



Town of Sterling
Office of the Town Clerk
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Sterling, Massachusetts 01564
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EXCERPT OF THE ANNUAL TOWN MEETING HELD
MONDAY, JUNE 14, 2021
Sterling Airport, 121 Greenland Road

ARTICLE 47. EARTH REMOVAL - GENERAL BYLAW

To see if the Town will vote to amend the General Bylaws by removing the entire Chapter 63 Earth Removal and replacing with a new Chapter 63: Earth Removal, as follows:

Chapter 63: Earth Removal

§ 63-1 Purpose.

The purpose of this bylaw is to protect the health and safety of the public by regulating the removal of earth, with consideration given to the natural topography of the Town of Sterling (i) to avoid creating hazardous conditions, washouts, excessive dust, or noise and (ii) to protect natural resources within the Town of Sterling.

§ 63-2 Definitions.

Earth

"Earth" shall include soil, loam, sand, gravel, clay, rocks, minerals, or other earth material.

Permit Granting Authority (PGA)

The Select Board of the Town of Sterling is authorized to grant permits for earth removal pursuant to this Bylaw.

Quarrying or Mining

"Quarrying or mining" shall mean earth removal for the purpose of extracting soil, loam, sand, gravel, clay, rocks, minerals, or other earth material, including establishments engaged in operating sand and gravel pits and in washing, screening, or preparing sand and gravel for construction or industrial uses. "Quarrying or mining" shall exclude grading of a lot in preparation for the construction of a structure or associated appurtenances for which a building permit or other similar permit has been issued by the town.

§ 63-3 Permit Required.

The following earth removal operations are required to obtain an earth removal permit from the PGA under this bylaw:

- A. Quarrying or mining operations.
- B. Earth removal from a single lot or a single site, unless exempt pursuant to §63-4.

§ 63-4 Exemptions from Permit Requirements.

The following earth removal operations are exempted from the requirement to obtain

an earth removal permit under this bylaw.

- A. Earth removal of less than an aggregate of 1,000 cubic yards *in situ* from a single lot or a single site within any five (5) year period (commencing on the date the Notification of Intent is filed with the PGA) and not in connection with a building permit granted by the Town of Sterling shall not require a permit under this bylaw, but operations shall be required to comply with the Earth Removal Operation Criteria set forth in §63-7. In order to claim this exemption, the owner of the lot or site shall, at a public meeting of the PGA, file a Notice of Intent for Earth Removal with the PGA indicating full compliance with the Earth Removal Operation Criteria.
- B. Earth removal from a single lot or a single site in connection with a building permit granted by the Town of Sterling, so long as the quantity shall not exceed 110% of the amount of material displaced by the below grade portion of the construction of permitted building or structure.
- C. Earth removal associated with the installation of septic systems shall be governed by the Commonwealth of Massachusetts Environmental Code (Title 5, 310 CMR 15.000), provided that the quantity of materials removed shall not exceed the amount of material displaced by the permitted septic system components (septic tank, distribution box, pump chamber, dosing chamber, grease trap, manhole and soil absorption system) below grade as approved by the Board of Health.
- D. Earth removal from one parcel of land to a contiguous parcel of land, held in common ownership and located within the Town of Sterling, subject to compliance with the Earth Removal Operation Criteria in §63-7. If there is a group of parcels that are (i) contiguous to each other, (ii) held in common ownership and (iii) located within the Town of Sterling, earth removal from one parcel of land in the group to any other parcel of land in the same group is exempt under this section. For example, an owner of four contiguous parcels on a public way would be allowed to remove earth from parcel one to parcel four since all four parcels are contiguous with at least one other parcel in the same group.
- E. Earth removal from any parcel of land in a definitive subdivision subject to the subdivision control process under Massachusetts General Laws Chapter 41, as amended, that has been approved by the Planning Board. In this instance, the Planning Board shall have full authority to regulate the amount and disposition of earth to be removed from such parcel(s) of land shown on the subdivision plan.
- F. Earth removal required for a certain parcel of land subject to the town of Sterling Site Plan Review process as defined in Article 6, Section 6.4 of the Town of Sterling Protective Bylaws as amended that has been approved by the Planning Board. In this instance, the Planning Board shall have full authority to regulate the amount and disposition of earth to be removed from such a site as shown on the site plan.
- G. Earth removal for land falling within the Town's Wetland Resource Area and associated buffer zones shall be governed by the Wetland Protection Act, MGL Chapter 131, Section 40, administered solely by the Town of Sterling's Conservation Commission.
- H. Earth removal operations in continuous operation prior to November 12, 1973 are permitted to continue on the same parcel(s) of land as existed on the date of adoption of this amendment; provided, however, an expansion of such earth

