

**CHESHIRE INLAND WETLANDS AND WATERCOURSES COMMISSION
REGULAR MEETING
THURSDAY, NOVEMBER 19, 2013
TOWN HALL 84 SOUTH MAIN STREET
ROOM 207/209
Immediately Following the Public Hearing AT 8:05 PM**

Members present: Robert de Jongh, Charles Dimmick, Kerrie Dunne, Dave Brzozowski, Earl Kurtz, and Thom Norback.

Member absent: Will McPhee.

Staff: Suzanne Simone.

I. CALL TO ORDER

Chairman de Jongh called the regular meeting to order at 8:05 p.m.

II. PLEDGE OF ALLEGIANCE

All present recited the pledge of allegiance at the public hearing.

III. ROLL CALL

Ms. Dunne called the roll at the public hearing.

Members at the public hearing were still present for the regular meeting: Robert de Jongh, Charles Dimmick, Kerrie Dunne, Dave Brzozowski, Earl Kurtz, and Thom Norback.

IV. DETERMINATION OF QUORUM

Chairman de Jongh determined there were enough members present at the public hearing.

**V. APPROVAL OF MINUTES – Public Hearing and Regular Meeting –
November 7, 2013**

Chairman de Jongh suggested putting off the approval of the minutes to the end of the meeting.

There was no objection to postpone the approval of the minutes to the end of the meeting.

At 9:13 p.m.:

Motion: To approved the minutes of the November 7, 2013 public hearing and regular meting with corrections.

Public Hearing: Pg. 3 L18 “in” to “then”; pg. 4 L36 delete “of”; pg. 5 L9 “fluid in the” to “flood, and they”, L25 “passed” to “past”, L36 “trio” to “trail”, L44 after “the” add “back”; pg. 7 L14 “her” to “our”, L19-20 delete “early”, “it”, “of”, L32 “wouldn’t” to “would in...be”, L46 “sphmataphores” to “spermatophores”; pg. 8 L16 “formal” to “vernal”, L32 “burro” to “borrow”; pg. 9 L30 delete “for the”; pg. 10 L12 delete “did”, L38 “trial” to “trail”; pg. 11 L40 “sidewalks of” to “site walk”, L42 “that had” to “the head”; pg. 13 L26 ; delete “locate”; pg. 17 L29 “and” to “an”; pg. 19 L22 delete “and the” and L25 “in the”; pg. 23 L19 “Amalanker” to “Amalanchor”; pg. 24 L12 delete “Acothaway”; pg. 28 L26 “are” to “at our”; pg. 29 L15 delete “that the”; pg. 31 L20 add “not” after “did”; pg. 32 L15 “Skabackus” to “Skabeikis.”

Regular Meeting: Pg. 3 L44 “Hickerman” to “Dickerman”; pg. 4 L42 “made the” to “may be”; pg. 5 L39 delete “Number”; pg. 14 L33 “tempting” to “attempting”; pg. 17 L27 “expected” to “accepted”; pg. 31 L16 after “can” add “not”; pg. 32 L15 “that” to “with”; pg. 34 L22 “compose” add “propose”; pg. 37 L28 “in” to “and”; pg. 53 L8 “with” to “what”, L48 “and” to “end.”

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

VI. COMMUNICATIONS

1. Request for Determination Re: Filling of Sludge Lagoons at the Water Pollution Control Plant

This communication was reviewed.

Ms. Simone stated this item is under new business tonight.

2. Staff Communication Re: John Ronamik, Jr.; Whispering Hollow Court, Lot #6; Application #2013-028 – Site Plan: House

This communication was reviewed.

Ms. Simone stated this item was subject of a public hearing that was then continued to the next meeting.

3. Staff Communication Re: Town of Cheshire, West Main to Jarvis Street

Application #2013-026 – Farmington Canal Greenway

This communication was reviewed.

- 4. Staff Communication Re: PABCO Cheshire, LLC, Saddlebrook Farms, Lot 6, Application #2013-030 – Site Plan: House**

This communication was reviewed.

HANDED OUT AT TONIGHT’S MEETING:

- 5. Engineering Comments Re: Site Plan, Rails to Trails, Town of Cheshire
Application #2013-026 – Farmington Canal Greenway**

This communication was reviewed – this item was part of the public hearing tonight.

- 6. Engineering Comments Re: Site Plan, 1143 Summit Road
This communication was reviewed.**

- 7. Engineering Comments Re: Site Plan, Pabco, Lot 6 Huckins Road
This communication was reviewed.**

- 8. Engineering Comments Re: Site Plan, Creamery Road Bridge Replacement, Town of Cheshire
This communication was reviewed.**

VII. INSPECTION REPORTS

- 1. Written Inspections**

Ms. Simone stated there were no written inspections.

- 2. Staff Inspections**

Ms. Simone stated there was a staff inspection for a certificate of occupancy for 1392 Cheshire Street – the required plantings are in place so that is complete.

Ms. Simone said for the additional site visits she did not have that information tonight but that she’d have that at the next meeting.

Chairman de Jongh said a question on the plantings – do we have the ability to monitor those plantings to make sure that are in place in the spring – that they don't die over the winter.

Ms. Simone said she did not recall if the stipulations stated were as far as the longevity required.

Chairman de Jongh said his concern was they were put in at the end of the planting season and really right on the edge and he wondered whether or not if any of the plants were able to take hold.

Ms. Simone said she could look at that for the next meeting and report back.

VIII. ENFORCEMENT ACTIONS

1. **Unauthorized Activities in a Regulated Wetland Area** SC 5/04/10
Dr. Robert Henry and Maria Passaro-Henry
12 Mountaincrest Drive

Chairman de Jongh said this is on the agenda for continued monitoring purposes.

IX. UNFINISHED BUSINESS

1. **Permit Application** APP #2013-026
Town of Cheshire DOR 10/01/13
West Main and Jarvis Street PH 11/07/13
Construct Farmington Canal Greenway PH 11/19/13
MAD 12/12/13

Chairman de Jongh stated this was subject of a public hearing both on the 7th and 19th of November – the public hearing on this item was closed this evening and will be discussed at our next meeting on December 3, 3013.

