

**CHESHIRE INLAND WETLANDS AND WATERCOURSES COMMISSION  
PUBLIC HEARING  
TUESDAY, JUNE 3, 2014  
TOWN HALL 84 SOUTH MAIN STREET  
COUNCIL CHAMBERS AT 7:30 PM**

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**Members present: Robert de Jongh, Charles Dimmick, Kerrie Dunne, Earl Kurtz, Will McPhee and Thom Norback.**

**Members Absent: Dave Brzozowski.**

**Staff: Suzanne Simone.**

**I. CALL TO ORDER**

**Chairman de Jongh called the public hearing to order at 7:30 p.m.**

**II. PLEDGE OF ALLEGIANCE**

**All present recited the pledge of allegiance.**

**III. ROLL CALL**

**Ms. Dunne called the roll.**

**IV. DETERMINATION OF QUORUM**

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

**V. BUSINESS**

**Ms. Dunne read the legal call to open the public hearing on the following item:**

<b>1. Permit Application</b>	<b>APP</b>	<b>#2014-012</b>
<b>Kathie A. Welch</b>	<b>DOR</b>	<b>4/01/14</b>
<b>Reservoir Road</b>	<b>SW</b>	<b>4/05/14</b>
<b>Resubdivision</b>	<b>PH</b>	<b>4/15/14</b>
	<b>PH</b>	<b>5/06/14</b>
	<b>PH</b>	<b>6/03/14</b>
	<b>MAD</b>	<b>7/08/14</b>

**Chairman de Jongh explained this is a continuation of a public hearing that initially took place at our meeting on April 15, 2014 so**

we'll allow the applicant to address any issues, Commission members will then be allowed to ask any questions, we'll open up the floor for the public to ask questions following than we'll entertain any comments pro and against following those questions.

Darin Overton, a licensed professional engineer in the State of Connecticut from Milone and MacBroom was present on behalf of the applicant.

**\*\*Recording malfunction: approximately twelve minutes of Mr. Overton's presentation were not recorded (microphone not operating); his comments were transcribed from the recording secretary's notes. Commission members' comments were recorded\*\*\***

Mr. Overton explained at the last public hearing there were some concerns that the Commission had – he said revisions to the plans were made in response to those concerns as well as to engineering comments.

Mr. Overton explained that on May 23 revised plans and responses to engineering comments were submitted; clarifications were made, a construction were added to the plans, changes to the rain gardens, weekly sedimentation and erosion control inspections were added to the plans; regrading of the driveway, hay bales and check dams were added and a revised wetland assessment impact report dated May 29 was submitted.

Mr. Overton said the plans were changed in order to address the Commission comments.

Recording resumed:

Chairman de Jongh said one of the questions that came up at the last meeting was the potential evidence of arsenic on site – there was a question as to whether or not it was an agricultural site and he thought it's been determined that it was so the question then remains as to whether or not that area has been tested for arsenic – he said he knew there was testimony previous potential developers and property owners were not required to measure up to the standard but unfortunately that doesn't really apply to the application before us.

Recording malfunction:

Mr. Overton explained he overlaid 1934 aerial photo on the current plans to show the area that was being used as orchard; over the years the area was developed as subdivisions and houses; he explained the plans show current conditions and the proposed location of check dams, rain gardens and floc logs.

Recording resumed:

Dr. Dimmick said Mr. Overton explained that about half of the access way would be fill and half you'd be making no more than 2' cut – he asked which part would be fill and which part would be cut roughly.

Recording stopped:

**\*\*Mr. Overton's reply to Dr. Dimmick's question about the fill was not picked up on the tape\*\***

Recording resumed:

Dr. Dimmick said so you'll be cutting them as you get further down.

Dr. Dimmick said he did appreciate getting an idea of where the orchards were.

Dr. Dimmick stated he was going to do something a little bit unusually – he said would going to enter a little testimony himself just for background here because arsenic in soil is within his area of expertise; for the record he needed to put just a few things in here.

Dr. Dimmick stated in his experience it has been in old orchards when they used the lead arsenic which was used extensively back in those days the lead tends to get caught in about the first foot down and we are able to find the arsenic down about 3' below the surface and still find traces of arsenic; it adheres to the silt and clay particles in the soil and then is relatively immobile until you actually disturb it – loosen the silt and clay so it's the finer particles we do worry about when they get in suspension there.

Dr. Dimmick said State of Connecticut cleanup for soil is that they want to keep the level below ten parts per million on arsenic.

Dr. Dimmick stated he's just adding this as background for the record in case we use it.

Mr. Norback asked Dr. Dimmick for some of his expertise – does the lead arsenic tend to migrate – he said one of his main concerns and

thoughts on this originally was that the topography where the houses are being constructed really wasn't conducive to an orchard anyway so he was surprised that there was such an issue; so now that we've pretty much established it was upgrade of that would the arsenic be apt to migrate to those parts that are going to have more disturbance than the minor disturbance of the driveways.

Dr. Dimmick said no my experience has been that the arsenic moves straight down and somewhere within the first 3' it fines fine soil particles which it adheres to then it stays there until you disturb it; so just ordinary water percolating though it doesn't loosen the arsenic.

Mr. Norback said thanks that's encouraging.

Chairman de Jongh said he had a question about the rain garden at the point where the parallel driveways make a left hand turn if you will – is appears on that map that those rain gardens drain into an area west and at the point where it enters that watercourse in that area – what kind of protection measures do you have to be able to prevent anything from flowing in that area to protect the runoff from that rain garden.

Mr. Overton said during construction there used as a sediment trap so any sediment that gets through the hay bale check dams and comes down will have an opportunity to settle – there would be water that basically gets retained in there and the particles would settle out and then overflow is through a grass swale down to where the discharges of the first cross culvert so that's where it enters that intermittent watercourse.

