

**CHESHIRE INLAND WETLANDS AND WATERCOURSES COMMISSION  
PUBLIC HEARING  
TUESDAY, MARCH 17, 2015  
TOWN HALL 84 SOUTH MAIN STREET  
COUNCIL CHAMBERS AT 7:30 P.M.**

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

**Members Absent: Will McPhee and Dave Brzozowski.**

**Staff: Suzanne Simone.**

**I. CALL TO ORDER**

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

**II. PLEDGE OF ALLEGIANCE**

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

**III. ROLL CALL**

**Ms. Dunne called the roll.**

**Members in attendance were Robert de Jongh, Kerrie Dunne, Charles Dimmick, Thom Norback and Earl Kurtz.**

**IV. DETERMINATION OF QUORUM**

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

**V. BUSINESS**

**Ms. Dunne called the legal notice to open the public hearing on the following item:**

**The continuation of the permit application of Apex Developers LLC, care of Anthony J Fazzone 2 Towne Center, Cheshire, CT 06410 for a resubdivision property located on Jarvis Street Cheshire, CT 06410 as generally shown on assessors map number 26 lot number 19 in an R-40 zone. The application is on file and available for public inspection in the Cheshire Planning Department, 84 South Main Street, Cheshire, CT 06410.**

1.	Permit Application	APP	2015-001
	Apex Developers, LLC	DOR	01/20/15
	Jarvis Street	PH	02/17/15
			POSTPONED
		PH	03/03/15
		PH	03/17/15
	Resubdivision	MAD	04/21/15

Chairman de Jongh explained to those present how the public hearing would take place – allowing the applicant to make their presentation then opening the hearing up for questions and comments from Commission members, staff and members of the public.

Attorney Anthony Fazzone was present. Ryan McEvoy, PE and Bill Root, Soil Scientist of Milone and MacBroom were also present on behalf of the applicant.

Attorney Fazzone addressed the Commission.

Attorney Fazzone said as stated in the call of the meeting this is a continuation of a public hearing from March 3, 2015. He explained since that time there's have been planned revisions mostly based on comments and questions from the March 3 public hearing; those changes will be described here in a moment by Ryan McEvoy.

Attorney Fazzone said Ryan will also show the layout of a conventional subdivision superimposed over the proposed subdivision plan and the conventional subdivision - one of the alternatives that the applicant considered on looking on how to layout this proposal.

Attorney Fazzone said and then after Ryan speaks Bill Root the soil scientist who has spoken earlier will go over his supplemental report which also addresses comments from the March 3 meeting.

Ryan McEvoy, PE of Milone and MacBroom addressed the Commission.

Mr. McEvoy addressed the Commission.

Mr. McEvoy said subsequent to the last hearing we prepared a revised set of plans that were submitted to the Commission last

week and the revisions to the plan were based on some the comments we received from the public and from the Commission. Mr. McEvoy said we did not receive any comments from staff and engineering- in fact the last memo received from them stated they did not have any comments on the application but we did receive some feedback from the public and the Commission.

Mr. McEvoy said the primary revision that he'd like to discuss is the revision to the grading behind some of the lots on the east side of the proposed road.

Mr. McEvoy explained they may recall previously we had stated and testified that there was a 3:1 slope behind those lots with a reversed bench in certain areas so that there's no more grade change in 14' of earth before you have a reverse bench.

Mr. McEvoy the grading would essentially go up to the property line. Mr. McEvoy said we've revised that grading – we've tightened it up to a 2:1 slope which while is a slightly steeper slope it's still an acceptable slope as long as it provides certain protection measures – mainly erosion control blankets which allow for the grass to more easily take hold to prevent erosion during the construction cycle. Mr. McEvoy said we still incorporated the reverse bench slopes as we previously had but the result of cutting up the grading does a couple of different things.

Mr. McEvoy said the first item is that it does provide a vegetative buffer between – what we've proposed is a homeowner's association land and the adjacent properties on Maplehurst.

Mr. McEvoy said and also as a result of cutting up the grading there is a reduction in the volume of export that is proposed to leave the site.

Mr. McEvoy explained previously had a 35,000 CY of export of material and now we're reduced that to 25,000 CY by tightening up that slope and reducing the limit of clearing some 15' to the west.

Mr. McEvoy said additionally we received some feedback from staff that additional wetland markers were preferable along the lots where there is clearing and in the open space where there is clearing – adjacent to the wetlands or the proximity to the wetlands on the west side of the site which we've added all along the lots on the west side of the property.

Mr. McEvoy said just for the benefit of some of the Commission members who were not at the last meeting – he'd reiterate the purpose of the application – it is to have approximately 34,000 SF of total regulated activity within the upland review area.

Mr. McEvoy said there was a lot of discussion about clearing in general but the crux of the matter – the regulated activities we are proposing are three very small areas – the first being the discharge from our detention basin which is located upslope of the wetlands but within 50' of the wetlands which is a disturbance of approximately 1,700 SF; a secondary grading impact within the upland review behind lot two on the west side of the road and that's about 1,100 SF and lastly a relocated storm discharge pipe that exists in front of 986 Jarvis Street which is approximately 660SF all within the upland review area.

Mr. McEvoy stated there are no direct wetland impacts associated with this development.

Mr. McEvoy stated he just wanted to make sure that its clears that's the regulated activities we are seeking approval for.

Mr. McEvoy stated the remainder of the clearing associated with the development and the construction of all the lots are outside of the upland review area and ultimately it's just those three small areas that we do propose any activity within.

Mr. McEvoy said one of the comments that we received from the public and from the Commission was what the impact of a conventional subdivision in this zone were.

Mr. McEvoy said they submitted with the revised plans this particular graphic (reduced size copies were handed out to Commission members) and the result of a conventional development of this property – it does a couple things - one it increases the lot size from minimum of about 12,000 SF to a 40,000 SF minimum and the lot count we can achieve approximately nine proposed lots.

