

**CHESHIRE INLAND WETLANDS AND WATERCOURSES COMMISSION
REGULAR MEETING
TUESDAY, MARCH 18, 2014
TOWN HALL 84 SOUTH MAIN STREET
COUNCIL CHAMBERS AT 7:30 P.M.**

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

Staff: Suzanne Simone.

I. CALL TO ORDER

Chairman de Jongh called the meeting to order at 7:31 p.m.

II. PLEDGE OF ALLEGIANCE

All present recited the pledge of allegiance.

III. ROLL CALL

Ms. Dunne called the roll.

Members in attendance were Robert de Jongh, Charles Dimmick, Dave Brzozowski, Kerrie Dunne, Earl Kurtz, Will McPhee and Thom Norback.

IV. DETERMINATION OF QUORUM

Chairman de Jongh determined there were enough members present for a quorum.

V. APPROVAL OF MINUTES – Regular Meeting of March 4, 2014

Commission members agreed to move the approval of the minutes was deferred to the end of the meeting without objection.

At 8:39 p.m.:

Motion: To approve the minutes of the regular meeting of March 4, 2014 with corrections.

Pg. 1 L44 delete “was deferred”; pg. 3 L21 “wait” to “want”; mpg. 4 L34 “be” to “he”, L44 “stocked piled” to “stockpiled”; pg. 10 L34 delete “is”; pg. 11 L36 “move” to “more”; pg. 12 L6 add “how” to “how much”; pg. 13 L42 “of” to “or”; pg. 14 L15 add “to” to “to do”; pg. 27 L30 “as” to “at”; pg. 27 L45 “accessible” to “excessively”; pg. 28 L12 “affluent” to “effluent”,

L21 delete “based on our investigation”, L24 add “map” to “map as”, L25 “they” to “they did not”, L29 “affluent” to “effluent”; pg. 289 L6 “that” to “that he had”, L11 & 17 “affluent” to “effluent”; pg. 30 L17 “ to” to be”; pg. 31 L21 delete “the”; pg. 33 L11& 12 delete “is” and add “will have no”.

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

VI. COMMUNICATIONS

1. **Staff Report with Attachment – 5 Baxter Court (Pemberley Estates), Lot 9, Site Plan - House**

This item was reviewed. Ms. Simone stated this item was under new business on tonight’s agenda.

2. **Staff Report with Attachments – Farmington Canal Greenway Permit Modification # 2013-026A, Parking/Stormwater Detention Facility**

This item was reviewed. Ms. Simone stated that this item was under new business on tonight’s agenda.

3. **Staff Communication: Schoolhouse Road & Dickerman Road Request for Agricultural Determination**

This item was reviewed. Ms. Simone stated this item on the agenda under unfinished business.

4. **Staff Communication: South Main Street, App. 2014-005 Site Plan: Shed and Relocation of Approved Drainage System**

This item was reviewed. Ms. Simone stated this item was under unfinished business.

5. **Request for Determination Re: Alexion Pharmaceuticals 350-353 Knotter Driver – Temporary Modular Office Building**

Ms. Simone stated this item was on the revised agenda and was under new business tonight.

6. **Southwest Conservation District Spring 2014 Newsletter**

Ms. Simone stated that this item was handed out at tonight’s meeting.

7. Information Re: Recused Commission members from an agenda item

Ms. Simone said she had some information she could email members if they were interested – there was a question raised about Commission members recusing themselves and what’s required – if a Commission member can stay in the room or if they need to leave the room.

Ms. Simone explained that from what she could tell there is no state law that requires whether the Commission stays in the room or leaves however it is advised – there’s a book that town officials refer to what’s legally required – that that information provides some guidance that it’s best for the record if a members recusing himself then leave the room so that it’s not seen as having influence on the application that’s currently before other members to consider however there’s not requirement that you leave the room.

Ms. Simone stated she just wanted to provide that information.

VII. INSPECTION REPORTS

1. Written Inspections

Ms. Simone stated there were no written inspections.

2. Staff Inspections

a. Waterbury Road - Cornerstone Church

Ms. Simone stated there was a sediment and erosion control inspection on Waterbury Road – Cornerstone Church – there are some sections in need of repair and she would be contacting the project manager regarding that.

b. 108 Blacks Road

Ms. Simone stated there was a field inspection of 108 Blacks Road – now that the snow is melting she just wanted to check to see the condition of the soil and mulch piles and she did not see any erosion coming from those piles.

c. Mountain Road

Ms. Simone said there was a field inspection of the lot that’s up for consideration tonight on Mountain Road.

d. 1392 Cheshire Street

Ms. Simone said she did not go out in the field but she received a phone call from the new owner of 1392 Cheshire Street. She said the Commission may remember this property came before the Commission last year – there was a house on that property – the house was torn down and a permit was issued to build a new house and a non-encroachment line was established at that time.

Ms. Simone said the property then came back to the Commission when there was a potential buyer for that new home and they wanted to do away with that non-encroachment line that was established and move the posts and expand the lawn and this Commission had indicated to that individual that that was something that would require a permit and at the time the Commission didn't feel that they would be voting of that if an application came forward.

Ms. Simone said so this new homeowner was asking about removing those posts and extending the lawn area so she did advise them the information that is already on the record and she has suggested that they look at the original approval for all of the details – they could read the minutes of the Commission so that they could understand there's no allowance to just establish a lawn in any particular area behind a non-encroachment line.

Mr. Norback asked – weren't they present at that meeting with the developer.

Ms. Simone said this is a new homeowner – it's not the same person who came before the Commission – this is a different homeowner. She said the potential homeowner ended up not buying it – someone else purchased it.

Chairman de Jongh said it's important to know – what he asked Suzanne to do is send a communication out to the new property owner summarizing the conversation that she had with them today and also copying the developer and any other parties associated with the transference of that property so there's no gray area as to the understanding of the intention of those non-encroachment markers because he didn't want anybody – particularly the new homeowner being able to say “well we didn't know” so he thought copying everybody on the communication put everybody in the know and protects the Wetland Commission and makes sure that the homeowner is aware of the upside and downside of that kind of activity is.

