

Motion: To approve the minutes from the November 18, 2014 public hearing and regular meeting with corrections.

November 18, 2014: Public Hearing: No corrections.

November 18, 2014: Regular Meeting: pg. 4 L 16 “hear” to “heard”, L43 “care” to “care of”; pg. 8 L11 “agreements their” to “paper they’re”, L46 “leave” to “leaf”; pg. 12 L36 “site” to “sight”; pg. 13 L24 “to” to “do”; pg. 15 L18-19 “thought” to “though” and “allow” to “allowed”; pg. 16 L6 “can” to “can’t”; pg. 19 L11 “filed” to “field.”

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

VI. APPROVAL OF 2015 MEETING DATES

The Commission reviewed the 2015 meeting dates.

Motion: To approve the Cheshire Inland Wetland and Watercourse Commission meeting dates as supplied by staff.

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

VII. COMMUNICATIONS

- 1. E-mail From Suzy Ribero Re: 64 Rita Avenue Application # 2014-027**

This communication was reviewed.

- 2 Request for Determination 220 Realty, LLC**

This communication was reviewed.

- 3. City of Meriden Comments; 825 Wallingford Road**

This communication was reviewed.

- 4. Revised Site Plan; 1430 Highland Ave., proposed sanitary easement**

This communication was reviewed. Ms. Simone stated this item was subject of a public hearing tonight.

- 5. Copy of site plan, 80 Suffield Court**

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

Handed out to the Commission at tonight's meeting:

6. Invitation for a Town Council holiday event for Commission members.

Ms. Simone stated a copy of the invitation was handed out at tonight's meeting and was also emailed.

VII. INSPECTION REPORTS

1. Written Inspections

Ms. Simone stated there were no written inspections.

2. Staff Inspections

Ms. Simone stated there were no staff inspections.

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 this item remains on our agenda for continued monitoring.

2. Notice of Violation SC 05/06/14
Ms. Suzy Lynn Antunes Ribeiro SC 06/03/14
SC 06/17/14
Unauthorized Activities in the Upland Review Area/Inland Wetlands
64 Rita Avenue
Assessor's Map 14, Lot 43

Chairman de Jongh stated this item is on the agenda under unfinished business.

3. Notice of Violation SC 08/05/14
Terrence and Deanna McIntosh SC 09/02/14
Unauthorized Activities in the Upland Review Area/Inland Wetlands
20 Smith Place

Assessor's Map 30, Lot 146

Ms. Simone stated also handed out to Commission members there is an email she received this afternoon from Terrence McIntosh and he indicates "as requested listed below is our current schedule for the removal of the yard debris. Based on recent weather conditions, there has been a negligible change in the original schedule. The new dates area as follows: December 20, January 3, January 17, and January 31. I will follow up with you after each removal. If you have any questions or concerns, please don't hesitate to contact me. Terrance McIntosh."

Ms. Simone explained it appears as though he's asking for an extension of the compliance date of the corrective order through January 31, 2015.

Chairman de Jongh said it appears as though there's a genuine effort to try to comply with what this Commission wanted done so he didn't see a problem with the dates.

Dr. Dimmick said he thinks they can give an extension subject to review if it's not being followed through on.

Motion: That the Commission grants an extension to February 3, 2015 subject to review on the applicant following through on they have proposed.

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

4. SHOW CAUSE HEARING

Notice of Violation

SC 11/18/14

Whitney Watts

SC 12/02/14

Unauthorized Activities in the Upland Review Area/Inland Wetlands

825 Wallingford Road

Assessor's Map 80, Lot 2

Ryan McEvoy, PE from Milone and MacBroom was present on behalf of the applicant Whitney Watts. Whitney Watts was also present.

Mr. McEvoy addressed the Commission.

Mr. McEvoy said he was here on behalf of Mr. Watts. He explained Mr. Watts requested us (Milone and MacBroom) based on discussions with Suzanne and the Commission at the last meeting to

direct our wetland scientist to delineate the wetlands areas in the vicinity of the areas that were cleared which was done last week.

Mr. McEvoy explained they also prepared a document depicting the location of the wetlands along with the areas where there was clearing on the property.

Mr. McEvoy said quickly running through this graphic – he said the bottom line is the wetlands are flagged W1-W18 on the right hand side of the sheet.

Mr. McEvoy stated there's a thick gray line that is generally upslope of the wetlands indicating where the clearing was done. He said there's one area right near wetland flag one and wetland flag two where it appeared there may have been one or two shrubs or brushy areas that were cleared in the wetland area.

Mr. McEvoy stated in general most of the clearing was at or upslope of the wetlands.

Mr. McEvoy said he believed Mr. Watts explained at the last meeting what his intent is and what the purpose of the clearing was – it was to create space for a tree farm.

Mr. McEvoy said he also wanted to submit some photos from 1985-86 aerials taken across the state that he hopes give a fairly clear indication of the most recent historical use portion of the property was.

Mr. McEvoy submitted the photos into the record.

Mr. McEvoy explained in the center of the picture they have is roughly at the same scale as the 11 by 17 that he prepared. He explained it shows the existing house at 817 Wallingford Road and if you follow in the easterly direction with north being up – the primary area that was cleared by Mr. Watts has historically been open space or even agricultural at least at the time this aerial was taken.

Mr. McEvoy said if there are any questions about the documents we've prepared at the request of Mr. Watts – he'd be happy to answer them; if there's any question of Mr. Watts regarding his intended use of the property he'd be happy to answer them.

Ms. Simone asked what year was this from (the aerial photos).

Mr. McEvoy stated 1985-86. He said he looked at the 1990 aerials and you can start to see the development of Tamarack Road and the area that he highlighted on this map has become more overgrown and is more or less the way it is today or prior to the clearing by Mr. Watts.

Mr. McPhee asked just out of curiosity what was it used for.

Mr. McEvoy stated he didn't know.

