

**CHESHIRE INLAND WETLANDS AND WATERCOURSES COMMISSION
REGULAR MEETING
TUESDAY, MAY 21, 2019
TOWN HALL – 84 SOUTH MAIN STREET
COUNCIL CHAMBERS – 7:30 P. M.**

I. CALL TO ORDER

The meeting was called to order at 7:30pm.

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, Will McPhee and Kerrie Dunne. Staff member Suzanne Simone was present. Members not present were Dave Brzozowski, Earl Kurtz and Thom Norback.

IV. DETERMINATION OF QUORUM

There were enough members present for a quorum.

V. APPROVAL OF MINUTES

Regular Meeting – May 7, 2019
Site Walk – May 14, 2019

Motion: To approve the minutes of the May 7, 2019 regular meeting with corrections; pg. 3 L43 delete “show all”; and the site walk of May 14, 2019 with no corrections.

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

VI. COMMUNICATIONS

Ms. Simone reviewed the following communications:

1. Letter to Mr. Brahim Krasniqi Re: Show Cause Hearing for 152 Talmadge Road
2. Wetland Restoration Plan and Map for 710 Peck Lane
3. Letter to Mr. John McKinley Re: Revised Cease and Desist Order for 1415 Marion Road

4. **Staff Communication w/attachments Re: IWWC Permit 2019-010, East Johnson Road, Regrading**

Handed out tonight:

5. **Photos and a draft for 710 Peck Lane**
6. **A follow-up photo for 569 Cornwall Avenue**

VII. INSPECTION REPORTS

1. **Written Inspections**

Ms. Simone reported on the following written inspections:

- a. **A revised cease and desist order for 1415 Marion Road.**
- b. **The cease and desist order for 152 Talmadge Road.**

2. **Staff Inspections**

a. **There was a staff inspection of Cheshire Street as a follow up that the Commission members had regarding if the non-encroachment area was allowed to grow in its natural state or if it was still being mowed. Ms. Simone reported she did go out to the property and observed that the area has not been mowed; what we are seeing from the street is that the grass is tall enough that it is laying down – it has in fact not been moved.**

b. **Follow up photo from the street of 569 Cornwall Avenue.**

VIII. ENFORCEMENT ACTIONS

1. **Cease and Desist Order** **SC 4/02/19**
Unauthorized Activities in Upland Review Area/Conservation Area
Robert and Barbara Gelmetti
710 Peck Lane
Assessor's Map 42, Lot 63

Bob Gelmetti was present.

Kelly Kerrigan, Soil and Wetland Scientist with Milone and MacBroom was present on behalf of (710 Peck Lane).

Chairman de Jongh said one of the questions was about completion dates.

Ms. Simone said the completion dates were in the draft motion.

Chairman de Jongh said the other question they had was about a trail – he asked if there was a trail on the property or just a path through the woods.

Mr. Gelmetti explained it's an old ATV path that kids used to ride their ATVs to the linear path; its been there since they owned the property.

Ms. Kerrigan noted the Commission has had a chance to review the planting plan – they did leave about 10 or so trees – that will take care of the overstory and they added some supplementary woody and herbaceous plantings; she conducted a sited inspection on May 7, 2019 and she noted there were some cinnamon fern coming up and other species are popping up as the season progresses – they anticipate the restoration will look a lot better than it did before.

Dr. Dimmick said the fire pit and gravel should come out before the restoration.

Ms. Kerrigan said she was notified that the fire pit removal is taking place – they are showing good faith efforts (to restore the area); the fire pit has been removed but not the gravel.

Ms. Simone asked where the gravel would be removed because that speaks to the restoration plan and time frame that the Commission will put in its order.

Mr. Gelmetti said he will start moving it by tomorrow (5/22/19) and it should only take a couple of days – it would be removed by hand with a shovel – it should be gone by the middle of June.

Chairman de Jongh said so by our second meeting in June (June 17, 2019) we should be all set.

Mr. Gelmetti stated yes. He stated they would be purchasing the restoration plants next weekend and will start planting them.

Dr. Dimmick said so as soon as the gravel is out, they will start the restoration plan and by the end of the summer it will all be complete.

