

**CHESHIRE INLAND WETLANDS AND WATERCOURSES COMMISSION  
REGULAR MEETING  
TUESDAY, JUNE 4, 2019  
TOWN HALL – 84 SOUTH MAIN STREET  
COUNCIL CHAMBERS – 7:30 pm**

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**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. Robert de Jongh, Charles Dimmick, Dave Brzozowski, Will McPhee, Thom Norback and Kerrie Dunne were present. Members not present was Earl Kurtz.

Staff member Suzanne Simone was present.

**IV. DETERMINATION OF QUORUM**

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

**V. APPROVAL OF MINUTES – Regular Meeting – May 21, 2019**

Motion: To approve the minutes from the regular meeting of May 21, 2019 subject to future corrections.

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

**VI. COMMUNICATIONS**

Ms. Simone reviewed the following communications:

1. Corrective Order #CO-5.21.2019, Re: Robert and Barbara Gelmetti, 710 Peck Lane
2. Modification of Cease and Desist Order for IWWC Permit #2019-001, Ed Barnett, 569 Cornwall Avenue
3. Site Inspection Report Re: 1415 Marion Road, Assessor's Map 16, Lot 10
4. Conservation Restriction Declaration Re: 400 East Johnson Avenue, WFM Properties Cheshire, LLC

Handed out at tonight's meeting:

5. Two Sedimentation and Erosion Control Inspection reports for 569 Cornwall Avenue
6. Invitation to the Cheshire Business Appreciation Day Breakfast

**VII. INSPECTION REPORTS**

1. Written Inspections – N/A
2. Staff Inspections – N/A

**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

Ms. Simone was contacted by Barbara Gelmetti and she informed her the gravel pit and fireplace had been removed; she was reminded that the requirement was the engineer needed to submit that information in writing to the Commission and they would be able to move forward once the staff inspection was done and go ahead with the plantings.

Ms. Simone said Ms. Gelmetti is aware of what's required, and that information is pending.

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 said he thought everything was moving along smoothly; and payments were relatively on time.

Ms. Simone replied yes.

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**

**Ed Barnett of 509 Mountain Road was present.**

**Ms. Simone reported in her absence last week a letter was sent to Mr. Barnett based on the Commission's discussion at the last meeting and that is dated May 21<sup>st</sup>.**

**Chairman de Jongh said at the last meeting as the letter sent out indicated – we tried to indicate the things that had to take place – the two things that were required to be done were to secure the stock pile of soil with erosion controls and submit the engineering reports and cease all work on the site including excavation and installation of the foundation; he asked if all that has been done and the engineering has provided the reports.**

**Ms. Simone said the way it was left was this letter was sent to Mr. Barnett – the Commission had authorized movement on the construction sequence allowing for the staking of the corners of the house and the Commission had discussed at the last meeting the area had been excavated and so that is why this letter has been sent.**

**Ms. Simone said as on right now the Commission had allowed the staking of the area, but he had exceeded that, so the Commission has a conflict to come up with a remedy.**

**Chairman de Jongh asked Mr. Barnett to go on the record as to why the activity took place, prior to (approval).**

**Mr. Barnett said a month ago – his father-in-law came to the meeting and he was under the impression after he spoke to him after the meeting that we could move forward because we left the deck off; we could moved forward with what was in the box and at that point he did not have a building permit; he said he wouldn't think of digging a hole or do anything without a building permit and within the next day or so he got a call saying his building permit was here so he was under the impression that obviously when the building department calls and says you have a building permit all offices have signed off on it – including zoning so when he got the building permit he walked in and asked Conrad 'what do I do now' – he said build a house.**

**Mr. Barnett said that was the reason he was absent at the last meeting - he thought he was in good space and able to move forward – obviously that was something you guys were not happy with – but 'quite honestly that is the truth.'**

**Chairman de Jongh said when your father-in-law was here a two meetings ago he was not really in a position to address any of the issues that were a concern of the Commission because he just didn't have the expertise of what have you – the conversation that we had**

was trying to lay out what we were permitting at that point – the record was pretty clear of that we tried to convey to him and that was the reason why we were surprised you had gone further – we tried to spell out – that’s the reason we are here having the same conservation again; he said we are all a little bit tired of going over this again – its like its one continuance circle.

