

**CHESHIRE INLAND WETLANDS AND WATERCOURSES COMMISSION
REGULAR MEETING
TUESDAY, AUGUST 6, 2019
TOWN HALL 84 SOUTH MAIN STREET
COUNCIL CHAMBERS AT 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. Robert de Jongh, Dave Brzozowski, Charles Dimmick, Earl Kurtz, Will McPhee, Thom Norback and Kerrie Dunne were present.

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 – July 16, 2019

Motion: To approve the minutes from the regular meeting of July 16, 2019 with corrections: pg. 4 L46 “can” to “can’t just”, pg. 13 L44 the “feralization” to “fertilization”; page 15 delete the text in red ‘September.’

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

VI. COMMUNICATIONS

Ms. Simone reviewed the following communications:

1. MMI Inspection Report Re: 710 Peck Lane, Wetland Restoration Plantings
2. Notice of Violation Re: IWWC Permit #2019-008, Marion Road
3. Cease and Desist & Show Cause Hearing/Permit Suspension/Revocation Hearing Notice Re: IWWC Permit #2019-008, Marion Road

4. Cease and Desist & Show Cause Hearing/Permit Suspension/Revocation Hearing Notice Re: Permit #2019-006, Fenn Road
5. RFD Request for Determination, 165-170 Northwood Court, Drainage Swale
6. Staff Communication Re: RFD #2019-017, Northwood Court, Drainage Swale
7. Staff Communication w/Attachments Re: IWWC Permit #2019-019, Crestwood Drive
8. Additional Information provided to Commission members for both show cause hearings and potential to suspend or revoke two permits tonight.

VII. INSPECTION REPORTS

1. Written Inspections

- a. Ms. Simone reported on an written inspection of 1392 Cheshire Street – the Commission may recall the previous owner had an ongoing violation which resulted in a stipulated judgement – that owner paid the town the required fees associated with that stipulated judgement; when the house was sold the non-encroachment area was moved again and most recently as of last week the new homeowner has moved in the non-encroachment area; the fence is up and the markers are still in place.

Ms. Simone explained that she has been in touch with the town attorney who worked in conjunction to draft a letter and provided a copy of the stipulated judgement that's been recorded on the land records - the documents were available at the time of purchase of the property – this will be part of ongoing monitoring.

Chairman de Jongh asked what information was conveyed to the new owner by the seller; stating if you buy the property you buy the violation; and if they continue to violate, they are in violation of the permit stipulations.

Ms. Simone explained the violation had been corrected prior to the sale of the property – all this information was recorded on the land records and they have been in communication – herself and the town attorney had been in communication with the new owners attorney regarding the final payment that the previous owner was to submit to the town – that is also referenced in the letter that the town attorney helped to draft.

Ms. Simone said they would start by sending a letter to the new property owner to inform them where we are starting at - and where everything still stands – the cease and desist order - the stipulated judgement – the documents that have gone through the court system so they (the new owners) were already on notice so

they are being noticed again and if it continues she will speak to the town attorney and see what the next best option is to do next.

Mr. Norback said maybe the information was not conveyed to the new homeowner.

Ms. Simone said the letter was sent as an informational letter with all of the applicable attachments – also they were suggested that if they had questions to contact her.

2. Staff Inspections

Ms. Simone reported there were staff inspections on the properties under show cause hearings.

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 reported a letter was submitted by Milone and MacBroom that all of the plantings have been installed; she said she'd go by the site to verify that and report back to the Commission at the September 3rd meeting – the Commission can decide by that meeting if they want to release that order at that point or hold it for a certain duration – that's up to the Commission's discretion; she would have information prepared on the September 3rd meeting.

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

Ms. Simone reported this permit was recently reinstated and we (the wetland office) has been receiving the erosion control reports in conformance with the permit; they have been receiving reports after rainfalls if a 1/2 inch or greater of a rain event or at a minimum of once a week so they have been in compliance; there is activity taking place on the site and the reports are coming in saying the erosion controls are in good working order.

3. 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 she did have a discussion with Mr. McKinley regarding the information he supplied to the Commission and as she had indicated to the Commission she is drafting a response to him addressing each item he is interested in doing and what items require a permit and what he's allowed to do as a matter of right.

4. **SHOW CAUSE HEARING**

Notice of Violation/Cease and Desist Order
Unauthorized Activities in a Watercourse
Town of Cheshire Public Works/Engineering
Marion Road/Cuff Brook
Assessor's Map No. 25, Lot No. 16 and ROW

SC 8/06/19

George Noewatne, Director of Public Works and Engineer and Don Nolte, Engineering Operations Manager addressed the Commission. Mike Caffrey, Engineering Technician was also present.

Dennis Sullivan, executive vice president for National Water Main Cleaning Company was present.

Ms. Simone provided a summary regarding the show cause hearing in association with a permit #2019-008 issued to George Noetwante, Director of Public Works and Engineering for the spray on culvert lining of Cuff Brook at Marion Road; the permit was issued on May 21, 2019 and part of the approved plan referenced a site plan that was dated January 19, 2019 and revised April 1, 2019 – the permit did have stipulations – the first three were:

- (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) The erosion controls shall be properly installed prior to the commencement of activities and shall be monitored, inspected and repairs made when needed.

Ms. Simone stated this permit was issued and set to expire May 21, 2024; as with pervious engineering department requests for determination and permit approvals the permit was issued to the town with engineering department staff being responsible for

adhering for the permit including the required erosion controls and exercising best management practices.

On Thursday, July 18, 2019 around 3:20pm Commission staff received a call from the Connecticut Emergency Response and Spill Division informing that there was an emergency at the Marion Road – Cuff Brook culvert and at that time she was asked to meet out at the site.

Ms. Simone stated she informed Mr. Nolte and his office about the call from the state which he was already aware of and had indicated that Mr. Caffrey was on site or headed to the site; she also informed Sean Kimball, the town manager and George Noewatne, the public works director; this was the first notification that commission staff had received that there was a problem out at the Marion Road project site – at the scene she was informed by Connecticut Emergency Response and Spill Division staff that a resident with property abutting Cuff Brook contacted the state with a spill concern – that spill report case number is 2019 – 03340 – “caller describing dead fish, lighter fluid smell – gray color and sheen”; observation of Marion Road Cuff brook site revealed a gray material settled on the stream bed as well as turbidity in the water; they walked along Cuff Brook to the intersection of the Ten Mile River – she was joined by two staff members of the Connecticut Emergency Response and Spill Division and engineering department staff – Mr. Nolte, Mr. Caffrey and Public Works Director Mr. Noewatne.

Ms. Simone continued her report by explaining an immediate measure was discussed by placing a dam immediately downstream of the visible deposit of sediment on the stream bed and that was installed that same afternoon.

The Connecticut Fishery Division was contacted by the state and inspected the site on the same day- 7/18/2019 at approximately 4:15 pm and wrote a report stating the following in summary “they identified the location of kill as Marion Road, Cheshire – downstream of the Cuff Brook culvert for a distance of approximately .2 miles – they identify that most of the fish were less than 4” with some of the Brook Trout and American Eel being larger; the inventory – the dead and stressed fish as less than 100 Black Nosed Dace, less than 20 Long Nose Dace, 6 American Eel, 8 Brook Trout, 1 Tessellated Darter, 1 Red Fin Pickerel and 3 Creek Chub.