Dr. Dimmick said obviously it had an agricultural that was hayfield or was something else of that sort so what we are really looking at is a reclaiming or previous agricultural land – he said he thinks this paints a completely different situation on this.

Dr. Dimmick said staff was correct to bring this to our attention and we could very well issue some sort of statement that it is clearing of previous agricultural land.

Chairman de Jongh asked if the intent of the area that needed to be cleared to be some kind of a tree farm – he said in order to cross the “T’s” and dot the “I’s” there needed to be an application to formally approve that kind of operation.

Dr. Dimmick said it's not so much an application to approve it's a request for determination which is totally different than an application.

Chairman de Jongh said right but that would have to come before us for as separate items.

Dr. Dimmick said all he thought that was needed was a letter requesting determination. He said he'd totally be in agreement with returning this to its former agricultural uses.

Dr. Dimmick said as long as we don't have any material deposited in the wetland; another words as long as the brush is being cut and doesn't wind up onto the wetland area – but if it's awfully close to it he didn't see that they had any problem with it.

Mr. McPhee said he completely agreed with Dr. Dimmick – is that something because we only have one meeting in December that the applicant could do now – put in a request for determination or is that against protocol.

Chairman de Jongh said he thought they had to handle the show cause now and do the request for determination later as a separate item.

Dr. Dimmick said he was inclined to and it's up to the rest of us and leaving it the chair and staff to decide this – he was inclined to close the show cause hearing and dismiss further inquiry into it unless there was some issue still pending on it (the show cause).

Ms. Simone said there's just a general question before the Commission of what to do with this site.

Ms. Simone said in speaking with Mr. Watts and she first learned of this area being cleared she discussed with him that she did not think that he should install silt fences because there are still trees there and she didn't want the roots of the trees to get disturbed by digging a trench to put the silt fence in but understanding this area is somewhat exposed and it does show its cleared directly right up to the wetlands.

Ms. Simone said she wanted to get some ideas from the Commission as to what they think would be an appropriate thing to do help stabilize the site.

Ms. Simone said for the location of the stock pile of the cut material that is placed very close to if not right up against to the wetland delineated line. She asked if that's something that could remain or be removed.

Mr. McEvoy said the area of brush – just for the Commission's sake – nearest to wetland twelve – W12 there is an area where cut brush is piled up – its upslope of that wetland flag but as Suzanne mentioned it's fairly close.

Ms. Simone said in the area where it's the most exposed is in between wetland flag twelve and fourteen – along that line you also do have a slope that heads down towards the wetlands.

Dr. Dimmick said and that's a little bit steeper slope therefore a greater chance for some kind of erosion and therefore a problem.

Ms. Simone said yes and there is exposed soil in that area. She said there was no grubbing or moving of tree stumps or anything like that – it's not that level of exposed soil.

Dr. Dimmick said is that something at least for winter stabilization some type of temporary mulch might work – they could get by get by spreading some of that brush as mulch.

Ms. Simone said she believed there were wood chips on the site.

Dr. Dimmick said he agreed that's the most sensitive part of the site at the moment and something could go wrong.

Chairman de Jongh said he thought it was the Commission's general consent to try to allow the activity to continue going forward based on the evidence they received but also to take whatever protective measures between wetland flags twelve and fourteen and along that strip so if they can do that with the mulch they have onsite or if they can created by grinding up what's being taken down.

Mr. Watts said or if the silt fences for something like that - is that okay too.

Ms. Simone said possibly in that area – maybe that's something if we met onsite then we can get a better idea of exactly where it can go – where it might have to least amount of disturbance to the soil.

Mr. Watts said his goal was to get some trees planted but with the winter coming it won't happen so he has some time to figure it out – he said his goal was to move that pile of brush material and basically get the field ready for planting in the spring time. He said he talked to someone who sells Christmas trees and they said that's the time to put them in the ground so we have through the winter to kind of figure it out.

Mr. McEvoy said getting back to Suzanne's point – they are concerned about silt fence near flag twelve, thirteen and fourteen – that area is really the continuation of the overgrown brush even though there are delineated wetland soils he didn't think there were any significant wetland trees in the immediate area so a silt fence might be a logical approach.

Chairman de Jongh said he would suggest that the applicant meet up staff and do an onsite determination as to what they need and where it should be going and he thought it would be fine as far as this Commission's concerned.

Chairman de Jongh said he thinks its important timing wise relative to the tree farming operation that once we clear this up then work with staff to put together whatever information they need to take a

look at it - for example in January relative to the determination for the Christmas tree farming activity.

Mr. Watts said okay so the next step is to clean it up and come back to you guys.

Chairman de Jongh said yes – they have to handle it as two separately so once we clean up the show cause hearing and he's getting the impression that we are willing to close that based on the evidence based on they heard this evening and then they can entertain (the tree farm) at the next meeting in January we only have one this month.

Mr. Watts said so at the next meeting they are looking for a letter stating what he wants to do.

Chairman de Jongh said discuss with staff – let her know what you're planning on doing and then she can kind of give you the frame work that needs to be presented to us – it doesn't have to be an applicant but just a letter of intent – we'll determine whether or not it needs an application and based on some of the testimony this evening you are going from an agriculture to another agricultural and probably doesn't need an application but we need to go through the formality of it and timing is perfect relative to what your time table is based on when the planting has to happen.

Mr. Watts said he can't do anything until spring anyways.

Mr. Kurtz said he was curious if he (Mr. Watts) knows by now where the trees are going to be planted.

Mr. Watts said yes pretty much – he explained he talked to the guy who owns a large farm up in Maine and he basically said they have to be six feet apart and he'd start in this area (he should on the photo).

Mr. McEvoy said the area of planting would take place upslope of wetland flag one and wetland flag nine and in-between the gravel driveway.

Motion: That the Commission closes the show cause hearing.

