

**CHESHIRE INLAND WETLANDS AND WATERCOURSES COMMISSION  
REGULAR MEETING  
TUESDAY, FEBRUARY 2, 2016  
TOWN HALL 84 SOUTH MAIN STREET  
COUNCIL CHAMBERS AT 7:30 P.M.**

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

**Members Absent: Dave Brzozowski and Thom Norback.**

**Staff: Suzanne Simone.**

**I. CALL TO ORDER**

**Chairman de Jongh called the regular meeting to order at 7:30 pm.**

**II. PLEDGE OF ALLEGIANCE**

**The pledge of allegiance was recited by those present.**

**III. ROLL CALL**

**Ms. Dunne called the roll.**

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

**IV. DETERMINATION OF QUORUM**

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

**V. APPROVAL OF MINUTES Regular Meeting January 19, 2016**

**Motion: To approve the minutes of the January 19, 2016 regular meeting with one correction: pg. 9 L 35 “the” to “he”.**

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

**VI. COMMUNICATIONS**

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

- 1. Staff Communication with Attachments: 2016-005 Cornwall Avenue Extension/Mountain Road, Subdivision**

**This communication was reviewed. Ms. Simone stated this is on the agenda tonight.**

- 2. Engineering Comments Re: 2016-005, Clearview Farm Preserve Subdivision, Cornwall Avenue Extension/Mountain Road**

**This communication was reviewed.**

- 3. Staff Communication with Attachments: 2016-006, 150 East Johnson Avenue, Agricultural Request for Determination, Grading**

**This communication was reviewed.**

- 4. Staff Communication with Attachments: 2016-007, Inverness Court Request for Determination and Application, Site Plan – House**

**This communication was reviewed. Ms. Simone stated this is on the agenda under new business.**

**Handed out at and reviewed at tonight's meeting:**

- 5. Draft Motion Re: Application 2015-036 134 North Brooksvale Road**
- 6. Cease and Desist Order Release Re: 134 North Brooksvale Road**
- 7. Engineering Comments Request for Determination and Application for Inverness Court 2016-007**

**VII. INSPECTION REPORTS**

- 1. Written Inspections**

**Ms. Simone stated there were no written inspections.**

- 2. Staff Inspections**

**Ms. Simone stated there was a staff inspection done of the property at Inverness Court.**

**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 remains on our agenda for continued monitoring.

Dr. Dimmick said he believed some of this was turned over to the town attorney at this point.

Chairman de Jongh stated that's correct.

Mr. Kurtz asked if there was a response.

Ms. Simone said there was no response yet.

2. Notice of Violation SC 09/15/15  
Mr. David Flanagin SC 10/20/15  
Unauthorized Activities in an SC 11/05/15  
Inland Wetland and Upland Review Area SC 11/17/15  
Summit Road  
Assessor's Map 32, Lot 50

Ms. Simone stated there is no movement on this item. She said he (Mr. Flanagin) did receive the letter informing him of the Commission's decision and that he would need to get an application to this Commission if he plans to continue clearing the property.

3. SHOW CAUSE HEARING  
Michael Van Haften SC 12/01/15  
Unauthorized Activities in an SC 01/05/16  
Inland Wetland and Upland Review Area SC 01/19/16  
134 North Brooksvale Road SC 02/02/16  
Assessor's Map 78, Lot 73

Motion: That the Commission moved to close the show cause hearing.

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

**IX. UNFINISHED BUSINESS**

- |    |                         |     |          |
|----|-------------------------|-----|----------|
| 1. | Permit Application      | APP | 2015-034 |
|    | Jason Bartlett          | DOR | 11/05/15 |
|    | 358 Cornwall Avenue     |     |          |
|    | Partial Filling of Pond | MAD | 3/14/16  |

Ms. Simone stated Mr. Bartlett has granted the extension – the maximum amount of time which brings the mandatory action date to March 14, 2016. She said she did send a letter both regular mail and certified mail to him after the last meeting to remind him this information is still outstanding; that the application is incomplete and he would need to get this submitted to town staff with enough time to review and report back to the Commission.

Ms. Simone stated she has not heard a response back from him (Mr. Bartlett).

- |    |                           |     |          |
|----|---------------------------|-----|----------|
| 2. | Permit Application        | APP | 2015-036 |
|    | Michael Van Haften        | DOR | 12/01/15 |
|    | 134 North Brooksvale Road |     |          |
|    | Garage                    | MAD | 2/04/16  |

Chairman de Jongh stated the show cause hearing was closed and he believe staff had a recommendation for us to consider.

Ms. Simone stated yes – there is a draft motion.

