

At 9:12 pm:

Dr. Dimmick noted the minutes for the June 2 meetings include in them the corrections for the previous minutes which were added by the recording secretary before the minutes were sent out; at the last meeting we approved the minutes from the previous meeting contingent upon corrections yet to be made.

Motion: To approve the minutes from the June 2, 2015 public hearing and regular meeting with corrections and the corrections to the May 19, 2015 minutes.

Public Hearing June 2: Page 2 L18 “coordinator” to “corridor”; pg. 3 L33 “chance” to “change”; pg. 4 L20 “of” to “if”, L21 “how” to “now”, L43 “when” to “went”; pg. 5 L40 “we” to “are”; pg. 7 L13 “ecstatic” to “aesthetic”, L17 “do” to “go”; pg. 8 L14 “there” to “their”; pg. 9 L27 “vivacity” to “vicinity”; pg. 10 L28 delete “did not mentions”; pg. 11 L7 “invariance” to “at variance”, L20 “public” to “public hearing”.

Regular Meeting June 2: pg. 3 L33 “complication” to “completion”; pg. 4 L22 add “Mr. Earl Kurtz”, L39 “Lord’s” to “Lord”; pg. 5 L46 “course” to “coarse”; pg. 6 L23 “another” to “in other”; pg. 9 L43 “legion” to “legend” and “his” to “this”; pg. 10 L18 “so” to “but”, L19 after “certainly” add “accept”, L50 “we use” to “were used”; pg. 11 L13 “because” to “cause”; pg. 14 L10 delete “would they do need is”, L35 “except” to “expect”.

Regular Meeting May 19, 2015:

Corrections submitted by Dr. Dimmick on June 7, 2015: Pg. 3 L32 “staff” to “written”; pg. 6 L48 “sway” to “away”; pg. 13 L7 “internal” to “vernal”; pg. 18 L41 “no” to “now”, L43 “up” to “be”, L45 “try” to “dry”; pg. 19 L46 “double” to “doubt”.

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

VI. COMMUNICATIONS

1. Staff Communications with Attachments: Moss Farm Road Application #2015-010

This communication was reviewed.

2. Staff Communication with Attachments: 10 Prinz Court Application # 2015-013

This communication was reviewed.

3. **Staff Communication with Attachments: South Meriden Road Request for Determination #2015-020 – Installation of Greenhouse**

This communication was reviewed. This item is on tonight's agenda.

4. **Staff Communication with Attachments: McCausland Court Request for Determination #2015-018 - Installation of two tanks w/pump & motor**

This communication was reviewed. This item is on tonight's agenda.

5. **Staff Communication: with Attachments: Peck Lane Application #2015-019 – Drainage Improvements**

This communication was reviewed. The town will make a presentation on this item tonight.

6. **Staff Communication with Attachments: Show Cause Hearing CK Greenhouses; East Johnson Avenue**

This communication was reviewed. This item is on tonight's agenda.

7. **Report from Carya Ecological Services, LLC dated June 15, 2015**

Ms. Simone stated that handed out to Commission members tonight was a report from Carya Ecological Services dated June 15, 2015.

Dr. Dimmick stated that was peripherally related to show cause hearing but because it mostly raises issues that are not germane to the actual show cause hearing we will receive it as a communication and make note of it but it is not going to be entered into the actual record for the show cause hearing because it's mostly not germane.

Dr. Dimmick stated if other matters come up in relation to CK Greenhouses this would be entered to that record.

VII. INSPECTION REPORTS

1. **Written Inspections**

Ms. Simone stated there were no written inspections.

2. **Staff Inspections**

a. Moss Farm Road Application

Ms. Simone stated there was a staff inspection of the Moss Farm Road application.

b. Sindall Road

Ms. Simone stated there was an erosion control inspection of the Sindall Road that is a current permit that the Commission had issued.

c. Smith Place

Ms. Simone stated there was inspection of Smith Place. She said the Commission did release that violation at the last meeting.

d. Rita Avenue

Ms. Simone stated she'd discuss the inspection of Rita Avenue under enforcement actions.

e. Mixville Park

Ms. Simone stated she wanted to report to the Commission that the state approved dam repairs have been completed.

Ms. Simone explained she did receive communication from Bob Ceccolini, the parks director that he plans to begin the installation of the walkway at Mixville Park this week.

VIII. ENFORCEMENT ACTIONS

1. Notice of Violation SC 1/07/14
Mr. Nathaniel Florian Permit #2013-015 compliance date: 12/31/15
Woodruff Associates
Unauthorized Activities in the Upland Review Area/Inland Wetlands
108 Blacks Road
Assessor's Map 19, Lots 43 & 44

Dr. Dimmick said this item is being carried on the agenda – they gave an extension of the compliance date to the end of the year – if anything exciting happens on this between now and then we'll mention it.

