

**CHESHIRE INLAND WETLANDS AND WATERCOURSES COMMISSION
REGULAR MEETING
TUESDAY, APRIL 2, 2019
TOWN HALL – 84 SOUTH MAIN STREET
COUNCIL CHAMBERS – 7:30 P. M.**

I. CALL TO ORDER

Chairman de Jongh called the meeting to order at 7:31pm.

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, Will McPhee, and Earl Kurtz. Staff: Suzanne Simone. Members not present: Thom Norback 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 – March 19, 2019

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

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

V. COMMUNICATIONS

Ms. Simone reviewed the following communications:

1. Results of Show Cause Hearing of 3/19/19 and Notice to Hold a Hearing Re: The Suspension of IWWC Permit #2019-00, 569 Cornwall Avenue

2. Show Cause Hearing Notice and Cease and Desist Order Re: 710 Peck Lane

Handed out at tonight's meeting:

3. 569 Cornwall Avenue – staff report in support of show cause hearing item #3.

4. 710 Peck Lane – staff report for show cause hearing item #4 on the agenda.

VI. INSPECTION REPORTS

1. Written Inspections

- a. 1262 Marion Road – Ms. Simone reported a written inspection was sent our regarding 1262 Marion Road; there were a substantial amount of Pine tree branches along the watercourse; staff sent a letter to the property owner informing them that that is a violation of the regulations and gave information about the transfer station (to dispose of trees) open on April 6 and 13; a May 6, 2019 compliance date was given at which time staff would inspect the property.

2. Staff Inspections

- a. 1403 Marion Road – staff received a call regarding tree clearing; the area where the tree clearing was taking place was not a wetland area but there are wetlands further north on the property so staff did speak with the property owner to advise and remind them if they planned on clearing in the area of the pond or stream they would have to measure out 50' from the watercourse banks; they indicated they were not interested in clearing in that area.
- b. Elim Park – staff explained she met with staff of Elim Park – they have several proposed projects that they are working on – some of which will come before the Commission for review; they do have two direct impacts – one is a bridge crossing for the creation of a trail along the Mill River and second is for improvements to an outfall which feds in to the Mill River; other projects fall outside the regulated area.
- c. Lot 3 Crestwood Drove – staff inspected the lot at the request of the developer for erosions controls – staff did go out to the property and observed silt fence and hay bales are installed correctly according to plan – the hay bales and silt fence were installed last year, and the hay bales are nonexistent at this point; new hay bales will have to be purchased and installed.
- d. South Main Street – an erosion control inspection occurred; it's the most recent John Ricci construction project at the location of the old Colorama location; the erosion controls were up and functioning.

- e. Quinnipiac River project – staff reported the Quinnipiac River project to remove the abandon waterline that project is moving forward and equipment is being brought out to the site; they are projecting they will be starting this week and will be monitoring storm events; the latest change to the plan is they will use sand bags directly in the river course itself; there was some indication that the neighbor granting access to the river wants to see this federal project move forward or they may take their authorization back.

VII. ENFORCEMENT ACTIONS

- 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

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

- 2. Notice of Violation/Cease and Desist Order SC 3/19/19
Violation of IWWC Permit #2019-001
Ed Barnett
569 Cornwall Avenue
Assessor’s Map 63, Lot 66

Items #2 and #3 were discussed together.

Ed Barnett of 509 Mountain Road was present.

Chairman de Jongh reported this item was subject to a lengthy discussion at the last meeting; he said the Commission is charged with taking the steps that need to be followed in order to move forward.

Ms. Simone provided details from the last meeting; the Commission had upheld the order – allowed Mr. Barnett to install the split rail fence – the Commission was supplied with pictures - handed out tonight - that show the split rail fence and the individual posts that have been installed; she reviewed the pictures and explained the details of what was shown in the pictures; the installation of the silt fence and hay bales; so according to the plan what is out in the field matches the plan.

Ms. Simone reported they did receive a letter from their engineer dated March 27, 2019 and they indicate they inspected the site and the wood fence is up as are the wetland placards.

Chairman de Jongh said they have not received the reports relative to the conditions of the site following a ½ inch of rainfall.