**Motion:**

That the Cheshire Inland Wetlands and Watercourses Commission, having considered the factors relevant to the issuance and release of the subject Notice of Violation/Cease and Desist Order, Commissioners' knowledge of the area, visit of the site and after reviewing an application for and granting a permit for after-the-fact for construction of a garage within and upland review area and inland wetland, finds the following:

1. That on November 25, 2015, a Notice of Violation/ Cease and Desist was issued to Mr. Michael Van Haften, 134 North Brooksvale Road for construction of a garage within an upland review area and inland wetland without the required

**permission from the Cheshire Inland Wetlands and Watercourses Commission, in violation of the Inland Wetlands and Watercourses Regulations.**

- 2. That on December 1, 2015 the Cheshire Inland Wetlands and Watercourses Commission opened a Show Cause Hearing and determined the property owner must submit an application for permit after-the-fact for construction of a garage in an upland review area and inland wetland.**
- 3. That on December 1, 2015 the Commission received the above referenced application for permit after-the-fact.**
- 4. That a Commission member and Staff visited the site and confirmed that the installation of a concrete pad did not cause erosion into the upland review area, or directly within the inland wetland which surrounds this property to the north and east.**
- 5. That on February 1, 2016 the Planning Office received the required application fee from the applicant.**
- 6. That on February 2, 2016 the Commission granted a permit after-the-fact, for the above referenced application.**

**Therefore, the Cheshire Inland Wetlands and Watercourses Commission does hereby release and discharge the aforementioned Notice of Violation/Cease and Desist Orders.**

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

**Motion:**

**That the Cheshire Inland Wetlands and Watercourses Commission, having considered the factors pursuant to Section 10 of the Inland Wetlands and Watercourses Regulations of the Town of Cheshire, Commissioners' knowledge of the area, previous site visitations, and after review of written information provided by the applicant on this application, finds the following:**

- 1. That the current application is for the construction of a single story, two bay garage at 134 North Brooksvale Road.**

- 2. That the property owner's contractor misrepresented the location of the garage relative to the nearest inland wetland, and a building permit was issued based on this erroneous information.**
- 3. That a Cease and Desist Order was issued on November 25, 2015 and the Commission revised the Cease and Desist Order at the December 1, 2015 meeting, to allow the continued construction of the prefabricated garage.**
- 4. That town records indicate that the garage is located within the upland review area of a high value inland wetland to the north and east of this property.**
- 5. That the concrete pad was installed without received the required permit from the Inland Wetlands and Watercourses Commission.**

**Based upon the foregoing findings, the Cheshire Inland Wetland and Watercourses Commission conditionally grants CIWWC Permit Application #2015-036, the permit application of MICHAEL VAN HAAFTEN as presented.**

**The permit is granted on the following conditions and stipulations, each of which the Commission finds to be necessary to protect the wetlands and watercourses of the State and the Town of Cheshire:**

- 1. Any lack of compliance with any condition or stipulation of this permit shall constitute a violation of the Cheshire Inland Wetlands and Watercourses Regulations, and an enforcement order shall be both issued and recorded on the Town of Cheshire Land Records.**
- 2. No changes or modifications may be made to the plans as presented without subsequent review and approval the Cheshire Inland Wetlands and Watercourses Commission.**
- 3. Throughout the course of conducting construction activities covered by this permit grant, and per Section 11.2K of the Cheshire Inland Wetlands and Watercourses Regulations, the applicant shall be responsible for ensuring the following:**

a) That all maintenance and refueling of equipment and vehicles is performed as far as practical from all wetlands and watercourses, at least 100' if possible. All oil, gasoline, and chemicals needed at the site shall be stored in secondary containment to prevent contamination of any wetlands or watercourses from possible leaks.

b) That all disturbed areas on the site not directly required for construction activities are temporarily hayed and seeded until the site is permanently stabilized.

4. This permit grant shall expire on February 2, 2021.

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

3.	Permit Application	APP	2016-005
	Clearview Farm Preserve, LLC	DOR	1/19/16
	Cornwall Avenue		
	Subdivision	MAD	3/24/16

Matt Ducsay, registered professional engineer and Bill Root with Milone and MacBroom were present on behalf of the applicant. Attorney Anthony Fazzone was also present.

Mr. Ducsay addressed the Commission stating he was present on behalf of the applicant for the property at 947 Cornwall Avenue, subdivision known as Clearview Farm Preserve.

Mr. Ducsay stated the property is located on the west side of Mountain Road; it totals approximately 25.6 acres; the subdivision consists of 21 conventional R-20 single family homes – that's half acre zoning.

Mr. Ducsay said its abutted to the north and south by existing residential homes as well as to the east by other residential homes and then to the rear by the state forest as well as North Roaring Brook.

Mr. Ducsay said the topographic on site is best described as rolling; much of the property is open farm field because this was an historic farm field; most of it is open – there are some wooded areas along the perimeter; he said you can see on the maps the existing tree line that forms an open field generally in the area of the subdivision.

Mr. Ducsay said the subdivision is proposed to be served by, in two different sections; a 1200 LF cul-de-sac serving 13 of those lots while the other 8 including the existing home will be served by Cornwall Avenue extension located on the northern portion of the property.

Mr. Ducsay said all the lots are going to be served by individual septic systems as well as public water.

Mr. Ducsay said as part of their due diligence on this property we've opened up over 40 test pits on the property; the soils on sight in the area of the development is mostly a well-drained Branford silt loam.

Mr. Ducsay said in doing the test pits for the septic feasibility we did not encounter any ground water or any sort of restricted layer on any of these pits.

