

**CESHIRE INLAND WETLANDS AND WATERCOURSES COMMISSION  
REGULAR MEETING  
TUESDAY, OCTOBER 20, 2015  
TOWN HALL 84 SOUTH MAIN STREET  
COUNCIL CHAMBERS AT 7:30 P.M.**

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

**Members Absent: Will McPhee.**

**Staff: Susanne Simone.**

**I. CALL TO ORDER**

**Chairman de Jongh called the meeting 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, Dave Brzozowski, Charles Dimmick, Kerrie Dunne, Earl Kurtz and Thom Norback.**

**IV. DETERMINATION OF QUORUM**

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

**V. APPROVAL OF MINUTES Regular Meeting on September 15, 2015**

**Motion: To approve the minutes of the September 15, 2015 regular meeting with corrections. Pg. 3 L43 “and” to “a”; pg. 4 L20 “in” to “somewhat”.**

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

**VI. COMMUNICATIONS**

**Ms. Simone reviewed the following communications:**

- 1. Permit Application #2015-032 – Allen Avenue, Drainage Work**

This communication was reviewed. Ms. Simone stated this item is under new business.

2. Permit Application #2015-033 – 456 East Johnson Ave, Agricultural Use

This communication was reviewed. Ms. Simone stated this item is under new business.

3. Staff Communication Re: Application #2015-033  
CK Greenhouses; East Johnson Avenue

This communication was reviewed. Ms. Simone stated this item is under new business.

## VII. INSPECTION REPORTS

1. Written Inspections

Ms. Simone stated there were no written inspections.

2. Staff Inspections

- a. Bishop Farms

Ms. Simone said there was an inspection of Bishop Farms. She reported they have started to clear some of the property – it is outside of the wetland area so there is no concern there.

- b. 850 Sindall Road

Ms. Simone said there was an inspection of the erosion controls at 850 Sindall Road for the installation of a deck.

- c. 10 Prinz Court

Ms. Simone said at 10 Prinz Court there was an inspection of the erosion controls and permanent wetland markers.

## 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

Chairman de Jongh stated this item would remain on the agenda for monitoring.

2. Notice of Violation SC 05/19/15  
Mr. Charles Kurtz SC 06/02/15  
SC 06/16/15  
SC 07/07/15

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

Ms. Simone stated this item is subject of an application under new business.

3. SHOW CAUSE HEARING  
Notice of Violation SC 09/15/15  
Mr. David Flanagin SC 10/20/15  
Unauthorized Activities in an Inland Wetland and Upland Review  
Area  
Summit Road  
Assessor's Map 32, Lot 50

Mr. David Flanagin was present.

Chairman de Jongh stated he understood staff has been in contact with Mr. Flanagin.

Ms. Simone stated Mr. Flanagin did come into the office last week and she did review with him the materials that were sent to him – the map of his property and the location of inland wetlands.

Ms. Simone said she wasn't able to get any further detail from him about what work was conducted on the site but as she continues to monitor that site she doesn't see there's any clearing.

Ms. Simone stated she was never able to establish there was clearing being conducted on the property.

Ms. Simone stated she was contacted by neighbors who said there was clearing and they would provide pictures – which we never received (pictures).

Ms. Simone said Mr. Flanagin when she spoke with him – we reviewed regulations; we also discussed agricultural use would need to come back before the Wetlands Commission.

Chairman de Jongh asked Mr. Flanagin to tell the Commission what if any activities are taking place.

David Flanagin addressed the Commission.

Mr. Flanagin stated he hasn't cutting trees down in his lot. He said he cut some vines and some bamboo things – he said he pulled them out and that's it.

Mr. Flanagin said you are looking at 4.2 acres over there and the area he did is a very small area.

Mr. Flanagin said the times he's been to his lot the neighbors called the police on him (3 times); they checked the records to make sure he was the correct property owner.

