

**CHESHIRE INLAND WETLANDS AND WATERCOURSES COMMISSION  
REGULAR MEETING  
TUESDAY, FEBRUARY 20, 2018  
TOWN HALL 84 SOUTH MAIN STREET  
COUNCIL CHAMBERS AT 7:30 P.M.**

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

Member not present: Robert de Jongh and Earl Kurtz.

Staff: Suzanne Simone.

Dr. Dimmick served as chairman pro-tem in Robert de Jongh's absence.

**I. CALL TO ORDER**

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

**II. PLEDGE OF ALLEGIANCE**

The pledge of allegiance was recited.

**III. ROLL CALL**

Ms. Dunne called the roll.

Members present were Charles Dimmick, Dave Brzozowski, Will McPhee, Kerrie Dunne and Thom Norback.

**IV. DETERMINATION OF QUORUM**

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

**V. APPROVAL OF MINUTES Regular Meeting – February 6, 2018**

Dr. Dimmick called for a motion to approve the minutes from the February 6, 2018 regular meeting.

Motion: To approve the minutes from the February 6, 2018 regular meeting with corrections; Pg. 2 L36 "stated" to "talked about"; pg. 5 L24 "fees" to "fact", L27 "out" to "out to", L33 "she" to "she will."

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

## VI. COMMUNICATIONS

Dr. Dimmick reviewed the following communications:

1. **Staff Memo Re: IWWC Permit After the Fact Fee**

Ms. Simone reported that this communication was sent to everyone (on the Commission) and it's on the agenda under unfinished business.

2. **Notice of Violation Re: 358 Cornwall Avenue**

Dr. Dimmick stated that this item is on the agenda for a show cause hearing.

## VII. INSPECTION REPORTS

1. **Written Inspections**

a. Ms. Simone reported she had an update from Scotland Hardwoods where they were doing a logging operation on Route 68.

Ms. Simone explained they have suspended activity because the ground is too soft.

b. Ms. Simone said there was a CO inspection for Strollo Court – she explained there are some issues with sediment and erosion controls and that's something that will need to be stabilized before getting a CO.

c. Ms. Simone stated there was an inquiring having to do with something at Richmond Glenn – she stated she has not inspected that as of yet.

2. **Staff Inspections**

## VIII. ENFORCEMENT ACTIONS

1. **Notice of Violation/Cease and Desist Order  
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**

**SC 12/06/16**

Dr. Dimmick reported there was nothing new on this item to report and that it will remain on the agenda for ongoing monitoring until items are taken care of.

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 stated this item is still ongoing for inspections to ensure the plantings survive the winter and that there's no further activity and the lawn is abandon in the upland review area.

3. SHOW CAUSE HEARING  
Notice of Violation/Cease and Desist Order SC 2/20/18  
Unauthorized Activities in a Upland Review Area, Wetland Area and  
Intermittent Watercourse  
Mr. Jason Bartlett  
358 Cornwall Avenue  
Assessor's Map 57, Lot 75

Jason Bartlett of 358 Cornwall Avenue was present.

Ms. Simone gave a summary of what transpired – she stated an inquiry was made to the Planning Office regarding development on Cornwall Avenue.

Ms. Simone reported that she had gone down Cornwall Avenue, saw there was activity at that address, went back to the office and looked at the file and saw back in March of 2016 there was an application to fill in a pond and that application had been denied.

Ms. Simone explained she went to the property and someone was there with an excavator and there's a pond on the property – someone was in an excavator near the pond certainly within the upland review area; she was not able to get their attention to ask them to stop or ask them what was going on; she went back to the office and contacted Mr. Bartlett and they had a conversation and he had indicated that he would have the activity cease at the property; he had asked about getting a permit; they had a conversation about a show cause hearing to be held tonight; in addition he did request an application packet and it was sent out to him.

Ms. Simone reported that on February 13, 2018, and how the regulations are written had to be sent within 10 days of a show cause hearing so the cease and desist letter was sent out on February 13, 2018 and Commission members for a copy of it – it basically

identifies that there was activity in and around the wetland area which is the pond, also the upland review area.

