

**Hamilton Conservation Commission
Minutes of Meeting of May 11, 2016
Meeting held at Hamilton Town Hall**

Commissioners present:

Richard Luongo, Chair, Virginia Cookson, Bob Cronin, Keith Glidden (arrived 7:02 p.m.), George Tarr

Staff present:

Jim Hankin, Conservation Agent

Others present:

Anne Gero
Mr. & Mrs. Mark Lampert-Lampert-Boden
Geoff Andrews
Don Borenstein
Jeffrey Angley
Gordie Rogerson

Richard Luongo opened the meeting at 7:00 p.m. and mentioned that the meeting was being recorded. Jim Hankin described specifics of packet including documents associated with 1 Surrey Lane matter: letter from Anne Gero, letter from Hamilton Open Space Committee; 641 Bay Road enforcement orders, letter from DeRosa Environmental who has been retained by property owner at Gardner Street where there is an enforcement order.

Enforcement Order (Continued from April 13 & 27, 2016)

1 Surrey Lane

Mark Lampert-Lampert-Boden landowner

Clearing and logging of land in jurisdictional, non-exempt zones

Wetland Scientist Geoff Andrews had written a letter to the Commission related to the matter. He spoke to activities that have occurred east and west of entrance to agricultural portion of property. He determined from reviewing WPA and regulations and his visual inspection that cutting that occurred was exempt and used for Mr. Lampert-Boden's own personal use. Mr. Lampert-Boden is allowed to take 20 cords of wood in a 12 month period. There was cutting within buffer zone and wetland resource areas. Many of the trees that were cut had fallen or were damaged from a storm event.

Mr. Lampert-Boden would like to complete the tree removal, clean up sawed logs and stabilize disturbed soils with seed mix along the access road in the buffer zone. In regard to allowing area to re-vegetate cut stumps will remain. Prior to any other activities occurring on the property Mr. Lampert-Boden will notify Jim Hankin.

Keith Glidden commented that this is the second time that the Commission has looked at this site from an after the fact context apply the exemption which is problematic. He added that the agricultural use is marginal due to how it is not hugely profitable, and there have been issues with

the exemption in the past. He understands that the property suffers from storms but suggested that Mr. Lampert-Boden should have first come to the Commission before beginning maintenance on his property. He noted that the property is up for sale.

Mr. Lampert-Boden's attorney Don Borenstein spoke to the Anne Gero letter stating that giving away wood to family and friends is a personal use which is different from "for sale" or commercial use. Also, there are conditions associated with personal use exemption related to WPA with limits on where wood is cut (i.e., within buffer zone and 50% of crown). Mr. Borenstein stated that this was an unusual circumstance because most of the wood that was cut was fallen trees. The crown has to be measured when the activity has been conducted. In this case since the trees had already fallen they are no longer part of the crown so there was little to no impact. In addition, there has been a hodgepodge of agricultural use that has gone on at the property through the years and forestry is explicitly covered under the agricultural exemption. Also, there is Christmas tree production and cutting of wood as forestry uses.

Mr. Borenstein suggested what could be done to stabilize the property including allowing area to grow back appropriately, make sure there are no impacts from activities that have occurred and allow areas to regenerate. He concurred that in advance to further activities of cutting on the property the property owner should come to the Conservation Agent for consideration as to whether or not he should come before the Commission with an RDA.

Mr. Glidden asked Mr. Borenstein for his opinion about the Anne Gero letter referring to how the exemption would not apply in the wetland whether or not the trees were blown down. Mr. Borenstein stated that there is the exemption for maintenance associated with ongoing agricultural activities including forestry and the personal exemption for cutting wood for the property owner, friends and family. Mr. Borenstein stated that he believed the regulation allows cutting of wood for personal use in the buffer zone. He had observed seedlings in the area. Also that harvesting wood over time is forestry and agricultural use. Mr. Glidden stated that he saw a difference between a stand of forest and wetlands specific types of growth that would never be profitable and should not be harvested. He questioned if there was a violation associated with the crown since cutting and chipping occurred before the Commission was able to evaluate. Mr. Borenstein said he did not necessarily disagree that non-forestry productive growth in an area would be difficult to categorize as forestry use. Even so, there can be forestry value productive trees in a wetland area or buffer zone as part of forestry and agricultural use.

Mr. Borenstein stated that the practical aspect is a land owner had a number of trees damaged substantially by a storm. At the time Mr. Lampert-Boden cut up damaged trees and took them out of the area allowing for re-growth and he thought he was allowed to do that under the regulation. He concurred that it would have better for the Commission to see the damaged trees before work was done to remove them. He said common sense action can be taken moving forward to prevent damage to the resource area and buffer zone, and commitment not to repeat former action again.

Discussion ensued about a rehabilitation planting plan for upland buffer zone and wetlands. Mr. Andrews stated that the best next step is to get the area stabilized and let it regenerate itself. If plantings were installed it is highly unlikely they would survive. In the wetland portion there is invasive species such as glossy buckthorn, bittersweet, etc. but they are not pervasive. No more cutting other than clean-up is planned at the property. Mr. Lampert-Boden said he has reached limit of 20 cords of wood. Mr. Luongo noted that the Commission cannot assess how much wood was cut after the fact. Mr. Borenstein noted that the Wetlands Preservation letter estimates that less than 10 cords of wood was cut. He provided the Commission with five photographs of

leaning trees that had been supplied by Mr. Lampert-Boden of area where trees were cut in wetland and buffer zone.