2. **Permit Application** APP #2013-028
John Romanik, Jr. DOR 10/15/13
Whispering Hollow Court PH 11/07/13
Site Plan - House PH 11/19/13
MAD 12/12/13

Chairman de Jongh said as read into the record tonight the applicant has asked that we postpone the public hearing to the next meeting.

| | | | |
|----|----------------------|-----|-----------|
| 3. | Permit Application | APP | #2013-024 |
| | Dante A. Pasqualini | DOR | 10/15/13 |
| | 815 Allen Avenue | | |
| | Filling in a Wetland | MAD | 12/19/13 |

Dante Pasqualini was present.

Chairman de Jongh stated this item has been discussed at length and there were a number of questions that were raised regarding evidence that was brought before us concerning this request for determination.

Chairman de Jongh said that he kind of wanted to take a 30,000 look at this and just make sure we are all on the same page before we get into some history which staff has been asked to kind of look at in regard to activity on this particular property.

Chairman de Jongh stated it's been asserted by the applicant and the applicant's representatives that the intent of the request for determine is to restore the conditions of the property to roughly 2006 – its that correct Mr. Pasqualini.

Mr. Pasqualini stated that was correct Mr. Chairman.

Chairman de Jongh said both Mr. Sipperly and Mr. Pasqualini had stated that the lawn that has come under question was in existence in 1980.

Mr. Pasqualini stated yes that was correct.

Chairman de Jongh said with those two assertions what I want to do is - again because of questions that we raised by Commission members and information that we were somewhat unsure of – there was no benchmark – we talked about pre-conditions – it was asserted that there was no precondition determinations that created – they didn't know what it was like before 2006.

Chairman de Jongh said so we had staff go back into the records and kind of research and if would indulge me I'd like to kind of read the summary that staff so eloquently put together.

Ms. Simone handed out to Commission members a copy of the summary.

Chairman de Jongh stated this is created by staff November 19, 2013
– 815 Allen Avenue Application/Permit/Order History:

“On October 17, 1978 a permit was issued to Beverly Hilzinger for the subdivision of land, creating "Meadow Haven."

The subdivision plan locates wetlands to the west, bordering the existing driveway (in the area of the current proposed filling) and a pond to the east of the driveway.

A 12" reinforced concrete pipe (RCP) inlet is shown originating from the pond (east of the driveway) and the outlet is shown to the west of the driveway, in a wetland area, and in the general vicinity of the proposed filling.

On August 22, 1990 a Cease and Desist order was issued to Dante Pasqualoni for conducting regulated activities (clearing) without erosion controls. The IWWC ordered the installation of erosion controls.

On August 6, 1991 a permit was issued to Dante Pasqualoni for the construction of a single family house and the installation of a pipe under Sindall Brook in association with the septic system.

The plans submitted in support of this application, dated June 25, 1991, identify that the wetland boundary was located by field survey.

The 12" reinforced concrete pipe (RCP) inlet is shown originating from the pond (east of the driveway) and the outlet is shown to the west of the driveway, in a wetland area, and in the general vicinity of the proposed filling.

The 1992 town topographic map shows the treeline bordering both the east and west sides of the driveway. There are no applications/permits on file for the creation of lawn at 815 Allen Avenue.

On August 1, 1995 a permit was granted to Dante Pasqualoni for the creation of a pond to the east side of the driveway.”

Chairman de Jongh said questions that arose as a result of that was - the file contains an environmental assessment dated July 18, 1995, completed by Soil Science and Environmental Services, Inc. and signed as "submitted at meeting, July 18, 1995, Staff J. Sipperly, CIWWC."

The environmental assessment describes the area to the east of the driveway as "spring fed", having a 'high' wetland quality 'because of significant continuous groundwater discharge'; this area is outside the area of the current proposal, however does indicate that the pond is spring fed, and may have continuous cool water discharge, which may then involve the pond outlet located on the west side of the driveway.

The report states (and is written on the site plan) that the pond testing revealed the water was discharging out the outlet at 5 gallons per minute.

The environmental assessment describes the area to the west of the driveway, which is the area of the proposed filling, as an "open deciduous wooded swamp dominated by red maple, spicebush, jewelweed, skunk cabbage, false Solomon's seal, redtop grass, clover, and grape."

There is no mention of the establishment of lawn to the west of the driveway, it is described as vegetated.

The area south of RCP pipe outlet was observed as "the streambed was saturated and in many places had flow and shallow pools ... primarily due to the continuous water flow from the groundwater discharge to the east of the driveway and possibly the groundwater in the vicinity of the stream channel."

On July 5, 2011 permit #2011-006 was granted for streambank restoration. Tom Pietras, soil scientist, performed a wetland delineation of the property for the Town project. Mr. Pietras' signature appears on the site plan.

On October 4, 2011 the IWWC considered a Request for Determination for storm damage to the streambank. The IWWC determined that an application for a permit was required.

On December 6, 2011 permit #2011-022 was granted for streambank restoration in response to the October 4, 2011 Request for Determination.

On December 6, 2011 permit #2011-020 was granted for pond dredging in an area unrelated to the current Request for Determination.

On September 3, 2013 the IWWC determined that the proposed inland wetland filling is not permitted as a matter of right and that such work requires an application to and approval from the IWWC.

Application/Testimony Inconsistencies

Staff reviewed the record to assemble findings to present to the IWWC. The record reflects conflicting testimony and Staff recommends that the record be clarified.

Staff's review of applications/permits/cease and desist orders for 815 Allen Avenue led to the following questions and identification of conflicting information:

When was the lawn on the west side of the driveway established?

The 1992 town topographic map and Mr. Pasqualini's 1995 IWWC application identify the area as wooded.

Why was no permit sought for the establishment of lawn?

What is the location of the pond outlet to the proposed fill area?

None of the maps submitted in support of application #2013-024 show the location of the pipe outlet.

Will the placement of the proposed fill have any impact on the outlet?

Will the placement of the proposed fill have any impact on the stream, as the 1995 environmental assessment indicated the area to have groundwater discharge?

Mr. Pasqualoni states (11/17/13 minutes, page 12) "that the application is to restore property to what it was before the flooding of June 1, 2006."

