

**CHESHIRE INLAND WETLANDS AND WATERCOURSES COMMISSION
REGULAR MEETING
TUESDAY, MARCH 19, 2019
TOWN HALL 84 SOUTH MAIN STREET
ROOM 207/209 – 7:30 P.M.**

I. CALL TO ORDER

The meeting was called 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, Kerrie Dunne, Earl Kurtz and Thom Norback. Staff: Suzanne Simone. Members not present: Will McPhee and Dave Brzozowski.

IV. DETERMINATION OF QUORUM

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

V. APPROVAL OF MINUTES – Regular Meeting – February 19, 2019

Motion: To approve the minutes from the February 19, 2019 regular meeting with no corrections.

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

VI. COMMUNICATIONS

Ms. Simone reviewed the following communications:

1. Cease and Desist Order, 569 Cornwall Avenue
2. Staff Communication Re: Request for Determination #2019-004 and Application #2019-004, Route 70 to Reservoir Road, Forestry
3. Staff Communication with Attachments Re: Application #2019-005, Site Plan, Beachwood Court

VII. INSPECTION REPORTS

Ms. Simone reported on the following:

1. **Written Inspections – None.**
2. **Staff Inspections**
 - a) Staff inspection of the Clearview Subdivision on Mountain Road which was previously approved by the Commission; there was an inspection of the way the road was being installed; erosion controls were put along the wetlands; and there were additional site inspection of Lot 8 and Lot 9.
 - b) There was an inspection of a complaint having to do with a tributary to Cuff Brook which goes to the Ten Mile River; it had to do with a neighbor who cut braches and put them along the stream – blocking the stream causing the stream to change course. Ms. Simone stated she would be contacting that person.
 - c) Ms. Simone reported today, they received notification of a property on Peck Lane which was previously approved by this Commission to allow for a single family house surrounded by wetlands; the house is located within the upland review area and wetland basically touches the edge of what the Commission allowed to be lawn; a split rail fence was instructed to be installed around the house which was installed and today someone was there clearing – cutting down trees; she spoke with the property owner who said he had intended to expand his lawn; so there is further investigation – there is a conservation easement on that whole wetland area so that is something that would be coordinated with the town attorney to further discuss what those steps are; a show cause hearing will be noticed and set in time for the next meeting.

Mr. Norback asked if the trees were cut using equipment or were the tree cutters on foot (in the wetlands).

Ms. Simone reported there was equipment in the wetland area.

VIII. ENFORCEMENT ACTIONS

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|---|----|---------|
| 1. 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 they received the second payment which was stipulated in the court order; so, once that is complete the Commission could entertain the release of the order.

2. **SHOW CAUSE**

Notice of Violation/Cease and Desist Order
Violation of IWWC Permit #2019-001
Ed Barnett
569 Cornwall Avenue
Assessor's Map 63, Lot 66

SC 3/19/19

Ed Barnett of 569 Cornwall Avenue was present. Gaye Siniscalco was also present.

Ms. Simone explained this property received approval in February 5, 2019; the approval stipulated that the construction sequence would be strictly adhered to; the construction sequence is mentioned in the approval; it is mentioned as a separate document and is also incorporated in the site plan itself.

Ms. Simone explained the notice was sent out to the permit holder by certified mail; and on February 14, 2019 Mr. Barnett from House to Home came into the planning office to submit the zoning permit; at that time we hand delivered a copy to him (the approval); in the past certified letters have gone unanswered and were received back in our office (and on other matters); when in the office he (Mr. Barnett) received a copy of the permit and she discussed that he should read through the permit and that we would need have a 'pre-construction meeting'; then she did receive later on an email from Mr. Barnett indicating that he was interested in looking to clear the property – she responded to the email saying 'that he needed to have a pre-construction meeting – post a bond – have the limit of clearing staked – and have a letter from the engineer' - she didn't hear back from that email; the next day she sent another email attaching what the bond calculation was along with bond forms; then that next day Mr. Barnett came to the office to purchase the markers and he had indicated that he went ahead and cleared the lot – without having the 'preconstruction meeting' which was all stipulated in the construction sequence what was worked out with Mr. Barnett and his engineer had discussed at length and did staff as well as di the Commission that there would be a 'pre-construction meeting' – that the bond would be posted – and they would get confirmation from the engineer regarding the clearing limits.

