

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

RICHARD SPARKS and
CATHERINE SPARKS

vs.

PC 2018-3429

SAINT 23 LLC, et al

TOWN OF FOSTER,
A Municipal Corporation

vs.

PC 2018-3588

SAINT 23 LLC, and
BRIAN ST. CROIX

PROCEEDINGS

HEARD BEFORE

THE HONORABLE JUSTICE MAUREEN B. KEOUGH

JUNE 15, 2018

APPEARANCES:

DYLAN B. CONLEY, ESQUIRE
ON BEHALF OF MR. and MRS. SPARKS

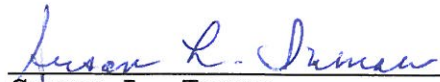
JOANNA M. ACHILLI, ESQUIRE
ON BEHALF OF THE TOWN OF FOSTER

JOHN O. MANCINI, ESQUIRE
NICHOLAS J. GOODIER, ESQUIRE
ON BEHALF OF SAINT 23 LLC AND BRIAN ST. CROIX

SUSAN L. INMAN
OFFICIAL COURT REPORTER

C E R T I F I C A T I O N

I, SUSAN L. INMAN, hereby certify that the succeeding pages, 1 through 28, are a true and accurate transcript of my stenographic notes.



Susan L. Inman
Court Reporter

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JUNE 15, 2018

AFTERNOON SESSION

THE CLERK: Richard Sparks v. Saint 23 LLC, et al,
PC 2018-3429, as well as PC 2018-3588, Town of Foster v.
Saint 23.

MR. CONLEY: Ready, your Honor.

THE COURT: Come on up, everyone.

THE CLERK: Counsel, identify yourselves.

MR. CONLEY: Dylan Conley on behalf of the Town.
Excuse me, force of habit. On behalf of the Sparkses.

I'm going to object. We have a conflict, your
Honor.

MS. ACHILLE: Joanna Achille on behalf of the Town
of Foster.

MR. MANCINI: John Mancini on behalf of Saint 23 LLC
and Brian St. Croix.

MR. GOODIER: Nicholas Goodier on behalf of Saint 23
LLC and Brian St. Croix.

THE COURT: Welcome back, everyone. We were here
on, originally, there were two separate matters that had
been filed. Separate, but yet related. I had, first and
foremost, Richard and Catherine Sparks vs. Saint 23 LLC
and Brian St. Croix, and then the Town of Foster. And,
then, after that, the Town of Foster filed their own
motion, or I should say suit against Saint 23 LLC and

1 Brian St. Croix. Both matters really involved a request
2 by the parties for injunctive relief as it related to
3 Mr. St. Croix and what he was doing with his property
4 located on Mount Hygeia Road in Foster, Rhode Island.

5 I had told the parties last time, and we had some
6 spirited arguments, certainly educational for the Court
7 concerning the matter, and that was really what Mr. St.
8 Croix was doing with his property. I heard the arguments
9 from both sides. I was entirely sympathetic to the Town
10 and the Sparkses concerning their very valid and well
11 placed concerns about what Mr. St. Croix was doing with
12 his property. That was based, primarily, on the history
13 of prior applications and things he had done before.
14 But, my concern was that given Mr. St. Croix's recent
15 statements or, as I think I described it, more of a
16 pivot; that rather than using his property to run a
17 gravel excavation or mining operation, he intended to use
18 it for a horse farm; that Mr. St. Croix may have found a
19 valid, and permissible more importantly, use for the
20 property.

21 I had suggested at that time that the parties get
22 together and speak because if Mr. St. Croix was going to
23 be operating a horse farm, in my review of the some of
24 the case law, that may be something he was entitled to
25 do, and it might be in everyone's best interest for the

1 Town to take this opportunity to negotiate with Mr. St.
2 Croix and his counsel concerning how that was going to be
3 done, restrictions that were going to be put in place,
4 and steps that could be taken to assure the Town, as well
5 as the Sparkses to a certain degree, that this wasn't a
6 ruse, for lack of a better term; that he still planned on
7 excavating and mining gravel, he was just going to call
8 it something else.