Using the town's 1992 topographic map and Mr. Pasqualini's 1995 application, the area was wooded.

Mr. Pasqualoni refers (11/17/13 minutes, page 12) to the photographs submitted at the October 15 and November 7 meetings (same set), the undated photos show "well graded, well seeded, grassed, ... beautiful area". Further, Mr. Pasqualoni states (11/17/13 minutes, page 19) that the lawn existed in 1980. Mr. Sipperly reiterates the

point (11/17/13 minutes, page 21) that the proposed fill area has been an existing lawn since 1980.

When was the lawn established, and under what authority, as the town records indicate a wooded forest in the 1992 town topographic map, based on aerial photographs, the 1995 application. It is only in 2011 that this area is identified as lawn.

The 1995 environmental assessment from Soil Science and Environmental Services, Inc., which has a signature indicating that 1. Sipperly received this information, identifies the "wetland area and stream channel to the west of the driveway" as an "open deciduous wooded swamp." The content of the 1995 report and Mr. Sipperly's testimony (reference above) are in conflict.

The October 25, 2013 letter from Chris Conklin, Land Surveyor, identifies that "there is little to no impact on the wetlands or upland review area." The plan submitted and labeled "Limited Property/Topographic Survey" dated October 18, 2013 identifies the filling of 990 square feet of inland wetlands and 440 square feet of upland review area.

Staff is unclear on the statement of 'little to no impact' when direct filling is proposed and environmental assessment has not been submitted as part of this application.

Mr. Conklin's testimony (11/7/13 minutes, page 14) references the calculations of the impact. Ms. Dunne asked Mr. Conklin (page 15) "if it was 444 feet", Mr. Conklin stated yes, then made reference to 990 square feet.

Mr. Conklin, Land Surveyor, offers the only statement regarding environmental assessment of the proposed fill area, "we're not affecting any wildlife, we're not affecting any vegetation other than grass".

There are no documents to support this statement, so the basis for this finding is unknown and unreferenced.

Dr. Dimmick said if he could add just one item – twice during the testimony there were statements by Mr. Sipperly concerning as of right uses and he said as in 'your regulations'.

Dr. Dimmick said looking at our regulations –we have two places where as of right applies – section 4.1 A 2 and 6.1 A, 4 A 2 says a

residential home for which a building permit has been issued or on a subdivision lot provided a building permit has been issued by the town or the subdivision has been approved by Cheshire Planning as of June 27, 1974.

Dr. Dimmick stated we seem to have the public permit issued in 1991 so that does not apply.

Dr. Dimmick said 4 reads – used incidental to enjoyment and maintenance of residential property such property is defined as equal to or smaller than 80,000 SF which is two builders acres and we have testimony that the lot is 3 acres so the property does not fit there – it's too large to have that and secondly 4.8 A – such incidental uses shall include maintenance of existing structures and landscaping but shall not include removal or deposition of significant amounts of material from or into a wetland or watercourse.

Dr. Dimmick said so there is no as of right for this particular case.

Chairman de Jongh said he just wanted to add some additional context to the history on this – Suzanne had shown him the map that was submitted and done by Mattison Associates presumably contracted by Mr. Pasqualini for the property that was to be done - this is a 1995 map dated March 2, 1995 and it shows the pipe that goes from the pond to the westerly side with a notation on it that says “5 gallons a minute” – the date is July 11, 1995.

Chairman de Jongh said and the letter that was sent to Mr. Pasqualini and was signed by Ken Stevens of Soil Science and Environmental Service as a professional registered soil scientist – there are paragraphs on the first page that say:

“A wetland and a stream channel exist to the west of the driveway. The wetland is an open deciduous wooded swamp dominated by red maple, spicebush, jewelweed, skunk cabbage, false Solomon's seal, redbud grass, clover, and grape. The soils in this portion of the wetland were very dry.

The stream flows in a southerly direction and the substrate was composed of sandy material as well as areas of larger gravel and cobbles. The streambed to the north of the outflow pipe from the isolated wetland was dry. However, to the south of the outflow pipe, the streambed was saturated and in many places had flow and shallow pools. The channel flow is primarily due to the continuous

water flow from the groundwater discharge to the east of the driveway and possibly the groundwater in the vicinity of the stream channel. In two of the deeper pools of the stream channel we observed a dozen or so minnows as well as the common water strider.

Chairman de Jongh stated that the letter was dated July 18, 1995.

Chairman de Jongh said the problem that we've got is we have a request for determination to fill a piece of property...

Dr. Dimmick stated – we have a permit application.

Chairman de Jongh said we've got an application before us to fill a piece of property that the applicant deems as an area that was created by the town subsequent and have become one and there was a depression created as a result of significant activity by the town but the reality of it is that it appears based on the history of the property that this was at one time and up until 1995 it had been a wetland area.

Dr. Dimmick stated with a swamp.

Chairman de Jongh agreed with a swamp.

Ms. Dunne said she wanted to add – what was said – there's little or no information before us as far as the impact on the wetlands or upland review that's been offered which is troubling and also the applicant has not offered any alternatives to filling in the wetland as meeting need for a lawn – we have not heard anything on that.

Chairman de Jongh asked Mr. Pasqualini if he had anything to add.

Mr. Norback said given the storied history of the property at this point has the property been comprised in such a way that we need to be considering what it was as opposed to what it as it exists now. He said we understand that obviously some kind of it appears that some kind of unpermitted activities took place but at this point what are we talking about – are we talking about a small area that's been filled and up fill in an area that's long been compromised or are we talking about adding insult to injury.

Ms. Simone said all of this came about just in looking at the file and trying to come up with findings to submit to the Commission and reference was made multiple times to restore it back to what it was

like prior to 2006 – there was no information provided in the file to show what it looked like that's how some of this information came across – to see all the way up through 1995 the information we have is that that area was wooded so at some point from 1995 up until the last application came in 2011 something happened and work was done without a permit it seems.

Dr. Dimmick said so the request for restoration should be to restore it to the wooded swamp conditions that existed before 1995.

Ms. Simone said so that was part of question she had to clarify on the record – what does that mean to restore it back to when the documentation that we have shows it was a wooded area so then in essence is that a violation and then is this – there's a lot to it to make clear.

