

**CHESHIRE INLAND WETLANDS AND WATERCOURSES COMMISSION
REGULAR MEETING
TUESDAY, SEPTEMBER 5, 2017
TOWN HALL – 84 SOUTH MAIN STREET
COUNCIL CHAMBERS – 7:30 P.M.**

Members present: Robert de Jongh, Charles Dimmick, Earl Kurtz, and Kerrie Dunne.

Member not present: Dave Brzozowski., Will McPhee and Thom Norback

Staff: Suzanne Simone.

I. CALL TO ORDER

Chairman de Jongh called the meeting to order at 7:30pm.

II. PLEDGE OF ALLEGIANCE

All present recited the pledge of allegiance.

III. ROLL CALL

Ms. Dunne called the roll.

Members present were Robert de Jongh, Charles Dimmick, Earl Kurtz, and Kerrie Dunne.

IV. DETERMINATION OF QUORUM

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

**V. APPROVAL OF MINUTES Public Hearing – August 1, 2017
 Regular Meeting – August 1, 2017**

Motion: To approve the minutes of Public Hearing of August 1, 2017 and Regular Meeting of August 1, 2017 subject to further revision.

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

VI. COMMUNICATIONS

Ms. Simone reviewed the following communications.

1. Request for Determination Re: Garage Modification, Lake Percival Way

This communication was reviewed. Ms. Simone stated this item is under new business for a request for determination.

2. CACIWC 40th Annual Meeting and Environmental Conference, 11/18/17

This communication was reviewed. Ms. Simone said any Commission member interested in attending should contact staff.

VII. INSPECTION REPORTS

1. Written Inspections

Ms. Simone stated there were no written inspections.

2. Staff Inspections

- a. 1392 Cheshire Street

Ms. Simone explained there was a staff inspection of 1392 Cheshire Street which will be further discussed under the show cause hearing for the same address.

- b. 70 Strollo Court

Ms. Simone explained about a week after the last meeting there was a heavy rain of about 2' over a one hour period and the newly graded slope had some channel erosion problems – those were in the areas where vegetation hadn't established yet – there was just a little bit of seed germination.

Ms. Simone said as a repair they maintained the grade which was approved by the Commission at the August 1 meeting and they armored the areas of erosion with large stone as well as removing all of the sediment that made its way to the bottom of the slope.

Ms. Simone said as of the last check at the end of last week all of the grass and everything was growing in quite well; there were no further signs of erosion; all of the silt fence and hay bales were reinstalled or reinforced so hopefully this will be the end of problems with the grade.

Ms. Simone stated that after the next rain storm we get tomorrow, she'd go out and inspect the watercourse which is on the neighboring property to see if there's any turbidity in the water – there was some sediment that made its way there; once that area dried out there was no evidence or delineation of new sediment as opposed to the actual bed of the watercourse.

Ms. Simone stated we'd see what happens after the next rain.

Chairman de Jongh said when he and Ms. Simone went out there after the last rainfall they talked a little bit about the removal of the silt at the base of the slope – he asked if that had been removed.

Ms. Simone stated yes that has been removed and that has been removed by hand and carried in buckets up the hill.

Ms. Simone stated there was an additional inspection as a result of a (rain) storm:

c. Mixville Park

Ms. Simone stated there were problems at Mixville Park – there were large clumps of aquatic plants that had been churned up from the storm and they were actually clogging between the upper pond and lower pond and that was causing the water to find its way on to the grassed area and bypassing and going around so that area was removed with equipment from Public Works where they were able to reach in and pull that material out and dispose of it off site.

d. 1430 Highland Avenue

Ms. Simone explained that the certificate of occupancy was finally conducted for 1430 Highland Avenue – it was found that everything was done in compliance with the permit.

Chairman de Jongh asked if they installed the Blueberry bushes and things like that.

Ms. Simone said they did that eventually after they got there CO because they weren't able to time that to get the Blueberry bushes in before getting the CO so they put grass seed down then planted Blueberries.

e. Crestwood Drive

Ms. Simone said they have been receiving correspondence from some neighbors on Crestwood Drive regarding the clearing that's going on.

Ms. Simone said she's been in touch with Mr. Ricci. She explained after he got his permit he went ahead and had a survey done of the clearing limits which was in conformance with the approved plans; he then cut those trees and put up erosion controls.

Ms. Simone said she just received a call from him (Mr. Ricci) today – the erosion controls; silt fence and hay bales are up.