Ms. Simone received confirmation from the engineer regarding clearing limits but the other (required) work was not done; she explained in the office she had a conversation with Mr. Barnett

that (work) was done out of sequence; he then took the bond forms and submitted the bond later on that day but at this point the lot was already cleared; when she went by the property the erosion controls were not up – the woody debris that was cut was actually chipped on site which was not mentioned in the sequence or in discussion with the Commission so the chipping was done again, without the erosion controls in place.

Ms. Simone received notice from Mr. Siniscalco on Monday that the silt fence was up and ready to be installed; she did take pictures yesterday.

Staff reviewed the pictures with Commission members showing the silt fence, the area that was cleared that seems to be in keeping with what was on the approved plan; the silt fence and hay bales behind it – behind the hay bales are stakes with pink ribbons and ribbons read ‘clearing limit’; some of the woody material is stacked in that area; looking at the plans it does show that the hay bales were to be in front of the silt fence and perhaps that would stop the sediment from going towards the wetland area; the plan also shows (on the section of the plan handed out) the split rail was to go in the area where the hay bales are currently – so she believed the hay bales would have to be moved to get that fence in; and the third phot shows the wood chips that area on site that were not mentioned or that was something that was planned to be done so she does not know if they plan to remain on site or what the purpose of that is.

Ms. Simone explained this afternoon they received something from their (Mr. Barnett’s) engineer that they went out and took a look at the silt fence and the silt fence extends a little bit further towards Cornwall Avenue than originally approved which is true – they added a little bit more length of silt fence – they don’t make mention of the hay bales or the location of the split rail fence or the hay bales in the area – they just comment that the hay bales are up as well as the silt fence.

Chairman de Jongh stated to Mr. Barnett that he wanted to express his frustration - he talked about other issues the Commission has had with Mr. Barnett where the Commission had to bend over backwards after the fact to make sure they satisfied what he was intending to do as well as satisfying the desires of this Commission. He said they tried to be pretty clear as to what they expected – there was an overabundance of attempts to convey to him (Mr. Barnett) what it was that they wanted to have – the sequential steps that had to be taken in order to satisfy this Commission’s concern – both in writing and verbally and in meeting that have been had with staff and or this Commission.

Chairman de Jongh stated he was flabbergasted that we are at this point – that you (Mr. Barnett) went ahead and did clearing without having the meeting with staff – it's clearly laid out in the motion that was received by him (Mr. Barnett) – a copy of the decision by this Commission; he said comments were made that Ms. Simone did not reply to emails – he said if she did not act in her capacity as she should – she would have to answer to her boss and the town manager so her ability to respond to what she is expected to do are without question; he stated it was incumbent upon him (Mr. Barnett) to get together with staff to have this meeting before he started clearing.

Chairman de Jongh stated he is not happy – speaking for himself – he stated he did not understand why they are at this point – why we are having the same conversation now for the third time.

Mr. Barnett of 569 Cornwall Avenue handed out copies of the construction sequence to Commission members.

Ms. Simone asked if this was the same one that the Commission reviewed and approved.

Mr. Barnett stated it was exactly; he said as of today the first five aspects of the sequence are followed.

Mr. Barnett talked about other projects he did in town and wanted to focus discussion on this project.

Mr. Barnett explained he received the approval on February 14, 2019 – he said he did not understand – he asked what a 'construction meeting' and what it entailed.

Ms. Simone explained that he, Mr. Barnett, designed this (the construction sequence) with his engineer; if he was unclear as to what a 'pre-construction meeting' was that would have been the time to raise it; she said they have had a 'pre-construction meeting' in the past – they had one for Mountain Road.

Ms. Simone said as she explained in the email (which days after sending she received an email back stating the email box was full and it was not received); that the 'pre-construction meeting' was to sit down and go through the permit and at that time she would present him with the bond calculation – he would post that bond and they would get all that in place; they would have his contact information, they would know exactly would the time frame was; and how things would move along.

Mr. Barnett stated he asked for that meeting – he did not ask for a 'pre-construction meeting' in writing but said he did ask for one in

a phone call message – then changed that to in-person on February 14.

