



EARTH REMOVAL BOARD

MEETING Minutes

Tuesday August 15, 2017 7:00 PM

Meeting started: 7:00pm

Board Members in Attendance: Al Peloquin (Chairman), Leonard Mort (Vice Chairman) and Anna Lewandowski

Board Members Unattended: Tom Brown and Scott Despres

Meeting Subjects:

1. Call to Order
2. Review meeting minutes from June 20th, 2017.
3. Subdivision Greenleaf Terrace
4. Renewal Application & Permits for F/Y 2017 - 2018
5. Discuss of Importation of Soil
6. Adjournment

RECEIVED
TOWN CLERK
17 SEP 20 PM 3:25
MILLBURY, MASS.

1. Call to Order:

Al Peloquin called the meeting to order.

2. Review of Meeting Minutes from June 20th, 2017:

Leonard Mort made a motion to accept the minutes, Anna Lewandowski second the motion all members were in favor 3 – 0.

3. Subdivision Greenleaf Terrace:

Al opened the discussion of Greenleaf Terrace on 82 McCracken Road located on the right side of the road heading towards Auburn; it appears to be a division where they want to build a cul-de-sac of four homes. Al is going to give the contact person a call and see exactly what they plan on doing and if it is necessary for the Earth Removal Board to be involved. Anna Lewandowski suggested that maybe the board should get the site engineer, Margaret Bacon, involved. Al will be giving Margaret a call and ask if she would take a ride over and take a look at the site and come into the next meeting and report on what she saw.

4. Renewal Applications & Permits for F/Y 2017 - 2018:

Al opened the discussion in regards to Elite Builders, Al has a copy of the permit that needs to be updated and also for Stratford Village now that both contractors have paid their \$500.00 renewal fee an updated permit needs to be created and sent off to both companies, Al and Nancy will be getting together within the week to type up and mail out the new permits. As far as Aggregate Al hasn't heard anything from them or Dave Lavalee it seems they want to hold onto the land but obviously they do not want to develop it at this particular time. Leonard Mort pointed out that the land down there looks like a dead zone, they're not making any concrete and they've rented out the large building and took the concrete plant down there doesn't seem to be anything coming in or out of there. Al is going to contact Katie McKenna to give them a report where the board stands financially.

5. Discuss of Importation of Soil:

Al opened the discussion in regards to a "DRAFT ONLY" hand out he gave to the board at the last meeting, Anna convened that she had taken Al's "DRAFT ONLY" letter and typed up another draft with some added information that would be helpful to get the attention the town residents and other boards from the town of Millbury (please see attached copies). In regards to the second paragraph to Anna's letter she wasn't sure if it should say, "adopt a similar bylaw" or "adopt similar bylaws" and on the end of the