Ms. Simone reported she planned on inspecting that (site) tomorrow or Thursday.

f. Cheshire Academy

Ms. Simone reported that we keep getting the required updates from Cheshire Academy having to do with their new entrance way and building off of Academy Road.

VIII. 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

Ms. Simone stated they received their approval to install the retaining wall – the last she had spoken to Mr. Barnett he was preparing to begin that work so she'd keep monitoring that.

Chairman de Jongh asked if they were going to be proving details as to how this stuff is going to be done – have we asked them to do that.

Ms. Simone said she didn't recall that was in the approval but he'll (Mr. Barnett) will have to submit an as-built to get a CO for the property and there was a permit that was issued.

Dr. Dimmick said there was some information given including the fact that the placement would be from above; that they would not have to go from below for it.

Ms. Simone stated and that was from the permit – it was stipulated that they could only operate from above.

Dr. Dimmick said that and securing whatever erosion controls were necessary under the circumstances; he said he didn't think they (the Commission) had in terms of how they were going to do.

Ms. Simone said that was a part of the approved plan; she stated she'd follow up for the next meeting.

2.	<u>SHOW CAUSE</u>	SC	5/16/17
	Notice of Violation/Cease and Desist Order	SC	6/06/17
	Unauthorized Activities in Upland Review Area	SC	6/20/17
	Luis Revera and Joanna Kozak	SC	7/05/17
	1392 Cheshire Street	SC	7/18/17
	Assessor's Map 30, Lot 17	SC	8/01/17
		SC	9/05/17

Ms. Simone stated this has been an on-going issue where she was trying to coordinate with the property owner who works out of stated and he wanted to be on the property when she was there to inspect.

Ms. Simone explained she was able to get on to the property until August 31.

Ms. Simone stated the Commission had pictures in front of them (of the site).

Ms. Simone stated the issues she was there to review were the marking of the non-encroachment line with the 4" by 4' posts and the placards; compliance with the 2012 approved site plan which placed shrubbery alongside that non-encroachment line as well as

indicating the area that needed to be abandoned as lawn and revert back into its natural vegetation and that was the purpose of establishing the non-encroachment line.

Ms. Simone said from pictures from August 31 there is only one marker on the property; that's the picture that also has the birdhouse on it – it's basically in the middle of the lawn; the area that you see behind the post is the non-encroachment area that was supposed to be abandoned and reverted back to natural vegetation and you can see in the pictures its maintained as lawn.

Ms. Simone said the next picture shows the grass and non-encroachment area that it goes back quite a distance.

Ms. Simone said basically what was shown in the 2012 plan which initiated the Commission to require that area to be abandoned.

Ms. Simone said photo number three – it shows the few shrubbery that exists which was supposed to be all along that line – there are only about three shrubs have survived or are still in place.

Ms. Simone started there is one lone tree that's in the middle of the yard area that's meant to be abandoned – she said you might not be able to appreciate it from the photo – but the tree is completely rotted out in the center – it does have leaves - but its leaning the center and the homeowner is interested in removing it – it does appear as though it's a hazardous and dying tree.

Ms. Simone said the last matter was to get more clarity what equipment he had installed in the upland review area – she said you may recall that there's a history of correspondence with Mr. Revera where he has been asking about putting in a pool and he has been informed that where is was looking to locate it is where the hot tub is now and would require a permit from the Wetlands Commission; and he was aware of that – he went ahead and put this patio in and also installed this hot tub in the upland review area without getting a permit.

Ms. Simone explained there are the major issues of the lack of compliance with the 2012 plan which indicated the markers that were to be posted along the non-encroachment line; shrubbery that was to mark the non-encroachment line to serve as a barrier to a previous lawn area that was to be abandoned; so for the last five years this area has been continued to be maintained as lawn.

Chairman de Jongh said he didn't know if everyone was part of the original discussion when this house was being built – the builder was Mr. Barnett – if you remember Mr. Revera coming in and complaining that he wasn't made aware of the non-encroachment lines and having to put in those posts in the backyard and made a big stink about the said posts – he said he's looked at the pictures Suzanne has provided us with this evening – and it's a blatant disregard for what was permitted versus what currently exists.

Chairman de Jongh said his feeling is that we give him a deadline by which those posts have to be reinstalled and those shrubs have to be reinstalled along that non-encroachment line and if that's not done by that date – maybe it's the first meeting in October to give him time to do this - it's certainly a great opportunity to put those shrubs in to take seed – to take hold and if it's not done by then – then they turn this over to the town attorney and put a lien on the property so any attempt to try to sell the property or transfer of the property cannot be done without the full knowledge that there's a lien against this property.