Ms. Simone said when she went back out to the property on February 16, 2018, she had noticed that the pond was freely draining – that the outlet area of the pond which had been a pipe structure – shown in some of the photographs handed out to Commission members – had been moved and that area had been excavated to allow the pond to drain freely into a plastic culvert under the driveway; also the soil right up to the edge of the water was exposed; a revised cease and desist was drafted was delivered to the homeowner and that was also handed out to Commission members tonight and a revised cease and desist dated February 16, 2018 – it says hand delivered on the top of it – there were some action items (1) stop the draining of the water from the pond via the unpermitted trench, the opening of the pond is to be closed by filling the trench with existing material restoring the area to pre-disturbance grade with a compliance date of Monday, February 19, 2018 – with photos to be sent today; (2) to install silt fence around the margin of the pond – within 3' of the pond.

Ms. Simone said she did go out to the property today and met Mr. Bartlett out at the property and she observed the area where water was leaving the pond, the soil had been pushed back into the excavated trench – there are no erosion controls around the pond and in conversation with Mr. Bartlett he had indicated that some of the pond had already been filled in and he believed it was the same square footage that he originally requested in 2016 which was denied; he had estimated that at about 3,500 SF.

Ms. Simone said as it stands now – there appears that there is soil that has been directly into the watercourse area; she said they did have a discussion about the trench area and he had indicated that that was preexisting.

Ms. Simone said in looking at photos she could see that in some areas where the stone is that it's very likely that was preexisting; but in the area where a connection was made to allow the pond to drain freely to the widen trench that is the new activity – that was not something the was necessarily preexisting.

Ms. Simone explained we are forecasted to get rain for the next four days – one thought that she had if the Commission was interested in seeing this property – that is perhaps something that could be discussed with the property owner.

Ms. Simone said as of right now the area is unsecure.

Ms. Simone stated there was a corrective order drafted and sent to Commission members in the mailing packet sent last week – that has since been amended to remove the first item which did indicate

putting up erosion controls – she said she had removed that thinking there would be conversation with the Commission regarding the possibility of a site visit or in looking at the pictures with the Commission, they may have other ideas – that they want erosion controls to go up right away or they want to see the site first or they want the area to be restored so she left that item off to the Commission could have further discussion on that.

Ms. Simone said so this is the course of action how it all came to be and the documents are provided to the Commission.

Dr. Dimmick asked Mr. Bartlett if he could give an explanation of what's going on.

Mr. Norback asked about the corrective order.

Dr. Dimmick stated it's not been issued yet.

Mr. Norback asked if that would necessitate an engineer's drawing of expectation.

Dr. Dimmick suggested handling this in order – let's get Mr. Bartlett's side of this and then get to the corrective order.

Jason Bartlett stated that everything she (Ms. Simone) had indicated is true. He said about a year and a half or two years ago he did apply for a permit to downsize the pond; he had just purchased the property and he was renovating the property and adding on to the house with an addition and stuff like that and at the time he hired a soil scientist to help him out to determine what the pond was all about - was it natural or manmade – he said he was talking to neighbors who had been there for years.

Mr. Bartlett stated the soil scientist determined – which we can go back to the notes and he could give them from when they originally went for the permit that he drafted a letter for - he said it was determined that it was manmade – it's not being fed by any natural body of water – that it's all being fed by the neighbors into his yard.

Mr. Bartlett said his main concern was that he has two little children and so far he's been there for two full summers and by July – if you see page two – it's down to a swamp – and it's not save for his children – and the bugs and mosquitos – it's just crazy – and he was sorry for stopping from proceeding with going on with meetings and hiring people but he kind of got caught up with building his house and the expense of that – and he just let it go – and he had the extra material on the site from the site from digging on the site so he started filling in the pond slowly and that's where we are now.

Dr. Dimmick said he remembered when he came for the original permit and David Lord was your expert at that point – he said he

worked with David Lord over the years – and his recollection of his testimony was that the intermittent stream that drained the area was artificial as to whether or not the pond was artificial or not is totally irrelevant – it is regulated by our regulations whether its natural or artificial.

Dr. Dimmick stated we denied you a permit. He asked if he (Mr. Bartlett) had a lawyer.