9 I had an opportunity to speak very briefly this
10 morning with the attorney representing the Town of Foster
11 as well as counsel for Mr. St. Croix and Saint 23 LLC,
12 and I understand that an agreement of sorts -- and I say
13 that because I appreciate that both sides had to give --
14 or, to agree to things that they didn't necessarily want
15 to. But, that's, I suppose, the substance of any valid
16 agreement; neither party walks away with everything that
17 they want, such that they have this agreement put in
18 place and it's taken the form of a consent judgment.

19 I did have the opportunity to review that, but,
20 counsel, why don't you go ahead, and then I will get to
21 the Sparkses in a moment. We'll take care of this first.
22 As I understand it, you're still pressing your motion,
23 which is fine -- or, request, and we'll deal with that in
24 a minute. But, if I can knock one off, we'll do that,
25 and we'll go from there.

1 Counsel, go ahead.

2 MS. ACHILLE: Good afternoon. Thank you, your
3 Honor.

4 As you indicated, per your instruction the Town did
5 sit down with Mr. St. Croix and his attorneys, and we
6 were able to work out an agreement that does satisfy the
7 Town Council that Mr. St. Croix is going to be operating
8 a horse farm, and that this excavating is going to be an
9 incidental use to the operation of a horse farm.

10 The consent order will allow Mr. St. Croix to
11 excavate the property prior to the commencement of the
12 horse farm in a fashion consistent with DEM permits and
13 also a site plan that is attached as Exhibit A. This
14 will -- essentially, the project will happen in four
15 phases. Each phase is limited to ten acres so that will
16 hopefully, the Town thought, and I think Mr. St. Croix's
17 thought is that that would limit the noise that is coming
18 off of the property in an attempt to condense the
19 operation.

20 In addition, there will only be 60 trucks coming off
21 of the property Monday through Friday. So, no trucks
22 will be entering or exiting on Saturday or Sunday. And,
23 he will be able to do some actual excavating and site
24 work during Saturday, but never on a Sunday.

25 The Town has also conceded that if he does need to

1 crush some of the boulders because of their size, he will
2 be able to do that. However, if he's going to be
3 crushing, he will contact the building official, and
4 there will be -- he will, Mr. St. Croix or the
5 corporation, at their expense, will hire professional
6 engineers to take some decibel readings. And, we've put
7 some decibel limitation in there to make sure that we're
8 protecting the neighbors and abutting properties from
9 sound.

10 In addition, he will be posting a bond with respect
11 to the soil erosion and things of that nature. And, the
12 work is to be completed within 24 months of today's date,
13 provided that your Honor signs the consent judgment.

14 Six months thereafter, he will commence the horse
15 farm. And, we've defined the horse farm so that nobody
16 has any questions as to what a horse farm is. This horse
17 farm will have the capacity to stable at least 15 horses,
18 but he will have at least one-third occupied, because you
19 never know if people bring a horse, leave a horse, things
20 of that nature.

21 And, importantly for the Town, there are
22 ramifications that are added in this. The Town building
23 official will have open access to the property to make
24 sure that Mr. St. Croix and the Company are complying
25 with the judgment. And, if they are not, a notice will

1 be issued that he is in violation of this judgment, and
2 he is to stop all work until there can be an agreement
3 reached. If Mr. St. Croix does not heed to the building
4 official's instruction and the Town is required to come
5 to court to get a preliminary injunction, Mr. St. Croix
6 will be responsible for the Town's legal expenses.

7 In addition --

8 THE COURT: Will you do me a quick favor? I
9 apologize. Only because it's been a really long morning
10 already, can you just --

11 MS. ACHILLE: Slow down?

12 THE COURT: ...slow down a little bit? I know; I
13 get it. I just, I totally imagine my poor stenographer,
14 if it sounds fast to me, that it's got to be killing her.
15 So if you could slow down a little bit?