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

CO #12-2-2014-A
Compliance Date: July 1, 2015

Ms. Simone reported that she did receive an email from Ms. Ribeiro inquiring about where to purchase the grass seed which was required in the corrective order.

Ms. Simone stated she provided her (Ms. Ribeiro) with that information and also requested an update as to the status of the site work so she could report to the Commission at tonight's meeting. She didn't receive a response back from her.

Ms. Simone explained she did go to the firehouse and from there she could observe that the entire property has been worked – it does appear as though there is exposed soil in the front yard as well as the back yard; she did not see any construction debris – it does appear comparing the photos taken yesterday to the photos taken last year at the same time – it does appear the grade is actually lowered so that might indicate that material has been removed although we have no verification at this point.

Ms. Simone stated they do have their corrective order that they have to comply with by July 1st which asks them to submit a written report to the Commission to detail everything has been done and what appears to be site work hopefully they will submit something and this will be up for release.

Ms. Dunne asked if she (Ms. Ribeiro) was reminded her of that date.

Ms. Simone stated yes (she reminded her of that date).

3. **SHOW CAUSE HEARING**

Notice of Violation
Mr. Charles Kurtz

SC 05/19/15
SC 06/02/15
SC 06/16/15

Unauthorized Activities in an Inland Wetland and Upland Review
Area
East Johnson Road
Assessor's Map 12, Lot 2

Attorney Anthony Fazzone was present on behalf of the applicant.

David Lord, soil scientist was also present.

Dr. Dimmick indicate because it isn't clear to some people that this is a show cause hearing – it's not a public hearing although it's held in public whoever is allowed to speak is entirely at the digression of the Commission. He said normally we bring in the person against whom and something has been issued and they present their experts, their staff or something or anyone else we find that have the proper finding – that's the reason he said from Carya Ecological is not going to be part of the show cause hearing report because it's not directly applicable to what we need to determine at this hearing.

Ms. Simone stated that she wanted to bring the Commission up to speed that there's a staff report that was issued – this property came before the Commission in 2001 for consideration for Freight Terminals Incorporated – that application was denied but in that application it does identify the field delineated pocket of wetlands.

Ms. Simone stated there was discussion on the record for public hearing as well as field visits that the Commission did view that isolated wetland pocket. She did submit a copy of the minutes to the Commission where they talk about at some point they had proposed incorporating that isolated wetland pocket as part of the storm water management system and at that time Mr. Logan who works for REMA Ecological (it's unclear on the record if he's hired as part of the applicant's staff); he does concur with the soil scientist report that it is a wetland and he says "it does function as a wetland - that it provides wildlife habitat – semi retention, etc. – this site is no longer attached to an active flood plain."

Ms. Simone said so in looking at the records that the Commission did identify that there was a wetland on this property in 2001 and the current property owner Mr. Kurtz – his Attorney has submitted documents from a soil scientist in 2011 that was working for the town for the Quinnipiac River crossing on East Johnson and they did a field delineation further up the street and down the street and they did not locate a wetland at that time and that is dated in 2011.

Ms. Simone said looking at that it appears as though some point between 2001 and 2011 that a wetland was indicated in 2001 and was not indicated in 2011.

Mr. Norback asked if it was conceivable that wetland area disappeared because a change in topography somewhere else on the property and not at the point where the wetlands were identified.

Dr. Dimmick said the wetland was identified based upon soil types – it was alluvial soil which under the state law is a wetland soil even if there's no water in it.

Dr. Dimmick said any change that occurred – there are a number of reasons it might not present in 2011 including if fill had been placed on it or if some other cover had been placed on it so one would not even think of putting a shovel down to determine whether or not there were alluvial soils there.

Dr. Dimmick stated this area is within the 100 year flood plain of the Quinnipiac River and so it certainly was in a position to receive the alluvial soils at some time in the past. He said he thinks what happened - historically Pasqualoni Farms long where there was any wetland commission did construct a road that is probably responsible for cutting this wetland area off from the alluvial soils right along the Quinnipiac River which is probably what isolated it to begin with.

Dr. Dimmick said he didn't know what happened to this actual wetland though – the one that disappeared between 2001 and 2011 and that's what we are trying to find out.

Mr. Norback stated that said need we consider it then if it isn't showing up in 2011 – need we consider it here tonight.

Dr. Dimmick said what you mean need be consider it – if it was there at a time when we were in existence as a Commission and it's no longer there – if something happened to it because of human activity that something should have required a permit from our Commission to have it happen.

Mr. McPhee asked but did it happen under the client's ownership of the property.

Dr. Dimmick stated we don't know that – there's the other rule says if there's been a wetland violation – if you own the property you own the violation even if you didn't do it.

Ms. Dunne asked when Carya Ecological Services is talking about an isolated wetland that's been filled – is that something different.

Mr. Norback stated we are not supposed to consider that.

Dr. Dimmick stated he didn't want to consider because we have essentially an opinion given in this letter which is something we might want to consider but it's an opinion without an expert to cross examine and this is not a public hearing in the usual sense – it's a show cause hearing to try to find out what happened to the wetland that was there.

