

5 **CHESHIRE INLAND WETLANDS AND WATERCOURSES COMMISSION**
 SPECIAL MEETING
 TUESDAY, AUGUST 14, 2007 AT 7:30 P.M.
 TOWN HALL – 84 SOUTH MAIN STREET
 ROOM 207-209

10 **Members Present: Robert de Jongh, Charles Dimmick, Robert Berner, Earl Kurtz and Matt Bowman.**

15 **Ms. Simone was also present.**

15 **I. CALL TO ORDER**

The regular meeting was called to order at 7:30 p.m.

20 **II. PLEDGE OF ALLEGIANCE**

The pledge of allegiance was recited.

25 **III. ROLL CALL**

Mr. Berner called the roll.

Commission members present at the meeting were Present: Robert de Jongh, Charles Dimmick, Robert Berner, Earl Kurtz and Matt Bowman.

30 **IV. DETERMINATION OF QUORUM**

A quorum was determined.

35 **V. APPROVAL OF MINUTES – July 17, 2007 Regular Meeting**

The approval of the minutes was deferred to the end of the meeting.

40 **VI. COMMUNICATIONS**

1. **Letter to Mr. Anthony Sciascia, 25 Jesse Court**
 Re: Request for Wetland Determination for 893 Farmington Drive

The Commission reviewed this communication.

2. **Letter to A.M. Napolitano, LLC**
 Re: Lot 6, Spring Meadow

The Commission reviewed this communication.

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3. Letter from RWA to Planning & Zoning Commission
Re: CIWWC App. 2007-030, Cheshire Route 10, LLC
Interchange Special Development Project

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The Commission reviewed this communication.

4. Letter from RWA to Planning & Zoning Commission
Re: CIWWC App. 2007- 028, David & Karen Bauer
Construction of single family home on Summit Road

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The Commission reviewed this communication.

5. Letter from Michael A. Zizka, Murtha Cullina, to Ms. Karin Eichten
Re: Cease & Desist Order – 630 Cook Hill Road

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The Commission reviewed this communication.

6. Letter to A.M. Napolitano, LLC
Re: CIWWC App. 2006-021A and submittal of new application

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The Commission reviewed this communication.

7. Letter from A.M. Napolitano, LLC
Re: Clarification of plans for Lot 6 Sudol Court

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The Commission reviewed this communication.

8. Letter to William G. Coleman, III 678 Coleman Road
Re: Unauthorized activities in regulated wetland area

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The Commission reviewed this communication.

9. Letter from Joe Michelangelo, Public Works Department
Re: MAD Extension Request for
Permit Application 2007-016, Schoolhouse Road

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The Commission reviewed this communication.

10. Letter from Attorney Kevin Hecht, P.C., Attorney for Karin Eichten
Re: Conduct of Activities in a Regulated Area
630 Cook Hill Road, Assessor's Map 92, Lot 27

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The Commission reviewed this communication.

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11. Letter from William G. Coleman, II, 678 Coleman Road
Re: Response to letter from the Commission regarding
Unauthorized activities in regulated wetland area

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The Commission reviewed this communication.

12. Letter from with Charles H. Boyd
Re: APP #2007-033 - 203 South Rolling Acres Road

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The Commission reviewed this communication.

13. Town of Cheshire Employee Picnic
Re: August 29, 2007 invitation to Commission members

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The Commission reviewed this communication.

14. Other – none.

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VII. INSPECTION REPORTS

1. Written inspections

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Ms. Simone stated that tonight's written inspections were covered
under communications.

2. Staff Inspections

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a. 345 Peck Lane

Ms. Simone stated that a staff inspection was conducted at 345 Peck
for sedimentation and erosion controls.

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b. Lot 5 Plank Road

Ms. Simone stated that a staff inspection was conducted at Lot 5
Peck Lane for sedimentation and erosion controls.

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c. 678 Coleman Road

Ms. Simone stated at a staff inspected was conducted to an
observation of regulated activity in a regulated area without a permit.

5 This item was addressed under the Show Cause section of the agenda.

d. 630 Cook Hill Road

10 Ms. Simone stated this violation had been addressed at previous meetings. Ms. Simone stated that currently a fence is being erected on the property.

e. Other – none.

15

VIII. ENFORCEMENT ACTIONS

20 1. **Monitoring: Remediation Approvals:** 02/01/05
Francis H. Switajewski 11/01/05 #2005-051
Summit Road

Chairman de Jongh stated that this item would remain on the agenda to guarantee the survival of the plantings.

25 Dr. Dimmick asked if there was work that still needed to be conducted at the site.

30 Ms. Simone stated that she expected that Mr. Switajewski was be submitting a letter detailing that the work has been completed late August or early September 2007.

35 2. **Monitoring: Remediation Approval:** 07/18/06 #2006-038
Mr. Walter Galko
740 Peck Lane

This item would remain on the agenda until the end of the summer to guarantee the survival of the plantings.

40 3. **Unauthorized Activities in a Regulated Wetland Area**
Ms. Karin Eichten
630 Cook Hill Road

Ms. Simone stated that an application for remediation has been submitted.

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This item was deferred to new business.

4. Other – none.

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SHOW CAUSE

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1. **Unauthorized Activities in a Regulated Wetlands Area**
William G. Coleman, III
678 Coleman Road

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There was no one present representing the application.

Ms. Simone informed the Commission that she received a complaint on July 30, 2007; someone came into the Wetland Office to make a complaints that fill was being delivered to the property.