16 MR. ACHILLE: It's not the first time.

17 THE COURT: Yes, that's fine.

18 MS. ACHILLE: And, lastly, I think the most
19 important thing to the Town is, if this horse farm is not
20 established within the six months following the 24 months
21 of site work, the Town will be able to impose a fine of
22 \$100 per day which will be retroactive to December 13th,
23 2017. So, essentially, it's \$36,000 a year. And,
24 Mr. St. Croix has already assented to that fine; he has
25 assented to a lien being placed on his property to ensure

1 payment of that fine; and he has also agreed that if
2 there is any money remaining from the bond posted for the
3 sediment and soil erosion, that that will also go towards
4 that fine. So, the Town does feel that there are
5 adequate parameters placed on this incidental project and
6 that the Town is protected should Mr. St. Croix not
7 comply with the terms of the judgment.

8 THE COURT: Okay. I also saw, because I did go
9 through it, that part of this as well is that Mr. St.
10 Croix and his company waive any right of appeal --

11 MS. ACHILLE: Yes.

12 THE COURT: ...to this Court in connection with
13 actions taken by the Town's Zoning Board pertaining to
14 the special use permit application advanced by the same
15 parties concerning the property in exchange for the Town
16 who is waiving the right to enforce the notice of
17 violation that had previously been entered, correct?

18 MS. ACHILLE: Yes, your Honor.

19 THE COURT: Okay, and I say that for a reason
20 because there's a couple of other things that I want to
21 put on the record. As I understood from my conference
22 this morning, that not everyone in the Town of Foster is
23 happy with this. And, I understand it; I truly do.
24 Sometimes I think that's the hallmark of a good
25 agreement; that everyone walks away unhappy. But,

1 there's some reasons why I'm inclined to think that this
2 is in the best interest of the Town, and I will expound
3 upon that in a second.

4 But, to the extent that defense counsel needs to
5 place anything on the record, I wanted to give them an
6 opportunity to do so.

7 MS. ACHILLE: I do also want to mention.

8 THE COURT: Sure.

9 MS. ACHILLE: On Page 4 of the order that we
10 submitted this morning, we had gone back and forth with
11 drafts, but there is a typo. First paragraph, fourth
12 line, it should say Section M. So, we will just retype
13 it and bring it in for signature, but that was it.

14 THE COURT: Okay. Mr. Mancini?

15 MR. MANCINI: Thank you, your Honor. John Mancini
16 on behalf of the defendants.

17 Your Honor, this proposed consent judgment really is
18 a good example of a tug of war. The parties did
19 negotiate in good faith, and I can say on behalf of the
20 defendants we believe that we have waived some
21 significant rights. Most importantly, as the Court has
22 just noted, is our appellate rights have been waived.
23 We've agreed to certain penalties and consequences in the
24 event that this order is not followed. And, importantly,
25 this would now be no longer a matter subject to zoning,

1 but, in fact, it would be a matter subject to this
2 Court's review as a contempt of court order, which is
3 much different, as the Court knows, and the avenue of
4 redress for the Town is more direct.

5 With that, we are in agreement with the order. We
6 concur with the synopsis provided by the solicitor and
7 we're ready to answer any questions, your Honor.

8 THE COURT: Thank you.

9 Let me ask you this, Mr. Conley, have you had a
10 chance to look at this? Are you familiar -- or do you
11 know what's in the order?

12 MR. CONLEY: I was given a copy of the order an hour
13 or so ago.

14 THE COURT: Okay.

15 MR. CONLEY: I have reviewed it, the rights that
16 Mr. St. Croix is giving up. They make -- this is
17 identical to his proposal to run a mine for two years.

18 I also think that the Town Council cannot circumvent
19 the authority and jurisdiction of the Zoning Board. The
20 Zoning Board has control over zoning use matters; that
21 the parties, because they have a difference of opinion
22 with the Zoning Board, can't then enter into a consent
23 agreement as an end round to the Zoning Code of the Town
24 of Foster. This effectively allows Mr. St. Croix to
25 violate the Zoning Ordinance by authority of the Town

1 Council, despite the fact that the Zoning Board has
2 already ruled on this and said it's an impermissible use.

3 To say that -- to complete their entire mining
4 operation exactly as proposed in the two-year period
5 exactly as originally proposed, and then six months later
6 we'll put five horses on the property is well short of
7 the standards set forth in North Kingstown v. Albert
8 where the Supreme Court found that the retention pond was
9 a necessary and incidental use towards the operation of a
10 turf farm. Critically, in that case, they actually found
11 that, "The Alberts maintained --" the Alberts in that
12 case would be the plaintiff, comparable -- excuse me --
13 the defendant, comparable to Mr. St. Croix. "...they
14 never intended to turn the pond project into a sand and
15 gravel operation. So, in that case, you have a temporary
16 retention pond billed out to support a farm. In this
17 case, you have a two-year 850,000 cubic yard mining
18 operation that is going to be squeezed under the Right to
19 Farm Act by putting five horses on it six months after
20 they're done.