Ms. Simone explain one of the stipulations is that every week or after every ½ inch of rainfall, an engineer will inspect the erosion controls and submit an inspection report to the Commission; one (report) has not been received to date aside from the initial one.

Chairman de Jongh asked from staff's observation - has there been any erosion or obvious impact.

Ms. Simone reported she was there on two occasions – first to look at the erosion controls when they were first installed after the cease and desist; and second time was when the split rail fence was put in – she didn't notice any discrepancies.

Chairman de Jongh thanked Mr. Barnett for installing the split rail fence and wetland markers. He said they have a couple of choices – they can suspend the permit and continue monitoring it going forward – they could also withdraw the permit; he wanted to know how Commission members wanted to proceed.

Chairman de Jongh stated at this point in the meeting that items #2 and #3 would be discussed together.

Ms. Simone clarified that the show cause hearing is for discussion for the suspension of the permit.

Mr. Kurtz asked if it was said that the engineer had not reported on the silt fence and possible erosion as required.

Ms. Simone explained the approval from the Commission specifies in item #7 “that every week or every storm event of a ½ inch or greater – that an inspection is to be done by the engineer and the report is to be submitted to the Commission”; since this lot was cleared and the erosion controls were put up they haven't received any notifications so there haven't been any inspections.

Dr. Dimmick said this sounded like a case where they needed to continue increased oversight of this project; now that the reports are not coming in; he was not so sure they needed to act tonight on the suspension of permit; maybe they leave this hearing open until they find that the applicant has figured out how to comply with the various parts of the permit and they see evidence of it.

Mr. Barnett said staff has a letter dated the 27th that states that the erosion controls have been looked at – the fence has been looked at – he said he has three letters – one that says everything was marked correctly – that the erosion controls were in place and the fence was in place; he said the engineer has been there three times with three letters that were sent to staff that states that; he said as far as a ½ inch of rain that’s a simple process to have him reevaluate that if that is the case.

Chairman de Jongh said the March 27th letter just verifies the correct installation of the spilt rail fence and the wetland placards – it says nothing about the erosion controls. He said the details of the construction sequence need to stay on track; they should have received erosion control reports.

Dr. Dimmick said there is a difference between getting a permit and getting a permit with the information the Commission required; only one of the three letters talks about the erosion controls – they have not received one each week – and that is what is missing and was specifically required in the permit.

Dr. Dimmick stated they are looking for exactly what the permit requires.

Mr. Barnett asked - so you want him to have his engineer come out every week and state something about the erosion controls.

Chairman de Jongh stated that was a requirement of the permit.

Chairman de Jongh read item #7 into the record “an inspection of the condition, integrity and adequacy of the sedimentation and erosion controls shall be made by a qualified party either weekly or after every significant rainfall of ½ of greater whichever is sooner until all areas are stabilized; said parties shall be independent of the contractor; all reports shall be submitted to the contractor and Commission staff either within 3 days of the inspection or prior to the next storm event whichever is sooner; all breaches or deficiencies shall be forwarded to a contact individual as defined above immediately after inspection; the cost of said inspection shall be borne by the applicant.

Chairman de Jongh said on the field walk they knew this wasn’t going to be an easy site; and they just wanted to make sure that everything was being followed chapter and verse; that is why they asked for that weekly report or if a storm event occurred prior to a weekly report they needed to make sure everything was okay.

Mr. Barnett said “correct me if I’m wrong – it doesn’t say weekly” it says after ½ of rainfall.

Chairman de Jongh stated it states that “weekly or after every significant rainfall of ½ or greater whichever is sooner”.

Mr. Barnett said so every week his engineer was going to send a letter.

It was noted, the letter needs to be stamped and certified by the engineer.

Mr. Kurtz asked if they ever had the preconstruction meeting.

Ms. Simone stated no.

Chairman de Jongh talked about continued oversight of this property to ensure it is done the way it was layout by the applicant and his representative; he said it may take patience.

Mr. Kurtz stated we have not cleared up the problem here – in addition to the preconstruction meeting not being held and we thought was very important and we said to get that done and some decisions and solutions could be arrived at before this meeting; they never had the meeting, so nothing was arrived at. He said he wanted to hear from the engineer – he asked does the engineer know what’s going on.