20

Ms. Simone stated that on July 31, 2007 she observed the property and reviewed the files. In 1995 there was an approval granted that permitted 5,000 cubic feet of fill to be disbursed on the property. The 1995 file does not depict the exact location of where that fill was to be disbursed.

25

Ms. Simone stated that the pictures she took on July 31, 2007 do show that there are approximately 15 piles of fill; at that time the fill was unsecured.

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Ms. Simone stated that she visited the site today, August 14, 2007 and noted that the piles still remain. The piles have not been spread, which was listed in the cease and desist order and only a small portion of the fill piles have been secured with silt fencing.

35

Ms. Simone stated that Mr. Coleman did submit a letter to the Commission detailing the questions that were outlined in the cease and desist.

40

Chairman de Jongh read the letter dated August 9, 2007 from William G. Coleman, III into the record.

45

Mr. Coleman's letter addressed staff's questions regarding the nature of the work within the regulated wetland area, when the work was done and over what period of time, if any further work was planned and what the reason that no Cheshire Inland Wetland and Watercourses permit was sought for the activities.

5 **Mr. Coleman stated in his letter that the area where he has the fill
piles, in his opinion, is not a wetland. He stated in his letter that he
is filling a portion of his property behind the pole barn to make a little
more room to store his farm machinery, a harrow, 2 farms trailers,
etc. He stated that over the years, the more the cows walked the
10 edge of the wetlands, the more their hooves would push down the
good soil.**

15 **Mr. Coleman also stated in his letter that the 17 or 18 piles of soil still
out in his pasture were going to be used to raise the elevation of the
65' by 65', then recovered with existing loam, seeded and let to grow
a better grass than was previously there.**

20 **Mr. Coleman stated in his letter that the work was done over a period
of approximately 4 weeks, but that soil was actually brought in over 5
days in July 2007. He also noted that no other work other than
seeding the embankments with rye grass is planned and the
installation of a fence.**

25 **Mr. Coleman concluded his letter by stating that he was not under
the impression that he was working in wetlands and the amount of
fill brought in was minimal.**

The Commission reviewed the map for the area in discussion.

30 **Ms. Simone distributed two pictures of the site that were taken July
31, 2007 and two pictures taken today, August 14, 2007. Ms. Simone
said after reviews of the Town's official maps from 1992 do indicate
there are wetlands on the property. A site map which was submitted
35 as part of the application in 1995 does indicate a wetland on the
property.**

**Ms. Simone stated that the 1995 file does not indicate where the
5,000 cubic feet of fill was to be placed.**

40 **Dr. Dimmick said that the area where the Commission allowed some
filling in 1995, by permit, was a portion of the pasture, that is
approximately in the area where it now states "wetlands flagged by
Bruce Lasky", a stipulation was added at that time the filling was
done for agricultural purposed only and that no future use other than
45 agricultural use could be made of the area other than for the
improvement of a pasture area; and that there was no indication that
other fill could be brought in later.**

5 Dr. Dimmick said if Mr. Coleman is filling in behind the pole barn he is within 50' of the setback area that would require the activity to be permitted.

10 Ms. Simone showed on the map the location of stock piles of fill.

Dr. Dimmick said the area is a soggy as it is because at one time there was a stream in the area.

15 Dr. Dimmick described how the water flow enters the subject property.

Ms. Simone said that a 1992 map does depict a stream located in the wetland area; she showed on the map the location of the stream.

20 Mr. Bowman said that he believed Mr. Coleman filled the one area that he was allowed to fill.

Chairman de Jongh said the problem is the other areas proposed to be filled not permitted and in a regulated area.

25 Mr. Bowman suggested that the Commission field trip the area.

30 Chairman de Jongh agreed that the Commission and staff needed time to inspect the site and determine the status of what is going on at the site and what the impacts are.

Ms. Simone reviewed the wetland regulations and stated that a determination needed to be made at the show cause hearing

35 Motion: To continue the show cause hearing to the September 4, 2007 meeting and at such time determine if there is a violation at 678 Coleman Road.

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

The scheduling of a field trip of 678 Coleman Road was deferred to the end of the meeting.

45 This item was addressed again at the end tonight's meeting.

A field trip was set for Saturday, August 25, 2007 at 9:00 a.m.

5 Further action on this item was deferred pending the field trip.

IX. UNFINISHED BUSINESS

10 1. Notice of Violation
630 Cook Hill Road
Ms. Karin Eichten

This item was deferred to new business.

15 2. Permit Application APP #2007-016
Town of Cheshire Public Works DOR 6/19/07
Schoolhouse Road MAD 8/22/07
Site Plan – Drainage

20 Ms. Simone informed the Commission that the drainage calculations
are still being worked on. The Public Works Department has
submitted a letter asking for an extension of the mandatory action
date.

25 Motion: To grant the applicant a 65-day extension of the application's
mandatory action date of August 22, 2007.

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

35 3. Permit Application APP #2007-027
Town of Cheshire, Park & Rec. DOR 07/03/07
Notch Road, Mixville Park MAD 9/05/07
Site Plan – Ball Field Reconstruction

Ms. Simone stated that today she received modified plans showing
the elevation of the spillway.

40 The Commission reviewed the revised plans showing the elevation
of the spillway, the invert elevation and the pond elevation.

Commission members discussed the accuracy of the elevations as
shown on the plans.