21 I don't think the Town Council has the authority to
22 enter into that agreement, and I think it's a violation
23 of the Right to Farm Act and the rights and interest of
24 both my parties and the Foster Zoning Board, quite
25 frankly.

1 THE COURT: My concern is because, quite frankly, if
2 I approve this, then that certainly implicates the
3 injunctive relief that you were seeking. So, that's why
4 I welcome your comments and that's why I wanted to invite
5 you to do so.

6 As I indicated last time -- and let me be very clear
7 on the record. The skepticism -- maybe that's a nice
8 word -- that is expressed by you on behalf of your
9 clients as well as the Zoning Board is incredibly well
10 placed. I, too, think if I was sitting there, I would be
11 skeptical given the history and the travel.

12 You know, I went through it exhaustively last time.
13 I looked at the report that was submitted in support of
14 the applications for relief from the Zoning Ordinance's
15 special use permit. There is no question that what
16 Mr. St. Croix originally proposed was a gravel and mining
17 excavation project. There's no question about it in my
18 mind. And that's why it was denied; I see that. But, as
19 I pointed out the last time, my concern is this; that
20 there are -- best case scenario, he went back and
21 reevaluated his business plan. Worst case scenario is he
22 found a creative way to get what he wants, as what you
23 just said. Don't have to like it; don't have to agree
24 with it.

25 I can't say, though, from my review, and

1 specifically I'm looking at -- I have it right in front
2 of me, the case you just cited, the Town vs. -- Town vs.
3 -- it really has been a long day -- Town of North
4 Kingstown vs. Albert, and that's at 767 A.2d 659. He may
5 have found exactly as you describe, the loophole to
6 squeeze through, okay? And, my thoughts, when I
7 suggested everyone go back last time and see if they
8 couldn't sit down, was to have something put in place
9 that would keep him honest, for lack of a better term.
10 Because if this is a ruse and he's just calling it a
11 different name and has no intentions of actually running
12 a horse farm, which, from everything I have read, would
13 be a permitted use of this property, right?

14 MR. CONLEY: We do not dispute that a horse farm
15 would be a permitted use.

16 THE COURT: Right, that if this is, in fact, a ruse
17 on his behalf, it seemed to me, having a judgment in
18 place and allowing the Town to get ahead of it, for lack
19 of a better term, and institute some very specific
20 requirements as to how this was going to be done would be
21 in the parties' best interest.

22 In looking at this consent judgment, the limitation,
23 you know, on times, sounds, what the Town's going to be
24 able to do as far as inspecting, the recourse they have,
25 if he chooses to -- and he has. Let's be clear, Mr. St.

1 Croix has vagrantly -- or, flagrantly -- excuse me --
2 disregarded and violated prior orders; he's gone ahead
3 and did what he wanted to do -- that there are some
4 repercussions, enforceable ones, if he does that.

5 It seemed to me that the best course of action --
6 although, I know nobody wants it -- was to at least get
7 out ahead. If he was going to be -- rather than spend
8 all the money, time -- oh, God -- years here in the
9 courthouse, whether it be here or up on the seventh floor
10 on appeals, let's see if we can't put some safeguards in
11 place right now.

12 I've looked at the consent judgment. I get why
13 there's people who don't want this at all. It's not
14 perfect, but it takes some of the uncertainty out of it.
15 So with respect to that, if he is going to be running a
16 horse farm and we agree that that's a permitted use,
17 would you also agree with me that he's allowed to, if
18 that's what he's going to do, to make some improvements
19 or alterations to the land so he can run that business.

