

**CHESHIRE INLAND WETLANDS AND WATERCOURSES COMMISSION
REGULAR MEETING
TUESDAY, MARCH 6, 2018
TOWN HALL 84 SOUTH MAIN STREET
COUNCIL CHAMBERS AT 7:30 P.M.**

Members present: Robert de Jongh, Charles Dimmick, Dave Brzozowski, Earl Kurtz, Kerrie Dunne and Thom Norback.

Member not present: Will McPhee.

Staff: Suzanne Simone.

I. CALL TO ORDER

Chairman de Jongh 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 Robert de Jongh, Charles Dimmick, Dave Brzozowski, Earl Kurtz, Kerrie Dunne and Thom Norback.

IV. DETERMINATION OF QUORUM

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

V. APPROVAL OF MINUTES Regular Meeting – February 20, 2018
Site Walk – February 24, 2018

Chairman de Jongh called for a motion to approve the regular meeting minutes from the February 20, 2018 and the site walk minutes from February 24, 2018.

Motion: To approve the regular meeting minutes from February 20, 2018 with corrections: pg. 2 L40 “inquiring” to “inquiry”; pg. 12 l21 “discuss” to “discussion”, L25 “under” to “after”, pg. 26-27 “costs” to “costs the applicant” less, L34 “the” to “they”, L39 “he” to “the”; and the site walk minutes from February 24, 2018 with no corrections.

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

VI. COMMUNICATIONS

Ms. Simone reported there were no communications.

VII. INSPECTION REPORTS

1. Written Inspections

Ms. Simone reported there were no written inspections.

2. Staff Inspections

a. Cheshire Academy

Ms. Simone reported there was a staff inspection of the Cheshire Academy site. She reported the site is well stabilized.

b. Downed Trees

Ms. Simone stated that after the last storm, staff received a lot of inquiries about downed trees in wetlands so there's been a lot of activity (clean up) which is allowed as a matter of right.

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

Chairman de Jongh stated this item remains on the agenda for continued monitoring.

- 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

Chairman de Jongh stated this item would remain on the agenda for continued monitoring.

- 3. 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**

Chairman de Jongh reported there was a site walk that took place on February 24, 2018.

Chairman de Jongh asked if anyone wanted to provide any comments on the record about the site walk.

Mr. Norback stated the only note he'd make it's that it (what he saw) was egregious.

Mr. Kurtz said he wasn't there but he agreed (with Mr. Norback); just reading about it it's pretty obvious what happened.

Mr. Kurtz asked what was the protocol for ignoring a decision – it's not violating the regulations – its ignoring a decision. He asked if the property owner received a registered copy of the 2016 denial decision.

Ms. Simone stated yes - it was received; and the card came back with a signature.

Mr. Kurtz said so it's clear what happened – he said he hasn't been on the Commission as long as some of the other people have but in his opinion, this shouldn't be handled the same as violating the regulations by not getting a permit or getting approved for something and going astray from the line that was drawn.

Dr. Dimmick said it's deliberately doing what he was told not to do.

Chairman de Jongh said the draft motion from staff addresses what the applicant is to do next, the corrective order details the restoration and return of the site to its original pre-construction condition.

Ms. Dunne said she thought what Earl was asking – was there something more than that (that we can do) within our regulations when something is a willful violation of a decision of this Commission.

Dr. Dimmick said we don't have the authority to issue any punitive damages we can get full restoration back to its original condition but there's no authority for punitive damages.

Ms. Simone explained if the order is ignored then it would go to the town attorney for further action.

Mr. Kurtz asked about going to the town attorney now or the town council.

Ms. Simone said she has spoken to the town attorney and that this is the first step – that the Commission would order a correction order with conditions that the Commission wants, a set and established time frame then if that's not complied with it will go to the town attorney for further legal enforcement.

Mr. Norback commented that at this point we need to see what will happen after we issue the corrective order.

There was discussion regarding the property owner responding to the corrective order; and if he didn't this would get turned over to the town attorney then this would get turned over to the town attorney; this is the first step.

