

**CHESHIRE INLAND WETLANDS AND WATERCOURSES COMMISSION
REGULAR MEETING
TUESDAY, OCTOBER 17, 2017
TOWN HALL – 84 SOUTH MAIN STREET
ROOM 207/209 AT 7:30 P.M.**

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

Members not present: Robert de Jongh and Dave Brzozowski.

Staff: Suzanne Simone.

Dr. Dimmick served as chairman in Mr. de Jongh's absence.

I. CALL TO ORDER

Dr. Dimmick called the meeting to order at 7:30 pm.

II. PLEDGE OF ALLEGIANCE

All present receipted the pledge of allegiance.

III. ROLL CALL

Ms. Dunne called the roll.

Members present were Charles Dimmick, Earl Kurtz, Will McPhee, Thom Norback and Kerrie Dunne.

IV. DETERMINATION OF QUORUM

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

V. APPROVAL OF MINUTES Regular Meeting – October 3, 2017

Dr. Dimmick called for a motion to approve the minutes from the October 3, 2017 regular meeting with corrections:

Page 3 L35 "Castel" to "Castle"; pg. 5 L36 "moving" to "movie"; pg. 6 L44 "your" to "you're"; pg. 7 L7 "your" to "you're"; pg. 9 L42 "your" to "you're".

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

VI. COMMUNICATIONS

Ms. Simone reviewed the following communications were reviewed:

1. Permit Extension Request for 2008-020, Hoadley Cash, Subdivision, Inverness Court

This communication is on the agenda tonight under new business.

2. Request for Determination, Miller Bros., 1220 Waterbury Road, Proposed PV Solar Facility

This communication is on the agenda tonight under new business; this item is from the amended agenda as of yesterday, October 16, 2017.

VII. INSPECTION REPORTS

1. Written Inspections

- a. Cheshire Academy

Ms. Simone reported that staff received written inspections from Cheshire Academy which is on-going.

- b. 1392 Cheshire Street

Ms. Simone reported that staff received a written notification from the owner of 1392 Cheshire Street which is handed out to Commission members.

2. Staff Inspections

- a. Cornwall Avenue

Ms. Simone reported that there was a staff inspection after receiving a complaint on Cornwall Avenue having to do with the new section of the linear trail.

Ms. Simone said the complaint was that there was turbidity in Willow Brook. She said she contacted the state who are the

people actually doing the trail work and they had indicated that they were putting 20' long sheeting driving into the ground and that had caused turbidity.

Ms. Simone explained they are done with that project and they reinforced the sediment and erosion controls and the complainant had indicated to her that things are now getting better and there is no longer turbidity in that area.

b. 1392 Cheshire Street

Ms. Simone reported there was a sight inspection of 1392 Cheshire Street which is under enforcement action as well as under unfinished business.

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

Dr. Dimmick asked if this was looking much better.

Ms. Simone reported she did not have an update for this meeting but that she'd have it for the next meeting.

Dr. Dimmick said the last time – it looked as though it was looking like things were going in the way we wanted.

Dr. Dimmick stated this will stay on the agenda until it's entirely resolved.

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

Ms. Simone reported that there's a corrective order on this property and the corrective order states that the permit for the activities within

the upland review area that they need to come in for a permit after the fact which they have done and is under unfinished business tonight; secondly they also had to establish the non-encroachment line with plantings in accordance with the 2012 approved plan.

Ms. Simone stated they also had to abandon the lawn area which was shown on the 2012 plan and also install all of the posts and markers that were shown on the 2012 plan.

Ms. Simone explained when she went out to the property that week, the posts were in place with the markers; the plantings that she identified and Commission members were sent an email on this, they plantings were too small Spirea shrubs that were not part of the planting plan and they were sort of planted together over to one side and there were not enough of them.

Ms. Simone said she contacted Mr. Rivera to tell him that he still needed to have more plants put in; he sent pictures which she handed out to Commission members tonight.

Ms. Simone said what she identified to him in her previous correspondence was that surrounding that post that has the bird house on it – that on either side of it – there was ample room for a lawn mower to get around the post and continue mowing that area which you can see is still pretty much the same height as the lawn area.

Ms. Simone said with those original plantings that he put in – there were three required plantings – there's still space on either side of those posts to get a lawn mower in – she did not know if that's enough for the Commission to rethink this – she said she thought if the Commission was inclined to find that their basically in compliance with the site plan that this is something that we would still look further into – that we'd leave the cease and desist on the land records and wait until spring to see that these new shrubs are actually established and coming in and that they are avoiding mowing that area.