removal operations to a new or additional parcel(s) of land following the adoption of this Bylaw amendment shall require an earth removal permit consistent with this Bylaw.

- I. Earth removal from land in public use, including the extraction and processing for road maintenance materials and safety by the Town of Sterling from municipal-owned property by the Town of Sterling's Department of Public Works.
- J. Earth removal for the construction, maintenance and repair of existing public roadways or the installation of public utilities and appurtenances.
- K. Earth Removal related to the construction, repair, and maintenance of fire ponds, being an engineered design structure with hydraulic capacity and a withdrawal mechanism such as a dry barrel hydrant, shall be under the jurisdiction of the Conservation Commission.
- L. Earth removal required in the customary use of land for agriculture of less than an aggregate of 1,000 cubic yards *in situ* on a single lot within any five (5) year period (commencing on the date of the Notification of Intent is filed with the PGA), subject to compliance with the Earth Removal Operation Criteria in §63-7.
- M. Any of the exempted earth removal operations listed in §63-4 A through L shall be exempted from any fees for earth removal operations.

§ 63-5 Public Hearing.

After a complete new permit application has been filed, the PGA shall set a date for a public hearing under this General Bylaw and so notify the applicant. Notice of the hearing shall be given as follows:

- A. The PGA shall publish a notice in a newspaper of general circulation in each of two successive weeks, the first publication being not less than 14 days before the day of the hearing.
- B. The applicant shall give written notice of the hearing to all abutters and abutters to the abutters within three hundred (300) feet of the property line as shown on the most recent tax list certified by the Board of Assessors. The applicant shall mail the written notice of the hearing to the abutters and abutters to the abutters by regular U.S. mail no less than fourteen (14) days prior to the hearing. The applicant shall request a certificate of mailing from the post office and provide it to the PGA as proof of mailing.

All publication and mailing costs shall be borne by the applicant. Final approval for the permit shall not be made until all hearing fees have been paid in full.

§ 63-6 Submission and Plan Requirements.

The form of the application for an earth removal permit as well as plan requirements shall be determined in accordance with rules and regulations adopted by the PGA.

§ 63-7 Earth Removal Operation Criteria.

All earth removal operations shall comply with the Earth Removal Operation Criteria listed below, unless specifically waived or modified by the PGA at a public meeting. Applicants shall submit a written statement certifying how each of the following criteria shall be addressed and/or mitigated.

All earth removal operations:

- A. Shall be in compliance with the Massachusetts Endangered Species Act and the Wetlands Protection Act.
- B. Shall be respectful of and work with the natural topography in order to minimize, wherever appropriate, the amount of cut and/or fill on the premises.
- C. Shall not endanger the public safety, public health or constitute a nuisance.
- D. Shall not produce noise, dust, or other noxious effects beyond the lot lines of the property.
- E. Shall not result in the transportation of materials in such manner as to cause traffic congestion, dust, spillage, noise, or other nuisances, hazards or damage, particularly on residential streets or adjacent land.
- F. Shall not result in a change of topography or loss of ground cover that shall cause soil erosion, increased rate of stormwater runoff or adversely impact drainage on the site, adjacent streets or abutting properties.
- G. Shall not cause pollution or particle infiltration to surrounding watercourses or groundwater.
- H. Shall not result in the removal/stripping of loam in an amount that would leave less than six (6) inches of organic soil cover that shall be reseeded, unless waived by the PGA, to provide vegetative cover and be maintained until the area has been stabilized.
- I. Shall not create a slope greater than five (5) feet in height that exceeds 1 vertical unit to 2 horizontal units (1:2) and does not exceed twenty (20) feet in vertical height except when in *competent* bedrock as determined by a geotechnical engineer. In *competent* bedrock earth removal shall not create a slope greater than five (5) feet in height that exceeds 1 vertical unit to 1 horizontal unit (1:1) and does not exceed twenty (20) feet in vertical height.
- J. Shall not encroach a distance of ten (10) feet from any property line.
- K. Shall have a lowest excavated point no less than six (6) feet above the existing seasonal high groundwater table except when incidental to the construction for which a building permit has been obtained. To ensure this depth the applicant shall, at applicant's expense, install observation wells in accordance with the designated agent of the Town of Sterling's Board of Health.