Mr. Ducsay said we since designed those septic's and submitted to Chesprocott and just recently received the septic feasibility approval to support the layout you see here.

Mr. Ducsay said the wetlands on property are relegated mainly - you can see most of the wetlands are located off site – the wetlands on this map are shown in pink along the western boundary and then there's a small pocket along the southerly boundary.

Mr. Ducsay said the plans in front of you tonight are proposed not to include any direct wetland impacts as part of this application.

Mr. Ducsay stated any impact is upland review area impact and again that is mainly relegated to the southern portion of our development here (shown on the map).

Mr. Ducsay said the frontage lots along Mountain Road were subdivided it was done so in the early 60's as part of that a 50' strip was left for access for this rear portion of the property – that strip is located here (as shown on the map); he said he believed the language on the map is for future roadway purposes.

Mr. Ducsay said since that time, the town has actually installed a number of catch basins in this vicinity that connect into the Mountain Road drainage and then discharge to this area here (shown on the map) where North Roaring Brook discharges to.

Mr. Ducsay said most of the upland area impact is associated with access to the property – we are bringing in our roadway in this 50' right of way and bringing it in according to town engineering standards as far as the horizontal geometry of the road and then we are bringing into the site and away from those protected areas as quickly as possible.

Mr. Ducsay said onsite we have .16 acres of wetlands; he said you can see (on the map) how the wetland boundary meanders in and out of the property line.

Mr. Ducsay said there are no direct wetland impacts and we have .3 acres of upland review area impact and as he just previously stated most of that impact is regulated to that area through the 50' right of way strip and then there is some grading on these lot right here (shown on the map) which just encroaches into the upland review area.

Mr. Ducsay said our storm water management basin is located in the southern portion of the site; we designed it according to town standards to mitigate peak rates of runoff for all storms 2 through 100.

Mr. Ducsay said we also have numerous S&E control measures on site including perimeter controls, wilt fence, hay bales, and diversion berms located along what is the eastern boundary of the property – upgrading the existing home sites which is designed to route any sort of runoff from the site toward our stormwater management basin which will double as a sediment trap during construction.

Mr. Ducsay said other than that – that pretty much summarizes the impacts; the wetlands leave the property here (as shown on the map) and then sort of extend up into State land so any upland review area impacts are regulated to the southerly portion of the property and mainly near the access from Mountain Road.

Mr. Ducsay said with him tonight was Bill Root who could speak more about the types of soils - his delineation of these wetlands and any sort of functions and values.

Mr. Ducsay said if anyone has any questions regarding the information that he just presented he was more than happy to attempt those questions.

Dr. Dimmick said he was trying to remember – there is an access way to the water company through there for their pipes going up the mountain.

Mr. Ducsay said correct – their water main flows up Cornwall Avenue Extension here (shown on the map) and you can see we've actually left that piece of land under existing conditions – they have an easement he believed on that property surveyed from that point leading up to that State land.

Dr. Dimmick said that is right on top of the water pipe.

Mr. Ducsay said that is right over the water main. He said he'd have to refer to the survey map to ensure but he knows there was an easement there for the water main and we are going to make sure that is left in place as a result; it's not going to be any of these lots; he said we've tried to create an access from Cornwall Avenue Extension so that can be owned in fee or remain as an easement.

Dr. Dimmick asked if it was wide enough when they have to do maintenance on it which they do once every 20 years or so.

Mr. Ducsay said he believed so – the strip looks to be 20' wide but he can verify that information.

Mr. Ducsay said if there were no further questions he was going to turn it over to Bill Root.

Bill Root, certified soil scientist with Milone and MacBroom addressed the Commission.

Mr. Root stated he prepared the delineation report with the photographs that are a part of it.

Mr. Root said the report is dated February 26, 2015; he flagged the wetlands on the site December of 2014 and photographs were taken at that time so you can take a look at those or perhaps you might have already to get an idea of what the wetlands are like.

Mr. Root explained as Matt was saying the property lies between Mountain Road and Cheshire Mountain and there is a fairly steep slope up Cheshire Mountain and there are a number of drainage ways that come off the slope and when they reach these open farm

fields which are slightly raised there's a trough along the back western side of the property where there's a perineal water course.

Mr. Root said so we have drainage from the upland forest – it becomes a small watercourse flowing southward and there are some small pockets of wetland soils along them.

Mr. Root said the small stream has been manipulated quite a bit – he said he didn't know if they (the Commission) had done a site walk yet but there is a long profile dam on it – there's a small ponded areas with herbaceous growth – it looks like it may have been a former farm pond; as Matt said there was a roadway that roughed in in the stream and the back area here has been channelized and routed through a reinforced concrete pipe and outlets on the other side of the road and discharges away to the south.

Mr. Root said there is a wetland pocket on the southern side of that roadbed which then becomes connected with the watercourse once it gets away from where there's been cut and fill operations.

Mr. Root said on the northern side of Cornwall Avenue there are no wetlands identified in that area so there are really very little wetlands on the property but this small watercourse flows pretty much along the western boundary of the site – these are old agricultural fields – there's a stone wall right along the edge of the field – its wooded then the terrain drops down lower into the stream so the stream is fairly separated from the flat farm open fields that were up above.