Mr. Norback asked if the purpose of the shrubs is to preclude a mower from getting in there (the non-encroachment area).

Ms. Simone stated yes.

Dr. Dimmick said the whole area was to revert to the wild; instead they keep mowing it.

Ms. Simone said it's not expressly said on the plan – it does identify that area to be abandon and allow to revert back to its natural environment but it does show that the plantings are spaced in such a manner along this line (shown in the photos) that once full grown would fill in and you wouldn't be able to gain access around that (area).

Dr. Dimmick said part of the problem is for the last two years they have been mowing that area.

Mr. Kurtz asked how many plants are along that line.

Ms. Simone stated they had some – and she believed they needed to plant 3 or 4 – she showed on the photos where a planting that was established that was covered over in native vegetation; she said she thought 3 is a good number that should be planted.

Dr. Dimmick said in his opinion, they need to leave the cease and desist in place until we determine that area is truly abandon because that certainly is not the case – things aren't growing fast enough to do anything right now – not until at least May of next year.

Ms. Simone stated yes – and the other shrubs planted in 2013 – they are still quite small so she thought it will take a while before that area to grow up – for the shrubs to grow.

Dr. Dimmick said he can't see it hurts to leave the cease and desist on the record; he said all that's required is that we take no action (at this time).

Ms. Simone stated yes – the deadline was their burden to come up with – so with the site work and the letter so if the Commission is satisfied with the email where he (Mr. Rivera) states that the work is done and it's been done prior to the cutoff date which was yesterday afternoon, October 16, 2017.

Mr. Norback said he thought it would be prudent to let them know that they have satisfied it but we just need to monitor it so they don't feel that they've done everything and remove it.

Mr. McPhee said in his opinion, they really haven't satisfied it.

Dr. Dimmick stated they satisfied that letter but they haven't satisfied us in terms of total.

Mr. Norback said the shrubs being that size –can't pin that on them – he said to let them know that they did what we asked but we need to monitor it because we can remove the cease and desist.

Dr. Dimmick said staff can come up with appropriate wording.

Mr. Kurtz asked if there was a way out for him –if he comes in and wants to plant six 5" shrubs would that be enough – would that take care of it.

Ms. Simone said so if he wanted to volunteer to plant additional and more mature shrubs – so what's required on the planting list is that there are three different types of shrubs – there's Winterberry, High Bush Blueberry and Silky Dogwood and their each to be 18" to 24" gallon.

Ms. Simone said she didn't think what is now planted were not even a foot and a half tall.

Mr. McPhee said so they really haven't satisfied the plan as far as the plantings.

Ms. Simone stated technically that may be true.

Ms. Simone explained to Commission members to get him (Mr. Rivera) to this point so that the Commission is aware has required a lot of staff vigilance; phone calls, visits at the site explaining (what was needed).

Commission members discussed what the next steps should be.

Dr. Dimmick asked if we can give staff a clear understanding – he fulfilled the letter of our deadline but that we're not happy that they have proven total abandonment.

Mr. McPhee said we either wait or they have to take additional steps to buy larger and taller plantings (bushes); he said as Mr. Kurtz stated he should have an out to this in case he has other plans for the property.

Mr. Norback said (waiting) encumbers this if he goes to sell it (the property).

Ms. Simone said so his options are – that if he was to plant larger plants then this would be removed from the land records.

Mr. Kurtz said if he sent you a picture before you went out there to (inspect).

Ms. Simone said part of the issue is looking at the pictures and being out at the site – that lawn area – maybe they stopped mowing it in the last couple of weeks but this is something that’s been ongoing since they had the house so she would recommend that the cease and desist remain on the land records and that we follow-up in the spring time and take a look at that area and see that they have abandon.

Mr. Norback stated and then maybe we make additional demands at that point.

Dr. Dimmick stated because abandonment was part of the original requirement and we don’t see proof of abandonment.

Ms. Simone said so she can express to him (Mr. Rivera) that the Commission is aware that he planted three shrubs; they appear to be a smaller size then what was shown on the plan so the Commission encourages him to make sure that they are watered and feed them and try to get them to move along more quickly (nurture the plants) and also to abandon that lawn area and that is something that will be continually monitored.