Virginia Cookson inquired as to why area to be cut was not staked out last year. Mr. Lampert-Boden responded that he thought he was being responsible by removing the downed trees in the wintertime to minimize damage to the area. He did not think of staking out area. Also, he did not increase his planting area there were trees planted between trees. In addition, the two major trees that fell down removed trees below and reduced crown cover. Ms. Cookson thought some crown cover should be left. She and Mr. Glidden questioned why clean-up occurred if Mr. Lampert-Boden is going to be selling the property. He reiterated his intent to be responsible.

In response to John Celata, 120 Blueberry Lane, Mr. Glidden said he had seen photos of downed trees on the Lampert-Boden property and he does not have any evidence that trees were removed that were not subject to a blow down or fallen trees. He did say there was an issue with the area and agricultural use. Richard Moore, 70 Blueberry Lane, who has been living there for 40 years, described details about pork chop lot and Surrey Lane and future of property. Also, that Blueberry Lane residents had not experienced down trees and how land on Surrey Lane is wet. He described the problem with storm-water runoff in the area and possibility of future development on Surrey Lane.

Discussion occurred with Ms. Collins, 74 Blueberry Lane, where she stated that neighbors have contacted the Commission for two years while watching what was transpiring on Surrey Lane with a lot of cutting and related flooding on soccer field. Mr. Glidden noted that the Commission only addresses the matter within its jurisdiction and he has not heard of any other cutting in jurisdiction. Mr. Hankin noted that a great deal of cutting occurred and it was in upland and not subject to jurisdiction. The Commission's first action was in 2013/2014 where the Commission viewed the site and found the work was within the exemption. Mr. Luongo explained the Commission's responsibility within jurisdiction when a property is proposed for development. Also that the cease and desist order was issued and work stopped. Mr. Hankin described how he could be contacted relative to working with residents on matters within the Commission's jurisdiction. Brendan Collins, 74 Blueberry Lane, mentioned that burning near the wetland is also occurring beyond the cutting.

Anne Gero commented about the trees planted in the wetland area. She stated that the language of the regulation says the cutting of wood within the wetland resource area and buffer zone needs to be by owners for their own use. Ms. Gero opined that a nephew took a huge amount of wood to New Hampshire from the wetlands area and she thought this does not constitute by owners for their own use. She opined that criteria associated with crown cover had not been met and that wetlands should not have been altered. Ms. Gero suggested the wetland line be delineated, the area be allowed to re-vegetate and that there is a lot of invasive species so restoration should be done.

Peter Bachini, 88 Blueberry Lane, spoke to the two building envelopes on Surrey Lane and wet property. It was noted that there is not a forest cutting plan associated with the property. Mr. Lampert-Boden said planting trees and removing trees does not require a forest cutting plan. Mr. Andrews noted criteria in his letter where if less than 5,000 square board feet is cut of forestry product, Mr. Lampert-Boden does not need a forest cutting plan. If a plan was in place it would include resource area. He concurred with Mr. Hankin that the GIS is roughly accurate in how it illustrates wetland. In response to Mr. Glidden, Mr. Borenstein explained that he has told Mr. Lampert-Boden not to do any further work and if he wants to do any more he should come to the

Commission with an RDA. In addition, Mr. Lampert-Boden has been advised by his attorney to focus on stabilizing the area and deal with invasive species, if necessary.

Mr. Glidden reiterated his suggestion that the wetland should be delineated and if this should be reviewed by Town counsel. Also, if stabilization would address wetlands and upland. Discussion ensued with the Commission about what part of parcel within jurisdiction should be delineated especially area related to the Enforcement Order. Mr. Andrews spoke to invasive species and if replanting occurred versus re-vegetation there would continue to be invasive species without a large scale control program. He suggested a planting plan could be put together without doing a wetland delineation to restore wetland and buffer zone areas. He noted that there was no tracking into the wetland all work was from the buffer zone.

Hand planting of trees would occur as part of the planting plan. Mr. Glidden noted the property owner's comment about how the bittersweet was bringing trees down. He stated that he is leaning towards where there is not an applicable exemption, to require modest planting, and modest invasive species eradication and speak to Town counsel about delineation. Ms. Cookson spoke to how analysis of soils could affect the wetland line. Mr. Andrews offered to prepare a mitigation planting program with proposed species at the next meeting. Mr. Borenstein suggested at the next meeting language will be included about next steps relative to wetland violation.

Gretel Clark, Bay Road, describes how there was clear cutting at the site and forest on borderline where no other trees were touched by storm and showed the Commission a photograph. Mr. Glidden noted the exemption for cutting that applies to the property which the Commission has to consider and how the Commission will work with the professionals that Mr. Lampert-Boden has employed. Ms. Cookson opined about importance for the Commission to understand its jurisdiction and upland.

