

**CHESHIRE INLAND WETLANDS AND WATERCOURSES COMMISSION
REGULAR MEETING
TUESDAY, JANUARY 7, 2020
TOWN HALL – 84 SOUTH MAIN STREET
COUNCIL CHAMBERS – 7:30 P. M.
Immediately Following the Public Hearing**

I. CALL TO ORDER

The regular meeting was called to order at 7:40 pm.

II. PLEDGE OF ALLEGIANCE

The pledge of allegiance was recited at the public hearing.

III. ROLL CALL

Ms. Dunne called the roll at the public hearing. Members present at the public hearing were still present for the regular meeting.

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

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 – Public Hearing – December 3, 2019
Regular Meeting – December 3, 2019**

Motion: To approve the minutes of the December 2, 2019 public hearing and regular meeting with corrections.

Public hearing pg. 2 L41 “left” to “east side”, L44 delete “and will have”; pg. 3 L45 “the” to “they” and “seats” to “sheet.”

Regular meeting pg. 1 L18 “receipted” to “recited”; pg. 3 L48 “left” to “left open”; pg. 4 L37 “sent” to “send”, L47 “will” to “will be”, L52 deleted “having”; pg. 5 L30 “attend” to “attorney”; pg. 9 L10 “with” to “will”.

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

VI. ELECTION OF OFFICERS

Chairman: Dr. Dimmick nominated Robert de Jongh to continue as chairman. Mr. Kurtz seconded the nomination. The nomination was approved unanimously by Commission members present. There were no other nominations for chairman; nominations for chairman was closed.

Secretary: Chairman de Jongh nominated Kerrie Dunne as secretary. Mr. Kurtz seconded the nomination. The nomination was approved unanimously by Commission members present. There were no other nominations for secretary; nominations for secretary was closed.

Vice-Chairman: Mr. Kurtz nominated Dr Charles Dimmick as vice-chairman. Chairman de Jongh seconded the nomination. The nomination was approved unanimously by Commission members present. There were no other nominations for vice-chairman; nomination for vice-chairman was closed.

The nominations were closed.

VII. COMMUNICATIONS

Ms. Simone reviewed the following communications:

- 1. 2019 Vernal Pool Compliance Monitoring & Reporting RE: 85 Fieldstone Court – summarized by staff.**
- 2. Staff Communication w/Attachments Re: IWWC Permit 2019-027, West Johnson Ave, Site Plan – Medical Office Building**
- 3. Staff Communication w/Attachments Re: Request for Determination 2020-001, Clearview Farm Preserve Subdivision, Map 55, Lot 8 – Grading: Subdivision**
- 4. Staff Communication w/Attachment Re: IWWC Permit # 2020-002, Jarvis Street – House**
- 5. Staff Communication w/Attachment Re: IWWC Permit # 2020-003, 40 Terrell Place – Solar Installation**

Handed out to Commission members - additional communications:

- 6. Marion Road, A.M. Napolitano LLC, construction sequence for the subdivision**
- 7. Notification from Bloom Energy Re: the propose is to go before the CT Citing Council to seek a permit to do work along their right of way; no maps of further information was supplied so staff could look into to see if she would get further information; it's a notice they are going for a state permit; its within 500 feet of the Cheshire town line**

Ms. Simone explained they are still receiving sedimentation and erosion control reports as required.

2. **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 noted there was no further information to report; additional erosion controls need to be put if, if they install the road. there has been no movement on the site or issues to follow up on.

3. **SHOW CAUSE HEARING**

Notice of Violation	SC	11/07/19
Unauthorized Activities in the Wetland & Upland Review Area		
Daniel Czyzewski (Flip It LLC)	SC	11/19/19
2085 Plank Road	SC	12/03/19
Map 32, Lot 32	SC	1/07/20

Daniel Czyzewski, owner of 2085 Plank Road was present. Jennifer Beno, biologist and wetland scientist, of Soil Science and Environmental Services, Rocky Hill, CT was present on behalf of the applicant. Town attorney Al Smith, who was present in the audience provided comment on behalf of the Town of Cheshire.

Ms. Simone reported after the last meeting she met with the property owner, and they took a look at the placement of the silt fencing which was subsequently moved to surround the cleared wetland area to keep the soil in place; also the Commission had conversation with the property owner suggestion to hire an environmental professional in order to provide information about the soil that was there and a proposed restoration plan; that is what the property owner is here tonight to discuss.

Mr. Czyzewski handed out to Commission members copies of the environmental professional report.

Mr. Czyzewski said he provided this restoration plan per the request and had Jen from the soil science office, and she could answer questions.

Ms. Beno addressed the Commission. She explained that Dan called them after the activities and Scott Stevens, registered professional soil scientist with their firm went out and delineated the wetland boundary on the property back in November (2019); then she went out on December 20 (2019) to inspect the property.

Ms. Beno reviewed the detailed reported that was submitted into the record (dated January 7, 2020); she explained a portion of the area was cleared of vegetation and there was some grading of the soil

material within the wetland; the report describes the existing conditions observed on December 20, 2019; it also recommends plantings in order to restore the wetland area that was disturbed.

Ms. Beno reviewed the general site description; and the location of the site; the site has cleared upland area around the house – the house was renovated and there are small wooded upland areas near the rear of the property; the report provides a location map on Plank Road; an existing condition sketch map used from the delineation report – it shows the existing house, cleared upland review area, the disturbed wetland and the wooded swamp in the western portion of the property; pictures of the property on the site were provided.

