

**CHESHIRE INLAND WETLANDS AND WATERCOURSES COMMISSION
REGULAR MEETING
THURSDAY, NOVEMBER 5, 2015
TOWN HALL 84 SOUTH MAIN STREET
COUNCIL CHAMBERS AT 7:30 P.M.**

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

Members Absent: Robert de Jongh and Dave Brzozowski.

Staff: Susanne Simone.

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 in attendance were Charles Dimmick, Kerrie Dunne, Earl Kurtz, Will McPhee and Thom Norback.

IV. DETERMINATION OF QUORUM

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

V. APPROVAL OF MINUTES Regular Meeting on October 20, 2015

Motion: To approve the minutes of the October 20, 2015 regular meeting with corrections.

Pg. 1 L24 “receipted” to “recited”; pg. 4 L15 should read “hasn’t been”, and L26 “has” to “has not”; pg. 5 L48 “elevation” to “evaluation”; pg. 7 L24 “doesn’t give” to “gives”; pg. 17 “Loden” to “Logan”; pg. 19 L20 delete “fandom”, and change “that” to “that fill”.

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

VI. COMMUNICATIONS

Dr. Dimmick reviewed the following communications:

1. **Engineering Comments Re: Permit #2015-032, 762 & 764 Allen Avenue
Proposed private drainage installation**

This communication was reviewed.

2. **Engineering Comments Re: Permit # 2015-033, 456 East Johnson Road
Grading and Stabilization**

This communication was reviewed.

3. **The Habitat, CACIWC Fall 2015 Newsletter Volume 27, Number 4
(To be handed out at meeting)**

This communication was handed out at the meeting.

4. **RWA Correspondence Re: 764 Allen Avenue**

This communication was reviewed.

5. **Staff Communication Re: Permit #2015-034
Jason Bartlett, Partial Filling of Pond**

This communication was reviewed.

Ms. Simone stated the following two communications were handed out at tonight's meeting:

6. **RWA Comments for 456 East Johnson Avenue**

This communication was reviewed.

7. **Letter from the Attorney representing CK Green Houses**

This communication was reviewed.

VII. INSPECTION REPORTS

1. Written Inspections

Ms. Simone stated there were no written inspections.

2. Staff Inspections

a. Summit Road

Ms. Simone said there was a staff inspection with Dr. Dimmick on the property on Summit Road that was the subject of the show cause hearing last week.

VIII. ENFORCEMENT ACTIONS

- 1. Notice of Violation** **SC 1/07/14**
Mr. Nathaniel Florian **Permit #2013-015 compliance date: 12/31/15**
Woodruff Associates
Unauthorized Activities in the Upland Review Area/Inland Wetlands
108 Blacks Road
Assessor's Map 19, Lots 43 & 44

Dr. Dimmick stated this item is kept on the agenda until we have completion of the request in the compliance order.

- 2. Notice of Violation** **SC 05/19/15**
Mr. Charles Kurtz **SC 06/02/15**
SC 06/16/15
SC 07/07/15
Unauthorized Activities in an Inland Wetland and Upland Review
Area
East Johnson Avenue
Assessor's Map 12, Lot 2

Dr. Dimmick stated this item is subject of a permit application under unfinished business.

- 1. SHOW CAUSE HEARING**
Notice of Violation **SC 09/15/15**
Mr. David Flanagan **SC 10/20/15**

**Unauthorized Activities in an Inland Wetland and Upland Review
Area
Summit Road
Assessor's Map 32, Lot 50**

Mr. Flanagin was not present at tonight's meeting.

Dr. Dimmick explained he and Suzanne did go out to the site with the owner's permission and did a field inspection of this property yesterday.

Ms. Simone said handed out to Commission members tonight is a summary of what was found at the property inspection yesterday.

Ms. Simone stated there are no applications that have been submitted to the town for this property so we do not have any historical documentations of a wetland delineation of the property so we then used the official town soils map which indicated that a majority of the property is an Adrian muck soils.