The report described the Cuff Brook downstream of Marion Road was turbid and had concrete particles on the bottom of the brook – they had identified the largest amount of concrete in the brook about the first 100 yards downstream of the culvert but that there were also signs of concrete and turbidly all the way down to Currier Woods Road approximately .2 miles downstream of Marion Road; they also identified there were dead fish in the brook all the way down to the pool on the downside of Currier Woods bridge; there were no signs

of concrete or turbidity or dead fish downstream of that pool – the number and species of fish were just as she had summarized; they go on the say – based on observations, the fish kill was a result of uncured concrete washing into the brook during a storm - the fish most likely died to changes in PH and particulates in the water column; concrete used for centrifuge casting culverts way also contain additional components like fiberglass or epoxy resins that may have increased the lethal effects.

While at the site the Connecticut Emergency Response and Spill Division staff informed Ms. Simone about an email that Mr. Nolte sent to the contractor on July 18, 2019 at 10:50am which reads “Eric, your crew is working without any E&S controls that could result in wetland enforcement problems and the need for them to clean up the stream bed (and in quotes) “and I don’t want to have to attend a violation hearing with you, if not corrected and caught” – please be sure that they bring the dirt bags and silt fence and hay bales tomorrow and follow best management practices. Also, as discussed with previous project manager – we’d like you to pour a footing beneath the flared end that they are working next to and it’s suspended it in the air before you pull off the job. The town will pay extra – please provide an estimate. Thanks. Mr. Nolte.”

Ms. Simone explained this information was also supplied as part of the cease and desist.

Ms. Simone said in accordance with the Town of Cheshire Inland Wetlands and Watercourses regulations a notice of violation was issued on July 23, 2019 ordering that all maintenance and repair and improvements to the Cuff Brook Culvert were to cease – given that Inland Wetlands and Watercourses regulations required that a cease and desist and show cause notice be issued within 10 days of the next scheduled meeting the cease and desist and show cause hearing notice was issued on July 30, 2019.

Ms. Simone summarized the site conditions – on Friday, July 19, 2019 she visited the site in the morning with Vice Chairman Dimmick and she and Chairman de Jongh met with representatives of the state and the engineering department and the contractor that afternoon to discuss a cleanup plan – as this was part of an emergency situation that was not the ability to seek a permit prior to the necessary clean up; the site clean up of the cement in the stream bed took place on Friday, July 19th through Sunday, July 21st and it is now completed; Commission staff has been in contact with the Connecticut Water Permitting and Enforcement Division regarding their ongoing investigation; the Chairman requested information from the engineering department – emails and photos of the site – through this information it appears that engineering staff was on scene doing inspection of this project beginning on July 16th – the photos were sent to Commission members on Friday, August 2nd and Commission staff received them – copies are provided tonight; the

photos have been numbered for easy reference; also emailed to Commission members on Friday was a written summary from Mr. Noewatne detailing the events of what had happened.

Mr. Norback asked if there was any other potential for any other wildlife to be affected even though they are not laying dead in the stream as fish and eels do – what is a threat to other wildlife.

Ms. Simone said that she did not know – that information was not relayed to her from the state – that is something she could follow up on and ask about.

Mr. Norback said he thought it was relevant.

George Noewatne, Director of Public Works and Engineer and Don Nolte, Engineering Operations Manager addressed the Commission. Mike Caffrey, Engineering Technician was also present in the audience.

Chairman de Jongh said what he'd like to have happen is if they start from the beginning and given a verbal description from the beginning to the end of where we are at this point.

Mr. Noewatne said in addition to his staff, members of the National Water Main Cleaning Company were also in attendance.

Mr. Noewatne summarized his written report that was submitted to Commission members.

Mr. Noewatne said they regret this has happened – they don't chose to be here under these conditions and regret they are here under them; he said he submitted a report on August 2nd; the Town of Cheshire bid a project to line a culvert that allows Cuff Brook to cross under Marion Road; through a bid process they selected National Water Main Cleaning Company of Massachusetts and they were going to do the lining of a 7' by 11' by 54' culvert - the culvert was structurally deficient – it was rusted out at the bottom and National Water Main has a process where they can line a culvert using sebaceous material to restore the structural rigidity of the culvert and allow it to convey traffic along and cross the top of the culvert without fear of collapse or any subsidence.

Mr. Noewatne said National Water Main was part of the development of the dewatering and controls and erosion plans – they have been provided with copies of everything through Don and Mike and others and we were confident in their abilities to do the work.

Mr. Noewatne explained that several members of National Water Main attended a wetland application meeting along with engineering department staff on May 7th and discussed with the Wetlands

Commission the plan and any modifications to it and requirements and that was subsequently put into place.

Mr. Noewatne said the project was delayed to mid-July because flows could be managed better at that point – less rainfall – less flow in the stream; National Water Main mobilized on July 15th and that information was communicated to all parties; prior to the mobilization Mr. Nolte directed our engineering technician Mr. Caffrey to review all the plans and be the inspector for the property – Mr. Caffrey has worked as our technician for about ten months now and is very experienced and done this job for another municipality prior to joining the team in Cheshire.

Mr. Noewatne reported that on July 15th National Water Main arrived on site and starting doing some preliminary activities and mobilization – there is an engineering field report and photos which the Commission is in possession of; on Tuesday the contractor began preparation of the culvert bottom (there is an engineering report and photos detailing all the activities) – Mr. Nolte made a site visit that day and he saw the bypass system was running and National Water Main was vacuuming out the bottom of the culvert in preparation for spraying; on Wednesday the contractor began pipe lining activities – there are photos and a report – Mr. Nolte emailed National Water Main advising them to install erosion controls and silt barriers around the staging area and Mr. Caffrey was checking up on that and reported it had not been done which was the reason for Mr. Nolte's email – Mr. Nolte also emailed an hourly rainfall forecast so that they would be in possession of the most up to date information; at the end of the day National Water Main didn't plan on coming back the next day because of predicated thunder storms and there were thunder storms so they canceled police traffic control for that Thursday the 18th; on the 18th Mr. Caffrey was called in the morning about 8:30 am or so by National Water Main saying they were going to be onsite doing some patching activities – they began some work activities that morning – there are photos and an engineering report in the file; Mr. Caffrey called Mr. Nolte to inform him that the foreman told him he planned to work for a short while – weather permitting – to patch a small area at the top of the culvert – Mr. Nolte assumed they were not going to do anything but assess the condition and leave the flows bypass if they weren't met.

Mr. Norback asked when he says top of the culvert does that mean the vertical top or the elevation top as far as upstream.

Mr. Noewatne stated the 'crown' of culvert.

Mr. Noewatne went on to explained that around 10:30 am that morning Mr. Caffrey returned to the office to show Mr. Nolte pictures of the cloudiness in the water and stated the contractor would be leaving the site shortly which is what he had been told at that time;

no mention was made of any sediment accumulations at that time – Mr. Nolte assumed they could not bypass the flows.