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

Ms. Simone stated that she did not have a draft for the release of the notice of violation for tonight's meeting but she'd have it ready for

the first meeting In January but it does not impact Mr. Watts's ability to continue working on the driveway or the construction of the house.

Chairman de Jongh said that's fine so we'll read that draft in at our next meeting and it doesn't impede what Mr. Watts needs to do next.

Ms. Simone informed Mr. Watts that he'll contact her and they'll figure out on the site for the stabilization.

Mr. Watts said do you want me to move that pile of brush before contacting you.

Ms. Simone said no – we'll meet out there and talk about everything and the silt fence.

X. UNFINISHED BUSINESS

1.	Permit Application	APP	2014-027
	Suzy Ribeiro	DOR	8/05/14
	64 Rita Avenue		
	Fill Removal	MAD	12/13/14

Suzy Ribeiro and Jaxon Rivers were present.

Chairman de Jongh said we have a lot of stuff that we basically have to take a look at and we're up against a deadline.

Chairman de Jongh addressed Ms. Ribeiro stating there have been numerous communications going back and forth between this Commission, staff and yourself and the problem is that there's a lot of information that we still need and staff has already expressed what we are requiring from you on several occasions and he's hopeful you have all that stuff with them tonight so they can have a conversation about what you intend to do.

Ms. Ribeiro said back – she doesn't even remember – she already filled out the application and in that application it tells what we intend to do. She stated you have that application.

Ms. Simone said the application does indicate that you plan on removing the material by hand but the Commission had asked for information about the actual quantity of the material you are going to move, how you propose to move it – you say by hand – but does that really mean you are not going to really use any equipment – how it's

going to be managed to get it off site and then how the slope is going to be stabilized.

Ms. Ribeiro said as she mentioned before she recently just got laid off so money is an issue so she doesn't have money to rent a machine and she doesn't have anybody who has a machine to take all that so that's why she expressed in the letter that she sent – she couldn't remember the date that it was – about the money situation and that's why they are doing it by hand because we have no other option at this point.

Dr. Dimmick said he doesn't want us to sound particularly hard hearted but in this particular case we've been dealing with this since April and we have been trying to work with you all of this time and we have legal obligations that we can't avoid and we are up against it at this point – we cannot go any further.

Dr. Dimmick stated we have an incomplete application as far as the information we need to be able to make any kind of approval of it.

Dr. Dimmick said staff has asked repeatedly for that completing the information we need to make a complete application that we can act on it and tonight is the deadline – we have no alternative to vote on that application tonight and with incomplete data it looks to him that they are going to have to vote to deny for lack of data to make a decision – legally we have no alternative.

Ms. Ribeiro asked what information you are asking that she has not provided for you.

Dr. Dimmick said he thinks staff has just gone through that list.

Mr. Rivers said as far as the amount of fill we are going to be taking out – it's like an undetermined amount – it's like a guesstimate of anywhere between 200 – 400 cubic yards and as far as stabilizing the slope was after everything was pulled and the slope was met the council would agree upon he was going to stabilize it with wood chips.

Ms. Simone said part of the question is what slope would it be stabilized to – that's part of the whole question. She said she understands you are saying you'd estimate you'd move this amount of material or that amount of material and would restore it to a particular slope but part of the question was what slope is that.

Mr. Rivers said it was in the drawing Dr. Dimmick rendered.

Ms. Simone said he does show a suggested comprised slope area but she thinks if you look back at the record the Commission is asking how would you know you were at that slope if you are doing this by yourself – this seems to be something you have to have somebody with a background in being able to figure this out.

Ms. Simone said she thinks – although she is not speaking for the Commission – but just having looked at the record – the Commission has asked for that information so that they understand and you understand what the scope of work is – that you know what to expect and they know what to look for when the work is completed.

Ms. Ribeiro said when Dr. Dimmick and Thom Norback were out trying to do the drawings they actually gave me a visual – by looking at a map she doesn't understand what a map is – but they actually pointed out somewhat to pull it back so they actually gave us a visual when they were out to my property – and how much further to go back.

Ms. Simone said she can understand that however the regulations require that there be certain documents submitted as part of the record so anybody can go in and take a look and say how much material are they taking out and where is the slope going to be so just because you may have a visual in the field that maybe helpful for you that's not really clear on the record.

Ms. Simone said anybody looking at this – somebody else from the department goes out to do an inspection – not just her – needs to have it documented to look at so they know to expect in the landscape.

Dr. Dimmick said I'm wondering then if their asking then that the materials he and Thom provided be incorporated into the application and made the boundaries for their application – if that's what they're doing it would give us some kind of documentation if they will attest to that.

Ms. Simone said if the Commission's comfortable with that.

Chairman de Jongh said if that's the intent that you accept – and I'm going to call it unprofessional because neither Mr. Norback or Dr. Dimmick are soil scientists so it's got to be important that the record show that clearly.

Dr. Dimmick said the problem is we are not licensed surveyors – we’ve both done surveying but we are not licensed so this is prepared by people who do not have the credentials to put a licensed survey stamp on there.

Chairman de Jongh said so if it’s the intention of the applicant to accept the on the spot rendering of how the slope is going to look then that’s something we can accept – it’s more than what we have.

Chairman de Jongh said the biggest problem on this thing that we have is that everything we talk about has been verbal and unfortunately the Commission doesn’t operate on verbal commentary - it operated a record of complete i.e. with paper unfortunately that’s the world we live in and forced to abide by relative to regulations.

Chairman de Jongh said the other thing is to that are at least a \$60 state fee that has to be paid – we can’t waive that and a lot of man hours on the part of Dr. Dimmick and Mr. Norback but most importantly our staff person in trying to work with you in getting this taken care of since May of this year so it’s been the better part of six and a half months that we’ve been working on this thing so while I understand the financial constraints and he certainly feels for them in that sense – there are certain things we can and can’t waive but at the very least the state fee of \$60 has to be paid.