Ms. Simone said when she and Dr. Dimmick went out there yesterday, Dr. Dimmick did look at some of the soil and it does appear there is some fill in some areas and is likely that it has been there for a while.

Ms. Simone stated it would be beneficial for a soil scientist to go out to the property and map where the wetlands are – there are streams through the property; walking the property that follows the stream that runs north south on the property they did find an area that has been cleared so trees were cut and there's stock piling of tree trunks and limbs; the stumps have remained in place but it is evident that there has been clearing on the property; she said in this area it's very likely that a soil scientist may find that there are no muck soils directly in this area but this was right along the watercourse where it then does quickly turn into the muck soils.

Ms. Simone said we haven't received nor did the Commission really ask for in detail to the property owner to get a map locating where they plan on conducting work – she said she believed they were just attempting to clear then we are going to come up with a plan to see how things went but it does appear as though on this property you could quickly go wetland to possible upland soil so it really would be beneficial for the property owner to know where the wetland soils are as well as this Commission to be able to tell which activities would be regulated depending on the soil type.

Dr. Dimmick said to add to that he tried to figure out the age of the various fills on this property and some of them go back at least 30 years well before the present owner and looking at tree growth – based on tree growth in the fill – the fill varies all over the place and almost clean reddish sand which is obviously not wetland to boulders as much as 2.5' in diameter and chunks of concrete and over a very short distance you are doing from one type of fill to another type so it's very complex and very irregular.

Dr. Dimmick said his actual judgment of some of the trees that were cut were in the fill and not in the wetland but you are within 10' of obvious wetland at places so there's no way the present wetland boundary would match the soil map that we have which is probably accurate when it was made back in the 1960s maybe even earlier – some of the maps for that area go back to 1958 that the soil map was based on; as to when the fill went in there again he would prefer the judgment of a certified soil scientist to make a closer approximation.

Dr. Dimmick said just as an aside if anyone is trying to grow Christmas trees among those rocks they are going to have problems.

Mr. Norback said that's exactly to his point – if the property owner was sincere in wanting to become a farmer and if there's a plan being generated or do we need a plan generated to act continue to act upon this or are we reacting to some clearing that was done in an unknown unidentified area.

Ms. Simone said there is no request for determination for agricultural use that was something that was something mentioned as a result of a neighbor complaint but there was clearing on the property and the investigation found that he has cleared so he's not asking this Commission at this point for a determination he was issued a cease and desist order to stop cutting and it was at that time when he mentioned agricultural use which he then discussed further with trees and ferns but no plans have been submitted.

Mr. Norback said if he agreed to stop clearing does it just die on the vine.

Dr. Dimmick said we still have the show cause hearing open there – he has a cease and desist and shouldn't be doing more cutting until and unless he comes to us for agricultural purposes that's the sort of thing that we could give an approval for but we don't know and the other factor is we really don't know where the unfilled wetland

boundary line is at this point; it's not up to us to make that determination and before we do anything else we'd need a revision of our soil map – our soil map is what we are bound unless evidence is produced to indicate it needs to be modified.

Mr. Norback asked if he (Mr. Flanagin) just abated the activity and took the brush out of there or didn't what would then happen to the show cause hearing.

Ms. Simone stated Mr. Flanagin was not expected at tonight's meeting.

Ms. Simone stated the Commission would have to make a determination whether they want to require remedy to have him (Mr. Flanagin) replant or have him come up with a plan on how he's going to restore the area or the Commission could find that he was in violation, close the public hearing and allow the cease and desist order to still stand which means he is not allowed to continue clearing anywhere on the property until he gets his information together and gets a soil scientist and gets a plan and comes before the Commission and seeks permission.

Dr. Dimmick said there's a possibility that with a boundary of the soil boundary map in front of us; we could decide that if no further work goes on the amount of damage was insignificant because he did not see cutting that he could say was actually in a wetland area.

Mr. Norback said he guessed that was his point.

Dr. Dimmick said we don't have enough information that's the main problem; it's one of several things for us to decide - we don't have enough information for us to decide.