Mr. Norback asked if it's conceivable that two soil scientists could come to a different conclusion in the same shovel full.

Dr. Dimmick stated as he pointed out last time around alluvial soils aren't the easiest thing to recognize but in this case we actually have three soil scientists because George Logan is also certified soil scientist so it had Ken Stevens original determination – they have George Logan's verification of it and with Mr. Lord being present it's not a case of him looking and saying it's not a wetland – it's a case of him not seeing a wetland there which be presumed we could ask him as to what happened there; if you did not see a surface indication to make you look you could very well miss it because there are no water features with alluvial soils.

Mr. McPhee asked wouldn't a map make you look.

Dr. Dimmick stated if you had that map – yes.

Mr. McPhee said it's on public record in 2001.

Dr. Dimmick said it is on public record – there's a lot of stuff on public record that he's never been able to find because nobody told me to look for it there.

Ms. Simone said just a procedural comment – the Commission did review this in 2000 and 2001 and what she's seen on the record there was no discussion relative to is this a wetland or is this not a wetland – it seems as though everyone was on board and that they did acknowledge it as a wetland – that they had Ken Stevens submit a report identifying it as a wetland and you had George Logan also then testify to the Commission about the wetland then there's field notes that they went out and they observed the wetland then you have Commission staff commenting on the wetland itself – he goes on in a memo dated December 12, 2000 – “number one I agree with George Logan's suggestion that the detention basin 14 be removed to the south to make use of the existing isolated wetland – overall this would provide a better buffer strip to the Quinnipiac River – the existing wetland appears to have minimal value however if the applicant wishes to pursue this alternative alternate location it may

be advisable to submit a functional value assessment of the to be impacted wetland to the Commission.” She said when she looks at the record she doesn’t see that there was any report submitted – it may be that the Commission issued its denial based on not receiving some of that information – that she hasn’t researched but just from procedural standpoint the Commission made a decision because they didn’t question the existence of a wetland in 2000 and 2001 so it would be difficult for a Commission years later to question information that was submitted without having the same conditions available for testing.

Mr. Norback said the word convoluted comes to mind.

Dr. Dimmick asked Attorney Fazzone if he had comment at this point.

Attorney Fazzone said he did and you’ve stolen a lot of his thunder (the comments made).

Attorney Fazzone said the first observation was that at that time that that was done he believed George Logan was still associated with Ken Stevens Soil Science and it’s clear from the record that he is speaking on behalf of the applicant and then there are actually four soil scientists who have done something if you count Ken Stevens and add Logan and Mr. Lord – there’s also the company that was hired by Cardinal Engineering with respect to the bridge situation – Soil and Environmental Services and they are the ones that did the 2014 report.

Attorney Fazzone said their soil scientists who went out in the field – Martina Castanho and Donald J. Fortunato.

Dr. Dimmick said he did remembers those now – he said it seems to him they have a problem because if you have something in 2001 and you don’t have it 2011 – we are trying to figure out where it went (the wetland).

Attorney Fazzone said it depends on whether it was a negative or positive.

Dr. Dimmick said we had two positive identifications and two people who couldn’t find it so if all of these are on this as professionals then there was something there in 2001 that is no longer there in 2011 the question is what happened to it – this is part of why we have a show cause hearing.

Mr. Kurtz stated what ever happened to it the point is its gone – it's gone.

Attorney Fazzone said he was going to skip ahead to his last part of his presentation and ask Mr. Lord if he could come up and give his thoughts to what may have happened. He said you have to bear in mind that the Pasqualino's farmed this area and they cultivated it – plowed it and with that in mind he'd have Mr. Lord come up.

David Lord, soil scientist for the land owner addressed the Commission.

Mr. Lord said he also had some of the information that he was going to present or talk about this evening already stated for the record.

Mr. Lord said he would clarify a somewhat unusual circumstance and he would say for the record he was at least the fourth soil scientist to look at this property in recent memory and it may also be he's the fifth one (he talked about the possibility of one of the soil scientists co-signing a report).

Mr. Lord said what you have and he's looked at all the information that Suzanne listed to the Commission – and one of the things he found that he found significant was the January 2, 2001 comment from George Logan from the public hearing minutes – it talks about his site meaning the wetland pocket area is no longer attached to the active flood plain – you already heard that a road was built to the east of that pocket wetland which isolated it from receiving any additional flood waters.

Mr. Lord stated alluvial soils are very difficult to identify and determine the extent of – they are not based on the proximity of ground water table to the soil surface – they are in existence because of flood waters depositing alluvial material overtime and creating stratification or horizons within the soil profile.

Mr. Lord stated that is the basic way of identifying alluvial soils – you look for light and dark and alternating bands of that – the darker bands are buildup of organic matter when that layer was the surface layer of the soil. He talked about alluvial soil activity and deposit of more sand without organic matter on top of that and you have a stack of pancakes of different colors that are within that. He stated that's the only way to identify alluvial soils is that stratification and the horizontalization of the alluvial soils.