letter; “open discussion at an upcoming meeting” we didn’t decide when and what we’re going to do it but now we can make a decision and when we want to do it. Al brought up the subject as to where does the board want to place this letter, on the town website, cable access channel, electronic message center, place a letter to all the boards, email and letter, however the board still needs to come up with a date that’s why Anna left her letter open ended. Al’s only concern is what the board wants to do with it, how much does the Earth Removal want to be involved and how much of a commitment the group want to make on it. Al had brought in an article he found online from telegram.com titled “Soil importation bylaws drafted in Uxbridge” (please see attached), he wants the board to review some of the things that they in-counted along the way; one of the statements listed as read “where do we go and who’s going to police this type of situation, who’s going to handle it? They assigned a planning board in order to try to take that under so as Al pointed out he doesn’t want the Earth Removal Board to be the police of this particular endeavor. Anna pointed out that what the board wants to be are the people who brought this issue forward as Scott did and this is the purpose of the meeting to decide where this should come from, the Planning Board, the Earth Board or whatever - generally it’s the Planning Board that would be writing up the bylaws. Leonard Mort pointed out once this is all said and done it would be the Code Enforcement Officer who would handle it, he/she would be writing up the Cease & Desist Orders. Anna reminded the board that’s why they need to set a first date and then discuss all that has been collected so far. Anna suggested having 10 to 12 copies of this letter so if the people were interested they could take one and look at it and then the board would have a follow up meeting. Leonard Mort suggested that there will be more than one meeting with the general popular so at that first meeting we’ll have the copies that everyone will get and then there will be copies available in the town hall during the week, it will take a while to get the word out through Public Access and the Chronicle but once the word is made available there will be residents who won’t want to see something like this happening in Millbury. With all that said Al thinks setting the date for October on the boards regular third Tuesday meeting, Anna suggested that if the board waits to long and the bylaw isn’t written up by January then chances are it won’t make the annual town meeting in May the bylaw would have to be printed there will have to public hearings about it, it will never make the annual town meeting next May. Al doesn’t want to give this too much of a rush with all the discussions that will be needed to take place but is there any way it could be enacted in the meantime for the year of 2018 and have something in place so if someone does bring in something contaminated we could enforce it? Anna informed the board as long as the town has the possibility or speaking of a bylaw then that would take precedence over a possible contamination or put a hold on whatever was about to take place. Finalizing a date Al decided that they will go with their October meeting for the initial introduction to the discussion of the soil, we’ll work with one of the two letters we’ll have to get a letter to Kevin from Millbury Public Access to get it on the air and make sure all the town boards have some knowledge of it and schedule for the first 45 minutes of the meeting. Finalized; an open discussion at an upcoming meeting on October 17, 2017 at 7:00 PM at the Millbury Town Hall in the large conference room. With all that said Al closed the meeting.

Al Peloquin approved Nancy’s time card.

6. ADJOURNMENT:

Al Peloquin asked the board for a motion for adjournment; Leonard Mort made the motion to adjourn; Anna Lewandowski second the motion, all members were in favor 3 - 0.

Adjournment was at 7:45 PM

Next meeting: Tuesday September 19th, 2017 @ 7:00 PM

DRAFT ONLY



May 12, 2017

To all Boards in Millbury
Residents of Millbury

Subject: Hazardous Materials By-Laws

The Earth removal board will be conducting informative meeting to discuss ideas about bringing an amendment to oversee all or any materials brought into the town. Municipalities have been developing by-laws designate which board and departments have responsibility for the hazardous material and create procedures to be followed which address them. The Earth Removal Board wishes to study whether we should adopt similar by-laws in Millbury. We invite all town residents and members of the various Boards to consider this issue and bring ideas to an open discussion at our next meeting.

Schedule workshop 3RD Tuesday of every month : 7:30 – 8:30 P.M.

DRAFT ONLY

(Letter created by A.P.)

*Al Peloquin Chairman
Leonard Mort, Vice Chair
Thomas Brown, Jr. Clerk
Anna Lewandowski
Scot Despres*



*Town of Millbury
Municipal Office Building
127 Elm Street
Millbury, MA 01527
Phone: 508/865-4710
Fax: 508/865-0843*

EARTH REMOVAL BOARD

***To: All Boards in Millbury
Residents of Millbury***

Subject: Hazardous Materials

Contaminated soil has been trucked to a local community farm as stated in a recent article by Paula J. Owens in the Telegram & Gazette. Municipalities have been developing bylaws to deal with the responsibility of handling these hazardous materials and procedures to be followed to address them.

The Earth Removal Board will be conducting informative meetings to discuss this issue and possible solutions. The Earth Board seeks your input as we decide whether we should adopt a similar bylaw in Millbury.

We invite all town residents and members of various boards to consider this issue and bring ideas to an open discussion at an upcoming meeting.

(letter created by ANNA L.)

Soil importation bylaws drafted in Uxbridge

By Susan Spencer

Telegram & Gazette Staff

Posted Aug 22, 2016 at 9:20 PM

Updated Aug 22, 2016 at 9:20 PM

UXBRIDGE - Voters could have two sets of soil importation bylaws to consider at fall town meeting Oct. 25.

