

Regular Meeting

**CESHIRE INLAND WETLANDS AND WATERCOURSES COMMISSION
REGULAR MEETING**

Tuesday, October 6, 2020 at 7:30 p.m.

Via Video Teleconference

Public access available on YouTube at

https://www.youtube.com/channel/UC4_xey3QjJmwe57R_6K94Dw

Video will be available on Channel 14 and on demand at www.cheshirect.org

I. CALL TO ORDER

Chairman Kurtz called the meeting to order at 7:31 pm

II. PLEDGE OF ALLEGIANCE

The pledge of allegiance was recited.

III. ROLL CALL

Ms. Dunne called the roll.

Members present were Chairman Earl Kurtz, Dr. Charles Dimmick, Dave Brzozowski, Thom, Norback Will McPhee and Kerrie Dunne.

Staff member present was Suzanne Simone.

IV. DETERMINATION OF QUORUM

Chairman Kurtz determined there were enough members present for a quorum.

V. APPROVAL OF MINUTES – Regular Meeting – September 15, 2020

Chairman Kurtz called for a motion for the approval of the minutes from the September 15, 2020 regular meeting.

Motion: To approve the minutes from the September 15, 2020 regular meeting with no corrections.

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

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VI. COMMUNICATIONS

Ms. Simone reviewed the following communications:

1. Request for Determination from Sarafina and Michael Staski Dated: 9/29/2020 RE: 1392 Cheshire Street – For Privacy Fence Installation
2. Application – Sarafina and Michael Staski dated 9/29/2020 RE: 1392 Cheshire Street – For Privacy Fence Installation

VII. INSPECTION REPORTS

1. Written Inspections

Ms. Simone stated there were written inspections for show cause hearings for 720 Yalesville Road and 152 Talmadge Road – both items were under enforcement actions.

2. Staff Inspections

Ms. Simone reported there were staff inspections for 720 Yalesville Road, 1392 Cheshire Street, and 152 Talmadge Road; these items are on tonight's agenda.

VIII. ENFORCEMENT ACTIONS

1. Notice of Violation/Cease and Desist Order SC 09/28/20
Unauthorized Activities in the Wetland & Upland Review Area
Mr. Heber Alvarenga
720 Yalesville Road
Map 59, Lot 76

Heber Alvarenga was present.

Ms. Simone provide a summary of her staff inspection.

Ms. Simone reminded the Commission that in 2006 there was a subdivision and site plan approval given for this property; at that time a non-encroachment area was established which was to be 50' along the wetland boundary; that area has been cleared and a new survey has been provided by Harry & Cole was emailed out to Commission members yesterday showed a clearing limit survey that was done that does indicate that the property was cleared

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directly up to wetlands in some areas and in other areas it appears to have just a couple feet of buffer so basically that established 50' non-encroachment line has been eliminated.

Ms. Simone explained in speaking with Mr. Alvarenga he indicated he went out to the property and cleared – he estimates he cut down about 12 to 15 trees; so before the Commission tonight is a discussion of the cleared non-encroachment area that was done without a permit.

Ms. Simone explained this came to their attention because the property owner had submitted a building permit plan where they were looking for a building permit and we went out to the site to inspect the erosion controls in place; she had been in communication with the property owner prior to going out and advised them where the silt fence should be and how it should be installed and on the first inspection of the property – it was found the silt fence was not installed correctly – it was not backfilled – the stakes were just in the ground and nothing anchoring to the soil and also the area behind the silt fence had been cleared.

Mr. Alvarenga, the property owner of 720 Yalesville Road was present.

Ms. Simone stated that there was a permit to do anything as far as the development but the permit had lapsed; and at a minimum the 50' upland review area was established - a permit was still needed – and the 50' upland review non-encroachment line still stood unless the Commission took action to reduce it – there were not was asked to do – they have not received an application.

Mr. Norback asked for a clarification about the staff inspection of the non-encroachment lines prior to the clearing; and asked about the silt fence and if when that inspection took place was there any discussion about the non-encroachment lines at that point.

Ms. Simone said they (the lines) were established in 2006 and the Commission had not received any applications to do anything else with that property to change the non-encroachment line or anything like that; the silt fence was inspected in the past month or so; and there was discussion (recently) about the 50' non-encroachment line had been established.

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Mr. Norback asked if the discussion and the non-encroachment line had been ignored.

Ms. Simone said there seems to be some indication that the property was cleared prior to (them) contacting our office so it was cleared before we had knowledge that there was intent to even develop this property.