Mr. Flanagin stated he has done anything over there – he said he just got the latest GIS map; he commented he looked at the map to see what was regulated and not regulated; he commented about the details on the GIS map. He said it needed to be more clarified and he needed to talk to the right people about the mapping – and the town soils maps.

Chairman de Jongh said the GIS map is not the wetland soils map and that's what we are regulated by.

Mr. Norback asked what are you trying to accomplish by taking the trees down – are you trying to reclaim it as yard.

Mr. Flanagin said he's not taking any trees down.

Mr. Norback stated the vines. He said what he (Mr. Flanagin) was trying to do.

Mr. Flanagin said he wants the area for recreation. He said if you went the actual lot and said he wants the area for recreation. He said if you went the actual lot and you would see where all the trees are and you would see where there's an area of vines – that's the area he's looking at.

Mr. Flanagin stated again, he plans to use the area for recreation and farming; he said he was going to plant Christmas trees and ferns.

Dr. Dimmick asked how long he's had this property.

Mr. Flanagin stated he believed he purchased it in 2012.

Dr. Dimmick said he was on that property back around the early 1990s and he was trying to picture at that time – there was someone interested in doing some development of the property and we went out on an information basis – we didn't have an application but there was an awful lot of wetland as he remembered seeing it and the wetlands map that we have was prepared by the US Department of Agriculture back in 1960s and it showed the vast majority of that site having wetland soils which is what our staff is working on – the fact that the official map which is based on the Department of Agriculture map transferred to our town map show it as being almost entirely wetlands except for a small strip. He said that is part of what our concern was.

Dr. Dimmick said we have a report from the neighbors and we have a report from you – he said it would be nice if you would grant permission perhaps to our staff person to be free to go out and look at this rather than depending on conflicting statements between what you say and what the neighbors say – that might help resolve things.

Dr. Dimmick asked if that was permissible as far as he (Mr. Flanagin) was concerned.

Mr. Flanagin said sure.

Dr. Dimmick said he thinks he just got permission for (staff) to go out and look at the property for you and wander it and see exactly what's going on.

Dr. Dimmick said he thinks that might help resolve the problem – because as it is we have no hard and fast data – we have what could be called hearsay – what you say and what they say and they don't agree with each other.

Dr. Dimmick said he'd like to get that checked – and while we are at it additional permission if he could accompany Suzanne – he says this because he used to do a lot of land elevation (but Mr. Flanagin didn't have to grant that). He said Suzanne is the staff person and she is the official one.

Mr. Flanagin said he didn't know what the other part you are asking about.

Dr. Dimmick said it's a mystery to him because all he has it what (he has on paper).

Mr. Flanagin stated he has a copy of the latest GIS map – he just copied it from the computer today – he said if you look at that you could see his confusion.

Chairman de Jongh said what he thinks Dr. Dimmick is asking our purpose is to try to assist you and enable you to do the kinds of things that are permitted to do and Suzanne has a firm grasp of what can and can't be done. He explained Dr. Dimmick certainly as a licensed geologist know soils and stuff and can certainly identify so between the two of them they can help you (Mr. Flanagin) identify the areas where you are permitted to be able to do some stuff – more than that it allows this Commission to give you permission to go ahead and do the work that's permitted to be done rather than creating situation which could be violation based on a map that doesn't really truly reflect what the soils are here in Connecticut so he thinks that's what Dr. Dimmick was trying to get at – at least with the help of the staff and help of staff and perhaps Dr. Dimmick you can get a better understanding of what you have, where it can be done and move on from there.

Mr. Norback asked if it was fair to say he might not even be in violation.

Dr. Dimmick stated we don't know.

Mr. Norback said that's where we have the expertise that they are offering to go out there and see if a violation exists instead of the nonce being yours (Mr. Flanagin). He said he thinks Dr. Dimmick has volunteered to go out and see if indeed there's a violation – he said he thought that's a pretty good deal.

Mr. Flanagin stated yeah – sure. He said he didn't want to sit on this for 25 years. He said every time he goes out there the neighbors call the police on him.

