

Town of Sterling  
Earth Removal Board, Room 205, Butterick Building  
Meeting Minutes 9/20/17

1) Call to order by Chairman Rivers at 9:00 AM.

Roll call – Mike Rivers, Chairman, Mike Pineo, Vice Chairman, John Kilcoyne, Clerk, Russ Philpot, Dolores Rich.

Pledge of Allegiance, all stood respectfully.

Recording the meeting – John Scarsella.

2) Approval of agenda by all.

3) Approval of past meeting minutes of 9/13/17 – Deferred.

4) Review Board Correspondence and Activities since last meeting. R. Philpot brought ERB (Earth Removal Board) proposal of phasing out ERB and transferring certain duties to the Planning Board to the Chair of the PB who acknowledged proposal favorably.

5) 38 Clinton Road Issue.

- At 9:14 AM, D. Rich recused herself from discussion of this item and left the table to sit in the public section of the room.

- J. Kilcoyne described his site tour with Mr. Brian Foley the previous day and indicated that all rocks appeared to have been removed from the abutter's property, site lines were visible marking the four lots and markings on the four septic sites were plain and visible, though no septic holes had been dug at that time. Upon being asked, Ms. Rich, an abutter indicated she was satisfied that the major rocks had been removed, but still had a concern that some minor rocks could fall onto her property at a later time.

- Mr. Philpot confirmed that if the rocks were not over the boundary line, then the trespass issue no longer existed.
- Mr. Foley commented on the rock issue and indicated that poor weather conditions existed at the time of the Vice-Chairman's site visit.
- Board agreed that “no trespass” currently exists, though Chairman Rivers expressed concern that lot line and excavation area markings were still not clearly and accurately marked.
- Mr. Philpot provided copy of professional drawings on elevation points to the Board at this time for further discussion. Mr. Philpot retained the drawings.
- The Chairman questioned the accuracy of the amount of gravel removed from the site based on the elevation calculations. He questioned Mr. Foley how 800 yards could have been removed from Lot 1 staying within the footprint allowed leaving a balance of 200 yards? Discussion ensued. Question arose for Mr. Foley regarding the requesting of building permits for the lots from the Zoning Board of Appeals (ZBA) at an earlier date. The Chair asked if Mr. Foley had submitted an ERB permit application? Mr. Foley indicated he had submitted an application from the ZBA for a variance. He was told to go to the ERB.

Mr. Foley then obtained “curb cut” or driveway access from the Board of Selectmen (BOS).

- Mr. Rivers asked if ERB permits were ever requested by Mr. Foley to which there was not a definitive answer. The Chairman indicated Mr. Foley was operating under the “exemption” clause of the Earth Removal By-Laws without an earth removal permit. Mr. Foley said he had received five curb cut permits. Mr. Rivers continued with exemption discussion. At this point, 9:55 AM Mr. Foley appeared frustrated and left the meeting.
- Some discussion continued with Mr. Scarsella, Mr. Foley's partner on the project, defending Mr. Foley's actions regarding earth removal. Mr. Pineo followed up with a discussion on what constitutes an “allowable” exemption. Mr. Philpot acknowledged that the interpretations between the Board and Mr. Foley differed on the definition of an allowable exemption, but in his opinion digging and removal should only occur in the footprint per the drawings and appeared to have far exceeded the footprint.
- At 10 AM Mr. Scarsella left the meeting but returned at 10:05 AM. He added to the exemption discussion and indicated that the project was nearly complete. Mr. Rivers said that it appears Mr. Foley believes he is being treated differently than other contractors, but he sees no evidence of different treatment, nor has Foley provided any evidence.
- Mr. Rivers then read the contents of a “cease and desist” letter he had drafted (See addendum for copy). After further discussion, Mr. Philpot made a motion to approve the letter for delivery to Mr. Foley as amended by Mr. Kilcoyne's proposal to suspend and hold in abeyance for 30 days the proposed fines scheduled to start on 9/30/17. Mr. Pineo seconded the motion, vote unanimous excluding Ms. Rich who was still recused from this portion of the meeting. The basic requirements in the letter being asked of Mr. Foley before rescinding the cease and desist order were as follows:

- (1) Cut and fill calculations from Mr. Foley's engineer for each of the 4 lots,
- (2) Engineered markings for lot lines,
- (3) Cut and fill calculations with maps for actual septic sites.

Chairman agreed to update the draft as a formal letter to be proofed by Town Counsel and then to be sent to Mr. Foley by certified mail or by constable if necessary.

- At this time, Ms. Rich returned to her seat at the Board table for deliberation of the remaining agenda items.
- 6), 7), 8) Due to length of the meeting the Board agreed to postpone these items to a future meeting.
- 9) Adjourn meeting. Mr, Rivers made motion, second by Mr. Pineo, vote unanimous at approximately 10:30 AM.

Submitted by; John Kilcoyne, Clerk.