45 Chairman de Jongh asked staff to advise the Town to add more
details to the plan to avoid any confusion.

5 Ms. Simone stated that the recommendation should include details that pages EX-1 and G-1 are revised as of August 14, 2007.

Motion:

10 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, site visitations, and after review of written information provided by the applicant on this
15 application finds the following:

1. That this current application is for the ballfield renovation at Mixville Park.
- 20 2. That two certified soil scientists, from Milone and MacBroom, Inc., have investigated and identified wetlands on the property.
3. That there are no direct wetlands or watercourse impacts associated with the site plan activities, as proposed.
- 25 4. That the proposed site plan activities will not have a significant adverse effect on adjacent wetlands or watercourses.

30 Based upon the foregoing findings, the Cheshire Inland Wetland and Watercourses Commission conditionally grants CIWWC Permit Application #2007-027, the permit application of the Town of Cheshire for site plan approval as presented and shown on the plans entitled:

35 "Preliminary Site Plan
Proposed Improvements, Mixville Park
Town of Cheshire, Connecticut
Prepared by Milone & MacBroom
7 sheets, Sheet 1: Scale 1"=40'
40 Sheets EX-1 and G-1: Scale 1"=30', Revised August 14, 2007
Sheet L-1: Scale 1"=30'
Sheets D-1, D-2, D-3: Scale As Shown,
Dated February 1997, Revised July 3, 2007"

45 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:

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

Motion:

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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, site visitations, and after review of written information provided by the applicant on this application finds the following:

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1. That this current application is for the construction of a culvert for a driveway crossing and construction of a single family house.
2. That the March 15, 2005 approval #2005-011, stipulated, in part, that Lot 2 requires individual review and approval by the Commission.
3. That there are no direct wetlands impacts associated with the site plan activities, as proposed.
4. That the proposed site plan activities will not have a significant adverse effect on adjacent wetlands or watercourses.

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Based upon the foregoing findings, the Cheshire Inland Wetland and Watercourses Commission conditionally grants CIWWC Permit Application #2007-028, the permit application of David & Karen Bauer for site plan approval as presented and shown on the plans entitled:

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“Proposed Site Plan & Subsurface Sewage
Sewage Disposal System
Bauer Subdivision, Lot 2
935 Summit Road, Cheshire CT
Prepared by Milone & MacBroom
Scale 1”=30’, Dated July 5, 2007”

40

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:

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1. Any lack of compliance with any condition or stipulation of this permit shall constitute a violation of the Cheshire Inland Wetlands and

- 5 **Watercourses Regulations, and an enforcement order shall be both issued and recorded on the Town of Cheshire Land Records.**
- 10 **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.**
- 15 **3. Prior to any commencement of activities covered by this permit grant and prior to request of a building permit, the applicant shall have the following items both completed by a qualified party and verified as complete by Commission Staff:**
- 20 **a) the proper installation of all sediment and erosion controls indicated on the above referenced plans. Staff may insist on additional controls if warranted by field conditions.**
- 25 **4. 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:**
- 30 **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.**
- 35 **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.**
- 40 **5. Prior to application to the Building Department for a Certificate of Occupancy, and per Section 11.12 of the Cheshire Inland Wetlands and Watercourses Regulations, the applicant shall provide the Commission with the following:**
- 45 **a) an as-built map (A2 survey) by a licensed land surveyor, at a suitable scale, showing, at least, all buildings and setbacks from the property lines, wetland boundaries and acreage, wetland non-encroachment lines and markers, limits of clearing, utility locations, and all paved driving surfaces.**
- b) written verification from the owner/applicant/agent that all conditions and stipulations of this permit grant have been generally met, that all yard areas are properly stabilized, and that all non-encroachment**

5 lines and associated restrictions are recorded on the Cheshire Land
Records and will be recorded in the deed of the lot upon transfer of
property.

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

5. Other –none.

X. NEW BUSINESS

15 1. Permit Application APP #2007-029
Prospect Pools, LLC DOR 08/14/07
656 Ashley Court MAD 10/17/07
Site Plan – Inground Pool

20 Mr. Chris Keller of Prospect Pools was present on behalf of the applicant.

The Commission reviewed the plans for the proposed construction
of an inground pool.

25 The Commission reviewed the plans for the proposed activity in
relationship to the wetlands in the area.

30 There was discussion that the slope in the area is now very well
stabilized. The slope area is located in the back of the property.

Ms. Simone noted that Penny Sharp was responsible for monitoring
the stability of the planting and vegetated buffer.

35 Dr. Dimmick stated that the applicant should install silt fence before
any activity begins.

Chairman de Jongh asked if the pool would have a cartridge filter.

40 Mr. Keller stated that the pool would utilize a cartridge filter and that
pool is a saline pool.

Motion: To accept the application as complete.

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

5

Mr. Overton stated that the 4,400 SF of direct wetland impact is all the direct impact that is being proposed. There are a few upland review area impacts; a majority of those impacts are associated with the direct wetland impacts, and there are a couple of other small isolated areas.

10

Mr. Overton showed on the plans an area when a pedestrian pathway is proposed and a future connection of the Rails to Trails in Cheshire that would have some upland review area impacts. Mr. Overton said there is another area of proposed upland review area impact where the construction needs to meet grade for a retaining wall.

15

Mr. Overton stated that for the convenience of the Commission individual copies of the drainage report have been provided. He said that this is the same information already submitted.

20

Dr. Dimmick asked if this application goes to a public hearing would there be someone addressed the wildlife impacts in the stream and the surrounding area.