Mr. Flanagin said he knows there are really wet parts – he said the right hand corner seems to be not really wet. He showed the Commission the GIS map he got today.

Chairman de Jongh said this is not a public hearing – and a lot could be accomplished by allowing staff and perhaps Dr. Dimmick accompanying her to come out with your assistance take a look at what's out there – see what you are trying to do and then provide you with input as Mr. Norback pointed out – you may not even be in violation.

Chairman de Jongh said we are just trying to get a handle on what you are trying to do and assist you with trying to get that accomplished in the most efficient way possible.

Chairman de Jongh said so with your permission (Mr. Flanagin's) they can coordinate to go out there.

Dr. Dimmick said as long as his (Mr. Flanagin) permission is recorded here – we'll take our chances with the neighbors. He said just clear you realize you've given permission so if we are out there then what ever the neighbors think isn't of any consequence.

Mr. Flanagin said yeah sure – he said if he gives permission this isn't going to get resolved one way or the other.

Chairman de Jongh said that's correct.

Mr. Norback said this is going to expedite things – having them go out there instead of having to get a soil scientist and have it delineated.

Ms. Dunne said just to follow up on something (he said) – you want to grow trees – can you expand on that.

Mr. Flanagin stated Christmas trees.

Ms. Dunne asked for your own personal use or are you going to sell them – what are you going to do with the Christmas trees.

Dr. Dimmick said he didn't think it mattered – it's a legitimate agricultural pursuit to be growing Christmas trees.

Ms. Dunne said she just wants to know what he (Mr. Flanagin) plans to do with growing trees – is he talking about a couple or is it a business.

Mr. Flanagin said right now it would just be a couple – he is just one person so if you told him he had to do a certain amount of work in three months he wouldn't be able to do it in three months – he's one

person and has a full time job – he said he wants to grow Christmas trees and fern plants – the fern plants would start out as his own personal use.

Mr. Flanagin commented about some of the soil types on the property and the site drainage.

Chairman de Jongh said at this point an awful lot could be accomplished by getting an idea of what's onsite where potentially activity can take place and give you directions as to what's the next step that might be required. He said we are just trying to help move beyond where we are now – which is kind of a stale mate until we have access to the property and allow staff and Dr. Dimmick to accompany her and assess what the situation is and try to help him do what he wants to do.

Mr. Flanagin said okay – fine.

Chairman de Jongh said we'll wait for a report back from Charles and Suzanne in terms of what was on place and take this up at the next meeting.

Chairman de Jongh said we'd keep the show cause hearing open until we hear back from staff and Dr. Dimmick.

#### IX. UNFINISHED BUSINESS

Chairman de Jongh noted there was no unfinished business.

#### X. NEW BUSINESS

1.	Permit Application	APP	2015-032
	Thomas & Gail Larson	DOR	10/20/15
	Allen Avenue		
	Site Plan - Drainage Work	MAD	12/24/15

John Friez, from Baillie and Hershman, 290 Highland Avenue in Cheshire was present on behalf of the applicants.

Mr. Friez explained he was here tonight on behalf of Thomas and Gail Larson who couldn't be here tonight – they are the owner of 762 Highland Avenue – it's a drainage pipe going from a sump pump in their basement that we are here to access. He explained it does go across to 764 Allen Avenue which is owned by Mr. Wagner – based on the application you should see that we have his authorization.

Mr. Friez said this application was filed to get a permit for the currently existing drainage pipe that is located on the property and also to put an extension on the end there – he said you can see on the corner of the pipe the section kind of going in a southwesterly direction will be the new added section in there.

Mr. Friez said the proposal is to have that pipe installed using simple hand tools – there will be no major excavation or tools or anything like that – and then to back fill over the 4” section 40 pipe that would go in there so at this point they wanted to come as they are negotiating easement with Mr. Wagner and that’s just about buttoned up; to get the permit in place to be sure they are already with where the pipe is located and so that everything is taken care of in one fell swoop.

Dr. Dimmick said it’s his understanding you are not actually working in the wetlands – you are working in the setback zone from the wetlands.