Mr. McEvoy explained the relativity of a conventional subdivision is that there are significantly increased zoning criteria for setbacks and for lot width.

Mr. McEvoy said so in this case what we show in red is that for the most part the conventional subdivision will result in houses being both further to the west of the proposed road and further to the east of the proposed road – meaning they will be slightly closer to the

houses on Maplehurst and they will be slightly closer to the wetlands because of the increased minimum building setback.

Mr. McEvoy said additionally, at the rear the cul-de-sac because of the required shape or minimum lot width of the properties the houses will be even further from where we propose them with the current plan that we have.

Mr. McEvoy stated the reality of a conventional subdivision like this – based on the plans you’ve seen – that it’s much more typical and much more desirable for the homeowners to have side load garages and the results of a side load garage is that you have more surface then you would have with a front load garage and the tight nature of our proposed development wouldn’t really be the opportunity for that side load configuration so all the proposed houses that we show here include a 12’ driveway with a side load garage configuration.

Mr. McEvoy said the result of this conventional development even through it does have fewer lots – fewer house – in fact it has a very similar if not a little bit more impervious surface then the more condensed smaller lots – tighter setbacks and ultimately will end up being smaller houses then you would likely see in a conventional development.

Mr. McEvoy said so we wanted to illustrate that to you and hopefully this plan does that – again it’s with respect to what we are proposing – we are not proposing a conventional – we wanted to demonstrate to the Commission the difference between what could happen if it were a conventional style development as opposed to the cluster development we’ve proposed.

Mr. McEvoy said at this point unless there are any questions about the revisions to the plan he’d like to hand it over to Mr. Root to discuss some of the supplemental information that we submitted along with the revised plans.

Mr. Root, certified soil scientist and wetland ecologist with Milone and MacBroom addressed the Commission.

Mr. Root addressed the Commission.

Mr. Root explained he wanted to follow up on some of the questions that came out of last public hearing.

Mr. Root said he and Ryan prepared the short letter report to formalize some of those responses (to questions raised) and he just

wanted to go through in brief to address the three topics that he addressed in the letter.

Mr. Root said the first to had to do with the vernal pool habitat – he said maybe he wasn't as clear as he shouldn't been last time about vernal pool habitat.

Mr. Root said he was talking primarily about the likelihood of vernal pool habitat being within the flagged wetland which is in the riparian floodplain of the river similar to what occurs north of Orleton Court. He said that was the opinion that he stated - that it's not particularly likely that when there are vernal pools in the wetlands on this portion of the site which is dissimilar to what you find north of Orleton Court.

Mr. Root said if you look at the aerial photographs from the town mapping, you'll see that north and Orleton there's a lot of pit mount topography; and on the GIS website there are a lot of ponds and pools which are also very obvious; if you look at the topo which is not the case on the subject property and as we talked about last time in active floodplain like this one doesn't particularly support the vernal pool utilization because the species tend to get rinsed out to often so they find that the breeding in there doesn't turn out to be 10, 20, 50, 100, 1000 years – to be very productive so they generally moved to areas that are more suitable and effective being able to complete the breeding cycle.

Mr. Root said this is what we found when we reviewed studies of at the interchange down to where along the Ten Mile River - there's also a very active flood plain. He summarized the condition along the Ten Mile floodplain area; he said they never found any utilization by vernal pool species because the floodplain is so active that even though there were pools there today – they are flooded every spring and the species weren't successful in breeding there.

Mr. Root said what he didn't state clearly enough was that within the development zone - within the uplands -there were not any vernal pools at all and if there were he would have flagged them as wetlands and they would have shown up as this pocket wetlands does somewhere on the site.

Mr. Root explained before he went out to the site he looked at the topography – he explored the area and some of the areas looked like pools because of the topography; not on any of the aerial photographs did they see any water.

Mr. Root talked about the pits in the area – he said because the soils there are so droughty - sand and gravel and that it was just a straight down so even if water might slow down into an area like that - it doesn't stay long enough to form a pool or to form wetland soils either.

Mr. Root said in summary there are no wetlands or vernal pools within the development zone. He stated it was unlikely there were vernal pools within the wetlands on the property.

Dr. Dimmick said there was some concern that between the wetland line in your northern storm or drainage basin. He said he vaguely remembered there were some depressed areas in there at one time – he asked did you specifically search that area.

Mr. Root said it is outside the wetlands but it is in the lower area not too far from where the northern detention basin plans to be.

Mr. Root said he certainly walked the whole site –all the property. He said the soils are very droudy up in there to – they are silter down in the southern portion of the site; once you get up into the higher areas it is really pretty sandy there; he stated he didn't see any wetlands or vernal pools.

Dr. Dimmick asked if all of the areas outside the wetlands areas that had depressions were checked.

Mr. Root stated absolutely yes.

Dr. Dimmick stated that clarifies that and that it was not clear from what information he gave us (the Commission) earlier.

Mr. Root said the second topic had to do with the species and turtles on the site.

Mr. Root said we talked about the Natural Diversity Database and as he said last time we filed and inquired with them. He said we know very well there are State species of special concerns – Wood Turtle and Box Turtle are in this corridor and so the response we got from DEEP was fairly typical for proposed development in this corridor which is a set of recommendations to protect turtles from the impact from the site development.

Mr. Root stated nothing about excluding development – nothing about any restrictions on clearing or any kind of development at all except that careful sweeps should be made prior to clearing and

prior to construction and then sometimes during construction to make sure that any turtles that might get trapped one side of the silt fence and if on the development side of the silt fence are found that they be placed on the safe side of the silt fence which would be to toward the wetland in this case.

Dr. Dimmick said again so we can get a clarification in the different habitat of Wood Turtle vs. Box Turtle - is it his understanding that Wood Turtles are dependent on wetland areas during part of their life cycle and the Box Turtles are not – Is that the case.

Mr. Root stated that is correct – Wood Turtles are very aquatic species - they spend almost of their entire life in and along the river corridor. He said they might walk into upland areas – they might wander into open fields to looking for berries and things like that but most in their life is spent in a riparian flood zone like this one – and we have located them in the river and other sites on here; he explained they spend the winter in tree roots.