Chairman de Jongh said so all of these things really need to be taken care of before we go any further tonight – tonight is the absolute deadline on everything that has to happen – he said he knows this has been conveyed to you by numerous communications from staff and he’s hopeful we are prepared to address those things so we can help you move forward on this – if not as Dr. Dimmick pointed out we have no choice but to deny the application and turn it over to another process which is totally out of our hands.

Chairman de Jongh said he didn’t know how you can respond to that but he needs to make sure you’re aware of where we are in this – right now our hands are tied.

Mr. Rivers said we are here to agree to the renderings that Dr. Dimmick and Mr. Norback came out and did – we will use those in our application; and as far as the \$60 fee we will be able to pay that tonight.

Dr. Dimmick said we can’t waive the state fee but we still have the town fees and there was a request to waive that.

Ms. Simone said that is \$150 – that’s the standard flat fee and plus and inspection fee of \$50.

Dr. Dimmick said the state fees are \$60 and those can’t be waived.

Ms. Simone said she does have another draft for the Commission to consider. She explained these approvals that the Commission grants by state statutes have to be valid for at least two years so any action from the Commission as far as approval will allow for a two year time period to have the material removed to comply with the permit.

Ms. Simone explained whereas the corrective order the Commission can set any date.

Mr. Kurtz said he’d defer to the experts sitting up here but he’s looking a proposed corrective order and we can avoid all the legal problems if we just deny the application and approve the corrective order – the work has to be done sooner with the corrective order.

Mr. Kurtz said it’s his opinion that the work is going to proceed and get it done by the deadline and no sooner no matter what. He said it’s a little more stringent but it’s certainly going to be subject to inspection when it gets closer to the deadline time and he was wondering if it was possible to issue the corrective order and deny the application – it might make it easier for everybody including the applicant.

Chairman de Jongh asked from a legal standpoint can we do that.

Ms. Simone said the Commission is required to act at tonight’s meeting so there’s only two actions to take either approval or denial also if the Commission is satisfied with the information can approve or deny.

Dr. Dimmick said if we deny then having the corrective order is an automatic procedure for that sort (of thing).

Ms. Simone stated yes and there is a draft for a corrective order which calls for the removal of all of the fill and the wood chips.

Mr. McPhee asked if there was any benefit to the applicant withdrawing the application that way there’s no prejudice for the future.

Dr. Dimmick said the application was made pursuant to the original violation and therefore it's not like a free will application.

Ms. Simone said this was an opportunity to present to the Commission.

Dr. Dimmick said it was an opportunity to prevent having a corrective order if an application was properly processed by a certain date.

Chairman de Jongh said let me get a clarification not only for this Commission but also for the applicants –if we deny the application and we immediately go into the corrective order then that means the work needs to proceed immediately- what's the time frame on getting that work done.

Ms. Simone said the Commission can elect any time frame. She said she had out a date of July 1, 2015 – the Commission can decide on any date.

Mr. Brzozowski asked what guideline they follow – the specifications.

Dr. Dimmick said the corrective order would require all of the violated material be removed – he said you get back down to the original slope when you removal all of the construction material – whatever's down underneath it all.

Chairman de Jongh said so what we are looking at is a situation of whether or not we want to approve the application where some of the fill would be removed to the slope indicated by Dr. Dimmick and Mr. Norback or if it's the Commission's pleasure that we deny the application and immediately go to the corrective order – the corrective order basically compels you to take all of the stuff that's on that slope away – so those are the two choices for us.

Mr. Brzozowski asked if we expose ourselves by following those specifications that the two members of our Commission layout.

Dr. Dimmick stated no because in this particular case what we have is the applicant is willing to accept that as the line and he will certify that he tried to draw is what would be a stable slope – the present slope is over steepened and for material of that sort would bring it back to maximum slope that in his opinion would still be stable.

Mr. McPhee said he for one concurs with Mr. Kurtz with the denial and approval of the corrective order is probably the best route for a paper and trail and legality standpoint like we do for everybody else.

He stated he didn't feel their application was complete and there's nothing in writing so he feels we're forced to deny and then approve the corrective order.

Mr. Brzozowski said plus we are in the eleventh hour – six and a half months went by – he said in his opinion that our only action at this point.

Motion: To approve staff's wording for denial of the application.

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, site visitations, and after review of written information provided by the applicant on this application and during the course of public meetings, finds the following:

- 1. That inland wetlands and watercourses of the State of Connecticut and the Town of Cheshire are an indispensable and irreplaceable but fragile natural resource with which the citizens of the State have been endowed.**
- 2. That the wetlands and watercourses are an interrelated web of nature essential to an adequate supply of surface and underground water; to hydrological stability and control of flooding and erosion; to the recharging and purification of groundwater; and the existence of many forms of animal, aquatic and plant life.**
- 3. That the Cheshire Inland Wetlands and Watercourses Regulations, in effect since June 2, 1974, are enforced by the Cheshire Inland Wetlands and Watercourses Commission, per town ordinance.**
- 4. That the Cheshire Inland Wetlands and Watercourses Commission is aware of the potential public interest in aesthetics and access in and around watercourses, wetlands and upland review areas, and that the Cheshire Inland Wetlands and Watercourses Commission is charged by State law and local ordinance with assessing, monitoring and reviewing potential and real impacts to watercourses, wetlands and upland review areas from activities such as the filling of inland wetlands.**
- 5. That in the beginning of April 2014, Staff received a copy of a town of Cheshire fire incident report dated April 5, 2014.**