Mr. Friez said that’s his understanding from talking to Suzanne as well – the yard area is very near to an area that could be a wetland area – they didn’t have the soil tested exactly out there but wanted to come forward at this point.

Dr. Dimmick said the one thing that’s not too clear on this – there are no contours on this so we don’t know much about the elevation or slope and the only reason that’s a problem for him is that we have the pipe just end and he is not sure how the pipe is ending – is it out letting to the surface at that point – is it going through some kind of a spreader or just what.

Mr. Friez said he believed it was out letting to the surface at that point.

Dr. Dimmick stated there’s no details – he thinks that’s the only part holding him up – other than that he see a real problem because at the end excavating a trench, backfilling then probably replanting – that’s another thing missing – after backfilling are they going to reseed this so they don’t have exposed dirt.

Mr. Norback said it says a sump pump – and he sees a sump pump but he doesn’t see a structure that it comes from – so this is basement sump pump.

Mr. Friez said it’s a sump pump located at 762 Allen Avenue which the structure is not indicated on the map.

Dr. Dimmick said so this only shows the work on the adjacent property – the extension of the thing to the sump pump on the adjacent property.

Mr. Norback said alright – it's just hard to see where its fed and the direction it's going in.

Dr. Dimmick comment it comes in from the lower right hand corner onto the property; the details aren't clear.

Ms. Simone said and to provide some clarity – is the Commission only interested in only seeing contours in this area of the proposed activity or contours of the surrounding area.

Dr. Dimmick said he only needed it within the area of the discharge to see if we have a slope problem or not.

Mr. Norback said it doesn't make a difference until it outlets because it's either gravity or its forced – either way we just care where it ends up.

Dr. Dimmick said actually just a detail of the outlet area - that's all that's missing; the rest of it he understands fine.

Chairman de Jongh said it's not just the contours – it's the contours and the details.

Dr. Dimmick said they can do a separate little drawing just for the area 30' within the pipe – that would give us everything that we need.

Chairman de Jongh asked Mr. Friez if they could get those addendums the next meeting.

Mr. Friez said he'd reach out this evening and they should be able to.

Mr. Kurtz said he is curious about the McIntosh situation – that land must be somewhere on this map.

Dr. Dimmick said the wetland they show here is that stream we had the problem with stuff being piled on the bank of the stream of the McIntosh's and what they cleaned up so it's the other side of the stream.

Ms. Simone showed on the map the general area they were referring and said it's since been cleaned out.

Ms. Simone said there was an issue at the same time as Mr. McIntosh that the neighbors had been dumping in that stream area and they did cooperate and pull that material out towards the road and then the town went and collected that material.

Ms. Simone said so there were issues previously in this general area but they have since been corrected.

Chairman de Jongh said so with the detail of the outlet structure and the topographic information we can deal with at our next meeting.

2.	Permit Application	APP	2015-033
	CK East Johnson North, LLC	DOR	10/20/15
	456 East Johnson Avenue		
	Agricultural Use	MAD	12/24/15

Attorney Anthony Fazzone, David Lord, soil scientist and Severino Bervino, of Kratzert and Jones were present on behalf of the applicant.

Attorney Fazzone addressed the Commission.

Attorney Fazzone stated as indicated this is an after the fact application; the grading in this area and the whole site has been completed.

Attorney Fazzone said with respect to this application we have notified the Southington Inland and Wetlands and Watercourses Commission even though the property is more than 500' from Southington the language of the ordinance is a little bit vague and the watercourse being the Quinnipiac River certainly is in and of itself its within while upstream it's still on the same watercourse; so just out of trying to be conservative we did notify Southington.

Attorney Fazzone said we also notified the Regional Water Authority in view of the fact this property is over the North Cheshire Aquifer and we have notified the Department of Public Health as required by state statute.

Attorney Fazzone stated copies of all those correspondences and materials we submitted with the application.