VIII. ENFORCEMENT ACTIONS

1. Notice of Violation SC 1/07/14
Mr. Nathaniel Florian
Woodruff Associates
Unauthorized Activities in the Upland Review Area/Inland Wetlands
108 Blacks Road
Assessor's Map 19, Lots 43 & 44

Chairman de Jongh stated that staff has already addressed those comments this evening. He stated this item will remain on our agenda for a while.

David Carson, one of the principals of the OCC Group was present representing that particular application.

Mr. Carson explained he was advised yesterday that the hay bales had been installed around the perimeter – he believed they were installed Friday – they have not been staked as of yet because the ground is still frozen but they will be and the concrete barriers for the containment area are scheduled to be delivered this week and installed.

Mr. Carson stated he just wanted to give the Commission that update.

2. Notice of Violation SC 1/07/14
John Ricci
Unauthorized Activities in the Upland Review Area/Inland Wetlands
680 South Main Street
Assessor's Map 71, Lot 93

Chairman de Jongh stated this item was coming up under unfinished business.

X. UNFINISHED BUSINESS

1. Agricultural Determination – As of Right Use RFD #2014-004
Joe Arisco/T&D Growers
Proposed Agriculture on Dickerman Rd. & Schoolhouse Rd.

Chairman de Jongh said he thought there was some information we planned on receiving – was there someone representing the applicant tonight.

Ms. Simone reported she has not had any communication from the requester since the last meeting.

Ms. Simone stated there was information that the Commission provided to him which was needed such as parcel and wetland boundary delineations and a detailed proposing what the agricultural operation was to be and we have not received that information.

Chairman de Jongh said so with the absence of that information there will be no further action on this item until we receive that information.

Chairman de Jongh asked staff to send a communication out to the applicant to let him know we are still waiting for that information and that there will be no action on this Commission's part until we get that information.

Ms. Simone stated she would (send a communication).

2. Permit Application	APP	#2014-005
RLJ Properties, LLC	DOR	2/04/14
680 South Main Street		
Site Plan	MAD	4/10/14

Mr. Brzozowski recused himself from this portion of the meeting at 7:40 p.m.

Ryan McEvoy, a licensed professional engineer in the State of Connecticut of Milone and MacBroom was present on behalf of the applicant.

Mr. McEvoy said he'd not go into too much detail from what was discussed at the last meeting – he said there were a couple of items that were requested that were outstanding questions that were asked to be addressed and the first was what the contents of the shed was presently.

Mr. McEvoy said he did view the shed this afternoon and he guessed he'd characterize the contents of the shed as what you would typically find in a residential shed – there was an air compressor – a portable generator – a snow blower – some building material – scrap building materials – plywood – windows – things like that.

Mr. McEvoy said there was also typical paint cans you would find – a shelve full of nails, screws and things of that nature so he didn't

think the contents of the shed or anything in in was substantially different then what you'd find in a typical shed.

Chairman de Jongh said he wanted to ask a question while they were on that point – was there storage of any fuels.

Mr. McEvoy stated there was an empty gas can in there but it was only a five gallon gas can that you'd use for the snow blower or generator or something along those lines – there wasn't a substantial amount of fuel storage – in fact the can was empty.

Mr. McEvoy said additionally it was requested that we determine if the stone trenches that were proposed in the stormwater basin itself were installed.

Mr. McEvoy explained that he waited until today to try to go out there because the ice is rather thick but he was able to smash through the ice with waders on and he was able to find with certainty that they have definitely been installed - the northern stone infiltration trenches – he was able to find the wrap with the stone inside – the southern one is a little deeper – it's about 3' to 3.5' deep so he was a little hesitant to wade into that area – he said he did poke around a little bit but he wasn't able to come to any conclusions on that – he said he thought it was probably reasonable to assume that if they installed the northern one – the southern one is also there although he didn't actually see if – there was about two layers of ice about 2' thick each in the pond area.

Mr. McEvoy said he understood the Commission was awaiting information on the shed before they determined significance – if there were any other questions at this time he'd be happy to answer them.

Dr. Dimmick said we also wondered about if those infiltration trenches are there.

Mr. McEvoy said that's what he was just talking about.

Mr. McEvoy said the northern one of the two was as he broke through the ice and kind of felt around – he said he was able to identify the northern one – the southern one is a little deeper and there's about 3'- 4' of water in that area so he didn't go too crazy in that area for what he thought were obvious reasons but he said he thought it was reasonable to assume they installed the northern one - the southern one was also there.

Dr. Dimmick said there's 3' - 4' of water – does that indicated that it's still frozen and the waters not going down through the system.

Mr. McEvoy said it could mean there's an elevated water table – he said obviously there was – the history of this property was that there was a pond in the back of the property so certainly an elevated water table could be the issue here – ground water is relatively high on other sites he's seen around town but either way it was difficult to determine with certainty that the southern trench was there.

Chairman de Jongh said the thing he keeps coming back to one this application is the installation of a shed in an area which should have never been installed – it's should have never been put there and based on the comments relative to the water table and the height of the water, etc., etc., it was obvious then that the conditions on site did not allow a shed to put there and that's the thing that's really troubling him.

Mr. McEvoy said the area that includes frozen water is primarily shown in the hatched areas on the plan that are identified as the mitigation storage area for the basin in the rear of the property.

Mr. McEvoy said the area where the shed is doesn't have any ground water at all present right now.

Mr. Norback asked if there was any ground water or surface water by the shed.

Mr. McEvoy stated there's no water – there's no surface water.

Mr. McPhee asked if there was any changing of the earth when they constructed the shed – he said he noticed there were poles underneath the shed.

Mr. McEvoy said no it's constructed at the level of the basin - in fact there's about 2' to 2.5' above the ground on 4 by 4s.

