

**CHESHIRE INLAND WETLANDS AND WATERCOURSES COMMISSION
REGULAR MEETING
TUESDAY, MAY 17, 2016
TOWN HALL 84 SOUTH MAIN STREET
COUNCIL CHAMBERS AT 9:24 P.M.
*Immediately after the Public Hearing***

Members present: Robert de Jongh, Charles Dimmick, Dave Brzozowski, and Thom Norback.

Members Absent: Kerrie Dunne, Earl Kurtz and Will McPhee.

Staff: Suzanne Simone.

Mr. Norback served as secretary pro-tem in Ms. Dunne's absence.

I. CALL TO ORDER

Chairman de Jongh called the regular meeting to order at 9:24 pm.

II. PLEDGE OF ALLEGIANCE

The pledge of allegiance was recited at the public hearing.

III. ROLL CALL

Mr. Norback called the roll at the public hearing. All members present at the public hearing were still present for the regular meeting.

IV. DETERMINATION OF QUORUM

Chairman de Jongh determined there were enough members present for a quorum at the public hearing.

Members present were Robert de Jongh, Charles Dimmick, Dave Brzozowski, and Thom Norback.

V. APPROVAL OF MINUTES – Regular Meeting – May 3, 2016

Motion:

That the Commission approved the minutes subject to possible future corrections.

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

VI. COMMUNICATIONS

Ms. Simone reviewed the following communications:

1. **Connecticut Ecosystems, LLC Comments Re: #2016-013, Fieldstone Court**

This communication was reviewed regarding the application that was subject of the public hearing tonight.

2. **Staff Communication w/Attachments: #2016-014, Cheshire Academy, Site Plan**

This communication was reviewed and was also subject of a public hearing.

3. **Staff Communication w/Attachments: Show Cause Hearing, Crestwood Subdivision, Lot #3**

This communication was reviewed and is on the agenda tonight.

4. **Staff Communication w/Attachments: Request for Determination #2016-016, 868 Farmington Drive, Site Plan**

This communication was reviewed and is on the agenda tonight under new business.

5. **Staff Communication w/Attachments: Request for Determination, #2016-017, Cheshire Nursery, Site Plan**

This communication was reviewed and is on the agenda tonight under new business.

6. **Algonquin Gas Transmission, LLC, 12/28/15, Project Summary - Access Northeast Project**

This communication was reviewed. Ms. Simone stated the summary was sent in December of 2016 and it provides maps and specific details relative to communication number seven.

7. **Algonquin Gas Transmission, LLC, 5/06/16, Notice for Comments – Access Northeast Project**

This communication was reviewed. Ms. Simone stated this item was received May 6, 2016 regarding their north eastern project.

8. **The Habitat, CACIWC Spring 2016 Newsletter, volume 28 number 2 (To be handed out at the meeting)**

This communication was reviewed.

9. **Communication from Brenda Nousiainen, 266 Mountain Road, Re: Cornwall Avenue Extension and Mountain Road Drainage**

This communication was reviewed.

10. **Engineering Comments Re: 266 Mountain Road**

This communication was reviewed.

11. **RWA Comments Re: Cheshire Academy, #2016-014**

This communication was reviewed.

12. **Email**

Chairman de Jongh stated they received an email from a resident on Mountain Road and the email was referencing some concerns that they had with regard to a pipe which was outside the review of this Commission when the application was brought before us.

Chairman de Jongh stated the email was received from Brenda Nousiaine at 266 Mountain Road. He said she was just concerned about the runoff on the project and brought up some issues that she felt this Commission needed to take into their consideration when the project was reviewed.

Chairman de Jongh said after research by staff this area of concern that she has was not part of the review because there was no work being done in that area therefore this Commission did not have to render any kind of judgment on that.

Chairman de Jongh said they wanted to acknowledge receipt of that and just put to rest that while there may be concerns on her part this Commission did not review that because it was not part of the activity being conducted in that area.

Dr. Dimmick said it should be pointed out, at the public hearing the water going into that pipe was covered by the applicant and said there would be no net increase with the water going into that pipe and that was confirmed by our own engineering department.