Mr. Overton explained post development – the rain garden would be vegetated which the vegetation would provide additional filtering for runoff from the fully developed driveways which are planned to be paved and then again once the retention volume – once that fills up it would spill over and through the grass swale down to the intermittent watercourse.

Chairman de Jongh said he guess the question was whether or not there's going to be any measures immediately before it enters that point by the culvert – is there going to be anything there to further insulate anything that might pass through or do you feel it's not necessary.

Mr. Overton said essentially the courser particles would settle out in the retention area – the rain garden itself and then the vegetation would filter out the remainder.

Mr. Overton said he really didn't think there was anything more that's needed.

Ms. Simone said if she could just further that – would there be any water that is in that underdrain that would be discharged directly into the stream.

Mr. Overton said the underdrain essentially would collect as the water percolates down through – it's basically a ground water collection drain – we're putting in a sandy mix of planting soil in the bottom of this and essentially it works as a sand filter – 2' of it over the underdrain and then the underdrain is wrapped in stone so as the water percolates through the soil and gets further filtered it would go into that underdrain and the underdrain could also collect some of the ground water that may be moving through the site as well so there would be a ground water flow out of that pipe towards the intermittent watercourse as long as there's water in – percolating through either the rain garden or potentially ground water moving through the ground in that area.

Ms. Simone asked if there's any erosion control protection at the end of that pipe where it meets the culvert – and where it meets the stream.

Mr. Overton said it's a very flat pipe with low ground water flows – essentially the water is just going to move through there no faster than it moves through the soil – it goes into the pipe so it will be a very low flow coming out of there; he said he didn't believe any erosion controls are needed for that type of discharge.

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

Mr. Norback asked if there was a detailed underdrain pipe – is it just a pipe or is there some kind of a filtration system that it courses through.

Mr. Overton said there's 2' of what we call a planting mix – its 50% sand – he said he didn't remember the exact breakdown of top soil and composed leaf matter but that's mixed and that's the 2' of planting soil which basically creates like a sand filter that but it has organic content in it that provide nutrients for the plants; below that

is a perforated pipe that's wrapped in stone and there's a filter fabric wrapped around that; the underdrain is simple intended to make sure that after a rain event that rain garden will go dry and have the retention storage that it was planned to have within 24 hours or less.

Mr. Norback said so the materials over the under pipe are meant as a filtration system.

Mr. Overton stated yes; it's part of the design of a typical rain garden or a bio retention area.

Ms. Dunne said Mr. Root testified that there had been a Natural Diversity Database hit and you were following up with EPA on that – she said she was wondering if you heard back on that.

Mr. Overton said no there was mention of Bald Eagles around the reservoir – when he (Mr. Root) was out there he didn't find any nesting sites particularly on the property – he said he thinks its people here who have seen eagles on the reservoir before. He stated he didn't think we were impacting any of that and we have heard nothing further regarding any more on that.

Ms. Simone said she had a question about the consistency of this plan and what's before Planning and Zoning.

Ms. Simone asked if the issues satisfied with the Police Department and Fire Department regarding the access way and the sight line or do you anticipate getting revisions from Planning and Zoning.

Mr. Overton stated we have not resolved the sight line nor have we gotten the final resolutions from the Fire Department on the access plan. He said we did send them a concept which they told us they are generally in agreement with but they wanted to look at in the field as well so he got that confirmation Monday and we've scheduled the stake out of those driveways today so once those are staked out we'll contact the town staff including the Police Department – the Zoning Enforcement Officer and Fire Department and give an opportunity to go out and either have a meeting together to review that or individually go out and look at that. He explained the changes are essentially outside any of the regulated upland review area.

Mr. Overton stated currently the plans that the Wetlands Commission has are consistent with what Planning and Zoning has and we still do have some zoning issues such as the sight lines yet to confirm.

Ms. Simone said and the Fire Department – they had some questions about the curvature of the driveway and you believe they are satisfied or that they should be satisfied with this latest revision.

Mr. Overton said we are considering a change to the driveway here to the radius to provide a broader radius around there.

Ms. Simone said okay so that's something that would drive the design because you do have that rain garden at the end of the driveway and it's close to the culvert.

Chairman de Jongh said we'll allow the audience at this point to ask any questions that they may have.

John Eagan of 720 Reservoir Road (just to the east of the property in discussion) addressed the Commission.

Mr. Eagan said at the very first meeting of the Inland Wetlands Commission he raised some questions about the agricultural use of the property and the possible pollution that could exist on the soil.

Mr. Eagan stated he was not 100% convinced that that's been dealt with properly.

Mr. Eagan stated his property goes back to 1780 and that was an active orchard back then for Bishop Farms so in 1934 to only go back that far that's not very far; so he's not 100% convinced about that.

Mr. Eagan said the other big question that he had dealt with the run offs of the lawns because the people in that area use lawn chemicals.

Mr. Eagan said there's been a lot of talk about rain gardens and he understands that the rain gardens will be built at the end of the driveway to gather water that run down the 80' drop in the driveway and it will also gather up run off from the roof of the properties however the use of lawn gardens does prevent any runoff of lawn chemical use and he didn't hear anything that says that that's a way to stop that lawn chemical runoff from getting into the reservoir.

Mr. Eagan said Mr. Waz has said and he's from the Department of Water in the Town of Meriden – he said that basically he opposes this whole project – he opposes the rain gardens – he opposes the runoff – he opposes the use of chemicals possibly in the driveways in the winters and he opposes the use of lawn chemicals on the lawns.

Mr. Eagan said at the last meeting he had heard Mr. Welch said that there were other subdivisions that we built in this area that never provided for any protection against runoff into the reservoir and he (Mr. Eagan) thinks he's (Mr. Welch) is absolutely right; he said one of the latest subdivisions was done to the right of him – to the east and there are four houses built there and there are no rain gardens – there are no lawn gardens there's nothing to prevent runoff from those properties into going directly into the culvert that completely right behind.