Mr. Root said Box Turtle which is also a special concern but is not endangered or threatened is a terrestrial turtle – the may come down into wetland areas as all animals do for water, shelter, food and things like that but their existence especially as adults is in an upland habitat and generally they are found along power line corridors, old fields and field edges and are looking for berries, worms, grubs and things like that – and less on a site like this which is kind of dry upland forested habitat without a lot and understory.

Mr. Root said our concern along this corridor where there is a lot of sand and gravel area is that turtles use those areas to breed and we have found areas where turtles do breed up and down the corridor; but the site faces west and is fairly steep and is wooded and doesn't appear to be a very good site for any breeding by either of those species of turtles.

Mr. Root said so we don't think there is any breeding here; Wood Turtles are likely to be in and along the corridor down to the river which would be protected in the open space area and Box Turtles - we don't think to be more common or present on the site; we'll follow the protective measures from DEEP specifies and requires and we have included them on the site plans and will be carried out during site development.

Dr. Dimmick said the reason he is asking this is that it's a public hearing and what is said is recorded and there is a jurisdictional thing in terms of what we have jurisdiction over and what we don't.

He explained according to various court cases that wild life which is partly dependent on wetlands we have jurisdiction over and that wildlife which is not dependent on wetlands the courts had decided we don't have jurisdiction over. He said he want to clarify this from what our area of concern was and where we can do something and where we can't.

Mr. Root stated he understood and that and the difference between the habitat life style of those two species.

Mr. Root stated the third item had to do with the site hydrology – land clearing and transpiration. He said as you all know sitting on a land use board, any site development results in changes in runoff patterns – transpiration patterns – infiltration patterns – all of those changes result when there is any site development whether it's a ball field or a new school site, apartment buildings, residential housing - that is why there are development manuals in this case the DEEP has a stormwater management manual and there are basic engineering programs like TR20 and TR55 which mandate and explain and then lead to design changes for home mitigating increases in runoff that are often the result of development patterns so on a site like this where there is tree clearing.

Mr. Root said there are going to be some impervious surface - are going to be lawns – there are going to be changes in runoff patterns on the site – there are going to be changes in infiltration patterns in most places on the site and this is why when Ryan gets up and hands in his hydrologic calculations and his engineering report – a lot of it is spent on explaining how those changes are going to be countered to make sure there are not off site impacts – in this case to wetlands but in other cases other areas of uplands as well.

Mr. Root said the swales that are proposed, the infiltration basins – the detention basins – all those measures are designed to accommodate – to trap – to treat the increases in runoff that are unavoidable for any development where there's going to be changes in vegetation patterns.

Mr. Root said what you need to understand and emphasize is that runoff which is directed towards these infiltration basin and detained there will have the opportunity to what it did in many parts of the site prior to clearing which is to be captured, treated and infiltrated so these detention basins are designed to mimic the treatment that runoff and precipitation receives from the natural setting before clearing stakes place.

Mr. Root explained that the detention basins are designed to mimic the treatment that runoff and participation receives from the nature setting before clearing take place.

Mr. Root said the other thing they need to think about is the Ten Mile River is a fairly large watershed and Ryan has talked about where this site fits relative to the rest of the watershed – this clearing amount is about seven acres although on a map like this that just shows this one parcel may seem to be significant when looked at from a watershed basis –it really is not.

Mr. Root said the conclusions that he included in his original report was that the type of changes that are proposed here – the clearing – the construction of houses – detention basins are set far enough back from the wetlands and are designed appropriately for the site so he did not think there's going to be any significant negative impact on the wetlands and especially not to the river which is a primary resource on the site – the river is quite a distance away from the wetland boundary in this case.

Mr. Root stated these were the three topics that he wanted to cover.

Chairman de Jongh said he had a question relative to the clearing – as he understands it the revised plan that's being shown tonight maintains a tree buffer to the east – and the concern about the removal of the trees is somewhat moot in this proposal.

Mr. McEvoy said yes – we revised the grade as such that we provided for an area of non-disturbance from the property line so that's any vegetation that exists along the property line will be maintained.

Chairman de Jongh said you used the term vegetative buffer and he just wanted to clarify we are talking about maintaining the trees and to some degree that are presently on the site.

Mr. McEvoy said it's corridor of 15' to 20' wide that will be undisturbed and all that falls on this property – many of the properties on the adjacent development on both Orleton and Maplehurst have essentially cleared right up to the property line or very close to it and we've going to provide at least 15' to 20' where we're not going to be excavating or clearing.

Mr. McEvoy said that he wanted to add one more item to the memo they prepared it was something requested by Dr. Dimmick at the last meeting that he provide in writing some of the items he testified to in

a prior meeting with respect to the detention basin and how it relates to the peak time of the Ten Mile River – he said in their packet they do have a hydrograph that he pointed out that demonstrates the relationship between the peak flows from the opposite side of the river under existing conditions and the peak flows from the opposite side from proposed conditions and there is a slight delay in the peak flows exiting the site as result of the detention but the reality is by the time you reach the peak flow of the Ten Mile River which is two hours after the completion of the storm event the flows under existing and proposed conditions from the watershed is essentially the same so by the time the flood comes from the Ten Mile River the detention basin has done its primary detaining and therefor there's no impact on the maximum flow on the river.

Dr. Dimmick said you may notice that you can see water where his concern is because if the detention basins were to withhold the water back a half hour more than they do they it would coincide with the peak flow at that site; so that's why he raised the original question knowing that far upstream it does peak rather quickly under natural conditions now.

Mr. McEvoy said he did review this information with the town engineer and it's their contention and still their contention that detention is appropriate on this property.

Ms. Simone asked Ryan if he had an estimate of the change in the clearing from what was originally proposed to what it proposed now.