Ms. Beno explained Mr. Stevens delineated a wetland in the central and western portions of the property; the wetland does continue off site to the west and the wetland is very gently sloping to the east to west; there is no vegetation growing in the disturbed area of wetland beside two Red Maple trees; she did observe the silt fence had been installed right on the wetland boundary line – one of the pictures on page six shows the silt fence going through the wetland area and that has been adjusted accordingly as scene in the second picture on page six.

Ms. Beno reviewed the report – and noting a deciduous wooded swamp wetland dominated the site on the west – it includes Red Maple, Spice bush, sedges and sensitive fern; there is dense tree canopy cover and shrub and herbaceous under story; primary functions provided by the wetland include good ground water discharge; wild life habitat and sediment and nutrient retention and removal – so obviously these functions have been reduced in the area of the wetland that was disturbed especially the wildlife habitat.

Ms. Beno explained invasive species were observed in the uplands and wetlands – Japanese barberry, multiflora rose, bittersweet; the Natural Diversity Database map was checked for the site and the immediate vicinity of the site dated June 2019 and no state or federal listed species were on the site or in the vicinity of the site.

Ms. Beno reviewed the approximate clearing limits; based on the wetland delineation report and visual observation; in order to mitigate for the direct wetland impacts – the applicant is proposing to provide plantings in order to restore native, non-invasive vegetation within that disturbed wetland area and to restore functions to that portion of the wetland.

Ms. Beno noted that over time these tree and shrub plantings would restore the wetland functions – they will provide more wildlife habitat, absorb more nutrients – the primary function is to replace wildlife habitat; sketch maps were prepared to give the Commission an idea of what plantings are proposed – tree and shrub plantings are recommended based on the anticipated hydrology of the area;

existing non-invasive species are recommended; and add enhancing or complementary species which is what they did – native non-invasive trees and shrubs to be planted within the restoration area including Silky dogwood, winterberry, high bush blueberry and arrowwood and red maple and pin oak trees.

Ms. Beno said page 13 and 14 gives the recommended species and number of plants for each individual species and the approximately location within the restoration area; 56 shrubs, 4 trees – that will survive in the designated areas; once the shrubs and trees are installed the area should be seeded with a New England Conservation Wildlife wet mix for soil stabilization and wildlife habitat for the restoration area.

Ms. Beno explained buffer plantings were also proposed – and those are depicted on page 15 of the report – approximately 114 shrubs in two staggered rows along the wetlands that were disturbed; black chokeberry, gray dogwood and red-osier dogwood are recommended; any bare soils should be planted with a seed mixture (examples provided in the report that include all native species).

Ms. Beno said they are recommending the planting areas be maintained with the seed mix; and recommending monitoring reports so they know the success of this area; if the mortality rate is greater than 15% then they are recommending the plantings be replaced; they recommended that the town recommended erosion and sedimentation control measures be followed and provide some obvious demarcation between the wetland and the non-wetland areas – that could be large rocks or placards on posts so future land owners know there's a regulated area there.

Chairman de Jongh said he was going to suggest that be part of the restoration – that they have some kind of delineation – he said its always the future homeowners that get ignorant of what they can and cannot do.

Ms. Beno stated in this case its very close to the house.

Ms. Simone asked about the identified buffer area on page 15 for plantings – what is the depth of that buffer area – is it 50' or less than that.

Ms. Beno said it depicts the planting area – 5' apart on center in two staggered rows - so you are looking at 10'.

Dr. Dimmick said he has gone through this as presented and it looks quite acceptable to him – he deferred to staff as to the best way to proceed.

Ms. Simone said the best way would be to have an order issued and she could prepare that at the next meeting; evaluating this report and making reference to the details and reiterate the highlights.

Ms. Simone said one thing not discussed was time frame for plantings – was there a recommendation as to when to start to plant.

Ms. Beno said as soon as we are into a planting season – May (or as soon as possible – each year is a little different – maybe April or May).

Ms. Simone addressed the property owner – asking with this proposed plan and time frame of mid-April – if the Commission was to order something saying the plantings would begin in April – would there be a problem on their part.

Mr. Czyzewski asked if it could be transferable in the event we sell the property prior.

Ms. Simone said there's a cease and desist order on the property now – the cease and desist order gets released once the corrective order has been satisfied – in this case that would be mirror what the planting is.

Dr. Dimmick said otherwise they'd have to have a future property owner understand and accept all of the orders as a condition to buy the property which is very difficult.

Mr. Czyzewski asked if they could do a permit instead of an order – asking if the permit could be transferable.

Attorney Smith replied the order is currently on the land records; when the order is complied with, there will be a notice of satisfaction of the order – unless and until that happens the owner of that property will be obligated to satisfy that order.

Ms. Simone said so in the event the property owner sells this property.

Attorney Smith said they'll have notice of it because it's on the land records – they will take it like any other encumbrance - like a mortgage that hasn't been satisfied; these kinds of obligations do run with the land and are filed on the land records – he said it provides notice to subsequent land owners; he didn't think they needed to do anything else other than to keep it on the land records unless and until it's satisfied.

Chairman de Jongh said the issue gets clouded regarding the mortality of the plantings and now they have to be replanted – whose responsibility is it to satisfy the original order to make sure those plantings are in place.

