December 15th just said that yes – soil has migrated into the upland area but does not get into the wetland area – there's no indication of the quality or the extent of how far out it goes.

Mr. McEvoy said he did produce a map depicting the areas where there's migration; he showed where the information could be found on the map. He said it's to the rear of the non-encroachment area where the trees were cut downslope of the rain garden and we also show the approximate present location of the silt fence and hay bales beyond the non-encroachment line behind the house.

Dr. Dimmick said that doesn't show the extent of the material that got through the silt fence.

Mr. McEvoy said no – it does not; he said there were some isolated areas where there was some over topping where some silt got done in the non-encroachment area.

Ms. Simone said it just shows a close up of that land and identifies the hay bales.

Mr. McEvoy said and where things have gone beyond the non-encroachment line.

Chairman de Jongh said so what's lacking is the extent to which there's migration into the non-encroachment area.

Ms. Simone said just to clarify you are identifying the area where two small trees were cut – is that the only area.

Mr. McEvoy said no – if you look up you'll see approximate location of hay bale; approximate location of sedimentation filter fence – he said he didn't clarify but those are beyond the non-encroachment area – but those are beyond the non-encroachment area – the non-encroachment area is the dashed line between the triangles.

Ms. Simone said it does not indicate the movement of soil – it just shows the erosion controls.

Mr. McEvoy said it shows where there's disturbance within the non-encroachment area – there have been a few areas of siltation that has gone beyond the measures that were installed.

Dr. Dimmick said when he was out there – approximate location there are tall hay bales where there was some sediment over the leaves for about 10' out from that.

Mr. McEvoy said he'd agree with that – in some places.

Ms. Simone said item #5 that engineer's report evaluating the site grading in compliance with permit 2014-007 and the long term stabilization of the slope.

Mr. McEvoy said in that case what we were trying to say in our letter – because of the fact there has been grading and activities certainly beyond the non-encroachment area – permanent activity with respect to how the slope is graded and how some of the silt fence is over topped – ultimately the first thing they are suggesting is to build it according to the approved plan – and that involves excavating out the material along the accumulated silt fence – pulling back the grade closer to the house at 2:1 slope so once the native grade is established

along the non-encroachment line immediately replacing sedimentation and erosion controls along that line – stabilizing the slope as a first measure - we did suggest and we did print a plan showing the cemented block wall –known as mafia blocks – but our recommendation is that and according to Mr. Barnett if that is something the Commission wants and undertaken immediately – they wanted to wait to have this discussion with the board – the establishment of the grade in accordance with the approved plan can be done within a day or two, if authorized; once that establishment is complete or at least the non-encroachment area and native grade is exposed put silt fence and erosion control measures up immediately – bring the slope back up to 2:1 as Mr. Nolte notes in his letter – that will involve bringing the top of the slope closer to the house which is was essentially how it was originally shown on the plan.

Mr. McEvoy said our goal and intent was to trade a suggestion that this slope can be created fairly quickly if authorized and Mr. Barnett is willing to do that.

Chairman de Jongh said the one question is – if it is the Commission desire to entertain the idea of putting in that wall – he said he wasn't a contractor so he doesn't know what the logistics are – but he does know what that slope looks like and he doesn't know how well you can get construction equipment on a slope like this and put a wall in – but it requires a lot more information that just saying we are going to put in a wall.

Mr. McEvoy said he thought he proper protocol for putting in a retaining – they'd need a medication of the permit.

Mr. McEvoy said he understood this was a separate matter.

Chairman de Jongh said he just wants to make sure the record notes that entertaining that (the wall) is a material change from what the application originally was – and we need a lot for information to be able to review that.

Mr. Kurtz asked was there a construction sequence that talked about establishing this grade that was more severe than the original plan – was that part of it originally proposed and approved; and the other question he has goes to the bond itself – he said he understood calling the bond and having it done and allowing the contractor to do the work – if the bond is called and we go into the business of hiring someone to get it done quicker because it hasn't been done – is that

the idea and lastly, does the cease and desist stay in effect until the conditions have been met which would include now the modification of the application – to put in the mafia blocks and change the grade.