The PGA may issue an order to any earth removal operation that does not appear to comply with the Earth Removal Operation Criteria (i) to submit evidence that it does comply, (ii) to bring the earth removal operation into compliance with this Bylaw, and/or (iii) to obtain an earth removal permit.

§ 63-8 Site Standards, Requirements and Operations.

In approving the issuance of a permit, the PGA shall require conformity with the standards and requirements set forth below. The PGA may, where appropriate under the circumstances, waive, modify, state more specifically, or add to the following standards and requirements provided that the intent of this Bylaw is maintained and the Earth Removal Operation Criteria stated in §63-7 are observed. Any deviations from the

following standards and requirements shall be stated as conditions to and noted upon the permit.

- A. All non-exempted earth removal operations in §63-3 shall be required to be accompanied with an initial Close Out or Reclamation Plan in addition to a non-waivable statement as stipulated by the PGA, and stamped by a Professional Civil Engineer attesting that all Earth Removal Operation Criteria in §63-7, except those for which the PGA has issued a waiver, shall be met for the duration of the earth removal. Following completion of earth removal operations, the applicant shall provide a final Close Out or Reclamation Plan as stipulated by the PGA, stamped by a Professional Civil Engineer, along with a report or a statement signed by a geotechnical engineer stating that the geotechnical engineer has inspected the site prior, during and upon completion of earth removal operations and certifying the structural integrity of the site and related slopes as shown on the final plan.
- B. The contractor hired to perform the earth removal or the applicant, if the applicant shall be the entity performing the earth removal, shall provide the Town with a current certificate of liability insurance in the amount of \$1 million per occurrence and \$3 million in the aggregate, issued by an insurance company licensed in Massachusetts, and if the earth removal work abuts Town-owned land or a Town accepted way, the certificate of liability shall name the Town as an additional insured. The applicant shall be responsible for providing the Town with a current certificate of insurance throughout the duration of the earth removal operations.
- C. The site standards and requirements include:
 - (1) Except for fire ponds as provided in §63-4 K, no area shall be excavated so as to cause the accumulation of free-standing water. Permanent drainage shall be provided as needed in accordance with accepted engineering and conservation practices. Measures shall be taken to insure that silting and sedimentation of nearby streams is not caused by a temporary or permanent drainage system on site. Drainage shall not lead directly into streams, ponds, abutting properties nor shall drainage from access roads drain directly onto public ways.
 - (2) If erosion control structures are utilized, these devices shall be in place and stabilized before excavation can begin in the affected area. These structures shall be inspected and maintained in accordance with the approved plan and the capacity of the structural device.
 - (3) If the earth removal operation occurs in phases, one phase shall be completed and seeded, unless waived by the PGA prior to the commencement of the next phase.
 - (4) Quarrying or mining operations shall be contained within the current property limits, as shown on the plan. The expansion to additional property must be authorized by a new permit by the PGA.
 - (5) During earth removal operations, a fence or suitable barrier shall be erected, as deemed necessary and approved by the PGA.
 - (6) Operations shall be conducted during the hours 7:00 A.M. to 5:00 P.M., Monday through Saturday. No earth is to be excavated or removed on Sundays or Massachusetts legal holidays. These hours of operation may be altered only upon written authorization of the PGA. Loaded trucks shall leave the premises

only during permitted hours. All loaded vehicles shall be suitably covered to prevent dust and contents from spilling and blowing from the load.