Mr. McPhee asked if we were going to ask the property owner at a considerable expense to hire a soil scientist just to come in and do that.

Mr. Norback said that is what he was struggling with – just because a neighbor drops a dime he has to spend his money.

Ms. Simone said if this person wants to come forward with a plan she thought it would be in his best interest to know what the soil types are on the property so he knows what would succeed as far as his agricultural use; right now he doesn't have that information or at least he hasn't expressed that he has that information and the only information we have shows that it's a muck soil which is going to be

very difficult to grow anything even access the area and when she and Charles were out there considering how dry it is has been there was a stream that was flowing.

Dr. Dimmick said and there were some very shallow ponds.

Ms. Simone said much of the property is going to be very wet in regular seasonal conditions.

Mr. Norback said it seems like he (Mr. Flanagin) had the agricultural calling in the midst of this.

Dr. Dimmick said he'd hate to draw a conclusion based on what little information that we have; the most obvious thing is we lack information.

Dr. Dimmick said his suggestion is to instruct staff to communicate with Mr. Flanagin and see where he wants to go and what he is willing to do before we go further.

Mr. Kurtz asked if the cease and desist order was in effect.

Dr. Dimmick said the cease and desist order is in effect.

Ms. Simone said as far as the cease order the Commission either elect to close or keep the show cause open – the advantage of keeping the cease and desist order is that if he does continue clearing this enforcement tool is already in the works; if the Commission was to rescind this and then he resumes clearing then the Commission would have to start from the very beginning and issue an new order and all the time period that goes with it.

Ms. Dunne asked if there was an expiration date on this.

Ms. Simone stated no.

Ms. Dunne said one clarification from the pictures it looks like the trees were actually but.

Ms. Simone stated yes.

Ms. Dunne said that is a little bit different then what the testimony was when he appeared before us.

Dr. Dimmick said he was dating the clearing as being in the spring based on the fact the stumps have resprouted and looks like there is 3 or 4 months growth around the base of the stumps.

Ms. Simone said the show cause hearing can remain open and in the meantime she can communicate with Mr. Flanagin and ask if he has any additional information to share with the Commission.

Dr. Dimmick said that explains what we found there (on the property).

Mr. Kurtz said and to remind him that until something is decided he's not to be clearing.

IX. UNFINISHED BUSINESS

1.	Permit Application	APP	2015-032
	Thomas & Gail Larson	DOR	10/20/15
	Allen Avenue		
	Site Plan - Drainage Work	MAD	12/24/15

John Friez, from Baillie and Hershman, 290 Highland Avenue in Cheshire was present on behalf of the applicant.

Thomas Larson of 762 Allen Avenue was present.

Mr. Friez said at the last meeting he presented the map and had some discussion on the proposed drainage pipe and there had been a request for some further information at the outlet of the pipe.

Dr. Dimmick said and you did submit a revision of the map that showed an inset and detail of the outlet.

Mr. Friez stated yes.

Dr. Dimmick said his understanding is the ground is very close to being flat in that area.

Mr. Larson said there's a gentle slope.

Dr. Dimmick said staff has a copy of the revised map.

Commission members reviewed the revised map.

Dr. Dimmick said our concern is without that information they wanted to make sure it wasn't going to be out letting in such a way that causes a possible erosion problem; the inset shows the slope being very gentle and there is a proposed splash pad at the end of the outlet which is still outside the actual wetlands although it's within the wetland setback area.

Mr. Norback said it shows its location more than the construction; he reviewed the elevations. He said he was surprised they didn't have a rendering of it; he said he's sure its fine.

Mr. Larson explained they would use 6" or 1/2" to 3/4" stone underneath and on top of that would be 6" of modified rip rap between 2" and 4" to eliminate any erosion; its 4" pipe.

Mr. Kurtz asked if the town had any comments.

Ms. Simone stated the engineering department reviewed it but did not have any comments.