- 6. That on April 17, 2014 Staff observed the stockpile of fill at the rear of 64 Rita Avenue, viewed from town property on Byam Road. Photographs were taken of the fill, which was clearly visible in the landscape, without cover.**
- 7. That according to the town of Cheshire soils map, inland wetlands are located to the rear of the property, in the vicinity of the stockpile of construction debris.**
- 8. That on April 30, 2014 a Notice of Violation/Cease and Desist Order was issued for the stockpiling of construction debris and filling of an inland wetland at 64 Rita Avenue.**
- 9. That on May 6, 2014 a Show Cause hearing was opened and continued to June 3, 2014 the Commission. The property owner stated the material was at the current location when they purchased the property in 2012.**
- 10. That on June 3, 2014 two Commission members and Staff scheduled a field visit with the property owner scheduled for June 14, 2014. That Mr. Norback has professional construction experience and it was his observation that the construction material appeared to not be weathered, and was not likely in the current location for the time period stated by the property owner.**
- 11. That on June 14, 2014 Dr. Charles Dimmick and Mr. Thom Norback met Commission Staff and Ms. Riberio at 64 Rita Avenue. It was observed that woodchips had been placed on top of the fill, obscuring the visibility of the amount and location of fill.**
- 12. That on June 17, 2014 the Commission closed the Show Cause Hearing and determined that a violation does exist on the property and decided to not issue a Corrective Order, but instead afforded the applicant the opportunity to submit an application to propose the removal of all and/or some fill.**
- 13. That on June 18, 2014 Staff sent the property owner, Ms. Riberio, a certified letter apprising her of the determination of the Commission and informing her of the Commission's order to submit an application for the August 5, 2014 meeting.**
- 14. That Ms. Riberio submitted Appendix B and a narrative for the August 5, 2014 meeting. Ms. Riberio stated the purpose and description of the application proposal on Appendix B as,**

“Removal of fill and regrading of land by hand”. Ms. Riberio’s narrative further states; “...I propose to move the fill out by hand in a timely manner; working around our work schedules. Providing the town direct us into the amount of material that needs to be removed and the degree of the slope that the property needs to maintain”.

- 15. That the Commission informed the applicant that additional information is required, including a site plan or other topographic representation, details of the amount of fill to be removed and how the slope will be stabilized.**
- 16. That Dr. Charles Dimmick and Mr. Thom Norback volunteered their professional expertise and visited the site, with the property owner present, and conducted a rough survey and calculation of the amount of fill existing and percentage of slope.**
- 17. That at the October 7 meeting Ms. Riberio, the property owner, received a copy of a site map created by Dr. Dimmick based on that site work. The property owner was informed that she was not required to accept this site plan and had the Commission’s permission to submit other sourced site plan mapping. Ms. Riberio requested time to review the plan and she indicated she would contact Commission Staff regarding the mapping she would submit in support of her application.**
- 18. That on November 26, 2014 Ms. Riberio sent Staff an email granting acceptance of Dr. Dimmick’s map. No additional information was provided, as per the Commission’s request and as defined in the town of Cheshire Inland Wetlands and Watercourses Regulations and Ms. Riberio did not respond to Staff emails after that date.**
- 19. That the deposit of fill in an inland wetland was not conducted in concert, support or authority of the Cheshire Inland Wetlands and Watercourses Commission.**
- 20. That Section 13.5 of the Cheshire Inland Wetlands and Watercourses Regulations authorizes the Commission to issue a corrective order for the removal of fill deposited in an inland wetland.**

Therefore, the Cheshire Inland Wetland and Watercourses Commission denies CIWWC Permit Application #2014-027, the permit application of Suzy Riberio for filling in an inland wetland and upland

review area (no site plan submitted) for the following reasons and for other reasons clearly set forth in the record.

I. Environmental Impact

Pursuant to Section 10.2a of the Regulations, the Commission must consider the environmental impact of the proposed action on wetlands and watercourses.

Based on information provided to the Commission and through field observations, the Commission finds that construction material was directly deposited into a wetland area to the rear of 64 Rita Avenue, in the wetlands bounded by Byam Road and Rita Avenue.

Based on the above information and other factors clearly set forth in the record, the Commission concludes that the applicant has not provided an adequate explanation of the project, materials used, recording of pre and post site conditions or justification for the direct deposit of fill in a wetland and the potential effects of such both to the ecosystem. Based on information in the record, the Commission finds that the wetland provides high wetland functions. The Commission concludes that the conducted activities present an unnecessarily high risk of loss of inland wetland function.

II. Incomplete Application

Pursuant to Section 7.1 -Application For A Permit To Conduct Regulated Activities of the Regulations, the Commission must consider the application requirements.

The Commission finds that the application is incomplete. The required site plan, engineered reports and construction and time sequence were not submitted to the Commission. Without this vital information the Commission could not determine the exact location of the proposed activities, nor the quantity of fill to be removed and quantity of fill to remain, nor how the site would be stabilized and type of materials and equipment to be used and in what timeframe the proposed activity would take place.

III. Alternatives

Pursuant to Section 10.2b of the Regulations, the Commission must consider alternatives to the proposed action including a consideration of alternatives which might have a less detrimental effect and which could feasibly attain the basic objective of the

proposed activities. This consideration must include, but not be limited to, the alternative of requiring actions of a different nature, which would provide similar benefits with different environmental impacts.

Based on information in the record, the Commission finds that the applicant has not presented adequate alternatives to the application submitted to the Commission.

IV. Measures to Mitigate

Pursuant to Section 10.2g of the Regulations, the Commission must consider measures that would mitigate the impact of any aspect of the proposed activity. Such measures to include, but are not limited to, actions which would avoid direct or indirect impacts or lessen impacts to any wetlands and which could be feasibly carried out by the applicant and would protect the wetland's natural capacity to, at least, assimilate wastes, facilitate drainage, control pollution, and promote public health and safety on this property.

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

Chairman de Jongh said we have a corrective order that staff has prepared and because of the denial of the application the corrective order will go into effect.

Ms. Simone stated items one through twenty are findings and the corrective order itself is found on the last two pages and there are four items there.

Chairman de Jongh read the balance of the corrective order at the end of the second page.

