

**Town of Sterling**  
**Earth Removal Board**  
**Meeting Minutes 04/25/2019**

Chairman Rivers called the meeting to order at 5:17pm followed by The Pledge of Allegiance

**Members present:** Rivers, Kilcoyne, Mosley, Philpot (joined at approximately 5:25)

**Members Absent:** Rich

Chairman Rivers commented meeting is subject to recording, Rivers, Mosley, and Ms. Page recording, SLCT broadcasting.

Motion to approve the agenda was made and seconded, unanimous vote to approve.

**UPDATES AND CORRESPONDENCE**

Rivers commented that the ERB has not met as frequently as we would like due to scheduling conflicts for members and individuals involved in the agenda topics.

Rivers commented that there were several sets of minutes the board needs to approve and will attempt to do that at our next meeting.

Rivers commented that all PRR of the ERB have been responded to in full and within allowable timeframes. Rivers commented that some of the ERB records between approximately 2011-2016 are not in the files and the former chairman does not have the minutes from that period.

Rivers commented that PRR from ERB to BoS for unredacted versions of documents had not been met. Some BoS minutes from executive sessions have not been provided. Kilcoyne commented that town counsel said unredacted versions cannot be made available. Rivers questioned why.

Rivers commented that he filed an appearance of no conflict of interest document regarding the upcoming agenda item regarding 68 Heywood Lane.

**COMPLAINT FROM CURTE PLANTE-EBAN REALTY REGARDING DESMARAIS et al PROJECT AT 7 CHOCKSETT ROAD-OFF CHOCKSETT ROAD et al.**

Mosley commented that he had filed a no conflict of interest document regarding this matter.

Rivers reviewed the circumstance that occurred in January 2019 causing Mr Plante to file the complaint. The issue was discussed at the previous meeting but no action taken because neither party was able to attend and that at the time Mr. Rivers left the event Mr. Plante was no longer asking for a Cease and Desist order.

At 5:30 Mr. Rivers recused himself from items 5a and 5b of this agenda item. Mr. Plante inquired why; Mr. Rivers stated he was not obligated to disclose his reasons. Mr. Kilcoyne took over as chairman for the items 5a and 5b of this agenda item.

Mr. Plante showed a video and picture of the event that occurred in January showing water running from the site entrance road onto Mr. Plante's parking area and into his drainage system. He stated this has happened on occasion since approximately 2008 and his drainage system has been comprised over a dozen times. He also commented that through emails the permit holder recognizes that runoff is coming from her property.

Mr. Philpot stated this is the first formal complaint the board has received on this site in the 4 years he has been on the board. Mr. Plante stated that a review of the file shows a history of complaints.

Kilcoyne stated it is reasonable to have this situation mitigated so it does not happen in the future.

Matt Gargulinski, John Durkin and Ed Balderelli were present representing the owner/permit holder. They stated that their intentions are to control the runoff but this situation was unique due to a combination of snow cover, ice in the detention pond and rain. Mr. Plante and owners representatives discussed several issues regarding what has been done, not done to remedy the situation and actions that could be taken to remedy the situation. For example a burm to channel the water and changing the pitch of the road.

The board determined that discussion of actions that might or might not work was not solving the problem. There needs to be a written engineered plan, developed by the owner, to permanently resolve the issue.

Mr. Plante commented that there was no need to do the burm and change road pitch before getting the engineered plan. Philpot agreed that nothing should be done until the engineer looks at it.

Kilcoyne suggested the owner provide the ERB with a written plan 30 days from the meeting date. If the completed plan cannot be provided the owner must provide the ERB with proof that measurable progress towards completing the plan is being taken. Mosley made a motion supporting Kilcoyne's request, Philpot second, motion carried unanimously.

Mr. Rivers rejoined the meeting at 6:04pm and resumed the chairman role to discuss the determination of blasting status of the Desmarais et al permit.

Rivers explained that for a period of time, due to federal government permit extension act, the normal renewal process was suspended until approximately 2017. The permit holder thought their ERB permit covered blasting and they did have approval from the state for blasting. However, as of today the latest permit the ERB has for the site does not indicate blasting but some of the communication from that time seems to indicate blasting was to be done. Some of the commentary after the permit references blasting but it is not indicated on the permit itself. At the time of the permit granting meeting the owner had their blasting contractor at the hearing and abutters were notified of the public hearing. The board is unsure if the lack of blasting approval was just an oversight or clerical error. There have been no complaints regarding the blasting and as far as the board is aware, the permit holder has been following all state regulations. Blasting has been going on since 2010. Rivers commented that he looked

at previous permits for the site going back to 2002. He could not find all the permits for those years but the ones he did find did not indicate blasting on the permit application.