20 MR. CONLEY: The scale of the improvements need to
21 be so that it's necessary for the primary purpose. The
22 primary purpose -- the statute itself, 2-23-4(a),
23 describes that it's for protection of agricultural
24 operations as the primary purpose. Five horse, six
25 months after you're done mining, does not qualify as the

1 primary purpose. The primary purpose --

2 THE COURT: I thought it was 15 horses.

3 MR. CONLEY: The stable will have the space for 15.
4 He's only guaranteeing four horses (sic) on the premises,
5 so you essentially need to build a three-car garage and
6 only put one car in there.

7 The issue is that for two years, at a minimum, the
8 primary purpose is a mine. That's not agricultural; it's
9 not site prep. They've provided no documentation saying
10 that this site needs this sort of preparation to support
11 five horses. It used to be a horse farm historically.
12 Why can't it be a horse farm in its present state? In
13 the Albert case, the irrigation was a necessary component
14 to the turf farm. Excavating 850,000 cubic yards of
15 gravel is an unnecessary step towards having five horses
16 on 125 acres. He could have five horses there now.

17 THE COURT: Mr. Mancini, do you want to respond --

18 MR. MANCINI: I do.

19 THE COURT: ...to that portion of it, that --

20 MR. MANCINI: I do, your Honor. I do, your Honor.
21 I understand the issue.

22 When you look at the order, the order made an
23 attempt to define the farm, and that attempt was to
24 establish a maximum and a minimum. There's 15 horses, or
25 stables for 15 horses. The occupancy was only a third;

1 it's five. But, what is being missed, and what's not
2 being described specifically is the fact that, in
3 conjunction with the horse farm, there is acreage and
4 acreage of fields, hay fields. And, they're identified
5 on the plan. And, the order specifically indicates that
6 the process is to be done methodically, over a course of
7 ten acres at a time, so until it's completed. And, it's
8 identified in the scope of work, in the area of work on
9 the plan attached to the order, so that the Town and the
10 applicant both understand and know what are the confines
11 in the areas in which the work is to be performed and for
12 what reason. And, the reason is for the creation of
13 leveling the topography so as to permit a uniformity to
14 provide grazing, to provide pasturing, and to provide hay
15 fields. That is in conjunction with the horse farm.

16 So, the primary purpose is not only essentially
17 housing horses. So, we're not just building a three-car
18 garage for horses. We're building a stable, a riding
19 arena, which is there; it's just getting revamped, and
20 then the fields around it. That is truly the essence of
21 the farm, and that's specifically memorialized in the
22 order. And, the Town went one step further by attaching
23 the exhibit, which is the plan, which is what we are tied
24 to to do.

25 THE COURT: Okay.

1 MR. MANCINI: And, one point I'd add is, also, the
2 soil and erosion is also specifically done on that plan.
3 And, the creation of the detention basins, you know,
4 converse within the fact pattern in the Town of North
5 Kingstown vs. Albert, creation of the hay fields is a
6 result of the RIPDES permit from DEM which provides for
7 the grading and the uniformity of the land, and then the
8 protection of the land by way of creating sheet flow that
9 is appropriate, and that's the purposes of those
10 detention basins.

11 THE COURT: I just wanted him to respond to that one
12 question, but I didn't want to cut you off completely.

13 MS. ACHILLES: May I just quickly? As far the
14 number of horses, I think that the Town and Mr. St. Croix
15 had to strike a balance because there is a very hefty
16 penalty associated with how many horses are going to be
17 on this farm in the six months, or within six months
18 following the site work period. The Town really wanted
19 to define horse farm so that it wasn't left open and
20 there would only be one horse. But, Mr. St. Croix did
21 have some concerns in that he could have 20 people, 30
22 people sign up to stable their horses and at the last
23 minute back out, and now suddenly he's on the hook for
24 \$70,000 to the Town. So, we attempted to say this is
25 going to be a facility that will hold at least 15, if not

1 more, but you will, within six months, at least have a
2 third filled. So, some of that was a balance because
3 there was a very hefty fine associated with it.

4 THE COURT: Okay, thank you.

5 Sorry, Mr. Conley. I just wanted to have a response
6 to that portion of it, which I think is a legitimate
7 argument; the scope of the operation isn't commiserate
8 with what they're asking for. But, having had that
9 response, feel free to respond to that.