- (7) All trucking routes and methods may be subject to approval by the Chief of Police and the Superintendent of Public Works.
 - (8) Earth removal permits are only transferable upon approval of the PGA in its sole discretion and shall automatically expire on the earliest to occur of (i) one year from the date of issuance, (ii) completion of the earth removal for which it was issued, or (iii) at such time as may be specified in the permit. In no case shall a permit be issued for a period longer than one year. A permit may be renewed by the PGA in its sole discretion after evidence is presented that (i) all conditions of the expiring permit have been complied with and (ii) the work authorized under the permit was delayed for good cause. All renewal applications shall be filed not more than 90 days nor less than 30 days prior to the expiration of the then current permit and shall include a copy of the previous conditions of approval. When the applicant intends to increase the scope of the earth removal, a new application and public hearing shall be required.
- D. This bylaw was adopted in conjunction with eliminating a requirement in the Protective Bylaws of the Town of Sterling that an applicant be granted a variance by the Zoning Board of Appeals for earth removal over 1,000 cubic yards if the lot or site was located in a Rural Residential (RR) or Neighborhood Residential (NR) zoning district. That requirement was deemed to be too restrictive. Therefore, any permits granted by the PGA under this bylaw will be at the reasonable discretion of the PGA, taking into account all of the facts and circumstances of the application, the zoning district in which the property is located, the intended use or uses of the property, and the amount of earth the applicant desires to remove.

§ 63-9 Site Reclamation or Close Out.

- A. All debris, stumps, boulders, and similar material shall be removed from the site or disposed of in an approved location on site. The PGA may, at its sole discretion and where appropriate, require areas to be reseeded so as to provide a vegetative cover with a minimum of six (6) inches of organic soil cover that shall be maintained until the area is stabilized. Vegetation not surviving one growing season shall be replanted by the applicant in accordance with standard US Department of Agriculture Natural Resources Conservation Service methods in order to prevent erosion. Alternatives to this method of Site Reclamation or Close Out shall be subject to the approval of the PGA.
- B. Upon completion of the operation, the land shall be left so that the natural drainage flow exits the property at the original drainage points or empties into the original drainage channel; and when it does so, the volume of runoff or flow at any one point is not increased above that which was normal for that particular point in the absence of the earthwork operation. This shall be documented and certified by a Professional Civil Engineer upon the Close Out or Reclamation Plan as stipulated by the PGA.
- C. All large stones and boulders that protrude above the finished grade shall be removed or buried. Alternatives to this method of site reclamation or close out shall be subject to approval by the PGA.

§ 63-10 Engineering Review Consultant, Bonding & Security and Release.

- A. Engineering Review Consultant. The PGA, at its sole discretion, may determine that a proposed project's size, scale, complexity, or potential impact warrants retaining the use of licensed professional independent consultants in any given respective field. Such consultants shall provide professional guidance to assist the PGA with the necessary review and analysis needed to make informed decisions that comply with all relevant laws and regulations regarding complex issues, including hydrological testing, noise analysis, and other analyses deemed necessary. The PGA shall select and retain for a reasonable fee such consultants at the expense of the Applicant, in accordance with the provisions of G.L. c. 44, §53G.
- B. Bonding & Security. In determining the effect upon the town, the PGA shall require a surety bond, in a form approved by Town Counsel and issued by a surety licensed by the Commonwealth of Massachusetts, which shall not expire until all conditions of the permit have been satisfied. The bond shall be for an amount estimated to meet the conditions of the permit, in the event the earth removal operations are abandoned, and the Town must take steps to secure the site, and to satisfy the requirements of §63-9 Site Reclamation or Close Out.
- C. Release. After completion of work, the applicant shall submit a Close Out or Reclamation Plan as stipulated by the PGA, prepared by a registered professional engineer, showing grades at the conclusion of the operation, along with a report by geotechnical engineer certifying that the site and resulting slopes are stable. The PGA shall release the bond after the submission of the plan and with a determination that the Permit conditions have been met and when sufficient time has lapsed to ascertain that vegetation planted has successfully been established and that drainage is satisfactory.

§ 63-11 Violations.