Mr. Noewatne said the gist of the email that Ms. Simone referred to earlier was that they were planning to leave the site and Mr. Nolte sent the email to several of the project managers and the executive vice president saying that before they return on the next Friday, if they were going to work Friday, all the siltation controls had to be in place; it was his understanding (Mr. Nolte's) that they were not on site that afternoon.

Mr. Noewatne said around 3:30pm DEP called and notified everyone there was a problem downstream that they had been contacted – he and Mr. Nolte went out to the field with Mr. Caffrey and Ms. Simone – they walked the area and saw the sediment accumulation in the stream bed and it was obvious that the material was from the culvert lining and that evening the contractor placed a sand bag – sediment trap across the bottom of the stream to try to contain as much of the bloom as possible downstream and they arranged to meet everyone on site the next day – Friday at 2:30pm to discuss remediation; that meeting was conducted on Friday – Ms. Simone recapped it very well in her report – a plan of action was developed Saturday and Sunday – the plan was implemented to clean the stream – it was vacuumed and the material was removed – he thought most folks were happy with what was done – it was unfortunate it happened at all but the clean up was done very professionally and thoroughly; the whole time Mr. Caffrey was onsite – Mr. Nolte was onsite sporadically both days just to make sure the town was covered in that way; on Monday, July 22nd a meeting was conducted – DEEP personal was called in rather than being onsite – everyone was very happy with the clean up and at that time National Water Main notified the town that they had one days work remaining to clean up the lining of the culvert; they received the notice of violation on July 23rd, the cease and desist on July 30th and on Wednesday, July 31st he and Mr. Nolte met to review the after action – after the fact reports and photos and everyone else.

Mr. Noewatne stated obviously there had been a discharge on July 17th which was that Wednesday and there are some pictures that document that and on the 18th show the sediment deposits present.

Mr. Noewatne said the had a communication problem in the field and the office and they sent emails out directing it be cleaned up once we knew about what was happening – in hindsight we should have stopped the contractor from working immediately at that point when there was turbidity in the water – that is not in dispute.

Mr. Norback asked as far as the materials that did go downstream – where they stored materials or were they applied materials that had not yet set up (solidified).

Mr. Nolte said it's his belief now that they were discharged – he thought it was residual material – perhaps material that fell down from the roof of the culvert - at that time he did not believe the bypass was working properly as it should have been - the key factor of this whole concept is to work under dry conditions – they trusted the contractor to do so.

Mr. Norback said he recalled asking that question and was assured it would be under the original permit application.

Mr. Noewatne said they are here tonight to discuss this matter with the Commission; they obviously have some lessons to learn and he has put them in his report - four major lessons learned (1) they are going to conduct training of personnel of the engineering department on E&S controls – the ability to stop work immediately – communication of any deviation of the plan (2) in the future they plan to conduct an onsite meeting during mobilization to insure all parties have the relevant plans and everything is just so and everyone understands what needs to be installed and how the project needs to be conducted (3) on future projects they will have their inspector on site to prepare daily reports in a prescribed format and a management member will review that to make sure there is nothing left unsaid or nothing nebulous left in the reports daily (4) they will also brief the Commission's designated representative on those reports – daily or every couple of days based on work activities.

Mr. Noewatne said he wanted to assure everyone that the public works department takes this very seriously – as a department head he takes this very seriously – no one wants to be called in front of the Commission will illicit discharge like this – it's not good for the environment or the town or anyone involved.

Mr. Noewatne offered his apologies to all those who were effected; the whole time they have tried to provide very clear communication – they were open to whatever investigation – they want to learn from this and move forward, so this never happens again – that is his goal and he thinks he speaks for everyone here.

Mr. Nolte said they would like to offer that they would like to develop a written standardized operating procedures to be reviewed by Suzanne and whatever members are interested just to ensure that this is how each matter – whether it be a construction site with utilities or driving through a subdivision that may have a wetland permit or be part of a wetland permit that the proper protocol is followed and notifying the people of the proper order by phone from the site with pictures when necessary and that follow up is done completely.

Chairman de Jongh said he wanted to go through on a day to day basis and ask pointed questions about the operation – he said to start with he was going to use a phase that was used early on in the

discussion stages of this – that this is a learning opportunity for us – which is somewhat of an interesting phrase since the language that we put in every permit application is standard language used with every permit application – so this is nothing new.

Chairman de Jongh said he was going to start with Monday, July 15th – you make mention of the engineering technician’s field reports, yet we have copies of all the field reports that were signed by Mr. Caffrey and at the bottom of every one beginning with July 15, 2019 – at the bottom of everyone above his signature there is a statement that says “I represent that the site is/is not stabilized in conformance with the Connecticut guidelines for soil and erosion and sediment control, amended 2002” – on every one of those pages beginning on July 15th, July 16th, July 17th, July 18th, etc. not one single is or is not is circled so he’s wondering how Mr. Caffrey can certified those things have been done when in fact a determination was not made as to whether or not they were done and in reality as we already know by visual proof those erosion controls were not even there so maybe that is why Mr. Caffrey did not check off is or is not because either one would have been an admission that the erosion controls did not exist.

Chairman de Jongh – said he was going to go on to Tuesday, July 16th – he asked that public works had a copy of the numbered pictures he was referring to – he said he was specifically looking at Tuesday, July 16th; each picture was numbered with the days reference – he said he was looking at the photos dated July 15, 16, 19 and 20 and he is questioning why the pictures show spring that began on July 16th when the narrative Mr. Noewatne presented tonight said that spring didn’t begin until July 17th – he asked if anyone could answer (that); he assumed those pictures were taken by Mr. Caffrey – is that correct.

Chairman de Jongh said let the record show he nodded in the affirmative (Mr. Caffrey).

Chairman de Jongh said so he (Mr. Caffrey) is taking pictures when his boss stated no work was done on July 17th – he is just wondering why.

Mr. Nolte said either George Noewatne or himself knew of the activities daily until – aside from his one 5-minute visit when he met the foreman – none of this work was going on – he didn’t know this had commenced on this day.

Chairman de Jongh said his brings up another question – he knows that Mr. Caffrey was charged with his responsibility is to inspect and make sure the S&E controls were in place and everything was operating functionally so here he is taking pictures of the fact that there are no S&E controls and there is run off from that pipe

beginning on the 17th yet he doesn't come back and tell you or doesn't tell – and he has the authority to do this to the contractor – he doesn't take the authority to shut the project down because the S&E controls are not in place.

Mr. Nolte stated, 'no he did not.'

Chairman de Jongh asked if there was a reason why.

Mr. Nolte said, 'he didn't know the reason.'

Chairman de Jongh asked if he was taught that was part of his responsibility when he was hired.

Mr. Nolte said he fully expected that he (Mr. Caffrey) knew that was his responsibility – stating he was in the same position for four years – it was his responsibility then along with other responsibilities and he did not have to be told that.