Mr. McPhee asked how those 4 by 4 are mounted - are they cemented.

Mr. McEvoy said he believed there was probably a pier underground – he said he didn't know that for sure.

Ms. Simone said so Ryan just to clarify – the area that has the hatch mark (on the plan) is the area where there was standing water when you were out there.

Mr. McEvoy stated (it was) ice.

Chairman de Jongh asked what remaining items we have on this Suzanne - what we are still waiting for.

Ms. Simone said those were the two items discussed at the last meeting – the shed and the infiltrators.

Dr. Dimmick said essentially we have a request to modify the original permit even though this is essentially an answer to a violation.

Dr. Dimmick said he gathered what they are asking for is to modify the original permit - to modify that which they have done.

Mr. McEvoy said he just wanted to add given the elevation it doesn't interfere with the function or the volume of the basin what so ever.

Mr. McPhee asked how far away was it (the shed) from the surface water.

Mr. McEvoy said he didn't take a measurement but it's probably between 50' and 100' somewhere along those lines.

Chairman de Jongh asked wasn't there also a discussion about trying to build another structure in that area – an addition to the shed.

Mr. McEvoy said the shed has been in place for many years – at least the majority of it – Mr. Ricci – the owner of the property has expanded the size of the shed and what we show on the plan is the total size of the shed as it is now – with the addition that was partially built.

Chairman de Jongh said okay so what we're seeing on the map is – there are no more revisions going on on this.

Mr. McEvoy stated not at all – no.

Mr. Norback said he had to ask Mr. McEvoy a question – in your opinion – in your experience - had this not been a violation and the applicant had come before this Commission just looking to put that shed there now – do you think it would have been asking for much.

Mr. McEvoy said well given the fact this entire site actually turned over and was improved upon – he you know I don't want to speak for

the Commission obviously but I would think that given that it doesn't impede the stormwater management system – that it doesn't affect the volume of the basin and it's not an area that currently has standing water – that area under a heavy storm sees water levels raised – given that it's all been essentially reworked – the whole site – he thought it wouldn't be completely unreasonable to include a shed on the property.

Mr. Norback asked how far it would be from any review area.

Mr. McEvoy said well technically it's not in an upland review area because this area was a mitigation for a pond that was entirely filled in.

Mr. McEvoy said there was a pond on the back of the property before this site was constructed and that pond is essentially where the parking lot is now and that volume of that pond was included in the size with the basin in the back along with increased volume to store runoff during a storm event – he said this area is considered a form of mitigation for filling in the pond that was there.

Mr. Norback said to accommodate the improvements if you will to the development.

Mr. McEvoy said to the improvements of the development and also to the volume of that manmade pond historically.

Mr. Norback said and the original pond was manmade.

Mr. McEvoy stated it was lined – there was a liner around it to hold water.

Mr. Norback said he thought that helped with a perspective.

Dr. Dimmick said if we have all the information I think we're at the point that we can ask Suzanne to prepare some kind of wording for us so we have something to act on one way or the other at the next meeting – there's nothing else we can ask.

Chairman de Jongh said he thought it was apparent that we got all the information that we need unless Commission members have some additional questions on this.

Chairman de Jongh said he thought at this point they just needed Suzanne to do her magic relative to how the Commission feels on this issue.

Dr. Dimmick said including any possible stipulations or modifications – two things that would be appropriate.

Chairman de Jongh said do we need any kind of motion to give her guidance on this.

Dr. Dimmick said I don't think so – there's the general will to go forward.

Chairman de Jongh said he didn't know if there was any kind of consensus formally of how the Commission feels – that's why I'm going in the direction – a polling of the Commission members to just get an idea of what direction Suzanne should go – pro or con on this that's why I'm suggesting we have some kind of formal discussion.

Chairman de Jongh said he for one – speaking for himself was not in favor of giving an approval on this simply because of the history for the reason that he mentioned two meetings ago – he said he was not in favor of what appears to be a continual absence of the contract – absence of awareness he should say of the permitted actions given to this particular developer – there have been too many instances where things have been forgotten.

Mr. Norback said are you then suggesting dismantling the shed.

Chairman de Jongh said I'm just saying relative to an up or down vote. He stated "I for one would not vote in favor of" – and it would be unprecedented - he said he understood if this were a regular application coming before us that the shed would probably be permitted and he understood that but what he was saying on principal alone because we've had situations with this developer in the past were he has had some lapses of attention to detail and we've had to gently remind the individual so for precedent alone I am not going to vote in favor of it and make it a unanimous vote.

Mr. McPhee said from a legal standpoint he would question that because you have to take it on the merits of what's in front of us here – so that would be his only concern and there may be other ways to express our opinions towards this developer in the future.

Ms. Dunne asked if there was a way to divide this –in other words that there was a violation and then separately approve it because it doesn't seem that if it came to us correctly we would have approved it.

Mr. McPhee said how about a penalty for the violation and then an approval.

Ms. Simone said there's not a penalty structure set up but there is an ability that when an application comes before the Commission the Commission does not have to take it as all or nothing – the Commission could approve some parts and deny other parts.

Dr. Dimmick said this is what he was trying to mention about five minutes ago – there's two parts to this – one is that the drainage structures are not what we approved but they perform essentially the same function so approving that as a modification.

Dr. Dimmick said I don't see a problem but the shed on the other hand is not anything that we would have had in mind with the original approval and in my mind when we gave the original approval and they asked for a shed at that point we probably would not have allowed the shed so there is that factor.

Dr. Dimmick said the shed is there and its possible that if the shed were not there he might have been able to come back and asked for an approval we might have granted a shed but the mood that we had with the modifications with the original proposal which was allowing the filing of the original watercourse which was what the pond was – a watercourse not a wetland and shifting everything to the new position creating a new storm water basin to perform the same function we would not have. He said I don't think anyone who was on the Commission at that time wouldn't have favorably looked at a shed at that point – these two factors due need to be separated.