- A. As a condition of receiving a permit, the applicant authorizes the PGA and/or its engineering consultant to: (i) enter on the site to conduct inspections on behalf of the PGA and (ii) inspect the relevant business records of the operator of the earth removal operation, including the delineation of the area to be removed. The PGA and/or its engineering consultant shall contact the applicant in advance to arrange such inspections.
- B. If a violation of this Bylaw or any condition of a permit is suspected, the PGA shall, at a public meeting and after notifying the permit-holder and/or the operator of the earth removal operation in writing, determine whether a violation exists or occurred. The PGA shall take appropriate action, up to and including issuing a fine, ordering the permit-holder and/or earth removal operator to cure the violation, imposing additional conditions to safeguard against the violation, or issuing an order to cease earth removal operations.
- C. In the case where an emergency cease and desist order requiring immediate cessation of all work on the property is warranted, the PGA shall designate an agent to serve the order regarding the violation. The PGA shall hold a public hearing to review the facts and to determine whether a violation has occurred. If a violation is found, the PGA may revoke, revise, or modify the conditions or restrictions of the permit.
- D. If a permit-holder and/or operator of earth removal operation persists in such

violation, the PGA shall, after notifying the permit-holder and/or the operator of the earth removal operation in writing, seek an imposition of penalties authorized by MGL Chapter 40, Section 21, Paragraph 17, and shall be subject to a fine of not more than \$50 for the first offense, not more than \$100 for the second offense and not more than \$200 for any subsequent offense. Each day during any portion of which such violation is allowed to continue shall be considered a separate offense. This Bylaw may also be enforced through the non-criminal disposition procedures set forth in MGL c. 40, section 21D and impose fines up to the amount of \$300.00, as provided in Chapter 1, Article III of the Town's General Bylaws.

- E. The PGA may seek injunctive relief to restrain violations or to compel abatement or remediation of violations.
- F. If the violator holds a permit issued under this article, the PGA may, after a public meeting and after notifying the permit-holder and/or the operator of the earth removal operation in writing, either (i) revoke the permit or (ii) suspend the permit, at which point all operations shall cease until such time as the necessary measures are taken to assure compliance with this article and a new permit or reinstatement of existing permit is issued.

§ 63-12 Authority to Adopt Rules and Regulations.

The PGA may adopt and periodically amend rules and regulations for the implementation of this article by majority vote after conducting a public hearing concerning such amendments. The hearing shall be published by the PGA in a newspaper of general circulation in each of two successive weeks, the first publication being not less than 14 days before the day of the hearing. Such rules and regulations may set forth performance standards for earth removal, impose filing and consultant fees, define additional terms not inconsistent with the article, and establish administrative procedures. Failure by the PGA to adopt such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this article.

§ 63-13 Appeal.

Appeals of the decisions of the PGA shall be conducted in accordance with Massachusetts General Law Chapter 249 Section 4, as amended.

§ 63-14 Severability.

The provisions of this bylaw are severable, and the invalidity of any section, subsection, paragraph, or other part of this bylaw shall not affect the validity or effectiveness of the remainder of the bylaw.

§ 63-15 Dissolution of Earth Removal Board.

Upon adoption of this bylaw by a majority of voters during a town meeting and following approval of this bylaw by the Attorney General, the Earth Removal Board shall be dissolved. All current Earth Removal Permits shall remain valid and shall transfer under the jurisdiction of the PGA under this amended bylaw. Following approval of this bylaw by the Attorney General, all pending and future earth removal issues shall be processed according to §63-1 through §63-14.

Or take any action in relation thereto.

Submitted by: Select Board
Recommendations: Select Board recommends approval.

Summary: *This warrant article replaces the current Earth Removal Bylaw with an improved version that will ensure greater protections to the health and safety of the public by regulating the removal of earth so as not to create hazardous conditions, washouts, excessive dust or noise and to protect the natural resources within the Town of Sterling. This new Earth Removal Bylaw is simpler to understand, eliminates ambiguity and will ultimately protect the Town, and hence the taxpayers, money from litigation.*

Motion Made by John Kilcoyne to amend the General Bylaw relative to Earth Removal as printed in the Warrant under Article 47. **MAJORITY VOTE**

Motion Passed by **MAJORITY VOTE** as declared by the Moderator

A True Copy Attest: _____


Kathleen K. Farrell, Town Clerk

