

33 **Passage requires a 2/3rds vote.**

34 Submitted by: Planning Board
35 Recommendation: Planning Board recommends approval.
36 Recommendation: Select Board recommends approval.

37 **Summary:** *The proposed new overlay encompasses Sterling's Zone II areas, being the high and medium yield zones.*
38 *The current overlay is overly broad and contains, high, medium and low yield zones, in addition to extra extraneous*
39 *locations. Pursuant to 310 CMR 22.21(1)(e), Sterling is not legally bound to provide land use prohibitions/controls*
40 *in this area as it does not own or operate the Leominster wells.*

41 ----- **EARTH REMOVAL BYLAWS** -----

42 **ARTICLE 47. EARTH REMOVAL - GENERAL BYLAW**

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

45 **Chapter 63: Earth Removal**

46 § 63-1 Purpose.

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

51 § 63-2 Definitions.

52 **Earth**

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

54 **Permit Granting Authority (PGA)**

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

57 **Quarrying or Mining**

58 "Quarrying or mining" shall mean earth removal for the purpose of extracting soil, loam, sand, gravel,
59 clay, rocks, minerals, or other earth material, including establishments engaged in operating sand and
60 gravel pits and in washing, screening, or preparing sand and gravel for construction or industrial uses.

61 "Quarrying or mining" shall exclude grading of a lot in preparation for the construction of a structure or
62 associated appurtenances for which a building permit or other similar permit has been issued by the
63 town.

64 § 63-3 Permit Required.

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

67 A. Quarrying or mining operations.

68 B. Earth removal from a single lot or a single site, unless exempt pursuant to §63-4.

1269 § 63-4 Exemptions from Permit Requirements.

1270 The following earth removal operations are exempted from the requirement to obtain an earth removal
1271 permit under this bylaw.

1272 A. Earth removal of less than an aggregate of 1,000 cubic yards *in situ* from a single lot or a single site
1273 within any five (5) year period (commencing on the date the Notification of Intent is filed with the
1274 PGA) and not in connection with a building permit granted by the Town of Sterling shall not require
1275 a permit under this bylaw, but operations shall be required to comply with the Earth Removal
1276 Operation Criteria set forth in §63-7. In order to claim this exemption, the owner of the lot or site
1277 shall, at a public meeting of the PGA, file a Notice of Intent for Earth Removal with the PGA indicating
1278 full compliance with the Earth Removal Operation Criteria.

1279 B. Earth removal from a single lot or a single site in connection with a building permit granted by the
1280 Town of Sterling, so long as the quantity shall not exceed 110% of the amount of material displaced
1281 by the below grade portion of the construction of permitted building or structure.

1282 C. Earth removal associated with the installation of septic systems shall be governed by the
1283 Commonwealth of Massachusetts Environmental Code (Title 5, 310 CMR 15.000), provided that the
1284 quantity of materials removed shall not exceed the amount of material displaced by the permitted
1285 septic system components (septic tank, distribution box, pump chamber, dosing chamber, grease
1286 trap, manhole and soil absorption system) below grade as approved by the Board of Health.

1287 D. Earth removal from one parcel of land to a contiguous parcel of land, held in common ownership
1288 and located within the Town of Sterling, subject to compliance with the Earth Removal Operation
1289 Criteria in §63-7. If there is a group of parcels that are (i) contiguous to each other, (ii) held in
1290 common ownership and (iii) located within the Town of Sterling, earth removal from one parcel of
1291 land in the group to any other parcel of land in the same group is exempt under this section. For
1292 example, an owner of four contiguous parcels on a public way would be allowed to remove earth
1293 from parcel one to parcel four since all four parcels are contiguous with at least one other parcel in
1294 the same group.

1295 E. Earth removal from any parcel of land in a definitive subdivision subject to the subdivision control
1296 process under Massachusetts General Laws Chapter 41, as amended, that has been approved by the
1297 Planning Board. In this instance, the Planning Board shall have full authority to regulate the amount
1298 and disposition of earth to be removed from such parcel(s) of land shown on the subdivision plan.

