

**CHESHIRE INLAND WETLANDS AND WATERCOURSES COMMISSION  
REGULAR MEETING  
TUESDAY, SEPTEMBER 17, 2019  
TOWN HALL – 84 SOUTH MAIN STREET  
ROOM 207/209 – 7:30 P. M.**

---

**I. CALL TO ORDER**

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

**II. PLEDGE OF ALLEGIANCE**

The pledge of allegiance was recited.

**III. ROLL CALL**

Ms. Dunne served as Madam Chair pro-tem in Chairman Robert de Jongh's and Dr. Charles Dimmick's absence. Mr. Brzozowski served as secretary pro-tem.

Mr. Brzozowski called the roll.

Earl Kurtz, Will McPhee, Dave Brzozowski and Kerrie Dunne were present. Staff member Suzanne Simone was present. Members not present were Robert de Jongh, Dr. Charles Dimmick and Thom Norback.

**IV. DETERMINATION OF QUORUM**

Madam Chair Dunne determined there were enough members present for a quorum.

**V. APPROVAL OF MINUTES – Regular Meeting – September 3, 2019**

Motion: To approve the minutes from the regular meeting of September 3, 2019 with corrections; Pg. 6 L4 "Peck Lan]" to "Peck Lane"; Pg. 6 L9 should read "would be", L32 "there" to "they", L36 "who's" to "whose", L42 "not" to "now"; Pg. 14 L19 should read "Dr. Dimmick said".

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

**VI. COMMUNICATIONS**

Ms. Simone reviewed the following communications:

1. Staff Communication w/Attachments Re: Request for Determination for Agricultural Use, 1415 Marion Road, IWWC Application 2019-021

2. **CT DEEP Response: Marion Road Cuff Brook**

**VII. INSPECTION REPORTS**

1. **Written Inspections – None.**
2. **Staff Inspections**
  - a. **Whole Foods property:** Ms. Simone reported there was an erosion control inspection at the Whole Foods property; the grading work has begun in preparation for the building addition and per their permit they had an engineer go out and verify the location controls and haybales and provided a letter saying that the done correctly and in the right locations – staff did go out to the field and verify that.
  - b. **Beachwood Drive:** Ms. Simone reported there was a CO inspection for a new house on Beachwood Drive.

**VIII. ENFORCEMENT ACTIONS**

1. **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 they are still getting the required erosion control inspection reports and they are reporting that the site is fine; she noted the last time staff visited the site the erosion controls were okay.

2. **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 suggested that this item be revisited after the Commission makes a determination on the request for determination under unfinished business.

There were no objections from Commission members to defer this to after the request for determination is discussed.

This item was revised at 7:55 pm.

**Motion:**

**That the Cheshire Inland Wetlands and Watercourses Commission, having considered the factors relevant to the issuance and release of the subject Notice of Violation, Commissioners' knowledge of the area, and after review of written information provided by the applicant on this matter, finds the following:**

- 1. That on April 30, 2019 (revised with address correction on May 14, 2019), a Notice of Violation/Cease and Desist Order was issued to John McKinley for unpermitted activities within the upland review area.**
- 2. That on May 7, 2019 the IWWC held a Show Cause Hearing and issued a Corrective Order to stabilize the disturbed soil in the area of the watercourse.**
- 3. That on August 27, 2019 John McKinley submitted a site plan application to cut trees and regrade the property.**
- 4. That on September 5, 2019 John McKinley revised the site plan application by submitting Appendix A, Permitted/Non-Regulated Use Determination Form for the site work to be conducted on an existing agricultural property for agricultural purposes, namely the expansion of hay fields.**
- 5. That on September 17, 2019 the IWWC considered John McKinley's Appendix A, Permitted/Non-Regulated Use Determination Form and determined that the proposed uses were agricultural and therefore are permitted and non-regulated.**

**Therefore, the Cheshire Inland Wetlands and Watercourses Commission does hereby determine that the issues noted in the Notice of Violation/Cease and Desist Order issued to John McKinley dated April 30, 2019 (revised with address correction on May 14, 2019) have been addressed. Further, the Commission does hereby release and discharge the aforementioned Notice of Violation/Cease and Desist Order.**

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

3. **SHOW CAUSE HEARING**

Notice of Violation/Cease and Desist Order	SC	8/06/19
Unauthorized Activities in a Watercourse	SC	9/03/19
Town of Cheshire Public Works/Engineering	SC	9/17/19
Marion Road/Cuff Brook		
Assessor's Map No. 25, Lot No. 16 and ROW		

Ms. Simone suggested that this item be continued for additional information to come in and then they can address some of the violation issues.