Attorney Fazzone said the application states it's for agricultural use. He said he was just ask the Commission does anyone, based on their knowledge have any doubt that CK Greenhouses is an agricultural activity engaged in agriculture. He asked can we stipulate to that.

Chairman de Jongh stated he thought the Commission was pretty much aware of that – they do nothing but plants.

Attorney Fazzone said with that he was going to ask Severino Bovino of Kratzert and Jones to go over the regrading of exactly what was done with respect to the regarding.

Severino Bovino of Kratzert and Jones Associates, of Milldale, CT addressed the Commission.

Mr. Bovino handed out copies of maps to Commission members. The map shows the entire property – there are two parcels.

Mr. Bovino said the property is in an I-2 zone – it is bounded north and west by Whole Foods Warehouse – east by the Quinnipiac River – south by East Johnson Avenue; it contains about 13.5 acres; it was and is used currently for agriculture; it is served by public water and public sewers.

Mr. Bovino stated the applicants hired David Lord to delineate the wetlands; Kratzert and Jones located the flags placed David Lord and they are retracted on the map.

Mr. Bovino explained the wetlands are associated with river and the land area associated with the wetlands is about 1.77 acres which includes the river; the property lines goes through the center of the river.

Mr. Bovino said the upland review area is 1.29 acres; the upland area disturbed by the fill that was placed is 10,682 SF; the volume of fill placed in this area is 1,884 CY (shown on the map).

Mr. Bovino said the area in light green labeled former wetlands on the map in front of you – the area we estimated to be 21,550 SF; the volume of fill placed is estimated about 4,500 CY.

Mr. Bovino stated the property was created and a concrete block wall was installed at the east edge of the fill; the grading changed the shape of the land from 6% to 7% grade to about 1% to 1.25% grade and in some areas even to less than 1%.

Mr. Bovino said the change in grade served the applicant's purpose – it also reduced the runoff of velocity across the field thereby reducing the potential silt moving easterly towards the river.

Mr. Bovino said in addition, the applicant covered most of the field with filter fabric; also in front of the wall he provided a stone trench with the detail of which is on the map – he handed out copies to Commission members so they could view that detail.

Commission members reviewed copies of the map.

Mr. Bovino said on the lower left corner of the map is a detail - he provided the view of the detail of the wall and the way it's constructed.

Chairman de Jongh asked if the trench on the Quinnipiac side of the wall or on the internal side.

Mr. Bovino stated on the west side of the wall – on the outside. He said the scope of that trench is to intercept the runoff, store it and then trap the silt so that whatever left over water that's not percolating to the ground – allow that water to move northerly in a perforated PVC pipe.

Mr. Bovino explained the stone trench detail shows at the top portion there's about 7' to 8' wide of stone and as it goes deeper it's about 3' wide and 4' deep below with a double layer of filter fabric; and on the wall face there is a filter fabric – double row of filter fabric that's beneath the stone and also follows the face of the wall to the top; so this is an additional item that's placed to prevent silt from moving through the wall and toward the wetland area so whatever movement of silt that occurs comes into the trench and the filter fabric that placed up against the wall and below the stone helps prevent the silt from moving easterly towards the river.

Chairman de Jongh asked about the pitch of the area where the plants are above ground – is the pitch towards the trench so everything flows into the trench.

Mr. Bovino stated yes.

Mr. Bovino said if you look at the grading plan in front of you, you'll see the dash lines – those are where the existing contours prior to the grading and the solid lines are the current contours and it shows the slope is moving towards the wall; at that percent its much less

then what was originally on this property. He said as indicated now the slope is between 1% and 2% and the property used to be 7% in some places.

Mr. Bovino said the notes are on the plan that indicate that this system – the silt fence, filter fabric cover and silt fence on the downside of the wall; there's also silt fence that was installed by the applicant on the east side of the wall which is the river side shall be maintained on a regular basis and if there's any breach the applicant is obligated to replace it and continue maintaining these erosion control systems; he stated Charlie Kurtz has a responsibility to do that and it's on the S&E control notes on the plan.