Mr. Norback said that's the question he was asking – has it been long enough an semblance of a lawn that your information might not even be viable at this point – he said he was struggling with this.

Ms. Simone said she thought that was something that needs to be put on the record and then also the question of the pipe outlet – that there is this outlet that from what we can see has existed since 1978 and that it is discharging in the area – it seems as though its in the area where they are proposing to fill.

Mr. Norback asked staff if she's seen the pipe.

Ms. Simone said she hasn't seen the pipe but there's documentation that shows that it releases five gallons a minute in July 1995.

Chairman de Jongh said he'd pass around the map from 1995.

Mr. Norback said he was wondering so – as this area has apparently has been compromised since 1995 – we have five gallons a minute back in 1995 and assuming you still get five gallons a minute---

Chairman de Jongh said where it is going.

Mr. Norback said yes – he wondering and said that's a lot of water.

Ms. Simone stated it discharges into the stream but there's no clarity on the record as to the proposed area that they want to fill – where that's located relative to the outlet for the pond so I think that's also another question that needs to answer is – is the fill going to be

brought into the area of where the outlet is and then will that impact the outlet and will that then cause erosion that goes directly into the stream channel because now you are changing the rate and adding soil to the area.

Mr. Norback asked if there was any chance we haven't seen the outlet as of late.

Ms. Simone stated no because this is the first time we've really seen documentation and this came about because there was so much questioning and confusion from the record – from the testimony compared to what was submitted – much of the information was contradictory so the applicant has never identified anything about the pond outlets so that was never anything that was questioned or asked of him.

Mr. Brzozowski asked even since the town went out there and did work they didn't know ahead of time that this was going to be –

Ms. Simone said the town wasn't doing anything in that area.

Chairman de Jongh stated that the town wasn't doing work in that area.

Ms. Simone said they were staying further away.

Mr. Pasqualini said in all due respect when the town was putting the rip rap in the embankment and you (Ms. Simone) had made a couple of different visits there once with Mr. Cunningham they were working right around that pipe outlet that the Carabetta Enterprises put in when they were subdividing up all the land – the rip rap that the town had installed there is right along that pipe that they installed.

Mr. Pasqualini said the discharge is different at all times – for example now the water is not even running because we've been in such a dry spell and in over all of these years those dry spells the wooded area that was left there – that died off – you may remember also – there was a couple of times you came down – you saw the trees that had fallen into the brook and I told ya that I continued to clean that up – I continued to cut the trees up and everything like that – put the wood out for free and all of that stuff – its been a nightmare – there's been many times over all of these years where everything has died out – fallen down – I've cut it and I've raked it out – it's in the brook – it's outside of the brook.

Ms. Simone asked so trees along the brook are falling in.

Mr. Pasqualini said that was evident when you came down and you said 'are you cuttin' these down' and I said no – you can see that the stumps have rotted off – I've cut them up and I've put the wood out on the street to give away just to keep the brook clean.

Ms. Simone stated okay – so how does that relate the outlet of the pipe and the creation of the water.

Mr. Pasqualini said over the years as we've gone through these dry spells and the trees have fallen down and everything and I've cleaned that area out by picking up the dead trees – I've handed raked it – thrown some seed in there.

Dr. Dimmick asked are you saying every tree between the stream and your driveway has died off over these years.

Mr. Pasqualini stated doctor there was so few of them – there was honestly so few.

Dr. Dimmick asked staff if the aerial photo showed trees.

Ms. Simone said she didn't have the aerial photo with me – but the topo map that shows the tree line.

Dr. Dimmick said it shows the tree line right next to the driveway.

Ms. Simone showed on the topo the driveway---

Mr. Pasqualini stated 'those died out'.

Ms. Simone said in fairness you (Mr. Pasqualini) won't know where I'm pointing to on the map.

Mr. Pasqualini said he remembered the ones that were on the driveway.

Ms. Simone showed the Commission the area that was vegetated – stating that's the driveway so it shows it as a very narrow gap and it was wooded on both the east and the west side of the driveway.

Mr. Pasqualini said those were Poplars that dried out.

Dr. Dimmick said it was listed as Red Maple Swamp – Poplars aren't defined as Red Maple Swamp.

Mr. Pasqualini stated he didn't remember any Red Maples doctor.

Dr. Dimmick said we have a professional who made a survey and listed them as Red Maple Swamp.

Chairman de Jongh said to Mr. Norback's question – do we go back and try to reclaim what was changed between 1995 and 2011 or do we permit additional work to be done on an area that's clearly disturbed based on historic evidence.

Chairman de Jongh said he was speaking for himself – there's an applicant before us to fill an area that was changed without a permit from this Commission whatever the reasons were however it happened – by nature or by man.

Chairman de Jongh stated he for one was not in favor of allowing additional work to be done in an area where work should not have been done in the first place.

Dr. Dimmick said his problem is that the original applicant, presentation, and statements that we now find are contrary to fact – such are reasons to completely reject the application.

Dr. Dimmick stated you can not apply for something and supply false statements.

Ms. Simone said that creates a difficulty when putting the findings together to go in a direction.

Chairman de Jongh stated that is why the history had to be read into the record and research so we have some kind of reference point.

Ms. Dunne said first it wasn't a wetland – and then they are relying on a soil scientist who was not there – and a soil scientist saying it is a wetland based on this and I understand what you were saying Dr. Dimmick – it was signed so it's probably appropriate but still I'm a little uneasy with that procedure and how that was done.

Chairman de Jongh said he would go back to the evidence that was submitted that was sent to Mr. Pasqualini on July 18, 1995 – there's a handwritten note by Mr. Sipperly at the meeting of July 18, 1995 and it's his signature on this letter.

Chairman de Jongh said so Mr. Sipperly is aware of the evidence and history of this so it's ironic that we have testimony that has been a lawn since 1980 when in fact he received a letter dated 1995 stating otherwise.

Chairman de Jongh said I can't speak to that – he's not here (Mr. Sipperly) to address that but I find that somewhat odd.

Chairman de Jongh said so then rather than belabor the point – we have an applicant before us and we need to decide how we want to proceed on this.