10 MR. CONLEY: Sure. I really think in order for this
11 use to be permissible under the Right to Farm Act, we
12 need an affirmative finding that the primary purpose of
13 the property is a horse farm, and that the 850,000 cubic
14 yard, 60 truck per day operation is necessary and
15 customary to the operation of a horse farm. Those are
16 the standards set forth in Albert. In Albert, the
17 excavation was found to be temporary, incidental, and
18 essential for the primary purpose. None of those are the
19 case here. And, not to beat a dead horse, but...

20 THE COURT: Nicely done. I like a good pun on a
21 Friday afternoon.

22 MR. CONLEY: In Albert, the Court specifically found
23 that the Alberts did not want to be and were not in the
24 sand and gravel business. In this case, it is one
25 hundred percent clear that the primary purpose is a sand

1 and gravel business. They just think that they can put a
2 couple horses in the back end of it, and that's the back
3 door towards -- another pun for this afternoon -- I think
4 we're putting the cart before the horse.

5 THE COURT: Two in one day. You've earned your fee.

6 I think that gets back to -- I appreciate it; you're
7 right. I think I said it the last time -- perhaps not
8 well, but -- frustrating, yes.

9 But, I'm reading this and I think certain assurances
10 have been garnered to make sure that he is doing what
11 he's saying he's doing. Does that mean he gets to, to a
12 certain degree, excavate some gravel which is what he
13 wanted to do to begin with? Yes. But, I don't know if
14 that incidental, collateral benefit, if you will, is
15 enough to say that he can't fix up the property to run it
16 as a horse farm.

17 I really do mean it when I say this. I am wholly
18 sympathetic to not only his immediate neighbors, but
19 residents of the Town, and particularly the Zoning Board
20 who has enacted certain ordinances to preserve the land
21 and the community as it is now, and that they've made it
22 abundantly clear that they do not want a gravel mining
23 operation. I wouldn't if I was living there either.
24 Without question. I just think, though, if he has found
25 a permissible use that allows him, in addition, to do

1 some of this mining excavation, he may have found a
2 legitimate way to accomplish both items. That was my
3 biggest concern; that he was going to get there anyway,
4 so let's do it while there's some safeguards in place.

5 I am not an expert in any of this. I don't pretend
6 to be. The Court is persuaded to a degree, though, that
7 the people who usually are, that being the DEM, have
8 issued and approved a number of permits that would allow
9 for this type of work. And, because I know when you were
10 first here, Mr. Conley, one of my concerns with respect
11 to the injunctive relief, as far as at this early stage,
12 was, well, what's the harm? There was the idea of the --
13 and you can all correct me if I am wrong, but there being
14 some kind of disturbance with respect to well water, dust
15 in the air that could bothersome. Those things seem to
16 have been addressed.

17 It also seems as though -- and, I appreciate you
18 said there are these zoning ordinances out there, but if
19 what he's doing, and that is running a horse farm, having
20 hay fields and meadows, finding other permissible
21 agricultural uses for this property, I don't know that
22 this Court can right now issue -- or should -- I mean, I
23 suppose I can do whatever I want -- but, should issue an
24 injunction.

25 I think that this was a hard fought compromise

1 between the parties. I think that there are certain
2 safeguards in here to make sure that Mr. St. Croix is
3 staying honest. There's limitations on -- because I went
4 back as well, Mr. Conley, to look at the original
5 complaint, and I know you have nuisance complaints in
6 there, intentional infliction of emotional distress,
7 negligence claims with respect to the enforcement of the
8 notice of violation and the gravel bank. As I said,
9 there's nuisance claims that are in here. All of that is
10 fine and that might ultimately resolve itself. The only
11 thing that was in front of me was the request for the
12 injunctive relief right now.

13 MR. CONLEY: Yes.

14 THE COURT: I'm looking at it. It says that you
15 wanted the Court to issue a temporary restraining order
16 and/or injunction against the defendants preventing the
17 operation of a gravel bank at the Mount Hygeia property.
18 From the looks of this, they have scaled back the
19 operation, for lack of a better term, that was originally
20 going on, and that what's being done is being done is a
21 means to get the property in a workable state to have the
22 farm. A lot of this went to -- a lot of the facts here
23 had to do with the fact that it was really a gravel
24 extraction operation that was going on. And, here, we
25 seem to have some assurances that that is not the primary

1 purpose and that there's some teeth in it.