Dr. Dimmick said he was on the fence – he said he hasn't made up his mind as to what he feels on the shed – he said he has no problem with the change in the drainage structures.

Mr. McPhee said so just so he was clear this is a modification for an existing permit - they are not asking for a new permit for the shed.

Dr. Dimmick said well that's a question.

Mr. McPhee said so if that's the question – he said in his opinion they should approve the modification or have you (staff) prepare words for the drainage for the modification of the existing modification but then require them to come back with a new application for the shed and treat the two as two separate entities.

Mr. McEvoy asked to add something about the drainage pipe – he said he was looking at the history on this and in fact in 2004 this was back in front of the Commission for a modification – after it was already installed – there were comments made by RWA about the fact that the storm drainage was relocated.

Mr. McEvoy said there appeared to be some discussion in the minutes with Darin Overton of our firm suggesting that the relocated pipe which he could only assume was referring to this one was discussed or at least partially in 2004 so – he said he wasn't part of it back then but he did see evidence that there was discussion between the RWA and this Commission and discussions with Mr. Overton in the minutes that a relocated storm pipe didn't change the function of the basin discussed.

Ms. Simone said Ryan if that was after the original approval.

Mr. McEvoy said yes – this was in 2004 when there were some modifications that were proposed.

Dr. Dimmick said he didn't think they ever approved any modifications to this.

Mr. McEvoy said he just wanted to point out there was some history on this – the discussion of the pipe – but not to try to cloud the discussion tonight but it was something that was discussed in 2004 – it seems to him that it was at least.

Ms. Simone stated that plans had never shown this permeation of the drainage.

Mr. McEvoy said right the plans never did but there was comments.

Ms. Simone said so comments of a change in the drainage if it's not tied to a plan it may be difficult to pin point exactly what was meant.

Mr. McEvoy said either way he just wanted to point out there was – he stated this has been in since '02 or '01 when the site was originally constructed.

Ms. Simone said and Will to answer your question about splitting the two – when there was the violations found they brought this in together so the Commission can treat each of those aspect separately.

Dr. Dimmick said this we can approve in part and deny in part – that’s always a function.

Ms. Simone said or approve both or deny both.

Dr. Dimmick said and the part that is denied can be denied without prejudice to allow them to come back with a separate thing on it.

Dr. Dimmick so those are all our alternatives.

Mr. Norback said this is really kind of making it tough on the Commission because we are starting out with something where the modification was not approved – we have a series of horses leaving the barn and here we are two horses later – now we’re just stumbling around up here – it’s cumbersome.

Dr. Dimmick said he thought this was the Chairman’s complaint that when you have a history of an applicant who on various occasions has caused difficulties to us there can be a certain amount of frustrations.

Chairman de Jongh said he understood Mr. McPhee’s comments and he certainly appreciated those comments but in this particular application – two changes – that were made from what was originally approved by this Commission and the changes were the installation of the shed and the changing of those drainage areas that were modified from what was originally approved by this Commission so the end result is we are asked now to try to put this square peg into a round hole.

Chairman de Jongh said while I understand the legality of the issues and how we need to vote the fact of the matter is the end result is in violation of the original permit was and now this Commission is being asked to accept the onsite conditions with a Mya culpa kind of attitude and he has a real issue with that.

Mr. Kurtz asked if there was a legal difference in violating a permit and violating a regulation.

Ms. Simone said no the Commission still has the ability to enforce either.

Mr. Kurtz said so there’s really no teeth in the enforcement either way.

Ms. Simone said well when it comes to a permit that has been issued the Commission does have the ability to revoke that permit – now after a building has already been constructed and everything is done on site I don't really necessarily see the value is in revoking it – that's really to be used before they start to develop or during development – the Commission always could take the legal route and go through the full enforcement and involve the town attorney and that would then seek legal fees and go through the court system.

Ms. Simone said the Commission could then also order that the drainage system be restored to what was originally approved that the shed then be removed.

Ms. Simone said so the Commission does have enforcement options.

Ms. Dunne asked Dr. Dimmick – did she misunderstand you – did you say something that if the shed had originally come properly that it may not have been accepted by Commission and why would that have been.

Dr. Dimmick said I think because at that point – I am trying to go back a long, long ways – we had the feeling that we were going to allow essentially the filling in of the natural watercourse and the idea was the replacement would be functionally equivalent to what was there originally so what was being proposed they say would do everything the original watercourse which is much closer to the building would have done and it would otherwise be pretty much be the same and so at that point.

Dr. Dimmick said he'd have to go back to the tapes which is probably impossible but essentially what we do is - are we moving it here or moving it further away – there's not going to be any activity on this once its constructed and of course that doesn't show up in the motion or in the permit – but that was the general feeling we had – they were just going to replace something with something else that would be functionally the same and there would be no activity there.

Mr. Norback said staff or Chairman – what would be the impact of our positive vote verses a negative vote here on the applicant – he said since they are not a punitive body anyway – what is the end result.

Chairman de Jongh said if the Commission approves it and gives it a positive vote then the conditions on site stay as is and the record's clean from this point forward – the negative vote would be okay now what's the next action.

Chairman de Jongh said that gets into some of the comments that Suzanne had made earlier – okay now what do we do – if we have not approved it – do we rescind the application – do we tell them to remove the shed – do we tell them to remove the infiltration basin and the likelihood of doing that is probably slim to none.

Chairman de Jongh said we are kind of stuck between a rock and a hard place.

Mr. Norback said so it seems – he said as Mr. Kurtz said – if we don't really have any teeth then why bare our guns.

Chairman de Jongh said the thing he was wondering to – and he didn't know if he was going to ask this question – and he has been absent for personal reasons the last couple of meetings but wanted to find out whether or not we have – to Dr. Dimmick's comments to what we were originally permitting in the beginning relative to the effect of the development and then after the modifications – are the calculations that were used in our approval – are they the same – are the site conditions the same even with the modifications that were approved and he said he didn't remember seeing any information that says that they are the same.