Mr. Lord said one of the things that can happen very quickly – very easily totally unintentional on the part of the land owner is tillage of that area. He said if you till down 15” – 20” with a sizable disc to level off a field to turn the soil over you disturb and destroy all of the horizontal character of the alluvial soil subsequent to that a soil scientist will come out take a soil boring and not see anything that would identify it as an alluvial soil - physically on the topography you’d stand in this area and you’d look and you’d see an elevated roadway access running parallel to the Quinnipiac River to the rear portion of the property - he you’d say this can’t be anything because we’ve too high on the land scape – we’re in sand and gravel type soils – there’s no water table connection – there’s no indication of alluvial activity associated with that – you also have the ability to look at flood plain data or the demarcation of flood zones – that would not be relevant to this area that we are talking about.

Mr. Lord said he didn’t have any knowledge of what occurred there but that’s one possible and quite likely probable activity or reason why 2001 is was identified as a alluvial soil and in 2011 it was no longer identifiable as an alluvial soil – it one had been cut off from the Quinnipiac River flood plain so it didn’t get that constant flow back up of alluvial soil there and that was one of the reasons why it could have been; normal tillage leveling off of the field, the Pasqualoni working on this – that field dates back to 1934 (based on historical aerial photos) – it was a field at that time – it did not look very much different than it does today other than the house between what’s the pump station and the existing barn is no longer there – that was removed from the site.

Mr. Lord said a lot has happened on this particular site – the removal of the house – the change in this area designation as an alluvial soil may have been totally inadvertent my the land owners in that period of time between 2001 and 2011.

Dr. Dimmick said by the way there’s no reason the Pasqualoni’s had to get any permit for what they were doing in terms of plowing because planting in a wetland has always been permitted – it’s the moving, filling or excavating in the wetland.

Mr. Lord said that’s the agricultural exemption from the wetland regulations allows agricultural uses - to plow, plant and harvest with no permit required. He stated the activities he’s talking about could possibly have occurred under that exemption.

Dr. Dimmick said and it would have had an historical exemption anyway.

Mr. Lord said he has a 19700 aerial photo which appears to be some type of row crop production there in a north south orientation.

Mr. McPhee stated he's having a hard time with this – it was just stated you can plow a field in wetlands and you can plow it under non-regulatory use and you (Mr. Lord) just stated that's probably the reason why it's not identified and it's gone.

Mr. McPhee said he guessed what he was saying he didn't see why they were talking about this.

Dr. Dimmick said we are stuck with the fact that technically there was a wetland – a regulated area that is no longer there and there is another state rule that says if we have a wetland area designated on a map that we have received and we want to change it we have to have a public hearing to change the map – we have regulations to deal with and either we have to look for something like a permit after the fact or have a hearing and decide that the wetland no longer exists.

Mr. McPhee said a permit after the fact that they did activities they are allowed to do based on the law.

Dr. Dimmick said not if they put in fill – once you put in fill into a wetland area that is a regulated activity even for agricultural purposes – the agricultural exemption does not include either filling or removing material from a wetland – the agricultural exemption says you can farm all you want but you can't fill and you can't excavate without a permit.

Mr. McPhee said but they filled an area that was not on a 2011 map.

Dr. Dimmick stated it was on our map at that point because we had accepted the map showing the wetland at a previous public hearing therefore it becomes part of the regulated wetland for the town.

Dr. Dimmick said he always worries about exceptions to rules – if we make certain exceptions in some case then the next thing you know someone will want a larger exception and things start snowballing.

Dr. Dimmick stated we have to be as consistent as we can over the years in the way that we do things. He said this is a problem and whatever activity occurred may very well been completely inadvertent because as far as the Kurtz's are concerned they have seen no sign of a wetland and it never occurred to them there might

be one – on the other hand and Attorney Fazzone might agree with him – when you are conducting activities where there might be a wetland it always pays to check the town just in case – and it wasn't done and we run into the problems.

Ms. Dunne asked if we could have a rational description of what might have happened that would have been permissible – we do not have any evidence or testimony that it was filled before us.

Dr. Dimmick said he understood part of what they are doing in putting in a retaining wall and leveling things off which would include filling there.

Attorney Fazzone stated filling this area in question but it's there position – number one to clarify the letter from Soil and Environmental Services – the last people to do this testing was dated 2014 so it's more recent and there's more farming activity that would have gone on between 2011 and 2014.

Attorney Fazzone said he thinks where they disagreed is that what Dr. Dimmick is saying – once a wetland is always a wetland and what the most recent testing and what Mr. Lord is saying that it could possibly have changed based on the tilling to no longer be a wetland.