4. Notice of Violation/Cease and Desist Order  
Violation of IWWC Permit # 2019-008  
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 said in relation to the violation there is the DEEP response that was sent out to the contractor – National Watermain Cleaning Company – in this letter the state went through and analyzed the initial written response National Watermain Cleaning Company and they identified issues – it indicates in the letter that the company has 15 days to write a reply back to the state; so this is an ongoing issue.

Ms. Simone said additional to bring the Commission up to speed, the Commission will recall after the last meeting where the contractor attended, he had written an email where he had indicated that he had proposed a change in the dewatering plan and that is what prompted the town to hire an outside engineer and review his proposal and compare that with the site conditions as they stand now and the permit itself; she has spoken with the engineers and they indicated they plan to get a written analysis in by the end of this week – she will then share that information with the Commission.

Ms. Simone said she understood they are evaluating everything, and they are coming up with their proposal for practice to move forward.

Mr. Kurtz asked if this was out of our hands.

Ms. Simone said this is on two parallel tracks – the state is managing what they are managing, and the Commission still has authority over the permit as well the show cause hearing is still open, and we are receiving updated information and verifications regarding the dewatering plan.

**Ms. Simone reviewed the options they can consider – such as allowing the contractor to revise the plans; the contractor is (one party) and then there is the permit holder (the engineering department – they hired the contractor); the Commission could ask for a new application, a revised application or deny the application; the Commission could issue a corrective order and specify the course of action to take – so definitely the Commission still has options.**

**Ms. Simone stated that the state has not directly anything –they just said to move forward this is how things have to be – the state is really looking at what happened – who said what and what evidence they have to refute all of the above.**

**There was discussion regarding what steps could be taken depending on what is proposed – the Commission will review what is recommended and sanctioned by the Commission before they move forward; there is not requirement of the town to ask permission of the state to move forward on the project.**

**Ms. Simone talked about what steps could be taken regarding the steps of the contract that needed to be followed and what possible next steps could be taken by the town and contractor.**

- 5. Notice of Violation/Cease and Desist Order  
Violation of IWWC Permit #2019-006  
Ricci Construction Group  
Fenn Road  
Assessor's Map No. 91, Lot No. 132**

**Ms. Simone explained at the last meeting there was a presentation from John Milone having to do with the suspended permit for this property and the Commission accepted the revised site plans from Mr. Milone and then reinstated the permit at that meeting; so as it stands right now there is a conflict – if the permit has been reinstated – yet the cease and desist order stands; at the last meeting when the permit was reinstated – it was reinstated with the caveat that he could go ahead and construct the road and associated storm water drainage system when the new erosion controls were installed and were verified to be installed correctly and in the right locations by his engineer then to provide in writing to staff – then subsequently to the Commission, staff would then go out and verify that everything was done correctly; so the cease and desist order needs to catch up; she reviewed options that could be considered.**

**Ms. Simone said she has not yet heard back from his engineers, so she doesn't know where they are at yet – so her suggestion is to move forward with a modification of the cease and desist order.**

**Motion:**

**That the Cheshire Inland Wetlands and Watercourses Commission, having considered the factors relevant to the issuance of the subject Notice of Violation, Commissioners' knowledge of the area, and after review of written information provided by the applicant on this matter, finds the following:**

- 1. That on July 31, 2019 a Notice of Violation/Cease and Desist Order was issued to Ricci Construction Group and hand delivered to John Ricci for unpermitted activities within the upland review area.**
- 2. That on August 6, 2019 the IWWC held a Show Cause Hearing and suspended IWWC permit #2019-006.**
- 3. That on September 3, 2019 the IWWC received the applicant's soil scientist assessment stating no permanent impact caused by the unpermitted clearing and approved an updated erosion control plan and erosion control inspection and verification. Permit #2019-006 was reinstated at the September 3, 2019 meeting.**