Mr. McEvoy said it's was previously seven and a half acres of clearly wooded areas – he said he didn't recalculate but its slightly less than that – he said it was in the range of seven and a quarter acres somewhere in that range but he didn't recomputed the total coverage in fact our drainage calculations still the previous limits as a conservative value.

Ms. Simone said as far as the width of the vegetative buffer.

Mr. McEvoy said its approximately 15' wide at a minimum 20' wide - in the original plans he submitted it was right up to the property line.

Attorney Fazzone said he did have more presentation.

Attorney Fazzone said in additional to the conventional subdivision and the regulation under which this application regulation of the Planning and Zoning regulation but this application falls under section 44 of the zoning regulations – in addition to those two

considerations we also considered and looked at the cluster subdivision for this area and that cluster subdivision would have been pursuant to section 42 of the regulations and we determined that the cluster subdivision was not a possible alternative to either the conventional or to the planned residential subdivision development.

Attorney Fazzino explained the reason for that is that the cluster subdivisions require that there be a minimum of 20 lots – 20 home building sites in any cluster subdivision and when you factor in the wetlands and the flood plain and the steep slopes here you are not able to put in the minimum of 20 lots as required.

Attorney Fazzino said if a cluster subdivision were to be allowed here – in an R-40 zone which this property is located in – the minimum lot size is 25000 SF – under the regulation that we are going under the minimum lot size – you can go down to 10,000 SF so most of these lots he thought were around 12,000 to 15,000 SF – significantly less than what they would be in a cluster subdivision and more significantly less than they would be in a conventional subdivision which requires a minimum of 40,000 SF.

Attorney Fazzino said a question was raised about low impact development – we would submit to this Commission that the proposal that you have before you would be the least impact or any of the three types of subdivisions that are allowed by the Cheshire Zoning regulations.

Attorney Fazzino stated that in part is due to the fact that not only to the lot size but under all of the Cheshire subdivision regulations where you are creating residential lots – under all of those regulations the road width and paving are exactly the same and the sidewalk requirements are exactly the same; so that's where you get your major impact and also as Ryan indicated that you are going to go down to a conventional subdivision typically you would find that the houses are larger than they would be with a proposed subdivision and again as Ryan indicated the conventional subdivision might have slightly more impervious surface than what we are proposing.

Attorney Fazzino stated he indicated at the beginning of the last public hearing that this particular zoning regulation which is the same as the zoning regulation that the Orleton Drive and Dundee Drive subdivision was created under – this creates and in fact the regulation he believed was initiated for the reason that it creates the best opportunity for preservation of open space and in this case

presents the best opportunity for preservation of the wetlands which are adjacent to the river and adjacent to other open space which is owned by the town and or the Cheshire Land Trust.

Attorney Fazzone stated again he would reiterate in his conclusion that there is no actual activity within the wetlands area or the river – all the proposed activity is in the upland review area.

Attorney Fazzone said there is one thing we need to correct from the prior hearing – he said he believed we submitted that the detention basins would maintained by the Town of Cheshire – and the Town of Cheshire somewhat recently adopted a policy that they will not maintain those basins so you'll see that we've created an area around those basins which will be open space and that will become the property of the homeowners association and established for this subdivision.

Attorney Fazzone said he understands the chairman's and other members concerns about homeowners associations – there has been an evolution dealing with the creation and requirements of homeowners associations; probably the best example is refining and tightening up homeowners associations with respect to rear lot access ways and that same evolution is taking place trying to tighten up the requirements of homeowners associations – giving the town the right to compel them to maintain the basins – and this is all done through a more thorough and compressive document that creates the homeowners association.

Attorney Fazzone said we did that for the detention basins – on a subdivision off of Plank Road – again the town engineering department required that they don't want to take the responsibility of maintaining them and putting those requirements into a homeowners association; and that's the most recent one that he remembered that that was required.

Mr. Norback asked about the documents in which he (Attorney Fazzone) was speaking about – does that make a provision for a schedule of inspections and therefor maintain – is that layout.

Attorney Fazzone said that he believed you've done that through your approval – or Planning and Zoning has done that through there approvals how often they are maintained and that then in incorporated into those documents that they have to be maintained in accordance with the plan that would be proposed and or required.

Mr. Norback asked if there was a professional that would be doing the inspections – is there somebody who actually has some expertise or is it just off the cuff.

Mr. McEvoy said in terms of maintained of detention basin there's really a very small amount of activity that has to occur on a typical basis and that's mainly going in and making sure sediment hasn't accumulated more than a foot in depth in the basin – one thing you may notice – they have incorporated a sediment forebay into the basin with a grassed vegetated buffer between the larger part of the basin and the initial part of the storm drain enters into the basin itself

Mr. McEvoy said that area will have more accumulation and sediment then the rest of the basin and once it reaches about a foot in depth it has to be excavated – other than that you are basically looking to make sure there are no trees that are growing on the berms and that its mowed somewhat frequently and maybe on a quarterly or annual basin depending on how the grass grows and maintenance of the sediment chamber he believed is something that the town has specifically requested an easement over so it's sort of joint responsibility of looking at the sediment chamber which needs to be vacuumed out annually depending on the amount of sediment and the sediment load that gets into the structure which is really dependent on road sand getting in there during the winter more than anything else.

Mr. McEvoy said it's a very basic amount of inspection occasionally – there will need to be some vegetation removal – occasionally some sedimentation removal and making sure the outlet control structure is not obstructed.

Mr. Norback said so that is not in completion with the statement that the town doesn't want to be responsible - then if sometimes it needs to be vacuumed out and it's a corporative effort and the town didn't want to be part of it how is that happening.

Mr. McEvoy said the town takes a direct over the discharge of all the storm water coming off the road so they require that you provide a 20' easement to the point where the stormwater enters the basin which includes the sediment chamber itself.

Mr. McEvoy said in terms of who actually pays for the removal – who actually does the removal – that he honestly doesn't know the answer.