Mr. Gelmetti stated yes.

Ms. Simone reviewed the details of the motion relative to the timeframes (for action to be taken).

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 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 a conservation easement was established as a result of IWWC permit #2009-007 issued on May 19, 2009.**
- 5. That on March 27, 2019 a Cease and Desist Order/Show Cause Hearing Notice was issued for the tree clearing and stump removal within the wetland/conservation easement area.**
- 6. That on April 4, 2019 a Show Cause hearing was opened. The property owners provided testimony and agreed to work with licensed professionals to develop a restoration plan.**
- 7. That the property owners installed the wetland boundary markers on the split rail fence in accordance with permit #2009-007.**
- 8. That Section 13.5 of the Cheshire Inland Wetlands and Watercourses Regulations authorizes the Commission to issue a**

corrective order for the restoration of the wetland/conservation easement area.

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. The fire pit and associated gravel shall be dismantled and removed from the conservation easement area. If equipment is required to conduct this work it shall be tracked equipment. The fire pit and gravel removal shall be the first item in the restoration plan and shall be completed by June 21, 2019.**
- 2. The property owners shall hire a licensed engineer to conduct a site inspection when the fire pit and gravel have been removed. A written copy of this report shall be supplied to the Commission within 3 days of inspection.**
- 3. Upon staff verification of the engineer's report, the property owners shall commence the restoration plantings by June 22, 2019 and shall be completed by October 15, 2019.**
- 4. The property owners shall hire a licensed engineer to conduct a site inspection when the restoration plantings have been completed. A written copy of this report shall be supplied to the Commission within 3 days of inspection.**

Failure to cooperate with Cheshire Inland Wetland and Watercourses Commission and Town of Cheshire regulations may lead to further enforcement action, including, but not limited to, transferring this matter to the Town Attorney to pursue injunctive relief and to collect all applicable penalties and fees as prescribed under state statutes. A copy of this notice has been recorded on the land records for this property and will remain so until released by the Cheshire Inland Wetlands and Watercourses Commission.

Moved by Dr. Dimmick. Second by Mr. McPhee. Motion approved unanimously by Commission members present.

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| 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 as Ms. Simone reported the area is starting to revert back to its natural state beyond the fence line which was a concern they had.

Ms. Simone said the payments are still coming through; she noted the property is up for sale but that doesn't resolve the court order that's in place.

Ms. Simone said the court order is against the person (property owner); it is on the land records as is the cease and desist.

Dr. Dimmick noted the cease and desist goes with the property.

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| 3. | 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 | | |

Chairman de Jongh said no one was present on behalf of the applicant.

Dr. Dimmick said what we have gathered is he is half in compliance and half out of compliance.

Ms. Simone said as it was mentioned at the last meeting to Mr. Sinacalazo that the inspection reported need to come to the office not only weekly but after every large rain fall of 1/2" or greater and following that meeting we received two inspection reports which seemed to correspond with rain events; additionally Mr. Sinacalazo was also informed that any zoning permit plot plan that was submitted had to be in conformance with the permit – the permit did not show a deck or any other extension into the upland area and he did submit a site plan that showed just the house in conformance – so he covered those two items which what was discussed that the April 16th meeting where the Commission made a motion that those two items needed to be done which weren't done by the last meeting which is why the Commission had further conversation; it was stipulated that if those two things were done to the satisfaction of

what the Commission had stated he could move forward with the construction sequence up to staking out the house and that's has far as it was permitted to go.

Ms. Simone explained that you can see from the photos taken today that he has actually excavated on the property.

Ms. Simone stated it does appear that the silt fence has been properly installed and has been monitored and there hasn't been any deficiencies identified through there engineer; it does appear that its in tact and she does see there area any compromises to the resources surrounding there expect that it is out of order and a further extension of moving ahead without coming back to the Commission to get a modification of the cease and desist order.

Chairman de Jongh said he would suggest that if it's possible a notice go out to Mr. Barnett that no further work on that property will begin until we verify the location of the excavated area of the house – that it be verified by his engineer and the accuracy of the foundation and make sure it conforms the site plan that was submitted to us and what was approved and that no further activity on that site is to be approved – he can take no steps forward until we have that verification and we can to see that at our meeting two weeks from now.