Mosley asked if we could amend the permit without a public hearing. Town counsel commented that she believed we could allow them to continue blasting until the permit is amended or new permit granted. Philpot asked if we can look at the meeting minutes from 2017 and determine if blasting was discussed and then the board would feel comfortable that it was a clerical error. Rivers said he would see if we have minutes or recordings from the meeting where this permit was discussed.

The permit holder representative asked what they need to do if a new permit application is required. Philpot told them they need to file the paperwork, making sure blasting is indicated, and then the ERB can schedule a public meeting. Town counsel agreed that we should have a public hearing since the by-law does not address modifications to the permit. Permit holders representative said they would begin preparing paperwork so they are prepared if necessary.

There was no motion or vote on a Cease and Desist order for the site.

#### **COMPLAINT FROM JEFFRY DONALDSON REGARDING EARTH REMOVAL OPERATIONS BY JIM SIMPSON AT 68 HEYWOOD ROAD.**

Mr. Philpot recused himself from this portion of the meeting.

Rivers commented that Mr. Simpson told him about the complaint. The building inspector issued a Cease and Desist on Mr. Simpson but the inspector did not notify the ERB.

Mr. Donaldson spoke on behalf of 3 abutters and 2 abutters of abutters. Complaint filed because they feel Mr. Simpson requires an earth removal permit for his site and he does not have one. He questioned the way the by-law is written as it seems to indicate that there is not an exception and a permit is required providing the abutters with the protections built into the permit. He commented that a lot of sand has been processed and trucks taking material to another of Mr. Simpsons site which would be prohibited under a permit.

Rivers commented that recent practice has been that if earth removal was in conjunction with residential building that has an end date, the variance requiring a permit did not apply. Mr. Simpson commented that he does have a building permit and a septic permit. Rivers asked Mr. Donaldson if he believes there has been material removed beyond that required for the residence, septic and grading. Mr. Donaldson said yes, material was removed under the powerline. Mr. Simpson stated that was for grading.

Rivers commented that National Grid has an approval process for what can be done in their right of way for the transmission lines. This will have to be done regardless.

Rivers stated Mr. Simpson had stopped worked and would be applying for a permit. He had the paperwork for the permit at the meeting. Mr. Simpson agreed with Mr. Donaldson that you could read the by-law that it requires a permit for under 1000 yards of material.

Mr. Simpson asked that the board approve a permit for removal of up to 1000 yards of material and he would turn in his paperwork for removal over 1000 yards for a future public hearing. Paperwork was provided by Mr. Simpson's engineer. Condition 11 and 13 will be checked no. Standard operating hours will be observed.

Mr. Simpson stated he will not do any more work in the easement until he receives approval from Nashville Grid.

Cheryl Cronin, abutter, asked about "huge" pile of material on the site.

Rivers stated he would like to have board members do a site walk.

It was determined the board could approve the permit even though it was not specifically on the agenda because we did not know 48 hours prior to the meeting that permit would be applied for. Rivers stated any work must be done in relation to the construction of the house and septic area. Plans dated 4/25/19 were reviewed.

Pamela Donaldson commented about the driveway being close to her property line and blowing sand coming onto her property. Mr. Simpson said he has put crushed stone on nearly 300 feet of the driveway. The board reviewed pictures she provided. Mr. Simpson will spread some calcium to try and reduce the dust.

Board will conduct a hearing to determine if Mr. Simpson will be allowed to remove more than 1000 yards of material. In the meantime, he will be able to remove material up to 1000 yards, including what has already been removed, for construction of the house and septic system.

Mr. Donaldson was ok with the approach of the board to allow removal up to 1000 yards with a permit to be approved at this meeting. Removal of material over 1000 cannot be removed until a public hearing is conducted.

Mosley moved to grant the permit, based on plans dated 4/25/19, for removal up to 1000 yards; Kilcoyne made the second and it was approved unanimously. Removal is limited to the construction of the residence and the septic system.

### **38 CLINTON ROAD PERMIT, BRIAN FOLEY/TCF HOLDINGS/LCM REALTY TRUST**

Mr. Philpot rejoined the meeting for this agenda item.