Discussion occurred with abutters about how a water flow study could not be done since there is no information about what the site looked like originally. Also that houses built in vicinity of Miles River are subject to water problems.

Discussion was on how any felled wood will be left at the site until after the Commission takes action. Mr. Glidden moved to continue the hearing until May 25. George Tarr seconded the motion. The Commission voted unanimously in favor of the motion.

Enforcement Order (SECOND ORDER)

641 Bay Rd.

641 Bay Rd., LLC Owner, Jeffrey T. Angley, Esq. Resident Agent, Francis and Jennifer DiRico residents and authorized to execute documents Failure to appear at April 27 meeting, continuation of jurisdictional activity after issuance of Enforcement Order dated April 14, clearing and alteration of buffer zone and resource areas without an application, without Commission review and without permits

Wetland consultant Gordie Rogerson, who was retained by the property owner, and Attorney Jeffrey Angley, Esq. and Resident Agent were present. Mr. Hankin received several complaints about the activity that was occurring at 641 Bay Road which is in the back of the old Pirie property. He issued an Enforcement Order as a result. There was a mix-up with the mailing so at the last meeting the Commission authorized a second Order. Mr. Hankin noted that the presence of Mr. Rogerson and Mr. Angley was compliance with the second Order.

Mr. Hankin and Commissioners Chris Currier and George Tarr went on a site walk and viewed several areas of concern and some areas that are ambiguous. Mr. Hankin presented photographs to the Commission of the site relative to a GIS map of the area. The pond is quite low and a weir to keep water in the pond has worn away. It is uncertain if the pond qualifies under the bylaw as an isolated wetland. If it is not jurisdictional under the bylaw it may not be under the WPA if it is 100' from wetland.

Also, there is a small structure with a chain link fence around it next to the pond where the landowners want to keep a pig and some rabbits. The fencing is new and there has been some disturbance near it and it is 100' from the pond (which may not be jurisdictional). If this is jurisdictional an RDA should have been filed.

Along the wetlands which are downgrade from the tennis courts there has been hydro-seeding, grading and earth alteration within the 25' No Disturb Zone to the edge of the wetland. Tracks were seen from equipment that had pushed material in to the resource area. There appears to be a lot of organic material (1,000 square feet) that has been pushed into the wetlands. Hydro-seeding has also been done along the road. At the back of the property is a small disturbance at the wetland.

Discussion was on how the fence issue could be resolved easily since it may have been permitted with correct seeding used. The organic matter in the wetland needs to come out and disturbance addressed as well as wetland delineation defined by a professional. The disturbance at the back of the property where an ATV vehicle got stuck could be left alone. Discussion addressed how the property had been let go for some time so the intent of work was to clean it up and remove invasive species (i.e., poison ivy, bittersweet). Removal of invasive species was also done along the driveway that goes to the back of the property where hydro-seeding could be left to grow unmowed. The prior owner had dumped fill in the wetlands. Discussion was on how a hand rake could be used to pull back the fill and to determine the new wetland line. The property owner is interested in keeping more water in the pond.

Discussion ensued about how Mr. Hankin could work with Mr. Rogerson to reach resolution in a written document to the Commission and the seeded area by the road would have to be a non-mowed area. Also, the area around the fence will be seeded. Mr. Hankin will monitor any work (removal of organic material in wetland) that occurs on the site. Fill has to be composted outside of jurisdiction or taken to a compost facility. The Enforcement Order will remain open until the Commission's meeting on August 17.

Mr. Glidden moved to continue the Enforcement Order for 641 Bay Road. Ms. Cookson seconded the motion. The Commission voted unanimously in favor of the motion.

Enforcement Order (Continued to June 8, 2016 meeting)

Gardner Street: Map 24 Lot 36 Clearing and alteration of resource areas and No Disturb Zone
Francis P. Sears III; Thomas M. and Nancy I Sears Owners

Wetland consultant Mike DeRosa indicated in his letter that the site is currently stable and he will have staff at the site to ensure site remains stable and erosion control stays in place. Mike DeRosa is going to prepare a full compliance plan for June 8, 2016.

Mr. Glidden moved to continue the hearing until June 8, 2016. Bob Cronin seconded the motion. The Commission voted unanimously in favor of the motion.

Vote Minutes for April 13, 2016 and April 27, 2016

Mr. Glidden moved to approve the minutes for April 13, 2016 and April 27, 2016. Mr. Cronin seconded the motion. The Commission voted 4-0-1 to approve the April 13, 2016 minutes with Ms. Cookson abstaining, and unanimously in favor of approving the April 27, 2016 minutes.

Discussion items

Mr. Glidden described how he had emailed Mr. Hankin about how another Conservation Commission member should replace him on the Community Preservation Committee since he is very busy at work and has had trouble attending CPC meetings. At a subsequent Conservation Commission meeting when there is a full board and a replacement is determined Mr. Glidden will resign from the CPC.

Mr. Cronin moved to adjourn. Mr. Tarr seconded the motion. The Commission voted unanimously in favor of the motion. Commission adjourned at 9:01 p.m.

Minutes submitted May 20, 2016 by Jane Dooley