Attorney Smith said it thought that becomes a condition that runs with the property – the obligation to maintain the species or whatever the action is like any other regulatory requirement that shows up on the land records.

Ms. Dunne asked if the corrective order is on the land records.

Ms. Simone stated yes as did Attorney Smith.

Attorney Smith said that order would be detailed to explain that these species would have to be maintained and it's the duty of the landowner to do that.

Dr. Dimmick talked about a concern he and the chair had – they have seen instances that it was very clear on the land records what the obligations were and despite the fact all of these should have been made clear to the purchaser of the piece of property – he could think of at least four instances this did not happen they had to go through quite a bit of litigation and so we are looking for a way for things to be understood as well as a way we would not be misunderstood.

Attorney Smith stated he thought putting in on the land records was the most effective permanent way of memorializing the obligation; then if people don't comply with in you are back in the enforcement circle; having it on the land records creates a legal obligation for the current owner to comply – its legal notice – its actual notice – its not something that can be ignored for a while, but ignorance is not a defense.

Dr. Dimmick said he thought what was being said with an order like this the land can still be transferred subject to the order as long as proper guidance is used this would not prevent Mr. Czyzewski from transferring as long as it was made perfectly clear that there's an obligation with it.

Attorney Smith stated that was correct.

Dr. Dimmick said failure to convey that to the new buyer would be a problem.

Attorney Smith stated that's why it would be on the land records.

Mr. Czyzewski said it will impact the new buyer because the new buyer has to obtain title insurance and if there's a restriction on the title they would be able to obtain title insurance; he said the property is complete and has been complete but unless they figure out a way to resolve this they are restricted in selling the property until he springtime.

Chairman de Jongh said maybe money could be placed in escrow to cover those plantings and an estimate could be made if there were

50% mortality rate on those plantings and what it would cost to replant them – that figure could be placed in escrow.

Mr. Czyzewski said in theory that works and they have done it in the past – they have held money in escrow for driveways out of season however they go back to that title insurance issue – they buyer will not be able to obtain title insurance on the property, so they are restricted to sell the property which is the bottom line.

Chairman de Jongh commented on how the issued came to be by the property owner and said the Commission needs to make sure the corrective order is taken care of in the proper manner – and that may delay the sale of the property.

Mr. Czyzewski asked if they had the option to issue a permit.

Ms. Simone said usually a permit is not issued for a corrective order; to get a permit you'd need to apply but since this is an enforcement action is usually a corrective order.

Attorney Smith said he thought with a permit he (Mr. Czyzewski) was going to have many of the same issues you already have – he said he didn't know the presence of a corrective order would have it uninsurable – they may take an exception – he said he didn't think it would stop the sale of the property or prevent other aspects of the title to be insured.

Ms. Simone commented about the cease and desist order or permit requirements being on the land record - still would be an issue for a potential buyer seeing this.

Chairman de Jongh said he didn't think there was a way to take care of the cease and desist order until the corrective action was taken care of so that mark is still on the record.

Mr. Czyzewski said in past situations the issue has held up the sale and they have lost buyers.

Dr. Dimmick commented that his dilemma and not the Commission's.

Ms. Simone recommend the show cause hearing be held open until the next meeting, so the information can be reviewed, and they'd move forward with the draft.

Chairman de Jongh said they'd allow staff to create the draft for the next meeting – they can then look at the information and handled it the way they can within the confines of their regulations.

X. UNFINISHED BUSINESS

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| 1. | Permit Application
A.M. Napolitano LLC
Marion Road
Resubdivision, Individual Lots & Wetland Crossing | APP 2019-026
DOR 11/07/19
PH 12/03/19
MAD 1/07/20 |
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Dennis McMorrow, PE of Berkshire Engineering and Surveying, LLC in Bantam, CT was present on behalf of the applicant. Andy Napolitano, the applicant was also present.

Ms. Simone stated this is for subdivisions and site plans on Marion Road; she reviewed the language in the permit and the requirement of adhering to the Natural Diversity Database information regarding endangered species as well as inspections of erosion controls for Lot 7, 8 and 10 which are the lots proposed to be cleared near a watercourse area.

Motion:

That the Cheshire Inland Wetlands and Watercourses Commission, having considered the factors pursuant to Section 10 of the Inland Wetlands and Watercourses Regulations of the Town of Cheshire, Commissioners' knowledge of the area, previous site visitations, and after review of written information provided by the applicant on this application, finds the following:

1. That the current application is for subdivision of a 27-acre parcel into 15 residential lots. This application is for both subdivision and the individual site plans for the undeveloped lots.
2. That the applicant's soil scientist field located inland wetlands both on the site and bordering the subject property with non-encroachment markers proposed for lots 1, 2, 7, 8, 10, 11 and rear lot accessway.
3. That the Commission declared this application significant and a public hearing commenced and concluded on December 3, 2019.
4. That the individual site plans for lots 1, 2, 7, 8, 10 and 11 are included in the review of this application.

5. That the Engineering Department has reviewed the subdivision and site plan proposal and is satisfied with the applicant's design and calculations.

