



SPECIAL MEETING MINUTES
Comstock Community Center Room 31
April 7, 2016

PRESENT: Liz Craig, Acting Chair, Tom Burgess, Nick Lee, Mark Andrews

ALSO PRESENT: Mike Conklin, Director of Environmental Affairs; Liz Larkin, Recording Secretary; George Cross, Property Owner; Bill Butler, Attorney; Patrick Luther, Property Owner

ABSENT: John Hall, Dan Falta, Rick Stow (notified of intended absences)

I. CALL TO ORDER

Ms. Craig called the meeting to order at 7:30 p.m.

II. SHOW CAUSE HEARINGS

A. CROSS – 105 Old Belden Hill Road – fill deposited in a wetland area

Mr. Conklin reviewed the steps he has taken and the timing of each step since a phone report was received in the office of the commission. He also distributed site photos that he obtained during a site visit on the day of the phone report, April 1, 2016 for commissioners to review.

Mr. Conklin confirmed a phone call was made to the office by a neighbor who asked to remain anonymous. The caller stated that there were 167 truck-loads of fill dropped at the site and being deposited into a wetland. Mr. Conklin and the Town's Assistant Sanitarian, Jennifer Zbell, went out to the property immediately upon receiving this report. Mr. Conklin confirmed that Mrs. Cross was home at the time of this visit so he explained the violation that was occurring.

Mr. Conklin noted that the wetland was flagged on the adjacent property with a portion of the 100 ft. regulated area extending into the subject property. Mr. Conklin also confirmed that when the site plans for the new house were brought in for permitting, there was no work proposed in the regulated area. Mr. Conklin noted that the site has now been graded into the regulated area and in the wetland on the adjacent property. He confirmed this has triggered a cease and desist on the neighbor's property as well.

Mr. Conklin stated that he called Mr. Cross after visiting the site on April 1, 2016 and Mr. Cross was adamant that he did nothing wrong and refused to entertain a conversation with Mr. Conklin. Mr. Conklin contacted Town Counsel who directed him to send the Cease & Desist Order via certified mail and retain a State Marshall to serve the Cease & Desist Order that same afternoon

to ensure the work would stop immediately.

Ms. Craig inquired how far the silt fence was placed off the house. Mr. Conklin confirmed it was 40 feet from the house. She then asked how much land is being affected and Mr. Conklin responded, all of this property and a portion of the neighbor's property. He noted that the stone wall would appear to be the property line but it is not, per the survey.

Mr. Conklin confirmed that this is Mr. Lato's 7th wetlands violation and noted that he still owes two citations totaling \$1,500. He asked for direction from the commission on how they would like to proceed with this contractor.

Mr. Butler, Mr. Cross's attorney, introduced himself and noted that Mr. Luther, the neighbor, was also present. Mr. Cross displayed a site plan which he indicated was his final as-built survey. Mr. Cross stated that the silt fence was noted on the original plan design as a straight horizontal line which was re-done twice per the instruction of Daphne White, Assistant Town Planner, who is responsible for soil and erosion permits.

Mr. Cross stated that he did not have 167 truck loads of material delivered to the site. He noted that he was only creating a boulder wall in the front area of the house. In order to prep the area, they stripped the soil out of the side yard to top dress. He stated the existing grade has not changed from the as-built and reiterated that he would not spend the \$32,000 it would cost to have all this fill brought onto the site. Mr. Cross also stated that he had a surveyor stake the outside of the wetland area so he would know where the wetlands were located. Mr. Cross indicated that the eastern portion of the lot is not in a regulated area. He admitted to moving 80 cu. yds. of soil from the eastern side of the home to the front yard for the rock wall, which he said was outside the regulated area. Mr. Cross also stated there was no change to the watercourse and he was filling in a ditch that was present in the front yard.

Mr. Butler asked how the message was received from the neighbor's call to Mr. Conklin. Mr. Conklin responded that someone called in on April 1, 2016 to report activity in a wetland and his Secretary took the message. Mr. Butler asked Mr. Conklin if he saw the equivalent of 167 truck loads of fill on the property as reported by the neighbor. Mr. Conklin responded that the material was graded throughout the site when he arrived and the yard was being extended into a regulated area with fill. Mr. Conklin indicated he was not able to see the piles but the basis of his jurisdiction is not the amount of loads, it was the observation of activities in a regulated area without a permit. Mr. Lee reiterated that the purpose of this meeting is to ascertain if a regulated activity was performed without a permit.