Mr. Barnett asked - didn’t they have a preconstruction meeting at the end of the last meeting – he said it was in the minutes.

Chairman de Jongh said the installation of the fence and markers were discussed and were to be installed; and that at tonight’s meeting they would discuss in more detail where they go from here.

Mr. Kurtz expressed concerns that as an experienced builder – Mr. Barnett stated he didn’t know he was supposed to have the site inspected every week – it was in plain English; that the applicant and the engineer were the ones who put this stuff in here (the construction sequence); he asked if the engineer was unknowing of the provisions.

Mr. Kurtz said now this is something new, after they had everything else figured out – he (Barnett) is still not doing what is supposed to be doing.

Mr. Barnett said the preconstruction meeting was covered at the last meeting.

Chairman de Jongh said he was looking at a copy of the March 19th minutes and it says “Mr. Norback asked if they should still require

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

Chairman de Jongh said there was no preconstruction meeting held.

Mr. Barnett said he thought they did have the preconstruction meeting; he asked if he had to go into the office and have a preconstruction meeting with staff.

Ms. Simone explained the chairman just read how it was left - it was items #1-5 that were discussed relative to your construction sequence and if everything was covered then item #7 of the construction sequence would not have been a surprise tonight because it would have been discussed at the preconstruction meeting so those minutes indicate items #1-5 of the construction sequence were discussed then discussion stopped after that.

Chairman de Jongh said our concern at the last meeting was that they got as far as they could i.e. the installation of that fence because that was one of the things that had to happen before any clearing took place; so we need to make sure that was in place and that was as far as we went at the last meeting – we stopped at item #5 – we wanted to make sure that was taken care of and then going forward making sure all of the other items were followed as he (Mr. Barnett) had presented to this Commission in that construction sequence.

Mr. Kurtz suggested and he didn't know what was in our regulations but his proposal was this –they figure out the time spent over and above the normal work on a project like this and come up with a dollar amount and he would like to maintain the suspension of the permit when a bill is given to Ed Barnett for the extra costs – he pays the bill and we make sure everything is up to par – we have a preconstruction meeting – we talk about any misinterpretations or any misreading's of English at the preconstruction meeting and we can go forward that way he can build his house - we can be satisfied that he (Mr. Barnett) is obeying the rules.

Mr. Kurtz stated this is what he feared all along - asked can (the town) be compensated for by (Barnett) - can he pay for all the unnecessary work Suzanne had to do – he didn't even know if that was in the regulations.

Chairman de Jongh said unfortunately it's not (in the regulations) – that is why they made the presentation to the town council for after the fact fees.

Mr. Kurtz stated he wants him (MR. Barnett) to pay for her time (Ms. Simone's).

Ms. Simone said that is something that would have to be discussed with the town attorney.

Mr. Kurtz said then pull the permit and let him start all over with a new permit.

Ms. Simone said in discussion of the suspension of the permit is the Commission could lay out what is expected – give a time frame and keep this item in the agenda or suspend until things are done by a certain date so the Commission has leeway that way; she would have to check with the town attorney on the payment issue – and that it was unprecedented.

Mr. Kurtz said he would like to see that happen. He stated that the Inland Wetlands Commission is the only commission in Cheshire that is here to help the applicants - and we are charged with the responsibility for maintaining the wetlands, watercourses – but there is no applicant that comes in here that says it has to meet this rule and that rule – what we do is listen the applicant presentation and think and talk about it – the town engineer gets involved and the Commission tries to tell the applicant how he can accomplish what he wants to accomplish while still upholding our responsibility; everybody else has rules to go by and if it does not meet the rule they have to change it – we are here to try to help people and in his opinion Ed (Barnett) was playing games; we are trying to do a job that promotes development within wetland areas without hurting wetlands and you have to tell us you didn't know what (was required).

Dr. Dimmick commented in his experience with inland wetland laws – they could not impose fees – but they did need to continue closer supervision of what's going on and layout goals they are looking for to bring this back into order; starting with clearing cutting before given permission they have been totally out of order in the standard sequence – they need to bring it to a stage where everything is in sequence and in order.

