



## **EARTH REMOVAL BOARD**

### **MEETING Minutes**

**Tuesday October 17, 2017 7:00 PM**

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MILLBURY, MASS.

**Meeting started: 7:00pm**

**Board Members in Attendance:** Al Peloquin (Chairman), Leonard Mort (Vice Chairman), Scott Despres, Tom Brown and Anna Lewandowski

**Board Members Unattended:** All members present

**Meeting Subjects:**

1. Call to Order
2. Review meeting minutes from September 19<sup>th</sup>, 2017.
3. Open meeting for Soil Contamination
4. Adjournment

**1. Call to Order:**

Al Peloquin called the meeting to order.

**2. Review of Meeting Minutes from September 19<sup>th</sup>, 2017:**

**Leonard Mort** made a motion to accept the meeting minutes from September 19<sup>th</sup>, 2017, **Tom Brown** second that motion all members were in favor 4 – 0 with the exception of Anna Lewandowski she was not present for the September 19<sup>th</sup> meeting. Anna Lewandowski did have a question in regards to the minutes from August 15th, in those minutes Al Peloquin was going to contact Margaret Bacon and see if she could check up on a property, Greenleaf Terrace, in Al's response he didn't have a chance to follow through.

**3. Open Meeting for Soil Contamination:**

Al opened the discussion in regards to this Tuesday night meeting being designated to the possibility of constructing some new bylaws for soil contamination that maybe brought into the town, the board has asked to have an open meeting unfortunately only one person showed up, the new town Building Inspector Paul Stringham. Leonard Mort spoke on behalf of the meeting and what the board is preparing to do, this meeting has been advertised on the Millbury website, Millbury Public Access and the Millbury electronic message center (plus a flier was posted on the town hall bulletin board, fliers were placed for residents visiting the town hall to have access to taking one and a flier was placed in all the mailboxes at the town hall) and the only individual the board has attending that has any concern for the possibility of contaminated material coming into the community is the ERB and the building inspector, Leonard Mort was appalled due to lack of attendance from the town, other board members and affiliates from the town hall. Al Peloquin understands what Leonard is saying and that there should be more interest as to what goes on but it's probably going to be left up to the ERB to take the responsibility. Anna Lewandowski commented that there are people in town who do get very much involved in things however, not until something happens, not until something happens do you all of a sudden hear this high cry, "oh you should have had a law in place", this is what the board is trying to do before hand, it's not up to this board to say go ahead and do it, if the people aren't going to be concerned about it however, it's not under the ERB's jurisdiction it's not the ERB's bylaw, it's pretty sad when you don't have representation from any other boards in town, not one! Leonard Mort brought up that while looking on the internet at a face book page someone from the town of Shrewsbury was looking to get rid of approximately 500 yards of, "somewhat clean soil" and a Millbury individual said that they would take it all, he had no idea if it

was a contractor only that this individual was building a new house and that they would take it all, so who knows what's in that 500 yards. Anna Lewandowski refreshed the boards minds; about a year or two ago we called ourselves the Earth Removal Board and we said in essence we should also be responsible for anything coming in as well as removed and that's where it would come under the jurisdiction of the board. Al agreed but the board doesn't have someone from the board to be placed full time to police and interact on this kind of issue all they have is their engineer. Leonard Mort pointed out; never the less the board needs to work on the bylaw for the community, whether the board is going to be the authority on it or not. Al Peloquin pointed out the main focus is, obviously, to protect the town from material coming in that is in fact contaminated, that would cost the town a lot of extra money to analyze all this earth that is in fact contaminated so we want to try to prevent that by putting these laws in place for these contractors to hopefully abide by, whether it be the building inspector or the ERB to be involved in the development of the property to see whether or not they are going to require material or they're taking material out, this is something the board can identify up front but it is also something that needs to be policed as well. Tom Brown pointed out that the ERB has a fee for material going out and we have a fee for the material coming in, in the license however what Leonard had brought up about this individual taking material in that should trigger the board to take a look and send the engineer out. The board continued to discuss the possibilities of charging an additional \$500.00 on top of the \$500.00 each contractor is already paying, the extra \$500.00 for material coming in to town and then the board can randomly do on site testing of that material.