Mr. Kurtz said he still has a problem with a person who had a denial and still deliberately did work on the site after he was denied his permit; he said he had a hard time understanding why that's not different and not subject to a different consideration.

Ms. Simone said there's no requirement or structure in the local regulations that call for penalties; and in speaking with the town attorney this is the best first step where the Commission documents what the Commission wants to see as an outcome then if he doesn't follow through on this it will go to the town attorney then through the court system.

Dr. Dimmick said the court system is the only place any kind of penalty could be assessed.

There was discussion regarding the date of the report from the engineer. It was agreed that by April 17, 2018 a licensed professional engineer shall provide the Commission written certification that issues 1-4 listed above have been completed as ordered.

Mr. Kurtz asked if an engineer was on this previously.

Ms. Simone said there was not.

Commission members reviewed the corrective order

Corrective Order:

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 on March 1, 2016 the Commission denied the application to fill in a portion of the pond, on the east side of the house and driveway at 358 Cornwall Ave.
5. That on February 9, 2018 Staff observed the disturbance of soil via excavator, which was in use at the time, in the area of the wetland (pond), upland review area and intermittent watercourse.
6. That on February 13, 2018 a Notice of Violation/Cease and Desist Order was issued to Jason Bartlett, property owner, for the violation of IWWC regulations for regulated activities conducted without the required review and permission of the Cheshire Inland Wetlands and Watercourses Commission.
7. That on February 16, 2018 a revised Notice of Violation/Cease and Desist Order was issued to Jason Bartlett, property owner. This revised order included the cease and desist of draining of the pond.
8. That on February 20, 2018 a Show Cause hearing was held, and the cease and desist order upheld. The record of the February 20, 2018 is incorporated into the record of the findings of this corrective order.

9. 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 and restoration of original conditions.

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. By April 2, 2018 the fill that was placed within the pond, without the required review and permit, shall be removed and the pond shall be restored to “existing pond” dimensions documented in the July 10, 2015 “property survey” drawing by Meyers & Associates.
2. By April 2, 2018 the fill soil shall be removed from the pond and shall either be relocated off the property or stockpiled and secured with silt fence, haybales and seeding and stored no closer than 25 feet from the edge of the pond and the drainage swale.
3. By April 2, 2018 the pond outlet pipe shall be reinstalled at the prior height, allowing for controlled release of water from the pond into the drainage swale.
4. By April 2, 2018 the graded soil comprising the lawn area shall be seeded with appropriate seed mix and be monitored and maintained to ensure seed germination and establishment of lawn.
5. By April 3, 2018 the property owner shall provide the Commission written confirmation that issues 1-4 listed above have been completed as ordered.
6. By April 17, 2018 a licensed professional engineer shall provide the Commission written certification that issues 1-4 listed above have been completed as ordered.

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

IX. UNFINISHED BUSINESS

1. Potential Addition/Modification to IWWC Fee Schedule

Chairman de Jongh said there's been discussion with members of the town council who deal with these types of fee schedules and they are still gathering some information for their review.

Ms. Simone said she is working on gather information from the towns she was told to compare; she will be reaching out to those specific town to get the fee schedules. She noted that the Commission voted on the fee structure for after the fact permits application fees and that now has to go to the ordnance committee because they approve and set fees.

There are certain towns that the town council compares Cheshire to and they want to see information regarding their fees.

Chairman de Jongh commented about the need for the town council to realize our fee structure is out of whack and move forward on that (making changes to the fees); the Commission can only use the fees they have in place.

There was discussion about the current fees and fees charges by comparable towns; and fees after the fact fees charged.

Commission members expressed concerns about the current fee schedule and the need for some fees to increase.

Ms. Simone said she is looking into other towns' fees and after the fact fees; this information will be provided for review.

X. NEW BUSINESS

There were no new business items.

XI. ADJOURNMENT

The meeting was adjourned at 7:50 pm by consensus of Commission members present.

Respectfully submitted:

Carla Mills
Recording Secretary
Cheshire Inland Wetland and Watercourse Commission