Selectmen voted 3-1 Monday in favor of placing bylaw amendments drafted by Town Manager David A. Genereux on the town meeting warrant. Selectman Peter Baghdasarian voted against the move.

Another bylaw proposal will likely be submitted as a citizen petition.

Mr. Genereux told selectmen that recent controversy over bringing in soil from construction sites that also had contaminated soil, to fill earth removal operations at 775 Millville Road and 175 South St., brought a lot of interest in the town's role in protecting residents and the environment from potentially harmful effects.

"One of the original concerns was we didn't have anything in place," Mr. Genereux said.

He presented draft amendments to the zoning bylaws to define soil importation, referring to the trucking of soils or other fill material under state Department of Environmental Protection regulations from unregulated sites and tested soils from regulated sites. Tested soils that exceed state and federal guidelines for toxins would not be allowed in Uxbridge.

The zoning bylaw amendment would also amend the table of use to require permission from the Zoning Board of Appeals for soil importation.

A companion article drafted by the town manager would amend the general bylaws to regulate soil fill in the same existing bylaw that regulates earth removal. Fill projects, like excavation, would require a special permit from the Planning Board.

Projects involving 1,500 cubic yards or less would be exempt from the excavation and fill permit requirements.

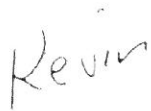
Frequently Asked Question's Regarding the Uxbridge Soil Reclamation Projects

Around town and on social media, there are a number of questions that I've been asked repeatedly about the soil reclamation projects currently underway in Uxbridge. I've tried to compile these into an FAQ.

I understand the concerns that many have about the projects. Few people have experience in the soil reclamation industry and in the interest of educating all who may have questions, I have tried to provide information to the best of my ability and without bias. I am regularly in communication with DEP and I will try to update this periodically as more information becomes available.

CAVEAT: Please note that I am neither an attorney nor an environmental engineer, and this is not legal advice or technical opinion, I am just trying to get information out to the public as accurately as I can. Please feel free to self-verify and double check everything you read about these projects, including the contents of this FAQ.

Regards,



Kevin Kuros
State Representative – 8th Worcester District

Q: How did these projects even get started?

A: Soil reclamation projects are very loosely controlled at the town, state and federal levels as the allowable soils are unregulated. At a very simple level, just as you would be free to move soil from your neighbor's yard to your yard (as long as your neighbor's soil was not regulated), soil reclamation project operators can move unregulated soil to their projects.

Q: Did the Town Managers who authorized these projects have the authority to do so by drafting letters to the DEP stating there was support in the community?

A: Probably. DEP guidelines for these projects are not specific as to the form of authorization that must be received from towns, because there are many different forms of town and city government in the Commonwealth.

Our town charter moved us away from a town administrator model to a strong town manager model, where the Board of Selectmen (BOS) doesn't make day to day operating decisions for the town. While only the BOS can obligate the town to contracts, the letters of support were not contracts the town was

Q: Is every truckload of soil at regulated sites tested before leaving the site?

A: No. A test is done every 500 yards of soil. This is approximately 1 out of 15 truckloads.

Q: So is there a chance that the untested loads could have toxins exceeding state or federal limits?

A: Yes. While highly unlikely, theoretically 14 out of 15 loads of soil leaving a regulated site could contain toxins exceeding state or federal limits. Upon discovery via ACO testing this would likely trigger a DEP review/action at the source site.

Q: Are there any other safeguards in place? Can we be 100% certain that no bad soil is being imported?

A: Visual and olfactory inspections are performed on every soil load imported. A licensed site professional (LSP) – a credentialed environmental professional - also randomly tests soil loads, but other than visual and olfactory inspections, less than 100% of the materials are tested so there cannot be 100% certainty.

Q: If bad soil is found to have been brought into Uxbridge, does that automatically create another 21E site?

A: No. My understanding is that soil and site evaluations are not binary situations i.e., good or bad, but rather that the designation of a 21E site is a technically complex process include testing, analysis, environmental impact, safety, risk assessment and other factors.

