Boxford Conservation Commission

Discussion of allowed activities under Forestry Plan and CR

June 2, 2016

REPRESENTATIVES

1. Kathleen Connolly, Esq., Louison, Costello, Condon & Pfaff
2. Michael Smolak, Owner and Operator of Smolak Farms

ISSUE

Michael Smolak and Smolak Farms (LLC) has applied for and obtained a Forest Management Plan for the property at 494 Ipswich Road, Boxford, Massachusetts, 01921, known as Small Oxx Farm. He currently farms a property in North Andover. Prior to his purchase of the property at 494 Ipswich Road, Mr. Smolak met with the Commission at a duly-noticed public meeting and inquired about any limitations on the use of the property with respect to farming and forestry activities due to a Conservation Restriction (CR) the previous owner had entered into with the Boxford. He was given assurances that he could conduct a broad range of farming activities under the CR.

Mr. Smolak purchased the property intending to farm it as planned and as discussed with the Commission and the previous owners, the party that had entered into the CR. In purchasing the property, he relied on assurances from the previous owner and Conservation Commission that he could conduct the following activities under the CR and Forest Management Plan:

1. Clear land for more growing fields
2. Rebuild a home within the same square foot imprint of the current home, and
3. Construct agricultural buildings.

Mr. Smolak has recently received a letter from Janis Bailey, daughter of the previous owner, Otis Curtis confirming their understanding and intent that the property continue to be farmed, including clearing trees for additional growing fields.

Following his purchase of the property, an issue was raised by a Commissioner that the CR prohibits clearing. In reply to the position taken by that Commissioner, I provided a letter to Mr. Smolak dated July 7, 2015 explaining why the CR – which is ambiguous – does not prohibit the agricultural activities Mr. Smolak wants to conduct. The Commission was provided a copy of that letter and asked its town counsel for an opinion on what activities are allowed under the CR. Town counsel, in her opinion letter dated July 30, 2015, agrees that it is discretionary. Although town counsel says she disagrees, she merely concludes that the Commission has discretionary authority to deny it. That is true and is half the definition; discretionary authority also means the Commission may grant OR deny.

Town counsel also says in her letter that land must have open space and forested area. That is precisely what is being proposed: clearing of some acres, approximately 15, under an approved forest cutting plan, and leaving 20 acres forested. Therefore the proposal complies with the CR.

Attached is a copy of the previously-issued Forestry Plan, which is being revised to reflect an additional 20 acres of clearing. We request the opportunity to meet with the Commission at its regularly-scheduled meeting on June 2, 2015 to discuss this matter further and to obtain approval for the clearing of 20 acres which Mr. Smolak wishes to conduct on the property in accordance with his Forest Management Plan.

PROCEDURAL HISTORY

At the November 20, 2014 ConsComm meeting: “Mike Smolak, Small Oxx Farm, met with the Conservation Commission to discuss his proposal for using the property for growing Christmas trees and maintaining the woodland. Smolak provided a forest management plan for the Commissioners and advised the property is not yet ready for a site walk. Grigg advised that the Conservation Restriction stipulates that nothing grown on the property can be sold commercially. Delaney advised the Commissioners will review his information and Smolak will let the office know when a site walk can be scheduled.”

At the Boxford ConsComm’s June 4, 2014 meeting: “Conservation Commissioner Frank DiLuna removed himself from the meeting and discussions on this proposal. Mike Smolak, owner of 494 Ipswich Road, appeared before the Conservation Commission to discuss improvements to the field areas and to provide access to a new area. Smolak provided a brief presentation on his plans for the property. The Commissioners discussed the proposal at length, trying to determine if the plans would be allowed under the Conservation Restriction. After discussion, Chairman Delaney suggested the Commission plan a site visit on an upcoming Saturday or Sunday. Smolak will make arrangements with the professionals assisting him on his property and will get back to the Conservation Commission with a date.” (Quoted from Boxford Conservation Commission Meeting Minutes)

Two important points that are not in the minutes that are important to note are that since his recusal, Commissioner Di Luna has received an opinion from the State Ethics Commission that he is not in conflict, therefore he has filed the requisite disclosure with the Town Clerk allowing him to sit on this matter. Secondly, Mr. Smolak asked Commissioner Griggs to recuse herself because she was the drafter of the CR at issue, a member of BOLT and she independently hired legal counsel to oppose Mr. Smolak’s Plan. To our knowledge, Commissioner Griggs has not recused herself.

Consistent with the CR, the Forest Management Plan, relevant statutes and the 3 proposed activities that the Commission previously agreed he could do, Mr. Smolak wishes to clear-cut approximately 20 acres of the land for fields in accordance with a Natural Resources Conservation Service (NRCS) Plan, to have a farm stand, possibly to rebuild an existing house, to conduct forestry for the health of the forest land, and possibly to grow additional trees.

The removal of trees will be in concert with and under the supervision of NRCS, the state forester, the forestry consultant, the forestry company and the Town of Boxford Conservation Commission Administrator.

Based on the language of the CR, the property Owner needs the approval of the Grantee, that is the Town of Boxford, presumably through its Conservation Commission for all activities and certainly from the Conservation Commission for activities involving wetlands, for any clear-cutting, forestry or other agricultural activities, including the creation of a farm stand, but each of these activities is allowed under the CR, provided he conducts it in accordance with “recognized natural resource conservation and farm management practices.” Provided he conducts activities in accordance with the Forestry Management Plan and NRCS plan, there is be no basis for the town commissions to withhold approval.

CONCLUSION

Mr. Smolak has since applied for and obtained a Forest Management and is again before you seeking formal approval of certain activities before he commences forest cutting or other agricultural activities on the property.