Mr. Root said as far as functions and values – there's nothing really to significant – there's no flood plain or anything associated with it but it's an open waterbody – it's a perineal watercourse – it's not a fishery resource but it's a good local wildlife habitat; there are some sand and gravel base soils in the area so you get ground water a number of feet from the small stream and the wetland as well.

Mr. Root said the nature of the stream and the vegetation along it would be good for removing pollutants –pollutant renovation which is another function and value so the old farm fields which generally drained into this wetland area – the runoff water would be treated to some extent by wetland vegetation that's present on the site.

Dr. Dimmick asked about the wildlife – was it south of this that a moose was sited last year.

Mr. Root said he didn't see the moose and he doesn't know anything about the moose.

Dr. Dimmick said several people on Mountain Road saw a moose back at the edge of the mountain right behind their houses; a bit further south from there.

Mr. Root said Cheshire Mountain is a great open wildlife area – we inquired from the Natural Diversity Database – there were a number of hits or listed species all along Cheshire Mountain side which overlaps on to this property so we've had to do endangered species surveys for the Connecticut DEP for this application.

Chairman de Jongh asked what type of protective measures were going to be used on that back piece along lots 10 – 13 in that area; you mentioned there's a stream cutting through and that's probably been interfered with overtime.

Mr. Root said it's been manipulated he thought for the farm purposes. He said you'd have to ask Matt more about the erosion controls – he really just did the delineation work on this one but he could tell them that the area proposed for the lots is quite a bit above the stream and between the two there's a wooded corridor – stone walls and has a good physical separation from the proposed development area and the watercourse.

Chairman de Jongh said his concern was just to make sure – he is sue its serves some function although it's been kind of beaten up over the years but his concern is once the homeowners get there and they start mowing the lawns and stuff and they start dumping stuff to impede whatever functionality that might have – that's all he's thinking about is what kind of barriers we could put up to make sure the homeowner doesn't go beyond the edge of their property.

Mr. Root said that's always a valid concern when you are working near the upland review area.

Ms. Simone said as far the Natural Diversity Database – can you elaborate on what you are doing as far as surveys.

Mr. Root explained they did surveys for Wood Turtle and Box Turtle made a number of visits on to the site - three or four visits actually and looking for Box Turtles and Wood Turtles and didn't find any that are habitat for both species is associated with the watercourse that

is east of Mountain Road but they do extend up on to this property somewhat.

Mr. Root said the open fields could have suitable for Box Turtles and he supposed Wood Turtle could have wonder up there but there's a lot of residential streets in between and it would be pretty perilous – he said he didn't see any nesting habitat for either species in these soils because the sand and gravel base soils kind of stop before you get to the undeveloped part of the site – these are Glacial till soils and are very compact.

Dr. Dimmick said that silt loam is not exactly suitable for that sort of purpose.

Mr. Root said it's not great.

Dr. Dimmick said its relatively flat – that Branford silt loam would erode if you give it any chance - he presumed things are flat enough that's not a problem.

Mr. Root said that was his impression - the site is flat enough the silt loams if they get flowing can be a problem.

Mr. Root said the other listed species – there are quite a number of plant species more associated with Cheshire Mountain so there was a number of them that he was not familiar with so we hired Lauren Brown to come and help us to the botanical surveys so she has prepared quite a report of species that were found all through this area including the area north of Cornwall Avenue as well – turtles and some plants and so those surveys are all done and we are just ready for the DEP when this application gets to that stage.

Dr. Dimmick said he seems to remember being taken on a walk back there years ago and the various rare plants were a couple hundred feet up the mountain before you started seeing most of them – they were pretty far up.

Mr. Root said most of the species are wooded, forested – some are wetland but they are all sort of seep in steep areas – nothing in the flat open farms fields; and of course most of this has been manipulated over the decades that the likelihood of rare plants unless they are colonists is unlikely.

Mr. Root said if there weren't any more wetland questions he'd turn it back over to Matt.

Chairman de Jongh asked Matt to talk to what potential measures are going to be taken.

Mr. Ducsay said to circle back to clarify the record real quick as far as Dr. Dimmick's original question goes – you can kind of see on this subdivision map - he stated he misspoke – under existing conditions the existing right of way terminates here (as shown on the map) and you'll see a 20' easement in favor of the water company across the Ben's property – that's an existing easement that's in place to maintain their infrastructure that runs up the mountain – that will remain in place and will remain across lot 15 – what we are proposing here is an area to be deeded to the town to provide access to the Ben's homestead trail should residents want to do some sort of passive recreation – much like we proposed on the other end of the site where we have created a small parking area for public use to utilize some of that state land.

Mr. Ducsay said as far as your question to Bill regarding what sort of barriers are in place along those lots – he said you can see on the site development plan that under existing conditions there is sort of like a ridge line between the developable portions of these lots and then the wetland feature in back – he said you can kind of see it depicted in the way these contours form.