Mr. Kurtz stated he'd certainly defer to Dr. Dimmick when he says that the premise of the application was incorrect or maybe false – if that's in our regulations we have no choice but to....

Dr. Dimmick explained that it is and isn't in our regulations depending on how you look at it.

Chairman de Jongh said it is in our regulations and the information presented to us on the basis of which we have to make a determination and that information is incorrect – we are not going to make a determination when we have evidence to the contrary that is before us.

Chairman de Jongh said submissions that were given at the previous meetings that everything was okay up to this point and so was the lawn but in fact evidence shows the contrary.

Mr. Kurtz said he was in favor of letting them fill it in.

Chairman de Jongh said he thought it was important that we had a history before we made a determination on this and again it was information – there were concerns brought up by some other Commission members that prompted staff to go back and peel this thing back and find out what's going on.

Chairman de Jongh said he thought the question that was before the Commission was whether or not we can approve an application based on evidence that turns out to be incorrect or whether we decide that the application before us is based on incorrect evidence and therefore we can't approve it – that's the choice we have.

Dr. Dimmick reviewed the Commission's regulations – he said he didn't see an explicit wording he was looking for – he said he wasn't sure he was seeing the regulation in his mind or a court decision in his mind.

Dr. Dimmick finally found the wording in the regulations he was looking – if the commission or its agent relied in whole or in part on information provided by the applicant; if such information proves to be false, deceptive or incomplete or inactive the permit may be bonafide, suspended or revoked – as stated in the Commission's regulations under 11.2 (I).

Dr. Dimmick said it doesn't explicitly say what we should do in the decision process if we find this before we make a decision – but after we can reject it; so by implication...

Chairman de Jongh said he would argue by inference.

Mr. Kurtz said it seems pretty clear that just on conversation and speaking for himself that we certainly can't approve this permit – he was just wondering to clear it up and he'd ask Mr. Pasqualini but not to put him on the spot but at this time would he be willing to withdraw the application.

Mr. Pasqualini stated yes sir I would and I'd like to go back to my engineer and surveyor and soil and environmentalist if that would be acceptable to the Commission....to clarify all of these findings if that's acceptable to the Commission.

Ms. Simone explained it's not up to the Commission – if you want to withdraw it.

Mr. Pasqualini withdrew the application.

Chairman de Jongh said what they could do is provide you (Mr. Pasqualini) with a history has put together.

Mr. Pasqualini stated he sincerely appreciated that Mr. Chairman.

Chairman de Jongh stated let the record show that Mr. Pasqualini has withdrawn that application.

Chairman de Jongh stated we appreciated all your time and effort (Mr. Pasqualini's).

Mr. Pasqualini replied he appreciated all your (the Commission's) time and effort.

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| 4. | Permit Application | APP | #2013-029 |
| | Apex Developer's, LLC | DOR | 11/07/13 |
| | South Meriden Rd., Lot 4 - Bishop's Corner Site Plan - House | MAD | 1/11/14 |

Ryan McEvoy, PE of Milone and MacBroom was present on behalf of the applicant.

Mr. McEvoy said he didn't want to indulge the Commission knowing they can't act on this given the statutory timelines but he did want to show the revised plans that do show the location of where we would put the 4 by 4 marker posts and the non-encroachment line so if there's any questions about the locations that we've chosen he'd be happy to answer them but other than that the plans have not changed.

The Commission reviewed the revised plans.

Mr. McEvoy explained the markers are shown in the black triangles around the perimeter (as shown on the plans).

Mr. McEvoy said the non-encroachment line is stated on the plan in the usual language.

Dr. Dimmick commented about the location of the tree line.

Mr. McEvoy said they are all located outside the upland review area.

Dr. Dimmick said some of that is existing and some of that is proposed clearing is it not.

Mr. McEvoy explained the applicant's stake is cleared up to the points that are shown so it's really an existing tree line.

Dr. Dimmick said it seemed to him there were more trees out there than what is shown (in one area).

Mr. McEvoy said that area was historically agricultural use and it sort of started to grown back for the last couple o decades.

Ms. Simone said Mr. McEvoy if that area was think vegetation – its not just mature trees – it has under story and it has a lot

Mr. McEvoy said the majority of the upland review area is pretty thick.

Dr. Dimmick said he presumed they were leaving the stone wall.

Mr. McEvoy stated yes.

Chairman de Jongh asked if there were any other questions.

There were no other questions asked.

Chairman de Jongh said we'll allow staff to go ahead and use her magic pen and do what she does best.

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| 5. | Permit Application | APP | #2013-030 |
| | PABCO Cheshire, LLC | DOR | 10/15/13 |
| | Huckins Road, Lot 6 - Saddlebrook Farms | | |
| | Site Plan – House | MAD | 12/19/13 |

Ryan McEvoy, PE of Milone and MacBroom was present on behalf of the applicant.

Mr. McEvoy said a couple of things since the last meeting – there was a few questions raised by the Commission with regarding to the state of the wall – the wall at the base of the existing barn along Cuff Brook.

Mr. McEvoy passed out photos that were taken in 2011 that show the back side of this building – the retaining wall that supported the barn historically was proposed to remain in place but the structure generally being removed.

Mr. McEvoy said that wall will no longer going to be supporting any loads other than the lateral forces.

Dr. Dimmick said it may need a little bit of patching up at the top of that wall.

Mr. McEvoy said it seems to be in reasonable space just to support a concrete slab – so that hopefully answers some of the concerns that were raised by the Commission.

Mr. McEvoy said we did have comments from the Engineering office and we responded with revised plans and we just got an updated

letter from the today – one of the items that they raised as a concern is that we are placing the rain garden over the location of the 15” pipe – it discharges directly to the brook – he (the town engineer) is concerned if there are any deficiencies in the pipe that collecting storm water above it and if there were deficiencies it could result in some washout through the pipe as we have to expose a portion of the pipe in order to tap into it with out outlet drain for the rain garden we offered that if we performed an inspection and mortar up and joints that are deficient or present any chance for sediment to enter the pipe.

