

September 18, 2008

Show Cause Hearing

5:00 p.m. Main Hall, Bryan Memorial Town Hall

MEMBERS PRESENT: Mr. Bedini, Mrs. D. Hill, Mr. LaMuniere, Mr. Picton, Mr. Thomson

ALTERNATES PRESENT: Mr. Wadelton

ALTERNATE ABSENT: Mr. Bohan

STAFF PRESENT: Mr. Ajello, Mrs. J. Hill

ALSO PRESENT: Mr. and Mrs. Rosen and Mother, Mr. Charles

Rosen/304 Nettleton Hollow Road/#IW-08-V2/Unauthorized Clearing, Grading, Stream Work

Mr. Picton called the Show Cause Hearing to order at 5:07 p.m. and seated Members Bedini, Hill, LaMuniere, Picton, and Thomson. He explained the reason for the hearing was to provide the property owner the opportunity to show cause why the 9/11/08 enforcement order should not remain in effect. He said the Commission would decide whether the order had been issued properly for work that was regulated and not to be conducted without a permit.

Mr. Ajello reported that a notice of violation had been issued on 9/4/08, but said that the work had not stopped at that time.

Mr. Picton noted the work should have stopped. He then read the 9/11/08 cease and restore order.

Mr. Ajello noted that a map of the property showing the wetlands boundaries was on file, that many of the commissioners were familiar with the property as a site inspection had been conducted there in 2005, and said he had taken many photos to document the unauthorized work done. Using the map, "Property/Boundary Survey," by Mr. Alex, dated April 2005, which Mr. Rosen had submitted for an application to construct a tennis court, Mr. Ajello pointed out the areas that had been disturbed.

Mr. Rosen said he had not received the enforcement order until the night before, he had not cleared land, excavated, or changed a watercourse, he had photos to prove that he had done none of these activities, and said the matter was "ridiculous," and a "tempest in a teapot." He said he did move stones in the stream, but did not think he had done anything wrong. He submitted photos taken one to two years ago and compared them with recent photos he took of the work done. He said he had neither widened nor narrowed the stream; he had only given orders to clean it up and he had made it "neat." He also claimed that the watercourse was man-made; not natural.

Mr. Picton numbered the photos submitted by Mr. Rosen and described each.

Mr. Rosen said he had not changed any grades and that in all his years as a real estate developer, no one had ever told him that a permit was needed to move stones around.

Mr. Picton noted for the record that Mr. Rosen had known at the time he submitted the tennis court application that he had needed a permit for work near wetlands, but that he did not know now that a permit was required for work actually in wetlands.

Mr. Rosen responded the work done was beautification and landscaping.

Mrs. Rosen presented before and after photos, which she said showed that the stream was now in the same course and had only been neatened.

Mr. Picton reviewed the same photos and pointed out evidence of work on the streambanks and the

construction of two terrace levels and new stonewalls.

Mrs. Rosen stated that no regrading had been done and that stones had been replaced in the existing channel. She also stated the growth in the area had not been changed.

Photos #8, #9, #10, and #11 were studied and their locations pointed out on the map. Mr. Picton pointed out new waterfalls in photo #11. Mrs. Rosen said there was a new stonewall in the streambed where the water falls over the stones.

Mr. Rosen said he had taken out permits for the tennis court and for work on a building, but had not known the stream work also required a permit. He apologized if he had done anything wrong, noting he was attending this hearing in good faith under difficult family circumstances.

Mr. Ajello read the landscape architect's written description of the vegetation in the two 30 to 50 ft. wide wetland corridors from the report, which had been submitted for the 2005 tennis court application, and noted other references in past files to the maintenance of the long grasses in the wet meadow.

Mr. Thomson noted that a condition of the tennis court approval had been that the wet meadow be preserved and mowed only once or twice per year.