**Therefore, the Cheshire Inland Wetlands and Watercourses Commission does hereby modify the Notice of Violation/Cease and Desist Order issued to Ricci Construction Group dated July 31, 2019. The modification is as follows:**

- 1. Once the additional erosion controls are installed, as shown on the site plan submitted at the September 3, 2019 meeting, and a favorable inspection report from the permit holders engineers verifies the erosion controls are installed properly and according to plan, the permit holder will be allowed to proceed with the preparation and construction of the roadway and associated stormwater system, upon favorable site inspection and verification of stated field conditions by Commission Staff.**
- 2. The cleared areas subject to the Cease and Desist Order and Show Cause Hearing shall be allowed to revegetate without any further trespass/alteration/mowing or other land clearing.**

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

#### IX. UNFINISHED BUSINESS

- |    |   |  |
|----|---|--|
| 1. | Request for Determination for Agricultural Use<br>Modification to Site Plan Application<br>Irene McKinley<br>1415 Marion Road<br>Clearing and Regrading | APP    2019-021<br>DOR    9/03/19<br><br>MAD    11/07/19 |
|----|---|--|

John McKinley was present.

Ms. Simon reported at the last meeting there was discussion of a site plan application that came before this Commission and there was a question as to what was the scope of the site plan application since that meeting she met with Mr. McKinley and they went over what the scope of the project is – he had identified that this is to expand the existing hay fields.

Ms. Simone said when looking through the as of right for agricultural use definition in the regulations for as of right use:

(1) Grazing, farming, fish farming, nurseries, gardening, harvesting of crops, farm ponds of three acres or less essential to the farming operation, and activities conducted by, or under the authority of, the Department of Environmental Protection for the purposes of wetland or watercourse restoration or enhancement or mosquito control. The provisions of this Subsection shall not be construed to include road construction (*not part of this project*) or the erection of buildings not directly related to the farming operation (*not part of this request*); relocation of watercourses with continual flow (*not part of this request*); filling or reclamation of wetlands or watercourses with continual flow (*not part of this request*); clear-cutting of timber, except for the expansion of agricultural crop land (*which is what this application is – so the activity is as a matter of right*); or the mining of top soil, peat, sand, gravel, or similar material from wetlands or watercourses for the purposes of sale.

Ms. Simone explained Mr. McKinley identified previously that on the tree farm property they are already hay fields there – this was verified in the tax records that that property is listed as a working farm so there is that verification of farm use.

Ms. Simone said she and Mr. McKinley reviewed the site plan and the general the areas to be cleared and the tree area that borders the existing hay fields is to be expanded upon; the map that the Commission received – the yellow line shows the existing tree line and existing hay fields – the orange line identifies a passage over the

gas easement – Mr. McKinley identified that he was in communication with the gas company and they provided specification as what's required for him to improve that crossing and that is something not within the prevue if this Commission as what is required to cross a utility easement.

Ms. Simone also explained, although specifically not covered under the regulations for as of right agricultural use – she and Mr. McKinley discussed best management practices and the use of silt fence and other erosions in areas that may be sensitive to areas being clearing – Mr. McKinley said he wanted to more immediately to cut the trees.

Mr. Kurtz said since Thom Norback isn't here – but were his questions (at the last meeting) satisfied; and the questions the Commission had.

Ms. Simone said she did speak to Mr. Norback and explained the situation after it was clarified – and that is was a request for as of right agricultural use, and he was satisfied.

Motion: That the Commission determined that the proposed activity is for as of right agricultural use and no permit is required.

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

At 7:53 pm: The Commission reviewed to item #2 under enforcement actions.

#### X. NEW BUSINESS

None.

#### XI. ADJOURNMENT

The meeting was adjourned at 7:57 pm by consensus of Commission members present.

Respectfully submitted:



Carla Mills

Recording Secretary

Cheshire Inland Wetland and Watercourse Commission