Ms. Dunne asked if the trees were cut.

Ms. Simone replied yes.

Mr. Norback said he had concerns about the trees being cut and asked about the number of stumps remaining.

Mr. Alvarenga did not reply - it appeared he was no longer on the call.

Chairman Kurtz said they had to make a decision as to what they had to do as far as starting the project with an expired permit; he thought they should ask him to submit an engineer's plan to restore the non-encroachment and possible wetland areas as to the way they were before – then he can come in for his permit to build a house which means setting up silt fence and start all over again – as Thom mentioned the permits and determination he (Mr. Alvarenga) is looking for is a little bit beyond where we are ready to go because he doesn't have a permit.

Mr. Norback said he needs to come in for a permit; and to Chairman Kurtz's point he needs to restore the area or at least have a plan to restore the area before the Commission entertains anything.

Ms. Dunne asked about acting on the notice of violation before the Commission.

Ms. Simone reviewed the Commission's options regarding the show cause hearing, notice of violation and corrective order that would issue that would give them a specific time frame to submit a restoration plan to the Commission for review.

Dr. Dimmick said based on what's been presented there has been a violation.

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Motion: That the Commission, based on the information provided tonight, has determined a violation has occurred and some kind of legal action is necessary.

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

Dr. Dimmick said the property owner would have to come up with a restoration plan and present it to the Commission; and would need a permit before construction.

Ms. Simone said she'd add that before they issue a restoration plan and a time frame and then at that time they may be allowed to apply for further changes - the restoration plan would be separate from the building plan.

Commission discussed the process that would need to be followed – including the need for an approved restoration plan prepared by a qualified professional before they could apply for a permit.

Ms. Simone explained she did speak to the engineer that submitted the clearing survey and spoke to a restoration person that they likely may be hiring who is the same person who worked on the Plank Road violation; she had discussion with both those individuals in preparation that they may be working further with this client.

Motion: That the Commission had determined the violator must present within 30 days a restoration plan prepared by qualified professionals for the Commission's consideration.

Moved by Dr. Dimmick. Seconded by Ms. Simone.

Commission members discussed receiving the restoration plan time frame.

Chairman Kurtz wanted to make sure the property owner know that no digging or clearing could take place – no shoveling.

The cease and desist order would remain in place.

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Motion approved unanimously by Commission members present.

2. Notice of Violation/Cease and Desist Order SC 10/01/20
Unauthorized Activities in the Upland Review Area, Wetland Area,
and Intermittent Watercourse
Mr. Brahim Krasniqi
152 Talmadge Road
Map 66, Lot 15

Brahim Krasniqi was present. Flamur Krasniqi, was present to serve as interpreter for his father.

Ms. Simone explained the Commission may remember there was discussion previously with this property owner back in April 2019; at that time there was tree cutting that happened without approval from the Commission; it occurred directly around the pond – and within 50’ of the pond and the Commission had determined at that time there was discussion that he needed to remove those trees because the insurance company had required it and the Commission at that time released the notice of violation and had no further action on it.

Ms. Simone reported since then the fence has been installed along the road on Talmadge Road and the fence goes right through the upland review area and it actually bisects the pond – there is a post for the fence – it goes right next to the outlet to the pond; so that is something that was installed without the required permit and in addition there is work that has been conducted around the pond with stone – perhaps its armoring it – there’s stone and other debris surrounding the margin of the pond and that was something that was done without a permit.

Ms. Simone stated she did not have any information as to why that work was done but the intent of that work was done so a notice of violation was issued on October 1, 2020; there is an error in the cease and desist order – it’s says Marion Road and it should say Talmadge Road; activity on the site was to be halted and that they attend the meeting tonight.

Brahim Krasniqi and his Flamur Krasniqi, who would be serve as an interpreter were on the call.

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Flamur Krasniqi explained the reason they cut the trees was because they fell down last year because of the weather; and the insurance required it – he said because the trees hit up against the house; and there was picture and mold in the ground – they were required to take them out.

Chairman Kurtz said we've heard all that before.

Ms. Simone said the information that was provided had to do with the fence that was installed that goes through the outlet of the pond – that was done without a permit and then also the work that's being done around the pond also without a permit so there's questions about what is being done to the pond – there's stone or other debris that's being placed around the pond – what is the purpose of that and how it that being done and why is that being done.

Flamur Krasniqi explained to his father what Ms. Simone was asking.