Corrective Order:

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, site visitations, and after review of written information provided by the applicant on this application and during the course of public meetings, finds the following:

- 1. That inland wetlands and watercourses of the State of Connecticut and the Town of Cheshire are an indispensable and irreplaceable but fragile natural resource with which the citizens of the State have been endowed.**
- 2. That the wetlands and watercourses are an interrelated web of nature essential to an adequate supply of surface and underground water; to hydrological stability and control of flooding and erosion; to the recharging and purification of groundwater; and the existence of many forms of animal, aquatic and plant life.**
- 3. That the Cheshire Inland Wetlands and Watercourses Regulations, in effect since June 2, 1974, are enforced by the Cheshire Inland Wetlands and Watercourses Commission, per town ordinance.**
- 4. That the Cheshire Inland Wetlands and Watercourses Commission is aware of the potential public interest in aesthetics and access in and around watercourses, wetlands and upland review areas, and that the Cheshire Inland Wetlands and Watercourses Commission is charged by State law and local ordinance with assessing, monitoring and reviewing potential and real impacts to watercourses, wetlands and upland review areas from activities such as the filling of inland wetlands.**
- 5. That in the beginning of April 2014, Staff received a copy of a town of Cheshire fire incident report dated April 5, 2014.**
- 6. That on April 17, 2014 Staff observed the stockpile of fill at the rear of 64 Rita Avenue, viewed from town property on Byam Road. Photographs were taken of the fill, which was clearly visible in the landscape, without cover.**
- 7. That according to the town of Cheshire soils map, inland wetlands are located to the rear of the property, in the vicinity of the stockpile of construction debris.**
- 8. That on April 30, 2014 a Notice of Violation/Cease and Desist Order was issued for the stockpiling of construction debris and filling of an inland wetland at 64 Rita Avenue.**
- 9. That on May 6, 2014 a Show Cause hearing was opened and continued to June 3, 2014 the Commission. The property owner stated the material was at the current location when they purchased the property in 2012.**

- 10. That on June 3, 2014 two Commission members and Staff scheduled a field visit with the property owner scheduled for June 14, 2014. That Mr. Norback has professional construction experience and it was his observation that the construction material appeared to not be weathered, and was not likely in the current location for the time period stated by the property owner.**
- 11. That on June 14, 2014 Dr. Charles Dimmick and Mr. Thom Norback met Commission Staff and Ms. Riberio at 64 Rita Avenue. It was observed that woodchips had been placed on top of the fill, obscuring the visibility of the amount and location of fill.**
- 12. That on June 17, 2014 the Commission closed the Show Cause Hearing and determined that a violation does exist on the property and decided to not issue a Corrective Order, but instead afforded the applicant the opportunity to submit an application to propose the removal of all and/or some fill.**
- 13. That on June 18, 2014 Staff sent the property owner, Ms. Riberio, a certified letter apprising her of the determination of the Commission and informing her of the Commission's order to submit an application for the August 5, 2014 meeting.**
- 14. That Ms. Riberio submitted Appendix B and a narrative for the August 5, 2014 meeting. Ms. Riberio stated the purpose and description of the application proposal on Appendix B as, "Removal of fill and regrading of land by hand". Ms. Riberio's narrative further states; "...I propose to move the fill out by hand in a timely manner; working around our work schedules. Providing the town direct us into the amount of material that needs to be removed and the degree of the slope that the property needs to maintain".**
- 15. That the Commission informed the applicant that additional information is required, including a site plan or other topographic representation, details of the amount of fill to be removed and how the slope will be stabilized.**
- 16. That Dr. Charles Dimmick and Mr. Thom Norback volunteered their professional expertise and visited the site, with the property owner present, and conducted a rough survey and calculation of the amount of fill existing and percentage of slope.**
- 17. That at the October 7 meeting Ms. Riberio, the property owner, received a copy of a site map created by Dr. Dimmick based on**

that site work. The property owner was informed that she was not required to accept this site plan and had the Commission's permission to submit other sourced site plan mapping. Ms. Riberio requested time to review the plan and she indicated she would contact Commission Staff regarding the mapping she would submit in support of her application.

18. That on November 26, 2014 Ms. Riberio sent Staff an email granting acceptance of Dr. Dimmick's map. No additional information was provided, as per the Commission's request and as defined in the town of Cheshire Inland Wetlands and Watercourses Regulations and Ms. Riberio did not respond to Staff emails after that date.
19. That the deposit of fill in an inland wetland was not conducted in concert, support or authority of the Cheshire Inland Wetlands and Watercourses Commission.
20. That Section 13.5 of the Cheshire Inland Wetlands and Watercourses Regulations authorizes the Commission to issue a corrective order for the removal of fill deposited in an inland wetland.

Therefore, the Cheshire Inland Wetland and Watercourses Commission under jurisdiction prescribed in Section 13.5 of the Cheshire Inland Wetlands and Watercourses Commission issues the following Corrective Order:

1. The construction debris shall be removed from the wetlands and upland review area of 64 Rita Avenue by July 1, 2015. The removal shall take place from the yard area of 64 Rita Avenue reaching downslope to the stockpile of construction debris. Equipment and machinery shall not be located and/or used at the base of the slope to remove the construction debris.
2. The slope shall be restored to the condition prior to the fill, as evidenced in town topographic maps, similar to the grade of the slope existing at the neighboring property of 50 Rita Avenue, as observed on June 14, 2014.
3. The exposed soil shall be regraded and seeded with the *New England Erosion Control/Restoration Mix*, or another seed mix approved by Commission Staff, by July 1, 2015.

4. The property owner shall verify in writing to the Commission that items 1-3 listed above are complete, by July 1, 2015.

Dr. Dimmick said he should comment that sometime in the future we can revisit this if we do need to modify the time if we see progress is being made then it can be revisited.

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

Chairman de Jongh recommended at this point is that you work with staff to make sure work on this being moved forward and just keep us abreast of how things are going.