Ms. Simone stated yes and subsequently after receiving she did meet with the property owner – she came to the office to express her concerns and Don Nolte went out to the property and confirmed again that there were no issues with the existing pipe and he wrote a letter to that effect to the wetlands Commission.

VII. INSPECTION REPORTS

1. Written Inspections

Ms. Simone stated there were no written inspections.

2. Staff Inspections

a. Drazen Orchards

Ms. Simone stated there was a staff inspection of Drazen Orchards – we received a complaint as far as work being done on the property; there was tree trimming that was being done and that was in relations to their agricultural business.

b. 154 Willow Street

Ms. Simone stated there was an inspection of 154 Willow Street. She said this property has a wetland area adjacent to the house and the property owner had contacted the public works department felt there was concern that there was change in

elevation in their lawn area; and that they were curious as to what was going on – if it was related to wetland issues that occurred off site years prior.

Ms. Simone said looking at the approved site plan for this project there was a pipe that supposed to be installed and by every indication it was installed that ran underneath the driveway and deposited in the area where there now experiencing some depression in their lawn.

Ms. Simone said they did take a branch when she was out there and put it down in this lawn area and the branch went down about 4' to 5' without any resistance.

Ms. Simone said so there is something going on in that area and they plan on have on having a professional come and take a look at it and find out what the problem is.

Dr. Dimmick said one of the things – he said he doesn't know that particular site but that he has been called out on other properties around the state where something like that has happened and several times it's been a case where someone a long time ago buried stumps and so forth that they brought it out and then you start getting a collapse.

Ms. Simone said he (the property owner) was also curious as to worse case senior if he had someone come and they start to inspect and they find it is a problem of real concern that needs to be addressed right then and there that they need to stabilize it – that they need to fill – that they need to do something and then be able to come in for a permit after the fact.

Ms. Simone stated she suggested she'd raise this issue to the Wetlands Commission. She stated it's an established lawn.

Dr. Dimmick said an established lawn where you get a sudden erosional thing we usually do a permit after the fact with no problem.

Chairman de Jongh said staff can confer with the (property owner) and then if there's an issue of safety that needs to be

addressed immediately then we need to be able to go ahead and come back to this Commission saying what the situation was.

c. 10 Prinz Court

Ms. Simone said on 10 Prinz Court – there was a follow up inspection of dead trees that were tagged for removal – additionally they had requested that they wanted to expand the yard area beyond the approved clearing limits near the septic system and that they wanted to change the plans to remove the retaining wall.

Ms. Simone stated they were revised that they needed to submit plans for both and that it would very likely that they would need to come back to the Commission for both.

d. Strollo Court

Ms. Simone said there was an inspection on Strollo Court for a level spreader that is already installed – there are some trees that are in the area that are dead trees and also some struggling trees that are preventing getting the correct grade needed to drain towards the wetland area; so the trees will be removed and graded appropriately.

VIII. ENFORCEMENT ACTIONS

1. Notice of Violation SC 1/07/14
Mr. Nathaniel Florian Permit #2013-015 compliance date: 07/01/2016

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 remains on our agenda for continued monitoring.

2. Notice of Violation SC 09/15/15
Mr. David Flanagan 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

Chairman de Jongh stated this is on for continued monitoring.

3. SHOW CAUSE HEARING

Notice of Violation

SC 05/03/16

Mr. John Ricci

SC 05/17/16

Unauthorized Activities in an
Inland Wetland and/or Upland Review Area
Crestwood Drive
Assessor's Map 86, Lot 86

John Ricci, Ricci Construction Group, 680 South Main Street,
Cheshire, CT was present.

Chairman de Jongh stated this was an issue that was happening with
a couple of lots on Crestwood.

Ms. Simone stated there was a notice of violation and cease and
desist that was issued for map 86 lot 86; at the last meeting it was
recognized that staff made an error in that listing – that it should be
map 86 lot 85.

Ms. Simone stated Mr. Ricci has submitted some plans that the
Commission had requested – a survey to find out where the clearing
limits were for lot 3 he also provided information for lot 4.

Commission members reviewed the maps.