Based upon the foregoing findings, the Cheshire Inland Wetland and Watercourses Commission conditionally grants CIWWC Permit Application #2019-026, the permit application of A.M. NAPOLITANO as presented in the Construction Sequence and on the plans entitled:

**“Re-Subdivision Plans
West Farms Terrace
Prepared for A.M. Napolitano, LLC
1675 Marion Road, Cheshire CT
Dated October 21, 2019; Revised November 14, 2019
By Berkshire Engineering and Surveying, LLC, Bantam,
CT”.**

The permit is granted on the following conditions and stipulations, each of which the Commission finds to be necessary to protect the wetlands and watercourses of the State and the Town of Cheshire:

1. Any lack of compliance with any condition or stipulation of this permit shall constitute a violation of the Cheshire Inland Wetlands and Watercourses Regulations, and an enforcement order shall be both issued and recorded on the Town of Cheshire Land Records.
2. No changes or modifications may be made to the plans as presented without subsequent review and approval the Cheshire Inland Wetlands and Watercourses Commission.
3. Prior to the commencement of clearing, grading or any construction activities covered under this permit the applicant shall provide adequate (48 hour) notification to Staff, so that Staff may verify that the following items have been completed by a qualified party:
 - a. The accurate staking or flagging of all clearing limits conducted by a qualified individual. Staff may insist on additional staking or flagging if warranted by field conditions.
 - b. The proper installation of all sediment and erosion controls indicated on the above referenced plans. Staff

may insist on additional controls if warranted by field conditions.

- c. The proper and permanent installation of non-encroachment markers along the wetland boundary as determined by Commission Staff.
4. All disturbed areas on the site not directly required for construction activities shall be temporarily seeded and hayed until the site is permanently stabilized.
5. All recommendations from the Connecticut Department of Energy and Environmental Protection regarding protective measures for the protection of Natural Diversity Database species shall be stringently adhered to.
6. An inspection of the condition, integrity, and adequacy of the sedimentation and erosion controls on lots 7, 8 and 10 shall be made by a licensed professional engineer either weekly or after every significant rainfall of 1/2" or greater, whichever is sooner, until all disturbed areas are stabilized. Said party shall be independent of the contractor. All reports shall be submitted to the contractor and Commission Staff either within three days of inspection, or prior to the next storm event, whichever is sooner. All breeches or deficiencies shall be forwarded to a contact individual, as defined above, immediately after inspection. The costs of said inspections to be borne by the applicant.
7. The applicant's engineer shall be present during the culvert replacement and provide a written report to the Commission within 7 days of the replacement, identifying the measures undertaken to ensure the protection of natural resources. The engineer has the responsibility to stop the site work if the conditions are found to be in violation of this permit and shall contact Commission Staff immediately.
8. Throughout the course of conducting construction activities covered by this permit grant, and per Section 11.2K of the Cheshire Inland Wetlands and Watercourses Regulations, the applicant shall be responsible for ensuring that all maintenance and refueling of equipment and vehicles is performed as far as practical from all wetlands and watercourses, at least 100' if possible. All oil, gasoline, and chemicals needed at the site shall be stored in secondary containment to prevent contamination of any wetlands or watercourses from possible leaks.

9. This permit grant shall expire January 7, 2025.

Moved by Dr. Dimmick. Seconded by Mr. Kurtz.

Discussion:

Chairman de Jongh stated he wanted to point out in item number six where the inspections are to be made by an independent third party independent of the contractor. He said they have into issues with this item, so he wanted to point this (requirement) would be the applicant.

Dr. Dimmick noted this is a five-year permit and it's quite possible some of those might not have erosion controls on them until they get to them.

Ms. Simone said they were written with the expectation that the road would be created first – there is the culvert replacement – before the lots would be developed and field work done.

Ms. Simone talked about some of the delays noted in the draft motion.

Mr. McMorrow said they were questioning the weekly reports – is he allowed to do that as Andy's engineer; for those three particular lots.

Ms. Simone stated yes – because the watercourse goes through those lots and the clearing limits get within the buffer area and the erosion control inspections are just for those lots; it's not expected for the other lots that have wetlands on them because the wetlands are further away.

Mr. McMorrow asked if the box culvert was separate and would be inspected as it was going it.

Ms. Simone replied yes.

Dr. Dimmick said the box culvert would have controls in place until it was fully stabilized in terms of erosion controls.

Mr. Napolitano stated correct,

Ms. Simone said the work for the culvert was reported that it would only take a couple of days.

Mr. McMorrow said the actual installation should only be a couple of days – there will be prep time and fill over it and most of the erosion controls will actually be on top because the way the box culver it put in – he described the process.

Dr. Dimmick said there's a little bit of regarding that needs to be stabilized.

Mr. McMorrow replied yes – on the top side to prevent (soil) from going into the brook.

Motion approved unanimously by Commission members present.

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| 2. | Permit Application | APP | 2019-027 |
| | FIP Construction, Inc. | DOR | 11/07/19 |
| | West Johnson Avenue | PH | 1/07/19 |
| | Site Plan – Medical Office Building | MAD | 2/11/20 |

This item was subject of the tonight's public hearing. The public hearing was continued to the next meeting.

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| 3. | Permit Application | APP | 2019-030 |
| | Napolitano Dietrich, LLC | DOR | 11/19/19 |
| | 678 Coleman Road | | |
| | Resubdivision & Individual Lots | MAD | 1/23/20 |

Ms. Simone said this draft recommends posting a bond for the installation of erosion control immediately behind the proposed house on 1B; the grade goes down to the wetlands with a very reduced buffer.