Mr. Eagan said ironically he came to the last Planning and Zoning meeting and the next morning he walked out and at a quarter after eight there was the lawn chemical company fertilizing several lawns so he didn't think that issue has been dealt with at all.

Mr. Eagan said he didn't understand why no one monitors that – he said he would believe that in all of their deeds that they're in the runoff of the reservoir – in the watershed of the reservoir and everybody ignores that and he didn't understand why there's nobody that monitors that.

Mr. Eagan said back when the last subdivision was built he didn't think anyone questioned anything and I think honestly the builder got away with murder. He said he was pretty sure but he didn't know enough about wetlands to be 100% sure but he believed he (the developer) even encroached on the wetlands of the property.

Mr. Eagan said this is 2014 – there questions to be asked here and he thought that you as the Commission has a greater responsibility to deal with the water in that reservoir and the people that drink the water from that reservoir.

Mr. Eagan said he guessed that was all he had to say – he said he wasn't 100% convinced of any of this.

Chairman de Jongh thanked Mr. Eagan.

Chairman de Jongh said his only comment and he'd allow the applicant to certainly address or answer any of the questions that were raised. He said his comment was unfortunately while he thinks the point about lawn chemicals is certainly well taken and over utilized by a lot of people in areas where there are sensitive areas there is no regulations that we have that govern our abilities that say you can or can't – no state regulations; so while we may have sympathy and empathize with your position our hands as a

Commission unfortunately deviate being able to enforce some kind of a shutdown of the use of those types of things – our hands are tied because we only go by the state regulations in terms of how we adjudicate certain applications.

Chairman de Jongh said he didn't know if Darin wanted to address any of the issues that were raised.

Mr. Overton said based on the concerns of the Commission and others we did go back and research available aeriels – unfortunately all that's available to us go back to 1934 – there is evidence that a portion of this did have an orchard on it and he believed they were dealing with it appropriately; there's no other evidence that we have that shows orchard beyond that – in fact as we go closer in time it shows those orchards are eventually phased out – the ones that are shown in 1934.

Mr. Overton said Dr. Kortmann that was here at the last public hearing testified that the CT Legislature has dealt with some of the impacts of lawn chemicals; he (Dr. Kortmann) stated that two years ago they passed a fertilizer and phosphorus elimination for residential lawns which he (Mr. Overton) now believed is state law and is required to be adhered to and phosphorus is typically as he understands the limiting chemical in water quality in water bodies such as reservoirs and lakes so that's been taken care of by the legislature.

Mr. Overton said Dr. Kortmann did also note that rain gardens are very good particularly if they are well sized and collect the first flush of at least 1/2" to 3/4" of run off - we've sized these to have storage to mitigate the runoff for up to the 100 year storm and they have retention volume for the first inch of runoff from the roof leaders so if there's more volume than what is typically required.

Mr. Overton said he can't speak to the other issues related to adjacent subdivisions – he said he didn't think they necessarily apply to this application.

Mr. Overton stated he believed they designed this with the reservoir in mind and from the beginning we've incorporated low impact development standards in segregating the impervious surface allowing for natural infiltration – infiltration of the surface runoff recognizing that this is within the watershed of the Broad Brook Reservoir.

Mr. Overton said he'd be happy to address any further questions.

Chairman de Jongh asked if there were any other questions from the audience.

Dennis Waz, Director of Public Utilities for the City of Meriden addressed the Commission.

Mr. Waz said he'd like to speak on behalf of the City of Meriden concerning some of the comments made previously at some of the hearings concerning this application.

Mr. Waz said at the previous meeting on May 6 the applicant had mentioned that there wasn't any impact to the Broad Brook Reservoir as a result of any type of development in the area. He said he didn't see any validity or accuracy to that statement – any type of development does have an impact – any type of water whether there's type of water runoff – Mr. Eagan had spoken previously about lawn fertilizers – he said as you could see in his comments that he's made previously – nutrient loading that he speak of is a culmination of nitration, phosphors and other type of chemicals that are applied to lawn or agriculture and when they are over applied or when they are applied to a point where they can run off – Broad Brook Reservoir is a receptacle to these type of nutrients.

Mr. Waz said Dr. Kortmann who spoke at the last meeting is a limnologist and he does a Google Earth when he's working on a watershed property – he said you can see in Broad Brook a very dark green – where the feeder streams enter into Broad Brook and basically this is carried from the developments in the area – in the watershed area into Broad Brook.

Mr. Waz said this a serious concern because it provides water quality concerns – Broad Brook is our largest water filtration plant – it's designed for 5 million gallons a day – we currently are upgrading that at a cost of nearly 20 million dollars. He said additionally working with Dr. Kortmann who is an limnologist – we have been making strides to try and reverse some of the impact that's taken place due to nutrient loading.

Mr. Waz said one of the points that Mr. Overton spoke of was the phosphorus – phosphorus helps promote root growth – they've taken that out of the step program and allowed the lawn fertilizers however it is not taken out of starter fertilizer – that is what establishes lawns.

Mr. Waz said to a point Dr. Dimmick had made about the stability of arsenic – some of the research that they have been doing with regard to pesticide safety education – he said arsenic would be stable in the ground if left undisturbed; however when any type of phosphate is applied and given the right conditions it can cause that to leach further into the ground water system.

Mr. Waz said only when you develop and strip off the top soil as Dr. Dimmick stated usually within the first 12” – the lead in arsenic will be contained in that 12” of top soil and routinely its spread back on the lawn – applied with seed – a starter fertilizer and with the mix of the phosphate and if there’s a potential for arsenic in there – he wasn’t saying there was – that’s the unknown right now – that could potentially be released and carried off into the watershed – obviously there’s a perennial feeder stream though the area.