Mr. Barnett said d he was kind of surprised to receive the letter – he followed the letter along and cleared it up and didn’t do anything beyond what we have and the site is nice and clean and secure; he said he said he thought the first question asked of Gaye was about the engineering reports – were the submitted on time and so on – he said he wanted to submit 11 pages of reports and every week his engineer has been out there and every week he has made sure the silt fence has been secured and everything is done – and making sure nothing goes into wetlands.

Chairman said he thought the reports were supposed to be weekly and following a rain event of ½ inch or more which ever is more frequent.

Mr. Barnett submitted copies of the engineering reports to Commission members.

Mr. Norback said he missed the meeting but remembering back when Mr. Sinacalczo was here while he didn’t have some of the answers to our questions – if occurred to him he kept circling around to the deck issue - it just coming back to the deck and he thought the Commission did an admirable job trying to explain that was not the issue and he offering up the idea that instead of having the deck being a stumbling block – why don’t you get a separate permit for the deck and don’t have it be part of this permit and it might help the continuity of what Mr. Barnett is trying to do – he said there might have been confusion regarding the deck and it was unfortunate Mr. Barnett was not here to understand that but he actually could see there was room for confusion considering what was said – he said that if they dropped the deck that was no longer going to hold them up (but that was not permission to build); there might have been confusion regarding the deck.

Dr. Dimmick said the issue the Commission has had over the years (with other applicants) is that having permission of the building department does not give permission from the Wetlands Commission and permission from the planning and zoning commission does not give permission from the Wetlands Commission – we are an independent agency and according the state regulations were are an agency of the state operating through the town – we are not an agency of the town.

Mr. Norback said as said we are seen this in the past – is there any way from guarding against this in the future – maybe having a flyer in with the permit describing what it allows and what it doesn't allow.

Mr. McPhee said back in April we were pretty clear as far as step by step progress of what you (Mr. Barnett) could do and not do and there were others on this Commission that suggest revoking the permit or suspending the permit and at that time he suggested and everyone agreed to allow him to do step by step to move forward and make everyone on this Commission satisfied that the wetlands were going to be protected and you (Mr. Barnett) were going to follow the rules – 1, 2, 3 and 4...whatever the construction sequence was.

Mr. McPhee stated is was clear and you agreed to it at the time that you weren't supposed to go past step 7 and part of 9 and you (Mr. Barnett) did it again – so he understands he thinks he (Mr. Barnett) was confused and is off the hook for all the steps because he got a building permit but at the same time we could not have been more clear in that meeting.

Mr. Barnett replied that is not what he said – he said he did read the minutes – he was allowed to clear and grub the site and the next step after that is staking it and the next step after once he has a building permit is to excavate it – his confusion is that was a month ago.

Mr. Barnett asked if it was a precedence that he has to show up every two weeks and say okay I can stake it and two weeks later he can excavate it.

Mr. McPhee said that is what we had agreed upon.

Mr. Barnett stated “understood.”

Mr. McPhee replied then why are we here having this conversation – it was what we agreed upon in April – that he was only going to go to those steps and come back in front of this Commission – get permission to proceed on to future steps.

Mr. Barnett said that is what he thought the last meet was – because the site was grubbed and staked and then the next step is to excavate – maybe that is where the confusion was – he said it would take him a year to build the house and he understood the process – he understood their thought process but he will go out of business if he builds one house a year; he claimed to be very respectful of the wetlands and you guys (the Commission) was doing exactly what they said they were going to do and he was being ‘honest’ of why one step was moved forward and that's it.