Commission members seemed okay with how to proceed.

Dr. Dimmick stated he appreciated staff trying to keep track of this sort of thing.

IX. UNFINISHED BUSINESS

| | | | |
|----|--------------------------------|-----|----------|
| 1. | Permit Application | APP | 2017-016 |
| | Luis Rivera | DOR | 10/03/17 |
| | 1392 Cheshire Street | | |
| | Activity in Upland Review Area | MAD | 12/07/17 |

Dr. Dimmick stated this is an after-the-fact permit application for the activity in the upland review area where they have put in a patio and

hot tub within the upland review area without getting a permit and now asking for a permit after-the-fact for a placement of these.

Ms. Simone said for our application there's just the narrative – there was no sketch provided – she did go out and measure - it does measure 20' by 20' and the patio is approximately 10.7' from the non-encroachment line.

Mr. McPhee said they didn't have to act on this tonight.

Ms. Dunne said they could move staff wording.

Mr. McPhee said they could wait.

There was a brief discussion about this application.

Dr. Dimmick said the non-encroachment area was placed they based on how far up towards the house we saw water when we originally gave the permit so those posts are roughly how far the water gets at certain times.

Mr. Norback said in theory the posts are supposed to do the job – but hey rarely do.

Dr. Dimmick reminded Commission members the permit-after-the fact is a separate item.

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 finds the following:

- 1. That the current application is for permit-after-the-fact for the installation of patio and hot tub within the upland review area.**
- 2. That this application for permit-after-the-fact was submitted in compliance with Corrective Order #CO-9-5-17-A.**
- 3. That the patio measures 20' by 20' and is located 10.7 feet from the posted upland review area.**

4. That no direct or indirect wetland impacts are proposed.

5. That the proposed activities will not have a significant adverse effect on adjacent wetlands or watercourses.

Based upon the foregoing findings, the Cheshire Inland Wetland and Watercourses Commission conditionally grants Permit After The Fact #2017-016, the permit application of Luis Rivera.

The permit is granted on the following terms, conditions, stipulations and limitations (collectively referred to as the "Conditions") 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.

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

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|----|--------------------------------|-----|----------|
| 2. | Permit Application | APP | 2017-014 |
| | Trilacon Development Corp. | DOR | 10/03/17 |
| | Lake Percival Way (Off Jarvis) | | |
| | Garage Modification | MAD | 12/07/17 |

Dr. Dimmick stated this is very close to a wetland area and our main problem making sure there was an adequate vegetative barrier that was put in place and staff has reviewed the proposal and staff is satisfied.

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 finds the following:

- 1. That the current application is for modification of garage dimensions for unit #6.**
- 2. That the Commission determined on September 5, 2017 that the modification to the upland review area required a permit.**
- 3. That no direct or indirect wetland impacts are proposed.**
- 4. That the proposed activities will not have a significant adverse effect on adjacent wetlands or watercourses.**

Based upon the foregoing findings, the Cheshire Inland Wetland and Watercourses Commission conditionally grants CIWWC Permit Application #2017-014, the permit application of TRILACON DEVELOPMENT CORP for site plan approval as presented and shown on the plans entitled:

**“Percival Estates, (Modification) Lake Percival Way,
Cheshire, CT
Wetlands Submission
Site Plan
6 Sheets, Scale Varies
Dated September 21, 2017
Prepared by LRC Group, Cromwell, CT.”**

The permit is granted on the following terms, conditions, stipulations and limitations (collectively referred to as the “Conditions”) 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. Throughout the course of conducting permitted activities, and per Section 11.2K of the Cheshire Inland Wetlands and Watercourses Regulations, the applicant shall be responsible for ensuring the following:
 - a) That all maintenance and refueling of equipment and vehicles is performed as far as practical from all wetlands and watercourses, at least 100' where possible. All oil, gasoline, and chemicals needed at the site shall be stored in secondary containment to prevent contamination of any wetlands or watercourses from possible leaks.
 - b) That all disturbed areas on the site not directly required for construction activities are temporarily hayed and seeded until the site is permanently stabilized.
4. This permit grant shall expire on October 17, 2022.

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

X. NEW BUSINESS

1. Permit Extension APP 2008-020A
Matthew Hall, Esq.
Inverness Court
Subdivision

Matthew Hall, Esq. was present in the audience.