Mr. McEvoy said there was a letter he wrote addressing comments from the Engineering Department – particularly in regards to the overall site – with the total impervious coverage on site even with the construction of the shed – and in fact it is less – roughly 500 SF to 1000 SF less in total imperious than what was originally proposed.

Mr. McEvoy said the storm drainage line that enters into the basin at a relocated location from the original approval is built at the same slope and same pitch – conveying the same water from the same parking lot as the original approval and essentially there's no change in where runoff is directed – what areas are directed to this basin in the rear and there's no change in the capacity of the pipe to convey that flow so from an engineering perspective – in terms of the function of the storm water basin there is no change – there's no affect – negative affect as a result of the shed or the relocated pipe.

Chairman de Jongh said and we have a letter like that on file – in the file.

Mr. McEvoy stated yes.

Mr. McPhee asked if we can go back to the beginning to the number of square footage – there's less impact now.

Mr. McEvoy said yes – there's a few areas that when he calculated the overall impervious coverage including the parking lots, building, sidewalks, etc. where the asbuilt conditions is slightly tighter than what was originally proposed – namely the width of the driveway coming off of route 10 – it's about 5' less and there's a few other areas where – its maybe inches - not even a foot different but the result is that without the shed – the total square foot of impervious surfaces on the site was asbuilt conditions was about 1000 SF less and with the shed which is about 500 SF plus or minus – you still have a net reduction in impervious surfaces from what was originally approved.

Chairman de Jongh said he was just asking Suzanne a question about whether or not the Commission had the “power” to send a letter of reprimand to the developer – its apparent from what the Engineering comments are and representative of the applicant this evening his comments – what Ryan is saying – is basically the site is better off now than it was before – and that's okay – he said he feels better about that – he was not happy about the modifications beginning made after the fact and to Mr. McPhee's point – from the standpoint of a legality – we have to rule on what our regulations permit us to do and not to do.

Chairman de Jongh said he did think that a letter of reprimand if this Commission approves this particular modification – a letter of reprimand be sent to the contractor pointing out the fact that there are on a number of occasions where permitted instructions were ignored and after the fact modifications to an application or site development were done and then came back to us and ask us to please slap the wrist but I'm sorry – can you approve it.

Chairman de Jongh said it obviously doesn't have any teeth but I think from the standpoint of a public reprimand i.e. a letter it doesn't hurt –we don't have any kind of financial teeth that we can utilize but to simple allow this to go on as if it's not going to create a problem down the road – I think is being blind.

Dr. Dimmick said there's certainly nothing in our regulations that to prevent us from sending such a letter – and I'm not aware of any case law that prevents that from being done either – what's not forbidden is permitted.

Mr. McEvoy said perhaps the minutes from his meeting will serve that purpose.

Chairman de Jongh said we'll see.

Chairman de Jongh said so he thinks what he's hearing is the comments he's hearing from the Commission members are accurate it seems that there is a general consensus of approval of the end result of this modification – although be it we are not happy about how we got there – so unless there's any further discussion on this – I don't want to beat a dead horse but he would instruct staff to then go ahead and put together comments that we can consider and maybe bullet proof some of the issues that came up during this to summarize some of the things that we talked about in preparation for the discussion of the comments.

Chairman de Jongh said we do have a mandatory action date of April 10, 2014 on this so it needs to be addressed at our next meeting.

Mr. McPhee said if he could just add that if staff could include as many restrictions to the use of the shed as possible with regards to the watercourse and regular maintained is permitted but he didn't want to see commercial lawn mower repair shop out of there at some point in time or something like that.

Dr. Dimmick said pointed out at the last meeting this this is the primary recharge zone for South Cheshire Well Field.

Chairman de Jongh said that was one of the reasons why he asked the question about where it is relative to the fields and stuff – he said he didn't want to see a lot of fuel being stored there – a five gallon can for a lawn mower – I'm not terribly concerned with it but I don't want to see five or six or ten cans of oil or gasoline or something and have it leak inadvertently through a regular shed because he didn't know what kind of protective measures are at the bottom of the shed.

Dr. Dimmick said or deicing compounds.

Chairman de Jongh said but those can be done with stipulations and the recommendation that staff can put in place.

Ms. Simone asked Ryan if he received comments back from the Regional Water Authority.

Mr. McEvoy stated no.

Ms. Simone said she saw that it was sent on February 18, 2014 so Mr. Chairman I'll follow up with Regional Water Authority for comments they may relative to the storage for the shed.

Chairman de Jongh said okay.

Chairman de Jongh said again, we'll allow Suzanne to wield her magic pen and come up with wording to satisfactory for this Commission.

Chairman de Jongh thanked Ryan.

Chairman de Jongh said seeing no further comments on this particular item let's move on to item number three.

3.	Permit Application	APP	#2014-006
	Apex Developers, LLC	DOR	3/04/14
	S. Meriden Rd. Bishop's Corner		
	Site Plan – House, Lot 2	MAD	5/08/14

Mr. Brzozowski rejoined the Commission at 8:09 p.m.

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 the construction of a single family house on Lot 2 of the previously approved Bishop Farms subdivision in an R40 zone.
2. That the proposed site is undeveloped and does not contain any structures.
3. That the applicant's soil scientist field located the wetlands and watercourses on site. That the field located wetlands are contained on five of the six proposed lots.
4. That the approved subdivision permit stipulated that Lot 2 requires an individual review and permit.