For example, if a single load of soil that tests slightly above state or federal guidelines for toxins was one of 100,000 loads brought into a site, that may dictate a different response than if 50% of the soil being brought in significantly exceeded state or federal guidelines.

Q: If the LSP is paid by the soil project operator, isn't that a case of the fox watching the henhouse?

A: LSP's are credentialed environmental professional firms licensed by the state and must maintain professional standards to retain their licenses, regardless of who is paying them for their services.

Q: Can the town hire its own LSP to also monitor the projects?

A: Yes and there has been some talk of this happening.

Q: What monitoring does the DEP do on these types of projects?

A: Projects involving soil that is not regulated are not monitored by the DEP unless an ACO is put in place. Once an ACO is in place the monitoring can be extensive, including multiple test wells, soil sampling and other measures.

Q: What is an ACO?

A: An Administrative Consent Order. It is a voluntary legal agreement between the project operator and the DEP to allow the DEP to monitor project(s) they would not otherwise have the authority to monitor.

Q: Why were the projects allowed to begin without the ACO's being in place?

A: ACO's are voluntary agreements, not mandatory.

Q: How is the operator of these projects also the chairman of the Uxbridge conservation commission?

A: Committee members for most non-elected committees are appointed by the Town Manager. To be appointed to a committee, an applicant completes a talent bank form at town hall expressing which committee(s) they are interested in volunteering on. The TM has the authority to appoint committee members from the pool of candidates in the talent bank whenever a committee opening occurs.

Q: But why was he appointed chairman?

A: He wasn't appointed chairman; he was elected chairman but his fellow committee members. All committees take organizational votes as to who the chair, vice chair, secretary, etc. of their committee will be. According to Robert's Rules, a motion to reorganize is always in order, so at any time a committee can reorganize via a majority vote.

Q: Is chairing the conservation commission a conflict of interest, given the potential environmental impact of the projects?

A: Possibly, possibly not. "Conflict of interest" has a very specific definition in MA General Laws. Typically, if a committee member recuses themselves from matters that directly impact themselves, their immediate family and their business partners, then the legal definition of conflict of interest is not met. However, there are many nuances to the law and I am not an attorney. The MA State Ethics commission is the state agency which deals with and rules on issues of conflict of interest when complaints are logged. Residents with specific concerns can register complaints with the Ethics commission. While the commission does not rule on anonymous complaints, the commission does maintain the anonymity of anyone who files a complaint.

Q: What is a "special town employee?"

A: Because of the limited number of committee volunteers available in the majority of small towns, often times the members of one committee may be conducting business in town that requires their presence before another committee. If the BOS declares someone a "special town employee" they are permitted to appear before other boards and conduct business. In the early 2000's the Uxbridge BOS made a blanket declaration that all committee and board members are to be considered special town employees. Please note that for the sake of the law, committee members are considered "town employees" even if they accept no salary, benefits or other compensation.

Q: Can selectmen be "special town employees?"

A: Not in Uxbridge because MA General Law says that members of the BOS in towns over 10,000 in population cannot be considered special town employees. So while all other committee and board volunteers in Uxbridge were deemed to be special town employees by the early 2000's vote by the BOS, the BOS themselves are specifically excluded from that vote by MA general law.

Q: What is the DEP doing on these projects? Will they be visiting Uxbridge any time soon?

A: DEP has visited Uxbridge a number of times regarding the projects. Most recently on July 28 to visit the South Street site to discuss the grading plans, review a wetlands appeal that had been made by concerned citizens, identify potential locations for test wells for the ACO monitoring, and resolve a number of open items that will appear in the ACO for the site.



EARTH REMOVAL BOARD

**Signature of Attendees and Approval for Minutes
(Meeting Minutes from August 15th, 2017)**

Al Peloquin - Chairman: _____
Al Peloquin

Leonard Mort - Vice Chairman: _____
Leonard Mort

Tom Brown - Clerk: _____
Tom Brown

Scott Despres - Member: _____
Scott Despres

Ann Lewandowski - Member: _____

Comments: _____