Mr. Bartlett stated he did have a lawyer.

Dr. Dimmick said he thought he would have to get his lawyer because what he has done is willful violation after being told that you could not fill it because you did not get a permit and you went ahead and filled it so it's not a case of acting in ignorance – it's a case of acting in willful violation.

Mr. Bartlett said he thought they were denied because he didn't follow through – he said he didn't technically even know they were denied because he stopped going to the meetings.

Mr. McPhee asked Ms. Simone to elaborate on that – he said he kind of remember us just closing this because nothing was ever followed through on.

Mr. Bartlett stated he never followed through.

Ms. Simone said she did not recall if there was testimony or if documents were given – she said she knew there was dialog of sending letters out to Mr. Bartlett letting him know that if the application was to go forward he needed to supply information and provide testimony.

Ms. Simone said he didn't believe that anyone testified on that. She said at the same time, if the Commission wants her to research that a little bit more she could prepare that for next time; she said she was starting this that there was a denial and then this moved forward.

Mr. McPhee said from his viewpoint there was a denial.

Dr. Dimmick said there was a denial and a letter should have been sent to him (Mr. Bartlett) with the denial because he certainly got a copy of that letter at the time.

Ms. Simone said yes, and reported that things get sent out certified mail – and there is a signature that it was received March 17, 2016.

Dr. Dimmick said so what we have is carrying on activities without a permit after they had been denied the right to be able to do that.

**Dr. Dimmick said while it is your land, it is regulated as is all wetlands and watercourses in the State of Connecticut by the state law that was passed back in 1973 which details among other things what are regulated activities and also details what you can and cannot do even if you have a private residence; and among other things it talks about incidental uses – it says incidental uses shall include maintenance of existing structures and landscaping but shall not include removal or deposition of significant amounts of material from or into a wetland or watercourse or diversion or alteration of a watercourse – it's very clearly stated in the state statutes – so that is a restriction on your property by state law.**

**Dr. Dimmick said he thought what they needed to do is look at restoring things to their original condition.**

**Dr. Dimmick said the first thing he will ask for from the Commission is if someone wanted to move that staff was justified in issuing the cease and desist.**

**Mr. McPhee said he thought that was necessary based on what was going on.**

**Motion: That the Commission verifies staff's actions based on the cease and desist order.**

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

**Dr. Dimmick stated that the cease and desist order stands per the motion that's been made.**

**Dr. Dimmick stated that staff has drafted a proposed corrective order which we can look at and discuss, make corrections and consider a motion for approval or not approve.**

**Ms. Simone said the corrective order can be read into the record once the Commission settles on what the corrective action is; and if the Commission is interested in going out to see the property so they can get a better sense of what's going on.**

**Mr. Norback said he thought it was prudent to go out there; he said they have a sense of the violation based on the verbiage but he thought it was good to go out there to see it physically; he said he thought it would serve us and the eventual applicant well.**

**Ms. Simone commented on the regulations that required the proper notification of the field trip which constitutes as a meeting.**

**Ms. Simone asked Mr. Bartlett if Commission members could come to the property to take a look (he nodded in agreement).**

Commission discussed what day and time a field trip could be arranged; and if they should see it in the rain or when it's dry.

Mr. Norback asked if there was an area that staff was particularly concerned with that might need controls right off the bat – he said in one of the pictures there was an area that showed a lot of siltation.

Dr. Dimmick said any place there was activity and where earth was moved you're going to want to have some kind of controls put up.

Mr. Norback said he was wondering if in the area the outlet was stopped - are they getting erosion in the direction of the culvert.

Ms. Simone explained to Commission what she observed during the site visit and that she said saw free flowing water from the pond from the trench – it was carrying sediment; it will certainly be carrying sediment now that its mounded up.

Mr. Norback stated that's why he needs to see it; he's wondering if that's headed towards a sensitive area or not.

Dr. Dimmick said it's headed towards the neighbors.

Ms. Simone said it goes under the driveway and that she didn't know where it goes from there.

Mr. Bartlett said if you look at the first page where it says drainage swale –not a watercourse – he said he spoke with his two neighbors and there are all rocks and pipes – their pipes – his pipes and they all come out naturally.