Chairman de Jongh said he was a little bit fed up with this – they've gone back and forth on this property way too long with the same parties being involved.

Dr. Dimmick said for those of you who were not around at the time of our initial inspection – the post is approximately the high water mark for that property.

Dr. Dimmick said it may look like lawn and it is lawn right now but when that area floods – that's how high that water gets.

Chairman de Jongh said to the left of 1392 Cheshire Street to the left of that – the homeowner had come to us wanting to extend the backyard – that whole area is basically a flood plain.

Chairman de Jongh stated again there is just blatant disregard for what was permitted and what he felt he should be able to do.

Ms. Simone stated there was a corrective order on May 16 which ordered that these items needed to be corrected.

Ms. Simone said in talking to Mr. Revera he said that he was holding off on that – until he could arrange a meeting out at the property.

Ms. Simone said there is a new draft corrective order before Commission members tonight - that item number one states that the above ground tub requires a permit – that he needs to submit a completed permit application with all the required documentation and payment by September 27 to be added to the agenda of the October 3 meeting; second the non-encroachment line shall be planted, in accordance with the approved 2012 IWWC permit, by October 16, 2017. The lawn within the upland review area shall be abandoned; number three - all non-encroachment markers which may have been removed or moved from the approved location must be re-installed to their original location by October 16, 2017; then a letter would have to be submitted to the Commission by the property owner verifying all the work has been done and completed by October 16, 2017.

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 public meetings, finds the following:

- 1. That inland wetlands and watercourses of the State of Connecticut and the Town of Cheshire are an indispensable and irreplaceable but fragile natural resource with which the citizens of the State have been endowed.**
- 2. That the wetlands and watercourses are an interrelated web of nature essential to an adequate supply of surface and underground water; to hydrological stability and control of flooding and erosion; to the recharging and purification of groundwater; and the existence of many forms of animal, aquatic and plant life.**
- 3. That the Cheshire Inland Wetlands and Watercourses Regulations, in effect since June 2, 1974, are enforced by the Cheshire Inland Wetlands and Watercourses Commission, per town ordinance.**
- 4. That beginning in 2014 Staff and Mr. Luis Rivera have communicated regarding the requirement to establish and**

maintain the non-encroachment area, as established in the 2012 IWWC permit #2011-025, and the requirement to apply for a permit to the IWWC for the installation of an above ground pool in the upland review area.

- 5. That according to the town of Cheshire soils map, inland wetlands are located to the rear and side of the property, and the 2011 soil scientist delineation provides detail to the location of the inland wetlands.**
- 6. That on May 9, 2017 a Notice of Violation/Cease and Desist Order was issued for the installation of an above ground pool within the upland review area and the continued mowing of lawn beyond the non-encroachment line as established in the 2012 IWWC permit.**
- 7. That on May 16, 2017 a Show Cause hearing was opened. The record of the May 16, 2017 is incorporated into the record of the findings of this corrective order.**
- 8. That on May 16, 2017 corrective order #5.16.17-B was issued, which ordered the removal of the hot tub and the posting, planting and establishment of natural vegetation within the upland review area.**
- 9. On August 31, 2017, Commission Staff visited the site and observed only one non-encroachment posting, only 4 or 5 existing shrub barrier plantings and the continued mowing with the non-encroachment area, which per the January 2012 Commission permit, was to be allowed to revert to natural vegetation, and not mowed.**
- 10. That the installation of an above ground pool/tub, the continued mowing into the established non-encroachment area was not conducted in concert, support or authority of the Cheshire Inland Wetlands and Watercourses Commission.**
- 11. That Section 13.5 of the Cheshire Inland Wetlands and Watercourses Regulations authorizes the Commission to issue a corrective order for the removal of fill deposited in an inland wetland.**

Therefore, the Cheshire Inland Wetland and Watercourses Commission under jurisdiction prescribed in Section 13.5 of the

Cheshire Inland Wetlands and Watercourses Commission issues the following Corrective Order:

- 1. The above ground tub requires a permit to be located within the upland review area of 1392 Cheshire Street. The application shall be completed (with all requirement documentation and payment) and submitted by September 27, 2017 to added to the agenda of the October 3, 2017 meeting.**
- 2. The non-encroachment line shall be planted, in accordance with the approved 2012 IWWC permit, by October 16, 2017. The lawn within the upland review area shall be abandoned, and no mowing shall take place in this area.**
- 3. All non-encroachment markers which may have been removed or moved from the approved location must be re-installed to their original location, as approved in the 2012 IWWC permit #2011-025, by October 16, 2017.**
- 4. The property owner shall submit written verification by October 17, 2017 that items 1-3 listed above are complete.**

Failure to cooperate with Cheshire Inland Wetland and Watercourses Commission and Town of Cheshire regulations may lead to further enforcement action, including, but not limited to, transferring this matter to the Town Attorney to pursue injunctive relief and to collect all applicable penalties and fees as prescribed under state statutes. A copy of this notice has been recorded on the land records for this property and will remain so until released by the Cheshire Inland Wetlands and Watercourses Commission.