25

Mr. Overton stated that the applicant has been working on a wildlife assessment of the site since the beginning of the year. He said that there have been extensive studies regarding the wildlife and the potential impacts as part of the proposed development along the River corridor.

30

Dr. Dimmick asked if the applicant has looked for any information from Quinnipiac River Watershed Association.

35

Mr. Overton stated that the applicant has met with representatives from the Quinnipiac River Watershed Association and that the applicant is working with them to address their concerns.

Motion: To accept the application as complete.

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Moved by Dr. Dimmick. Seconded by Mr. Berner. Motion approved unanimously by Commission members present 4-0-1; noting that Mr. Bowman had recused himself from this portion of the meeting.

45

Motion: To declare the proposed activity significant within the context of the Commission's regulations specifically section 10.2 a, b, d and f.

5 **Moved by Dr. Dimmick. Seconded by Mr. Berner. Motion approved unanimously by Commission members present 4-0-1; noting that Mr. Bowman had recused himself from this portion of the meeting.**

10 **A field trip was set for Saturday, August 18, 2007 at 8:00 a.m.**

Dr. Dimmick asked that notification be given to the Town of Southington regarding the field trip.

15 **Attorney Fazzone stated that the Town of Southington has been noticed of the application and has been sent everything that has been filed to date.**

20 **Ms. Simone said that she sent notification to the Town of Southington regarding tonight's meeting. She agreed to send notification to the Town of Southington regarding the field trip.**

25 **Chairman de Jongh noted for the record that the field trip is for the Commission to view the site but that the public is welcome to come to the field trip but that they are not able to interact with Commission members or the applicant in terms of questions or answers. All questions and answers will be addressed at the public hearing.**

30 **Attorney Fazzone stated for the record, that only the places that people will be allowed to go are the places that the Commission views and will be strictly enforced. He stated that a portion of the site is a construction site.**

35 **A public hearing on this application was set for Saturday, September 4, 2007 at 8:00 a.m.**

Further action on this item was deferred pending the outcome of the field trip and the public hearing.

40 **Matt Bowman returned to the meeting at 8:10 p.m.**

3. **Permit Application
John Fellows
Farmington Drive
Site Plan – Garage**

**APP #2007-031
DOR 08/14/07
MAD 10/17/07**

45 **John Fellows was present.**

5 **Mr. Fellows stated that the application is for a proposed 24' by 24' garage addition.**

The Commission reviewed the plans for the proposed activity.

10 **The location of the Farmington Canal to the proposed activity was reviewed.**

Dr. Dimmick said that the problem is not the location of the proposed activity to the canal but to the stream.

15 **Mr. Fellows stated that he is proposing front and rear doors to access the garage to be able to walk through the garage and not round the garage.**

20 **Dr. Dimmick said that the major concern is that there is no further encroachment to the brook.**

Motion: To accept the application as complete.

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

There was discussion regarding the distance from the proposed activity to the edge of the slope towards the brook.

30 **The garage is proposed to have a slab construction.**

Chairman de Jongh said that he is concerned about having any erosion to the bank causing it to become unstable.

35 **Mr. Fellows said that one of the builders suggested using gravel or rock on the bank but asked for the Commission's recommendation.**

40 **Chairman de Jongh said that if the applicant is proposing to install gravel or rock along the bank the Commission would need a lot more details than what has currently been presented.**

45 **Dr. Dimmick said he could see a garage being constructed without having any disturbance to the north side of the garage. He would have a concern if the applicant is installing a lawn around the garage.**

5 Dr. Dimmick stated that the bank is stable in the area, about 3' to 4'
along the top of the bank there is vegetation.

Chairman de Jongh said that the Commission would have concern
relative to where the equipment was going to go to perform the
10 necessary construction.

Mr. Bowman stated that the project would have to be worked back to
front.

15 Chairman de Jongh stated that the applicant would need to clearly
spell out in a construction sequence the activity that is proposed to
take place to make sure that both the Commission and the applicant
are aware of what would be permitted to take place.

20 Dr. Dimmick said that the Commission would not deny the applicant
the right to construct a garage but they wanted to make sure that the
garage would not pull away from the house at some point.

25 The proposed garage would have footings 42" deep.

There was discussion about the proposed construction and how the
construction could take place and with what type of equipment.

30 Motion: To declare the proposed activity not significant within the
context of the regulations.

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

35 Dr. Dimmick stated that the Commission would need to have the
specifications for the proposed activity in place prior to any
approvals being granted.

40 Chairman de Jongh suggested to Mr. Fellows that he work with staff
to work out the details of the proposed activity to make sure the
applicant is complete.

45 Further action was deferred pending the submission of additional
information and staff review and recommendation.

4. Permit Application
AGS Builders
Farmington Drive

APP #2007-032
DOR 08/14/07
MAD 10/17/07

5 **Site Plan – Porch**

Anthony Sciascia of AGS Builders was present on behalf of the applicant.

10 **Mr. Bowman recalled at the last meeting that Mr. Sciascia stated that only three 42” piers were proposed to be installed for the construction of the porch.**

15 **Mr. Sciascia informed the Commission that the Regional Water Authority had visited the site and that no problems with the proposed activity were noted.**

20 **There was discussion about the height of the property and the steepness of the slope.**

25 **Mr. Sciascia said at about 22’ the slope grades off to about a 1.5’.**

30 **Mr. Sciascia said that for the record he has provided a list of precautions that the applicant would take during construction.**

35 **Motion: To accept the application as complete.**

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

45 **The application has been signed by the owner of the property.**

50 **Motion: To declare the proposed activity not significant within the context of the regulations.**

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

60 **Further action on this application was deferred pending staff review and recommendation.**

65 **5. Permit Application
 Charles H. Boyd
 203 South Rolling Acres
 Site Plan – Garage & Addition**

**APP #2007-033
DOR 08/14/07
MAD 10/17/07**

Mr. Charles Boyd was present.