Mr. Bovino said the upland review area disturbed is an area that is the past contained multiple structures along the river and a long driveway to get to these structures; the map shows the old driveway and shows some of the structures; those structures are now gone and there maybe leftover slaps of concrete that structures were on.

Mr. Bovino said the plan also shows that we proposed to plant some Arborvitaes on the face in front of the wall and provide a safety fence on the top of the wall.

Mr. Bovino said staff has some comments regarding the quantity of fill and the areas – he stated he provided that answer and he also has a letter addressed to chairperson and passed out copies to Commission members and for the record.

Mr. Bovino reviewed the map – he said the bottom of the map is East Johnson Avenue; the river is shown; shown are the wetlands associated with the river; the review buffer area; and the wetland area that was brought to our attention at the last meeting; so what they did was take the maps they were provided with at the last meeting and digitized them and placed them on this map now showing the grade and drainage patterns, the erosion control notes and details and whatever is necessary to maintain that property in the condition it does not create a problem for the river.

Mr. Bovino said at this point if you have any questions he'd be glad to answer.

Chairman de Jongh asked if the proposed 4' high split rail fence about mid-way up the property line on the easterly side – what purpose does that serve.

Mr. Bovino said the 4' fence is to prevent someone from falling off the wall – it's more of a safety item.

Mr. Norback said typically in construction anytime there's a grade differential like that when you have a more than 4' drop its incumbent upon you to put up some kind of barrier – it's sometimes called a warning barrier but it's really just a safety rail and it's probably a good idea in case someone (pedestrians) walks off then end of it.

Chairman de Jongh asked if that was going to run the entire length.

Mr. Bovino stated yes.

Attorney Fazzone said David Lord is here this evening – he is the soil scientist who went out and did the wetland flagging after the wall was installed and he is here and can answer any questions about the report.

Attorney Fazzone said he would ask Mr. Lord to specifically address the relationship between his report and where the wetlands flags are shown and wetland areas are shown on the site plan.

David Lord, a professional soil scientist and environmental consultant – his company is Soil Resource Consultants in Meriden, CT addressed the Commission.

Mr. Lord said he believed they (the Commission) had in the application package a document that he prepared dated June 2, 2015 and concerns the findings of an onsite investigation which was actually completed on June 2 of this year during at which time he placed 28 flags along the boundary of the wetland beginning in the northern extent and running in a southerly direction parallel the Quinnipiac River coming out near the Town of Cheshire pump station facility.

Mr. Lord said wetlands on the site – there are three different types of wetlands within that solid green line shown on the drawing – the first is a poorly drained soil that is the Rumney soil – it's a flood plain alluvial type wetland soil – it does have a high ground water table condition; moving to the west its slightly higher elevation is the Pootatuck soil which is a moderately well drained flood plain soil, occurs in narrow bands and strips and parallel to the Quinnipiac River; lastly the generic or taxonomic description of Fluvaquent which is the disturbed flood plain soils – these soil areas are at the furthest westerly limit of the flags – they are just inside the wetland flags – these are moderate to excessively drained soils – they are

disturbed to the extent that he can't classify into a natural soil group; he said he describes them at the taxonomic level as Fluvaquent which means a disturbed wetland soil; but these soils do not have any connection to the ground water table there – they are very deep depths to the water table – they are very high – they are very dry but they are subject to periodic flooding from the Quinnipiac River and very large term storm events when we get outer bank flood on the west side of the Quinnipiac River.

Mr. Lord said there were upland soils to the east of the existing retaining wall are primarily Manchester soils to the north – and Agawam soils in the area of the existing retaining wall down to Johnson Avenue – to the west of the retaining wall the soils again are disturbed fill and can only be classified at the taxonomic level as Udifluvents upland and non-wetland soil characteristics there. The area further to the west of that has been described and talked and somewhat extensive previous meetings – he said he did not have any opportunity to see that – he only looked at the documents that were on file and talked to some of the interim soil scientists who looked at that area prior to the placement of the fill and retaining wall in between the time in 2000 when it was originally identified as a wetland and in the present condition – the town hired a soil scientist firm from Old Lyme – Soil and Environmental Services – he said he did speak with Don Fortunato who is his counterpart with that firm talking about the extensive investigation that they did in 2011 and 2014 which extended well beyond and to the west of the area we are talking right now and to the north of Johnson Avenue they found no evidence of any wetland soil such as is indicated on that area.