Chairman de Jongh said in regarding to calling the bond – in the 20 years he's been on the Commission we have never called a bond – he didn't think we've ever been presented with this kind of situation.

Chairman de Jongh said he thought if we called the bond it frees up cash that the town can go ahead and hire someone to put in the S&E controls – but he didn't know if that would be done better than the applicant doing it he wasn't sure.

Mr. Kurtz said maybe it would be done quicker since the applicant hasn't done it.

Ms. Simone stated the erosion controls have been lacking for quite a while; and the stipulations for having ongoing monitoring have never been complied with aside from the one time to get the building permit; when the Commission had the meeting on December 6th that was the opportunity to have the erosion controls repaired and properly installed.

Ms. Simone explained the process in which the town would need to proceed to get the work on the site done if the bond was called; the commission would allow the permit holder another opportunity to complete the work or if the bond is called the town can hire someone to complete the work according to the plan.

Mr. Barnett addressed the Commission and said the reason the slope is where it is now is to do what work on the site that needed to be done for construction purposed for the footing and foundation purposed; he said he thought the cease and desist order meant no work could be done and did the work he could be done by hand; he said if he was given the chance to do the work in the next 2 days he would; and he has a lot tied up in this; he asked for one more chance to get this done. He said he does understand the seriousness of this matter and the importance of the wetlands; he said he did get in touch with the wetlands as they would have liked and there were some issue with the silt fence.

Dr. Dimmick corrected Mr. Barnett saying it wasn't as much communication with what the Commission would have like it was what was ordered and it wasn't done.

Chairman de Jongh said he thought we were all on the same page that we want this done; he thought it was better for Mr. Barnett that the bond not be called; but the Commission wants this work done yesterday.

Mr. Norback said the area might be less compromised if he was able to get in there with a machine – and that they could get in there with the right size machine.

Mr. McEvoy suggested getting in there pulling the soil back, fixing the silt fence and putting in new erosion and sedimentation controls and hay bale would be the best for the site; and mitigate the impact; the applicant has contracted with Milone and MacBroom to provide the required reports; he said the goal was to comply with the approved plan.

Chairman de Jongh asked if there was going to have someone on site to monitor this.

Ms. Simone said the permit didn't stated what the slope was going to be – the engineering department has questions on how that is going to be correct.

Mr. McEvoy said the machinery will not be in the wetland area for the work to be done.

Mr. Norback commented about the need to have the temporary out of compliance of the slope for the work to get done; then the slope can get restored to the proper slope.

Chairman de Jongh asked for a clarification – that Mr. Norback's experience it's a common practice for the area to be temporality disturbed and then reestablished after the work was completed, restoring the slope; the soil could be pulled back from the top to do what is needed.

Mr. Norback said yes – it's a common practice – a temporarily disturbance that is then restored.

Mr. McEvoy said it's the goal to fix this as soon as possible; grade the slope and fix the toe and install new erosion controls.

There Commission discussed the next steps they needed to take regarding the calling of the bond and the next steps that needed to be taken on the applicant; as well as their concerns for the wetlands and environment.

Motion: That unless the proposed stabilization of the sedimentation and erosion controls has been properly stabilized and/or removed by Friday, December 23, 2016, as attested by the applicant's engineer and verified by staff; and unless this is done the bond will be called.

Moved by Dr. Dimmick. Seconded by Mr. Kurtz.

Discussion:

Chairman de Jongh said so the motion by Dr. Dimmick is to allow the applicant to do the work discussed this evening; to take corrective measures to make sure that sedimentation and erosion controls are completely established properly and done so my the means necessary to do that; if mechanical means are required then certainly do that – that needs to be verified by the applicant's engineer and staff also needs to sign off on that the work has been done effectively – that's going to be done by Friday, December 23, 2016.