Mr. Waz said Dr. Kortmann also mentioned in his testimony about the concern he has – the feeder stream through 650 Reservoir enters into a pool on pond one Broad Brook; Dr. Kortmann’s concern initially was turbidity so any type of disturbance in fines the soils carried in there; what would complicate it even further if these fines were to contain some type of heavy arsenic or lead into the reservoir creating water quality concerns because number one turbidity in and of itself would be a concern – he’s recommending to the City of Meriden should this subdivision go through and the subdivision and the construction start that we erect a curtain baffled across the cove in order to contain the turbidity levels that could possibly be as a result of the excavation and the construction taking place – that would come at a burden to make repairs to both Meriden and Cheshire because obviously we don’t feel that we should pay for any type of disturbance that’s created by private development.

Mr. Waz said at the time he wrote his comments – he said he has staff looking further into the possibility of lead and arsenic being contained in the property – he said he thinks before anything would move forward he thought it would be a prudent action to test the soils - he said he wasn’t privy to the overlay and hasn’t really had a chance to digest what Mr. Overton has presented tonight but he would imagine in the area soil testing would be a prudent activity given the fact that it has the potential with the grade to run down and potentially impact the feeder streams and ultimately Broad Brook Reservoir.

Mr. Waz said one of the Commission members had mentioned about eagles in the area – we do have eagles nesting on Broad Brook – there are two nests that the DEP is tracking right now and in

preparation for our meeting two weeks ago he actually witnessed a Bald Eagle flying over Broad Brook when he was out there.

Mr. Waz said in closing he would like you to strongly consider if anything further testing so that we would take the question as to whether the soils on the property do or do not contain arsenic which would obviously have an impact on the drinking water.

Mr. Waz stated the limit for arsenic is .01 in drinking water – we do test the reservoir – we had tested the stream and the good news is that we did not find any of the samples that we took to be secondary in the perennial stream that runs through the property – there was nothing contained in there – however he would imagine over at the time that the previous speakers were talking about – that would have probably would have been flushed through by this time however anything that would be contained in the soils which would go back and apparently lead arsenic was as Dr. Dimmick alluded to was heavily used up until the 70s when DDT was actually the pesticide of choice and from what the information he has and what he learned from Mr. Eagan tonight if in fact this was agricultural land dating back to the late 1780s – this was the primary pesticide that was used in that area so it give me concern of what this land might contain.

Chairman de Jongh thanked Mr. Waz.

Chairman de Jongh asked Mr. Overton a question – he asked if Bill Root did any kind of soil testing.

Mr. Overton stated no when the soil scientist when he goes out there to locate the wetland boundaries if there are any – he just arguers into the ground and is looking at the colors and soil horizons and things like that – there's no lab analysis of the soils that's done to determine that.

Mr. Overton said he apologized if there's some confusion with the testimony at the last hearing but he said he didn't believe he ever said that there was any prior development that had any impact on the reservoir; in the decision about the issues with potential pesticides prior use on the property – he said he made the statement that the best answer he could give at this point if it hasn't been a problem in the past it's not likely to be a problem now and that was related to the fact that – from the area you saw – there's a number of areas around this that were prior orchards that have been developed as subdivision lots since the 70s and to date there's been nothing submitted in the record that shows there's been any issues with either lead or arsenic contamination in the reservoir itself so there's

clearly been much development that's been done in the past and as he said at the last meeting the standards continue to go up just like was stated with the legislature limiting the use of phosphorous in lawn chemicals – the standards have gone up with storm water management – the standards have gone up with sediment and erosion controls and the plans that we designed are consistent with all of those new standards – the erosion controls meet the DEP E&S guidelines – the storm water management is designed to be consistent with low impact development which is encouraged by the DEP and we follow the DEP storm water quality manual – the septic systems are designed to meet the state health code requirements – we've designed this subdivision to meet all the current standards.

Mr. Overton stated he understands there's potential for some historic issue here – there's no evidence that any of it exists and he wasn't sure at this point how we deal with it – he said he's never had to deal with this before in a subdivision like this.

Chairman de Jongh thanked Mr. Overton. He asked if there were any other comments or questions from the audience.

Neil Welch addressed the Commission. Mr. Welch stated his wife is the owner of 650 Reservoir Road.

Mr. Welch said he thinks Mr. Waz was referring to his testimony at the last meeting and basically what he was talking about was at the last meeting was lead and arsenic – he was not talking about any other impacts on the reservoir – the nutrient loading for the turbidity.

Mr. Welch said he just wanted to reemphasize what he said – he went back and looked at some of the water quality reports of the City of Meriden about their reservoir – there's no indication in any of the reports that he read that there's any problem with elevated levels of arsenic and lead and if there are elevated levels of arsenic and lead in that reservoir and they are indicating there aren't – he thought they needed to let the public know that there are so my guess is they aren't letting them know so there probably are not elevated levels of arsenic and lead.

Mr. Welch stated there have been dozens of subdivisions in this area around the reservoir and in the water basin surrounding the reservoir – dozens of them – none have come anywhere near the level of protection that his two lot are proposed to have; he said we are trapping the sediments – we are doing rain gardens – we're preparing for 100 year storms – we're probably catching all of the water that comes down from the Apple Hill or whatever the name of

that subdivision is that come down that hill through his property down to the reservoir – he said our rain gardens are going to help to protect some of the stuff that’s running down from their lawns and stopping in our rain gardens so the condition of his property right now is simple a slope that heads down to the reservoir.

Mr. Welch said in terms of arsenic and lead if there was an arsenic and lead problem from disturbing the orchard properties that were developed around that reservoir we would have seen it – but there’s no indication from the City of Meriden – it’s never been in the paper in the City of Meriden that there’s an arsenic and lead problem and so it’s very unlikely that his two lots that we’re going to do is going to add to the dozens and dozens that have already been done and its probably not going to create an arsenic and lead problem just as the other ones have not without any protection what so ever – they don’t have rain gardens – many were developed at a time where they didn’t have any of the sophistication that we now have and they didn’t do the levels of protection during development, etc.