Mr. Lord said he believed they (the Commission) had copies of all the correspondence that he received from Don and previous information as far as this wetland.

Mr. Lord stated that is all he had to present at this time – and he'd be happy to try to answer any questions that members may have.

Dr. Dimmick asked Suzanne is she got copies of this correspondence.

Ms. Simone stated yes.

Attorney Fazzone stated he had copies of exhibits that were included with correspondence; they were handed out.

Attorney Fazzone said he wanted to address the area in the lighter green on the site plan which going back to 2000 – 2001 had been

delineated by Ken Stevens as a wetland. He said that was part of an applicant called Freight Terminals and that is what that site plan they have seen – it was an application before this Commission and in the discussion before the Wetlands Commission Mr. Stevens and George Loden were asked about this wetland area – Ken Stevens remarked that the soil is moderately well drained but is not a swamp and it does not function as a swamp wetland.

Attorney Fazzone said there came a point in time where the applicant decided to change the location of the detention basin and they were proposing to put the detention basin exactly in the area of the area that Ken Stevens had delineated as wetlands; he said George Loden was asked a question by Mr. Kasinskas can Mr. Loden stated that “from a regulatory perspective the area is called a wetland because it has flood plain soils however it does not function as a wetland that provides wildlife habitat, semi retention, etc.; this site is no longer attached to the active flood plain.”

Attorney Fazzone said the exhibit that he has given you – shows the report that was done in conjunction with the proposed bridge rehabilitation over the Quinnipiac River on East Johnson Avenue – and that was done a few years ago – it shows a more recent letter dated in September of 2014 which somewhat indicates that they were asked to go out and review the work they had done because the project extended a little bit further up East Johnson Avenue and then it shows a recent email which Mr. Lord was talking about from the soil scientist saying that they investigated an area 300’ from the brick deck up East Johnson and 300’ into the property and they did not find any wetland soils.

Attorney Fazzone said if you look at the last page of the exhibit that he gave you – for the record – originally they indicated that they had gone a total of 350’ – 200’ on the original inspection and 150’ but in his email he only confirms they went 300’ whether or not that’s a mistake on his part or not but if you were to scale off the 300’ it would be exactly where the red line is shown marking the 300’ in width; and in any event their investigation incorporated nearly all of the wetland area previously designated by Ken Stevens.

Attorney Fazzone said just the point he is trying to make is that when CK Greenhouses went to do the regrading that they did in this area – there was nothing to alert them that that was a wetland area – it didn’t look like a wetland area unlike the area down by the river where they were able to find some old wetland flags – actually Mr. Lord did the wetland flagging when the town built the sewer pump

station there and some of those old flags were available down in the area near the river.

Attorney Fazzone said Mr. Lord has indicated that the wetlands flagging as shown on the latest site plan by Kratzert and Jones is as he has mapped it and our application that we submit to the Commission that for purposes of this application and regardless of the soil type as explained in the Freight Terminal application the area did not function as a wetland and ask that the filling of this area be approved.

Dr. Dimmick said to Mr. Fazzone that there appears to an error of omission in the definition of a wetland in the Environmental Service report from the people from East Lyme where they say an inland wetland soil by Connecticut criteria is defined as soil that is saturated within about 12" of the surface during a portion of the growing season; he said most wetland soils have to fit that definition but then they just glance at the fact that inland wetland soils also include Alluvial and he should add flood plain soils and Alluvial and flood plain soils do not have to have that requirement of water within 12" of the surface so by their own definition they would not have recognized that area as a wetland soil even though by Connecticut regulations it was a wetland soil as shown by Ken Stevens and by George Logan so it's no wonder they missed that it's a wetland area they didn't even have the right definition from the appearance of it so he's not surprised.

