

**Hamilton Conservation Commission
Minutes of Meeting of July 13, 2016
Meeting held at Hamilton Senior Center**

Commissioners present:

Chair Richard Luongo, Bob Cronin, Virginia Cookson (arrived at 7:07 p.m.), Chris Currier, Tom Myers, George Tarr

Staff present:

Jim Hankin, Conservation Agent

Others present:

Anne Gero
Geoff Andrews
Mark Lampert-Boden
Rosemary Kennedy

Richard Luongo opened the meeting at 7:00 p.m. Jim Hankin mentioned the revised Enforcement Order for 1 Surrey Lane, and letter received from Anne Gero.

Enforcement Order

(Continued from April 13, April 27, May 11, May 25 June 8, and June 22 2016)

1 Surrey Lane

Mark Lampert-Boden landowner

Discuss, revise and/or vote to accept and sign the draft of a new Enforcement Order reflecting the June 22, 2016 vote of Commission.

Wetland Scientist Geoff Andrews representing the landowner mentioned that there were no issues with the new draft Enforcement Order. He commented on the letter from Anne Gero, and noted that planting area in buffer zone would be allowed to revegetate (photos of resource area and buffer zone included examples of stump sprouts).

The property owner would have to come back to the Commission to do any maintenance of the gravel access road. At that time a full wetland delineation could be done and reviewed for approval by the Commission. The Commission has a plan now with a partial wetland delineation where work occurred. Also noted was how glossy buckthorn was the predominant species in the red maple swamp.

Discussion addressed if there will be any additional agricultural activity in the buffer zone. There are spruce trees for commercial harvest in this buffer zone which will be removed for sale as ornamental plantings to landscapers. Mark Lampert-Boden had planted 4,000 trees throughout his property as part of the commercial trees that he sells. This was new work that may be allowed under the agricultural exemption.

A planting plan has been filed to restore the disturb area includes red maple and high bush blueberry. Also, a slash pile and saw log pile will be removed. In addition, the drainage easement

(ditch) on the site is jurisdictional. Mr. Andrews noted no work would occur in the area that was cleared that is now being allowed to revegetate. He mentioned that wetland delineation was done relative to the Enforcement Order to define what area had to be revegetated.

Mr. Hankin noted that any future work (e.g., agricultural use such as growing of Christmas trees) in the buffer zone would be reviewed with him or brought before the Commission. Mr. Andrews explained that if any work by Mr. Lampert-Boden were to occur in the buffer zone, Mr. Lampert-Boden would communicate beforehand with Mr. Hankin to understand if it is non-exempt.

The Commission wants all slash piles in jurisdictional area removed as soon as possible. Plantings will occur in the fall.

Anne Gero referred to Wetlands Protection Act, DEP decisions and publications and stated that she disagreed that the 90 or more trees planted in the buffer zone are agriculturally exempt. She argued that the sale of trees has to achieve a primary goal of making a profit, according to the regulations. Ms. Gero mentioned that Mr. Boden-Lampert has been growing Christmas trees on his property for 22 years and last year he filed with the Assessors a gross total revenue amount of \$1,800 from the property. This does not cover the cost of real estate taxes under Chapter 61. She suggested that Mr. Lampert-Boden is not making a profit.

Ms. Gero also stated that, in her view, the buffer zone on Mr. Lampert-Boden's property is not presently and primarily in an agricultural use or supporting an agricultural use. She concluded that the property owner is not entitled to the agricultural exemption. She added that in her reading of the regulations no portion of the property is exempt based on the DEP agricultural exemption regulations. Mr. Andrews replied that he would not argue, at this time, with Ms. Gero presentation on the regulations except to state that the regulations allowed Mr. Lampert-Boden to cut saw logs if 50% of the canopy is un-disturbed by the work.

In reply to a question from Ms. Gero, Mr. Hankin indicated that it is responsibility of the Commission to determine the applicability of the agricultural exemption regulations to any parcel in any particular situation. Mr. Hankin stated that if the Commission should determine that Mr. Lampert-Boden's activities meet the definition of agricultural as presented in the regulations, then the activity would be exempt from review under the Wetlands Act and Conservation Bylaw.

Mr. Lampert-Boden described how he would do more damage to the land if he took all of the trees out every year versus taking out and replanting trees on a selective basis. He stated in the last 22 years the trees were planted amongst the existing woodland trees. He stated that the area where he did not plant trees was the wetlands. His understanding was that trees could be planted in the buffer zone.