Dr. Dimmick said the statement that they have been getting from the town engineer is that the town engineer not only doesn't want responsibility of doing it they don't want responsibility of enforcing that somebody else does it and his real problem is how his version of a homeowners association was there were no teeth to force a homeowners association to continue to function properly – that the homeowners association could fall into abeyance and there is no one with the authority to force the homeowners association to do what they are supposed to do – but maybe he was wrong.

Attorney Fazzone said he was not that certain that the town engineering department doesn't inspect them because ultimately it's the stormwater drainage coming off the town road that ends up in these.

Attorney Fazzone said any member of the homeowner association would have the right to enforce that it be done – that the maintenance be done – the bottom line is that this is the only vehicle that's available to handle the management of these basins.

Chairman de Jongh for the record and Commission members have a copy of these and perhaps the applicant has a copy as well – this is a communication from Walter Gancarz dated March 17, 2015 and it's talking about the homeowners associations – it says 'public works staff including Water Pollution Control Department staff currently does not maintain the inspection and maintenance of either of these improvements, with the exception of perhaps a dozen storm water gross particle control structures located on town property (usually in roadways), the town has historically not removed sediment from private storm water control systems. In addition, it is important to note, that if a homeowners association does not stay active in a legal or physical sense, even in an emergency situation, if maintenance was performed by town staff, it is unclear who would be billed for that work, and be responsible for payment of those costs.'

Chairman de Jongh said he thinks the concerns that were raised at the meeting about the effectiveness of the homeowners association will all good intentions – they are only as good as the people who are members of that homeowners association – in the beginning that might be a strong association but as the properties begin to turn over the attitudes of those people who reside in these homes may not be as intense.

Attorney Fazzone said he thought you could build into the homeowners association the same type of rights that a condominium

association has and that is basically lien rights against the property if the association dues are not paid.

Attorney Fazzone said they are legally able to do that – it creates a common interest ownership.

Mr. Norback asked if that was done through the deeding of each parcel.

Attorney Fazzone said through the deeding and also filing of the actual conveyance of the common area and also done through the conveyance and in the deeds to each homeowner.

Mr. Norback said the Commission got an email stating what Mr. de Jongh just brought up – and it just seemed to him that it would be prudent at this point to have some kind of legal document to protect all homeowners from getting in a jam with the maintenance and inspection of the ponds.

Attorney Fazzone said it's enforced basically the same way that maintenance of common area in a condominium would be enforced – it would be written that way.

Chairman de Jongh opened the floor for questions from the audience.

Paul Gleason of 49 Maplehurst Court addressed the Commission.

Mr. Gleason said he wanted to recognize and thank them very much for allowing the neighbors to this development to be able to be a part of this process – he said he appreciated the time and thought they put into this and whatever decision is made it's in the best interest in the community.

Mr. Gleason said he heard about the increase buffer zone on the trees – between 15' and 20' – he said he was curious about the drain onto Orleton – he said he was curious if there's going to be runoff from these properties that drain into the backyards of these communities and specifically into the sewer system off Orleton – is that accounted for and is that described at all.

Mr. Gleason said the transpiration – the hydrology – he said transpiration robs the soils of its moisture – the transportation robs the soil of its moisture and the transpiration allows the tree to breath and it may explain why he can't grow grass in his yard because of the trees that just do severe impact on his grass.

Mr. Gleason said he was curious – he wrote a letter (dated March 16, 2015) and included photographs that there are a significant amount of trees in the area – he would call it a forest – the erosion blanket with regular grass seed – he said it would seem to him that the loss of those trees and those acres especially in some of the lowlands that are at the foot of the property that it will be built on just would present such an enormous impact on the drain off and the storm waters, etc. that he just can't figure it out so he is hoping that the considerations that the Commission is making on the hydrology – he said he was hopeful it will be considered how the water will collect in these 10, 20, 50 year storms that are bound to occur.

Mr. Gleason said the other question he had on the development – the effectiveness of the homeowners association. He said everyone starts with the best of intentions – it was mentioned liens can be put on properties – but the moral dilemma of the homeowners association to pursue liens on property with people that they are in a tight knit community – that's hard one.

Mr. Gleason spoke about issues with homeowners associations and the issue of paying and not paying dues so to expect there to be responsibility – that might not happen in just a tight knot community and to expect people to pay their dues.

Mr. McEvoy said he'd address the engineering comments that Mr. Gleason had.

Mr. McEvoy said first about the drainage runoff that is directed to Orleton Court to the north – there is a fairly large watershed area under existing conditions – a fairly significant portion of the northeast most corner of the site does drain towards this area and the houses and driveways are going to be directed towards the proposed detention basins.

Mr. McEvoy said there are some lawn areas in the back that will be directed toward Orleton Court. He said they are reducing a substantial amount of the area that gets there by directing there regarding efforts and swaling a lot of these grassed areas particularly on the lots to the east of the road – back into the roadway system and into the detention basin so we are significantly decreasing the overall area that does get to Orleton Court – there will be some grassed areas in the back yard that does drain there but the net result is that there is no change in the runoff that goes to the north.

Mr. McEvoy said in terms of site hydrology – as Mr. Root mentioned the methodology that they utilized in order to estimate both existing and proposed condition for runoff takes into account vegetation – the nature of vegetation – the nature of soils and under a condition where you have a wooded site that represents coefficient or rate of runoff existing the property then an impervious or gravel or a building does.

Mr. McEvoy said so the methodically utilized does take into consideration that a wooded site does have the least amount of runoff under existing conditions this generated under a 10, 25, 50 or 100 year storm event.

Mr. McEvoy said our proposed drainage system with the volume we propose in the basins is designed that it holds back that increase in runoff from the proposed site improvements which are primarily are the changes to convert to paved surfaces and to hold that flow back within those basins itself so the volume of water will increase as the storm continues to the point where the increase in the rate of runoff is captured within the basin and comes out the outlet structure at a rate that will result in no increases in runoff during a large storm event.

Mr. McEvoy said so we proposed these basins and the volume associated with them as an effort to mitigate the increases in runoff that otherwise would happened in a situation where you do take wooded areas down and replace it with houses, driveways and things of that nature.