Mr. Norback said just for clarification sake – where there a definition if you will about its function – was that at least accurate.

Dr. Dimmick said he could certainly agree that is even at the time Ken Stevens looked at it – it was no longer functioning as a wetland but the term regulatory used by George Logan by regulation it was a wetland and technically require a permit for the filling even thought we would recognize it has having no function and therefor automatically granted the filling of it nevertheless as with any of the agricultural use exemptions we give you do need to come before the Commission to get the Commission to put the okay on it; you cannot make the decision on your own which is the only reason we have this whole problem because had they come in front of us to begin with he is sure we wouldn't have had any of this problem.

Mr. Norback said you referenced the outfit from East Lyme – what's there another soil scientist (from the show cause hearing) that came up with that conclusion that it was not recognizable.

Dr. Dimmick said he couldn't remember how many there were – they had Ken Stevens, George Logan were the two original recognized it as a wetland even though it was not functional; we had the firm from East Lyme and then we have David Lord and by the time David Lord looked at there was nothing to see.

Ms. Simone said that information was not included as part of this application because the application coming depicts a wetland area so she didn't incorporate all of that into this application – she was trying to keep it separate but she could include that information.

Mr. Norback said he thought it was historically relevant because there were two guys who saw it and two guys who didn't.

Dr. Dimmick commented about it was too difficult to determine now if there was a former wetland down underneath all of that – he thinks it's a 2, 1 and 1 rather than 2 and 2. He said he is not arguing Attorney Fazzone's point that it was a non-functional wetland and therefore if they had originally gotten the application there would have been no problem in granting it.

Mr. Lord said he did have an extensive discussion with Don Fortunato the East Lyme Soil Science firm and just to clarify for the Commission's perspective when a soil scientist flags wetlands by today's standards we are looking for wetlands that are poorly drained, very poorly drained, flood plain or alluvial soils – that's the state statute criteria that we use; Mr. Fortunato and his firm used that criteria when they looked at the site in 2011 and 2014 so they did not only look for saturated soil type wetland in this area – they were also looking for flood plain soils as a matter of course regularly that's the type of information that we are looking for when we flag wetlands; he said he did specifically talk to him about that; he said he would need a clarification regarding that point (as noted by Dr. Dimmick it's on the first page of the report by Don Fortunato where he gives the definition of a wetland). He said he did speak to Mr. Fortunato about this site and what they were looking for at the time – not only swampy type wetland area but flood plain alluvial soils.

Chairman de Jongh said he thinks as what was pointed out by Dr. Dimmick the existence of that wetland piece – the fact of the matter that that piece while it's under our purview – i.e. regulated piece probably would not have created a problem for if this were coming before us from the beginning; it would have probably been a non-issue if they knew about it in the beginning.

**Attorney Fazzone said he is not sure if they were coming in for the wall and we had asked David to go there before the wall was constructed that we would have gone up into that area and found that as a wetland soil without the fill being there.**

**Attorney Fazzone stated we are here today and the application seeks after the fact permission to fill the area in question.**

**Dr. Dimmick said he has no problem with the application. He asked Suzanne if engineering was going to make some commentary on this.**

**Ms. Simone said the engineering department is reviewing both of the applications that are on the agenda tonight for new business tonight; they don't have comments for tonight's meeting but will have then by the end of the week and at that time we'll share whatever comments they have with both of the applicants.**

**Attorney Fazzone said in order that they might be prepared would the Commission be voting on significance.**

**Motion: To declare the proposed activity not significant with the context of the Commission's regulations.**

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

**Chairman de Jongh said we'll allow staff to pull together the comments from engineering and take this up at our next meeting and move on from there.**

**XI. ADJOURNMENT**

**The meeting was adjourned at 8:29 pm by consensus of Commission members present.**

**Respectfully submitted:**

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