Dr. Dimmick said he didn't want to words into Mr. Lord's mouth but he thinks he was getting the interpretation the agricultural activities could have destroyed whatever features that allowed it to be identified as a wetland – it doesn't keep it from having been a wetland.

Attorney Fazzone said it doesn't keep it from having been – but does it not stop it from being a wetland.

Attorney Fazzone stated there's no evidence in the aerial photographs that you look at – there's no evidence of any filling prior to the 2014 testing that would indicate that fill had been placed in that area – that anything other than just ordinary farming had gone on.

Attorney Fazzone said he wasn't certain if he heard Suzanne correctly or even if Mr. Lord referred to Mr. Logan's comment – he said he'd like to read it into the record and basically he says it is a wetland from a regulatory perspective – but he goes on to say the area is called a wetland because it has flood plain soils – however it does not function as a wetland that provides wild life habitat, semi

retention, etc. and then he goes on to say the site is longer attached to the active flood plain.

Attorney Fazzone said so he's (Mr. Logan) saying at the time in 2000 and 2001 that it does not function as a wetland and it doesn't provide wildlife habitat for semi retention, etc.

Attorney Fazzone said those were his comments at this point – he does have other information he needs to present for the record.

Ms. Simone asked Attorney Fazzone if she could just clarify for the exhibit that was submitted in regards to the soil scientist from 2014 – so originally they were delineating wetlands for the replacement of the bridge and then they were asked to go out an additional 200'.

Attorney Fazzone stated they should have all received a document entitle exhibit (handed out to Commission members) which explains the chronically order – but what happened is that they originally went out and did an area 200' by 300' – 200' up Johnson Avenue and 300' into the property.

Ms. Simone asked if that was going to the west.

Attorney Fazzone said going west which is called the bridge deck which is basically at the top of the river – a little further in from the top bank of the river; if you look at the color plan in front of you – the deck of the bridge is outlined in red – from the edge of that they first went 200' which would have put them partially into the formally designated wetland area.

Attorney Fazzone said he didn't know and Mr. Gancarz (from public works) can explain why they may have gone further - he thought it had to do with some change in the scope in the bridge project but in any event they were asked to go out and check an area that's further and as the letter states they went another 150' and 300' in width.

Attorney Fazzone said Mr. Kurtz observed them when they went out – he had now acquired the property he went out and said there were several people – they were all over that area – they hadn't come and asked him for permission – he went down and asked them what they were doing – they said they were working on a town project and they were doing soil testing and that sort of stuff.

Attorney Fazzone said if you look at the portion of the map and that by the way is the map that would done in 2001 – you'll see the yellow lines indicate the new area – the total area of testing that was done

with respect to the bridge project and it includes every square inch of the originally designated wetland area and the letter speaks for itself that they didn't find any wetlands in that area.

Attorney Fazzone said because this is a show cause hearing he'd like to get into something that may kind have all been taken for granted and that is CK Greenhouses – he passed out an exhibit – it their contention that CK Greenhouses falls within the state definition of farming – they are engaged in raising or harvesting any agricultural or horticultural commodity – CK Greenhouses started in Cheshire in 1995 – the started on Schoolhouse Road – over the years they've acquired additional properties – one on Mccausland Court and another one on the corner of Mccausland and East Johnson which was formally they Kurtz-Weitz Greenhouse facility and then finally the Pasqualoni farm.

Attorney Fazzone said they grow bedding plants – poinsettias, perennials and chrysanthemums - the field in question that they are preparing and where they have done the filling and spread the black matting is initially intended to be a chrysanthemum field that's why the black matting has been put down.

Attorney Fazzone said in the past couple of years there's growth of CK Greenhouses business – they found it necessary to improve and expand the size of their growing fields and most of the area used CK for those proposes and the area in question was previously used by Kurtz-Weitz Greenhouses for the same exact purpose.

Attorney Fazzone submitted a copy of his information he presented for the record.

Attorney Fazzone said a couple of other things he'd like to point out – one of which is that he believed it was on the weekend before your June 2 meeting we had a pretty significant rainfall in Cheshire – there was a bout 4" to 5" of rain that occurred on that date. He said Mr. Kurtz went down to inspect the retaining wall and the sedimentation controls that be built in to the retaining and also when the retaining wall was put it up sedimentation controls and silt barrier was put all along the river – all along the area of construction between that and the river itself in the wetlands and that still exists – it's still there – it can be seen but there was no evidence what so ever of any siltation getting through the retaining wall that could reach the wetland.

Dr. Dimmick said although that is data we like to have he didn't think it was immediately relevant to this.

Dr. Dimmick said one of the factors that he said he really wanted to get into here was we've seem to establish that there's no way you can find that wetland now without digging down more than 15" to 16" to see if you've got layering beneath that level – we still have that as a wetland of record for the town and in fact when we adopted our initial wetlands map in 1974 – the area there showed the little dirt road that the Pasqualoni's put in and showed wetlands to the west of that little dirt road so we do have a problem that we recognize that as a regulated area back when we adopted our initial wetlands.