Motion:

That the Cheshire Inland Wetlands and Watercourses Commission, having considered the factors pursuant to Section 10 of the Inland Wetlands and Watercourses Regulations of the Town of Cheshire, Commissioners' knowledge of the area, previous site visitations, and after review of written information provided by the applicant on this application, finds the following:

1. That the current application is for resubdivision of one 5.74-acre parcel into 2 residential lots. This application is for both subdivision and the individual site plans for the undeveloped lots.
2. That the applicant's soil scientist field located inland wetlands both proposed lots.
3. That the Engineering Department has reviewed the resubdivision and site plan proposal and is satisfied with the applicant's design and calculations.

Based upon the foregoing findings, the Cheshire Inland Wetland and Watercourses Commission conditionally grants CIWWC Permit Application #2019-030, the permit application of NAPOLITANO DIETRICH LLC as presented on the plans entitled:

**“Re-Subdivision Plans
Lot 1 – Coleman Farm Subdivision
Prepared for Napolitano Dietrich, LLC
678 Coleman Road, Cheshire CT
Dated June 28, 2019; Revised January 3, 2020
By Berkshire Engineering and Surveying, LLC, Bantam, CT”.**

The permit is granted on the following conditions and stipulations, each of which the Commission finds to be necessary to protect the wetlands and watercourses of the State and the Town of Cheshire:

- 1. Any lack of compliance with any condition or stipulation of this permit shall constitute a violation of the Cheshire Inland Wetlands and Watercourses Regulations, and an enforcement order shall be both issued and recorded on the Town of Cheshire Land Records.**
- 2. No changes or modifications may be made to the plans as presented without subsequent review and approval the Cheshire Inland Wetlands and Watercourses Commission.**
- 3. Prior to the commencement of clearing, grading or any construction activities covered under this permit the applicant shall provide adequate (48 hour) notification to Staff, so that Staff may verify that the following items have been completed by a qualified party:**
 - a. The accurate staking or flagging of all clearing limits conducted by a qualified individual. Staff may insist on additional staking or flagging if warranted by field conditions.**
 - b. The proper installation of all sediment and erosion controls indicated on the above referenced plans. Staff may insist on additional controls if warranted by field conditions.**
 - c. The proper and permanent installation of non-encroachment markers along the wetland boundary as determined by Commission Staff.**

4. All disturbed areas on the site not directly required for construction activities shall be temporarily seeded and hayed until the site is permanently stabilized.
5. An inspection of the condition, integrity, and adequacy of the sedimentation and erosion controls on lot 1B shall be made by a licensed professional engineer either weekly or after every significant rainfall of 1/2" or greater, whichever is sooner, until all disturbed areas are stabilized. Said party shall be independent of the contractor. All reports shall be submitted to the contractor and Commission Staff either within three days of inspection, or prior to the next storm event, whichever is sooner. All breeches or deficiencies shall be forwarded to a contact individual, as defined above, immediately after inspection. The costs of said inspections to be borne by the applicant.
6. Per Section 12 of the Cheshire Inland Wetlands and Watercourses Regulations, a bond covering the costs of the sediment and erosion controls on lot 1B, as shown on the above-referenced plans, shall be filed with the Town Planner's Office prior to the commencement of construction activities. The amount of the bond shall be determined by the Cheshire Planning Office.
7. Throughout the course of conducting construction activities covered by this permit grant, and per Section 11.2K of the Cheshire Inland Wetlands and Watercourses Regulations, the applicant shall be responsible for ensuring that all maintenance and refueling of equipment and vehicles is performed as far as practical from all wetlands and watercourses, at least 100' if possible. All oil, gasoline, and chemicals needed at the site shall be stored in secondary containment to prevent contamination of any wetlands or watercourses from possible leaks.
8. This permit grant shall expire January 7, 2025.

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

XI. NEW BUSINESS

1. Request for Determination RFD 2020-001
Clearview Farm Preserve, LLC
Cornwall Avenue Extension
Grading: Subdivision

Attorney Anthony Fazzone was present on behalf of the applicant.

Van Hopson, PE of Milone and MacBroom was also present.

Attorney Fazzone explained this property was subject of a prior application that was somewhat abandon and the applicant came back for a modification of that permit for what would have been the southerly half of the property; there is a brook and wetlands on two of the lots and in short there is no activity either in the wetlands area or the upland review area.

Attorney Fazzone said they are here to seek determination.

Dr. Dimmick said just to be clear – the activity you are proposing in outside the upland review area – does not require any change in water flow or drainage as a result of (activity).

Mr. Hopson stated that was correct – there is not change in watershed boundaries going to the wetlands.

Dr. Dimmick said he didn't see where there was anything they have to worry about.

Ms. Simone suggested they show the portion of the map where they identify the markers they propose to install on the non-encroachment area and stated the non-encroachment area is to be untouched.

Mr. Hopson showed on the map the location of the wetlands located along the southwestern portion of the property – the 50' upland review area line is around the corner of the property – they have proposed to put two non-encroachment markers at that curve.

Mr. Hopson said nothing is going beyond the 50' upland review line.

Motion: That the Commission has determined that that proposed activities as presented do not require a permit.

Moved by Dr. Dimmick. Seconded by Mr. Kurtz.

Chairman de Jongh said they are talking about the installation of only two non-encroachment markers along that entire area.

Mr. Hopson said yes; and there are additonal placards installed on the subdivision to the south.