Mr. McEvoy said so certainly the gentleman is correct – by removing vegetation like this you increase runoff but we are proposing measures – standard engineering practice through methodology used by the Army Corp of Engineers, the CT Department of Transportation and the Cheshire Engineering Department to mitigate those increases in runoff and in fact decrease them somewhat during large storm events.

Mr. McEvoy said in terms of the homeowners association – he didn't know if Attorney Fazzone had anything else to add – he did not.

Chairman de Jongh asked if there were any other questions from the audience – there were no other questions asked.

Chairman de Jongh opened the floor to any comments for or against this proposed development.

Samuel Waldo of 846 Wolf Hill Road said he was here as vice-president of the Cheshire Land Trust. He also noted that he has been an environmental affairs for approximately 40 years - the last 27 as the corporate director of environmental affairs for company that's headquartered in Wallingford.

Mr. Waldo said the Land Trust has provided comments for the record (handed out to Commission members).

Mr. Waldo said the Cheshire Land Trust owns approximately 12 acres immediately northwest and downstream of the property to that extent we do have some concerns with the activity that's being proposed to the site.

Mr. Waldo said we also recognize that some of our comments are more appropriately directed towards planning and zoning but he thought there was overlap here which needs to be addressed.

Mr. Waldo asked if the Commission had a field trip to the site yet and he would suggest that it would be appropriate to do that before a final decision is made.

Mr. Waldo said Mr. Root clarified some of the comments we had with respect to the turtle population but he would emphasis that the Wood Turtle does go into upland areas occasionally and will travel between houses particularly if there is adequate wooded area in those yards.

Mr. Waldo said this type of more concentrate subdivision would effectively eliminate that path of upland travel.

Mr. Waldo said we would suggest that the written monitoring program that is proposed for during construction period be extended into much further to include if it is approved after the houses are constructed to access the health of the population on an ongoing basis particularly for the Wood Turtles which would be under their direct prevue.

Mr. Waldo said the clear cutting and the quarrying operations that are proposed to clear to re-grade the site - the sediment controls doesn't appear to be adequate - he said he had personal experience of problems with what considered to be appropriate sediment controls at a site that he had to work on - when a storm greater than 100 years frequency hit the area completely destroyed and over ran all of the sediment controls - it's a concern that during the time of the construction that there will be unstable soils despite the good

intention of the contractors doing the work and that needs to be addressed more thoroughly.

Mr. Waldo said finally from their (the Land Trust) prospective we are going to reiterative the concerns of homeowners associations – we see it time and time again and exactly what other individuals commented on including members of the Commission.

Mr. Waldo stated homeowners associations are only a good as the people are in there – some operate very well and some of them do not and there have been some very serious problems that come up as a result of that inability to manage those things properly.

Mr. Waldo said whether there are other types of storm water retention systems that might lend themselves to more passive management as opposed to active management he didn't know what should be consider as part of this process.

Mr. Waldo thanked the Commission.

Chairman de Jongh asked if the Cheshire Land Trust conducted their survey of the turtle population in that area.

Mr. Waldo stated we have not.

Dr. Dimmick asked you have some professional abilities in the environment that you indicated – with the Wood Turtle how would you classify – would you say it's possible that you are going be removing Wood Turtle habitat or that it's probably that you would be removing wood turtle habitat – it does make a difference in our deliberations here.

Mr. Waldo said it would be purely personal view point – he said he thought long term that the eliminating relatively undisturbed habitat with developed habitat you are probably going to reduce the population in that area – but he couldn't quote a study that would support – that's purely personal.

Mr. Norback said when he voiced his concern about the maintenance – what would be the worst that could happen if it wasn't maintained – it doesn't sound catastrophic – if the thin fails so to speak what is the ramification of that – if they not functioning the exact way they were designed – he said he is looking for a little more insight.

Mr. McEvoy said if by failure he said the first thing that comes to mind would be obstruction from the outlet control structure so that

basin would discharge over – the plan shows that we include a provision or for the possibility of that with the design of the basin with an emergency rip rap spillway and what this spill way is designed to do – its set at an elevation that is a foot lower than the berm then for whatever reason the outlet control structure is obstructed or damaged – the water will exit the basin in a controlled manner through an armored channel and then be directed toward the upland review areas towards the level spreader outlet but it will not result in any erosion – it will be fairly easily repaired just by making sure any obstructions are removed – but that’s why we have an emergency rip rap spillway for that scenarios where for whatever reason there is damage to the outlet control structure.

Mr. Norback said the reason he asked that question was to give the opportunity to say that – he said he thought we were putting too much credence in the idea that this thing could fail – he thought it would relevant to see what failure actually means – he said he did a project recently with a similar failure and it certainly wasn’t catastrophic it was just a warning that something needed to be done.

Mr. McEvoy said he didn’t think he responded adequately to the gentleman’s question about clarifying the clearing limit on the east side of the property – its generally 15’ for a majority the stretch in here - behind his property it’s a little bit larger – they are maintaining the existing vegetation behind the existing lot but for the most part its approximately 15’ and it get wider as you go to the north and south of that stretch.

Chairman de Jongh said there was an issue that was brought up with regard to the suggestion by comments made that this Commission conduct a field trip to be able to see that onsite conditions – he said they are somewhat challenged with the weather – he didn’t know how effective a field trip would at this point be – it would require postponement and the public hearing would have to be kept open pending the result of that fieldtrip but it’s an issue that came before us and we as a Commission need to deal with it – he throws that out for the Commission’s consideration.

Ms. Dunne asked Mr. Waldo – she said you have a background but she really didn’t know what his background was as far as an expert question that was asked.

Mr. Waldo said he has a background in environmental engineering – he went to school for environmental engineering and worked for a regulatory agency for six years but for the past thirty-fourty years he’s

been in an corporate environmental role and currently he is the corporate director of environmental affairs for a company

Ms. Dunne said in his report it notes in the first page there is a concern that no vernal pool survey has been conducted.