Ms. Simone said the first survey for lot #3 – this is the lot that
required in the stipulation that prior to any clearing he did need a
permit received prior to clearing lot 3 and lot #3 is cleared.

Chairman de Jongh said so the issue here and after review it doesn't
look like there was a lot of activity conducted in a wetland area as
much as activity conducted without permission.

Ms. Simone stated correct.

Ms. Simone stated it was the clearing of Lot #3 without permission
and the clearing limit that's shown that says the approximate limit of
clearing based on the approval – the Commission never reviewed

this particular lot for clearing so the issue had never approved where the clearing limit would be because they required that this lot come back for individual review.

Ms. Simone said so there is a little bit where it is in the 50' upland review area and Mr. Ricci may add some information to that – there is a detention basin in this area for road runoff.

Mr. Ricci addressed the Commission. He stated as per the Commission's request we have had a surveyor go out there and delineated the new clearing line versus what was approved originally.

Mr. Ricci showed on the maps the lines where they marked out what was existing; the wetland and what was shown originally.

Mr. Ricci stated the only area that we had cleared previously was the area where the drainage swell in when we put the road in and he thinks that's where our initial confusion in regards to tree removal because we had to cut trees in that area – he should on the map – he said where we put the swale in is the area where we had to cut trees to put this in – it was a wooded lot – he showed the area where they initially cut trees to put this drainage system in a couple years ago.

Chairman de Jongh said as he look at what is now cleared it doesn't look like on this particular lot that there's a significant amount of intrusion in the area – he said he thought it was more of the activity being conducted without permission and that's the thing began this conversation.

Dr. Dimmick said because the original stipulation on the permit said you needed an additional approval to start clearing on that lot.

Chairman de Jongh said the other thing that we have as part of this now is when we took a look the information that you (Mr. Ricci) provided to us – first off we need to be able to address the cease and desist order on Lot#3 because it's been misidentified.

Ms. Simone said the map and lot on lot is incorrect and yes it would be cleaner on the record to release it into error.

Chairman de Jongh read the violation releases into the record.

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, and information provided by the property owner on this matter, finds the following:

- 1. That on April 27, 2016, a Notice of Violation/Cease and Desist was issued to John Ricci/Royal Estates, LLC. The Notice of Violation cited, in part, the clearing of the property known as map 86, lot 86.**
- 2. That at the May 3, 2016 meeting it was noted that the lot on the Notice of Violation/Cease and Desist Order, lot 86, was incorrect.**
- 3. That the Notice of Violation/Cease and Desist order was recorded on the land records prior to realizing the error on the lot number.**

Therefore, due to the error in the lot number, the Cheshire Inland Wetlands and Watercourse Commission does hereby release and discharge the aforementioned Notice of Violation/Cease and Desist Order.

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

Chairman de Jongh explained to Mr. Ricci that the other issue that came up was as part of this review was that based information that you had supplied to Suzanne on lot#4 which did need to come before us for approval but there was more extensive clearing into the upland review area than what was originally outlined.

Chairman de Jongh said that was based on the map that was provided by the applicate to this Commission.

Chairman de Jongh stated the problem is that on this particular area – the issue is that the clearing was in a non-encroachment area so the outline in orange or yellow (green) is the area that's permitted – the outline between the green and the yellow which is colored in

orange by staff's map is a non-encroachment area and that was not to be cleared.

Mr. Norback asked how this area was to be identified.

Chairman de Jongh stated on the map it was identified as a non-encroachment area; but there are no markers that were required.

Mr. Norback asked if we were quite certain that this unpermitted clearing is as depicted on the map.

Ms. Simone said she could show the approved subdivision map that identifies the area as the non-encroachment area but it does not stipulate in the approval that markers needed to be up; but it did stipulate where the upland review area was.

Commission members reviewed the map (showing the non-encroachment area) as pointed out by Ms. Simone.

Chairman de Jongh asked if he was correct in saying when this was approved there was no requirements for any kind of boundaries for the non-encroachment line.

Ms. Simone stated correct – no markings in the field but there was an established non-encroachment line and no excavation or filling without a permit but still it is established 50' non-encroachment.

