

**CHESHIRE INLAND WETLANDS AND WATERCOURSES COMMISSION
REGULAR MEETING
TUESDAY, JANUARY 3, 2017
TOWN HALL 84 SOUTH MAIN STREET
COUNCIL CHAMBERS AT 7:30 P.M.**

Members present: Charles Dimmick, Dave Brzozowski, Earl Kurtz, Kerrie Dunne, Will McPhee and Thom Norback.

Members Absent: Robert de Jongh.

Staff: None. Ms. Simone was not present due to illness.

Dr. Dimmick served as chairman pro-tem.

I. CALL TO ORDER

Dr. Dimmick called the 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 presented were Charles Dimmick, Dave Brzozowski, Earl Kurtz, Kerrie Dunne, Will McPhee and Thom Norback

IV. DETERMINATION OF QUORUM

Dr. Dimmick stated there were enough members present for a quorum.

V. ELECTION OF OFFICERS

Commission members agreed to defer the election of officers to the next meeting.

**VI. APPROVAL OF MINUTES Regular Meeting – December 6, 2016
Special Meeting – December 19, 2016**

Commission members agreed to postpone the approval of the December 6, 2016 regular meeting and December 19, 2016 special meeting to the next meeting.

VII. COMMUNICATIONS

Dr. Dimmick reviewed the following communications:

1. **CT DEEP Aquatic Pesticide Application Re: Carriage House Pond**

This item was reviewed.

2. **Notice of Show Cause Hearing for Assessor's Map 62, Lot 4, Mountain Road**

This item was reviewed.

3. **Memorandum of 12/27/16 from Milone & MacBroom, Inc. to Ed Barnett and Staff Re: Sediment & Erosion Control for Assessor's Map 62, Lot 4, Mountain Road**

This item was reviewed.

4. **Staff Communication Re: 509 Mountain Road, Assessor's Map 62, Lot 4**

This item was reviewed.

VIII. INSPECTION REPORTS

1. **Written Inspections**

Dr. Dimmick reported there were no written inspections other than what staff has sent Commission members.

2. **Staff Inspections**

Dr. Dimmick reported there were no staff inspections.

IX. ENFORCEMENT ACTIONS

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

Dr. Dimmick reported that staff has been out at the site twice since the special meeting; Mr. Barnett's advisor from Milone and MacBroom has been out there twice; we have photographs and have had some progress.

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

Mr. McEvoy addressed the Commission. He explained that since the last meeting in order to replace sediment and erosion control measures upslope of the non-encroachment line reestablishing the slope and securing the site – new sediment and erosion control along the perimeter were needed particularly along the toe of the slope behind the house and to reinstall the erosion control blankets and the silt fence at the top of the slope.

Mr. McEvoy said Mr. Barnett over the course of the next few days particularly Wednesday evening and Thursday accomplished the goal of putting sediment and erosion controls along the non-encroachment line.

Mr. McEvoy said he had discussions with Suzanne Simone about leaving the erosion controls in place that were inside of the non-encroachment area until the situation got buttoned up – he didn't want Mr. Barnett removing those until all parties agreed that what took place is secure.

Mr. McEvoy said he did feel what is in place is secure – all silt fence has been toed in.

Mr. McEvoy said there are ongoing maintenance issues that will have to be addressed – and there are larger cobbles that still are in places along the silt fence but in general the work that was done was done quickly in an effort to pull back the amount of fill that was located particularly within the non-encroachment area.

Mr. McEvoy said if you (Commission members) had a chance to read our memo – they have installed additional fence around a stock pile that was created as a result of pulling that slope closer to the house; ultimately this site will need to be stabilized with top soil and seed although this is not the time of year to do that.

Mr. McEvoy stated in their opinion the site is secure – we were out there today to review the site and none of the erosion controls seem to be compromised whatsoever given the rain – he said he did not have the chance to prepare a memo to that effect but you will see one issued tomorrow again with minor recommendations of repairs, the removal of some of the boulders that still remain along a portion of the silt fence but in general Mr. Barnett made an effort to try to at least pull back that slope, reinstall new install fence and erosion control measures along the non-encroachment line where there were originally supposed to be located and pull back that slope to the extent possible at this time.