Chairman de Jongh said the process we are going through is not a usual process for this Commission – the process we are going through on this particular application is out of the norm because we

have had this similar conversation now for almost three months in terms of going over a construction sequence we had asked for which he (Mr. Barnett) had provided to us – he remembered meeting in room 207 and we went over that construction sequence and everyone agreed that was the sequence you were going to follow since you had developed it and then continually the construction sequence was ignored and steps were taken beyond what we had discussed and what we had permitted to be done – so the dragging out of the construction of this house is an unfortunate byproduct of what's happening and it's not because of the actions of this Commission – it's because of the actions of you (Mr. Barnett) as the contractor – you have chosen to go forward beyond what you were permitted to do – you deliberately slowed this process down to make sure everyone is on the same page – and yes 'you have permission to go on to the next step' is not the normal procedure that we follow – it never has been unless we had violation after violation or ignorance of the construction sequence – step after step and we are left here saying 'why are we having this conversation again – now three months later' – it's the same conversation Mr. Barnett.

Chairman de Jongh said he was tired of it - and he can hear the echoes from other Commission members – if we are not going to have cooperation on both sides of the table the only recourse we have is to slow you up; sorry if it makes it a long process – and if it costs him economically he is sorry but that is not because of something that we've done.

Chairman de Jongh stated he was expressing a frustration that we all feel – when your father-in-law was here there was a long conversation about the deck – we got the map without the deck but that did not give you permission to go ahead and pass go and collect two hundred dollars – go ahead and build the next step – that was not what we permitted him to do.

Chairman de Jongh said he thought it was important to express the frustration that we are having with the continued conversation about the same thing over and over again – it's the failure to abide by the construction sequence that you provided to us and agreed to three months ago.

Mr. Norback asked about sequence number nine - stakeout house foundation, start building excavation and place foundation, slab and begin to frame.

Ms. Simone said at the meeting of April 16 – you had offered to the Commission he (Mr. Barnett) could go up to number nine and allowing for the staking of the house only and he was not permitted to proceed with any other activities detailed in number nine of the construction sequence – that was in the motion.

There was a brief discussion about the motion language only allowing to proceed up to the staking of the house in construction sequence number nine.

Chairman de Jongh said the question now before this Commission is where we go from here.

Ms. Simone said she had not inspected the site and suggested that Mr. Barnett give some insight as to what the conditions are on the property.

Mr. Barnett said they only worked in the 40' by 60' box that we are allowed to excavate in, and we peeled off the layers of soil in there and then put a silt fence around it; that's it.

Chairman de Jongh asked if the site was secure.

Mr. Barnett replied yes - everything is secure - he can't secure it anymore - he has 500' to 600' feet of silt fence on a quarter acre lot - the split rail fence is in - the silt fence is in front of the split rail fence - there are two piles where they were suppose to be on the plot plan and they are secured by silt fence and everything else is done and ready for a footing; there is nothing else that has to be done or secured and that is what he did when he received the letter - he said he made sure he followed what you guys wanted to do exactly and its done - he said he hasn't done anything else.

Mr. Norback asked how the bottom of the hole was looking after all of the rain; and if it was well drained.

Mr. Barnett replied there was nothing there; they had to dig down to where they have soil to hold a footing - inorganic so that is what they did - there are two piles one of which is the one on top of it and the other is organic materials which will probably be used as top soil; they filled it with stone - initially there was some water - it's done properly.

Mr. McPhee commented on the status of construction sequence number nine and about the receiving of the engineering reports.

Ms. Simone said they had been getting them weekly - then there was a lapse and then she sent an email out to Mr. Barnett and Mr. Gable to remind them about the rainfall of 1/2 inch or greater - and there was a lag there without getting it with the week - and then another information when out and after Mr. Sinacalzo being here they received something the next day from John Gable and now those are up to date and even indicate rain events - multiple reports within a one week period.

Mr. McPhee said it's safe to say he has satisfied everything up to step nine.

Ms. Simone said she believed so – the inspection reports just look to make sure everything is secure – he is up to number nine, starting work on number nine with the excavation – the question to the Commission is if the Commission will allow Mr. Barnett to move forward and continue on nine or to hear what his time frame is and what his plans are for doing other work and doing that – there are no deficiencies with the reports either with the timeliness of keep them from week to week and after storm events or also the content.

Mr. McPhee suggested amending the cease and desist to allow Mr. Barnett to proceed with steps nine and ten.

Mr. Norback provided input on following the sequences detailed in number nine and ten and submitted the weekly inspection reports from the engineer.