Ms. Simone said so it day lights in his yard.

Mr. Bartlett said it daylight in his yard – correct; and there's a swale between the front two properties – he said he guessed there was an overflow of the pipe and in the spring time that overflow would flood his neighbor to his right facing his driveway – in the springtime - he said the yard would flood because of things being done prior to him moving there – it would go over his driveway into the drainage swale; and the reason this would happen was because the pipe under his driveway was crushed - it was a concrete pipe - and they have pictures of it – the reason why they changed that pipe was that when they were doing construction on his house – the sewer pipe was crushed because that pipe was crushed because that pipe goes directly under the sanitary line; the sanitary line was collapsed when he purchased the house -it was backing up into the house – the line down the driveway.

Mr. Bartlett said at the time they cut the driveway he replaced the old concrete drainage pipe with a plastic pipe so it didn't happen again.

Mr. Norback said the only reason he brings this up is if the siltation is headed to a sensitive area – even to the town’s storm sewer system he didn’t know if it was even worth addressing before the actual corrective order was issued – even if it was offered as a suggestion – he didn’t know not having seen the site.

Mr. Bartlett said on the second page – we filled in approximately what the first page is requiring – that fill - if it rains – it looks like muck – its green – that’s where the sediment is going to go; and Susan (Suzanne - staff) has us not that from draining into the drainage system by having us put the material back where the outlet was and that’s what we did so if it does rain its basically going to go into that little ponded area.

Ms. Simone commented about the soil going into the excavated trench – that’s loose and when rain hits that it’s going to go into the stone trench and that would go under the driveway.

Mr. Norback said that was his concern – he wanted to make sure that it ultimately wasn’t ending up in a sensitive area.

Ms. Simone asked if he (Mr. Bartlett) had silt fence available that he can put that across the trench and pull that soil back.

Mr. Bartlett stated yeah – he could do that – it’s not a problem.

Mr. Norback said it’s more of a request than anything but he thought it was prudent.

Ms. Simone said if he could do that now so they didn’t get calls from neighbors about loose soil getting into their yards.

Dr. Dimmick said they still have the question of setting fieldtrip.

There was discussion regarding the timing of the field trip and that 24-hour notice was required to notice the field trip.

A fieldtrip was set for Saturday, February 24, 2018 at 9:00 am.

Mr. Bartlett agreed that date and time was okay.

Mr. McPhee said and he didn’t know who could answer this – if Mr. Bartlett or staff could research this for us – one of the things he said Mr. Bartlett said there was this pond has an overflow that was previously installed prior to him purchasing the property.

Mr. Bartlett said yeah there was a pipe coming out of there.

Mr. McPhee said so that’s been put in – he asked if there was any other regulated activity going on – was this pre-regulation or was

this part of the development going on or part of the sub development plans.

Dr. Dimmick talked about the history of this area and said at one time there was an entire wilderness area full of Cat Briar and Multiflora Rose and intermittent swamp puddles; he said there was more than that one pond there were a few others in there.

Mr. Bartlett said in Mr. Miele's yard there was a pond in front of his house he was told.

Ms. Simone stated she did not see documentation for a permit to allow for an outlet structure.

Mr. Norback said he thought that was what Will was addressing.

Mr. McPhee said it could have been something done (before or pre-regulations).

Dr. Dimmick said it was not there in the 1970s.

Mr. Norback said he could tell from the material it was not there in the 70s.

Ms. Simone said perhaps it was just maintained.

Mr. McPhee said if he (Mr. Bartlett) built this house or was it preexisting.

Mr. Bartlett said he gutted it and added on to it.

Mr. McPhee said so in the originally development there's no record of any of that – no drainage pipe – no nothing.

Dr. Dimmick said he was trying to remember the original plan that came before us to build that and there were at that time restrictions not to do anything with the pond – he let them get fairly close to the pond in building the original house rather than he the original normal 50' set back – it thought they let them have a 30' setback or something like that.

Ms. Simone said she'd have to research that because she didn't see any records.