Mr. McEvoy stated just to clarify – that does involve the reestablishment of the slope as we stated.

Chairman de Jongh said okay – that was understood.

Mr. Barnett said just so he's clear – if you give him the opportunity by Friday, he'll get his equipment in there – pull that back – reestablish line wherever Ryan tells him to put there – whatever sedimentation controls he tells him to put in – as long as there's in by Friday – that's what you (the Commission) are requesting him to do.

Ms. Dunne stated and the erosion controls.

Dr. Dimmick stated before 3:00 pm (on Friday, December 23, 2016).

Chairman de Jongh said he'd suggest making sure there's enough time for staff to go out and see the site herself - maybe having it done by noon.

Ms. Simone said by 3:00 pm is fine; then she'd go out at 3:00 pm.

Mr. Barnett said he'd do it as soon as possible; if he gets it done before then – if he can get it done in the next two days and Thursday its done – he said believe him he'd be happy to do it.

Ms. Simone asked Ryan if he'd be there onsite and provide a report afterwards – a written verification.

Mr. McEvoy said so what he believed we could do as a firm is review what's going on out there on a periodic basis and provide a report stating the completeness of the – for the lack of a better term – the reinstallation of the sediment and erosion controls along the non-encroachment line and a statement that erosion blankets are in place and things of that nature.

Mr. McEvoy asked if there was a desire to have this be surveyed because he didn't know if they could have a surveyor out there by Friday; but that he could certainly be out there witnessing it as construction goes along; and testify we have the non-encroachment line markers in place – those have also not moved – tilted yes – the stakes that we put in at the beginning of construction are still in place and we verify that those are accurate.

Mr. McEvoy said we can certainly provide inspection and a statement about the completeness of the installed erosion control measures – he asked if that was suitable by Friday.

Ms. Simone asked if you'd be able to verify that the slope is at the proper 2:1.

Chairman de Jongh said he thought it was premature to do that based on the comments from Mr. Norback.

Ms. Simone said we just want to ensure that there's not going to be multi-step that we didn't get it so now we have to go back and do it again and keep exposing soil if we are getting closer to the CO.

Ms. Simone said she thought Mr. Barnett would just want to get it one and done.

Mr. Norback said it doesn't work that way. He said it seemed to him this is the best resolve and it's a construction site; what the permit asks for is in order to get a CO that's when he needs to have the slope – which he thought wasn't stated in there by the way.

Chairman de Jongh said he thinks staff's concerns and the degree to which the applicant can do as much as he can while we are trying to rectify the sedimentation and erosion controls.

Mr. Norback said there might not enough be enough material to do that.

Chairman de Jongh said what he thinks staff is concerned about is what we don't want to continue is have a slope that's so steep that we are going to have continued and ongoing erosion into the wetland area – that her (staff's) concern.

Chairman de Jongh said so whatever the applicant can do to try to bring that toe of the slope back more toward that 2:1 as you try rectify the S&E controls he thought that's what we're trying to do.

Mr. Brzozowski asked shouldn't they blanket the whole slope as well.

Ms. Simone agreed.

Mr. Norback said there's another approach you could have – even if the slope wasn't what it needs to be at the end you could have particularly effective erosion controls that could mitigate any problem.

Mr. Brzozowski said by blanketing it.

Mr. Norback said you could blanket it you could trusses it even though your slope is not what its meant to be – if your erosion controls are robust it should see you through the end of the project.

Chairman de Jongh said if we need belts and suspenders – then we need belts and suspenders but whatever it takes to make sure the integrity of the wetland and the non-encroachment area is protected that's what are aim is so whatever it takes to do that that's what we're trying to do.

Mr. Brzozowski said they can install bales and silt fence.

Ms. Simone said to Thom, when this was permitted it was discussed that the slope was going to be stabilized 2:1 to start with and then the house was going to be constructed so it was never presented to the Commission that its one to be 1:1 then slowly worked on.