Chairman de Jongh said let's go on to July 17th – why was the work allowed to begin when Mr. Nolte noted in emails on July 17th and especially on July 18th that controls were still lacking – again, we have Mr. Caffrey taking pictures of the situation and verifying that we have a situation that we need to deal with.

Mr. Nolte said the erosion controls consisting of the bypass pump was in place – that was the principal and most important control – the control that was absent to his knowledge was the silt fence around the staging area which had been covered with 75% thick rubber pads that limited open soil that could be exposed erosion in that area and that absence was not the cause for the failure.

Chairman de Jongh said he understands that but it goes back to the permit stipulation #3 when the permit was granted to the public works department – and that is 'no activity would commence until all erosion controls were in place and verified'; so whether it was just a silt fence or just a haybale – the fact of the matter is the erosion controls were not in place and work was being conducted.

Dr. Dimmick asked about photos taken on July 17th – photos 3 and 4 show water in the culvert when he thought anything going on should have been in the dry on July 17th.

Mr. Nolte said that was correct and that did not come to his knowledge until he viewed the pictures on July 31st.

Dr. Dimmick said the photos of July 17th show quite of bit of compound already sprayed on the culvert so that is either the result of the spraying on the 16th or more straying on the 17th - he didn't know which; he didn't know the reason for the turbid water showing on photo one of July 17th showing some rather milky water – is that

going up stream or down stream of the culvert – what is involved in that one.

Mr. Nolte said that appears to be downstream – the didn't know about the hose shown in the photo; the water appeared to be milky in the photo unbeknownst to him on that date.

Chairman de Jongh said again Mr. Caffrey did not take the step to just the project down because he might have been able to foresee a potential problem.

Mr. Norback asked if we were sure of the accuracy of the timing of the photos.

Chairman de Jongh said this is what their engineering technician provided as an inspection of the site.

Mr. Norback said he didn't know what kind of hose would be so far in the stream – he asked what the hose was conveying.

Dr. Dimmick said photo six on July 17th shows people standing in water while they are spraying.

Chairman de Jongh said he was at a lose why there is such a disconnect with what is going on – again another learning opportunity.

Chairman de Jongh called attention to the photos of July 18th – if Mr. Nolte cancelled the work for the day and traffic control was cancelled why did Mr. Caffrey receive a call in the morning and allow the work to commence.

Mr. Nolte said he didn't know and wanted to defer to and introduce our contractor National Water Main Cleaning Company.

Chairman de Jongh said he didn't think they could speak to why Mike still allowed work to continue – he asked what Mr. Caffrey had to say and asked him to come up to the microphone.

Michael Caffrey, engineering technician, said when he got the call they were already working.

Chairman de Jongh said so they were already commencing their work.

Mr. Caffrey said what he was told on the phone they were already commencing their work.

Chairman de Jongh asked if he (Mr. Caffrey) took it upon himself to tell them they had to stop.

Mr. Caffrey stated no.

Ms. Dunne asked if that was because of the weather – the work was stopped that day for what reason.

Mr. Caffrey said it was pending rain.

Chairman de Jongh said he didn't think it rained.

Mr. Caffrey said he didn't think it rained until the afternoon - he believed – he was not positive.

Chairman de Jongh said we have the workers in protective gear spraying the stuff doing work that the shouldn't be doing because the work was stopped.

Mr. Caffrey replied 'correct' – they didn't stop – he said, "he should have shut it down, but he didn't."

Chairman de Jongh said there is an apparent communication breakdown from members of the public works department in terms of what their responsibilities are – who is supposed to be in charge and taking the action necessary – he failed to understand why this wasn't shut down – as a result of that we have the state now involved in taking a look at this and it's a situation that could have been nipped in the bud on the 17th or the 16th.

Mr. Caffrey said he agreed 'he should have shut it down – he didn't, and he should have'.

Chairman de Jongh said when he and Ms. Simone met with the contractors on site on the 19th we were referencing maps that we were looking at – those maps were dated January of 2019 but in fact they had been revised with April 2019 map and when we brought that to the contractors attention – he thought Mr. Caffrey said he had another set of plans in the truck and he went to get his set and they too were January 2019 plans.

Mr. Caffrey said he the plans had E&S on them which were the revised plans.

Chairman de Jongh said it was his understanding that the plans he had were dated January not April – he asked Suzanne if that was correct.

Ms. Simone said she thought that was the discussion.

Chairman de Jongh said they were working with maps that were four months old; all of the contractors that were doing the work had plans that were four months old – and even though the approval was given

months earlier the work didn't happen until July – the question in his mind is why weren't they provided with revised maps.

Mr. Nolte said they were indeed – if you look through his email transmissions – plans and permits and latest approved plans were transmitted to the project manager James Fleming.

Chairman de Jongh said all he knows is that when we were onsite we were looking at the maps and the state representative was referencing maps all dated January.

Mr. Nolte said that was correct – that is what he saw at that time.

Chairman de Jongh said he begs the question – how can you do a job when plans have been revised and you are not working with current conditions.

Chairman de Jongh went on to Friday, July 19th, Saturday, July 20th and Sunday, July 21st – admittedly the contractor did the work that was necessary – they worked all day Saturday – they worked all day Sunday and to their credit it looks like at least the project is stabilized.

Chairman de Jongh said as a side bar – as a tax payer – as tax payer the fact that we have to pay overtime to Mr. Caffrey to be there Saturday and Sunday to oversee work that should have been stopped four or five days earlier rubs him the wrong way – knowing this is not germane to the issue here but it's a byproduct and one of many that they are going to have to face as tax player of this town.

Chairman de Jongh said it was mentioned many times during this process that this was supposed to be a learning opportunity and in fact Mr. Noewatne mentioned it that there were four or five steps that they were going to implement – many of which had to do with understanding the job – basically reeducating people and it exasperating to him to think that you'd allow someone to be in charge of a project who is good at taking pictures but not able to step up and stop a contractor from his or her work; that's a failure of learning – that's a failure of training – that's a failure from the top down.

Dr. Dimmick said one of many things that bothers him about this is that it took a call from the State of Connecticut for our staff to be aware of the problem – there is internal communication that one part of the town should have immediately let another part of the town know of something that was immediate concern to them – not let them find out by a hone call from the state.

Ms. Dunne said especially when that email references inland wetlands specifically.

Chairman de Jongh said the public works department and the engineering department has had a very good working relationship with this commission over the years – and he has been on the commission over 35 years – we have always tried to create a good relationship departmentally but within the town – what this particular situation brings to mind and casts a cloud over is he has zero faith in the ability for public works to professionally present information to us that we have to deliberate on and come to a conclusion on and make an approval of any application that may come before us; because what he has seen over the five day period of time is a total inability for staff to communicate among themselves – for training to be appropriate and across the board and to take the necessary steps to step in and shut things down when they are supposed to be (shit down) instead of taking pictures of the actual event taking place and then waiting for as Dr. Dimmick pointed out – for the state to step in and call our staff person and inform us we have a problem.

Mr. Kurtz stated he agreed and also this business about it being a learning experience – this project like any other project that comes before the commission and approved by this commission and acted upon should never be a learning experience – maybe continued education – but you are supposed to know what you are doing – now you want to have a learning experience - is that an excuse – it's a pretty poor one.