Mr. McPhee asked if items #1-5 were completed to this Commission's satisfaction.

Ms. Simone reviewed the items #1-5 of the construction sequence were completed – item #1-4 were complete – for item #5 – we don't monitor that.

Mr. Barnett said item #5 was complete.

Mr. McPhee proposed they hold hands throughout this process – he'd like to propose what they had done – allow him to go up step #6 then he has to appear in front of us to make sure everything is done to staff's satisfaction – that reports are submitted to satisfaction and go step by step in the construction sequence meeting by meeting.

Ms. Simone asked if the site was cleared and grubbed.

Mr. Barnett stated no – he only put the fence up and called the town to let them know it was up – he had his engineer write a letter and he has been there since then.

There was discussion about Mr. McPhee's proposed motion.

Mr. McPhee stated he still believes a preconstruction meeting has to happen and all the sequences need to be discussed with Suzanne on site or how it is done normally so these reports are on time and there are no misconceptions of what that language is in this – and they are on the same page.

Ms. Simone said Ed can email her dates and times he's available and we can schedule something; she asked if the Commission had a deadline in mind when to have the preconstruction meeting by.

Mr. McPhee said prior to the next meeting and prior to step #6.

Chairman de Jongh asked about the remaining steps remaining in the sequence; he suggested they can pair a few of the sequences together and get the project back on track; he said that at the preconstruction meeting with the applicant, the engineer, staff and himself, they see what items can be grouped together by agreement; continued oversight is required.

Mr. Barnett said the site is cleared but not stumped.

Mr. McPhee said he wanted, within the next two weeks a clear indication the rules are being followed and everything is happening week by week and not jumping ahead

There was discussion about the project's next steps and the importance of item #6 and careful oversight of this step.

Ms. Simone asked the Chairman if the Commission wanted to see an inspection report from the engineer prior to Mr. Barnett moving forward with item #6 of the construction sequence.

Chairman de Jongh said he wanted a certification by the engineer that the erosion controls are in place and they are working

satisfactory and everything is okay up until this point; that is prior to authorization to start #6 of the construction sequence; and the preconstruction sequence is to be held.

Mr. Barnett stated he would request by email a preconstruction meeting; he will provide dates and times he is available.

Chairman de Jongh explained to Mr. Barnett that it's out of the ordinary to have to hold an applicant's hand – and this has gotten out of hand.

Motion:

That the Commission will use the predetermined dates of Commission meetings scheduled, for an opportunity to review the construction sequence to make sure the steps are being followed appropriately; and every two weeks the Commission will have a discussion to make sure those steps were followed; and if so, they can go on to the next items in the construction sequence.

An inspection of the site and a report will be submitted as noted in the permit approval; then they will hold a preconstruction meeting after which time, if Mr. Barnett is cleared, upon staff review of both, they can move on to item #6 of the construction sequence.

There will be no further discussion of what will happen in the future (until the Commission gives the go-ahead). Work on item #6 cannot take place before the preconstruction meeting takes place – the preconstruction meeting precludes all other activities.

Mr. Kurtz said he thought it was a good item if the Commission required the engineer to be at the next meeting, so he can directly here what has been going on – maybe the engineer doesn't understand what the letter requirement are.

Ms. Simone explained Mr. Barnett is the permit holder and it's up to him to hire an engineer and have him onboard.

The Commission requested that the applicant's engineer be at the preconstruction meeting and the next meeting,

Move by Mr. McPhee. Seconded by Dr. Dimmick. Motion approved unanimously by Commission members present

Chairman de Jongh said they should keep item #3 – the show cause hearing open on the agenda and that it should remain on the agenda until all items are complete.

Commission members concurred with Chairman de Jongh's suggestion.

Ms. Simone stated them technically the motion is a modification of the last version of the order that only allowed for the construction of the spilt rail fence; so, with permission she'd modify that order to include what was discussed tonight – holding the preconstruction meeting – getting the inspection report and authorizing moving forward on item #6 of the construction sequence once those first two items are complete.

3. **SHOW CAUSE HEARING** SC 4/02/19
Suspension of Permit
Ed Barnett
569 Cornwall Avenue
Assessor's Map 63, Lot 66

See discussion under item #1.