Mr. Ducsay explained there's a natural ridge line between these development areas and the actual wetland feature – between that and then the fact that we are adding some perimeter S&E controls – he said he thought there was a relatively low chance that any sort of runoff from these lots get into those adjacent wetlands given the natural barrier that exists there and then the fact that we have no encroachments into that 50' upland review area along those lots.

Chairman de Jongh said we are going to propose then the non-encroachment line across the back of those lots.

Mr. Ducsay said he knows that staff had made a recommendation of us striking a non-encroachment line along these back lots here – he said we feel and believed the applicant is willing to do so – one of the topic that we've suggested would be that any non-encroachment line would more or less follow the existing limit of clearing that's out there now given that you have a lot of yard areas and areas that are

cleared and hayed or mowed under existing conditions so we would think that any non-encroachment line along these back lots would more or less follow the existing or proposed limit of clearing and that would be the recommendation that we would discuss with staff.

Dr. Dimmick said he generally don't have too much of a problem with that – he said he'd have to go back and look at the maps but he thought there was one place where the clearing went within about 15' of the wetland.

Mr. Ducsay said he thought Dr. Dimmick was right – you are probably referring to lot 13 where it does jog close to the wetlands – in that area we would certainly strike one line across that lot that would not mimic the limit of clearing so as to maintain a better buffer between the wetland feature and the actual home site; he said most of the time on lots of this size we would site – the pressure treated posts would be on either lot line and then a line struck across it – that way you don't have that 4' by 4' pressure treated post and placard in the middle of your backyard so certainly on lot 13 it wouldn't mimic the limit of clearing there given how it jogs inward.

Dr. Dimmick said so if you would do that – and he would be in favor of – would you possible put some plantings on the other side of the line.

Mr. Ducsay said to increase the natural vegetative buffer – he thinks the applicant would be willing to do that – absolutely.

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

Ms. Simone asked Matt about the comments from the engineering department – do you have any modifications relative to the suggestions that they made.

Mr. Ducsay said we have gone through engineering comments – he said he could touch upon some of them – he asked if there was something specific the she (Ms. Simone) had in mind that she had a question pertaining to; he said they have reviewed the comments and looked at them and feel we can compile but he'd be happy to address any specific items that she might have questions about.

Ms. Simone said there was one item where her comments overlapped with engineering comments – actually on two items – to

show a silt fence along the proposed north side of Beachwood Court to prevent any of the soil from getting into this detention basin as its being constructed or from running off site.

Mr. Ducsay said correct – so he thought it was from lots 9-13 you had proposed silt fence along the frontage of the property – we have looked at that and we’ll certainly be depicting those erosion control on our subsequent revision so we are in agreement that that would be worthwhile and we will be complying with that suggestion by staff.

Mr. Ducsay said he believed her other comment was pertaining to the non-encroachment line which we just touched upon – correct.

Ms. Simone stated yes.

Chairman de Jongh said this may be something that Commission members may want to go out and take a look at before we really render a decision on significance.

Dr. Dimmick said we did have a field trip when this first came in front of us.

Ms. Simone said she believed it was in April of last year.

Commission members did not express a need to revisit the site.

Dr. Dimmick said for a subdivision this size this has fewer implications than most of them this size.

Dr. Dimmick said he wants to have the applicant to continue to work with staff on fine tuning this but for once he doesn’t feel this rises to significance but that’s just his own opinion on it.

Mr. McPhee said he was in agreement with Dr. Dimmick that the impact is minimal.

**Motion: To declare the proposed activities are not significant within the context of the regulations.**

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

Dr. Dimmick stated again that the applicant continues to work with staff for fine tuning this and then we will be able to act on it.

Ms. Simone said as far as the modifications – do you propose to get those to my department as well as engineering before the next meeting.

Mr. Ducsay stated yes – absolutely it’s our intent to that we are going to make the proposed modification to address comments in advance for staff to review those modifications and have feedback from the Commission.

Attorney Fazzone said just one further thing about the non-encroachment line – with the drainage basins we now have and Planning and Zoning we’ve created a much more defined and specific set of declarations that go on the land records – some of them we put in bold print – the part about the filing of the wetlands permit is actually mentioned in the declaration and in the deeds.

Dr. Dimmick said and the maintenance of the basin is going to be in the deeds also.

Attorney Fazzone stated yes – now that those basins are mandatory in most subdivisions – since you have to remain your runoff that’s the primary part of the declaration.

**X. NEW BUSINESS**

- 1. Agricultural Request for Determination RFD 2016-006**  
CK East Johnson South LLC  
150 East Johnson Avenue  
Grade land for growing fields

Mr. Kurtz mentioned to the Commission that CJ is his nephew and he doesn’t have a problem and he doesn’t know if anyone else does; he mentioned the new conflict of interest statement.

Chairman de Jongh said to his knowledge he didn’t think the operations were co-existing so he thought this was find; he said he appreciated the information.

Attorney Anthony Fazzone was present on behalf of the applicant.

Attorney Fazzone said Suzanne pointed out that the plans that were submitted really don't point out the area that's being graded.