Chairman de Jongh said his concern is for the stretch of area – about 300' – they only have two markers – one at each end of that 300' stretch; they are going to need a lot more – there is nothing to prevent a property owner once they are in there from ignoring that

and going closer to the wetland area – is there another other buffer along that line other than the tree line.

Mr. Hopson said they would propose a third marker and the tree line is the only other buffer.

Chairman de Jongh said he was suggesting the add placards along that line to make it perfectly clear to the homeowner that that is an area that should not be touched.

Ms. Simone said it the Commission is entertaining the determination no stipulations could be imposed on that but if the applicant wanted to submit a revised site plan with drawings on it showing where addition markers would go – that plan would become part of the record then the Commission could make a decision on that (at tonight’s meeting).

For the record, Attorney Fazzone indicated the applicant would install markers every 50’.

Mr. Hopson hand drew the additional markers on the plans – every 50’.

Ms. Dunne asked about a concern with some species of concern – she wasn’t quite sure what that was.

Ms. Simone stated on their application they indicate species of concern were located and they are shown in the area on the plans and they show that erosion controls will be used – they show there is a Natural Diversity Database on this property and they have the plans list how they plan to manage and have adopted the recommendations from the state.

Commission members agreed they were satisfied with the revised plans showing the marker placements – every 50 feet; Mr. Hopson signed and dated the plans.

Motion approved unanimously by Commission members present.

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| 2. | Permit Application | APP | 2020-001 |
| | Clearview Farm Preserve, LLC | DOR | 1/07/20 |
| | Cornwall Avenue Extension | | |
| | Grading: Subdivision | MAD | 3/12/20 |

Attorney Fazzone withdrew the permit application.

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| 3. | Permit Application | APP | 2020-002 |
| | Timothy McMurray | DOR | 1/07/20 |

Jarvis Street
Site Plan – House

MAD 3/12/20

Timothy McMurry was present.

Mr. McMurry explained he has owned this lot some 14 years ago and they had a delay – when he went to get a building permit he was told the Mattison map was too old and he had to have it redone so he went to Cole Engineering and he had to add additional requirements – a sewer plan which he had done.

The location of the property was identified.

Ms. Simone explained there was a permit history – in 1995 there was a permit issued for the reconstruction of a single family house; 2001 there was an approved conceptual site plan which at that point was a review the Commission did – so it was yes you do need a permit – today would be called a request for determination – and in 2002 a permit was issued for the construction of the house – that permit is now expired; looking at the site plan there are a couple of things that come out – it refers to a conservation easement – that was something required in 2002 – as those plans were not executed its unclear if the conservation easement has been established.

Ms. Simone asked if Mr. McMurry knew if the conservation easement has been established.

Mr. McMurry said he didn't.

Ms. Simone also explained the information shown on the plan regarding wetland flags – there is no soil scientist signature on the plan and so its not clear if this was a field determination or this was the location was based on historical information.

Ms. Simone asked Mr. McMurry if he hired a soil scientist to go out and locate.

Mr. McMurry said he didn't, and the original Mattison Associate plan had a certified soil scientist stamp on it – the plan he believed was from 2001.

Ms. Simone said she'd need input from the Commission as to whether that field information from 2001 is adequate for the site plan.

Dr. Dimmick said if that map exists with a signature they'd need to see a copy of it.

The map was reviewed, and the soil scientist signature was viewed – it was believed it was Ken Stevens who signed the map; staff would look through the town files to see if they had a copy of the map.

Dr. Dimmick said what you are proposing is reactivating what has been proposed originally and the question before us – is if we want to put in some set back lines.

Ms. Simone said looking at the previous files from 20 years ago – there isn't that much information in these files as far as discussion – there's no calculation to impact to wetland area or upland area – the majority of this area is within the upland review area and reduced the buffer of the wetland which a large contiguous wetland that goes off site to nothing – that was not addressed in the previous applications; the grading on the east side of the property is proposed to go right up to the edge of the wetland boundary – it does show it feathers out and on the map provided its not easy to let what the natural grade is so the proposed 140 line - abuts up to a wetland but is there a drop off or a natural progression as far as the protection of that proposed graded area to maintain the integrity of that area.

Chairman de Jongh and Dr. Dimmick both agreed they needed to look at this property.

A field trip was sent for Thursday, January 16, 2020 at 3:00 pm.

4.	Permit Application	APP	2020-003
	Derrick Moorner	DOR	1/07/20
	40 Terrell Place		
	Solar Installation	MAD	3/12/20

Stephanie Finke, from the Momentum Solar on behalf of the applicant.

Ms. Finke submitted soil scientist maps to the Commission showing the area of the proposed activity.

Ms. Simone explained the soil scientist map identifies the wetlands on the property; the proposal is to clear in the upland area as well as in the wetland area; she did speak with the wetland scientist that conducted this field work and he indicated he put flags up to identify the edge of wetlands and he also put flagging up to identify the proposed limit of clearing – those exist in the field.

Ms. Simone asked if the sole reason for the tree removal was in support of the solar installation.

Ms. Finke replied yes – that's the only reason; it is clearing but they would be leaving the stump for erosion help; they want to get more light to the solar panels.

Ms. Finke explained this is a ground mounted solar project; the owner want the panels on the ground and not on the house.

Commission members reviewed the plans and location of the wetlands.

Chairman de Jongh commented that the homeowner doesn't want solar panels on the house, so they are suggesting they disturb a significant portion of the wetlands to make it esthetically pleasing.