5

Mr. Boyd stated that since the last meeting he did receive a notarized approval from the owner of the property granting permission to allowing the Commission to field trip the site.

10

The Commission reviewed the plans for the proposed activity. The plans are for a proposed detached garage set far back from the existing home and about 10' from the wetlands.

15

Commission members talked about the need for a field trip of the site to review.

Ms. Simone confirmed with Mr. Boyd that the application was for a proposed detached garage and an addition to the existing home.

20

Mr. Boyd said the proposed addition is near the drainage swale.

Ms. Simone asked if the area is currently staked off showing the area of the proposed addition and garage would be.

25

Mr. Boyd stated that the area has been staked off.

Dr. Dimmick commented about the history of the storm drainage in the area.

30

Motion: To accept the application as complete.

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

35

A field trip was set for Saturday, August 25, 2007 at 8:00 a.m.

Mr. Bowman stated that he would like to have the Commission determine the quality of the wetlands on the site or adjacent to the proposed activity.

40

Further action on this application and the declaration of significance was deferred pending the field trip.

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6. Permit Application
A.M. Napolitano
Sudol Court
Site Plan Modification

APP # 2006-021B
DOR 08/14/07
MAD 10/17/07

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Tony Napolitano, 605 Coleman Road of A.M. Napolitano was present.

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Mr. Napolitano stated that the site plan modification is for the return to the original approved subdivision. He stated that the changes pertain to the activity involving the wall.

15

Mr. Napolitano stated the he has spent a great deal of time talking with the Planning Office and it was determined that it was prudent that the entire wall be removed.

20

Mr. Napolitano said that the applicant is proposing to return the site to the original grade.

Mr. Napolitano stated at the last meeting the Commission discussed the approved methodology for removing 2/3 of the wall. The applicant is now looking to remove the last portion of the wall and to stabilize the area.

25

Mr. Napolitano stated that the portion of the wall proposed to be removed is 2' with 1' under ground a 2' above ground. He said that the applicant is asking to return the site to its original state.

30

Dr. Dimmick informed Mr. Napolitano that it was a legal interpretation that the applicant could not go back to the original permit without a permit modification.

35

It was noted that the modification of the application nullified the original modification and therefore a new modification to the approved modified application was needed.

Motion: To accept the application as complete.

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

Motion: To declare the proposed activity not significant within the context of the regulations.

45

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

Details for stabilizing the site were submitted.

5 Chairman de Jongh stated the record that the new modification needs to be signed off by the engineering on the project for the most recent modifications to the plan.

10 Further action on this application was deferred pending staff review and recommendation.

7. Permit Application APP #2007-034
Jason Pickus DOR 08/14/07
Briar Court MAD 10/17/07
15 Earth Removal, Filling & Regrading

Jason Pickus was present.

20 Mr. Pickus addressed the Commission. Mr. Pickus explained that the application is for the proposed construction of a backyard area in the rear of his property. He stated that there is a sliver of wetlands located in the rear of the property.

25 Mr. Pickus said that he is proposing to construct an 8' retaining wall and grade off a portion of the yard to get a 33' to 35' yard off of the back of the house but staying 55' from the wetlands.

30 There was discussion about the stream located at the base of the subject property. It was noted that changes in the size of the stream at different times of year.

Mr. Pickus stated that engineer flagged the wetlands.

35 Mr. Bowman stated that the 8' wall would need to be engineered and that an engineering report would be needed for the record.

Mr. Pickus stated that Milone & MacBroom, Inc was doing the engineering of the wall.

40 Ms. Simone asked Mr. Pickus if he had any idea the amount of cubic yards of material he would be bring onto the site.

45 Mr. Pickus said he thought that approximately 400 cubic yards of material would be used on the site.

Ms. Simone informed Mr. Pickus that he is required to go before Planning and Zoning and that Planning and Zoning allow only 100

5 cubic yards of material as a matter of right, more than that requires
Planning and Zoning Commission approval.

10 There was discussion about the approximate amount of cubic yards
of material needed for the project.

Motion: To accept the application as complete.

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

Mr. Bowman said that based on the fact the proposed activity is over
50' from the wetlands he did not see a need for a field trip of the site.

20 Dr. Dimmick said he would comfortable with Milone & MacBroom
designing the project and that someone would be supervising the
proposed activity.

25 Chairman de Jongh asked the application that Milone & MacBroom
provide a copy of the design plan with details for the record.

Motion: To declare the proposed activity not significant within the
context of the regulations.

30 Dr. Dimmick said that he might go by and take a look at the site.

It was noted that the applicant would need to go before Planning and
Zoning and would need an exact figure of the amount of material
needed for the project.

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

40 Further action on this item was deferred pending staff review and
recommendation.

8. Permit Application
Ms. Karin Eichten
630 Cook Hill Road
Wetland Remediation

45 Attorney Kevin Hecht of 220 South Main Street was present on behalf
of the applicant, Karin Eichten Carnock doing business as East End
Farm, LLC.