- 5. That the lot was the subject of a Notice of Violation and Cease and Desist Order dated September 10, 2013.**
- 6. That part of the resolution of the Notice of Violation/Cease and Desist Order was the installation of erosion controls and permanent wetland boundary markers, which were observed as installed by Commission Staff in November 2013.**
- 7. That the Commission has determined the activity to not be significant under the context of the Cheshire Inland Wetlands and Watercourses Commission regulations.**

Based upon the foregoing findings, the Cheshire Inland Wetland and Watercourses Commission conditionally grants CIWWC Permit Application #2014-006, the permit application of APEX DEVELOPERS, LLC as presented on the plans entitled:

**“Proposed Site Plan & Sub-Surface Sewage System Design
Bishop’s Corner, Lot 2
Academy and South Meriden Road, Cheshire, CT
Dated February 11, 2014
One Sheet
Prepared by Milone & MacBroom, Inc.”.**

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. Erosion controls, as shown on the above referenced map, shall be monitored and in good working condition throughout the construction of the single family house.**
- 4. 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 the following:

- a) 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.
- b) That all disturbed areas on the site not directly required for construction activities are temporarily hayed and seeded until the site is permanently stabilized.

5. This permit grant shall expire on March 18, 2019.

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

4. Permit Application	APP	#2014-007
Connecticut Yankee Construction	DOR	3/04/14
Mountain Road		
Site Plan – House	MAD	5/08/14

Ryan McEvoy, a licensed professional engineer in the State of Connecticut of Milone and MacBroom was present on behalf of the applicant.

Mr. McEvoy said subsequent to the last meeting there were a couple of items that were asked by this Commission for us to look into – particularly on the plan we've added the location of the soil classification areas for the NRCS county survey maps and as was discussed at the previous meeting the majority of the site falls within an area that's defined as Manchester sand and gravel areas – there are some limited areas of Cheshire silt loam and of course the wetland soil itself.

Mr. McEvoy said additionally we were also asked to research or look into the travel time that we might be able to expect - the septic system is located outside the upland review area but in a gravel soil with respect to the wetlands.

Mr. McEvoy said what he did was used a calculation or formula that's approved by the DEEP for large scale septic systems to determine the horizontal travel time through the soil and typically what you

would do is you would drill in a soil like this until you found ground water – given the fact that we are some 15' to 20' above that wetland he took a simpler approach that we hoped would be acceptable for the purposes of this discussion – and that's about 15' from the wetlands he hand dug a hole about 4' down until he got an elevation that was close to the elevation of the wetlands itself – and in that particular area we did not encounter any ground water.

Mr. McEvoy said with some extrapolations he admits there's a very general nature to our calculations but if the ground water or hydrologic gradient of the ground water is at a slope of 8% or less which he very much expected it would be based on our isolated test pit to determine the relative nature of the ground water contours – then the travel time exceeds 21 days from our septic systems located – in fact based on the extrapolation of encountering no ground water to the depth that we've dug to – he would expect that we would have achieved 21 day travel time at a distance of 35' from the septic system and the system itself is about 55' from the wetlands so we expected that it greatly exceed the 21 day travel time.

Dr. Dimmick said essentially the water table is almost flat under this area.

Mr. McEvoy said it's not terribly uncommon in this type of soil – that the ground water is at or close.

Dr. Dimmick said the leachate is going to go straight down but the water table once it gets there you've saying it's going to exceed 21.

Dr. Dimmick asked if he (Mr. McEvoy) could put some of that in writing for us for the record.

Mr. McEvoy said he submitted this afternoon the calculations and my assumptions in those calculations.

Dr. Dimmick said there's another thing when he went out there looking today – where the proposed driveway is – as you get to the end of the proposed driveway the last 15' is all fill – did you know that.

Mr. McEvoy said when he went out there it looked like it was a disturbed area but he didn't dig in that area.

Dr. Dimmick said there's trees that have at least a foot and a half of soil around there truck and one of the trees is still alive so it must have been in the last three years – there is relatively fresh looking

plastic sticking out of the material barrier down there – he said it certainly doesn't sound like natural soil conditions.

Mr. McEvoy said in the area where there's been some logging.

Dr. Dimmick said as you move away from the road and getting to the end of where that logging is – that's where it looks like – he said he didn't have a shovel deep enough but it looked like at least 5' depth of fill at the end of that flattening things out somewhat so I'm not sure how that effects things.

Dr. Dimmick said the other thing I could not note when you gave the last presentation because we talked about the fill coming out from behind the back door – is that when building the rain garden you are also going to need some fill.

Mr. McEvoy said the rain garden is generally – there's going to be some cut on the upslope side and small berm on the down slope side – we tried to fit it in to the extent possible in that area – it's kind of a natural swale through there so capturing it and excavating it a few feet to store some of that water seemed appropriate in that area – but there will have to be a small amount of fill roughly along the 50' buffer and swale excavation as you approach the property line to the south.

Dr. Dimmick said the other thing he noted and he doesn't know how it affects things is that there used to be a road along the upslope side of that stone wall near the wetlands – a road about 8' wide going the length of the property – a wood road of some sort – again it's not natural material as a fill – it could have been stuff washed down the slope or it could have been artificial fill but it looks very old – it looks like it got abandon about 30 years ago –there's a road there.

Mr. McEvoy said it seems like it's been there for some time – he said it didn't occur to him that there was a road through there but certainly that retaining wall – that rock wall appears to be that it's been around for a while.

Dr. Dimmick said and as he raised last time – he said he really did feel that there's some kind of alternative house design that would not require as much fill there – one of the things that caught his eye is that your front yard although it's not absolutely flat is relatively level – looking at some other houses further down on Mountain Road – the driveway goes down to the house and that requires less fill in the back of those houses because of the driveway going down – it

seems to me that some alternative could be considered that would require less fill on the back of what you need.

Mr. McEvoy said we would certainly be willing to take a look at that – it's probably a reasonable suggestion.

Chairman de Jongh said he thought based on comments that he's hearing and what he's read in the minutes there's a number of issues that need to be discussed in an open environment – almost in a public hearing type of a setting.

Motion: To declare the proposed activity significant within the context of the Commission's regulations because of the issue raised specifying section 10.2, 10.2 b and 10.2 g.

Moved by Dr. Dimmick. Seconded by Ms. Dunne.

Mr. Norback said he was struggling with this a little bit - the significance of the activity is based on the travel time or the effluent or is it the fill.