Mr. McEvoy stated his latest comment letter (the town engineer) said the response to item three is generally acceptable – the Commission may wish to stipulate that the applicant’s engineer certify the 15” pipe has been inspected and the joints mortared as proposed.

Mr. McEvoy stated they made no exception to that (the town engineer’s comment).

Chairman de Jongh asked what is the integrity of the base of that wall – is there any threat of that just collapsing inside the brook.

Mr. McEvoy said not right now – it looks like it’s in reasonable space.

Dr. Dimmick said if they built it like the normally do it the actually went down 3’ below the stream bed at the base of the wall.

Mr. McEvoy stated they probably did.

Mr. McEvoy said the fact that this thing isn’t going to be supporting a load anymore I imagine its going to last quite some time and even if there are parts of that that do start to deteriorate again its not supporting a structure or any real health or safety issue so I think leaving it in placing – leaving it as is currently is probably a reasonable approach.

Mr. Norback said from where the existing barn is now – and when that barn is gone and the foundation wall stays – that a new slab being poured on top of it.

Mr. McEvoy explained there’s a concrete floor there now.

Mr. Norback asked if it was pre-salvaged for what purpose – what does that design allow for.

Mr. McEvoy stated a patio for the homeowner to overlook the brook.

Mr. Norback said so they'll be adding additional slab on there somehow – adding a stone finish on to of the existing slab – is that what they will do.

Mr. McEvoy said that's possible if they put some sort of finish to make it look nice because right now its just a concrete slab but ultimately that wouldn't result in any activity along the brook – it would just be simple masonry but with regard the patio itself – they will have to incorporate a safety fence to prevent anyone falling into the brook.

Mr. Norback asked during demolition – would this demolition be done by hand.

Mr. McEvoy said actually he was out there recently and they had to take down some of the portions of the building that were really in rough shape for safety purposes – in fact there's more taken down then what was shown in that photo.

Mr. Norback said so when they do start the demolition – there going to do it by...

Mr. McEvoy stated by hand.

Mr. Norback said he didn't imagine this was going to stay sound if they use a machine. He said this should be something that can be stipulate – it's important.

Ms. Simone said she had a question about the tree shown growing out of the stone fence of the wall - would that remain or would it be cut.

Mr. McEvoy said he thought for now it would remain – he explained the applicant has told him (he is not here tonight to answer that) that his intent is to leave that wall exactly as it is with the exception of the little fence behind it so unless for some reason that changes the wall section will essentially stay as is with the tree on top of it.

Chairman de Jongh asked if there were any other questions from Commission members or staff.

Mr. Norback said he wanted to see some kind of stipulation that the building be taken down by hand and monitored. He said his concern

was this thing is just ready to go – he said it's really hard to keep this thing out of the stream (the building).

Chairman de Jongh said we can do that with stipulations.

Mr. McEvoy stated part of the building has been taken down – the portions that still remain are the ones right along the brook (as he shown on the plan/photo).

Ms. Simone asked Mr. Norback if his entire recommendation was the entire building be taken down by hand.

Mr. Norback said not having visited the site – I was only going by this (the photo) so I guess the part that had him most concerned has already been demolished then he assumed it was done with care.

Mr. McEvoy said he didn't know how it was (taken down) but he thought nature took care of half of it.

Chairman de Jongh said he though Mr. Norback's recommendation can be addressed in a stipulation so that in the areas of sensitivity that hand demolition can be chosen over using any kind of machinery.

Dr. Dimmick said at this point he thought staff should be instructed to craft wording for a permit.

Ms. Simone asked Mr. McEvoy if he had any updated photos that show what the building looks like now.

Mr. McEvoy stated he didn't – he said he was out there today but didn't have a camera with him – he said he could get new photos.

Chairman de Jongh said he thought it would be helpful if there was a current photo – Mr. McEvoy could give it to Suzanne so she could end it out to each of the Commission members to they can kind of compare that – the picture before them now is somewhat deceiving (but not intentional).

Mr. Kurtz asked what the purpose was in looking at the picture – if we should decide if it should be demolished by hand.

Dr. Dimmick stated for staff to make that decision.

Ms. Simone said the information could be provided before next meeting and then she could hear back from Commission members on it.

Chairman de Jongh said and it will give Suzanne enough time to go ahead and do what she has to do in terms of wording.

Chairman de Jongh stated will address this item at our next meeting.

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| 6. | Permit Application | APP | #2013-031 |
| | Town of Cheshire | DOR | 11/07/13 |
| | Creamery Road Bridge Replacement | MAD | 1/11/14 |

Ms. Simone stated this item was going to be subject of a public hearing at the next meeting which was December 3, 2013.

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| 7. | Permit Application | APP | #2013-032 |
| | Francis Switajewski | DOR | 11/07/13 |
| | 1143 Summit Road Site Plan – Garage | MAD | 1/11/14 |

Scott Meyers, a professional engineer and land surveyor with Meyers Associates PC, office at 60 Lyndon Street, Waterbury, CT was present on behalf of the applicant Francis Switajewski for the proposed storage garage.

Mr. Meyers submitted revised plans which were handed out to Commission members.

Mr. Meyers said if you recall from the last meeting we outlined the location of the storage garage as well as Mr. Lord was here and we talked about his report for the record and we were waiting for some comments from engineering which we did receive last Friday.

Mr. Meyers stated he did respond to those comments yesterday – two comments pretty minor in nature – one was a detail on the stone trench which we did add to the plan – the other had to do with the calculations for the runoff for the increased impervious area for the garage.

Mr. Meyers said so we did submit those to the town engineer and when he got back to his office this evening around 5:00 p.m. he did receive a new email back with the two comments and I guess the first

one is he didn't get the revised plan so I faxed a portion showing the stone trench and the second was he guessed the town likes to use a 100 year rain fall intensity – he only used 25 – so he did rerun those calculates and he still had two times the amount of infiltration area in those stone trenches.

Dr. Dimmick said he did not like you were assuming perk rate.

Mr. Meyers state yes – the reason he did that because there was a perk done for the septic system which was a ten minute per inch perk so he assumed twenty because based on the soils in the area and the perk that was done for the septic which was done when the house was built in the late 80's – rather than have to go out and do a perk test in the garage – its' only 30' from the septic area – that that would be adequate – to increase it basically two-fold – to perfect the safety type thing.