5

Chris Juliano, P.E. of Juliano Associates of 405 Main Street, Wallingford, CT was present on behalf of the applicant.

10

Butch Davison of Wallingford, CT was present as an interested party.

Jacqueline Prast and Kevin Prast of 10 Bluefield Court were present.

15

Ms. Simone stated that an application for remediation of 630 Cook Hill Road had been submitted as well as a letter dated August 13, 2007 from Attorney Kevin Hecht.

The Commission reviewed the plans for the proposed remediation of the subject site.

20

Chairman de Jongh read a letter dated August 13, 2007 from Attorney Hecht into the record. An Appendix A, describing the planned activity was also attached to the letter. The required application forms checklist; Appendix B, application for Inland Wetland & Watercourse permit; Statewide Inland Wetlands and Watercourse activity reporting forms; Regional Water Authority Watershed/Aquifer notification form and Mattson Associates, LLC check in the amount of \$240.00 representing the requisite application fees were included with the letter.

25

30

Dr. Dimmick asked if everything was complete in terms of the application.

Ms. Simone stated that it was.

35

Motion: To accept the application as complete.

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

40

Motion: To declare the proposed activity significant within the context of the Commission's regulations specifically sections 10.2 a, b, d and e.

45

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

A public hearing on this application was set for September 18, 2007.

5 **Attorney Hecht asked for a confirmation that no action in respect to remediation of the site could take place without a permit.**

Chairman de Jongh stated that the applicant would need a permit before any remediation work could be started.

10 **Attorney Hecht stated that the area is currently vegetating itself.**

Chairman de Jongh asked if any stabilization of the site was needed,

15 **Ms. Simone said that as long as the site is revegetating itself, which she imaged that it has since the original cease and desist was issued, the previously exposed areas should be stabilized by now.**

20 **Ms. Simone asked Chairman de Jongh to clarify for members of the public what next steps were to be taken in regard to the setting of a public hearing. She stated that some people have had some questions about what the whole process is about.**

25 **Chairman de Jongh explained for the benefit of the public the status of activity at 630 Cook Hill Road.**

30 **Chairman de Jongh explained that work took place at 630 Cook Hill Road without a permit; the property owner took it upon herself to do work that she felt was a permitted activity and a matter of right under the agricultural statutes of the Town of Cheshire and because of what was done based on a legal review of what was done, the Commission now believes that the work done was not a permitted right and does not fall under a permitted agricultural activity.**

35 **Chairman de Jongh based on the fact that the work conducted was not a permitted agricultural activity or matter of right, a cease and desist order was issued requiring the property owner to stop work at the site and appear before the Commission to explain what work is being done and how the work would be done.**

40 **Chairman de Jongh stated that the purpose of the process to make sure that all parties involved are on the same page.**

45 **It was asked that now that the property owner has applied for a permit, what rights does she have to perform work at the site.**

Chairman de Jongh said that the property owner does not have any ability to conduct any work at the site in question without a permit

5 and that the work done is not a matter of right based on the Town of
Cheshire statutes and the Cheshire Inland Wetlands and
Watercourse regulations.

10 Chairman de Jongh stated that it is the Commission's contention
that the property owner does not have the right to perform the work
without an application.

15 Chairman de Jongh stated that the property owner was compelled to
submit an application detailing what she intends to do at the site; an
application is required.

20 Dr. Dimmick said that there are two possible outcomes to this
situation; one would be that the Commission would grant an
application for what work had been done or if the application was
denied, the applicant would have to restore the site to its original
condition. Dr. Dimmick stated that there is a process that must be
followed and had the property owner not done anything to begin
with, she could have applied for an application for the activity and
either a permit would have been issued or denied, and therefore the
work would not have been able to be done.

25 Dr. Dimmick that if after the public hearing, if an application is not
granted, then the area would have to be restored to its original
condition; an outcome that is not known yet.

30 Jacqueline Prast of 10 Bluefield Court asked that Commission to
define what the cease and desist order does in the way of building or
doing things in or around the area.

35 Chairman de Jongh said the cease and desist order means that the
Commission cannot impede the property owner from enjoying
his/her property but it impedes the property owner from going any
further with any activates from which they were told to stop.

40 Chairman de Jongh said that the cease and desist order applies to
the activity that the Commission had been apprised of. He said that
the property owner cannot continue with work that she originally
thought could be done without a permit.

45 Chairman de Jongh stated that the cease and desist order requires
the property owner to stop what they were doing, as is or stabilized
to prevent the site from becoming worse but that not other work

5 could take place but that the property owner could still enjoy his/her property.

Chairman de Jongh said that nothing could happen at the property until coming before the Commission.

10 Mr. Bowman clarified that the property owner could not move forward with even to repair the damage that has been done and to bring the damage back to its natural state without a permit.

15 Mr. Prast asked if the applicant could install a fence.

Mr. Bowman said yes, as long as it is outside of the 50' wetlands setback requirement.

20 Ms. Prast explained that there are some issues because work is being done at the site; the applicant has ceased the earth removal but proceeded in establishing a fence. Ms. Prast stated Juliano Associates has re-surveyed and staked out spots where the applicant can install a fence.

25 Chairman de Jongh stated that the property owner cannot do any of the work Ms. Prast is describing regarding the installation of the fence.

30 Mr. and Ms. Prast stated that the property owner has installed the fence since the cease and desist order has been issued.

Dr. Dimmick said the only fencing allowed would be silt fencing allowed to stabilize soils.