Mr. Rivers said so we are going to be pulling the stuff out by hand and say after the winter tax season comes and we rent a machine to pull it up with an excavator is he able to.

Dr. Dimmick said yes.

Chairman de Jongh said as long as it's done from the Rita Avenue side and not from the wetland side.

Mr. River said and as far as you are saying about the erosion control.

Dr. Dimmick said that is something staff can tell you how you can get a hold of it's a standard erosion control mix.

Mr. Rivers asked if he could use a contractor's grass mix would work.

Ms. Simone said that may not depending on the content of that seed mix – the erosion control seed mix is really made for that type of condition.

Dr. Dimmick said we are talking about the slope what you have on the part above the steep slope is something else – the steeper slope you have has to be stabilized and use something designed to hold. He said a regular contractor's mix will work up to a 4% slope and then after that it starts having problems.

Ms. Simone said she could give information on where to purchase that seed.

2.	Permit Application Fifteen North Plains Industrial Road, LLC 1430 Highland Avenue Site Plan	APP	2014-028
		DOR	9/02/14
		SW	9/06/14
		SW	9/10/14
		PH	10/07/14
		PH	10/21/14
		PH	11/06/14
		PH	11/18/14
		PH	12/02/14
MAD	1/06/15		
3.	Permit Application Chris Hillburn 80 Suffield Court Septic Replacement	APP	2014-030
		DOR	11/18/14
		MAD	1/20/15

Ms. Simone reported that Mr. Hillburn indicated he would not make it to tonight's meeting – he did supply us with a larger scale map.

Commission members reviewed the map.

Ms. Simone said in looking at this map it does indicate that the wetland soils shown are from a subdivision map from 1988.

Ms. Simone stated this map is not signed by Chesprocott. She explained Chesprocott did send a letter to the Commission in October indicating the septic system had failed and there needed to be an emergency repair.

Chairman de Jongh said he thinks this is the information we were waiting for and gives a better idea as to what has taken place.

Ms. Simone said the last she spoke to Mr. Hillburn they did not yet repair the septic system - they were preparing the site for the fill, so as he moves further along in that she'll go out to the site to verify the silt fence is in.

Dr. Dimmick said so looks like the new system will be entirely in fill.

Ms. Simone said it does appear that way.

Dr. Dimmick asked if there was a problem with the boundary between the fill and the underlying material serving as a channel. He asked if Chesprocott gave approval for this.

Ms. Simone stated they did not – there signature does not appear on these plans.

Dr. Dimmick stated he thinks they need to clarify with Chesprocott and particularly ask them about the possibility of the boundary and the fill between the surface servings as a conduit.

Dr. Dimmick stated there are ways to prevent it but there are known problems that sometimes that will happen particularly with that slope.

Ms. Simone said and Mr. Hillburn the applicant did indicate that he is prepared to come to the meeting on January 6 – he was not able to attend tonight.

Ms. Simone said she can convey this information to him (Mr. Hillburn).

Ms. Simone said they are in the beginning phases of preparing the site for an emergency repair – she said she clarified with him (Mr. Hillburn) as to what he meant by being underway and he said he was preparing the site to have this work done.

Chairman de Jongh said what he recommended is that we keep this open pending the receipt of some documents from Chesprocott saying they have approved this system and have some commentary regarding the questions Dr. Dimmick raised.

Dr. Dimmick said looking by the way there is some note on this so evidently they recognize part of this problem because it does say they are going to remove the top soil, contour – plow or scarify the surface prior to placing the select fill material – the compact scarify surface shall not be permitted so they recognize the same problem so as long as whoever is installing this is aware of that note so they can avoid that problem.

Chairman de Jongh asked if there was a way of making sure on that map that note is highlighted in a different color because that is potentially a big problem.

Ms. Simone said she could have further conversation with Chesprocott and ask them if they have been in communication with

the person or company who is doing this work and if they have some site specific guidelines.

Dr. Dimmick said he knows but he's not sure if it's Chesprocott but some health districts have their people there at that critical step to make sure it's done properly.

Ms. Simone said then she'll check on that.

Chairman de Jongh said so we'll keep this item open until our next meeting when we receive the information we need from Chesprocott.

XI. NEW BUSINESS

- 1. Request for Determination** **RFD 2014-031**
220 Realty, LLC
220 Realty Drive
Site Plan – Cemetery

Attorney Anthony Fazzone and Ryan McEvoy, PE from Milone and MacBroom were present on behalf of the applicant.

Attorney Fazzone addressed the Commission. He said as the agenda says it's an application for a cemetery at 220 Realty Drive.

Attorney Fazzone said not to bring up bad memories but you are familiar with the adjacent property and the access to this property goes through the Coplex Sporting Facility so if you recall on Coplex they had an entry on Route Ten but they also had an access down Realty Drive.

Attorney Fazzone explained since that time we've gotten easements with the people who foreclosed on the Coplex property and now own it so we have the ability to widen and improve the access way from the improved Realty Drive from the area where some of you might remember was the old tennis center and before that the Pithan Center. He said in fact Fazzone and Zima bought the properties from the Pithan Center.

Attorney Fazzone explained the property does contain wetlands and we'll get into a review of that but the first thing is a request for determination - there's no activity within the wetland nor is there any activity within the 50' upland review area.

Attorney Fazzone said that's why we've filed both the request for determination and an application if the Commission sees fit to deny

the request for determination and with that Ryan McEvoy of Milone and MacBroom will go over exactly what he activity is on the site is.

Ryan McEvoy, licensed professional engineer in the State of Connecticut from Milone and MacBroom with offices at 99 Realty Drive addressed the Commission.

Mr. McEvoy explained he wanted to walk the Commission through the property and expand on some of the things Attorney Fazzone mentioned and discuss the conditions of the site and the ultimate proposed conditions of the property.