2 I want to be clear, Mr. St. Croix, and I told your
3 attorneys I was going to speak to you directly so they
4 shouldn't be alarmed that I'm doing this. I'm not a fan
5 of semantics. I don't like when people get,
6 for lack of a better term, cute, call something one thing
7 and then decide they're going to do what they want
8 anyway. When I say I'm not a fan, it's actually one of
9 my pet peeves.

10 I also should let you know, I'm new to the bench.
11 I'm going to be here a really, really long time, so that
12 any violation of this order and any attempt by you to do
13 anything above and beyond what's in this order, if I'm
14 satisfied by the proof presented that you have, it will
15 absolutely, unequivocally result in sanctions to you up
16 to and including incarceration.

17 Your attorneys can also tell you, in my former life
18 I worked as a prosecutor. I have no problem putting
19 people in jail. I kind of miss it sometimes. So, I
20 don't want you to think that you can dance around this or
21 use the words and turn them on their head to do what you
22 clearly indicated in the report I saw you wanted to do
23 from the beginning, and that was to operate a gravel or a
24 mining operation. That is not going to happen. You're
25 going to be allowed to improve your property so you can

1 make it into a workable farm, in particular, a horse
2 farm. But, anything above and beyond that, and anything
3 that I find is being done by you as an end run around, I
4 want you to know this so there's no question in your mind
5 when you leave here today, will be met with very serious
6 sanctions by me.

7 If those building inspectors, the Town officials
8 want to come on your property, they're coming on.
9 They're going to check. If things are too loud and there
10 needs to be some adjustments made, that is going to be
11 done. There will be no questions about it. I don't want
12 to have these games later on about, well, this is what
13 was said and this is what was done. You have made,
14 through your attorneys, the affirmative representations
15 that your only intention at this point in time is to run
16 a horse farm. I am holding you to that. I am holding
17 you to that to the letter of this agreement. Monetary
18 sanctions will be the least of your problems if I find
19 that you are stepping outside the very clear dictates of
20 this order. So, you need to know that before you leave
21 here today so that I don't want, when we come back, if
22 there's allegations and I'm satisfied, for you to say
23 that you didn't understand or that it wasn't clear,
24 because I want to be really clear with you. And, as I
25 said, it will come back before me. Ms. Lynch will make a

1 note in the file that any motions to adjudge in contempt
2 or any alleged violations of this consent judgment will
3 be assigned to me. Nobody else. I wouldn't burden
4 anyone else with having to go through this. But, more
5 importantly, I know what's happened, I know what's
6 transpired, and I am the one that is going to keep a
7 watchful eye on this.

8 Mr. Conley, you may be right, and I don't know
9 whether or not the Town Council had the authority or
10 whether it should have been the Zoning Board. That's not
11 before me today.

12 Go ahead.

13 MR. CONLEY: One question from understanding
14 everything that is happening.

15 THE COURT: Yes.

16 MR. CONLEY: As it's laid out in my complaint, my
17 clients have deep concerns with the Town's interest in
18 actually enforcing the provisions of the consent order
19 and was curious to any ability to add teeth in that
20 regard. Because if the Town simply decides to look the
21 other way, as it historically has done, than the consent
22 order won't actually protect my clients or, really, the
23 code of the Town of Foster in any way.

24 MR. MANCINI: Your Honor, I want to speak to that,
25 if I may?

1 THE COURT: Yes, go ahead.

2 MR. MANCINI: I know my brother is aware of this,
3 but the law in Rhode Island is very established with
4 regard to who can enforce the Zoning Code, and that is
5 the Town. Private citizens, by way of separate counsel
6 or on their own, do not have the authority or
7 justification to enforce orders of the Town, ordinances
8 of the Town, and the Zoning Code. In fact, there are two
9 parties that can do that; one is the zoning officer under
10 Rhode Island General Laws of the Zoning Enabling Act, and
11 secondly, the Town Solicitor. So, it is the purview of
12 the Town, by way of the solicitor, by way of the zoning
13 enforcement officer to enforce this consent order --
14 consent judgment, rather, or any other ordinances of the
15 Town, including zoning ordinances. So, I think that it's
16 not appropriate or it's not within the jurisdiction of
17 the Court to determine that there is not proper
18 enforcement mechanism for this order because there is,
19 and I think that that is very clearly set forth in our
20 law.