Dr. Dimmick said he's had a couple of conversations with Suzanne concerning this – she is encouraged that a great deal of what we have requested been done – progress has been made – she said there are still a few areas that she is not satisfied with but it was her suggestion that was up to the Commission to do – to modify the cease and desist order which will allow work on the house to continue with a whole bunch of stipulations.

Dr. Dimmick said he passed out (to Commission members) a transcription of what she relayed to him; and also the pictures she sent and the staff reports that she sent and the reports that you (Mr. McEvoy) had sent.

Dr. Dimmick reviewed the wording he proposed. Commission members reviewed the proposed wording regarding the modification of the cease and desist order.

Dr. Dimmick suggested that the Commission move to modify the cease and desist order to allow work on the house to continue, provided that Mr. Barnett agrees, in writing, to continue to correct outstanding violations, including specifically: a. removing sediment that still remains in the upland review area; b. determining exactly by survey where the as-built house is located as compared to the permitted location (there was some doubt as to where it was supposed to be); c. determining by survey whether or not the existing slope is in agreement with the proposed slope on the original permit; d. replanting the trees that were cut in the upland review area; e. other corrective measures as identified in the recommendations from the staff of Milone and MacBroom; and f. other deficiencies identified by Cheshire Wetlands staff. And, that this be accompanied by a written narrative as to exactly how each of these shall be corrected.

Mr. Norback asked how and more importantly to the applicant when (this work would get done) – it's a difficult time of year to complete all these (requests).

Dr. Dimmick said this is a case of things ongoing but essentially what the wording is – is that it agrees in writing to continue to correct the outstanding violations so its assuming that work to correct these continue; it obviously can't all be done at once.

Ms. Dunne asked wouldn't item b have to be done right at once – where the house is located before we can go forward.

Dr. Dimmick said the foundation is there – he said he thought it would be in the interest of Mr. Barnett to make sure as soon as possible – that's something he didn't specify the quality of the survey.

Mr. McEvoy said just to let you know what we've done for Mr. Barnett from a survey perspective up to this point – and this is independent of the discussion with regard to the cease and desist order – because of the proximity of the tightness of the house with respect to both building setbacks and wetland setbacks we did request that what we do is what we call “pinning” the foundation so under a normal house construction you provide stakes at the perimeter of the house and when there's a concern about proximity to whatever – we'll go back and once the actual footing is poured we'll put actual metal pins in the footing at the corners of where the foundation wall is supposed to go vertical.

Mr. McEvoy said that is what Mr. Barnett did request us to do before any of this so we haven't actually surveyed the location of the foundation but when we pin it – unless there are some massive construction failure – it's almost within a very small margin of error – an inch or two at the most.

Dr. Dimmick said he found in most cases – there isn't a problem but he certainly has had the experience of things being as much as four or five feet out.

Mr. Norback said if they pinned it that is all he would have ever asked.

Dr. Dimmick said if we get this in writing from the professionals he thought that would satisfy that part (of the concern); he is saying it has been done but we don't have that in writing.

Mr. McEvoy stated he would be happy to provide that in writing.

Dr. Dimmick said then the whole problem of the slope because certainly the slope has been corrected but weren't not sure that matches what was on the original (plan).

Mr. McEvoy said he would say this and you can see his memo – and he knew there were some places it may be steeper than 2:1; what we did is we took some very rudiment measurements in a very short amount of time because of the window that was offered by the Commission and for the most part except in a couple of sections the average slope between the lower silt fence and the upper silt fence is at the 2:1 level but there are places where it's a little flatter – and it's a little steeper so knowing that - this site still needs to be top soiled and vegetated at some point in the future – given that the site is stable now and the sandy soil that we have is not terribly propone to siltation that at the time when essentially he is going to be finished grading the lot and putting down top soil and seed then at that point in his opinion it would make the most sense as to when that slope could be touched up as needed and then top soil placed, grass seed, the erosion control blanket replaced because that will be critical to the protection of that slope as grass is growing – that would be his opinion as to when any final detail of that slope should be addressed.

Mr. Norback said and you are saying at that point you'd offer documentation that it was indeed in compliance.