Mr. Ajello also noted that in previous files Mr. Kearney, WEO, had recommended a riparian buffer zone, and Mr. Neff, engineer, had said the wet meadow would be mowed only once a year. Mr. Ajello read the 6/29/05 letter to Mr. Rosen from Mrs. Hill, which included the motion and conditions of approval for the tennis court; the third condition being, "no filling, excavation, or regrading is permitted within 50 feet of wetlands and watercourses." Yet Mr. Ajello stated that when he first inspected the site early in September, there had been a backhoe digging in the stream. He pointed out this area on the map and presented a photo he took of the backhoe.

Mr. Rosen countered that the photo did not show the backhoe in the stream. He said he would answer questions from the commissioners and invited them to inspect the site with him.

Mr. LaMuniere agreed that a site inspection should be conducted. From the photos he said it appeared the stream had been "canaled" with stone sides.

Mr. Rosen said he had changed no grades.

Mr. Picton summarized the information presented to this point; that there had been excavation in the stream channel, recent regrading and mulching, and the construction of new stonewalls with filling behind them.

Mr. Rosen again stated he had not changed any grades. Mr. Rosen said there was two days work left to spread the last of the top soil and to mulch.

Mr. Picton asked if there was an additional area of disturbance that hadn't been discussed yet.

Mr. Ajello presented four photos of the area behind the house where there was a lot of "rubble."

Mr. Picton asked what immediate stabilization measures were recommended.

Mr. Ajello said there was enough rubble so there was not an immediate erosion hazard.

Mr. Picton asked that there be no further regrading, spreading, filling, or excavating and that hay mulch be put on the disturbed soils at the edge of the stream as soon as possible.

Mr. Rosen asked instead to rake the stones and spread top soil by hand and then seed and mulch.

Mr. Picton said no more top soil could be spread at this time and that Mr. Ajello would advise him on how to stabilize the area without additional soil.

Mr. Ajello said the area should be covered with hay, but Mr. Rosen said he would not put hay over bare stone.

Mr. Picton noted the enforcement order called for the posting of a \$10,000 bond. Mr. Ajello thought this was a fair amount for professional consulting fees.

Mr. Ajello pointed out an area that had been filled in.

Having attended the 2005 site inspection, Mrs. D. Hill remembered all the shrubs on the north side of the stream near the access to the house. She said she was concerned that there had been clearing as well as stream work done.

Mr. Rosen said he had taken out the prickles and left the ferns.

The commissioners briefly discussed whether to modify the enforcement order. It was generally thought that if a different bond amount was needed or a different course of enforcement was necessary, the order could be amended later. It was the consensus to keep the order as issued.

MOTION: To keep the 9/11/08 Enforcement Order issued to Mr. Rosen/304 Nettleton Hollow Road in effect as written. By Mrs. Hill, seconded by Mr. Bedini, and passed 5-0.

Mr. Rosen said he would not post the \$10,000 bond and Mrs. Rosen reminded the Commission they had come to the hearing in good faith.

Mrs. D. Hill said that was appreciated, but the Commission had enforcement procedures to follow.

Mr. Rosen said he did not own the property and so advised the Commission to consult with its attorney.

Mr. Picton said this matter would be on the agenda of the next regularly scheduled meeting and he suggested that a site inspection be conducted on Tuesday, 9/24, before the meeting.

Mr. Rosen said that due to the recent death in his family and religious observances, he could not attend on this date and he would not grant permission for the commissioners to inspect the property on their own.

Mr. Thomson explained that minutes of the site inspection would be filed so that Mr. Rosen would know what had transpired, but Mr. Rosen said that would not be satisfactory. He said he would be available for an inspection sometime after 9/24.

Mr. Picton said the hiring of the consultant would be discussed at the next meeting.

Mr. Rosen objected. First, he thought it did not make sense to make the determination that a consultant was needed without first having inspected the site and second, he said he would not pay consulting fees.

MOTION: To close the Show Cause Hearing to consider whether the 9/11/08 Enforcement Order issued to Mr. Rosen/304 Nettleton Hollow Road should remain in effect. By Mr. Picton, seconded by Mr. Thomson, and passed 5-0.

Mr. Picton adjourned the hearing at 6:15 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Janet M. Hill

Land Use Coordinator