Mr. Welch said in terms of the nutrient loading again his subdivision is two lots – we are lots and lots and lots of things in terms of rain gardens and protection to eliminate the amount of water that flows – he said in fact the way it is set up – that 100% of the water in a 100 year storm goes into out rain gardens and doesn’t end up in the reservoir. He said there are no other lots around there that can say that.

Mr. Welch said so we’re doing everything we can – it’s an improvement of what we have right now – it’s just simple a slope – its takes all the lawns across the street – it flows across Reservoir Road – across our property down into the reservoir so the nutrient loading – he said he didn’t think they were going to make much of an impact at all – in terms of turbidity again we have rain gardens – we are setting up all the protections during construction – the turbidity issue in that portion of the reservoir are effected by again dozens and dozens of properties – one of the main ones of which is the gas line that runs through there – that it’s just an open sore or dirt so if they’re having turbidity issues in the reservoir in that area they might look in the gas line – there’s a bunch of dirt that every time it rains it washes in there becomes this big mud stream and flows – the stream the comes down from his property –once it gets to the gas line it’s just running on the surface – there is no channel to that stream across that gas line – it simple runs across on flat ground – across the gas line and ends up in the reservoir so the turbidity issues they’re having are not going to be from the two lots that he’s creating they’re from all the lots that have been created in the past and the

natural gas line that is there that are basically just flowing – the dirt is flowing – everything's flowing – we've done everything we can – we've basically on every single question we've been asked we've changed our design to accommodate that at significant cost – significant extra engineering but to raise the Red Herring that there's arsenic and lead is crazy – it hasn't happened on these other lots that had not protection and therefor I doubt it's going to happen on ours as well – especially given all the protections that we've added.

Mr. Welch thanked the Commission.

Chairman de Jongh thanked Mr. Welch.

Ms. Simone asked to address the Commission. She said at the last meeting Mr. Welch did provide testimony where he cited some specifics subdivisions and made a comparison between his proposal and what was approved from this Commission; she said she did provide some information to the Commission that she wanted to get on the record – the subdivisions that Mr. Welch mentioned were on Reservoir Road – there was a four lot subdivision of Mr. Ricci's that was done in 1997 – there was also a subdivision of the Welch's property now which was done in 2002 and there was also mention of Sunrise Land Associates on South Meriden Road and Oregon Road. She said the difference among what the Commission has previously reviewed and what the Commission is reviewing tonight are impacts so for the four lot subdivision for Mr. Ricci Reservoir Road in 1997 there were no indirect or direct wetland or upland impacts that were proposed as part of that subdivision and that's great different that was proposed tonight – there are two wetland crossings which are direct and much of the development is also contained within the upland area.

Ms. Simone said for the Welch's approval there was a resubdivision which was just basically just that a resubdivision – there was no development proposed so there were no impacts.

Ms. Simone said and as far as the Sun Land Associates project on South Meriden Road and Oregon Road – the Commission did review this a couple of years ago and the Commission had determined it was de minimis and therefore an application for a permit was needed because there were no indirect nor direct impacts to wetlands or uplands and in fact much of the development took place entirely in the uplands.

Ms. Simone said she has been out to that property in conducting the usual silt fence inspections and she's aware that was arsenic found

in the soil on that property and that it was being handled through the finance company so it was really outside of the prevue of what staff was going to monitor or regulate because there was no permit per se and all of this was stored well outside of a wetland area but it's just to give the Commission some knowledge of what her experience has been that finance companies do have an interest in testing and that the do require that there we certain contaminant levels in soils before they're allowed to leave the site or how they're managed on the site.

Ms. Simone said so it's really comparing apples to oranges to some of the other development that has gone on in and around reservoir road because they nearly do not have the same proposal of impacts as what the Commission is charged with reviewing today.

Chairman de Jongh asked if there were any other comments or questions of either the Commission members or the audience.

Chairman de Jongh said he didn't know if there were any other issues that remain outstanding – there's been an ample amount of testimony provided – he said he thought the applicant has provided us with information that answers some of the questions that we raised – certainly with the overlay map from 1934.

Ms. Dunne asked if there was no issues with PZC submission – that there's nothing that would change there.

Chairman de Jongh said we have to go with what's in front of us tonight – what Planning and Zoning does if they require the applicant to change the configuration of the road and it that has a material impact then what's been presented to us then they have to come back.

Ms. Simone said if she could just elaborate to that – the reason why staff mentioned the Planning and Zoning process was not so much for this wetlands commission to get involved in that but just to understand that it's a fluid sort of a situation in that there may be changes that may affect areas that the Commission is directly reviewing such as the configuration of the driveway – the rain garden and the culvert crossing so if the Commission was to close the public hearing tonight this is all that the Commission is able to review – if the plans then change then the applicant has to come back and start over again.

Ms. Dunne said she thought there was an option that we could extend it or do something just in case so they wouldn't have to come

back if they changed something; she said she just wanted to make sure that if they changed something you wouldn't have to start over again.

Ms. Simone said the applicant does have time available left in the 65 days maximum that they are allowed by state statute; up to tonight's meeting 29 days have been used on the extension so the applicant is able to extend the public hearing.

Chairman de Jongh said he didn't see the applicant jumping up and down willing to do that.

Mr. Overton said he wanted to make one kind of last statement to relate this development area to the overall watershed – prior testimony from Dennis Waz at the prior hearing said that this was about a 3000 acre watershed to Broad Brook Reservoir – the disturbed area on the site he estimated is approximately 3 acres – that's a tenth of one percent of the overall watershed; so to give you just the relative scale of the overall watershed compared to the development area that we're talking about here.

Mr. Overton said before we proceed if he could just talk to his client for one minute.

There was a brief recess so Mr. Overton could talk to his client.