Mr. McPhee said it actually shows 39' from the edge of the pond based on the original drawing he submitted; he asked what year the house was built.

Mr. Bartlett said he believed the 50's.

Dr. Dimmick said okay he was (maybe) thinking they did a modification in there.

Ms. Simone said there was something that came before the Commission for a determination for the garage addition and the Commission found there was no permit needed for that - because he was maintaining the distance between the yard and the pond and he was not proposing anything else.

Mr. McPhee said that was around the same time as his application or just prior to.

Ms. Simone stated yes – correct.

Mr. Bartlett said he had a question on the first page where it says drainage swale - he said his neighbor to the left front – Mr. Fowler – he's second generation and he grew up in the house and he's in his 50s now and lives there was his kids – he said that the drainage there that goes from his (Mr. Bartlett) property to Mr. Fowler's property to his neighbor to the left has been like that since he's lived there 50 years – he said they said the never had any issues where his year was flooding out.

Mr. Norback said he was just concerned where the siltation was going to end up now; he said he thought he knew the swale that was there between the properties.

Mr. McPhee asked if that overflow pipe was not there which he believed drained towards Miele's property –where is the next lowest point.

Mr. Bartlett said what happened was when that was clogged - under the driveway – it flooded Mr. Miele's yard and getting into this house.

Mr. McPhee said so the overflow pipe went under the driveway into the swale area.

Mr. Bartlett said that pipe was crushed for who knows how long and under that his sewer pipe was crushed.

Mr. McPhee said so all good things to look at on (the field trip; the thanks Mr. Bartlett for being agreeable to putting that silt fence up before the rain.

The fieldtrip was confirmed for Saturday, February 24, 2018 at 9:00 am at 358 Cornwall Avenue.

Mr. Bartlett asked about Dr. Dimmick mentioning something about hiring a lawyer – is there some reason why he should hire a lawyer and not represent himself.

Dr. Dimmick said only in terms of if there's any question in terms of our right to regulate what you are doing – when we make our final determination we issue a corrective order – that if you have any questions what we will be ordering you might need a lawyer to explain that to you.

**IX. UNFINISHED BUSINESS**

**1. Potential Addition/Modification to IWWC Fee Schedule**

Dr. Dimmick said since the last meeting staff has been very active in pursuing this item and that she was just coming from a town council meeting on what we can do along this line.

Ms. Simone as far as permit after the fact – she and Kerrie did attend a meeting of the ordinance committee of the town council before our meeting tonight to discuss with them the discuss of the Commission at the last meeting to go with the standard application fee plus 200% and the justification was explained to them for that fee; that it was not a penalty but to close the gap on the disparity of the straight forward application and permit under the fact – under the current fee schedule actually costs less than the straight forward application; the committee asked to see further information – they wanted to see a comparison of other towns in Hartford county – in Simsbury, Glastonbury and Avon – the reason for that was that a lot of times they compare what goes on in Cheshire as far as fee schedules with those communities – there was some concern the information sent from Connecticut Council of Municipalities was from Fairfield county which is a different demographic than Cheshire and the communities the compare Cheshire to.

Ms. Simone said that is something that would be ongoing. She said she did speak to the town attorney relative to the permit after the fact proposal and he thought he best approach was to have a straight forward fee as opposed to sliding fee schedule which some other towns have; he also said its well within the Commission's bounds to add this to the fee schedule; she did speak to him about the other issues relative to wetland impacts, violations and inspection fees - more research will be required on staff's part and they'll work back and forth with the town attorney and bring something back to the Commission.

Dr. Dimmick said they could do these items in pieces.

Ms. Simone said yes and the town attorney wanted to move forward with the permit after the fact; that it was discussed at the last meeting and the Commission was in agreement on it; and get it before the ordnance committee before budget talks took place.

Dr. Dimmick thanked Suzanne for following through on this item.

**Ms. Simone also thanked Kerrie for coming to the meeting tonight to share the Commission's opinions on these items.**

**X. NEW BUSINESS**

**There were no new business items.**

**XI. ADJOURNMENT**

**The meeting was adjourned at 8:08 pm by consensus of Commission members present.**

**Respectfully submitted:**

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