Chairman de Jongh said it would be in Mr. Barnett's best interest to make sure whatever is approved by this Commission this evening be followed chapter and verse otherwise we will be back here again slowing the process down; that is the only impact we have to make sure the site is developed the way we expected it be developed in the very beginning; what ever is approved this evening Mr. Barnett should make anyone working for him fully aware of what is approved and what they are allowed to do and nothing more than that.

**Motion: That the Commission amends the cease and desist order to allow Mr. Barnett to proceed with construction sequence #9 and #10:**

**#9. Stakeout house foundation, start building excavation and place foundation, slab and begin framing.**

**#10. Construct site utilities, protect catch basins with staked hay bales, trap and sediment that accumulates during construction.**

After construction sequence #10 is complete, then once again Mr. Barnett would come before the Commission before proceeding to construction sequence #11.

Mr. Barnett would need to provide an update as to what was going on and to make sure what was approved by the Commission this evening is followed to the satisfaction of the Commission before moving on to the next step in the process.

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

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| 4. | <b><u>SHOW CAUSE HEARING</u></b><br>Suspension of Permit<br>Ed Barnett<br>569 Cornwall Avenue<br>Assessor's Map 63, Lot 66 | SC 4/02/19<br>SC 4/16/19<br>SC 5/07/19<br>SC 5/21/19<br>SC 6/04/19 |
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Chairman de Jongh said he thought this needed to remain on the agenda for monitoring purposes.

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| 5. | Notice of Violation/Cease and Desist Order<br>Unauthorized Activities in the Upland Review Area,<br>Wetland Area & Intermittent Watercourse<br>John McKinley<br>1415 Marion Road<br>Assessor's Map 16, Lot 10 | SC 5/07/19 |
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Ms. Simone reported the soil scientist's report were handed out at the last meeting and copies were provided to the Commission.

Ms. Simone stated she has not had any contact with Mr. McKinley about any additional plans for clearing so she will wait to hear from him and then advise him on how to move forward.

**IX. UNFINISHED BUSINESS**

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| 1. | Permit Application<br>Shorab Hossain<br>195 Lanyon Drive<br>Tree Cutting | APP 2019-007<br>DOR 4/16/19<br>SW 5/14/19<br>MAD 6/20/19 |
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Ms. Simone reported she has been in email contact with the property owners and we are arranging a meeting this week to talk about the application and to talk about what their options are, and they may be interested in changing some of the plans.

Ms. Simone said she'd keep the Commission updated regarding the outcome of the conversations.

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| 2. | Permit Application<br>Robert Donnelly (Whole Foods)<br>East Johnson Avenue<br>Regrading | APP 2019-010<br>DOR 5/07/19<br>MAD 7/11/19 |
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Ryan McEvoy, PE of Milone and MacBroom was present on behalf of the applicant.

Mr. McEvoy addressed the Commission. He explained since the last meeting they addressed the conversation easement and the slope

**stabilization and rate of the slopes recommended by the engineering staff – the cut slope on the west and the fill slope on the east.**

**Mr. McEvoy said the documentation regarding the conversation easement has been provided to the Commission; he had said there was some discussion regarding a field walk.**

**Dr. Dimmick said after going through the information he was satisfied with the cut slopes on the west side – on the east side fill slope – he still had stability worries – he has seen what should have been stable slopes completely compromised so he would love to see in some way some permanent stability if they are going to maintain that slope using some kind of stability tool.**

**Mr. McEvoy said there was discussion with the engineering staff regarding the type of stabilization to use on this site; there are different kinds of erosion control blankets out there – the one they agreed on is more of a permanent one.**

**Mr. McEvoy agreed to provide the Commission with the manufacturing specifications for the erosion blankets proposed as the specifications were not attached to the information the Commission had.**

**A field walk was set for Tuesday, June 11, 2019 at 5:15 pm.**

**X. NEW BUSINESS**

**Ms. Simone reported an application was received for Whole Foods application for building; this item will appear on the next agenda under new business – it was received today and the mandatory action date starts today.**

**XI. ADJOURNMENT**

**The meeting was adjourned at 8:09 pm by consensus of Commission members present.**

**Respectfully submitted:**

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