Dr. Dimmick asked if you have looked at this property –have you walked it.

Mr. Norback stated sadly no.

Dr. Dimmick said it's a property where putting the house is the only place where they could essentially put the house because of the front and side setbacks and the fact that you have this huge steep drop off into the adjacent flood plains and wetlands. He said his concerns more than anything else are they potential for erosion and instability of any material that is put there in the back – all of the fill would be within the upland review area not in the wetlands – but you're taking a slope which is already steep enough you have to be careful walking down it and you are going to create a steeper slope closer to the wetlands as a result of it – and materials that could be unstable – we don't know 0 he said he's looking at two different soil types and fill all mixed in there together.

Mr. Norback said he seemed to recall Mr. McEvoy saying last week that some of the soils that were going to be used to create that slope at the back was going to be taken from the front which was a more stable soil if he was not mistaken.

Dr. Dimmick said its extinct sand and gravel which is more stable than the Branford Silt loam which is back in the area they are going to fill.

Mr. McEvoy said the referenced limit is located in the very northern part of the property – we are not looking to excavate anything in that area.

Mr. McEvoy said the testing we've done on site indicates that it's all sand and gravel – he said there is a delineation of a Cheshire type soil towards Mountain Road.

Dr. Dimmick asked Cheshire or Branford silt loam.

Mr. McEvoy stated Cheshire – the Branford is on the property to the north.

Dr. Dimmick said the main reason I think to have a public hearing is so this can be explored and so we can look at alternatives – we can only mandate that we look at alternatives if we have a public hearing.

Chairman de Jongh said one of his concerns on this is that we are looking at the edge of the house closest to the developed area – we are looking at about 40' – 45' to the edge of the wetlands.

Mr. McEvoy said the house is located entirely out of the 50' upland review area.

Chairman de Jongh said I'm saying that it is entirely out of the 50' upland review area – what he is saying from the edge of the wetlands the corner of the house – it's about 45' to 50'.

Dr. Dimmick said its 50'.

Mr. McEvoy stated its 50' plus.

Chairman de Jongh said okay 50' – what he is getting at is that what the applicant is requesting is that the lawn area be pushed back so it's closer to about 10' from the wetland.

Mr. McEvoy said about 10' to 15' would be the limit of clearing.

Chairman de Jongh said rarely do we allow that to happen without taking a look at what alternatives there are to that might be particularly with the slope that you have on this and he thought that was one of the other reasons why there's some concern over this lot.

There were no other questions or comments from Commission members.

Motion approved unanimously by Commission members present.

Chairman de Jongh stated the public hearing is going to be on April 1, 2014.

XI. NEW BUSINESS

- 1. Wetland Determination** **RFD 2014-009**
Verna @ Pemberley Estates, LLC
5 Baxter Court (Pemberley Estates)
Site Plan – House

Gerald Verna was present representing Verna Properties.

Mr. Verna explained when we were looking for a site plan approval for number 5 – lot 9 Baxter Court.

The Commission reviewed the plans.

Ms. Simone said she just wanted to remind the Commission that for the subdivision approval for this – this subdivision which this lot is a part of that the applicant had volunteered a 40' conservation easement which is already recorded in the town clerk's office and is shown on the map so the activities that are proposed on this site do not encroach either on the 40' conservation easement nor do they encroach in the 50' upland review area.

Dr. Dimmick said the first part is the request for determination and while he really doesn't have any concerns with wetland impact the problem is we have features here that are not on record that if they file a permit application these features will be on record but the actual placement of the house – the actual placement of the septic system and so forth are things that we like to have on record; and cannot be shown as approved by this Commission unless we go through and have a permit application on it – these are things which could be a concern later if any question arose why did you allow such and such if we just say the request for determination was they don't need a permit then we have no control of the septic system – they can put it anywhere they want even if they come in front of us if we don't give them a permit they have no requirement to put it where they have it on the map.

Mr. Norback said but this map has been approved by Chesprocott so doesn't that already establish that location.

Dr. Dimmick said we are not Chesprocott – Chesprocott is not part of the permitting process – the town hall has no control just because Chesprocott has said something – if any change were made someone would have to go before Chesprocott or whatever subsequent agency is handling things which might not Chesprocott – the town entirely loses control of the placement of the septic system under those circumstances.

Mr. Norback said he guessed his point was if this was approved by Chesprocott for its location as depicted on a map – isn't that then what we would ultimately be looking for – if Chesprocott approved this based on this footprint for this structure – then you can triangulated it off the structure and see where that septic system was approved to be by Chesprocott and in doing that we would be approving it as they drew it – wouldn't we.

Ms. Simone said the regulations do allow for other agencies to provide information to this Commission – Chesprocott being one of them and the Commission has historically looked for plans that are approved by Chesprocott to identify the actual septic system.

Mr. Norback said they already gave us what we would require – it is located on the map.

Mr. Verna said they also come out and inspect and measure where the system is itself before.

Mr. Norback said he realized it says proposed and approved but that's all they ever are – is proposed.

Ms. Simone said and this current plan – this is where you plan on putting the septic system.

Mr. Verna said yes – yes – he said if it's not on the location that shows as approved by Chesprocott he won't get a release by Chesprocott.

Mr. Norback asked if he (Mr. Verna) passed the footprint of the house your building.

Mr. Verna stated yes.

Mr. Norback said he guessed he was having trouble understanding what control we need of it – if it will accommodate a septic system and the septic system approved and it's already located on the map then he didn't know what more we could ask for.

Chairman de Jongh asked Mr. Verna once the installation of the septic system is been done Chesprocott comes out to verify whether or not it's the same as what you've originally proposed.

Mr. Verna stated yes.

Chairman de Jongh said let's assume worst case scenario – it's not – he said he thought that was Dr. Dimmick's problem is if all of a sudden it's not put in where it is – if it doesn't come through the normal permitting process.

Mr. Verna said he believed they would make him fix it the way it was proposed on the plan.

Chairman de Jongh asked if they had the power to do that.