Mr. Kurtz said all of this is immaterial – it's pretty obvious what happened – there was a problem within the contractors organization – within the public works department - that's their problem to solve – our problem it the entity granted the permit violated the stipulations of the permit – that's simple – excuses don't explain it – and they certainly don't absolve it – so we are doing a lot of talk but its not even relevant – you guys have a problem – take care of it – if we have a problem we take care of it; the public works department did not follow the stipulations of the permit they were given and signed for so they are in violation.

Chairman de Jongh commented about our engineering department being charged with spearheading a program called MS4 which is a state required program to documented illicit discharges and he has to chuckle that our engineering department would be in charge of such an important project such as this when they cant even do a culvert project properly; he said he was frightened about what a project of that magnitude would be.

Dennis Sullivan, executive vice president for National Water Main Cleaning Company addressed the Commission.

Mr. Sullivan started off by stating their regret about what happened during the course of these several days during the course of this project; he said they pride themselves on being able to do this type of work – they have upward of 40-50 crews ranging from New

England to upstate New York and we are the trusted contractor of many cities, towns and municipalities throughout the region to inspect – care and rehabilitate the underground infrastructure; he said there is no one more embarrassed in this room as he is listening to these events because they are much better than this.

Mr. Sullivan said they have conducted their own investigation on this matter and already have taken corrective action; he said the one thing they certainly want to do is finish this job – we always complete the projects that they have – they perform many projects that fall under environmental stipulations similar to this – it's not foreign to us – we execute these type of projects every day – day in and day out and really the cause for this specific job for them was the supervision on site – the crew and supervisor had performed these type of projects before – they have performed environmental controls – bypassing is the most important feature of this type of work – its common sense not to apply some semideciduous lining with flow going through this conduit and that's exactly what caused this event to happen – was the crew trying to apply this semideciduous product while flow was going through the conduit – he said he was embarrassed when he heard that's what happened – and conveyed some of the semideciduous product to go downstream while they were performing this job.

Mr. Sullivan said he could go over the sequence of events from what they could get from their own internal investigation - many of the events were similar to what was stated – the first day of semideciduous application happened on a Tuesday – the conduit was in poor shape – the reason why this application was selected for this conduit was because it is less disruptive – more cost efficient and it's a new innovative way to rehabilitate and upgrade underground conduits in this manner – it's a newer technology that's being accepted by Connecticut DOT and other state DOTs across New England – and it was a perfect application in this case; instead of having to dig it up and replace the conduit beginning able to bypass and form a fiberglass reinforced semideciduous liner on the inside is the perfect application from a less disruptive as least to the environment being able to do it this way; bypassing the flow during the work is the most important feature of it and from their investigation that bypassing occurred on Tuesday and Wednesday but on that Thursday that's the day it did not occur and that's what cause the product to migrate downstream.

Mr. Sullivan said when he was copied on the email that came through on Thursday morning at 10:51 – he does have project engineers that are responsible for overseeing it and he has a site superintendent on the site what was trained and performed this type of work in the past and when he saw the environmental controls being raised as an issue – he made the determination that was going to be rectified in the field but he didn't find out until he got the call and he spoke to the state DEP on site and in fact it was the lack of the bypass that

actually caused this event to happen on Thursday; and that's when we took immediate action to build a haybale filtration system 500' downstream and able to mitigate the process of any semideciduous residue from moving downstream and that is when we began the cleaning process – immediately and until it was complete and to everyone's satisfaction – it was due to the bypass not being in place on that Thursday is what caused this event to happen.

Mr. Sullivan explained not having the other environmental controls in place – very embarrassing – something we should be doing immediately from the first day of the job but the most critical nature of this was that the bypass wasn't in place on that Thursday that brought that flow downstream.

Mr. McPhee interrupted Mr. Sullivan to say they have pictures of the guy standing in water on the 17th spraying your product – which is Wednesday.

Ms. Dunne asked that he (Mr. Sullivan) be shown the photos.

Mr. Sullivan was provided with the photos and the photo of July 17th – pictures 3, 4, 5 and 6.

Mr. McPhee asked if there was anything in place in the permit and what the proposed to us as far as the silt fence and E&S and safety things – was there anything in place that would have prevented this from going downstream other than the dewatering – was there supposed to be a boom on the other side that they didn't put in.

Ms. Simone replied no - it was all indicated on dewatering.

Mr. McPhee said dewatering was the problem and the fact that they worked in this area while there was still moving water going through the pipe is the cause of this problem.

Ms. Simone replied yes.

Dr. Dimmick talked about his previous experience with similar projects and said as long as they put in a bypass and worked in the dry – and had proper protection upstream and had the bypass and the culvert was dry we never had an issue downstream.

Mr. Norback said he asked about this during the permit process and had the assurance this would be the process; he said he was impressed with the product and through it was a great product.

Chairman de Jongh commented to Mr. Sullivan that there is a disconnect with the dates he was referring to and the picture dates in which they were seeing.

Mr. Sullivan said from their investigations onsite assuming these pictures are correct – you are correct – he said he was under the impression that the bypass was in place on that Tuesday and Wednesday and it was on Thursday that it did not happen but if these pictures are in fact correct and the day they were taken – they are correct – the semideciduous product is getting downstream when the bypass was not in place and up and running.

Mr. Sullivan said rest assure that if he was notified and had known this bypass was not up and running this job would have been shut down immediately – its common sense not to perform this work without a bypass in place.

Mr. Brzozowski said your technicians are standing in water – don't they know enough (not to).

Mr. Sullivan explained the supervisor knows enough that is why he is no longer employed with the company anymore – he was terminated.

Mr. Sullivan said they take this matter very seriously – this is what they do for a living – a lot of communities rely on them – they come in and perform the clean up after matters like this – the fact that we caused this under our own actions is applauding to us and the comment about overtime – whatever costs the Town of Cheshire has incurred as a result of this - can be taken off (the bill) as a credit for our contract.

Mr. Norback said he thought Mr. Kurtz said it best – that's their problem – we are here for the cease and desist and suspension or revocation of the permit – the permit was given to the engineering department of the Town of Cheshire so we should be more on task with that.

Mr. McPhee asked where the project stood now – is it 100% completed – is it 80% completed - where are they right now.

Mr. Sullivan said they need to perform one more pass – the initial several steps as he described and the last application that remains to be done needs is they have a centrifugal spinning head that whips the cement that basically forms a pipe inside a pipe - we have to do one more pass and apply ½ inch of product on to this liner to get the 1 inch full thickness – that will give it its structural repair – the application will extend the life of the conduit of 30 plus year life expectancy but to certify that you need a 1 inch application over the top of the corrugations – we don't have that yet – technically its not structurally repaired.

Dr. Dimmick asked if what was put on so far was Geo-Spray; and there was also Hyperform on site – what purpose was that used for.

Mr. Sullivan stated yes; the Hyperform was used for filling in voids; the spraying type product is geopolymer (Geo-Spray).

Chairman de Jongh asked how long the remaining work will take.