Mr. Meyers said if the Commission would like him to go and do a new perk they could certainly do that but we didn't feel it was necessary given the site conditions as well as the over design in the trench for the roof water.

Dr. Dimmick said plus the fact that the garage is an area that was previously filled and there's stone in the fill and the perk rate is probably better than that.

Mr. Meyers said that is correct – in that area there is already grass – so it's already a disturbed area.

Mr. Meyers said so were the couple of comments.

Dr. Dimmick said he had no problem – he said he understood the engineer's caution because certainly a perk rate with no basis to do you can be way off – he said he just so happen to know the fill that went in there was stone.

Ms. Simone said just to clarify – the driveway gets to the new garage.

Mr. Meyers stated there is going to be no plans for a driveway.

Ms. Simone said it would just be grass.

Mr. Meyers stated yes it is already grass in that area – he said you can access the garage from the existing driveway – it's only for

storage so there's not going to be traffic driving in and out on a daily basis.

Ms. Simone said so no plans for grading – paving.

Mr. Meyers said no – there are actually no plans for regrading because that area there is pretty level as it is.

Motion: To declare the proposed activity not significant within the context of the Commission's regulations.

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

Chairman de Jongh said will allow staff to go ahead and do what she does best and we'll address this at our next meeting.

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| 8. | Permit Application | APP | #2013-033 |
| | Apex Developers, LLC | DOR | 11/07/13 |
| | North Brooksvale Road - Lot 3, North Brooksvale Estates | | |
| | Site Plan-House | MAD | 1/11/14 |

Ryan McEvoy, PE of Milone and MacBroom was present on behalf of the applicant.

Mr. McEvoy said there were no revisions to the plan before you – we did receive some comments from engineering – again this is an application he's aware the Commission will not be able to act on anyway but there were some questions raised by the Commission with respect to where the applicant intends to establish a non-encroachment line and so we've prepared revised plans again similar to the previous plan we looked at showing where the non-encroachment parkers were placed.

Mr. McEvoy stated because of the fact that this particular property does have lawn established right up to the end of the pond and the pond will be under the sole ownership of the future homeowner – it's the applicant's desire to establish a non-encroachment line just upslope from the wetlands so they have the opportunity to maintain the lawn as it currently is.

Mr. McEvoy stated we still aren't proposing any regulated activities because the fact is we don't need to do any earth work or construction with 50' of the wetlands – the applicant is currently looking to maintain the current state of that upland review area.

The Commission reviewed the revised plans.

Mr. McEvoy showed on the plans the location of the erosion control line – the dotted line and bold dashed lines represent silt fence and haybales.

Dr. Dimmick stated good that was what he'd recommend in that area.

Mr. McEvoy said there's a bit of a grade in that area.

Mr. McEvoy said but this particular body of water is entirely located on this lot and will be the responsibility of the owner of this property so the applicant feels it's important that they have the potential to access and maintain that area as it currently is.

Mr. Brzozowski asked if that area was man-made that pond.

Mr. McEvoy stated yes he believes it was – he'd have to look back at the soils scientist report. He said there's another pond just upslope that drains into this and then this drains down to Roaring Brook.

Dr. Dimmick said I think its ground water – there's sand and gravel it was dug down to below where the water table is which is almost flat in that area.

Mr. McEvoy said he believed the flood plain in Roaring Brook does include this pond right the edge of the limits of that.

Chairman de Jongh said the only problem he had with what's before us is that location of the non-encroachment line – its right at the edge of the wetland.

Mr. McEvoy said its just upslope – not the edge of the pond – the edge of the wetland.

Chairman de Jongh said that concerns him – he would like to have it away from that somewhat to allow that area to just naturally vegetate. He said he knows that you have 50' to the silt fence but not silt fence and haybales so between those two control areas – that's the 50' upland review area – he would like to see that non-encroachment line further into the upland review area with maybe 15'-20' buffers – and there's still be an ample backyard for the property owner. He stated he'd like to provide some protection for that pond.

Dr. Dimmick said there's another reason for the benefit of the homeowner – if you have grass going right down into that pond you are going to find Canada Geese finding that an absolutely wonderful habitat for them; where as even 10' of brush along the edge of the pond will stop the geese from using the area.

Chairman de Jongh said I'd like to see that non-encroachment line moved down about 20' from the edge of the pond – that's still gives a 30' buffer in the upland review area – that's would be like to see.

Ms. Dunne said that makes sense.

Mr. McEvoy said he'd have to reply that to the applicant.

Mr. Norback asked what the existing conditions were there.

Mr. McEvoy stated it's essentially its grass that goes right up to the edge; grass that needs to be mowed periodically not like a manicured lawn.

Mr. McEvoy said Mr. Norback was asked what the current state of this area is and essentially its periodically mowed – he did asked if it was used for irrigation and he believed it was – he belief there's lines going into the pond – he did now the exact method to draw water out of it.

Dr. Dimmick said they had a permit to pipe in there and wheel a pump out there every time they wanted to use it – it was like the other site in that area. He asked Mr. Kurtz if that's how they usually do that.

Mr. Kurtz stated yes.

Dr. Dimmick said they have a permanent pipe – the pump is brought out when they need it.

Mr. McEvoy said there are a few spickets in various places around the pond.

Chairman de Jongh said if Mr. McEvoy could find out whether or not the applicant was willing to entertain that 20' separation from the pond and non-encroachment line – then it would be certainly acceptable to him but he could not speak for his fellow Commission members.

Dr. Dimmick said the rest of it is currently mowed grass – if they continue that that’s fine.

Mr. McEvoy said we did have a comment form engineering that they haven’t had the opportunity to look at but will before the next meeting.

Chairman de Jongh said so well defer any further consideration pending the receipt of additional information.

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| 9. | Permit Application | APP | #2013-036 |
| | Krista Ostuno | DOR | 11/07/13 |
| | Sindall Road | | |
| | Site Plan-House | MAD | 1/11/14 |

Ryan McEvoy, PE of Milone and MacBroom was present on behalf of the applicant.