Mr. Verna stated he believed they do.

Chairman de Jongh said okay – and he's listening to Mr. Norback's comments and he thinks there well stated – and that we may be able to get what we want without having to go through the normal mechanics of a permitting process of we've got Chesprocott's approval on this particular situation.

Dr. Dimmick said how about the position of the house – Chesprocott doesn't approve the position of the house.

Mr. Norback said no but they are basing it on this position of the house which has been established on this plot plan that's going to be used for permitting - correct.

Mr. Verna stated correct.

Mr. Norback said so he thought we could address your concerns by stipulating that this map as drawn was used for permitting.

Dr. Dimmick said he has no problem with us stipulating as long as it shows we have an action of this Commission that it took this as the accepted approved map but if we just issue a determination and say no permit is necessary then they don't have to have anything on record with us.

Ms. Simone said Mr. Chairman just to clarify for a request for determination this Commission does not have the ability to stipulate anything but if the Commission was to determine that this did not need a permit the Commission could in their motion identify the map by the name and the date of the map.

Chairman de Jongh said there would be an indirect reference to the locations as stipulated and shown to us at this meeting.

Dr. Dimmick said that would satisfy him.

Chairman de Jongh said so the commentary that would be made on this application would have to show the date of the map – and everything germane to this particular map as part of our commentary.

Ms. Simone stated right and also when this Commission makes a determination and staff sends a letter out to the requester – it is identified what map was used and the date of the meetings so all of that is already on file in the Planning Office.

Motion: That this Commission has determined that if everything is built according to the plan of March 10, 2014 for Pemberley Estates Lot 9 our determination is a permit from this Commission is not necessary.

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

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|----|------------------------------------|-----|-----------|
| 2. | Permit Application | APP | #2014-009 |
| | Verna @ Pemberley Estates, LLC | DOR | 3/18/14 |
| | 5 Baxter Court (Pemberley Estates) | | |
| | Site Plan – House | MAD | 5/22/14 |

Mr. Verna withdrew the permit application.

Chairman de Jongh said let the record show the applicant withdrew item number two which is a permit application for Verna @ Pemberley Estates, LLC.

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|----|---|-----|-----------|
| 3. | Wetland Determination | RFD | 2013-026A |
| | Farmington Canal Greenway | | |
| | West Main & Jarvis Streets | | |
| | Modification of Parking/Stormwater Detention Facility | | |

Michael Doherty, land scape architect with Milone and MacBroom was present.

Mr. Doherty said he hoped they had the communication with the cover letter and map – so what this is – is what we think is a minor site revision – previously the application was approved on December 11, 2013 for the parking lot associated with the Farmington Canal Trail Extension on Jarvis Street.

Mr. Doherty said after doing some primarily work and dealing with the state and architectural consultant on the project and working with George Noewatne on the town we've reconfigured the parking lot and you can see that in the plan sheets – the first shows the December approved plans and the second sheet is the revised proposed resigned that we are in front of you today for.

Mr. Doherty said the impacts to the wetland – square footage remain the same and the types of impacts remain the same – what we've done actually is taken the parking and swung it more to the north so we've actually taken where we had our large rain garden area that was in the 50'upland review area – we've actually taken that and moved it to the southeast of the plan so the parking is not draining – sheet flowing across down the sheet to the southeast and then into a large retaining detention area that will be seeded and that if every has a spill way to the south.

Mr. Doherty said we feel this is actually an improvement on the design and allows the water a longer time and further distance away from the wetland itself.

Mr. Doherty said the other reason there were some potential archeological hits where the old parking lot layout jutted to the east so that was a another reason we shifted more to the north.

Ms. Simone asked if there were the same number of parking spaces.

Mr. Doherty stated yes – is a 77 space lot.

Chairman de Jongh said so we've actually improved the onsite conditions after the fact because of the archeological dig.

Mr. Doherty said yes – we feel it's improved it because actually mid-way through the parking lot there's a buffer that the water will pass through so we thinks it's an improvement.

Mr. McPhee said – you said the wetland impact is the same – is the impervious the same.

Mr. Doherty said impervious surface – it's got the same number of spaces so its wider because we put about a 12' grass strip of trees in the center of the lot of catch some of that water so it's not completely paved through the whole thing so its breaks it up a little more than the last lot – the last lot had more pavement – there wasn't as much breaking it up with islands – we think this is a nicer feel to the lot and it also provides a little more mitigation to the water.

Motion: That the proposed modifications to the original permit have been minimal impact on wetlands and therefor do not require a permit revision “plan page 37 dated February 28, 2014 entitled layout plan.”

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

**4. Wetland Determination
OCC Group for Alexion Pharmaceuticals
350-352 Knotter Drive
Temporary Office Buildings**

David Carson, a principal of the OCC Group was present on behalf of the applicant.

Mr. Carson said Alexion is proposing – we've submitted a site plan application for two temporary modular office buildings – some of the members of this Commission may recall that Alexion has done this three times in the past – as far as he could tell from the files in the Planning Department each time they have come to this Commission for a request for a determination and that determination has been that a wetlands permit has not necessary.

Mr. Carson said the two modules are colored on the plan in front of you there – in a reddish color – they're right at the employee entrance to the main building – those units are a minimum of 240' outside the 100 years flood plain and the closest regulated wetland area is 330' away.

Mr. Carson said these two (buildings) are in the identical location they were the last time they were here.

Chairman de Jongh said he was going to point out that this is exactly the same location that was permitted by this Commission before – nothing is different.

Ms. Simone said request for determinations – whatever the Commission determines is valid for one year – so that is why Mr. Carson is back before the Commission because this was not built upon within that year time period.

Motion: That the proposed activities (Alexion Pharmaceuticals) are de minimus in regard to the Commission’s regulations and there for a permit is not required.

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

XII. ADJOURNMENT

The regular meeting was adjourned at 8:40 p.m. by the consensus of Commission members present.

Respectfully submitted:

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