Motion also noted in item #2.

Motion:

That the Commission will use the predetermined dates of Commission meetings scheduled, for an opportunity to review the construction sequence to make sure the steps are being followed appropriately; and every two weeks the Commission will have a discussion to make sure those steps were followed; and if so, they can go on to the next items in the construction sequence.

An inspection of the site and a report will be submitted as noted in the permit approval; then they will hold a preconstruction meeting after which time, if Mr. Barnett is cleared, upon staff review of both, they can move on to item #6 of the construction sequence.

There will be no further discussion of what will happen in the future (until the Commission gives the go-ahead). Work on item #6 cannot take place before the preconstruction meeting takes place – the preconstruction meeting precludes all other activities.

Move by Mr. McPhee. Seconded by Dr. Dimmick. Motion approved unanimously by Commission members present

4. **SHOW CAUSE HEARING** SC 4/02/19
Unauthorized Activities in Upland Review Area
Robert and Barbara Gelmetti
710 Peck Lane
Assessor's Map 42, Lot 63

Robert and Barbara Gelmetti were present.

Ms. Simone briefed the Commission on clearing that took place in the conservation easement area on this site.

Ms. Simone explained in speaking to the property owner it was stated they wanted to expand their lawn area.

Ms. Simone provided pictures for Commission members to see site conditions; she explained a large area has been cleared and behind the fence into the conservation easement there is equipment in it and the area have been leveled.

Ms. Simone there are two issues – one a violation of the permit and two – the conservation easement issue.

Mr. Kurtz asked if these were the original owners.

Ms. Simone noted yes; the house was constructed in 2015; the conservation easement was placed on the land records; the entire property is surrounded by the conservation easement; that when there was a title search of the property the easement would have been found.

Robert and Barbara Gelmetti addressed the Commission. They explained when they moved in there were no markers on the split rail fence; and that they did not know about the property restrictions.

The Gelmettis' expressed their sincere apologies for what they did and that it was not their intention to do damage because they love their property and surrounding property.

Mr. Gelmetti explained that he did know the area was wetlands but did not know they had to come before the Commission to do work in the wetlands – he said he wanted to have the trees removed.

There was discussion regarding the clearing that took place and there was discussion about what could be proposed to restore the area to a suitable condition.

Commission members agreed the property owners should work with staff and possibly someone with professional wildlife credentials; and come up with a plan to be reviewed by the Commission in order for them to give an order to act.

Ms. Simone will work with the property owners and come up with a restoration plan (for the next meeting).

IX. UNFINISHED BUSINESS

1. 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

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 the construction of a single-family house on lot #11 of the previously approved Clearview subdivision.
2. That site plan field locates the extent of inland wetlands, as field delineated in support of the Clearview permit #2016-005A
3. That the site plan locates the 50' upland review area. The plan identifies the upland review area impact will include the construction of an earth berm, a portion of the septic system and associated grading.
4. That no wetland impacts are proposed.
5. That the applicant's engineer agreed to comply with the March 14, 2019 engineering department comments.
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 #2019-005, the permit application of CLEARVIEW FARM PRESERVE, LLC for site plan approval as presented and shown on the plans entitled:

**“Site Plan – Subsurface Sewage Disposal System
Clearview Farms Preserve, Lot 11
Beechwood Court, Cheshire, CT
Dated March 13, 2019
Prepared by MMI, Cheshire, 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 construction activities covered by this permit grant, or request for a Building Permit, the applicant shall accurately stake and/or flag all clearing limits and install sediment and erosion controls, as depicted on the above mentioned site plan.**
- 4. The March 14, 2019 Engineering Department comments will be adhered to.**
- 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' 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.

6. This permit grant shall expire on April 2, 2024.

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

X. NEW BUSINESS

Ms. Simone stated a new business item needed to be added to the agenda for a subdivision on Fenn Road (a John Ricci project).

This item would appear on the next meeting agenda, April 16, 2019.

XI. ADJOURNMENT

The meeting was adjourned at 8:39 pm by consensus of Commission members present.

Respectfully submitted:

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