Mr. Sullivan replied one day.

Chairman de Jongh stated and that should be done in dry weather.

Mr. Sullivan said that should be done under bypass – and in dry weather.

Chairman de Jongh said assuming the bypass is operational there is no water flow through that conduit anyway.

Mr. Sullivan replied – correct.

Chairman de Jongh say he for one appreciates the fact that his company has stepped up to the fact that their contractors were less than professional on this job - he appreciated the honesty on their (Mr. Sullivan company) behalf.

Mr. Sullivan said once they found out what happened they did everything the could to mobilize a workforce – they scrubbed the rocks – they scrubbed each individual rock to make sure the residue was out – they vacuumed all the content and sand that had gotten into that stream – they cleaned all that out up to a 400' distance – they did what ever the could to go above and beyond but the fact that he is standing in front (of the commission) today is one of the most embarrassing things that could happen to his company.

Chairman de Jongh said he mentioned the supervisor on site has been terminated from the company – what assurances do we have that the next person taking his place is better than the person missing.

Mr. Sullivan explained they have had retraining that has occurred – the biggest emphasis is when you have your number two, three and four guy – when they see something that should not be done – its up to them to step up and to put a call in to management – that is probably one of the biggest lessons to learn is that there were other people on the crew that knew better but they were going along because the supervisor was saying that is was okay – that is the most important lesson that you have to take away from that is that you have to embolden the other men on the crew to be able to speak up with they know when something isn't being done right.

Mr. Sullivan said when they go back they would have their lead Connecticut superintendent on site the entire time until this job is done.

Mr. Norback said he'd like to suggest if they do indeed allow them to finish the project – that he'd like to see some redundancy by the bypassing of the water and perhaps it would be prudent to have a boom set up closer than 500' to the end of the culvert – right in the immediate area just in case there was a reason that any water passed through that pipe.

Dr. Dimmick said the problem with the boom is that it stops solid material but if you have enough water going through the water has to go somewhere – and the boom is not going to stop the contaminated water – especially in this case; he said it looks like the primary culprit was the change in the PH – the stream water runs about 5.5 PH it's a little on the acid side – the product being used has a PH between 10 and 13 which is all the way towards the alkaline side (12 will kill you -13 is worse).

Mr. Sullivan said what they have done in project before – even through they have the bypass in place they would line haybales with filter fabric just immediately outside the culvert – if any flow does try to make it through it passes through that barrier – as long as the bypass is in place they won't have any flow trying to make its way downstream.

Mr. Sullivan said two other points he wanted to mention – when he became notified and had the conversation with the state they immediately hired Kleinfelder – a private consultant firm to be on site the entire duration and they have developed a report on our clean up activity and that is part of a report he can share with you (the commission) – it has a Kleinfelder private engineer onsite all entire time observing our work and documenting the cleanup – he can submit that report.

The Kleinfelder report (dated August 5, 2019) was handed out to Commission tonight.

Dr. Dimmick suggested a precaution that is a little out of the ordinary but since the main cause is PH that if they had several gallons of vinegar on hand and if a spill occurred the white vinegar would help neutralize thing quite quickly. – and is actually the PH that fish like.

Mr. Sullivan said in his discussions with the DEEP we offered to restock anybody of water that was reasonable and necessary and their response to him was that they didn't think it was necessary that the population was a low kill and they thought it was already starting to regenerate itself.

Ms. Simone said it was a Marshall Hoover from the enforcement division – not fisheries.

Dr. Dimmick said he would like an opinion from fisheries.

Ms. Simone said she could check with the state and see if fisheries has an opinion on that.

Dr. Dimmick said new material came in today that staff has not had a chance to review – he wants staff to check with fisheries about restocking so perhaps the best thing to do is leave this show cause hearing open just for the purpose for reviewing new material and receive new material; and that they made a decision if the show cause was valid and justified.

Motion: That the Commission moved to uphold the cease and desist order (by staff).

Moved by Dr. Dimmick. Seconded by Mr. Brzozowski.

Mr. Kurtz said he was swayed by (Mr. Sullivan's) presentation and he had a lot of faith in this company all of a sudden and there is one day left of work to complete this job – and we could hold them up for a month or forever if they have to come for a new permit perhaps the public works department wouldn't want to go the same route – if they were dissatisfied with the work; if the material really works and the application was flawed and its going to be corrected and the company is paying for all the problems there were created.

Dr. Dimmick said this is not germane to the motion on the floor – they are just voting on if staff was justified in ordering the cease and desist.

Chairman de Jongh said the discussion about the permit comes next.

Mr. McPhee said so we are voting to make sure Suzanne was in her right to issue this cease and desist order, but he did agree with Earl that they should be allowed to finish the project.

Chairman de Jongh said that comes under the next part – when they discuss if they want to revoke the permit.

Chairman de Jongh said that public works dropped the ball on a number of issues – the violation occurred because of a lack of oversight and the lack of professionalism on the part of the public works department - he wanted that to be underscored and reiterated.

Motion approved unanimously by Commission members present.

5. PERMIT SUSPENSION/REVOCATION HEARING PS/RH 8/06/19

**Unauthorized Activities in a Watercourse
Town of Cheshire Public Works/Engineering
Marion Road/Cuff Brook
Assessor's Map No. 25, Lot No. 16 and ROW**

Ms. Simone noted the cease and desist does stand unmodified – the next order of business is to discuss a suspension or revocation of the permit; she reviewed the information the Commission could request from the contractor or the engineering department or anyone in particular and assign how that is to be reviewed and come back at the September 3rd meeting or authorize staff to review the information received – that is up to the Commission.

Dr. Dimmick said they could come up with wording to authorize staff with final review from the Chair to make sure everything was okay.

Ms. Simone also suggested reviewing wording with the vice chair based on this experience.

Dr. Dimmick said information he wanted to see was from fisheries and whether restocking is or is not necessary (this falls under another matter); he wanted to make sure that work could occur with some kind of secondary safety in place.

Ms. Simone asked specifically what the Commission would look for – would that be supervision from the contractor.

Mr. Norback said he thought it (the work) was going to be overseen by Kleinfelder – the consultant.

Mr. McPhee asked if the consultant was willing to oversee the project to compellation.

Chairman de Jongh aske that the record show Mr. Sullivan said the consultant Kleinfelder would be the overseer of the project.

Mr. Sullivan addressed the Commission and stated they would offer the private consulting firm by the name of Kleinfelder to act as their on-site inspection on their final day of work on site.

Dr. Dimmick said staff needs to get that in writing with proper guarantees before they can get an approval.

Ms. Dunne said she would like to have the inspection report come to the Commission or staff – she wanted to make sure they were reporting to us.

Mr. Nolte said he did appreciate the appearance that they are willing to allow the work to go forward and there are important reasons why it should – for public safety reasons this is a half-finished job – they are going to probably have to take some cores to make sure they get

the proper 3.26 inches of lining required by the structural engineer – he said he would hate to see two axil trucks pass over at the same time and develop a crack in the system and the while pipe fails and they have a \$650,00 box culvert replacement job on their hands.