Mr. McEvoy state yes – sure.

Mr. Norback stated that seems to make since to him.

Dr. Dimmick said the very last thing he suggested (in the wording) was that this be accompanied by a written narrative as to exactly how each of these shall be corrected; so we have in writing what is to be done – how it is to be done; it's the sort of thing that we have been missing – the sort of thing that has frustrated our staff in trying to monitor what has been going on.

Mr. Kurtz said we talked but never voted on it but the idea of putting mafia blocks or a wall at the bottom – is that an idea we don't have to pursue anymore.

Mr. McEvoy explained the purpose of bringing that up at the last meeting – was to merely suggest that that was something the applicant was willing to consider; in order to approach that or to get to that point and in discussions with Suzanne and with the Commission at the last meeting – that would have to come in the form of an actual permit modification application.

Dr. Dimmick said it would – yes and certainly we are still open to that sort of consideration.

Mr. McEvoy said he thought that was something the applicant is still willing to entertain - we just wanted to get a feel from the Commission as to whether that would even be something that would be worth considering opposed to forget about it.

Dr. Dimmick said hearing from Commission members – two might like to see it and one is not sure but it's something that could be considered.

Mr. Kurtz stated if you're going to put a wall in this is the time to do it.

Mr. McEvoy said before the slope is finished and vegetated – absolutely he'd agree.

Regarding the Cease and Desist Order:

Motion:

That the Commission moved to modify the cease and desist order to allow work on the house to continue, provided that Mr. Barnett agrees, in writing, to continue to correct outstanding violations, including specifically:

- a. removing sediment that still remains in the upland review area;
- b. determining exactly by survey where the as-built house is located as compared to the permitted location (there was some doubt as to where it was supposed to be);

- c. determining by survey whether or not the existing slope is in agreement with the proposed slope on the original permit;**
- d. replanting the trees that were cut in the upland review area;**
- e. other corrective measures as identified in the recommendations from the staff of Milone and MacBroom; and**
- f. other deficiencies identified by Cheshire Wetlands staff.**

And, that this be accompanied by a written narrative as to exactly how each of these shall be corrected.

Moved by Ms. Dunne.

Discussion:

Mr. Norback said he thought it gave the applicant and the Commission opportunity to take a look at it if the engineer feels that the prescribed slope can be achieved then the mafia blocks wouldn't be necessary; he said he was thinking more along the lines of early in the game it would have helped mitigate the problem but it might to the applicant's advantage help improve the slope of the back yard from a sales standpoint that's why it worth reflecting that.

Dr. Dimmick said that staff wanted the Commission to be more specific as to exactly what needed to be done.

Seconded by Mr. McPhee.

Discussion:

Mr. Kurtz said he agreed with all of them but the discussion we had at the previous meeting was the calling of the bond.

Ms. Dunne said that's next issue (to address).

Mr. Kurtz said this speaks to that because certain things need to be done and the discussion was a permit modification so calling the bond if he find things are satisfactory and we don't call the bond – we still have the cease and desist order in place whereby the applicant would have to apply to do things that should properly be done to stabilize the area.

Dr. Dimmick said he had two further small motions once we deal with this (motion).

Mr. McPhee said he thought Earl's point was bond has to be taken care of before we move on to the show cause cease and desist.

Dr. Dimmick said the way the agenda was put together – the cease and desist was the first item on there.

Commission members discussed the order in which to address the items on tonight's agenda.

Mr. Kurtz and Mr. Norback expressed their concern about the calling of the bond and the order of the other items on the agenda pertaining to this application.

Dr. Dimmick said the (proposed) motion following this motion addressing the calling of the bond.

Commission members discussed the cease and desist and the modification of the cease and desist.

Motion approved unanimously by Commission members present.

2. **SHOW CAUSE HEARING** SC 1/03/17
Revocation of Permit #2014-007
House 2 Home Construction c/o Mr. Edward Barnett
509 Mountain Road
Assessor's Map 62, Lot 4

Dr. Dimmick said the next items are regarding the calling of the bond and restatement of the permit; based on what has been done and what is being promised to be done.