Chairman de Jongh asked if he was correct in stating that when this was approved there were no requirements for any kind of boundaries for the non-encroachment line.

Ms. Simone said correct – no markings in the field; what is shown here is established here is shown as a non-encroachment area so there was no request to reduce that 50' non-encroachment area so the 50' was established.

Ms. Simone stated it was not required to be marked in the field; the map identifies the limit of clearing and it doesn't come close to the non-encroachment area.

Chairman de Jongh said so the question that is before this Commission is whether or not at this point we've got an area of a

non-encroachment area which is not supposed to be a lawn area that's cleared - so how do we remedy that.

Dr. Dimmick said if we didn't worry about the details on it – you replant it and then put in markers; you aren't going to replant it the way it was because they had mature trees taken down.

Chairman de Jongh said he did not know why the Commission did not require this in the beginning but at this point it makes sense to clearly mark where that non-encroachment line was supposed to be and then from that point back in the area that was cleared just allow it to go back to normal vegetation.

Dr. Dimmick said we could advance it with all kinds of things – you could establish shrubs and trees in there in a very short time – that's what it was – a treed area; if you let it go naturally it's going to go through about 20 years of meadow before it goes into the tree business.

Mr. Norback said the question is whether it was required to be marked or not – it's still exists marked or not.

Mr. Norback said he was inquiring from staff how it was located that some clearing had been done in a non-permitted area and was actually located by Mr. Ricci's surveyor so now we've established that it was unpermitted clearing in an upland review area so with that said the way to have avoided that – whether it was marked or not – whether we as a Commission required to have it identified or not – we certainly wanted it respected whether it was identified or not so its comes upon the original applicant to respect that – asking was he right.

Chairman de Jongh stated yes and what he is suggesting is now that it has been identified a way to prevent future homeowners who ever that might be to incorporate that in a lawn area is to now at this point require that that area be left to grow back to natural vegetation – if we have to somehow try to spur that on by the planting of inexpensive stuff that will grow.

Chairman de Jongh stated there needs to be a boundary – a visible boundary and that's normally by non-encroachment markers that we can have planted as part of this mitigation otherwise it becomes part

of a lawn area for the next homeowner and nullifies the whole reason for making a non-encroachment area.

Mr. Norback stated is actually nullifies the whole reason for having a Commission to tell you the truth.

Chairman de Jongh said he suggestion was that this be a two-part mediation – a remedial project and that is one install non-encroachment makers at various intervals along the non-encroachment line and from that point back to the 50' non-encroachment line just make sure its replanted in some way and allow it to grow back to natural vegetation as was originally intended.

Ms. Simone asked if the Commission would want to have Mr. Ricci present something to the Commission showing what he's proposing to reestablish the area.

Dr. Dimmick stated that was easier than our dictating the details – yes very much so – he knows our general intent of what we are looking for.

Chairman de Jongh said to Mr. Ricci that we've solved one problem and another one was created but he thinks its easily remedied by presenting to us an idea of how he can allow that to go back to the way it was before it was cleared and then work with staff in terms of non-encroachment markers that can be put along that non-encroachment line as it was clearly intended when this was approved that that was an area that was not to be cleared.

Chairman de Jongh said he wanted to make sure that future homeowners – does not inadvertently make that a lawn area or playground area of whatever that might be.

Chairman de Jongh said it would be helpful to work with staff to be able to come up with a scheme and present it to the Commission at the next meeting and then we can kind of move on from there – we need to be respectful of what was permitted as part of the application.

Dr. Dimmick stated if we do it this way we can avoid some of the legal ramifications of having to do it in a more formal manner.

Ms. Simone said along the same line this would have to be noticed for a show cause hearing for the next meeting because then if there's something presented to the Commission they could take that up as an order and then put this to rest at the same meeting where if it's an application the Commission would have to wait the two weeks.

Chairman de Jongh said then his suggestion is that we create this as a cease and desist order and then we can go ahead and get this information presented – we can clear this up at the next meeting and there is no undue delay and you are able to move forward with your project and this Commission is satisfied that the elements of the original proposal and the original approval are met on both sides of the aisle – so if that's the Commission's pleasure then we could move forward on that and we able to take this thing off the table in a couple of weeks.

