



***Town of Sterling  
Earth Removal Board  
1 Park Street  
Sterling, MA 01564***



**Meeting Minutes June 4, 2015**

Meeting was called to order by Russ Philpot at 8:30 am. Board members attending were Russ Philpot, Mike Pineo, Bob Cutler and David Mosley (alternate). Audio recording done by Mr. Philpot and audience member John Scarcella.

After the Pledge of Allegiance, Mr. Philpot led a discussion of the board members regarding reorganization of the board and noted the board is not fully seated at this time. Two at large members from the community are necessary to complete the board.

Mr. Philpot was moved and seconded for temporary chairman, unanimous vote to approve.  
Mr. Pineo was moved and seconded for temporary vice chairman, unanimous vote to approve.  
Mr. Cutler was moved and seconded for temporary secretary, unanimous vote to approve.  
Once the board is fully seated permanent chairman, vice chairman and secretary will be elected.

Philpot explained the Board would follow the general format of Zoning Board Hearings wherein the Board would ask questions seeking answers to help it come to a decision. The Applicant would be invited to offer their comments, and then the general public would be given an opportunity to speak. Philpot requested that all comments made be on the subject being discussed and that they not be repetitive to some point already made.

Public hearing: #38 Clinton Rd.

Mr. Philpot opened the discussion regarding the earth removal exemption granted for the work at 38 Clinton Rd. The board will discuss and then open discussion to the floor. Brian Foley, attorney for the land owner(s), presented a document (attached) outlining the chronology of events regarding this property and the town beginning on June 12, 2014. Mr. Philpot noted the September 2014 minutes of the board indicated earth was being removed from the site, and that Mr. Foley indicated in that meeting that less than 1000 cubic yards per lot had been removed for grading, preparation for septic testing, etc. At that time the board ruled the project was exempt under section 63-12 of the earth removal by--law.

Mr. Philpot, citing the By-Law, noted that to be exempt for earth removal purposes building and septic permits must exist, the removal must be limited to the footprint(s) of proposed structures and that topographical changes are not allowed. At this time no such permits exist other than permission (from the BOS) to cut the curb(s) for driveways. Philpot went on to note it is evident that topographical changes had been made to the lot(s) and finally, because there are no plans submitted describing any structure on any lot, "footprints" of structures do not exist meaning the areas allowed for earth removal can't be defined. Mr. Foley noted that an earth removal permit application was completed by the applicant and submitted to the board prior to the exemption

being granted in 2014 which did include such plan(s) and presented it to the Board. Upon inspection of the plan, the Board determined it to show two rectangles on each lot entitled “proposed leech field” and “proposed house” but none of the rectangles had any dimensions defining their size nor were there any dimensions locating them on the lot(s). The Board agreed these plans did not meet the requirement of defining any footprint(s).

The board discussed at length the nature of the work that has been done to date and that topographical changes have been made to at least one of the 5 identified lots. Mr. Foley showed a small plan of the lots but Mr. Pineo noted it did not show septic plans. Mr. Foley noted that although there are 5 lots, there might not be 5 dwellings built. Mr. Philpot noted that without detail plans and permits, we do not know what will ultimately be done on the property. Mr. Pineo noted there might issues with Title V septic approval since the ground has been disturbed. Mr. Foley stated this would not be an issue because the work is to get the property to grade. Mr. Foley noted the owners have paid for septic testing on all 5 lots. They are hoping to test during June and July based on the Board of Health schedule. He went on to say that at this point they are simply digging down to reach the elevation where they could conduct soil tests on the lots. He continued saying that once they do their tests, they may combine lots, build duplexes, or some other idea rather than 4 singles (single family homes).

A comment was made that the board could issue cease and desist order regarding earth removal. Mr. Foley commented that doing so would be the worst thing to do for the Town because if work was stopped it would leave an eyesore at a gateway to the town of Sterling. It was noted that such an order would not cause work to stop, only stop earth removal from the individual lots. Mr. Pineo asked is material still needed to be removed; Mr. Foley commented that only a small amount, about 100 cubic yards, might still need to be removed.

Mr. Paul Belair, abutter, commented:

- feels all the work is in violation
- all work should be stopped and the site should be cleaned up to eliminate dangers to children and wildlife
- a cease and desist order should be placed on the property

After the discussion Mr. Pineo moved the public session be closed, Mr. Cutler seconded, approval was unanimous.

#### Board Deliberation

Mr. Philpot commented that he takes the developers at their word that they intend to put houses on the site, that they have been forthcoming with their intentions and that nothing “nefarious” has been intended. However, the by-law is clear, in order to have an exemption from an earth removal permit, building and septic permits must be in place. At this time no one is really sure what in the way of dwellings will end up being put on the property and there is a chance, nothing will be built. The developers should have gotten an earth removal permit rather than operate under an exemption. Mr. Foley repeated that the developers did submit an application for permit prior to be granted the exemption.

Both Mr. Cutler and Mr. Pineo agreed with the assessment presented by Mr. Philpot. Mr. Philpot commented that the requirements for an exemption have not been met and the board can either continue the exemption or enforce the by-law and issue a cease and desist order for earth removal on the site. Mr. Cutler asked what would have to be done to release a cease and desist order; Mr. Philpot commented they would need to apply for and receive an earth removal permit as outlined in the by-law or acquire building and septic permits. It was re-enforced that work could continue as long as no earth was removed from any of the individual lots.

In response to Mr. Foley's opinion that stopping work would be the "worst thing to do" the Board recognized that not taking action to enforce the Laws they have sworn to uphold would send the wrong message to the Town and be much worse.

**Findings:** Upon deliberating the facts, information presented, and comments by the Applicant found the following to be true:

There are no Building Permits or Septic Permits issues for any of the lots

No plans have been submitted that specifically define the footprints of any building, septic, or appurtenance on any lot.

The removal operations thus far have changed the topography of the lots.

Mr. Cutler moved to issue a cease and desist order for earth removal on lots 1-5 at 38 Clinton Rd, Mr. Pineo made the second, unanimous approval. Copies of the order are to be sent to applicant, Building Inspector, Conservation Commission, Planning Board, Board of Selectman, Zoning Enforcement Officer, Board of Health and Police Chief  
Next meeting for the board was set for June 18, 2015, time and place to be determined.

Meeting was adjourned at 10:10 am.

Respectfully submitted,

Robert F. Cutler,  
ERB Secretary