Al Peloquin brought in for the board to review a print out from the Town of Wilmington, their bylaw on contaminated soil, (please see attached). Al seems to think that this bylaw is somewhat thorough and something that the board might be able to work with, Anna pointed out their bylaw doesn't specify the amounts coming in or who the enforcer is but there is a fine fee and as Al pointed that this bylaw is something that the board could use as a tool in creating their own bylaw. Anna had suggested that maybe someone on the board could do further research into some of the other surrounding towns who also have such a bylaw in place and use their information to also assist in the creation of Millbury's own bylaw. Scott Despres offered to do that research and also look into the town of Uxbridge as to how far they have gotten into implementing their bylaw.

With all that said Al Peloquin invited the new town building inspector, Paul Stringham, to the podium; Mr. Stringham is aware of the concerns that the board has and has offered in an effort to help the board along where he can provide all the technical advice from his past experience to help the board out with this matter so the general public knows that the building department and the planning department is subject to know what's going on in the town. One of the communities Mr. Stringham worked for was Seekonk, the town of Seekonk is located on the Rhode Island border and Mr. Stringham lives in Attleboro and worked for Seekonk for four and a half years. He explained how the town of Seekonk progressed through the years and how the town created their earth removal bylaws which were enforced and conducted through the town selectmen as the point source but as the DEP started to get more involved with the water protection and overlay bylaws they saw the number of permits dropping down, the activity with the water protection zones coming in so they eventually made a change and created a form that put the building inspector as the point source in helping to review the subdivisions and put a provision in place that required notification on how much soil is being moved and how much is actually being redistributed to the lots that needed the grading as well as what's leaving and what's coming in, which is the subject of the ERB's concerns. So a form was developed and when this document came in the building inspector would have to check it off by asking the developer is all the dirt staying here and they would have to answer yes or no and if it was "no" the next line would ask; "what's leaving, how much and where is it going?" This was part of the approval processing, they had documentation in place for it, it was a great way to regulate it and the planning board got really active because they were the special permit granting authority. Another town Mr. Stringham worked for was West Bridgewater they have the same thing the planning board handles the water protection so they can get that data, they have their engineers and they can ask those very important questions from that stand point that is the progression in some of these communities. Mr. Stringham suggested that the board may

want to contemplate something in that nature and has offered to get some of that information for the board to look at. Mr. Stringham also offered another item for the board to consider; with the on slot of order of conditions on properties, which are subject to the wet lands control act, most conservation commissions in their blanket order in their conditions of provisions for clean fill, if it is in the water protection district that's where knowing what's coming in, that's very important that's where your board and any regulations the board is contemplating is very important and working with the subdivision and planning with the planning board a very important role to get that information out and handle your duties.

Commercial development inside of town or outside of town, if there is a bank involved in it they have to have a 21E, a 21E is a section in the DEP code where they have to do an initial soil evaluation where they have to hire a professional engineer, that engineer goes out and does random testing, they have to find out if there is any evidence of potential on the surface, there are different levels, level one; what was on the site prior to construction (burnt house, gas station, manufacturing etc.), part of the 21E is that the property gets certified that there were no gas stations or manufacturing that's documentation in the construction documents. If they have a 21E hit then they have to go to the next level of the evaluation and if it goes over a certain amount then comes in the DEP for level and remediation and it usually stops the job. Mr. Stringham continued that there are protections there that can be utilized so if you have a 21E and you know from any kind of identification form development if you have one now or you were to add that as a requirement from the Earth Removal any one of you or any citizen who wants to go on the public record can say yes this is what we have and it was clean and that's a DEP requirement.

Another item that is out there today is called ABC – asphalt, brick and concrete, when they break up buildings, concrete slabs that are thicker than six inches or greater DEP considers it solvable waste, there has to be a permit and it has to be taken to a facility, today some of these places have to have a permit to accept it and they have to have a permit from there to process it, it's called an ABC license. There's been some debate on that because there are some asphalt issues, for a water protection district some people can turn around and say it's been processed but who's tested it, you have to be careful, what's mixed in it, once it gets broken down its soils it's still earth, tracking that is important if they're making it in town and hauling it out it probably should be on your purvey at that. Mr. Stringham knew of a job on a gas station, all the concrete on the foundations over the tanks were eight inch thick slabs, they tore that up brought in a processor processed it in a clean pile, he knew that the LSP on the job had it randomly tested and they were allowed to use as fill around the tanks, with that person on board communicating with the town and having some documentation, this is all part of the permit process and if you craft a bylaw to meet your need with your concerns for the residents of Millbury it's a very good point to work with.