Mr. Nolte said he would like to offer on the behalf of his department to replant the stream banks where the contractor had to remove invasive vegetation and decades of neighborhood dumping and waste piles and plant a few dozen fruit and berry producing shrubs upon completion of the project and to notify those neighbors that it's not okay to dump their waste materials in this area.

Ms. Simone said if they could have specific language for the motion – they are at the point of the agenda that they talk about the suspension or revocation but they could talk about a suspension but the Commission could ask for specific information they are looking for and upon receipt of that and review and distribution to the Commission and review from the chair and vice chair that then they could be allowed to move forward.

There was discussion regarding the wording for the motion; and the need for independent engineering third party consultant review; and reports submitted to staff.

Ms. Simone talked about the next steps for the benefit of Mr. Sullivan.

Motion:

That the Cheshire Inland Wetlands and Watercourses Commission, having considered the factors of the Inland Wetlands and Watercourses Regulations of the Town of Cheshire, Commissioners' knowledge of the property, ongoing enforcement action, and after review of written information provided by the record, finds the following:

1. That inland wetlands and watercourses of the State of Connecticut and the Town of Cheshire are an indispensable and irreplaceable but fragile natural resource with which the citizens of the State have been endowed.
2. That the wetlands and watercourses are an interrelated web of nature essential to an adequate supply of surface and underground water; to hydrological stability and control of flooding and erosion; to the recharging and purification of groundwater; and the existence of many forms of animal, aquatic and plant life.

- 3. That the Cheshire Inland Wetlands and Watercourses Regulations, in effect since June 2, 1974 are enforced by the Cheshire Inland Wetlands and Watercourses Commission, per town ordinance.**
- 4. That on July 18, 2019 an unauthorized release of material was discharged into Cuff Brook, associated with a Town of Cheshire Engineering Department project.**
- 5. That on July 23, 2019 a Notice of Violation was issued to the Town of Cheshire Public Works and Engineering Department prescribing that all maintenance/repair/improvement on the Cuff Brook culvert was to cease.**
- 6. That on July 30, 2019 a Cease and Desist Order and Show Cause Hearing Notice was issued to the Town of Cheshire Public Works and Engineering Department requiring attendance to the August 6, 2019 IWWC meeting. This Order was issued within 10 days of the next scheduled meeting date, as required by law.**
- 7. That on August 2, 2019 the Director of Public Works and Engineering Department issued to the IWWC a memo identifying the Engineering Department's actions which enabled the illicit discharge of culvert liner spray into Cuff Brook.**
- 8. That on August 6, 2019 a Show Cause hearing was opened. The cease and desist order was upheld.**
- 9. That Section 13 .4 of the Cheshire Inland Wetlands and Watercourses Regulations authorizes the Commission to suspend and revoke permits.**

Therefore, the Cheshire Inland Wetland and Watercourses Commission under jurisdiction prescribed in Section 13.4 of the Cheshire Inland Wetlands and Watercourses Commission has conducted a show cause hearing and suspends permit #2019-008, prohibiting all activity associated with the permit and orders that the following shall be submitted to Commission Staff in order for the Commission/Commission's assigned designee to consider the reinstatement of permit #2019-008:

1. Submission of a project sequence detailing the remaining work to be completed and associated required erosion control measures and timeframe for project completion, and the details of the project supervision to be conducted by an independent engineer consultant.

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, consideration of revoking the permit, and transferring this matter to the Town Attorney to pursue injunctive relief and to collect all applicable penalties and fees as prescribed under state statutes.

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

6. **SHOW CAUSE HEARING**

Cease and Desist Order

SC 8/06/19

Regulated Activities in Violation of the IWWC Regulations

Ricci Construction Group

Fenn Road

Assessor's Map No. 91, Lot No. 132

Jonathan Ricci of Ricci Construction was present.

Ms. Simone reported a cease and desist order and a show cause hearing notice along with a suspension notice/revocation notice as issued to John Ricci, Ricci Construction Group on July 31, 2019; on Wednesday, July 24, 2019 staff received a phone call from Melanie Ricci requesting the erosion control bond calculation which was required and stipulated in the approval that allowed for the installation of a road and the associated storm water system; during this phone call the stipulations of this permit 2019-006 were discussed including no clearing was allowed on Lots 1, 2, 3 and 4 and individual permits were needed for each of those lots prior to any clearing and as a follow up an email stating the very same information was submitted to Ricci Construction stating the same along with the bond calculation on July 24, 2019.

Ms. Simone reported on July 30, 2019 Commission staff visited the site and observed clearing had extended beyond the approved roadway and that a non-encroachment post was installed on lot number 1 – the non-encroachment line was not as established as part of the subdivision approval – the subdivision approval was specifically was just to document that the lot lines had changed on that parcel and that it was now broken into many parcels and to allow for the installation of a roadway and associated storm drain systems;

therefore the clearing lots have not yet been approved – individual site plan is required for that – the cease and desist order had specified that all of the land work on the Fenn Road including any additional clearing or creation of the road and storm water system was to stop – there are photos handed on to Commission members tonight that show the conditions of the property on the site inspection of July 30th – photo one shows the center of the area – the area of the approved road to the land has been cleared and mowed additional on either side – there are some stumps they were mostly small woody herbaceous plants – there were some larger trees put off to the side that have been chipped; photo two shows the trees and shrubs that have been cut and again this is something that would have only been permitted with individual site plan approval as stipulated in the approval; and photo number three shows where a non-encroachment line has been installed and again the non-encroachment line and clearing limits have not been established for this lot or any of the other lots.

Chairman de Jongh stated we have had this conversation with Mr. Ricci's construction company multiple – multiple times and he thought the message came through loud and clear. He asked that the representative of Ricci Construction explain why activity took place that was not permitted.

Mr. Ricci showed the map - he said he thought there was some confusion as to the non-encroachment lines that Suzanne was speaking about – clearly noted on the subdivision approval map that went through – on all the approved maps for the entire subdivision.

Chairman de Jongh said he didn't think there was a question about where the non-encroachment line is – the question is the permit that was provided to Ricci Construction Company was just for the road – that no clearing was to take place on the lots – duly noted specifically on lots 1, 2, 3 and 4.

Ms. Simone confirmed its lots 1, 2, 3 and 4 and its stipulation number three that states prior to any clearing or earth moving and or construction activities for the single 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 Watercourse Commission.

Chairman de Jongh stated so therefor there is no clearing allowed on those lots – again this was only for the construction of the road which doesn't mean you can clear the area for lot number 1 so the question he keeps asking himself over and over again when this construction company is coming before us is why do continue to go beyond what is permitted and wind up coming before us and tell us why you made a mistake.

Mr. Ricci said he thought they didn't realize they made a mistake – they simply thought they were brush hogging a field.

Chairman de Jongh stated they cut trees down – they cleared.

Mr. Ricci said he did admit the guy got way from himself and started to clear a narrow row of trees on lot number 1 – there were 7 or 8 of them cleared on lot number 1 - they were all under 12” and all gnarled together.