Mr. McEvoy said on the left side of the sheet is Route 10 – Realty Drive is on the lower part of the sheet with north being up on this map. He explained Realty Park is an industrial type business park area – you are probably familiar with Barker Animation which is the first building on the right and the rear most building is occupied by Milone and MacBroom Incorporated.

Mr. McEvoy explained around the center part of Realty Drive is a driveway that goes through the center part that Attorney Fazzone mentioned which is the hockey center (he believed) and is directed to an existing building that is currently occupied by a concrete supplier and also a storage company.

Mr. McEvoy stated there is also a small building located on the subject property – he said this property is part of a condominium association and is highlighted in yellow on this plan and is about thirty two acres in size.

Mr. McEvoy said the dominate wetland feature is Honey Pot Brook which is in blue and is on the east side of the property and there is a fairly extensive area of wetlands associated with the brook and a flood plain associated with the brook; on the east of the property is a residential neighborhood on Braemer Drive; to the north is generally vacant land; there is a residence interestingly at 1240 Highland Avenue that has access rights through this property – their house is some 3,000' from Route 10 but it still a Highland Avenue parcel.

Mr. McEvoy said the northern most part of the site was historically used for earth excavation operations and generally remains in a semi-vegetative state – there's a lot of exposed earth – there's a lot of exposed material – there's some shrubby vegetation that's started to take hold but in general this area of the property is essentially heavily disturbed.

Mr. McEvoy said the eastern portion along the brook and the associated wetland in the upland review area is generally undisturbed.

Mr. McEvoy explained the topography of the site has its been manipulated throughout the years is generally mildly sloping in the area that was excavated and the remainder of the property is actually fairly steep having a high point right near the existing building at elevation 190 down the river which is roughly elevation 120 .

Mr. McEvoy said he had a second rendering of the existing conditions which is a little bit more focused on the area where we are proposing activities associated with the cemetery – he said you can see perhaps a little clearer the area on the aerial map that it’s generally un-vegetated or lightly vegetated.

Mr. McEvoy said what we propose for this application is a cemetery and the cemetery will continue to take access through the existing driveway that serves the business to the west.

Mr. McEvoy said they are going to widen it in a few areas – it’s just between 24’ and he believes 24’ is reasonable road width given the fact that we will have potentially more people unfamiliar with the roadway going up and down it so we are proposing a small amount of road widening on the access drive – they are going to try to keep this office building in place which will be used primarily for maintenance equipment, facilities and some office space for the cemetery itself.

Mr. McEvoy said they are going to have a small parking lot in an area adjacent to building.

Mr. McEvoy said in terms of the cemetery itself we are going to extend a new roadway terminating in a cul-de-sac turn around that is similar in size to a town standard cul-de-sac with continued access maintained off the property to the residence at 1240 Highland Avenue.

Mr. McEvoy said to the north of the roadway is where the burial sites will be located.

Mr. McEvoy explained based on the layout they have 2,150 potential burial sites.

Mr. McEvoy said the majority of the access between the different will be served by gravel driveways with one paved roadway sort of centrally located through the burial area.

Mr. McEvoy stated we are not proposing to disturb any areas of this site - at least on the northern portion that are currently not disturbed.

Mr. McEvoy stated they are doing some clearing associated with the parking area and some of the drainage outfall from the parking area in the southern portion of the site which is some several hundred feet from the wetland boundary itself and the upland review area but the majority of the site work associated with this will be in areas that are more or less exposed earth areas and shrubby vegetation.

Mr. McEvoy said we are going to be collecting runoff from this site as it heads down towards Honey Pot Brook and directed into a water quality basin – the onsite soils are sand and gravel primarily which are simple for infiltration. He said they do not need to provide formal infiltration because as a result of improving ground cover from an exposed earth condition to a primarily grassed condition with the exception of our main driveway – we are actually reducing runoff from the site just by virtue of what we are proposing we are however going to pick up runoff from the site directed to an area where it can be controlled and treated and infiltrated to a certain degree before its released down slopes towards the wetlands.

Dr. Dimmick said he noticed they had a number of test pits on the site - they all showed sand and gravel he gathered to the bottom.

Mr. McEvoy explained the primary reason for the test pits as you can imagine – we don't want to have a cemetery where we have shallow ledge.

Dr. Dimmick said he didn't think there was a problem there – he said he thinks that sand and gravel goes down another 20' at least. He asked if Mr. McEvoy ran a perk test just out of curiosity.

Mr. McEvoy stated no.

Dr. Dimmick said he suspected you'll find it less than five minutes per inch through most of it for that site which means with any luck your basins are going to be dry most of the time and you are not going to have any runoff – he said he sees you have an emergency berm along one side that will be heavily grassed for that one event if there is a problem.

Mr. McEvoy said as they get to larger storm events 10, 25 or 100 year storm events we will expect some over topping – again we are still reducing by virtue of just simply bring the top soil and planting grass by reducing the net volume and rate of runoff from the site but you still want to control the runoff from point discharges.

Dr. Dimmick said he expected it's going to go out the bottom of the basin almost as fast as it goes in there.

Mr. McEvoy said that's a possibility in the event there is an overtopping essentially the level berm can evenly distribute the water.

Dr. Dimmick said Mr. Chairman I believe one of the things we have is a request for determination – he said he doesn't see a problem with it and any concern to the Wetland Commission.

Motion: To declare our determination is this proposed activity does not need an application from this Commission.

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

2.	Permit Application	APP	2014-031
	220 Realty, LLC	DOR	12/02/14
	220 Realty Drive		
	Site Plan – Cemetery	MAD	2/05/15

The applicant requested the withdrawal of the application.

XII. ADJOURNMENT

The regular meeting was adjourned at 8:35 p.m. by the consensus of Commission members present.

Respectfully submitted:

Carla Mills
Recording Secretary
Cheshire Inland Wetland and
Watercourse Commission