Flamur Krasniqi replied for his father – the reason they put the things near the stream is because it was looking dirty near the pond – he didn't want it to be looking dirty.

Ms. Simone questioned - so that's why he put the stone around the pond – because he wanted to make it look nicer.

Flamur Krasniqi said they put up the fence.

Flamur Krasniqi said for his father they tried to clean up the pond area because it was smelling bad and they aren't going to do anything else; it was smelling back and there was very high grass.

Chairman Kurtz said that's nice, but he had to get a permit and he was told he had to get a permit to do any further work in that area.

Chairman Kurtz stated he did not get a permit – there's no excuse for that – he was warned, and the Commission was very kind, very liberal and very lenient.

Flamur Krasniqi apologized.

Chairman Kurtz replied that's good but now you have to fix it.

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Flamur Krasniqi said his father – he apologized and will get the permit.

Chairman Kurtz said its not that easy - they need to clean up the violation – the fence close to the wetland - the edge of the pond has stone and debris around it.

Flamur Krasniqi said the stone around the pond is for the kids on the bikes around the pond so there's more security; he claimed they didn't know (about a permit).

Chairman Kurtz stated we don't care about the 'because' – they were told they needed a permit to do anything – beyond that they are in willful violation of the regulations.

Dr. Dimmick said even if you bring in a permit request we may deny the permit which means you'd have to bring everything back to the condition it was before hand; and if necessary we would turn this over to legal and add up fines would be assigned per day for now doing so (correcting issues) – so its urgent they come in with a permit request but also keep in mind they may be required to restore everything to its original conditions.

Flamur Krasniqi said his father said he never knew he needed a permit – he apologized and said he didn't do it on purpose.

Chairman Kurtz replied no - that's too little too late.

Mr. Norback said even if we make allowance for the language barrier here – the last time he was before us – he really did think that it was understood about the activities needed a permit and he thought they (the Commission) gave they (the property owner) a pretty wide sway with what was done – it almost looked like a wood operation – it looked like a commercial venture because there was so much wood cleared; he said it was explained then – that they talked about a silt fence around the pond as well because of the activity – they were muddying it up – they had a backhoe in there and he's not sure this has been going on for quite some time and there's some chance they didn't understand they needed a permit but that's incumbent upon them and if there's a language barrier that they bring someone to bridge that barrier and get things explained.

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Flamur Krasniqi said he tried to explain (to his father) as much as he can; and they haven't had an issue before.

Flamur Krasniqi asked if they can come to the office.

Mr. Norback asked if asking if a restoration plan request was appropriate in this case before they move ahead.

Chairman Kurtz said he would think so and perhaps it could be coupled with a permit – the fence is in violation by itself – that has to go; the debris that's in the back – we have to know a little bit about it – where did it come from and why was it put there; it doesn't look like something indigenous to that area.

Chairman Kurtz said they can have restoration plan and perhaps a permit to do something presented at the same time – then they would have to have it done in order; we can just the restoration permit and take it from there to tell you what you have to do.

Flamur Krasniqi asked if they have to remove the fence from there.

Chairman Kurtz said they (the Commission) have not decided.

Mr. Norback said even if they remove the fence they need a plan on how they are going to remove the fence and how they are going to restore the area around the fence. He said he's at a lose of what they started with here and what they would be restoring it to.

Flamur Krasniqi said he (this father) just wanted to clean it up because it smelled, and the grass was raised higher.

Ms. Simone said the one question she has is – a technical question – looking at the fence in the pictures provided to the Commission – you can see what appears to be a fence post that goes right at the outlet of the pond – so her question is how was that installed and has it created any problems – is there a closed bottom culvert there – did it possibly go through something that may have damaged the culvert – the integrity of the culvert and the flow of the water is a question that she has in looking at that post and its placement right at the outfall.

Mr. Norback asked if that culvert crossed Talmage Road.

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Ms. Simone replied it goes under the road and it then discharges onto the property across the street – goes into a larger pond and then it sort of spreads out to that field area along Academy Road.

Mr. Norback said he thought they (property owner) needs to bring a professional in.

Dr. Dimmick provided a little bit of background as to why there's a problem here – they have had drought conditions this year – the stream that goes into that pond is partially spring fed and the ground water table has dropped and as a result some of the springs that feed off of that are not working; so this is a condition in terms of the smell he's talking about - it's because the water table has dropped and will happen every once and a while in extreme drought conditions; the water table now might be 4' lower. He noted he has not gone out and studied this specific area, but he commented on the general trend in that part of town with the water table.