Ms. Finke said that was correct; there is a massive septic system, so they can't place them there, so this is the spot they have come it (show in the plan); and protective measure can be taken to protect the area.

Chairman de Jongh said the issue is there has to be a compelling reason to destroy wetlands other than for esthetic purposes.

A field trip was set for Saturday, January 18, 2020 at 9:00 am; pending checking with the homeowner to make sure they are okay with this date (Ms. Finke would contact staff regarding the field trip date).

5. Commission Discussion of Engineering Department Reviews

Mr. Kurtz explained that he asked for this item to be added to the agenda tonight – the reason is that he believe they all gained some information from the Cuff Brook situation and he wanted to use the positive part of the information we gain in order to improve the way we handle things in the future specially in this case – that the town engineering department does not have the kind of expertise that is needed to review these proposal that are made by professional engineers – he was wondering if they could institute a policy where we did this wherever we felt it was needed – he said there are cases where we do need professional help to plan and evaluate certain projects that are our engineer department, that doesn't put engineers in (they have a part time engineer), can't do; he said he has since found out we can already do that (hire a professional engineer to review projects).

Mr. Kurtz talked about projects – like the Johnson Avenue project – that is tough and needs special handling around wetland areas; the town engineering department doesn't have the kind of staff that is multitalented and certified professionals to review these things either.

Dr. Dimmick said he was in agreed and they were lucky they could use Milone and MacBroom to review as a third party; he said one thing they need to provide for is if Milone and MacBroom is the application they'll need another third-party reviewer.

Dr. Dimmick said they can ask staff to find a back up firm just in they are needed; he wanted to make sure they had a third party engineer the Commission had trust in.

Mr. Kurtz suggested approaching engineering firms to see if they wanted to bid on their services.

Chairman de Jongh talked about the situation that came up with Marion Road and Cuff Brook; and for us it forced us to look at the relationship with the engineering department and make sure things are handled equal across the board; they have requirements that engineers have to certify work but it was expected the engineering department was doing the work correctly – the working relationship has been injured and we now have to have that same level of accountability until we feel comfortable we have the relationship we had before – we hope we will be able to gain back that relationship we had but in the meantime they'll take things on an individual basis and have an outside third-party verify work done by the engineering department.

Mr. Kurtz said for work done by anyone else that applies; now that we have the tools, he wants to think about using them more often and the same time use it to help the situation – not hinder; and the applicant has to pay for this service so its not going to be funs off the town (except for town projects).

Ms. Dunne said if we have the town engineer department look at plans and a peer review look at the plans – those are separate views – they are not to be working together and their reviews should be separate that helps us to have different experts and it gives us different opinions.

Mr. Kurtz said he is looking at this as how to get things done right; and the working relationship staff already has with the department – he is not worried about the relationship – he's worried about the performance and the work is done right so the end result is right; he said he was alright (with how things would be handled moving forward).

Chairman de Jongh said he thought the whole Commission was in agreement on that (getting things done right).

6. Commission Discussion with Town Attorney

Town attorney Al Smith was present.

Commission members and Attorney Smith engaged in a discussion regarding situations requiring input from the town attorney.

Chairman de Jongh explained they have had a number of situations that have come before them which have caused conversations to be had with the town attorney; they are now looking to see if there are

more efficient ways to act as a Commission – what are they allowed to do – that are they not allowed to do.

Attorney Smith said he is always available to the Commission and Suzanne – he’s happy to remain available; he said they could do a brief review of some of the legal basis for their actions and procedures they have to follow, and they can touch on things like enforcement and they can talk about the application process and ex-parte communications – about the legal limits in which the Commission operates.

Attorney Smith asked if there were any specific questions the Commission had.

Chairman de Jongh talked about having applicants that were repeat offenders – same problems on different properties but for the same reasons – from a legal stand point what can they do when this applicant or this type of applicant comes before us again on a separate issue – because the town was burned (by this applicant) before they shouldn’t expect the same equal treatment – he said there are two or three that come to mind that just seem to be repeated offenders and then plead on the mercy of the court.

Attorney Smith said he thought the Commission was completely within their right and even have an obligation to look at the applicant’s compliance history as they make a decision as to whether and under what conditions they will issue an approval so he thought that was fair game – they are entitled to remember past actions of an applicant and keep those things in mind – its just a matter of housekeeping; and for recording keeping will be important to put those things on the record – he thought those were relevant considerations and again as long as it documented on the record you can provide more scrutiny – more stringent conditions and requirements on an applicant that has a history of non-compliance; past non-compliance could be so egregious that it could be basis for denying an approval.

Dr. Dimmick said that would put us in immediate legal difficulty because he could see an immediate appeal to that decision (a denial).

Attorney Smith said he would expect that would be appealed and he wouldn’t use that tool lightly, but he thought it was important for the regulated community to understand they (the Commission) have tools at their disposal and the are willing to use them when necessary.

Ms. Simone confirmed the fee structure for the permit after the fact was passed by the town council.

There was discussion about costs associated with the permit after the fact and making the town whole of their extra efforts.

Dr. Dimmick said every few years he tried to get to a legal workshop on land use – they are always a valuable thing and something our Commission members need to sit in on.

Attorney Smith said he would be happy to put together a brief presentation to cover whatever subject they thought were important.

Ms. Dunne said if that could include site walks – she knew there were things they should and shouldn't do on site walks.