21 THE COURT: No, and I appreciate that. I'm just
22 thinking it through and I understand what Mr. Conley is
23 saying.

24 I would presume, by the way, this would be available
25 to you and your client, so they'll know precisely what it

1 is that Mr. St. Croix is allowed to do. I also presume
2 if there's 61 and not 60 trucks, the Town will be
3 notified. If they don't, as you said, live up to their
4 obligations to enforce the order, there are certainly
5 steps that you and your client can take. I can't,
6 though, right now, on what might hypothetically happen
7 down the road, put anything or add any language to this
8 judgment that would somehow give your clients the right,
9 if you will, to try and enforce it or enforce the terms.
10 But, they're going to be aware of it.

11 As I said, I don't doubt from everything I've seen
12 that it won't only be the Town is keeping eyes on you,
13 Mr. St. Croix, it will be the citizens of that Town, your
14 neighbors, who are making sure that you're being honest
15 about what it is that you intend to do. I'm willing to
16 give someone a chance if you are, in fact, doing what
17 you're saying you're doing. It might ultimately enhance
18 the property around there. But, I don't like being made
19 a fool of either. That's all I really need to say to
20 you. Unfortunately, you weren't here this morning when I
21 was doing my restraining orders to know just how serious
22 I am about that, but your attorneys will let you know I
23 am. I'm very serious.

24 It's not a perfect solution. It's really not. But,
25 my sincere concern, and I mean this wholeheartedly, is

1 that even if I were to grant you the injunctive relief
2 you were seeking, you could be up in front of the Supreme
3 Court and they could say that I was totally wrong on all
4 that, and then we're right back. And, guess what? He's
5 crushing gravel and doing whatever he wants without these
6 limitations or protections in place, and after a lot more
7 money has been spent by all the parties. Because it's
8 not exactly the Town of North Kingstown; I agree with
9 you. It's close enough that it gives me pause, and
10 that's why I thought this was the best of the avenues
11 that are available.

12 So, as it relates to the Town of Foster vs. Saint 23
13 LLC and Brian St. Croix, this Court has reviewed the
14 consent judgment. I do think that, despite the
15 reservations, which, once again, I know I've said it a
16 few times, I'm repeating myself, they're so well founded;
17 I share them. I just think that this might be the best
18 way to address it; that the provisions outlined here
19 should be enough to ensure that any work being done on
20 the property is being done incidental or as a means to
21 accomplish the primary ultimate objective, and that being
22 converting this property to a workable horse farm. If I
23 am wrong, you can all come back and see me and we'll go
24 from there.

25 Because of that, I would say, Mr. Conley, that's why

1 I indicated by virtue of me agreeing to approve and enter
2 that consent judgment, it does, in essence, effectively
3 deny your request for the injunctive relief on behalf of
4 your clients, Richard Sparks and Catherine Sparks. Your
5 well placed, well founded, and well reasoned objection is
6 noted for the record. And, I'm going to keep my fingers
7 crossed that your valid concerns will be put to rest
8 because Mr. St. Croix is going to do what's being asked
9 of him, knowing that there will be consequences if he
10 does not.

11 So, with that said, I will wait for the corrected
12 consent judgment.

13 Your objection is noted for the record, counsel,
14 with respect to your clients' requests.

15 Is there anything else I need to place on the
16 record?

17 MS. ACHILLE: No, your Honor.

18 THE COURT: Okay, I wish you all well.

19 Mr. St. Croix, it's incumbent upon you to be not
20 only a good citizen of the Town of Foster, but also to be
21 a good neighbor. To the extent that that hasn't always
22 been the case, let today be the first day of a new
23 relationship, okay?

24 Be well, everyone. Enjoy the weekend.

25 MR. CONLEY: Thank you, your Honor.

1 MS. ACHILLE: Thank you, your Honor.

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