Mr. Norback stated again – they need a professional.

Motion: That the Commission has determined that based on the show cause there is a violation at 152 Talmadge Road.

Moved by Kerrie Dunne. Seconded by Thom Norback.

Mr. McPhee abstained from vote due to the property owners are his neighbors.

Motion approved 4-0-1.

Chairman Kurtz asked how to remediate this and that we ask them to hire a professional to do the work and make recommendations or does the town hire professionals and go out and do it and bill the people at 152 Talmadge Road for it.

Ms. Simone explained in an application it allows for the town to hire a third party reviewer and then have the applicant pay for that – seeing as there is no fee structure for the violation – she didn't believe that opportunity exists so her suggestion would be that if the Commission was interested in getting an evaluation of what the conditions are out on the property and what they've done and

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what the potential issues may be that then she would recommend they be ordered to hire a professional and give a time frame that that Commission would expect a report back.

Ms. Simone said she could help provide resources to them (the property owner) find someone to help them (a professional), she said she would send (Flamur Krasniqi) an email.

Flamur Krasniqi said he did receive the previous email; he wanted to meet face to face to have things explained.

Ms. Simone said she would send the email and he could let her know if there was anything in doubt.

Flamur Krasniqi asked if there was anything he had to move.

Mr. Norback said to wait for recommendations.

Ms. Dunne said they have to have a professional look at it – make recommendations and then come back to us – you are not to do anything until that is done.

Mr. Norback said they can discuss with staff on how to find a professional in the email.

Flamur Krasniqi asked if he could meet with Suzanne at the town hall.

Ms. Simone said she will be out until next week, but would send the email that has resources where he can get names and an explanation of whatever the Commission decides tonight; sounds like they are going to require you to hire a professional to assess the conditions on the property and provide their professional opinion to the Commission and then they can decide on how to act; the property owner would have to hire the professional.

Flamur Krasniqi said he would contact Suzanne next week on Tuesday (October 13, 2020).

Motion: That the Commission has decided that the property owner has 60 days to hire a professional, evaluate the site conditions, and then come up with a remediation plan. In the meantime, no work is to be done at all at 152 Talmage Road.

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Moved by Kerrie Dunne. Seconded by Thom Norback.

Chairman Kurtz stated it has to be clear to the people at 152 Talmadge that there is no work to be done at all. There's a cease and desist and they have to understand that – the only work that is going to be done is what the professionals need to do to assess and make recommendations regarding the property.

Flamur Krasniqi said he promised.

Chairman Kurtz asked how could we be cleared on that – he didn't want to hear "I didn't understand – I didn't know."

Flamur Krasniqi replied okay.

Motion approved 4-0-1 with Mr. McPhee abstained from vote due to the property owners are his neighbors.

IX. UNFINISHED BUSINESS

There were no unfinished business items.

X. NEW BUSINESS

1. Request for Determination RFD 2020-026
Sarafina and Michael Staski
1392 Cheshire Street
Privacy Fence Installation

Sarafina and Michael Staski were present.

Ms. Simone provided a summary of the proposal; the Commission issued a permit in 2012 for the demolition of an existing house and the construction of a new house which is the house that is on the property as of right now; the Commission has had some ongoing violation issues with the previous owner from 2014-2019; in 2018 there was a stipulated court judgement that required the installation of a spilt rail fence and to cease the mowing in the non-encroachment area which is behind the house and there was also some penalties to be paid to the town which have been paid.

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Ms. Simone said the cease and desist order and court judgment still stand which requires that that non-encroachment area be allowed to maintain in its native vegetation and not to be disturbed and the split rail fence be in that area.

Ms. Simone explained new owners took possession of the property in 2019 and at first they had started mowing behind the split rail fence within the non-encroachment area – she met with the property owners and discussed there was that standing order and that that area needed to revert back which is had this year.

Ms. Simone said more recently she was contacted by the owner inquiring about putting a fence up around the property – they provided a sketch that was provided to the Commission – it is a copy of the 2012 approved plan and in red shows the area where they are proposing to put the fence so to the rear of the property the fence is proposed to replace the split rail fence which was part of the court order instead install a privacy fence that nobody and gain access to the back of the property as well as putting a fence on the sides of the property where there are wetlands on either side.