Mr. Norback asked Mr. Overton - with the Planning and Zoning and Fire Department do you sense that you are pretty close with them – what it be prudent to leave this open instead of trying to run the gallant again.

Mr. Overton said he wasn't sure how best to address this – it's like a chicken and egg thing; the statues require that Wetlands act before Planning and Zoning does so we are always going to be subject to finishing up with Planning and Zoning and its somewhat unknown as to whether some changes could occur – the result is we could have and its happened before come back for a modification after the fact.

Mr. Overton said what he'd like to do tonight is just give the Commission – he has two updated plans – he has a site plan where based on the recommendation of the Fire Department we essentially took the two driveways and pushed them closer together; instead of having 30' between them there's 6' between them – it's the same amount of impervious area – it's actually less disturbed area and a change in the radius (as shown on the plan); there are very minor

changes – he said he was going back and forth as to whether – pretty much all of this occurs outside the regulated area.

Mr. Overton stated he was going to submit three copies of that (revised plan) so the Commission has the most up to date information.

Mr. Overton said one last thing is there were some engineering comments that came out on May 27 which he didn't have a chance to make a formal response to but they are very minor related to clarifying drainage computations – he said he did have an update of those sizing computations which simply show the culvert as we've upgraded them can pass the 100 year storm without having any back water what so ever so it's just kind of confirming statements that we made before.

Mr. Overton said so there were three comments – six, seven, eight and nine – six is regarding the rain garden details being generic – we added a table labeling clearly all the invert elevations of the rain gardens – bottom of it – top of it – the under drain elevations – the discharge elevation – again just clarifying information that was already shown on the plans.

Ms. Simone said when you say you have that – that's something you already submitted or something you will submit.

Mr. Overton said I'm going to give it to you now since the Commission has somewhat of a concern about what's going on and he was inclined to give you the most up to date information to clarify this before the hearings closed.

Ms. Simone said that's still then going to be a dialog between you and the Engineering Department – she said she just wanted to be clear.

Mr. Overton stated he was comfortable this addresses all the issues.

Ms. Simone said right and as far as the plans that you were planning on submitting tonight that show a reconfiguration of the driveway – is that something you want that to be the final plan that the Commission's reviewing – the Commission is not really going to review two plans at the same time simultaneously and then let you get to pick one in the end.

Mr. Overton said this would be an update – this is the plan he would want the Commission to review render a decision on.

Ms. Simone said okay and then after you hand that to the Commission tonight are you planning having the public hearing closed tonight so that the Commission doesn't have the ability to really review it ahead of time and to provide questions or sort of chew it over.

Mr. Overton said like he said the changes are very minor – we are simply taking the driveways as they are and pushing them together; all of that is occurring essentially outside of the regulated area – it's really just a clarification.

Mr. Overton said he guessed he was just trying to give the Commission the most up to date information – we still don't have confirmation from the Fire Department; if you want to discuss the plan after he hands it out he was happy to answer questions that you might have; but it's really just a simplification.

Ms. Simone stated that's entirely your decision – thank you.

Mr. Overton said the other items on the engineering department list were in regard to the culvert is there any change in the design calculations – we gave the updated calculations to show again as he mentioned this can pass the 100 year storm without an issue; both the 24" culvert and the arch culvert.

Mr. Overton said as Suzanne had mentioned earlier – we discussed there was a question about whether the under drain from the rain garden would have an effect on surface runoff calculations; the fact of the matter is ground water and surface water discharge are very different – we never include ground analysis or runoff in the surface water runoff so the underdrains would not have effect on our surface water calculations; and then there are some clarifications in the language in number nine that the engineering department requested in the engineering report based on the change we had done previously with providing the storage for the 100 year storm.

Mr. Overton said so there's nothing really new it's just clarifications – documentation was previously shown on the plans – the only thing new as he mentioned is and he has a copy of it here – here are the two driveways – same concept with the grading – with the swale in the middle – the driveways will be pushed together so that there's a 6' strip in between that will have a stabilized stone surface on it; the Fire Department wanted to have the ability to have more maneuverability and then we widened the radius for the access to the driveway to lot two.

Mr. Overton submitted revised plans into the record.

Commission members review the newly submitted plans.

Mr. Overton said he got a preliminary indication from the Fire Department that we are moving in the right direction; they liked this with the driveways closer together – they are okay with the radius – they just wanted to go out and see it in the field.

Mr. Overton said and I think this lessens the disturbed area by pushing the driveways together – there's no real increase in impervious – the same paved width – we are just pushing them closer and we are going to put a stone strip in between to stabilize the middle and have a drivable area in between; we are still going to have the swales – we are still going to allow for infiltration of the runoff and it will still runoff and be directed into the rain garden.

Mr. Overton said so the same concept and the design just pushing them together.

Mr. McPhee said like some other projects that you folks have worked on with long driveways – is there anything in here for the turning around of the truck – where the truck is pulling off so traffic can pass – he said he knew the length of the driveway is quite long.

Mr. Overton said that is the benefit of pushing the driveways together – is that for the length down to here there was room for someone could pull off into the stone strip or vise a versa.

Mr. McPhee said into lot two especially there's no area for the trucks to pull off or for vehicles to pass – emergency vehicles or what have you.

Mr. Overton said they didn't express any concern in regard to that at the time – he said he thought by the time you get down to that corner you see into the...

Mr. McPhee said he didn't want to see some turnoff that was going to be coming back to directly impact wetlands – you don't know that yet.

Mr. Overton stated he can't predict that – he said unfortunately the way this is set up one of the Commissions has to decide first.

Ms. Simone said she had a question about the erosion controls that are depicted – this application is for resubdivision and the construction of the driveways and the two water crossings and it does show there's proposed silt fence and staked hay bales all around these two lots – is that something you're proposing would be done during the construction of the driveways and the two water crossings.

Mr. Overton said the silt fence and hay bales would be in place with the check dams along the driveway – you mean prior to the development of the lots.