35 Ms. Prast stated that fence being installed is a 6' wooden stockade privacy fence.

40 Chairman de Jongh asked Attorney Hecht to clarify if the fencing was installed after the cease and desist was issued.

Attorney Hecht stated that he could not comment on the fence since he was unaware of a fence. Attorney Hecht deferred Chairman de Jongh's question to Mr. Juliano.

45 Mr. Juliano stated for the record that the fence was installed after the fact.

5 Chairman de Jongh asked why.

10 Mr. Juliano explained that the property owner has a fencing going half way down her property line towards the pond; he said the last he know the fence stopped before the pond. He said that stakes ran across the rear of 10 and 20 Bluefield Court.

15 Mr. Juliano said that going across the rear of Bluefield Court where she abuts, she would not be within the 50' wetland buffer but outside the buffer area and before the pond.

Mr. Juliano stated that he has not been out to the site in a couple of weeks.

20 Mr. and Ms. Prast shared pictures of the site taken today showing the pond and the fence running from Bluefield Court to the pond.

The pictures were for the record.

25 Ms. Simone stated that she has had conversation with the Prasts and Mr. Juliano that there is some concern between the neighbors regarding the location of where the property line lies. She explained that the Commission has only jurisdiction over wetland considerations and not property line issues.

30 Ms. Simone stated that there is some concern regarding the fencing being installed on someone else's property.

35 Chairman de Jongh stated that the property line issues are not the concern of the Commission.

Mr. Bowman asked who flagged the wetlands.

40 Mr. Juliano stated that Ken Stevens's office flagged the wetlands in 1999 and that his firm did the original subdivision maps and located the wetlands at that time.

Mr. Bowman asked if Mr. Juliano's firm installed the original pins and monuments at the site.

45 Mr. Juliano stated that the pins and monuments were installed on the property. He said that one of the neighbors helped him locate the pins on the site. He said that since 1999 the pond has been expanding, and in 2001 when the corner of the pond was pinned the

5 location of the pin was moved to adjust for the expansion of the pond.

10 Mr. Juliano stated that the Engineering Department was notified of the change in pin location of the pond. He said today the pin is still there, 10' from the originally flagged location (now in the pond).

Mr. Juliano stated that the area had been staked to allow the property owner to install a fence.

15 Mr. Bowman said that what Mr. Juliano is saying that at one time the water exceeded the property line, causing a portion of the pond to be on the neighbor's property.

This point was agreed upon.

20 Mr. Bowman asked if there was now a fence installed in the area.

It was noted that a particle fence had been installed.

25 The Prasts had pictures taken of the site showing the metal pins and status of fence.

30 Ms. Prast talked about measuring the distance from the pin to the original property line locate in the pond, that is now visible because the pond had been lowered. She talked about her concerns about the location of the fence and location of the pins marking the property lines.

35 Ms. Prast explained the details shown in the pictures.

Chairman de Jongh suggested that details be added to the pictures and submitted for the record at the public hearing. A written narrative of the pictures should also be included with the submission of the pictures.

40 Ms. Prast said her issue is with the property line and the location of the buffer line as well as her concern for the health of the pond and wildlife in the pond.

45 Chairman de Jongh stated that a lot of the issued being addressed will need to be discussed in detail at the public hearing on September 18, 2007.

5 Chairman de Jongh stated that in regard to the property line issues, those issues are not the concern of the Wetland Commission. He said the issue the Commission has is if the fence is installed through the perimeter of the pond. He said he would have a problem with installing the fence in a wetland area.

10 Mr. Juliano said that there is a disagreement between neighbors regarding the fence, right, wrong or in different.

15 Chairman de Jongh and Mr. Bowman stated that the problem is that the fence is within 50' of the upland review area.

20 Dr. Dimmick stated that there are two different things here, the pond and the wetland soils that extend a dozen or more feet from the pond.

25 Chairman de Jongh stated that the permission to install a pond in a wetland area must come from the Wetland Commission.

30 Chairman de Jongh stated that the property owner must stop the installation of any fencing until the activity is reviewed.

Mr. Juliano talked about the problems with the property line.

35 Mr. Bowman stated that the installation of a fence prevent wildlife from accessing the pond and therefore becomes an issue for the Commission.

40 Attorney Hecht explained that his client was not able to be at tonight's meeting. He stated that the whole circumstance is an issue of ignorance by his client; his client thought that as a farm, she had the right to use the property as she did and now realizes otherwise. The attorney she used was from White Plains, NY and not Connecticut; he is not aware of the Connecticut laws and gave bad advice.

45 Attorney Hecht said that he wanted to make sure he understood the procedural aspects to follow pursuant to the Commission's regulations. He said that his client has submitted an application for a proposed remediation plan and would the public hearing be held to discuss the remediation plan only.

Attorney Hecht said under the regulations/statutes, his client does have a working horse farm and would that evidence be reviewed at

5 the time of the public hearing or would the remediation application
be reviewed.

10 Dr. Dimmick said that although there is a farming exemption, but if
you have a watercourse where there is both in-flow and out-flow,
then farming exemption or no farming exemption, you cannot do
anything to that area without a wetland permit.

15 Attorney Hecht stated he understood the exemption but wanted to
also understand what could and could not be done without a permit.

20 Dr. Dimmick said that the horses could take water from the pond,
they could swim in the pond, you could grow hay to the edge of the
pond as a matter of right but as soon as you start moving soils,
stockpiling material or removing materials then you need a permit.