IX. UNFINISHED BUSINESS

1. Permit Application Nosal Properties of Cheshire, LLC Fieldstone Court Site Plan	APP	2016-013
	DOR	4/05/16
	SW	4/09/16
	PH	5/17/16
	MAD	6/21/16

Chairman de Jongh stated this was subject of a public hearing tonight and continued to our next meeting.

2. Permit Application Cheshire Academy Academy Road Site Plan	APP	2016-014
	DOR	4/05/16
	SW	4/27/16
	PH	5/17/16
	MAD	6/21/16

Chairman de Jongh stated this was subject of a public hearing which was closed this evening but there are some details that we are receiving from the applicant in relationship to that.

X. NEW BUSINESS

1. Request for Determination Michael and Melinda Grove 868 Farmington Drive	RFD	2016-016
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Site Plan – Addition

Ms. Melinda Grove of 868 Farmington Drive was present.

Chairman de Jongh stated this was a request for determination for Michael and Melinda Grove at 868 Farmington Drive.

Ms. Grove addressed the Commission. She stated they are trying to add on to the house and they were looking to extend – at the south end of the property there's a little creek that goes along and they would like to extend in that direction so they'd like to extend about 24' – it would be a two car garage.

Dr. Dimmick said you now have about an 8' wooded strip between your lawn and that creek and you cut some of the trees down about 3 or 4 years ago - he said he knew the property very well.

Ms. Grove said so they are looking to go on top of the driveway – they are thinking of a two car garage with bedrooms on top is what their thinking.

Dr. Dimmick asked if they would be getting closer than the existing driveway in doing that.

Ms. Grove showed on the map the location of the driveway – she showed the area of proposed activity – she stated it would not extend an area on the side of the driveway.

Chairman de Jongh said so it's going to be on the current black top footprint that they have right now.

Ms. Grove stated correct.

Dr. Dimmick said the only thing he would want and that we can't request unless we actually get a permit is some kind of erosion control – but other than that they have established lawn except for that buffer and the property well predates wetland regulations so no set back was set up when that house was constructed.

Ms. Simone said if the Commission feels comfortable perhaps it could be drawn on to this map (site plan) that was submitted so it

documented that the Commission received something indicating that a silt fence would be in place.

Ms. Grove drew a line on the map indicating where a silt fence would go along the stream.

Chairman de Jongh asked that the record show that a silt fence line was drawn on the plan to protect the adjoining wetland.

Dr. Dimmick stated based on his knowledge of that property and the assurances we've gotten he proposed a motion.

Motion: That the Commission declares that the proposed activities are not requiring a permit within the context of the regulations.

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

2. Request for Determination RFD 2016-017
Cheshire Nursery
1263 South Main Street
Site Plan - Greenhouse Replacement

John Milone of Milone and MacBroom was present on behalf of the applicant.

Chairman de Jongh stated the determination is for a greenhouse replacement.

Dr. Dimmick said for the greenhouse replacement it's his understanding is when they finish they will be future away from the wetlands then they are at the moment.

Mr. Milone stated that was correct. He showed on the map the location of five small greenhouses – they are long and short – they want to replace those five (greenhouses) with three slightly taller and wider greenhouses.

Mr. Milone had a picture of the proposed replacement greenhouse; one that currently exists on the site.

Mr. Milone said we did go out there and map the wetlands in the vicinity of that and identify the 50' regulated area and they can install the greenhouses so we are actually a little future away and stay outside the 50' area to try and keep it so its consistent to what is there now and maybe to leave it there.

Dr. Dimmick said the area is as flat as a pancake if he remembered and you have some kind of gravelly material down.

Mr. Milone said there would be absolutely no other changes. He said theses (greenhouses) are just pole structures – we don't call them temporary because he doesn't take them down.

Chairman de Jongh said he didn't think there was an issue.

Motion: That the Commission declares the proposed activity de minimis and it is not necessary for an application.

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

XI. ADJOURNMENT

The meeting was adjourned at 9:57 pm by consensus of Commission members present.

Respectfully submitted:

**Carla Mills
Recording Secretary**