Attorney Fazzone presented the map to the Commission. He pointed out the outer circle in orange is the area that would be graded; he showed the area that is already growing fields with the black matting; showing East Johnson Avenue and McClausland Court already with the black matting.

Attorney Fazzone explained over the years – some of it even came from some of the grading on McClausland Court – this area (shown on the map) has some piles of material, top soil and excavation from the area and the intent is to grade this to extend this field and then to slope this down.

Attorney Fazzone showed on the map the location of the wetlands boundary and 50' upland review so the activity is all right in here (shown on the map) and the material is there. He said there is about 600 CY of cut and then that would go into basically 2,500 yards of fill so the excess material on the site is basically around 1,900 CY.

Attorney Fazzone noted the pink line on the map is the flood plain; he pointed to the location of the Quinnipiac River.

Ms. Simone said so it would be graded to these.

Attorney Fazzone stated yes – they are going to bring these lines to drain it off; he said it drains that way anyways but by flattening it out up here this becomes a little steeper.

Commission members reviewed the map showing the proposed activity.

Ms. Simone asked if matting would be put down.

Attorney Fazzone stated yes – that would be matted.

Dr. Dimmick said what about erosion controls.

Attorney Fazzone said it shows sedimentation.

Ms. Simone asked if it was proposed to wrap around the entire property.

Attorney Fazzone stated yes – the whole yellow (line).

Ms. Simone asked if there was something already installed in this area.

Attorney Fazzone said he didn't think so.

Chairman de Jongh asked if there was any plan in raising this – so they are basically sloping it – moving it from here to try to make this level so cutting in here and filling over here (as shown on the map).

Attorney Fazzone said yes. He showed on the map a hill and mole which is actually just placed there during construction and greenhouse materials.

Dr. Dimmick said this is an extension of existing agricultural use.  
Attorney Fazzone stated yes.

Dr. Dimmick said and staying outside the setback line.

Ms. Simone said will this (area) have to be cleared.

Attorney Fazzone stated yes – there's clearing in there. There's brush that has grown up; he said primarily since the farming of the land has ceased.

Dr. Dimmick said this was all Pasqualoni (property) originally.

Chairman de Jongh asked if the clearing in anyway would change the drainage calculation on McClausland Court and in some of those other areas.

Attorney Fazzone said he didn't believe so. He said on McClausland Court we were in before and that pipe is being increased in size at the Engineering department's request.

Chairman de Jongh said so the changes are not in any way going to impact McClausland Court.

Dr. Dimmick said he was not sure that we need a permit on this – we can just give him a waiver on it – that's his feeling.

Chairman de Jongh said so that large area shown in orange is what's going to be agricultural and this (other area) is going to be a grass knoll coming down.

Attorney Fazzone agreed.

**Motion:** That the Commission declared the activity to be within the agricultural exemption and does not require a permit on the basis of the map and explanation given to the Commission at tonight's meeting; it's fits the definition of agricultural exemption.

**Moved by Dr. Dimmick. Seconded by Ms. Dunne. Motion approved unanimously by Commission members present.**

2. Request for Determination RFD 2016-007  
Apex Developers, LLC  
Inverness Court  
Site Plan – House

Ryan McEvoy, licensed professional engineer with Milone and MacBroom was present on behalf of the applicant.

Mr. McEvoy addressed the Commission.

Mr. McEvoy said this is a site plan for a lot in the subdivision that is known as the Cash Property Subdivision which is located on Inverness Court.

Mr. McEvoy stated the subdivision was approved by this Commission in 2009 and one of the stipulated conditions was that this particular lot – lot 1 come back in front of this board for review prior to a building permit being issued.

Mr. McEvoy said overall this is a 3 lot subdivision served by a common rear lot access way; this is the first lot on the left of the common rear lot access way with lots 2 and 3 further in the rear of the original parcels.

Mr. McEvoy said this particular lot which he is only showing the relevant portion is rectangular in size roughly 3 acres in total which extends much further to the north than what he shows but bisecting the parcel roughly west to east is a stream that discharges through a 66" culvert underneath Inverness Court and heads eastward down towards Shire Court.

Mr. McEvoy stated there is a small wetland corridor associated with the stream and is generally a steep gravelly soil so the wetlands are confined mostly to the corridor itself.

Mr. McEvoy said what they are proposing is a single family home that will be served by a well and septic system.

Mr. McEvoy said the house is located in the front most portion of the lot closest to the rear lot access way.

Mr. McEvoy said we have a septic system located to the rear of the house outside of the 50' upland review area and there are two small rain gardens that are proposed as part of this lot and also as part of the larger development as a whole; one located to the west of the house and one located further to the rear in sort of a natural lower lying area on the property.

Mr. McEvoy said we do propose no clearing within 50' of the upland wetland soils and we do show a portion of the buffer – the upland review area limit has some White Pines that are not proposed so much for the buffer to the wetland land or upland review area but actually because there was an issue with the access coming off on Inverness and the nature of an easement that existed – a large triangular easement in front of this parcel on the original subdivision of the Inverness Court in the 80's there was a large area that was dedicated on the subdivision map to the Cash Property however it was never recorded in deed and what they were left was simply a 50' strip that was kind of awkwardly placed in the neighboring house.