25 Dr. Dimmick said as soon as the applicant started work on the outlet
the problems began.

30 Attorney Hecht said that he wanted to make it clear that the
stockpiling of material occurred over many years and it was his
client's intention to remove the material because she believes that
material might be contaminating the pond.

35 Attorney Hecht said he looked at the pictures submitted showing the
dead fish and in his opinion it appears that the heads of the fish had
been cut off.

40 Attorney Hecht said that this client does have concerns about the
material stockpiled adjacent to the pond and what affect it is having
on the health of the pond; it was his clients intention to clear the
material from the pond if in fact it was having an adverse affect on
the pond.

45 Attorney Hecht said that a lot of the work was done by his client in
ignorance but in her mind for good reason.

50 Attorney Hecht wanted to know evidence the Commission would be
looking for regarding the agricultural use and the remediation plan
for the site.

55 Chairman de Jongh said that it was safe to say there are a number of
issues and remediation would have to take place if there was a

5 violation. He said that the discussion would run the gambit at the
September 18, 2007 public hearing.

10 Dr. Dimmick said that he would like to hear that the property line
issue has been settled before the public hearing.

Mr. Juliano asked about the lowering and raising of the pond for
flood and safety purposes; was that agricultural or not.

15 Dr. Dimmick stated that activity was not agricultural but there were
long standing grandfather practices where the pond has been
lowered in the winter and the activity was allowed by right and others
have been required to get a permit for a winter lowering.

20 Mr. Juliano asked if the issues could be split into two discussions,
one about the clearing of the site to the rear of the property and the
pond being the second issue. He said that the pond issue would be
the sticker issue.

25 Chairman de Jongh stated that both issues would need to be
addressed but could be addressed as separate issues at the public
hearing.

30 Mr. Bowman said that what he is hearing, for the record, is that the
site could not be staked originally and the pin was offset, and when
the original subdivision was approved the pond when on the
neighbor's property. In 2000 the pin could not be staked because of
the water but now that the pond is lowered the pin could be staked.

35 The pond is now lower than it was.

Mr. Bowman said that if the applicant has a fence in the 50' upland
review area, he thinks that should be removed immediately.

40 Mr. Prast said that if Ms. Eichten was ignorant in lowering the level of
the pond would she also be considered ignorant again, installing the
fence after the cease and desist order was issued.

45 Attorney Hecht said he was not aware of the fence. He said he would
advise his client to remove the fence if that is what the Commission
wanted done.

Chairman de Jongh said if the fence is in the wetland area, then the
fence should be removed.

5

Attorney Hecht asked about the location of the pond on 10 Bluefield Court when the area was originally pinned.

10

There was discussion about the pond and that in some years the pond would go on to the neighbor's property and in other years it would not.

Ms. Prast asked if it was possible a field trip of the site would occur.

15

The Commission said a field trip is possible.

Ms. Prast asked about the fence inside the pond issue.

20

Both issues would be addressed at the public hearing.

Mr. Bowman said if there is a problem with the line, the Commission is not going to deal with that. He suggested the line being surveyed.

25

There was discussion about the setting of the pin in the pond area.

Chairman de Jongh said that at the public hearing all of the issues regarding the pond would be addressed. He advise the Prasts to label the pictures they shared with the Commission submit them at the public hearing as evidence.

30

Further action was deferred pending the public hearing.

35

9. Information from DEP
Re: Use of Chemicals for Pesticides Management
Shire Court

40

Ms. Simone stated that a correspondence was received advising the Commission that the DEP has new regulations regarding the Pesticide Management Division. DEP now requires a copy of the application to be sent to the Towns asking if they have any comments.

45

Ms. Simone said that an application was received for Shire Court – Justin Haley's lot. There is a spillway and the pond can be closed off to treat the area to prevent any damage to the pond. The ownership issue of the pond is being addressed.

5 No respond form the Town is requires. Ms. Simone said she would
send a letter to DEP that the Commission has no objection to the
proposed pest management.

10 Mr. Bowman said that he wanted the DEP to know that there is an
issue with the ownership of the pond.

10. **Approval of Minutes
July 17, 2007 Regular Meeting**

15 Pg. 7: L47 delete "the drainage from"; Pg. 8 L 21 change "in the" to "that", L35 add
"the" after "of", L41 "Zoning" to "Zoning's"; Pg. 11: L18 change "a" to "at", L41
"apart" to a part", L44 "when" to "went", Pg. 12: L47 "based" to "base"; Pg. 17"
"phragamities" to "Phragmites; Pg. 26: L40 add "the" before "field"; L42 "thinking"
20 to "think"; Pg. 28: L21 "remaining" to "retaining", L21 "wither" to "either", L34
"then" to "that"; Pg. 29: L14 delete first "wall", L45 "bear" to "bare"; Pg. 31: L31
change "putting" to "he was here tonight"; Pg. 34: L38" change "Milone &
MacBroom" to "Environmental Services"; Pg. 39: L25 'drainage" to "dredging",
"drain" to "dredge"; Pg. 43 L6 "contention" to "intention", L20 add "in" after
25 "been";; Pg. 44: L21 should read, "has neither an inlet nor an outlet", L31
"engineering" to "engineer."

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

30 **XI. ADJOURNMENT**

The meeting was adjourned at 9:30 p.m. by the consensus of Commission
members present.

35 Respectively submitted:

40 Robert Berner, Secretary
Cheshire Inland Wetland and
Watercourse Commission