Ms. Simone asked about the stockpile of soil – on the plans submitted for zoning it showed erosion controls specifically around the stockpile and not just to the front of the street – they have to be wrapped around – they are not there yet.

Chairman de Jongh stated they have to be installed.

Commission members reviewed and discussed the photos of the site that were taken today.

Ms. Simone recommended a formal motion be made and that Mr. Barnett would receive a copy of the formal motion; the minutes would also be provided to him and town departments.

Chairman de Jongh suggested also to provide a copy of the April 16, 2019 minutes highlighting what he was permitted to do up until this point so he can visually see he chose to ignore those or go out of sequence voluntarily.

Motion: That the Commission orders staff to send a notice to Mr. Barnett that no further work on that site is to be permitted until he gets approval from this Commission but in the meantime he has to have his engineer verify the location of the excavation to make sure it's in conformity of the plan that was submitted and approved by this Commission and also that no further activity is going to be taking place on this (property) and that he come before us at the next

meeting two weeks from now to determine if he can go forward. The S&E controls need to go around the entire area of stockpiled soil. And, let the communication from staff include copies of the April 16, 2019 minutes on page 6 that state what he was permitted to do up to that point which he voluntarily chose to ignore that sequence.

Chairman de Jongh asked staff to check with the town attorney to find out what can be done if Mr. Barnett continues to ignore the stipulations and the advice from this Commission what the legal ramifications would be; there has been a total misrepresentation on his part (and is choosing to ignore his construction sequence presented to the Commission).

Moved by Dr. Dimmick. Mr. McPhee seconded. Motion approved unanimously by Commission members present.

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| 4. | <u>SHOW CAUSE HEARING</u> | SC | 4/02/19 |
| | Suspension of Permit | SC | 4/16/19 |
| | Ed Barnett | SC | 5/07/19 |
| | 569 Cornwall Avenue | SC | 5/21/19 |
| | Assessor's Map 63, Lot 66 | | |

Chairman de Jongh asked that the record show Mr. Barnett was not present nor did a representative show up on his behalf.

This item would remain on the agenda.

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| 5. | Notice of Violation/Cease and Desist Order | SC | 5/07/19 |
| | Unauthorized Activities in the Upland Review Area,
Wetland Area & Intermittent Watercourse | | |
| | John McKinley | | |
| | 1415 Marion Road | | |
| | Assessor's Map 16, Lot 10 | | |

Ms. Simone reported the revised cease and desist order was sent out after the last meeting so there is no further action on this.

Mr. McKinley submitted to each of the Commission members dated May 21, 2019 some corrections to the minutes from the May 7, 2019 meeting; and referenced phone calls and meetings.

Mr. McKinley asked that the minutes be corrected to reflect that he did not cut trees on the site after he spoke with staff.

Commission members agreed to have the minutes checked regarding the wording about cutting of trees.

Mr. McKinley said he had a copy of the soil scientist report from Chris Allen from Land Tech dated May 21, 2019 which he handed out at tonight's meeting; he said the soils turned up great (based on what he was told).

Dr. Dimmick said he reviewed the report detailed.

Ms. Simone said the report would be listed on the agenda under communications for the next meeting.

IX. UNFINISHED BUSINESS

1. Permit Application	APP	2019-006
Ricci Construction Group, Inc.	DOR	4/02/19
Fenn Road	SW	5/02/19
Subdivision	MAD	6/06/19

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, public hearing testimony, and after review of written information provided by the applicant on this application, finds the following:

1. That the application is for the creation of a six-lot subdivision, with stormwater management and public road.
2. That the subject property is bounded by the Mill River to the east and south and wetlands to the west.
3. That approximately 0.25 acres of proposed upland impacts and .01 acres of direct wetland impacts.
4. That the town engineering department reviewed the proposed development plans and was satisfied with the engineering report and drainage plans.
5. That the Regional Water Authority provided comments, dated April 16, 2019.
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 #2019-006, the permit application of RICCI CONSTRUCTION GROUP, INC. as presented on the plans entitled:

**“Rivers Edge Subdivision
257 Fenn Road, Cheshire, CT
Dated March 26, 2019, Revised May 1, 2019
11 Sheets, Varying Scale.
Prepared by Milone and MacBroom, Inc.”.**

The permit is granted on the following conditions and stipulations, 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, earthmoving and/or construction activities for the single-family homes on lots #1, #2, #3 and #4, lots #1, #2, #3 and #4 requires individual site plan review and approval from the Cheshire Inland Wetlands and Watercourses Commission.**
- 4. Per Section 12 of the Cheshire Inland Wetlands and Watercourses Regulations, a bond covering the costs of the sediment and erosion controls, as shown on the above-referenced plans for the installation of the storm water basin and associated access way, shall be filed with the Town Planner’s Office prior to the commencement of clearing/installation activities. The amount of the bond shall be determined by the Cheshire Planning Office.**
- 5. All recommendations from the Regional Water Authority April 16, 2019 comments shall be stringently adhered to.**
- 6. Throughout the course of conducting construction activities covered by this permit grant, 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.

7. This permit grant shall expire on May 21, 2024.

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

2.	Permit Application	APP	2019-007
	Shorab Hossain	DOR	4/16/19
	195 Lanyon Drive	SW	5/14/19
	Tree Cutting	MAD	6/20/19

Ms. Simone explained this item subject of a site walk – she said she has not had communication with the applicants; she said she wanted to get feed back from the Commission to help guide them – should they get a soil scientist to work on an application with them or did field conditions that Commission members observed really solidify what the actual plan is – should they be notified that perhaps they should modify their plans.

Chairman de Jongh said he shared pictures of the site with staff.

Chairman de Jongh said when they took a look at the property there were only three trees that he thought that could be taken down – one adjacent to the deck and then two on a little knoll – they were concerned about those falling on the house.

Ms. Simone said that was something that when previously discussed the Commission had decided they could remove those trees – without needing a permit because it conformed with the original clearing limits on the site plan.

Chairman de Jongh talked about conversation in the field and that when the site was approved they compromised the 50' upland review area to allow that house to be built so its maybe 25' to 35' at the most

where the house is close to a wetland area so there isn't any margin of error for cutting trees down – all of the trees of concern were in the wetland or deep in the wetland – some had red tape around them that they clearly wanted to cut down which were right in the middle of a wetland.

Dr. Dimmick put on the record based on his professional experience he wanted to clarify that having worked with wetlands for 45 years – as a very healthy wooded wetland there the trees for the most part that are in that wetland are essential to the environmental set up - the ecological balance that is in that wetland is dependent to those trees being there and any cutting not only is in violation of our standards but would completely harm the health of the wetland that is there.

Chairman de Jongh said what he did suggest to them is there are trees adjacent to the driveway where branches are falling down on cars - they can contact a local arborist or tree cutting place and maybe trim some back the top parts of the trees but he explained to them you start taking trees out of the area and allow more sunlight to come in and you change the integrity of what the wetland is designed to do; a compromise was made to allow the house to be build and it doesn't allow for much of a backyard – its just the nature of the property.

Dr. Dimmick said they are legally allowed to submit a permit, but he can't see how they could act on that without a public hearing and expert testimony – at a great expense with very little chance of approval.

Ms. Simone said she would notify them that if they planned to continue with this that the Commission would wan to have a public hearing and expert testimony; she that she would remind them of that they are able to cut the trees previously reviewed and discussed by the Commission.

3.	Permit Application	APP	2019-008
	Public Works & Engineering	DOR	4/16/19
	Marion Road		
	Cuff Brook CMP Culvert Maintenance	MAD	6/20/19

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 applicant is seeking a permit to maintain the existing Cuff Brook culvert which crosses Marion Road.**
- 2. That the water flow will be diverted in order to work within the stream channel.**
- 3. That the activities will likely not have a significant adverse effect on adjacent wetlands or watercourses, the proposed work is located in the paved parking area to the east of the nearest inland wetland.**

Based upon the foregoing findings, the Cheshire Inland Wetland and Watercourses Commission conditionally grants CIWWC Permit Application #2019-008, the permit application of Town of Cheshire Department of Public Works for site plan approval as presented and shown on the plans entitled:

**“Town of Cheshire, Connecticut
Department of Public Works and Engineering
Site Plan
Cuff Brook Culvert Lining at Marion Road Crossing
Dated: January 19, 2019 Revised: April 1, 2019
2 Sheets (1/5 and 2/5), Scale Varies
Prepared By: Cheshire Department of Public Works and Engineering”**

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.**

Mr. Overton explained with the acquisition from Amazon the higher archy of approving these projects has become more difficulty; he talked about some of the proposed project plans and what it would take to put the new building up and its associated expenses – they started looking at the slopes and realized there's room to cut the slopes back and they were did test pits, took samples and analysis and determined the native fill could be used a structural fill under the building; so the plan was to initiate the plan was to initiate an earth work and grading permit - there is probably two months' worth of earth work to move the earth and place it so we broke up the design plans we they broke in up into an earth work and grading permit; this was a way to get started with the project and provide a time frame to get the foundations in and get partially closed in before winter; he talked about the state permits needed.

Mr. Overton said so that's the reason they are here before the commission now – with a partial plan just to move dirt and they have erosion controls on the plan – they will be able to use the materials on site because they are moving the soil on site.

Dr. Dimmick asked if he had seen the engineering department comments; and commented that the area at one time had an active quarry.

Mr. Overton said he did agree with the comments and discussed the 2:1 / 3:1 slope; he said they have room to go 3:1 – he has spoken to Don Nolte about his comments and about being able to change the slopes to 3:1 in most of the area and they have received assurances that they are comfortable with the proposed plan.

Mr. Overton showed on the plan the location of the conservation easement – they have no evidence of the language of the conservation easement – he thought it was established by this commission or planning and zoning in one of the land use processes – maybe when the industrial subdivision was done

Ms. Simone said so he didn't only find anything on the land records – he just saw reference to it.

Mr. Overton said – right and that with the work done in the past they believed there were no restrictions that the work proposed would not be going past the limit of disturbance that was previously involved in the application; he showed on the plan how far back they planned to extend the building – they had always planned for further expansion – they didn't realize at the time the Fire Department wants a 30' drive so the the fill needs to get pushed back for that reason.

Mr. Overton said so eventually they are going to expand their trailer operation and parking area – they looked at the original stormwater analysis and the proposed expansion and they are still fine and adequate, and they don't need to add any basins; he talked about the soil infiltration.

Ms. Simone explained there is something in the file regarding a conservation easement.

Mr. Overton said the surveyors did not find it on the land records.

Ms. Simone stated its in volume 2024 page 149; revised 2005, revised 2006; she would provide Commission members and Mr. Overton a copy for the next meeting.

Mr. Overton said they are aware they need a permit; he did have draft responses engineering comments but haven't issued any official responses.

Ms. Simone said the Commission look at the conservation easement and read through that language to see what was allowed and what was not allowed; then if they wanted to go out and do a site walk they'd have a better understanding of what's allowed and what's not.

Ms. Simone asked Mr. Overton about the Natural Diversity Database – she asked if they were relying on previous submissions for the Box Turtle or did they have new information that has new protocol.

Mr. Overton said he had a determination that's good until March 28, 2021; he would give staff a copy of that; for Box and Wood turtles and other species; one thing that did change is it did require having a herpetologist on site a part of the initiation of construction to help identify and locate turtles.

Mr. Overton stated they have no direct wetland disturbance of the 3,200 Sf of the upland review area associated with that pocket wetland – nothing associated with the wetland corridor.

Dr. Dimmick suggested they go out and look at the wetland corridor to see if the wetland vegetation has been completely established.

Mr. Overton showed on the plan and talked about the basin filling up and the flow, the discharge process and pipe and catch basin system

and oil water separator before getting to the river– he said when was not sure if water ever flowed between the systems.

Mr. Overton talked about the erosion controls – there is roughly 4-5 acres of disturbance which is controlled by a sediment trap and silt fence and two temporary sediment traps to control runoff from the pad area.

Mr. Overton submitted a copy of the prior wetland delineation report and any other documents as needed.

XI. ADJOURNMENT

The meeting was adjourned at 8:19 pm by consensus of Commission members present.

Respectfully submitted:

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