Mr. Waldo said that was clarified in some of the earlier comments this evening that's why he didn't raise it – he said they based their comments on the testimony from the previous hearing; it's now been addressed.

Sigrun Gadwa of 183 Guinevere Ridge addressed the Commission.

Ms. Gadwa addressed the Commission stating she is a neighbor and walked over there and also she is the chair of the ecology and conservation committee of the Connecticut Botanical Society and the foremost botanist and her degree is in ecology and has a long time scientist and conservation interest in this population of these rare turtles.

Ms. Gadwa said she wanted to clarify a few things – she noted the attachments to the DEEP letter that was submitted for the letter – she commented on the Wood Turtles and explained they spend time from May through October roaming upland woods – they do spend the winters in the river.

Ms. Gadwa talked about the life cycle of the Wood Turtles and talked about the their survival needs in the habitat and how they are dependent on their natural habitat – the land and river resources.

Ms. Gadwa talked about the Eastern Box Turtles and their lifestyle and that they can be found in perimeter wetlands and upland review areas; she talked about the deciduous forest being a major habitat for the turtles – she talked about how the turtles use the site for their survival and that they are somewhat dependent on the wetlands.

Ms. Gadwa expressed concerns the stormwater system for the aquatic species and ecosystems – she said there were two basins – one at 112 which is the smaller one and she talked about the slow flow to the river and it has a good deal of elevation between the basin and wetland boundary – she had concerns about the ground water discharge when the trees are going to be cut down and talked about her concerns about the increase in the water table as well as increases in runoff when all of the trees are cut down.

Ms. Gadwa said she didn't think there was going to be any problem in basin 112 however the larger basin - if you look at the details its very close to the wetland boundary - she said they should take a close look at the data on the depth to seasonal high water table; she presumed the Commission had that information.

Ms. Gadwa talked about her concerns about the basin at 110 and a situation with ground water.

Ms. Gadwa comment on LID and infiltration and issues regarding nitrogen and treatment and vegetation that kicks up the nitrogen. She commented about the stormwater water management basins effectiveness and their need to have a buffer.

Ms. Gadwa talked about lawns and how they drain into the street and into the catch basins and that they can drain backwards; and pesticide use, runoff and her concern for the aquatic system and the Ten Mile River. She talked about the use of pesticides and measures to minimize runoff into the street.

Ms. Gadwa talked about the last time she was here talking conventional development and Wood Turtles and Box Turtles and their travel patterns and their use of the open space land; she provides suggestions about lot (1 and 2) removal close to the basin and another lot (13) at the end so you could have two corridors that could go across to a remaining area in the woods - she said she didn't see why the applicant had to take excavate the maximum possible from this site - she talked about how it was a very nice woods and the 20", 24", 26" diameter trees - she talked about the photos taken of the trees and she has some tree data.

Ms. Gadwa commented on the number of trees proposed to be taken out in this area and based on two plots and 7 acres there's 2,668 trees of 5" in diameter or greater so that's the acreage of trees to be cut down.

Ms. Gadwa said she had some tables showing the limitations of storm basins and water quality treatment and excerpts from a scientific paper on transpiration; she asked about keeping the hearing over so she could prepare her documents and attachments so she could submit them into the record. She said she will give the Commission a shamble of loose papers - she gave the Commission her resume and tree data.

Ms. Gadwa said the quantity of transpiration varies a lot according to the size of the trees - the density of the trees and also how close to

the surface the water table is – it can be a huge amount if you have moderately well drained soils and a high water table – the data you need to collect – you need to get a handle on the age class distribution – the size class distribution and the number of trees which is available online under the tree transpiration website; she noted this information can be obtained without too much trouble.

Chairman de Jongh asked if Mr. Root wanted to respond to Ms. Gadwa concerns.

Mr. Root said he'd take a crack at a few of the topics and maybe Ryan can talk about the gross particle separators and the functioning of the detention basin and the distance of the river and the fitness of the vegetation.

Mr. Root addressed the transpiration topic – he said it comes up a lot; he said trees of course use and draw a substantial amount of water; most of the site are sand and gravel based soils – there tens of feet 20', 30' 40' above the elevation of river and the ground water table so they are very likely not drawing up as much water as you might think under other circumstances.

Mr. Root said the point being that any land clearing is going to change the runoff characteristics of the property – the design of the stormwater system in the basins is to mitigate the effect of that pond – uplands and in this case nearby wetlands.

Mr. Root said the turtle issues – we know that there are turtles all around the corridor – they are no rare turtles – their special concern turtles; any inquiry that we send to the Natural Diversity Database always has Box Turtle and it doesn't matter where we put something in there is always a Box Turtle circle which is fine –we love Box Turtles and they provide a very important role in the ecology of the site.

Mr. Root said we can't do very much more then to protect them – DEP has these protocols that have evolved over 20-30 years the goal being to protect these species even though they are of special concern and we try to keep the population as healthy as we can but allow homeowners to get some beneficial use of their properties – it's a tradeoff – he is not here to say that subdivisions and playing fields and schools are wonderful for the ecology or for turtles or for birds or anything else but we are trying to strike a balance between the right for people to develop their property and wildlife which needs protection.

Mr. Root said fortunately in this corridor the town has preserved substantial amount of land and hopefully this subdivision will add some more to it and he thought that land would provide a corridor for utilization by manner of wildlife – the river is a significant distance – there is a delay from the development portion of the site – the rear portion of the site and again it’s not all imperious surface it’s going to be lawn - there will be turtles, salamanders and frogs - there will be all manner of wildlife crossing through lawn areas; it’s a comprise between a development which preserves a lot of land and a more conventional subdivision which spreads out its shoulders a little wider in the environment.

Mr. Root said he didn’t see a significant impact or threat to the wetlands in particular the river from this proposal – we are out of the upland review area almost completely and he thinks it’s a somewhat benign use of the land in this case and the basins are designed well for the site and he thinks they will preserve the water quality – particular the river which is the real topic here.