Mr. Norback said it seems like the only issue here is the map – so is there anyway somebody can make procedurally a motion to accept another map that just gets us past this. He said he thinks as Mr. Kurtz so eloquently stated – it's gone.

Dr. Dimmick said he like his idea but would have to research it to see if we can do it that easily. He said the state has provided that we can always call a public hearing to change a map – he was not sure a show cause hearing is the type of hearing that fits the state definition. He said they needed to determine what the state would determine what was legal.

Mr. McPhee said but nor do we have – in his opinion – to hold Mr. Kurtz liable for these actions in this cease and desist – he thinks it needs to be released.

Dr. Dimmick stated the reason for the cease and desist is we had an area on our records as wetlands and we had an apparent violation and you do need to have a show cause hearing to find out what happened in this case.

Mr. McPhee stated there's no evidence of fill.

Dr. Dimmick stated there was filling.

Mr. Norback stated placed over what was unidentifiable as a wetland at that point.

Dr. Dimmick said there is fill over an area that was on our map as a wetland – that's an undeniable fact.

Mr. Norback said how do we move on from here – how can we best procedurally stop this matter.

Dr. Dimmick said he sees two possibilities – one is hold a special public hearing just to change the map and that eliminates the

problem or two to issue a permit after the fact to allow the activities because had he come in initially for a determination we would have looked at it and said it's a wetland on our maps therefor you need a permit – one the other hand we don't see any particular value to it so it would almost be a pro forma thing to give a permit to allow him to put the fill in – one or the other would eliminate this problem.

Mr. Norback said a permit after the fact seems to be the most streamline.

Dr. Dimmick said he's like to do that.

Ms. Dunne said you said there's fill where the wetland was. She asked that this be clarified.

Dr. Dimmick said there is at this time.

Ms. Simone said to bring up the history of this – the office was first notified that there was work going on at this site and that fill was being brought in so it does appear fill has been evenly distributed across the property so fill has been brought in – what the status was of that wetland prior to this fill being brought in is unknown.

Ms. Simone asked Attorney Fazzone about the map submitted today – its shows the flood plain – the shows the wetland flags and then it shows the upland review area list as RB – what does that stands for.

Attorney Fazzone said that's the upland review area – review boundary.

Attorney Fazzone stated Mr. Kurtz has brought in fill – there are two properties there one to the west which has been the site of a gravel permits, farming so he has regraded that and part of the fill that when he regraded part of the area this area in question has been included in that fill area.

Ms. Dunne said that may or may not be the cause of the wetland having disappeared.

Attorney Fazzone said it is not the cause of it disappearing and based on the letter – the investigation done in 2014 says that area was not a wetland.

Attorney Fazzone showed on the map the contours and said on this map the old contours are basically the same as the old contours on

the 2001 map and if you look at the 120 line and the 118 line – that the approximate area of the area in question.

Dr. Dimmick said so there's about 6' of fill on top of that – he said he sees 124 and crossing 118.

Attorney Fazzone said yes that would be in certain parts – you're correct.

Dr. Dimmick said he was looking for the area of concern and the other bit is that although we don't have photos of it he has seen that area underwater. He said we had a Quinnipiac flood that came across that side of the Quinnipiac River – the only part that was exposed is the very top of the Quinnipiac River Bridge and the water on both sides of it was about 400' wide and covered that particular area; he noted the 100 year flood level.

Attorney Fazzone said that's basically the area where the retaining wall is built – it's at the 117 just outside the 117 elevation.

Attorney Fazzone said he liked the idea of changing the map because if you go to the other step you have to find that he has violated the regulation and we don't think he has violated the regulation – we don't think he's fill or disturbed a wetland area.

Dr. Dimmick said he likes changing the map also – he said we do have to check to make sure that we have our proper legal procedure down on this. He asked if they could suspend this show cause hearing until they get more information.

Ms. Simone said she would recommend that it remain open just in case there is some legal caveat that she was not aware of right now.

Dr. Dimmick said we can suspend rather than close it.

Ms. Simone stated the cease and desist had specified that no more fill could be brought on to the property and so she believed there was no issue with that – that the site has been secured with the retaining wall as well as putting down the fabric.

Mr. Norback said so he can continue operation – he can make it functional.

Attorney Fazzone stated he would not be filling anymore.

Dr. Dimmick said with any luck we can get this issue resolved by the middle of July which would be the time to get the mums in.

Ms. Simone said he can use the site as long as there's no fill being brought on to the property – that's what the cease and desist order indicated and as long as the site was secure any further exposure of soil or anything like that wouldn't happen.

Mr. McPhee asked if staff had been to the site to assess the area.

Ms. Simone said she had been by the site but not in a heavy rain storm – she did see there were blocks up and the filter fabric was done – she hadn't see issues with soil getting into the roadway – that's usually our first indication that a site is unstable.