Ms. Simone said she just happen to be in that area after getting the request asking about putting up a fence and she saw that trees had been recently cut – it appeared as though a majority of the trees looking at the stumps were right outside that 50' upland area but there were a few that were within the direct wetland finger area which is on the south of the property; when she went out to the property to take a look at the trees that were cut that stump was rotted so it did appear to be a dead or dying tree.

Ms. Simone noted in the condition of the property there was also two sections of the split rail fence that were removed and there were wood chips that were recently chipped from the trees that were cut approximately the day before – were chipped into that area and she did meet with Ms. Staski and she had indicated that she would try and remove some of the chips that were in there.

Ms. Simone explained after that visit we received the request for determination – it's a hand written note – which she read into the record “dated September 29, 2020: Addressed to Cheshire Planning and Zoning Office Inland Wetlands and Watercourses Commission regarding request for determination privacy fence installation. To Inland Wetlands and Watercourses Commission, we are submitting a

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request for determination to install a privacy fence to enclose out backyard. Part of the fence will run through the upland review in the northside of the property, the fence will also run along the current wetland buffer fence, but not behind nor would it impede in the non-encroachment area of the property. We are looking to install a vinyl fence on the west side of the property in front of the house and enclose it with pressure treated stockade wood fence; at 6 feet in height, 8 feet in width. We would like to remove the current wetland buffer fence and place the posts in the same spot and not disturb the soil further; new posts would be cemented or due to restrictions the posts would be dug deeper to withstand light winds or other acts of nature. We would appreciate your consideration in this determination. Thank you. Michael and Sarafina Staski.”

Mr. Norback said it sounds like they are sensitive to what our expectations are.

Mr. McPhee said based on that they are asking for a request for determination – he actually sees that a privacy fence will do a better job keeping everyone out of the wetlands then what’s there now so he’s all for it.

Mr. Norback said with their narrative their intent and their plan and promise is to put it in within the footprint of the spilt rail fence; he said digging deeper for more support was fine – it’s a better direction to go – a privacy fence versus split rail.

Chairman Kurtz said based on the nature of the project and some of the things they have already done - he was thinking of a formal permit would be more formally binding; he was not sure allowing their request to be granted is the safest way to do it – there has been some disturbance beyond the wetlands buffer.

Ms. Simone said yes – it was in the non-encroachment area.

Chairman Kurtz said it was in the deed – on the town records for the property – they were aware of the restrictions.

Ms. Staski said they weren’t – they didn’t know – we didn’t know if was wetlands or anything until they got the deed; she said the previous owners lied to them and their lawyer looked into it and they never told us.

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Chairman Kurtz stated its on the record – telling you is one thing but whoever did the title search had to see it.

Ms. Staski said again they never told us.

Chairman Kurtz said your attorney (should tell you), so it's your problem.

Chairman Kurtz said this is why he was thinking a permit would be more formal to make sure they do the right thing instead of letting them just go do it.

Dr. Dimmick said they have had problems with the three previous owners on the property.

Mr. Norback said have them pull a permit.

Ms. Staski asked if they could use cement for the posts or just dig deeper.

Dr. Dimmick said he didn't see that has a problem cement if it's going to be at the edge of the non-encroachment line.

Mr. Norback said the application should include all of the details of how the work would be done.

Dr. Dimmick said the permit could be accepted tonight and amended showing additional details (by the next meeting).

Ms. Simone advised that the sketch be more detailed and labeled on the site plan with more accuracy and specificity so the Commission can look at this plan and know exactly what's being requested and if more trees are to be cut should be part of the application; and explain it step by step so they know what they are being asked to evaluate and act on.

Motion: That the Commission has decided after looking at the proposed activity has determined that a permit for the proposed activity was required.

Moved by Dr. Dimmick. Seconded by Ms. Dunne. Motion approve unanimously by Commission members present.

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**2. Permit Application
Sarafina and Michael Staski
1392 Cheshire Street
Privacy Fence Installation**

**APP 2020-026
DOR 10/06/20**

Sarafina and Michael Staski were present.

Chairman Kurtz informed the applicants to make sure all the details are presented in the proposed plan.

The application fee and more details of what the property owner is proposing will need to be submitted for the Commission's review and consideration.

Ms. Simone agreed to work with the applicant and let them know what information was needed in order for the Commission to act on this item at the next meeting.

XI. ADJOURNMENT

The regular meeting was adjourned at 8:28 pm by consensus of Commission members present.

Respectfully submitted:

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