Dr. Dimmick said he can’t help but realize that you keep on talking about preserve by providing all of this open space – and in our regulations it says we need to look at alternatives to the proposal including the alternative of doing nothing – he said it seemed to him doing nothing would be the one that would have the maximum preservational effect under the circumstances – he stated that does need to be mentioned.

Mr. Root said he thinks that’s always the case and thinks they are trying to strike a feasible and prudent balance here between use of the property and the protection of the environment.

Mr. McEvoy said just a couple of quick comments on some of the discussion about the detention basin –particularly about the larger storm water management basin and the discharge located within the upland review area.

Mr. McEvoy stated it’s important to note that when designing this basin includes water quality volume at approximately two feet of the basin – this detention basin was not designed as a infiltration basin as the design was referred to by Ms. Gadwa – specifically with the discussion about three feet of free boarding between the ground elevation, the ground water table and the bottom of the basin; if we were designing this as an infiltration basin it means flow comes in goes down to the bottom of the basin and that’s how we mitigate the increases in runoff - we would have to adhere to that standard – in our case we’re proposing to mitigate increases in flow from a formal

outlet control structure with a v-notch control and a low flow orifice - the purpose of the low flow orifice is to prevent or make sure that the substantial volume of the basin is dewatered so when the next storm should come there's not any water in the basin that would result in any decrease in the volume.

Mr. McEvoy said as he mentioned before we do provide for water quality – it's a two chamber basin – with a sediment forebay in the primary inlet of the basin which will allow for easy maintenance of any sediment – its designed in accordance with town standards and with respect to the outlet itself they included a level spreader outlet – there's a small depression will runoff will enter into this depression approximately 2' above the wetlands itself – 2' in elevation – it allows to dissipate in a controlled even flow rather than a point discharge.

Mr. McEvoy said it's important to note that there's a 6' to 8' grade change between just upslope of the wetland and some feet back so there's a fairly steep drop off – we are benching into that slope so any runoff that does come off here won't go over that steeper slope before it gets to the wetlands – it's actually going to have a more slower even style flow from our discharge that say is something upslope and then runs over that steep portion before it gets to the wetlands.

Mr. McEvoy said he just wanted to state that the basins are size according to town standards – the engineering department has had no comments in respect with the design of them and we feel that the outlet itself is designed appropriately with the maximum preservation of the wetlands in mind particularly with respect to the velocities exiting our discharge.

Donna Strollo Zentek of 575 North Brooksvale Road addressed the Commission.

Ms. Strollo Zentek read a statement explaining that she grew up at 966 Jarvis Street where the proposed development is considered and before the land behind them was sold and developed into the Dundee neighborhood they had the ability to enjoy that property – riding horses, quads, dirt bikes, snowmobiles, go shedding, cross country skied and took walks but once the homes were built that all ended; they didn't go to the town hall and oppose the change – they didn't create arguments about turtles and sediment runoff; she said they didn't address their concerns about changes to their privacy and lifestyle – to this point they did not own the said property – they did not pay the taxes on said property – the property was not theirs to dictate its usage; she said when the land was vacant it was an

asset but things changed and it was not a change they liked but a change they had to live with a change that was understood; she said they came to a realization that growth and progress can sometimes be uncomfortable to accept.

Ms. Stollo Zentek commented about residents voicing their concerns about the wildlife and vegetation now but did they when they bought these home. She went on to say that her grandfather bought this property to pass down to his heirs and now it needs to be sold – she said that for a few neighbors to attempt to block their rights is simply wrong.

Attorney Fazzino said he had one last point to make – and that is with respect to the tree cutting. He said if you look at the definition of regulated activities within your regulations – it specifically mentions that clear cutting of trees within 50' of a wetland is a regulated activity – we would submit that cutting of trees outside of the 50' of the wetland is not a regulated activity.

Attorney Fazzino said people have the right to go in and harvest the trees on their land – limited by the fact that they can't do it with 50' of the upland.

Attorney Fazzino said he didn't know if the issue of the clear cutting of the trees primarily because it's outside of the 50' upland area is a matter to regulate by this Commission.

Mr. Norback said he thinks the trees was more of an emotional issue for the public then whether we were considering it or not – he said he didn't think we were considering it.

Attorney Fazzino said maybe that could just as well be directed to the emotional issue of the cutting of the trees.

Mr. Norback said he's public that we are not addressing the cutting of the trees in the unregulated areas.

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

Ms. Gadwa address the Commission and commented about the filtration and air pollutants that are in winds that are headed for wetlands - the blockage of noise like lawn mowers and all that kind of thing – that scare away wildlife that may be key in the food chain; and also the uptake of nutrients with the water – nitrogen especially that would otherwise still be in the ground water and pollute the river

– those are all things that indirectly impact wetlands and occasionally the scale can be enough that it can be significant; she said that’s just a point and it’s not just emotional.

**Ms. Gadwa submitted copies of attachments for the record.**

**Chairman de Jongh said the only final issue that’s left is whether or not we as a Commission feel compelled to conduct a field on this; he said he knew the issue of vernal pools was one of the concerns that we had at the previous meeting and he thinks that issue has been addressed by testimony tonight.**

**Dr. Dimmick said if it were not for that testimony tonight he might have considered having a field trip just to check that out ourselves but we do have testimony that it was looked over by an ecologist; he said he no longer feels that urgency.**

**Mr. Kurtz said there’s no reason to continue the public hearing – we’ve heard it all.**

**Chairman de Jongh said he wanted it on the record as having a commentary on that issue.**

**Chairman de Jongh said seeing to further questions or comments from Commission members or staff; and no questions or comments coming from the members of the audience – he said he believed the received the information that they need and saw no reason to continue this public hearing.**

**The public hearing was closed at 9:09 pm.**

## **VI. ADJOURNMENT**

**The public hearing was adjourned at 9:09 p.m. by the consensus of Commission members present.**

**Respectfully submitted:**

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