Mr. McEvoy said the original application that was before this Commission included the access awkwardly coming off of Inverness at a more acute angle but through negotiations with the owner of the abutting property to the west who is the owner of this land in here (shown on the plan); they agreed to allow the driveway to be on the larger easement area depicted on the subdivision map in exchange for some Evergreen buffering between the proposed house and their house which is further to the north.

Mr. McEvoy said so in any event he just wanted to clarify why we had the White Pines in that particular area.

Mr. McEvoy stated this plan was reviewed and submitted to the Commission in October 2009 just to show the driveway in this configuration; he said we also included that vegetative buffer on this particular lot.

Mr. McEvoy said at this point what we are requesting is a determination as to whether or not this property will require a formal application or whether or not what we show and depicted on this plan with no regulated activities would require an application.

Dr. Dimmick said there was a little bit confused because staff provided us with a piece of the original subdivision approval and it seems to show some kind of detention basin on this property.

Mr. McEvoy said yes – there are really two infiltration rain gardens – they are just overland flow from the driveway on the westerly side of the property and overland flow from the driveway to one of the rear more lots.

Dr. Dimmick said these are meant to be dry between rains.

Mr. McEvoy said these are not formal detention basins – they don't have any formal outlet control structures – they are very small, shallow depressions to treat overland flow from driveway areas.

Dr. Dimmick said on one of the original plans there was some attempt to have an under drain on one the rain gardens – is that still going in at some sort.

Mr. McEvoy said yes – and the town engineer did come up with some comments that were received today and he said 4 or the 5 comments are related to the construction of rain gardens and sediment and erosion controls associated with the construction of the road just to make sure we follow the detail that was on the approved plan for the construction of the rain gardens.

Dr. Dimmick said so there is nothing going back towards that stream.

Mr. McEvoy said no and in reality the topography in the upland review area does not drain directly towards the stream rather it follows the course of the stream and generally slopes to the east so as the crow flies of course he may be clearing within 50' of the wetlands but the sheet flow and direction of runoff will be substantially longer than 50' in over that area.

Mr. McEvoy said the only time that Mr. Nolte had on his 5 comments was that may impact the wetland activity or the upland review activity is the placement of the White Pines; his suggestion was perhaps – and part of his original thought was that we were

proposing some sort of buffer to prevent activity within the upland review area which wasn't exactly the original intent but his suggestion was – it's fairly close to where the house is proposed and perhaps these can be pushed into this upland review area.

Mr. McEvoy stated at this time we are not proposing to do that – he said if they ever do get close to the house they can just trim the branches.

Mr. McEvoy said if that is something the Commission feels strongly about that we do include a vegetative Evergreen buffer in the upland review area it's something we've have to pursue in the application process.

Chairman de Jongh said his concern is – he was looking at the position of the house and it looks like the closest corner to that White Pines is somewhere about 15' to 20' at the most so he is looking at the orientation of the house and if you've got a detention basin of will – he said in his mind if he was the homeowner he wouldn't want his kids playing in the detention basin – changes are he'd want them to go to the east part of it – he said his question is the temptation to assume that the 50' upland review area is part of his backyard would be pretty intense where there not any kind of barrier to said this is where the line of demarcation is.

Chairman de Jongh said he would be inclined to try to extend that White Pine barrier to go across that 50' upland review area; he said that was just him because the temptation to try to assume that that is now part of my backyard.

Dr. Dimmick said he thought with a clarification is that it is a rain garden and not a detention basin.

Mr. McEvoy said it's about 1'.

Chairman de Jongh said it's a depression none the less.

Mr. McEvoy said it's a depression that will collect in very heavy storms; realistically most rain falls you will probably want to make it to that depression.

Mr. McEvoy said he would have to run that by the applicant if they will consider that.

Chairman de Jongh said if all they are going to do is put a couple of posts in there – guess what – it’s part of my backyard.

Mr. McEvoy said that’s probably not a unique situation.

Mr. McEvoy said he didn’t want to agree to anything without discussing it with the applicant but he wanted to clarify the purpose of why we proposed that and that’s something that it wasn’t necessarily done as a protection for wetlands it was merely to allow for the driveway to be configured in a more logical fashion; but if that is something that is desired along the upland review boundary we’ll have to consider what is appropriate.

Mr. McEvoy said just to clarify – we do have the posts proposed – it’s a difficult method for delineating that encroachment area.

Ms. Simone said as far as the comments from the engineering department items 1-4 they raise some questions – would you be able to address them.

Mr. McEvoy said yes – it’s really just more towards the construction of these rain gardens – the one of the western side of the property will handle some runoff from the common driveway – there is another one further to the east off this lot that is part of lot number 3 and the reality is that will be constructed as part of the rear lot access way construction which was more or less part of the original approval from 2009 that this be installed similar to most approvals in a subdivision fashion but it just the construction of this lot that they wanted us to come back for.

Mr. McEvoy said in any event, adding a little stone trench in the bottom is consistent with our original approval so that’s something certainly we’ll incorporate into the construction of that.