Mr. Foley and Mr. Scarcella were in attendance.

Rivers reviewed the situation with the board wanting the final plan from the Geotech engineer to be reviewed by the same engineer the town engaged to review the initial plans. The board was informed there was no money allocated for such a review. The board feels such a review is necessary before we can approve the reseeding plan and close out the permit. The board assumed this final review would have been part of the original agreement to engage an engineer. In the board's opinion there are two main reasons for wanting the final review. First this permit waived condition #6, 2:1 slope limit and secondly when the permit was approved

the applicant was not sure what the final slopes would be since they needed to bore the rock to determine what needed to be removed.

Philpot commented that he expected that common practice would be followed when using an independent engineering review. The engineer would review the initial plans and then review the completed project to ensure it was done according to the approved plans.

Kilcoyne commented that we usually rely on the applicants engineer because they assume the liability.

Mr. Foley stated they thought the closeout plan was approved based on the original engineering review and permit granting. Their Geo-tech engineer has put his stamp on the closeout plan and on the monthly updates.

Mr. Foley stated they are ready to loam and seed according the recommendations of their engineer. He is concerned that this is the prime time for seeding and if we don't approve their plan the seeding operation may not take. They want the board to let them put the seed down. Cannot stabilize the site until hydroseeding is done.

Rivers stated this permit is the only one that he is aware of to ever waive the 2:1 slope requirement and associated loam and seeding requirements. The permit conditions state the ERB can impose additional reasonable conditions based on the recommendations of the town engineer.

Philpot stated that we should stick with the terms of the permit. Unfortunately for the applicant the lack of funding impacts their ability to closeout but we should not walk away from our requirement as stated in the permit

Maureen Cranston stated the BoS hired the engineer with a limited scope. She commented that the ERB has not asked for funding for an engineering review. At this time she thought the report of the applicants engineer should be satisfactory since he is putting his license on the line with the plan.

Kilcoyne commented the board needs to send a formal request to the BoS to fund a final engineering review in order to closeout this permit.

Town counsel commented that it was their understanding that the Town Administrator said if engineering review was requested to the BoS, they would find the money. She commented that the town engineering review should confirm the stability of the site and that it was done according to the plan.

Mr. Foley stated they have a closing coming up. He asked if they could go ahead and do the hydroseeding before or while the final engineering review was going on.

Rivers asked if a week or two wait for the engineering review would work for the applicant. He also stated the applicant can hydroseed if they want knowing that the engineering review might change the loan and hydroseeding requirements.

Philpot moved to request funding from the BoS, not to exceed \$3000, to conduct final review of geological site plans and do a site walk to ensure it is built to plan specifications. Kilcoyne seconded, motion passed unanimously with a roll call vote. Kilcoyne commented it can be put on the agenda for the next BoS meeting.

Town Counsel asked if the board needs to meet if the engineer reports back that they agree with the applicants plan as written and it was built to the plan. Can we approve the plan and close out the permit contingent on engineering review.

Philpot moved the board close out the permit contingent upon review by an outside engineer hired by the town finding the geo-technical plans sufficient for the site and that the site was built according to those plans. Kilcoyne seconded and the motion passed unanimously.

Philpot offered to reach out to Haley and Ward to see if they can react quickly to do the review once funding is approved.

#### **DELIBERATION AND ACTION RELATIVE TO REVIEW OF NEW EARTH REMOVAL BY-LAW PROPOSED BY BOS, AND VOTE OF ERB TO TAKE A FORMAL POSITION**

Kilcoyne commented the BoS is taking up discussion of the new proposed by-law at the next meeting.

Philpot commented that the BoS wants this by-law and responsibility for earth removal permits.

Both Rivers and Philpot think there are issues and loopholes with the proposed by-law but are fine with the BoS taking over responsibility.

Kilcoyne commented that he would like to see the planning board as the permit granting authority. Not a fan of BoS taking on additional responsibility. He thinks it will provide better service to applicants since the BoS has administrative support and meets more often.

Kilcoyne supports the new by-law.

The board takes no position on supporting or opposing the proposed by-law.

#### **NEW BUSINESS**

Rivers commented that Kilcoyne will be taking over the chairmanship of the board. Next meeting will tentatively be scheduled for May 20<sup>th</sup> at 6pm.

Philpot moved to adjourn at 8:24, Mosley second and motion passed unanimously.