Mr. McEvoy said subsequent to the last meeting we gave a filed walk with the Commission- we did receive comments from engineering with regard to the application and we have not provided revised plans that address those comments.

Mr. McEvoy said he did want to go over a couple of items that were discussed at the field walk – particular with regard to reconstruction of driveway to a 10% slope coming up from Sindall Road.

Mr. McEvoy explained Mr. Disbrow of the engineer department raised some concerns as did Mr. Norback about the potential for erosion particularly during construction on this stretch and what the applicants are intending to do is to start construction from up top and – they have another means of ingress to this property from a driveway they own in Meriden – they can bring the construction equipment up – start cutting from the top maintaining an environmental low area to prevent water and runoff from construction from getting down to the road and eventually into the Sindall Brook culvert.

Mr. McEvoy said so by allowing for throughout the construction and excavation going down we can prevent any rapid runoff from construction activities until such time the slope is stabilized and the driveway is essentially graded out until they get down to the last piece of the road so what we will do is we would prevent the

'opening' of the driveway on to Sindall Brook until this area is sufficiently protected from erosion from getting into the road.

Mr. Norback asked if that would be described in sequence.

Mr. McEvoy state yes.

Chairman de Jongh said he was going to ask if that was going to be a written commentary on the plans.

Mr. McEvoy stated they were working on that currently –they haven't had the opportunity to finalize that yet.

Dr. Dimmick said and that is the maximum amount of clearing shown on the map.

Mr. McEvoy yes and where the house and septic system are located but otherwise we are going to be maintaining the location of the gravel driveway just for those members that were able to go out there – it is over 20% in some areas – even though the town regulations do not require you to meet the 10% grade for the entire entirety of the driveway it certainly something the Fire Department looks favorable on particularly for long driveways for emergency access and also the applicant doesn't want to drive up and down a 20% road in the winter.

Dr. Dimmick said the reason he asked about the clearing up near the house as was pointed out in the filed trip although there's presently adequate buffer – it is still a very high quality wetland and we have a maximum vegetate area left.

Dr. Dimmick said the reason he asked about the clearing up near the house as was pointed out in the field trip – although there's presently adequate buffer that is still a very high quality wetland down there so you want to make sure to have a maximum vegetative area left.

Mr. McEvoy said as you take a look at updating these plans you are see where we might be able to pull back away from the wetlands - the septic system is about 65' away.

Dr. Dimmick said that clearing line looks alright to him at that point.

Mr. McEvoy said ultimately they actually pulled back the location of the tree line from our original plans – the applicant wants to maintain more of the vegetation around that corridor.

Motion: To declare the proposed activity not significant within the context of the Commission’s regulations.

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

Chairman de Jongh said let the record show that while I was not present on the field trip I have been on that property more than once and know it pretty well.

Mr. McEvoy said in the meantime he’ll work to address the comments from staff and the question about septic system proximity to the wetlands.

Chairman de Jongh said he thought they would be able to take care of this at the next meeting.

X. NEW BUSINESS

1. Wetland Determination RFD 2013-040
Town of Cheshire WPCP
1325 Cheshire Street
Removal of Sludge Lagoons

Walt Gancarz, town engineer for the Town of Cheshire was present.

Mr. Gancarz said they were previously before the Commission back in March for the upgrade as a whole and that was determined to be de minimis.

Mr. Gancarz said this is not just for a small piece of it on the property – there’s two normally emergency sludge lagoons that were actually never used – one’s about 35’ wide by 90’ long and the other is 40’ by 60’ long at varying depth – but no more than 6’ in depth.

Mr. Gancarz explained with the construction on site there won’t be any flat areas left for emergency laydown of equipment of anything so being that there’s an excess amount of fill that will be removed for the new administration building and the ultraviolet disinfection building is proposed that we fill these lagoons making a flat – use

some of the excess top soil from the site and hydro seed and stabilize at the end.

Mr. Gancarz said this will prevent from hauling all of this material off site – between the two lagoons we estimate 12,00 CY of material at maximum and we did have Soil Science go out and look at it – Ken Steve’s has a report that’s attached to our report.

Mr. Gancarz said we have determined not to be either state or federal wetlands – also there are wetlands 110’ away on the other r side of the dike.

Mr. Gancarz said the existing plant construction which has already started has an entire ring of hay bales around the entire site around the fence line so there’s no need for additional emergency sedimentation requirements.

Dr. Dimmick said having read Ken Steven’s report on this and having general knowledge of it move to declare the proposed activities do not require a permit.

Moved: That the Commission declares the proposed activities do not require a permit from this Commission.

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

2. Two Peck Lane Applications

Ms. Simone said received in the office on Friday were two new applications – both applications for Peck Lane and they were not added onto an amended agenda; she said she hasn’t had a chance to look at them but they were officially receive as of today – so they’ll have a date of receipt of November 19, 2013.

Chairman de Jongh said the applicant is aware that we can acknowledge these tonight but could act on them tonight.

Chairman de Jongh said what he’s asked staff to do was to create a notice available to vertically anybody who is going to come before the Commission that they need to have the information available to them for public distribution by Wednesday afternoon.

Ms. Simone stated yes – it’s listed on the application form – that information received Wednesday prior to the meeting would be

added to the agenda – anything received after that is up to the Commission's discretion.

Ms. Simone said with the work load on this agenda there's no ability to really look at things - not only for this meeting but previous meetings so in discussion with the chairman she has asked what the Commission's preference was to take up a matter once staff has had a chance to review it and put together a basic review – she just wanted some guidance when people bring in applications.

Chairman de Jongh said he thought it made sense to have take a look at something and make us aware of situations that may or may not require additional information rather than having us accept it and have her go back and do the work – it's almost like double duty.

Chairman de Jongh said we have a couple of items that were brought before us – we can have a Commission have the applicant make a presentation but staff has had no opportunity to review these things.

Chairman de Jongh said we'll recognize that we've received them and then take them up at our next meeting.

Commission members agreed.

Returned to the approval of the minutes at 9:13 p.m.

XI. ADJOURNMENT

The meeting was adjourned at 9:14 p.m. by the consensus of Commission members present.

Respectfully submitted:

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