Mr. McEvoy stated it's not 1:1 – it's not that steep as 1:1 but point taken.

Ms. Simone said still it's not 2:1 its still steep and it still has soil moving into the non-encroachment area.

Mr. Norback said okay he might have overlooked that; so it was meant before construction...

Ms. Simone said there was discussion in 2014 that the Commission had concern about the slope and there was discussion that the slope was going to be dealt with first; and that is was going to be secured – and Ryan had testified to that.

Mr. McEvoy said yes - the discussion at the time was that prior to construction of the house was that the back slope area would be created and established and protected and a silt fence installed along the slope as they did in this case but it turns out its a little bit steeper than it should be and went a little bit further away from the house then it should have been pushing further into the non-encroachment area.

Mr. McEvoy said what he's planning on doing in the next few days is the establishment of that slope in the proper location bring it back and installing new erosion controls along the non-encroachment line; we will be out there to ensure that its done and we can take certain filed measurements to check the accuracy of the 2:1 slope; he said he didn't know if we could have a field survey – a field topographical survey verify that but we could certainly be out there and take simple measurements to verify that is the case.

Chairman de Jongh said to satisfy Mr. Norback's concerns he just wanted to read from the April 1, 2014 minutes "Mr. McEvoy said there was some concern in the previous meetings about the nature of the fill and how that would be constructed behind the house and we added a detailed construction sequence with specific requirements that the slope in the back of the house which again is approximately 4' vertically at a 2:1 slope will have to be constructed well drained or free draining material that is available from the excavation that will be required on the upland areas of the property.

Mr. McEvoy said this fell slope will have to be stabilized with a permanent erosion control blanket and this all will have to happen before any house construction begins – that slope will have to be stabilized, top soiled, seeded and then upon that being completed

another row of silt fence will be placed above the top of the slope to prevent any run off with any velocity coming over and on top of that slope.”

Chairman de Jongh said so the 2:1 was one of the concerns that we had back in the beginning.

Mr. Kurtz said that was the construction sequence.

Mr. Norback said he stood corrected.

Chairman de Jongh said so if you can – and again we need to try and solve that problem while we are trying to solve the S&E problems.

Chairman de Jongh said he didn’t know if you were going to get a 2:1 slope by Friday but you certainly need to manage the S&E controls and do whatever can be done to bring that back closer to the 2:1 slope.

Mr. McEvoy said yes – absolutely.

Mr. Barnett stated he understood.

Chairman de Jongh asked if there was any more discussion about the motion before us.

Mr. Kurtz said he’d also have the understanding that they’d come back with a permit modification to build a mafia block wall.

Dr. Dimmick and Mr. McEvoy stated that was a separate matter.

Mr. Kurtz stated that’s not part of this.

Mr. McEvoy said he didn’t mean to confuse things by suggesting that.

Chairman de Jongh said we have another issue before us that we have handle on our agenda so we have to move on this.

Motion approved unanimously by Commission members present.

B. New Business

1. SHOW CAUSE HEARING

Status of Permit #2014-007; Suspend/Revoke/Maintain

SC 12/06/16

**House 2 Home Construction c/o Mr. Edward Barnett
509 Mountain Road
Assessor's Map 62, Lot 4**

Chairman de Jongh said he thought there was a lot that we talked about tonight that requires that this remain open until our January meeting.

Motion: That the Commission continues the suspension until further notice; this item can be reconsidered at the January 3, 2017 meeting.

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

Motion: That the Commission add to the agenda of the January 3, 2017 meeting the consideration of revoking the permit if conditions have not improved.

Moved by Dr. Dimmick. Seconded by Ms. Dunne. Motion approved unanimously by Commission members present.

X. UNFINISHED BUSINESS

None.

XI. NEW BUSINESS

None.

XII. ADJOURNMENT

The meeting was adjourned at 8:41 pm by consensus of Commission members present.

Respectfully submitted:

**Carla Mills
Recording Secretary
Cheshire Inland Wetland and Watercourse Commission**