Attorney Fazzone said it's pretty easy to view – if you go to where the pump station is – there's a way you can walk on the town's property back to see where the retaining wall is.

Dr. Dimmick said the other thing he thinks we need to do is check with the Army Corp of Engineers who are also very interested in what's going on.

Attorney Fazzone stated they intended to respond to the Army Corp of Engineers - Mr. Lord can describe what he's found.

Mr. Lord stated the Army Corp regulates federal jurisdictional wetlands – none of the wetlands we've have been talking about other than the Quinnipiac River and a very narrow band in a couple of spots right along the edge of the Quinnipiac River qualify as federal jurisdiction wetlands.

Mr. Lord stated none of the wetlands that are shown on here (the map) from flood plain alluvial soils – the Army Corp of Engineers does not regulate alluvial soils unless they have a high water table condition.

Mr. Lord said the issue with Army Corp jurisdiction or interest in this – he feels we can answer very quickly stating he looked at the site – the federal wetlands are the river and there's one pocket of federal wetlands (he showed on the map).

Dr. Dimmick said the Army Corp also claims to have jurisdiction over any area that's within the 100 year flood plain of a river.

Mr. Lord said that would trigger from a flood plain standpoint – not from a wetland or federal jurisdiction – wetlands is what he does so he is only stating what they would regulate or be interested in from a federal jurisdictional wetland perspective. He spoke about what the Army Corp takes interest in.

Dr. Dimmick said but they have their finger in from a couple of other sources too. He talked about a pervious Army Corp intervention on this property – up river from here so the Army Corp has a file on some of this area already.

Ms. Simone asked Attorney Fazzino will you be suppling this information namely the map that was submitted to us today directly to the Army Corp because they did ask that the town supply them with information that we received – is that something that they'll handle directly.

Attorney Fazzino stated yes.

Attorney Fazzino said the Army Corp got involved because County Wide cut a driveway down to the river – through the river bank and down to the river so they could pull water out of the river to keep the dust down in their earth removal operation.

Attorney Fazzino said they do have to file an application with Planning and Zoning Commission an after the fact and that one is pretty clear because there's fill that went on after the fact. He said he didn't know how that relates to what is going to happen here so they are not ready to file that application so if this gets resolved by the middle of July he thinks that will be fine.

Dr. Dimmick commented about the need to verify details on this item before it could be resolved.

Dr. Dimmick said they will leave this open until we can come to have we are going to resolve it.

IX. UNFINISHED BUSINESS

1.	Permit Application	APP	2015-010
	H & H RE, LLC	DOR	04/07/15
	Moss Farm Road	PH	06/02/15
	House	MAD	07/07/15

Dr. Dimmick stated this item was subject of tonight's public hearing which was continued.

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|----|--------------------|-----|----------|
| 2. | Permit Application | APP | 2015-013 |
| | Joseph M. Green | DOR | 05/05/15 |
| | 10 Print Court | SW | 05/26/15 |
| | Site Plan - House | PH | 06/02/15 |
| | | MAD | 07/07/15 |

Dr. Dimmick stated the public hearing on this item was closed tonight and staff was going to see about possible wording.

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|----|---------------------------------|-----|----------|
| 3. | Request for Determination | RFD | 2015-015 |
| | 607 Yalesville Road | | |
| | Pool Shed in Upland Review Area | | |

Dr. Dimmick said we were waiting for a site plan for this item.

Ms. Simone stated when she looked at the minutes of the June 2 meeting the Commission did request that the property owner submit a site plan showing the location of the shed relative to the wetlands.

Ms. Simone stated to date we haven't received any information.

Dr. Dimmick stated he didn't see how they could move forward without that information – they just needed something as a map for the making of a request for determination.

Ms. Simone agreed to contact the applicant.

Dr. Dimmick said they'd continue this item until they hear (back from the applicant).

X. NEW BUSINESS

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|----|---|-----|----------|
| 1. | Request for Determination | RFD | 2015-018 |
| | Cheshire Airgas | | |
| | 325 McCausland Court | | |
| | Installation of Propylene Tanks with pump and motor | | |

Dr. Dimmick said he believed they were send some information regarding the installation of tanks with pump and motor. He said he didn't know about the rest of the members but he didn't see a problem – they are going to install tanks between an existing building and the other existing structures.

Ms. Simone stated correct and they do not indicate there's going to be any disturbance of soil or cutting of trees – this will be in a currently paved area close to the building.

Motion: That no permit is required for this request for determination (activity).

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

2.	Permit Application	APP	2015-019
	Town of Cheshire Public Works Dept.	DOR	06/16/15
	Peck Lane		
	Drainage Improvements	MAD	08/20/15

Walt Gancarz, town engineer was present on behalf of the applicant.

Mr. Gancarz explained in their application is for a rather small drainage issue out on Peck Lane – the current road in that area is failing – some of the pictures show it – where you can see the guard rail leaning toward the ditch in addition to poor drainage and ponding water.