Attorney Smith explained there are rules regarding ex-parte communications in regard to site walks; he said it's a fine line what questions can be asked.

Chairman de Jongh said having that refresher course might be worthwhile.

Attorney Smith said he could work with Suzanne to prioritize issues and follow up as necessary.

Mr. Kurtz said he had a question relative to the Cuff Brook situation; as a Commission member he knew some people wanted to go to the meeting with the town attorney, the town manager and public works department and Bob and Suzanne (the only person from the inland wetlands commission and commission staff that were there); he said some people were told they couldn't go to that meeting and – solving the issue with a meeting Commission members were not able to attend - he thought it was discriminatory to the Inland Wetlands Commission – why did that all happen and how will it not ever happen again.

Attorney Smith said understand that whenever a certain number of Commission members are in any one place at the same time talking about Commission business it becomes subject to the Freedom of Information requirements where you have to have notice and be available to the public – there has to be an agenda and have all the procedure pre-requisites to a formal meeting.

There was discussion about the number of members who could attend a meeting and the idea of keeping in mind the open meeting law that this Commission and all other Commissions are subject to.

Attorney Smith explained there are times when you can go into executive sessions in situations – but again that needs to be properly noticed and put on the agenda and the right motions made.

Mr. Kurtz said there were decisions made at the meeting – those issues should have been determined by this Commission and it was

determined at one of these private meetings – and way wasn't it done normally.

Chairman de Jongh said the meeting he and Suzanne attended was also attended by National Watermain, Walt Gancarz, Mr. Noewatne, Mr. Nolte, Sean Kimball, the engineer from Milone and MacBroom and we were there to address the issues we had but more importantly because we needed to move the project forward we had to talk about what could be done to get this moving forward – that was basically the reason why they were there.

Ms. Simone said they started doing work without doing the appropriate steps and so part of the meeting was where they were doing and where were they at.

Ms. Dunne asked Suzanne if it was about the notice of violation she issued the day before – so there was a notice of violation issued on Wednesday then there was a meeting to determine whether or not the notice was complied with and they only needed to do two things and they did those two things and therefore that was it; the reason for the meeting was to look at those things; she thinks what Earl is talking about that things had to get done right away instead of waiting for the following Tuesday when we had an Inland Wetlands meeting.

Chairman de Jongh said he thought there was a pending rain storm and a number of factors; he said he and Suzanne took a number of steps at that meeting, recognizing all of the variables and decisions were made that were probably outside of what would have normally been brought to this Commission but because of time constraints and all the other variables – there was too much going on to wait to the next meeting.

Attorney Smith said Suzanne, as the designated enforcement agency has certain independent authority that they have delegated to her and she has independent authority in certain circumstances.

Dr. Dimmick said actions taken at that meeting should have been on the agenda and ratified at the next meeting by the Commission.

Ms. Simone stated it was listed on the agenda for the next meeting under enforcement action.

Chairman de Jongh said the action was not ratified.

Ms. Simone asked Attorney Smith to explain the difference of the notice of violation and remedy or resolve of that opposed to a show cause hearing.

Attorney Smith explained that one could follow the other - the show cause hearing was a preliminary step based on the information – the

regulations allow for any or all steps can be followed regarding a violation; there's a cease and desist order, a show cause hearing, there's an order for remedy, an order for action – going to court for civil penalties is the same as going to court for criminal activities – all of those options are on the table except in criminal cases (the standards are different).

Chairman de Jongh said he thought they should look at areas they need a refresher; and based on the issues Mr. Kurtz has, he for one would not take the same steps that were taken before.

Ms. Simone said things were happening right then and there and if they were to wait for a show cause hearing could have been determinantal to the environment as to what had already had gone on; with the understanding in her mind that notice of violation could be the first step – then cease and desist with a show cause hearing to follow up on that Tuesday – it was not a beginning and end (the meeting) but there's a notice of violation stipulating we need to meet with everyone and discuss what have you done on the site – how have you stabilized the site and how do you plan to conform to your permit.

Dr. Dimmick said he thought they always had the provision they could what they had to in an emergency to immediately secure a site and then worry about the legal details later – securing a site from further damage should come first.

Chairman de Jongh said that is what they tried to do – move things along.

Mr. Kurtz said he knew Commission members were upset (about not being able to attend the meeting); but from a practical standpoint he wanted to see that job done which was what he wanted to see after the first violation; he thought the Commission was denied their prerogative to discuss these issues.

Ms. Simone asked about chairs and staff communicating outside the meetings to discuss what's coming up – what's happening now – an emergency situation.

Attorney Smith said the chair has unique but limited authority compared to other commission members – that unique authority centers mostly around the planning and conduct of the meetings; so its very common for the chair and the assigned professional to talk about what's going to be on the agenda and what issues are likely to be raised, etc. – that's common and appropriate for the chairman to meet his obligations; in terms of the decision making – its either delegated to the professional or its held by the commission as a whole.

Chairman de Jongh spoke about situations that arise where he speaks with staff and actions are taken after discussion.

Attorney Smith stated but the ultimate discussion is staff's and authority has been delegated to her under the state inland wetlands statues to issue enforcements using her professional judgements; her actions are then ratified at the next meeting by the Commission.

XII. ADJOURNMENT

The meeting was adjourned at 9:27 pm by consensus of Commission members present.

Respectfully submitted:

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