Mr. Stringham informed the board that they have the power of the conservation wet lands laws which comes from DEP, you have with you today the 21E backing the DEP and the banks not loaning the money if there is a 21E therefore the banks need to protect their assets. The planning department might be of help in the drafting of the bylaw and that's something the board can discuss with Lori Connors.

Mr. Stringham shared with the board some contamination material experiences he had to deal with in his past 40+ years of experience, from processing concrete slabs to pig farm waste and all the illegal dumping that occurred and what the end results took place.

After discussion between the board and Mr. Stringham he had suggested if the board wants to get the other town boards involved his suggestion would be to ask each board to be put on their next agenda to talk, the board agreed but they still want to gather more information amongst themselves. Mr. Stringham offered his assistance and recommended that the board reach out to Lori Connors. In closing Al Peloquin thinks that with the next meeting that they need to come up with some hard line stuff from what the board has available to them. As far as time frame the board really doesn't have a time frame, if they continue to advertise for the meetings and people are still encouraged to attend and the board looks forward to their input, the town residents by all means they are always

welcomed to attend the meetings and the board is opened to what they have to say and their input as well, Anna thinks that the board will get their input when they actually have such a bylaw in place, (rough draft), but at this point it's nothing. Al pointed out its all open discussion and that's what this particular meeting was for and what the board needs to do is move forward themselves and come up with a plan as to what the board wants to see and then go to the boards and say this is what we came up with over the last couple of meetings. Leonard Mort had suggested that between now and the next meeting that each member to take the time to jot down some thoughts and potential structure of the bylaw in various capacities and then the board members can bounce those ideas around, that's what they did when they put the bylaws together for this board many years ago. And as Anna pointed out that the board also has additional information from the surrounding communities that they have been relying on... With all that said Al Peloquin asked to board to close the meeting.

#### **4. ADJOURNMENT:**

Al Peloquin asked the board for a motion for adjournment; Leonard Mort made the motion to adjourn; motion was second by Tom Brown, all members were in favor 5 - 0.

Al Peloquin approved Nancy's time card.

**Adjournment** was at 8:10 PM

**Next meeting: Tuesday November 21<sup>th</sup>, 2017 @ 7:00 PM**

# TOWN of WILMINGTON

## Section 9      Penalties

Any person violating this by-law shall be liable to the Town in the amount of \$50.00 for the first violation and \$100.00 for each subsequent violation. Fines shall be recovered by indictment, or on complaint before the District Court, or by non-criminal disposition in accordance with section 21D of Chapter 40 of the general laws. Each day of violation shall constitute a separate offense.

## Section 10      Severability

The invalidity of any portion of provision of this by-law shall not invalidate any other portion or provision thereof.

## REGULATION OF AUTOMATIC AMUSEMENT DEVICES

### Section 44:

Selectmen shall not grant a license for any automatic amusement device that presents a risk of misuse as a gaming device. An automatic amusement device that presents a risk of misuse as a gaming device is one that has one or more of the following features: 1) the device involves matching random numbers, patterns or cards; 2) the device accumulates more than twenty-six (26) plays; 3) the device is equipped with a "knock off" switch, button or similar device; 4) the device has a mechanism for adjusting the odds; 5) the device has a remote control feature that can reset the device from another location; 6) the device is capable of returning money to the player other than the change for the excess amount deposited; 7) the device permits a player to pay for more than one game at a time; 8) each game on the device does not cost exactly the same amount for each player, and a player may change any aspect of the game by paying a different amount than any other player before or during the game; and 9) there is a metering device that accounts for both money/points in and money/points out.

All licenses for automatic amusement devices granted by the Board of Selectmen shall be subject to inspection by the Wilmington Police Department to insure conformance with submitted application information and local by-law requirements. Any unlicensed automatic amusement device shall be subject to immediate seizure by the Wilmington Police Department.

Any person found in violation of this by-law shall be punished by a fine of \$200.00 for each offense. If any sentence, clause or phrase of this by-law, is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions.