Ms. Simone said this application is just for resubdivision so the Commission is not considering the location of the houses – she said she knew they were depicted generally just to show they can conform with all of the required land use regulations but she is asking about the depiction of the silt fence and hay bales that if this was approved and somebody was going to start developing it appears as though all of these erosion controls need to be in place before any work can start on the driveway or water crossings.

Mr. Overton stated yes.

Ms. Simone said so you would propose that silt fence would be put all the way in the rear of these lots even though there's no development that's proposed.

Mr. Overton said it could be either placed there or it can be relocated if all they were doing was the driveway at any one point; they would put the silt fence at the limit of disturbance – they is certainly phasing that a contractor needs to consider if they are going to phase the construction of this – right now we've laid it out as if an individual lot would be purchased and developed – there are erosion controls for each lot as a whole – if the driveways were to be constructed separately or the driveway in just getting the crossings in – there are erosion controls set up in the sequence for the actual construction of the arch culvert but there would be interim measure at the limit of disturbance that would be put in because that would be part of the phasing of the project and there's a note on the plans that covers that; that the silt fence and hay bales need to be adjusted as the construction proceeds if there were to be a phasing of the construction with that.

Ms. Simone said part of her concern as she goes out and does these inspections is that you will have a contractor working on a site and just looks at the plans and may not read the narrative so may not

understand that this is not to be cleared – this is not an area that has been approved for development; and additionally to say that it may be phased – it's helpful for everyone involved that everything be detailed and really specified and depicted on maps to show where the limits are and that everyone has an understanding of what's expected because this is really sort of opened for interpretation.

Mr. Overton said we note in the construction sequence that the environmental planner is to be notified prior to construction and in the sequence itself the contractor is required to stake out the limit of disturbance before construction begins so if they were to propose a phasing of this they would have to stake the limits of the phase; there's also a note on here that there's a right for the town staff to require additional erosion controls if deemed necessary.

Ms. Simone said and that is good it's just that sometimes there are occasions where people will go out to a property and clear ahead of time and the Commission has seen that happen a couple of times over the last year or so – so even though there is a note there that requires them to notify and that there's a permit issue that you must comply with such and such – her concern is just having a plan that depicts all of this development – these erosion controls are unnecessary to the installation of a driveway and two water crossings so to try to disturb land to put in erosion controls that are going to serve any purpose – she just wanted to make sure that there's something that can be done – maybe another map can be submitted that can show just the appropriate required erosion controls for the installation of the driveway and the two water crossings.

Mr. Norback said just a suggestion – maybe as part of the sequence perhaps whether its phased or not a meeting with staff and the developer and the land clearing company might be prudent because then some determination could be made where the erosion controls would be necessary and indeed viable.

Mr. Norback said because he knew in the past that we have had on occasions where clearing was done outside the limits and could have potentially caused problems but I think we need to learn from those lessons but he didn't think we need to hold anyone to a higher standard – but sequentially if its addressed on the map that they talk with staff and meeting with staff prior to any land clearing so it can be addressed sequentially.

Ms. Simone said that's a good idea and a good point and that's happened in the past – she said her comments are not meant to

onerous or to create a problem for the applicant its really to get a map that everyone can look at and understand exactly what's being proposed here because anyone looking at this map – potential property buyer will walk in and say – yes so my house is here – I already got that approved and she says to them no that's not approved that's just approved for the driveway – well it shows the house right here – so she thought this is not just about his application its really helpful that maps depict exactly what is proposed and looking at this map it really shows far more erosion controls then what's needed for this site and she understands that through discussion that that can be tailored and toned down but sometimes discussion doesn't take place prior to work being done out there.

Mr. Norback said that's why his suggestion about having that in the sequence and then if staff didn't feel that some of these erosion controls are necessary or timely – he said there's no sense in disturbing an area to put in silt fence if it's uphill or unnecessary.

Ms. Simone said right so that's why she thinks it would be beneficial to have a plan that shows just exactly that – that just shows the erosion controls needed for what this application is for – this is showing something far greater than what this Commission is even reviewing right now.

Mr. Norback said he understands your point but didn't they also leave staff some latitude anyway so couldn't that be exercised at that point whether it's to lessen the erosion controls or enhance.

Ms. Simone said she thinks then its relying solely on that – she said she thinks that its always beneficial and just as she's tried to work with applicant engineers to try to get the wetland markers shown on maps before the approval is issued – that's now a standard as before it wasn't and there were issues because it was left to staff to follow up – remind – contact – bring the markers to the site – so this really needs to reflect she believed what's being proposed.

Mr. McPhee said he agreed and understands what you are getting at but we have the precedent in front of us that we've approved a hundred of these subdivision just like this before.

Ms. Simone said she's not suggesting that this should be denied because of this.

Mr. McPhee said that we are in a situation now that you are suggesting they do another map but they have to close the public

hearing and they are in kind of a catch 22 here as far as we say we want another may and he agrees to do it then he has to leave the public hearing open.

Ms. Simone said well then this is just an opening discussion that staff believes that whatever plans are submitted to this Commission should really reflect what's being proposed and time and time again there are numerous issues that come up with showing the location of the house and the septic system and that's not even part of the approval so she thinks that yes – she understands that if the applicant is going to have the public hearing closed tonight – yes we are not going to ask for materials to be received outside the public hearing.

Mr. McPhee asked to make the suggestion that staff – and he completely agreed with you as far as what you are requesting – because he thinks it simplifies everything and maybe it's just another page to the plans that is a sub development erosion control map which is just reflective upon the driveway – the crossings whatever is relative to the sub-development knowing they have to come back before this Commission for the locations of both houses.

Mr. McPhee said perhaps you should communicate with the local engineers and make that a SOP somehow for them so future plans coming in front of us will have this information and they can make it easier for you as staff and also the committee to include supporting you to have all that information in front of them.

Ms. Simone stated okay.