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

Chairman de Jongh said he wanted to add language that failure to comply with the fore mentioned stipulations by October 16 will result in the Commission turning this over the town attorney for review and for further action.

Mr. Kurtz stated we already know the facts – we issued a corrective order – and nothing was done – wouldn't it be appropriate to contact the town attorney now – we have a history of what the problem was and was to be done.

Dr. Dimmick said he agreed with Mr. Kurtz but if they can get things solved before taking any other action it's better to do that then to do an action that may not be needed; he said he recommended trying to get something done at a lower level then trying to bring it at a higher level.

Chairman de Jongh said he thought they were at the point where their patience was worn out; and they revisited this too many times; they've outlined what needs to be done and if it's not done by this date - this is what will happen; the choice to do that or not do that is the property owners choice – he said if they give a date they will be looked on favorable if this is taken to court.

By unanimous consent the additional language was added to the motion.

Ms. Simone stated that Mr. Rivera indicated that he might be putting the house on the market in the next couple of months so she would like to record the cease and desist as well as the corrective order on the land records.

Chairman de Jongh said he thought that was appropriate; and whatever they could do to announce this to future property owners make a lot of sense.

Chairman de Jongh confirmed the motioner and seconder approved the additional language added to the motion.

Motion approved unanimously by Commission members present.

3. 70 Strollo Court

Ms. Simone informed the Commission that Ryan McEvoy did write a narrative to the Planning and Zoning Commission and copied the Wetlands Commission relate to 70 Strollo Court – the history which she already mentioned – she stated she had a copy if members were interested in reviewing.

IX. UNFINISHED BUSINESS

- | | | | |
|----|--|-----|-----------|
| 1. | Permit Modification | APP | 2016-005A |
| | Clearview Farm Preserve, LLC | DOR | 6/06/17 |
| | Mountain Road (Cornwall Ave Ext. 2016-005) | PH | 7/05/17 |

Resubdivision	PH	7/18/17
	PH	8/01/17
	MAD	9/05/17

Chairman de Jongh said this was subject of several public hearings ending on August 1; he said he believed they had gotten all the information this Commission had asked for and there was a draft motion for our consideration.

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, public hearing testimony, and after review of written information provided by the applicant on this application, finds the following:

1. That the Inland Wetlands and Watercourses Commission approved a 21 lot subdivision, for the same property, on March 15, 2016.
2. That an application for the same was submitted on March 3, 2015 and withdrawn on May 19, 2015.
3. That the current application is for the subdivision of a 23 acre lot, into an 11 lot subdivision.
4. That the record of permit #2016-005 be incorporated into the record of application #2016-005.
5. That the subject property is bounded by approximately 1,200 linear feet of delineated inland wetlands to the west, sharing the boundary with town owned open space to the west and south.
6. That the proposed road located along the south boundary of the subject parcel borders approximately 140 linear feet of delineated inland wetlands.
7. That the proposed upland impacts consist of 0.359 acres for the installation of septic system, sidewalk and roadway construction. The direct wetland impacts consist of a direct

discharge into a watercourse (North Roaring Brook) from the proposed stormwater basin.

8. That the property is located within the watershed of Willow Brook, a tributary of Lake Whitney, a public water supply reservoir.
9. That the Regional Water Authority provided comments, dated July 12, 2017.
10. That the applicant has supplied correspondence from CT DEEP NDDDB, dated July 11, 2017. The site plan contains a "turtle management plan", incorporating the comments from the CT DEEP NDDDB.
11. That the Commission determined the application to be not significant under the context of the regulations.