Mr. McEvoy said also, there is a temporary swale during construction that we proposed to this basin that was shown on the original subdivision not necessarily on this plot plan; we can certainly add that.

Mr. McEvoy said the discussion about the White Pines in the proximity to the house which we talked about earlier and the plan should indicate the accesses on the record easement now or formerly owned Olsen Little where the rear lot access way is now proposed; he said there was still an access that needed to be

reviewed by zoning and engineering – he didn't know if that was necessarily a wetland issue per se but we'd be happy to address that with them.

Ms. Simone said so the rain garden proposed as approved in the subdivision before lot 3 – that will be constructed while the rear lot access way is being constructed and it would have to be in place prior to lot 1 getting there CO.

Mr. McEvoy said he didn't think that was actually part of the P&Z approval but as a practical matter but the rain garden off of this lot accepts runoff from the ball of the cul-de-sac; so yes that would have to be installed to prevent runoff from going off the property to other adjoining abutters.

Ms. Simone asked if these lots all up for sale individually.

Mr. McEvoy stated no – the applicant has an option to purchase the two proposed lots; but the third lot and the rear most has an existing house on it presently.

Ms. Simone said what's before the Commission tonight is a request a determination – if the Commission is satisfied and comfortable with the plan as shown because no stipulations can added to a request for determination; then there is also an application that was submitted and the clock starts ticking on that tonight so if the Commission wanted to see changes or modifications or had suggestions that would fall under the application.

Mr. McPhee said so without the application we'd have no way of guaranteeing that the markers and trees are being planted.

Ms. Simone said what's shown on the plans in front of you – that's what they would be bound to do but as far as being a stipulation to say instead of the 6 or 7 trees we want 10 – that's not anything the Commission would be able to during a request for determination.

Ms. Dunne said or anything to do with the rain gardens.

Ms. Simone stated correct.

Mr. McEvoy said he would say that is more of a separate issue with respect to the construction of this common driveway; again it's not common that there's features associated with these common

driveways that may not fall exactly on one lot – we have drainage that will split from the north side of the cul-de-sac on to this area from the south side will drain to this area (shown on the plan); he said we incorporate these sort of low impact style mitigation measures for storm water because the relatively small volume and rate of runoff associated with it – it's really a slightly larger driveway and having formal detention and formal larger structures is kind of impractical for small developments of this size so that's why we proposed these much smaller features that blend in more with the landscape and do the job infiltrating minor increases in runoff.

Ms. Simone said she thought that comment number one from the engineering department where they talk about lot 3 – that's brought up as a factor because staff has experienced situations where something was supposed to be done off site which was to benefit a particular lot and then it was not done or now its owned by someone else and then it turns into a legal issue of then trying to enforce someone who purchased the lot – didn't necessarily have knowledge of what was expected and when it was expected so that had been a sticky situation and she thought staff has learned from that.

Mr. McEvoy said just to clarify – in these style developments there are sort common elements for instance they wouldn't be able to get a CO until their driveway was competed to the satisfaction of us – we have to write a letter certifying it's been done in accordance with the plans; and also to the satisfaction of the engineering staff, planning and zoning enforcement officer, you, building official review so there is a lot that would go into a final approval and he thought there was enough muscle behind it so that perhaps and infiltration basin or rain garden or something to that effect on an adjacent line would have to be constructed and functional prior to a sign off on the suitability of common driveway.

Dr. Dimmick said he thought we've got although no one issue is significant enough minor things have come up that he would recommend that we are best off saying a permit is required so we can take care these various details rather than leave them hanging.

Chairman de Jongh said personally he was leaning that way because he would love to be able to see something more than what we are seeing on the map relative to protection of that wetland piece to the north of the property; and he would personally even entertain kind of moving that line of the 50' non-encroachment line or the buffer of the upland review back a little bit to give a little bit more lawn area but in

exchange for that have more of a protective measure assuming that is someone's back yard.

**Motion:** That the Commission having considered the request for determination has determined that a permit will be required from the Commission for this individual site.

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

3.	Permit Application	APP	2016-007
	Apex Developers, LLC	DOR	2/02/16
	Inverness Court Site Plan – House	MAD	4/07/16

Ryan McEvoy, PE from Milone and MacBroom gave the presentation on this application under item number 2.

Chairman de Jongh said what he would love to see – and he mentioned his discomfort with this is more of that protective barrier and he would love to see what creative ideas you can come with - with the applicant's permission to present to us; he said he can see the close proximity of the house to that upland review area –posts in his opinion are not going to cut it and there is nothing to protect all the way down to that stream that's right there; he said he needed to see something more concrete.

Mr. McEvoy stated okay.

Dr. Dimmick said he thought staff had some concerns with the rain gardens so they also need to be looked at.

Mr. McEvoy asked if there would be a need for a site walk.

No Commission member stated they needed to walk the site.

Chairman de Jongh said he didn't think the activity was significant in itself but he thinks it needs to be played with a little bit.

The Commission agreed to determine significance at the next meeting.

## XI. ADJOURNMENT

**The meeting was adjourned at 8:27 pm by consensus of Commission members present.**

**Respectfully submitted:**

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