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 both permit-after-the-fact for a sump pump drain pipe installation, and extension with new outlet to a portion of the existing drain pipe.
2. That the town soils map locates the proposed work to be located within the upland review area of a watercourse.
3. That the proposed work is to be conducted by hand excavation. The Commission did not review a request for the use of heavy equipment for the execution of this proposal.
4. That the site plan depicts the down gradient elevation from the pipe outlet to the watercourse.
5. That the Regional Water Authority and the Cheshire Engineering Department have reviewed this application.

6. 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 #2015-032, the permit application of THOMAS & GAIL LARSON for site plan approval as presented and shown on the plans entitled:

**“Property Survey
Proposed Easement Over #764 in Favor of #762
Prepared for Mark E. Wagner and Thomas and Gail
Larson
762 & 764 Allen Avenue, Cheshire, CT
Scale 1”=40’
Dated August 24, 2015; Revised October 27, 2015
Prepared by Harry E. Cole & Son, Plantsville, 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. Prior to any clearing, grading, or other activities associated with this permit, the applicant shall accurately stake and/or flag the work area.
4. The hand excavation and backfilling of the drain pipe trench is limited to be conducted during dry conditions during the months of June through September.
5. 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' if 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.

6. This permit grant shall expire on November 5, 2020.

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

2.	Permit Application	APP	2015-033
	CK East Johnson North, LLC	DOR	10/20/15
	456 East Johnson Avenue		
	Agricultural Use	MAD	12/24/15

Attorney Anthony Fazzone and Severino Bovino, of Kratzert and Jones were present on behalf of the applicant.

Attorney Fazzone addressed the Commission. He said at the conclusion of the last meeting the Commission was waiting for comments from the engineering department – they've been received – the applicant's reviewed them and he submitted a letter which was distributed this evening saying the applicant is willing to comply with all the recommendations.

Attorney Fazzone said one of the recommendations involves some placement of some crushed stone and rip rap along a certain portion of the wall and he'll ask that Sev Bovino to briefly explain that.

Mr. Bovino stated on October 29, 2015 the engineering department generated memoranda with six items on the list – he said he understands the applicant has agreed to comply with all the items – one in particular that needed to be indicated on the map was item number 4 – on the wall here in the center of the wall they discovered an area that needs to be addressed and the propose is to place crushed

stone at the base of the wall. He described the process to lay the crush stone, stone, rip rap and silt fence and filter fabric as detailed on the map.

Dr. Dimmick said this is to provide additional support at the point the engineering department felt the wall could either move or tilt.

Mr. Bovino said this is not to support the wall it's to prevent the erosion from moving through the wall and downstream from the wall; the applicant has agreed to monitor and provide an as-built of the wall as they go along; he comments about possible causes for the concern for the wall support; there is concern about water carrying silt through the wall; the area is outside of the upland review area.

Mr. Bovino said the details have been provided.

Mr. Norback said during the original placement of those blocks were those voids left in order to provide some kind of a weep or did that just happen.

Mr. Bovino said no it's just that concrete blocks don't have a perfect face so you have an inch or two of an opening.

Dr. Dimmick asked staff if engineering was satisfied with the modification.

Ms. Simone said she hasn't gotten a written response back from them but she believed this sort of provides for what they had recommended in their comments.

Dr. Dimmick said they'll instruct Suzanne to move ahead with a draft motion for the next time.

X. NEW BUSINESS

1.	Permit Application	APP	2015-034
	Jason Bartlett	DOR	11/05/15
	358 Cornwall Avenue		
	Partial Filling of Pond	MAD	1/09/16

Ms. Simone said the application was received and was just a basic application; they didn't submit their site plan and additional information – they plan on having that completed for the next meeting.

Dr. Dimmick said if the Commission wanted to see the site should they wait first to see the site plan.

Ms. Simone said she believed so – yes so the Commission could get a clear idea of what’s proposed.

Dr. Dimmick said they had a previous application on this property and they issued a de minimis action saying what was previously done was not of significance but this is different; they have to see what’s going on here.

This item was continued to the next meeting.

XI. ADJOURNMENT

The meeting was adjourned at 7:59 pm by consensus of Commission members present.

Respectfully submitted:

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