### SECTION 45:

#### NO SMOKING RESTAURANTS AND FOOD ESTABLISHMENTS

Effective September 5, 2000, smoking shall be prohibited in any restaurant or other such establishment open to the general public that sells food products. The operator of any food establishment shall conspicuously post such notice or signs indicating that smoking is prohibited therein. Any person who smokes in a food establishment shall be subject to a fine of \$50.00. Any operator of any food establishment who does not comply with this provision shall be subject to a fine of \$50.00.

#### CONTAMINATED SOIL

### SECTION 46:

#### Section 46.1 Purpose

The purpose of this Section 46 is to protect the health, safety and welfare of the citizens of the Town of Wilmington, including without limitation to protect the Town's drinking water supply.

#### Section 46.2 Authority

This by-law is adopted by the Town of Wilmington pursuant to its police powers to protect the public health, safety and welfare, and the Home Rule Amendment of the Massachusetts Constitution, Article 89 of

the Articles of Amendment, independent of the provisions of Section 150A of Chapter 111 of the General Laws and regulations promulgated thereto.

### Section 46.3 Definitions

The following terms as used in this Section 46 shall have the following meanings:

- A. Contaminated soil: soil containing oil and/or hazardous material as a result of a release to the environment in which levels of contamination exceed the background levels of contamination.
- B. Background levels of contamination: those levels of oil and/or hazardous material that would exist in the absence of the disposal site of concern and which do not exceed the levels of concentration in natural soil stated in the Department of Environmental Protection technical update entitled "Background Levels of Polycyclic Aromatic Hydrocarbons And Metals In Soil" dated May 2002 and which are:
  - (1) ubiquitous and consistently present in the environment at and in the vicinity of the disposal site of concern; and attributable to geologic or ecological conditions, or atmospheric deposition of industrial process or engine emissions;
  - (2) attributable to coal ash or wood ash associated with fill material;
  - (3) releases to groundwater from a public water supply system; or
  - (4) petroleum residues that are incidental to the normal operation of motor vehicles.
- C. Environment: waters, land, surface or subsurface strata, or ambient air.
- D. Release: any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment, but excludes: (1) emissions from the exhaust of an engine, (2) release of source, by product, or special nuclear material from a nuclear incident, as those terms are defined in 42 USC Sec. 2014, if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under 42 USC Sec. 2210, (3) the normal application of fertilizer, and (4) the application of pesticides consistent with their labeling.
- E. Zone II: an area designated and approved by the Massachusetts Department of Environmental Protection to be the zone of contribution for a public water supply well. For the purposes of this Section 46, the term shall also include any Interim Wellhead Protection Area (IWPA) for any public water supply well. Both Zone II and IWPA as further defined in 310 CMR: 22.02.

### Section 46.4 Zone II Prohibition

Contaminated soil which results from a release to the environment is prohibited from being brought into the Town of Wilmington to be disposed of, stored, stockpiled, spread onto the ground surface for any purpose, used for shaping, grading, or closure of a landfill or former landfill area, or used as fill material for any and all purposes within any Zone II aquifer protection area which has been approved by the Department of Environmental Protection.

### Section 46.5 Enforcement

Failure to comply with any provision of this Section 46 is a violation of this Section 46. Each separate day of failure to comply constitutes a separate violation. Additionally, each individual instance of violation within each day constitutes a separate violation. In addition to and without limitation of any other available remedies, any person or entity who violates any provision of this Section 46 shall be subject to civil and/or criminal prosecution in a court of competent jurisdiction, including without limitation a civil action for injunctive relief to enjoin any such violation. Any violation of this Section 46 shall be punishable by a fine of \$300.00. In addition to and without limitation of any other available remedies, this Section 46 may be enforced by use of the non-criminal disposition procedure set forth in M.G.L. c.40 §21D."



**EARTH REMOVAL BOARD**

**Signature of Attendees and Approval for Minutes  
(Meeting Minutes from October 17<sup>th</sup>, 2017)**

**Al Peloquin - Chairman:** \_\_\_\_\_  
*[Handwritten signature]*

**Leonard Mort - Vice Chairman:** \_\_\_\_\_

**Tom Brown - Clerk:** \_\_\_\_\_  
*[Handwritten signature]*

**Scott Despres - Member:** \_\_\_\_\_  
*Scott Despres*

**Ann Lewandowski - Member:** \_\_\_\_\_

**Comments:** \_\_\_\_\_

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