Regarding the Bond:

Motion:

That the Commission moved that, in light of the remediation work done since the last meeting to correct erosion controls and slope

problems; that the Commission does not call the bond at this time; based on compliance in the work shown in the photographs and other evidence.

Moved by Ms. Dunne. Seconded by Mr. Norback.

Discussion:

Ms. Dunne said even though there are substantial improvements made she did not believe our staff was able to evaluate the change in the slope so that's just one issue that's out there but because of the compliance she thought we should still (move forward).

Motion approved unanimously by Commission members present. Dr. Dimmick said it was staff's suggestion that since we've dealt with the issues of the original show cause hearing that at this point we reinstate the permit for the site; close the show cause hearing; leave the modified cease and desist in effect.

Mr. Kurtz said since it's on the agenda he thought they should discuss it. He said he doesn't have any problem with anything except that we said continue working on these erosion controls and wetlands protection issues – there's no timeline for doing it – is he going to build the whole house and then go back to do it – are these going to be carried on at the same time; he said he was especially concerned and he guessed it wasn't going to happen if there's going to be mafia blocks installed – they should be done quickly.

Mr. McEvoy said the way the first motion was passed give us the opportunity to perhaps discuss about when, in our opinion, the applicant's judgement and best time frame to keep the process moving might be with the understanding that they can essentially keep framing the house; he said he didn't have an answer right now on that.

Mr. Kurtz said he thought a progress report was needed.

Mr. McEvoy said as part of his (the applicant's) original permit which we have been conducting weekly sediment and erosion control inspections as well which will keep occurring.

Mr. Barnett addressed the Commission. He explained that the logical progression and the most important thing tonight is to be able to continue work; obviously the one major thing he has to do in the

back is a retention pond once we get around the corner; we will obviously shore up any work that we have done now; basically what we have done is protect the areas that we have had to and make sure we have gotten to a point to where we can continue construction – the slope will come into play at the end of the project when you say – do you want to have a backyard like this or – that was the consideration of the mafia blocks – can we protect the area but also make the backyard a little larger – that was it but at this point he'd want to continue construction and then entertain that thought but he would need a different permit to do that.

Dr. Dimmick said so we would reinstate the permit which goes along with modifying the cease and desist order and as long as we are getting those weekly reports from Ryan and we see progress he didn't think we'd have a problem; if new problems show up it's a different matter; that's why we leave the cease and desist in place even though its modified.

Mr. Norback said showing progress – would it be better described as maintenance as opposed to progress.

Dr. Dimmick said progress and the list of things they need corrected; that kind of progress; and obviously if we get 42" of snow we don't expect anything to happen on the site for a while.

Ms. Dunne said just as a procedural thing – we are voting is to reinstate the permit.

Dr. Dimmick commented about the process they used to consider the reinstatement of the permit.

Ms. Dunne said the discussion you are having is regarding the requirements had to do with the cease and desist order which we already worked on but we did not actually give a time table for.

Dr. Dimmick stated no but he was once we get something in writing then we will have a time table they will present as long as it's expectable.

Ms. Dunne said once we reinstate the permit then we can't go back and give a date for the first thing we did – correct.

Mr. Kurtz said we already have our discussion on the record.

Dr. Dimmick said we have done that and the cease and desist is still in place that's been modified and that still gives us control over what's being done and if it's not being done satisfactory...

Ms. Dunne said it's already said – that a written narrative (will be supplied) as to how each item would be corrected.

The Commission discussed the next action to take on the permit; at the December 19, 2016 meeting the Commission decided to suspend the permit.

Ms. Dunne said we have suspended the permit but at this point in time the record is clear that enough has been done – in her opinion that we should reinstate the permit.

Regarding Restatement of the Permit:

Motion:

That the Commission moved to reinstate the permit for the site.

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

Regarding Closing the Show Cause Hearing:

Motion:

That the Commission moved to close the show cause hearing.

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

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

Dr. Dimmick stated that the applicant asked that this item be postponed.

XI. NEW BUSINESS

There were no new business items.

XII. ADJOURNMENT

The meeting was adjourned at 8:05 pm by consensus of Commission members present.

Respectfully submitted:

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