Ms. Simone and Mr. Barnett had discussion regarding his recollection of his request for a ‘pre-construction meeting’.

Mr. Barnett stated (in his opinion) he followed the (construction sequence).

Dr. Dimmick explained to him that he needed to have a ‘pre-construction meeting’ before he (Mr. Barnett) did any clearing – that was laid out to him very clearly in this meeting; he stated he (Dr. Dimmick) was here and heard those words stated to him (Mr. Barnett) when they were putting the permit together - so we are all witnesses to the fact that he was required to have a pre-construction meeting before he (Mr. Barnett) started cutting anything).

Mr. Barnett asked if all ‘pre-construction meetings’ have to be made in writing.

Ms. Simone stated no but from this day forward – she and Mr. Barnett would only communicate in writing; she disputed that Mr. Barnett asked verbally for a ‘pre-construction meeting’ because if he had - she would have scheduled it right then and there.

Mr. Norback said it was clear to everyone he (Mr. Barnett) needed a ‘pre-construction meeting’; that Mr. Barnett requested it – but did he have the construction meeting – so he (Mr. Barnett) should not have started the work without the meeting.

Mr. Barnett asked what he does from here.

Chairman de Jongh explained the Commission has several options – they have the power to revoke the permit – they have the power to suspend the permit – and staff has been in touch with the town attorney to find out where they have the most leverage as a Commission. He said they need to make sure the steps that this Commission tries to lay out to builders – that they follow the same procedures for everybody – and we clearly state this is what we expect to be done; he said he would recommend they suspend the permit so they have the total control over this and then work with the regulations and guidelines that are available to work with (Mr. Barnett) to get this thing moving along.

Ms. Simone explained if the Commission is interested in suspending or revoking the permit that is something that had to be noticed for a public hearing.

Commission members talked about the situation and about the sequence of events

It was noted by Mr. Norback the work is not that off track and they can work to get it on track.

Chairman de Jongh said item #8 talks about prior to the clearing of the property the installation of the split rail fence and installation of permanent markers installed – not only is the split rail fence not in but they have chipped materials on property – that was not part of the discussion; he said they would not be having this discussion if this was followed (the construction sequence) the way it was supposed to be followed; he said this is a conversation they have had all too often and how they (the Commission) has tried to bend over backwards to work with applicants which has gotten them in trouble.

Mr. Barnett talked about his integrity and how he was talked down to by town staff; he said when he attended what he thought was a ‘pre-construction meeting’ he was handed a cease and desist; he claimed he reach out to staff and left a message to schedule a meeting.

Ms. Simone said she did receive the message saying an email was sent; and replied to the email.

Mr. Barnett talked about the steps he planned on taking including installing the split rail fence and wetland markers, having the erosion controls in and that he was good.

Chairman de Jongh said the problem was the property was cleared prior to getting certified letter from his engineer and having a ‘pre-construction meeting’; those two things didn’t happen before the clearing.

Ms. Simone said an engineer’s letter was sent prior to the clearing saying they flagged the clearing limits – that was within the timeframe she tried to send an email saying they had to sit down – she read the text of an email sent about posting the bond and setting a pre-constriction meeting; this email was returned because the recipients (Mr. Barnett) email box was full.

Chairman de Jongh said we would not be having this conversation of the steps were followed that were outlined in the approval by this Commission; he said they need to adhere to those steps the Commission and the applicant approved when they finalized an application that’s before us.

Mr. Barnett said he would only communicate with Suzanne through email – only. He commented that he has integrity and he felt that was challenged.

Mr. Siniscalco said Bill, the town planner told Ed to go and put the silt fence in.

Chairman de Jongh said that was required by this Commission.

Mr. Siniscalco said if you talk about rules and regulations why it would be Bill's job to tell him that; he thought a few honest mistakes or omissions were made.

Chairman de Jongh said that detail (the silt fence) was outlined in the stipulations of the approval that came from this Commission; there was a sequence of events that had to be followed; he stated at this point enough is enough.

Mr. Barnett said his landscaper is using the wood chips (they are not in or near the wetlands); that is why there are (on site).

Commission members discussed how to proceed.

Motion: The Commission determined that a public hearing would be held to discuss what action to take, whether to suspend the permit application #2019-001. The Commission agreed the applicant could install the fencing as reviewed by the Commission.