Mr. Conklin read the Cease & Desist letter in its entirety as Mr. Butler was questioning the semantics of the document. Mr. Butler was asking again about the amount of fill in truck loads but Mr. Lee commented that clearly work was done in the regulated area and there were many dump trucks seen on the site. Mr. Lee stated this is clearly a Significant Level Activity. Mr. Cross stated the previous owner clear-cut the property and left junk at the site. He stated that he hand-removed debris out of the setback. Mr. Lee stated he had seen large machines in the back yard area when driving by on a daily basis. Mr. Cross stated this was not accurate.

Ms. Craig stated that she can see recent tread marks on the photos in the regulated area which would indicate large vehicles have been present. Mr. Cross stated no trucks were in that area. Mr. Lee again stated he has seen them with his own eyes. Mr. Cross then displayed the map

again and was not clear on the direction of the area in question as he was not aware of the north arrow which was clearly marked on his plan. Mr. Lee attempted to explain how to read the directions several times.

Mr. Butler asked Mr. Conklin if he had suggested to Mr. Cross that he ask the surveyor to come out and determine the amount of fill deposited. Mr. Conklin responded that Mr. Cross was not amenable to any discussion on the phone and was adamant that he did nothing wrong. Mr. Conklin confirmed that he could tell work was being done in the regulated area by the silt fence and added that the newer soil is darker which is evident in the photos. Ms. Craig asked why the silt fence was removed. Mr. Conklin responded that it is best to keep the silt fence in place until the site is stabilized. Mr. Cross stated he had received his Certificate of Occupancy and silt fencing is only required during construction. Mr. Cross then noted he did not encroach on the neighbor's property as the property line was staked.

Mr. Andrews reiterated that fill, no matter what the amount, in a regulated area, is this commission's jurisdiction. Mr. Burgess concurred that any amount of fill in the wetland setback is grounds for a violation. Mr. Lee noted that there is more than 100 cu. yds. of fill so this triggers a Significant Level Permit. Mr. Conklin suggested to Mr. Cross that a Soil Scientist be hired to determine the amount of new fill present at the site.

Mr. Lee MOVED to UPHOLD the CEASE & DESIST order and directs staff to issue a Notice of Violation, SECONDED by Mr. Burgess and CARRIED 4-0-0.

Mr. Conklin provided the commission with data that captures the six previous violations for Mr. Lato, contractor for Mr. Cross. As this will be his 7th violation, Mr. Conklin asked the commission if they wanted to increase the citation amount and noted that Mr. Lato still owes \$1,500 from previous citations that remain unpaid. Mr. Lee asked that the decision be held until a determination is made on the property. Ms. Craig asked how long would be appropriate to have the Corrective Action application due. Mr. Conklin stated we typically provide one month. Mr. Conklin asked Mr. Cross to immediately install silt fencing, one at the disturbance line, and once half way up the lawn.

With no further questions or comments, the hearing was closed.

B. LUTHER/BARILE – 101 Kent Road – fill deposited in a wetland area

Mr. Conklin stated that he contacted Mr. Luther about the violation on his property and he was very receptive to his concerns. Mr. Conklin confirmed that he saw some pink flags on the property. Mr. Luther confirmed these flags were placed by a soil scientist and represents the wetlands area, not the property line as Mr. Cross may believe. Mr. Luther confirmed the work done by Mr. Cross may be a few feet over the property line onto his property. Mr. Andrews asked if the activity he sees on his property is in that wetland which was flagged. Mr. Luther responded that it is close or in the outer perimeter.

Mr. Conklin directed Mr. Luther to provide a corrective action application and then he can make arrangements directly with his neighbor for the repayment of any costs. Mr. Conklin agreed to help Mr. Luther figure out the corner of the property with a measuring tool on site from a nearby catch basin. Mr. Conklin recommended that the fill be removed from the wetland and the area be graded and seeded as part of the corrective action.

Mr. Lee asked Mr. Luther if he witnessed any large machines in the regulated area and Mr. Luther confirmed that he did witness machines in that area.

Mr. Lee MOVED to UPHOLD the Cease & Desist on the property, SECONDED by Mr. Burgess and CARRIED 4-0-0.

III. ADJOURN

Mr. Burgess MOVED to ADJOURN at 8:29 pm, SECONDED by Mr. Andrews and CARRIED 4-0-0.

Respectfully Submitted,
Liz Larkin
Recording Secretary, Environmental Affairs