Thomas Myers added that the definition of agricultural use under the wetlands regulations allows for a parcel to keep an agricultural status even if it is inactive, for a period of up to five years.

Virginia Cookson described her understanding that the DEP regulations speak to the agricultural use to make a profit but if the property owner does not continue to make a profit the state agency does not take action. She noted that Mr. Lampert-Boden is in front of the Commission since he was cutting trees in the buffer zone and wetlands.

Mr. Lampert-Boden added how he had chosen not to raise cattle on the land due to runoff into the wetland, or plow the land to grow vegetables since he did not want to use pesticides or herbicides

near the wetland.

Discussion was on whether Mr. Lampert-Boden should file a Request for Determination of Applicability to plant spruce trees in the buffer zone. Mr. Andrews expressed interest preferred to move forward with the planting plan in resource area with the buffer zone to revegetating naturally. Any further work on the property (e.g., replanting or removing spruce trees) would need prior approval by the Coordinator or the full Commission if the Coordinator determined that such review was appropriate. Mr. Hankin added that in addition to the planting plan for the resource area, Mr. Lampert-Boden needs to come to the Commission for any activity planned in buffer zone, wherever the buffer zone may be located on the entire parcel.

Discussion ensued on the application process for forest cutting plans. Such plans are filed with a state agency and once approved a copy is submitted to the Commission for comment. A few properties in Hamilton have a forest cutting plan, and as noted they are regulated by the state and not the Commission. There is no forest cutting plan for 1 Surrey Lane.

Mr. Hankin summarized how the wetland areas will be replanted as described. Also, Mr. Hankin will sign off on removal and replanting spruce trees in the buffer zone throughout the parcel. Mr. Lampert-Boden noted that spruce trees are harvested when they are three feet tall and replanting occurs with 9-inch plants that take two to three years to grow to the size where they can be harvested. If Mr. Lampert-Boden wants to increase area where spruce trees will be planted he would have to come back to the Commission. Mr. Lampert-Boden stated that he is not planning to put trees in any part of wetlands.

The Commission will require that the Enforcement Order be recorded. Mr. Hankin stated that he will continue to work with Mr. Lampert-Boden on the property, and acknowledged that people in the neighborhood were understandably upset with activity occurring on the parcel although much of the work is outside of the Commission's jurisdiction.

The revisions to the Enforcement Order consist of setting up a process where Mr. Lampert-Boden will:

1. Contact the Conservation Coordinator prior to doing work in the buffer zone, Mr. Hankin will review proposed work and put notes in file and take photographs ,
2. The Commission understands that existing harvestable spruce trees in buffer zone may be removed and replaced by new growth spruce trees in the buffer zone.

Any other work has to be thoroughly reviewed by the Conservation Coordinator or the Commission prior to work start. Mr. Hankin will walk the site with the property owner so both parties understand locations of all buffer zones on the parcel.

Other next steps include:

1. The Commission has to sign the Enforcement Order with supplemental page containing information on communication that will occur between the Conservation Agent and Mr. Lampert-Boden,
2. Site visits by Mr. Hankin,
3. The property owner's understanding that the only activity in the buffer zone that will be

allowed without further formal review is spruce tree harvesting and replacement,

4. Any other activity has to come before the Commission. The Enforcement Order will remain in effect and could be renewed annually.

Discussion was on how the Commission has limited authority to issue monetary penalties, but it can require remedial actions on site for un-permitted work in jurisdictional areas. Typically when Enforcement Orders are issued compliance is eventually achieved. When there are several violations on a property, the DEP can intervene and they have substantial authority to impose significant monetary penalties/fines.

Chris Currier moved to renew the Enforcement Order on 1 Surrey Lane. Tom Myers seconded the motion. The Commission voted unanimously in favor of the motion.

Minutes Approval – June 22, 2016

Mr. Myers moved to approve the Conservation Commission minutes for June 22, 2016. George Tarr seconded the motion. The Commission voted 5-1 with one abstention.

Conservation Commission meeting schedule – Tuesday, July 26 and Monday, August 15

The Commission will meet on Tuesday, July 26 and Monday, August 15 at the Hamilton Senior Center. Four conservation restrictions for Sagamore Hill will be before the Commission on July 26. Essex County Greenbelt Association is granting a conservation restriction to the Town of Hamilton for the Sagamore Hill project which will come to the Commission at a future date.

Bob Cronin moved to adjourn. Ms. Cookson seconded the motion. The Commission voted unanimously in favor of the motion. Commission adjourned at 8:15 p.m.

Minutes submitted July 23, 2016 by Jane Dooley