Based upon the foregoing findings, the Cheshire Inland Wetland and Watercourses Commission conditionally grants CIWWC Permit Application #2016-005A, the permit application of CLEARVIEW FARM PRESERVE, LLC as presented on the plans entitled:

**"Clearview Farm Preserve
947 Cornwall Avenue, Cheshire, CT
Dated June 5, 2017
9 Sheets, Varying Scale.
Prepared by Milone and MacBroom, Inc."**

The permit is granted on the following conditions and stipulations, each of which the Commission finds to be necessary to protect the wetlands and watercourses of the State and the Town of Cheshire:

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, cutting or any development activities

covered in this permit, all recommendations from the Connecticut Department of Energy and Environmental Protection (CT DEEP) regarding protective measures for Natural Diversity Database (NDDDB) species shall be forwarded to the Commission and a report submitted by the applicant's soil scientist summarizing any future proposed modifications to be made to this permit grant, so as to be consistent with the recommendations from the NDDDB.

4. Prior to any clearing, grading, or other activities on the site, associated with this permit or the request for a Building Permit for lots #7, #8, #9 and #10, the applicant shall accurately stake and/or flag all clearing limits, install erosion controls and permanently mark all non-encroachment lines, as shown on the reference plans above. 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.
5. Prior to any clearing, earthmoving and/or construction activities for the single family home on Lot #11, Lot #11 requires individual site plan review and approval from the Cheshire Inland Wetlands and Watercourses Commission.
6. 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.
7. Throughout the course of conducting construction activities covered by this permit grant, 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.

8. This permit grant shall expire on September 5, 2022.

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

X. NEW BUSINESS

- 1. Request for Determination RFD 2017-014
Trilacon Development Corp.
Lake Percival Way (Off Jarvis)
Garage Modification

George LaCava from Trilacon Development Corporation from Berlin, CT was present on behalf of the applicant.

Mr. LaCava explained this property has been before the Commission in the past –they originally got a wetland permit in July of 2000; he was back before the Commission last year to renew the permit in August 2016.

Mr. LaCava said when they were in last time they showed a proposed modification to the existing old Walter Percival Estate and had shown a garage addition of 36’; they are currently in the design process and they need 4’ more feet.

Mr. LaCava said the request before the Commission is to increase the garage from 36’ to 40’ – it would be approximately 5’ closer to the wetlands at the closest point.

Mr. LaCava said the way the grading is – it would not change any of the grading as originally proposed and would not result in any disturbance of the wetlands.

Mr. LaCava said he also enclosed copies of the maps that were presented last August.

Dr. Dimmick asked if staff reviewed this.

Ms. Simone stated yes – she had – she said there was a question about the erosion control plan that was originally permitted – was that something they planned to incorporate – having the silt fence and hay bales going around the corner of the garage.

Mr. LaCava stated yes.

Ms. Dunne asked how close the activity was from the wetlands.

Mr. LaCava stated it would be 15' from the wetlands; originally it was 20' give or take; the wetlands kind of curve away from the wall of the garage.

Chairman de Jongh asked if there were any vegetative areas to prevent any further passage way action; he was concerned about the protection of that because they were getting closer to the wetlands now that we have gone from 20' to 15' - he asked what was going to be done to protect that remaining buffer.

Mr. LaCava said they would be 10' to work around the area for backfilling and excavation; they would leave whatever they could to disturb and if they needed to they could plant more plantings to keep it under control.

Dr. Dimmick said he thought the closer you get to the wetlands the denser the plantings need to be between the disturbance and the wetlands to act as a just in case situation

Dr. Dimmick commented that if they make a determination no permit is needed then they have no control over making sure that planting is done.

Chairman de Jongh said he'd like to be assured in writing that things are going to be taken care of and we have a scheme to refer back on that things are going according to plan.

Dr. Dimmick said he thought it was cleaner to ask for a permit modification; he didn't see a problem with granting the application.

Ms. Simone asked if they'd be looking to add additional plantings the Commission would ask of the applicant.

Motion: That the Commission has determined that a permit modification is required for the proposed activity.

Dr. Dimmick said where you are getting closer – you need to see more plantings; normally they ask for 50’ but if they could be assured of a dense planting (at 15’ from the wetlands).

Chairman de Jongh said he wanted to make sure the area was adequately protected from the excavation – protecting the wetlands.

Ms. Simone asked about the 20’ tree on the plan next to the garage – she asked if that was to remain.

Mr. LaCava said it’s hard to say until they get out to the site – (and start working); they may or may not keep the tree.

Dr. Dimmick said they need to make sure there’s adequate vegetation.

Motion: That the Commission has determined that a permit modification is required for the proposed activity.

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

Mr. LaCava said he’d work with staff to get the necessary information together.

XI. ADJOURNMENT

The meeting was adjourned at 7:53 pm by consensus of Commission members present.

Respectfully submitted:

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