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

Commission members discussed the motion and what remedies were available; and how they could move forward with this at the public hearing and come up with possible alternatives to suspension of the permit; and it was suggested allowing the applicant to put up the spilt rail fence now.

Mr. Kurtz said this goes to the fact that he (Mr. Barnett) knew about this – they (the Commission) had experience with Mr. Barnett before – personally Mr. Kurtz stated he was through – he said the rules were something he (Mr. Barnett) was well aware of going into this and he didn't make a mistake – he purposely did something that he knew he wasn't supposed to do and that he didn't do things he was supposed to do – this was all done willingly.

Mr. Barnett said he wanted to move forward and make sure this doesn't happen again.

Mr. Norback asked what the bond in place was for.

Ms. Simone said it's for the length of the silt fence and the hay bales; cost of materials and installation; it gets released once the project is done.

The Commission continued discussion on this matter and what the next steps were.

Motion approved unanimously by Commission members present.

Chairman de Jongh said the applicant can work with staff to try to resolve issues prior to the public hearing; and determine if staff is reasonably satisfied that the sequence of construction has been followed (moving forward).

Items to be addressed prior to the public hearing are the installation of the fencing, placement of hay bales, post markings on the fence and placement of the wood chips are to be secured as not to get into the wetlands.

Mr. Norback asked if they should still require the 'pre-construction meeting'.

Ms. Simone suggested having it now and asked Mr. Barnett if there was anything else coming up that they should be clear about – stipulation permit items 1-5 were discussed; Mr. Barnett could not proceed past item #5 and at the April 2, 2019 public hearing they could pick this up again.

The Commission agreed the applicant could install the fencing.

Mr. Norback said in his opinion, he didn't think the site has been comprised but that this is more of an admonishment (others agreed); the site really hasn't been comprised at all, but it might have been done differently.

A public hearing was set for Tuesday, April 2, 2019.

IX. UNFINISHED BUSINESS

None.

X. NEW BUSINESS

1. Request for Determination RFD 2019-004
Rod Burgess, Scotland Hardwoods
South Meriden Road
Forestry

Rod Burgess was present on behalf of the applicant.

Mr. Burgess provided a presentation of the proposed activities for a forestry project at the Broad Brook Watershed – this is another section – the north section.

Mr. Burgess said the request for determination is outlined in the narrative exhibit A and the map section exhibit B.

Mr. Burgess reviewed the proposed logging operation of approximately 50 acres of property owned by the City of Meriden; lot #46, lot #9; the project details including the skid road and other project aspects were reviewed; about 80,000 board feet of saw timber will be harvested from the property; the work is proposed to start this summer (2019); the crossings are designated on the map.

Motion: The Commission, after reviewing the materials, determined a permit is not required for the proposed activity.

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

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| 2. | Permit Application | APP | 2019-004 |
| | Rod Burgess, Scotland Hardwoods | DOR | 3/19/19 |
| | South Meriden Road | | |
| | Forestry | MAD | 5/23/19 |

Rod Burgess requested to withdraw the application.

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| 3. | Permit Application | APP | 2019-005 |
| | Clearview Farm Preserve, LLC | DOR | 3/19/19 |
| | Beechwood Court, Lot 11(Clearview Farm Preserve) | | |
| | Site Plan - House | MAD | 5/23/19 |

Darin Overton, PE from Milone and MacBroom was present on behalf of the applicant.

Mr. Overton provided a project overview; he said in the original subdivision application they had a longer house which didn't fit so well and the applicant looked to have a shorter one that fits better; they pulled in forward so they were able to move it away from the non-encroachment line and gives it more room for the septic system; the plan was reviewed.

Mr. Overton said there were comments from engineering staff which they are happy to comply with; the septic system has been approved by Chesprocott; the bottom of the septic system is at elevation about 196.

Chairman de Jongh asked that the record show the applicant has accepted the recommendation of the engineering department.

Dr. Dimmick suggested that they instruct staff to come up with wording for the next meeting.

Chairman de Jongh stated this item would be taken up again at the next meeting.

XI. ADJOURNMENT

The meeting was adjourned at 8:41 pm by consensus of Commission members present.

Respectfully submitted:

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