Chairman de Jongh said one way around this is to be able to require individual site plan approvals as this is just for subdivision activities and the creation of a driveway and we required individual site plan approvals for those lots that have got to come back to us showing an A-1 survey of exactly where those lots are located so that way the potential home buyer doesn't look at the original map with just the approval for the subdivision activities and assume that that's where the house is going to be located – they may be one in the same but if we require individual site plan approvals then we have belts and suspenders on both ends of it.

Dr. Dimmick asked if we received all of the comment from this applicant at this point – are we ready to close this public hearing is what he's asking.

Mr. Overton said essentially we could propose a number of different construction scenarios or what if scenarios and he could almost guarantee if we present ten of them someone will have an eleventh.

Mr. Overton said what is before you is what we are proposing to do – these are the impacts we are proposing – this is basically the development area we are proposing; he said he didn't understand why the Commission looks at this as simply a resubdivision and construction of a driveway and crossing; we are proposing and we looked at this with a realistic layout and design of the septic system and the house, etc. – now granted every homeowner will likely have different architecture and things like that but those are outside the regulated area but he would think the Commission is approving this as a whole and if there are no changes to the regulated activities that the development of a different house shape would be allowed to proceed under this permit – he said essentially what the Commission is permitting is the whole plan – the Commission does have the ability to regulate beyond the regulated area and we are showing the full amount of the development that's needed to build these two houses and the access ways and enmities to serve them.

Ms. Simone questioned Mr. Overton – she asked at this public hearing now that you are asking the Commission to consider the development of these sites when that was never mentioned before of discussed before.

Mr. Overton said he didn't think that's ever changed – these plans have been before you showing all the development area on here – he said it's just like the driveways – they are coming closer together – the Commission seemed to have a concern over that – the driveways are well outside of the upland review area but he wanted to have a complete plan.

Chairman de Jongh stated he thought the application was for resubdivision was for resubdivision activities though. He said he understood what Darin was saying – we've been going under the premise from day one that this was a resubdivision application and if that's the case then that does not include the approval of the location of the house – typically unless the house is outside areas and doesn't have any impact – he said he thinks there's a concern about the site in general as evidence of testimony over the last three public hearings – but he thinks what's he's asking for us tonight unless the application is different is to expand the intent of the application to include the potential location of the houses as they are depicted on the map and he didn't think that was part of the original application.

Ms. Simone said as staff understood this application because as she was sure you were aware that when an application is submitted there's application for subdivision and site plan and sometimes there one in the same such as an application the Commission will consider tonight under new business; it says here that this application is for a resubdivision and then it goes on to say " a driveway to service lot two is proposed which would include the construction of two culverts – proposed culvert plan would alter .05 acres of wetlands and alter .03 acres of upland area; in addition 100 LF of the perennial watercourse will be impacted; see attached wetland impact assessment and alternatives analysis."

Ms. Simone said she understood if you are bringing this up as a means of trying to start a discussion with the Commission and with staff that's one thing but that's not how this Commission as conducted business in the past or present.

Mr. Norback said he was and maybe in error but he has actually been looking at this compressively the whole time – maybe because of his construction experience may he sees it that way and he just perceives it that way so if he's been doing that in error – he said he thought some of the questions that had been asked had that flavor to it that we indeed were reviewing that so that's so he sees why we are having this discussion but he thought a lot of the questions reflected the fact that we were looking at it compressively.

Ms. Simone said staff never reviewed it from that perspective.

Chairman de Jongh said he thought the other thing is that it's not uncommon for us to require individual site plan approval and then they come back and we find it de minimis and then it just moves on from there so it's not an obstruction.

Mr. Norback said he agreed as well – he said he looked at it compressively and maybe it's because of the perspective he has because of his business.

Dr. Dimmick said he think often that we expect they will show a house and septic system to show that it's possible to have a house and septic system within the various safe guards and without direct impact in the upland review area without the permit application asking that this be set in concrete.

Mr. Norback asked wasn't there a recent subdivision up on Summit where all the houses were depicted and locations cast in stone at that point.

Ms. Simone said that was done in 2004 she believed.

Chairman de Jongh said but we had individual site plan approval on a number of those homes.

Ms. Simone said none of them required any direct or indirect wetland impacts – all the wetlands were far down slope – some of those lots were quite large.

Chairman de Jongh said which is not the case here because of the potential direct impact area because of the slopes.

Mr. McPhee said he was a stickler for precedent and sticking to what we have done and continue having continuity and he thinks this should be treated as just a resubdivision for the driveway and for the general location of the homes with individual site plan approval which 99.9% of the time when polices and procedures are followed – that a map is referenced that is brought in – that's been approved by Chesprocott and a date of a map we usually call it de minimis and allow them to move forward – this is the biggest to cross right now is just to get the subdivision done and he thinks it's the right way to go – just treat it as the way it is in front of us as staff read it.

Mr. Overton said certainly if the Commission has been looking at this differently he didn't want to confuse things tonight but he always looked at the permit application that the different things designated on here are relative to what's filed in Planning and Zoning – like the Wetlands Commission doesn't have earth removal filling and regrading section in the regs nor does is there a zone change – he thought this was just a check box as what they were submitting to Planning and Zoning – that this wetlands permit that we are submitting is part of a resubdivision which is why we checked that box; there's a site development plan that's been submitted all along with this that shows site development – he said we always fill out permit applications with the paragraph on the back is description of proposed activities – it says activity within the regulated area is how we've always defined this; he said he's a little confused as to how the Commission just rakes out of the plans that we submitted but he was not going to confuse the issue now – just look at it the way you've been looking at it; and if individual site plans are required then fine.

**Motion: To close the public hearing at 8:48 p.m.**

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

**VI. ADJOURNMENT**

**The public hearing was adjourned at 8:48 p.m. by the consensus of  
Commission members present.**

**Respectfully submitted:**

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