Dr. Dimmick said the permit for Inverness Court subdivision is due to expire in November.

Dr. Dimmick asked what has actually taken place on this property.

Ms. Simone said one of the lots has been developed and there's a zoning permit request in for development of the remaining lot.

Dr. Dimmick said Inverness Court itself was approved quite a few years ago.

Ms. Simone stated it was approved in 2008 then there was the public act that extended this approval to 9 years and so that's why there's a request to add another 5 years – so this is for the two lots as well as the rear lot access way – that rear lot access way still yet needs to be created and the second lot developed; the rest of Inverness Court was developed quite a few years ago.

Ms. Simone stated she has a copy of the subdivision if anyone wasn't to see it; she said there is a draft motion for approval; this is not something up for different consideration – it's just to extend what was already approved – there's no new information.

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 finds the following:

1. That this application is for the permit extension of the existing approval #2008-020, which was approved by the Cheshire Inland Wetlands and Watercourses Commission on November 4, 2008 to Hoadley Cash.
2. That through legislative action, resulting in the adoption of Public Act 11-5, the expiration date of this permit is November 4, 2017.
3. That attorney Matt Hall is the authorized agent of Hoadley Cash/ the Cash estate.
4. That the applicant is seeking to add an additional five years to the expiration date, the IWWC regulations allow for the extension of permits up to 10 years, per Section 11.3.C.5, however under the provision of Public Act 11-5, this permit may only be extended a maximum of five years, allowing the permit to be valid for a maximum of fourteen years.

Based upon the foregoing findings, the Cheshire Inland Wetland and Watercourses Commission conditionally grants CIWWC Permit Extension for the permit of Hoadley Cash for subdivision approval,

as presented and shown on the plans referenced in the November 4, 2008 approval of application #2008-020.

The permit request 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. All conditions and stipulations of CIWWC Permit #2008-020 granted, with stipulations are incorporated by reference as though fully set forth herein to the extent they are not in conflict with the present permit grant.
4. This permit grant shall expire on November 4, 2022.

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

- 2.* Request for Determination RFD 2017-018
Miller Bros.
1220 Waterbury Road
PV Solar Facility at Cheshire Landfill

Dean Gustafson, professional soil scientist from All-Points Technology Corporation was present on behalf of the applicant Miller Brothers.

Dr. Dimmick stated this request is for a determination where the permit has expired; the request for determination has only one year for action to take place.

Ms. Simone stated this was from June of last year.

Dr. Dimmick stated this is for the soil facility on the Cheshire Landfill and at the time we looked at what they proposed and their various safe guards and our determination was that they did not need a permit for the proposed activity and they are outside the upland review area and they had adequate safe guards for what they are doing.

Dr. Dimmick stated they are asking for a new determination.

Mr. McPhee asked if this is the exact same place we saw last time.

Dr. Dimmick said he thought they moved one thing 2'.

Mr. Gustafson addressed the Commission.

Mr. Gustafson explained this is the plan they looked at a year and a half ago – there has been no material changes to the proposed facility – we do have some wetland areas highlighted in green; they have been delineated and the 50' upland review area is highlighted (on the plan); the actual facility and bench limits – there's a small area where they need to clear some trees for some shading effect and that's only 700 SF of trees within the upland review area – if approved they'll still be 44' way from the nearest wetland.

Mr. Gustafson stated they do have erosion controls – also there won't be any stumping done – they'll still be within the confines of the landfill so there will be soil disturbance – they'll just drop the trees and drag them out.

Dr. Dimmick said the only thing they have to watch out for is possibly of the species of concern – the box turtle wanders up through that area.

Mr. Gustafson said they have a protection plan that's was approved by the department of Energy and Environmental Protection – Box Turtle and Wood Turtle were recorded in the project area so they have a protection plan in place – they contractor is ready to start work next week.

Mr. Gustafson stated they'd do a contractor awareness training before they start doing any activity – we're pretty much at the tail end of the turtle's active season so it's very rare they'll encounter a turtle but we'll still go through the protection plan because the plan approved by the state had the action period to November 14.

Mr. Gustafson said Eastern Ribbon Snake may also be in the area.

Motion: That the Commission has determined no permit is needed based on the information submitted and in the file.

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

XI. ADJOURNMENT

The meeting was adjourned at 7:56 pm by consensus of Commission members present.

Respectfully submitted:

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