Dr. Dimmick stated the road clearing should be a path no one than 50’ wide along the actual road – the permit you and did not allow for any clearing beyond that was necessary for the construction of the road – its clearly in the permit – your people agreed to the conditions of the permit before the permit was issued and the permit is being violated – he said ad the chair pointe out and its his recollection this is at least the sixth time in the last 20 something years that we have had a violation of Ricci Construction in terms of a permit that has been issued to him; someone can make a mistake once but again and again and again – its disbelieve that one never learns.

Mr. Ricci said he has worked with the company the last seven years they haven’t been here for (issues).

Chairman de Jongh said they had an issue a few years ago and at that point they had this conversation and had thought the message go through clearly that this is not going to happen again and here we are – the same thing and the same report back from Ricci Construction that we made a mistake – we went beyond.

Chairman de Jongh said he’s had enough with Ricci Construction; he is tired of having to have this conversation – it takes the time of this Commission to put together language that is pretty clear – he asked what part of stipulation number 3 doesn’t the firm understand – he reread the stipulation “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”; he said this is pretty clear – and this statement has been in every application that Ricci Construction has asked for from this Commission and it’s been included in every one - for as long as John has been building houses; he has been here 40 years and it’s been included – it’s the same language and we have the same conversation over and over again.

Mr. McPhee said its pretty clear they are in violation.

Motion: That the Commission uploads the cease and desist order.

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

7. **PERMIT SUSPENSION/REVOCATION HEARING PS/RH 8/06/10**
Regulated Activities in Violation of the IWWC Regulations
Ricci Construction Group
Fenn Road
Assessor's Map No. 91, Lot No. 132

Motion:

That the Cheshire Inland Wetlands and Watercourses Commission, having considered the factors of the Inland Wetlands and Watercourses Regulations of the Town of Cheshire, Commissioners' knowledge of the property, ongoing enforcement action, and after review of written information provided by the record, finds the following:

1. That inland wetlands and watercourses of the State of Connecticut and the Town of Cheshire are an indispensable and irreplaceable but fragile natural resource with which the citizens of the State have been endowed.
2. That the wetlands and watercourses are an interrelated web of nature essential to an adequate supply of surface and underground water; to hydrological stability and control of flooding and erosion; to the recharging and purification of groundwater; and the existence of many forms of animal, aquatic and plant life.
3. That the Cheshire Inland Wetlands and Watercourses Regulations, in effect since June 2, 1974 are enforced by the Cheshire Inland Wetlands and Watercourses Commission, per town ordinance.
4. That on July 24, 2019 Commission Staff received a request to calculate the require erosion control bond for the construction of the road. Commission Staff calculated the bond that same day and the permit was reviewed during a phone conversation and it was reiterated that the lots required individual permit approval prior to clearing.
5. That on July 25, 2019 the erosion control bond was posted.

- 6. That on July 30, 2019 Commission Staff observed the unauthorized clearing of individual lots in the Fenn Road subdivision, which is in conflict with the subdivision permit allowing the construction of a road, only.**
- 7. That on July 31, 2019 a Cease and Desist Order and Show Cause Hearing Notice was issued to the John Ricci requiring attendance to the August 6, 2019 IWWC meeting. This Order was issued within 10 days of the next scheduled meeting date, as required by law.**
- 8. That on August 6, 2019 a Show Cause hearing was opened. The cease and desist order was upheld.**
- 9. That Section 13.4 of the Cheshire Inland Wetlands and Watercourses Regulations authorizes the Commission to suspend and revoke permits.**

Therefore, the Cheshire Inland Wetland and Watercourses Commission under jurisdiction prescribed in Section 13.4 of the Cheshire Inland Wetlands and Watercourses Commission has conducted a show cause hearing and suspends permit #2019-006, prohibiting all activity including further clearing of the property, preparation or construction of the road and associated stormwater basins, as stipulated in the permit and orders that the following shall be submitted in order for the Commission to consider the reinstatement of permit #2019-006:

- 1. A field survey showing the current cleared limits on all lots of the subdivision property, to be submitted to the Commission by September 3, 2019.**

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, consideration of revoking the permit, and transferring this matter to the Town Attorney to pursue injunctive relief and to collect all applicable penalties and fees as prescribed under state statutes.

Moved by Dr. Dimmick. Seconded by Mr. McPhee.

Ms. Simone said that she did proposed that one item be added that if the permit holder provided that information the permit could be

reinstated if the clearing limits all lots were submitted to the Commission by the September 3, 2019 meeting – additional information was needed so they could be in a better position to take further action.

Chairman de Jongh explained to Mr. Ricci what was required by the next meeting regarding the information about the clearing limits.

Motion approved unanimously by Commission members present.

IX. UNFINISHED BUSINESS

1. Request for Determination RFD 2019-017
165 – 170 Northwood Court
Public Works/Engineering Department
Drainage Swale

Mr. Nolte reported that the wanted to withdraw the request and that they would be submitting an application for the proposed activity.

2. Permit Application APP 2019-019
Ricci Construction Group DOR 7/16/19
Crestwood Drive
Resubdivision MAD 9/19/19

Jonathan Ricci was present on behalf of the applicant.

Mr. Ricci showed the plan showing the parcel and the proposed resubdivision; he said what they are looking to do is to divide one exiting lot – to subdivide it in half and there is an existing building lot with an existing house position – they want to change it to another second location – and they want to divide the lot to the new location – the original location.

Commission members reviewed the plans showing the proposed resubdivision.

Mr. Ricci said this was originally a lot of Crestwood Drive – this entire piece total is about 4.5 acres originally – they have a current house under construction shown on the plan – they wanted to see if it was possible to subdivide the lot with appropriate frontages – they were able to do so with all the zoning requirements – he showed the original position of the house from the original application and subdivision approval – the same septic field – septic system that was originally proposed – the only change talked about was to use roof leaders for the storm water detention.

Ms. Simone asked that the clearing limits be identified.

Mr. Ricci showed the clearing limits on the plans – he said all the 50' upland review lines and posts are installed.

Ms. Simone questions if the clearing limits were marked.

Mr. Ricci said this lot could have had two houses on it – they went back and achieved a second building lot.

Dr. Dimmick asked if the subdivision has already taken place.

Mr. Ricci stated yes – they are looking to resubdivide single lot – lot 3.

Ms. Simone clarified the details regarding lot 3 and the subdivision and now the resubdivision of lot 3 into 2 lots; a house on lot 3 is currently under construction.

Ms. Simone said the applicant is not clear as to what they are doing – if its just for resubdivision or resubdivision and site plan.

Mr. Ricci stated the application is for resubdivision and site plan to construct a house.

Ms. Simone explained the process if he wanted to apply for site plan as well as resubdivision.

Commission members talked about what the applicant was proposing to do.

The application will need to be modified showing all of the information the applicant is looking to do.

Chairman de Jongh stated this item would be brought up again at the September 3, 2019 meeting.

X. NEW BUSINESS

There was no new business.

XI. ADJOURNMENT

The meeting was adjourned at 9:22 pm by consensus of Commission members present.

Respectfully submitted:

Carla Mills
Recording Secretary
Cheshire Inland Wetland and Watercourse Commission