Mr. Gancarz explained this is one of the roads on the list to get repaved this year so instead of paving it and then coming back and tearing it up they'd like to go ahead and pave it ahead of time.

Mr. Gancarz said a significant note is the major area where we'd be impacting wetlands is the area off the shoulder of the road has been the subject of two inland wetlands permits for Danlynn to fill that area to put a driveway in – at this point in time they haven't proceeded to that point so we'd like to kind of jump ahead of them and install it so we won't have to come back and install it and work on it later or impact the paving.

Dr. Dimmick asked if those permits were still valid.

Ms. Simone stated yes they are – because of the state statute that changed relative to duration.

Mr. Gancarz said what they are doing is hooking into an existing 15" pipe on the westerly side running into 111' of 18" pipe and connecting into a catch basin which then connects into a pair of catch basins in the road and replacing that pipe – that cross culvert with a 24" and then improving the discharge with an end wall.

Mr. Gancarz stated in addition they will be putting in a guard rail where there's a significant drop-off where you can see creates a hazard. He said on the easterly side they'll be installing an 8" underdrain to keep water under the road and from undermining the base for the road easterly so that would connect into that catch basin and also drain. He reviewed the location of the activity on the plans.

Mr. Gancarz stated there is an area under Danlynn permit – there is to be a mitigation area and we'd love that as their responsibility – it's on their property.

Mr. Norback said so you are going to go across where they have a proposed driveway and you'll make something adequate for them to traffic over that.

Mr. Gancarz stated yes.

Dr. Dimmick asked if staff reviewed any of this.

Ms. Simone stated yes – it's all in keeping with what's been approved for Danlynn.

Mr. Kurtz asked about the Danlynn permit and their cost and responsibility for work; and asked about the driveway.

Ms. Simone stated they were required for doing that work as part of putting their driveway crossing in but the town wants to solve the road drainage problem so they want to put the culvert in now so they can use as part of their driveway if they ever get to that point.

Ms. Simone said they would be disturbing a wider area and when they'd be creating their own crossing they'd be creating their own drainage issues associate with that (work) – that's why they'd be required to do all this other work.

Mr. Kurtz said he wanted to know if they (Danlynn) should participate in the cost besides the town.

Mr. Gancarz said he thought in a perfect world if they had acted on their permit – this part of it in the direct area of their property would have already been improved but that being said they are not required to do it and if we wait for them to do it we are going to be tearing up a section of road there – having them excavate it into the street on our newly paved road and we'd still have to do portions of it anyhow.

Mr. Gancarz stated they still have the responsibility of mitigating the wetland on their property when they get around to this.

Dr. Dimmick said his impression is the wetland impact is relatively small – improvements to the health and safety are relatively large.

Commission members had no issue with this and instructed staff to go ahead and prepare something for the next meeting.

3. Request for Determination RFD 2015-020
Michael's Greenhouses
300 South Meriden Road
Greenhouse Installation

Attorney Anthony Fazzone was present on behalf of the applicant.

Attorney Fazzone explained Michael's Greenhouses is engaged in farming operations – they have been before the Commission in the past.

Commission members reviewed the plan for the proposed activity.

Motion: That no permit was required based on the drawings submitted.

Attorney Fazzone said a while ago you (the Commission) approve a greenhouse that required the filling of a farm pond – and he put another pond in – you said he didn't need a permit to dig the new pond because it was under three acres but he did need a permit to get rid of the old one because it had become a wetland and you granted that permit. He showed on the plan the area of activity, the green house and the pond that was filled – he noted if you are in the bedding plant business in Connecticut you can't grow your crops – your annuals outside – they'd freeze during the winter so a greenhouse is necessary for business.

Attorney Fazzone showed on the plan the new greenhouse he wants to build – its 22 plus or minus feet away from the existing pond – it's been staked out – its 22' away – all of this area has been mums fields and during the excavation in this area (shown on the plan) for the pond a lot of the soils in here have been disturbed – in preparing this they will be stabilized afterwards.

Attorney Fazzone said the applicant intends to completely circle the pond with sedimentation controls, hay and silt fence – this is being built on piers so there is no foundation.

Ms. Simone asked if there was grading associated with this.

Attorney Fazzone said it's pretty flat and didn't think there was any grading.

Attorney Fazzone and Ms. Simone noted the sedimentation and controls on the plan.

Ms. Simone noted for a request for determination the Commission is not able to stipulate anything – it's either allowed as shown on the plans so the Commission may entertain drawing on this map erosion controls

Attorney Fazzone and Michael from Michael's Greenhouses marked on the map the location of silt fences and hay bales.

Motion: That no permit is need based on the drawing submitted this evening.

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

At 9:12 pm: Return to the approval of the minutes.

XI. ADJOURNMENT

The regular meeting was adjourned at 9:13 p.m. by the consensus of Commission members present.

Respectfully submitted:

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