1299 F. Earth removal required for a certain parcel of land subject to the town of Sterling Site Plan Review
1300 process as defined in Article 6, Section 6.4 of the Town of Sterling Protective Bylaws as amended that
1301 has been approved by the Planning Board. In this instance, the Planning Board shall have full
1302 authority to regulate the amount and disposition of earth to be removed from such a site as shown
1303 on the site plan.

1304 G. Earth removal for land falling within the Town's Wetland Resource Area and associated buffer zones
1305 shall be governed by the Wetland Protection Act, MGL Chapter 131, Section 40, administered solely
1306 by the Town of Sterling's Conservation Commission.

1307 H. Earth removal operations in continuous operation prior to November 12, 1973 are permitted to
1308 continue on the same parcel(s) of land as existed on the date of adoption of this amendment;
1309 provided, however, an expansion of such earth removal operations to a new or additional parcel(s)
1310 of land following the adoption of this Bylaw amendment shall require an earth removal permit
1311 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.

- 1351 C. Shall not endanger the public safety, public health or constitute a nuisance.
- 1352 D. Shall not produce noise, dust, or other noxious effects beyond the lot lines of the property.
- 1353 E. Shall not result in the transportation of materials in such manner as to cause traffic congestion, dust,
- 1354 spillage, noise, or other nuisances, hazards or damage, particularly on residential streets or adjacent
- 1355 land.
- 1356 F. Shall not result in a change of topography or loss of ground cover that shall cause soil erosion,
- 1357 increased rate of stormwater runoff or adversely impact drainage on the site, adjacent streets or
- 1358 abutting properties.
- 1359 G. Shall not cause pollution or particle infiltration to surrounding watercourses or groundwater.
- 1360 H. Shall not result in the removal/stripping of loam in an amount that would leave less than six (6) inches
- 1361 of organic soil cover that shall be reseeded, unless waived by the PGA, to provide vegetative cover
- 1362 and be maintained until the area has been stabilized.
- 1363 I. Shall not create a slope greater than five (5) feet in height that exceeds 1 vertical unit to 2 horizontal
- 1364 units (1:2) and does not exceed twenty (20) feet in vertical height except when in *competent* bedrock
- 1365 as determined by a geotechnical engineer. In *competent* bedrock earth removal shall not create a
- 1366 slope greater than five (5) feet in height that exceeds 1 vertical unit to 1 horizontal unit (1:1) and
- 1367 does not exceed twenty (20) feet in vertical height.
- 1368 J. Shall not encroach a distance of ten (10) feet from any property line.
- 1369 K. Shall have a lowest excavated point no less than six (6) feet above the existing seasonal high
- 1370 groundwater table except when incidental to the construction for which a building permit has been
- 1371 obtained. To ensure this depth the applicant shall, at applicant's expense, install observation wells
- 1372 in accordance with the designated agent of the Town of Sterling's Board of Health.

1374 The PGA may issue an order to any earth removal operation that does not appear to comply with the
 1375 Earth Removal Operation Criteria (i) to submit evidence that it does comply, (ii) to bring the earth
 1376 removal operation into compliance with this Bylaw, and/or (iii) to obtain an earth removal permit.

1377 § 63-8 Site Standards, Requirements and Operations.

1378 In approving the issuance of a permit, the PGA shall require conformity with the standards and
 1379 requirements set forth below. The PGA may, where appropriate under the circumstances, waive, modify,
 1380 state more specifically, or add to the following standards and requirements provided that the intent of
 1381 this Bylaw is maintained and the Earth Removal Operation Criteria stated in §63-7 are observed. Any
 1382 deviations from the following standards and requirements shall be stated as conditions to and noted
 1383 upon the permit.

- 1384 A. All non-exempted earth removal operations in §63-3 shall be required to be accompanied with an
- 1385 initial Close Out or Reclamation Plan in addition to a non-waivable statement as stipulated by the
- 1386 PGA, and stamped by a Professional Civil Engineer attesting that all Earth Removal Operation Criteria
- 1387 in §63-7, except those for which the PGA has issued a waiver, shall be met for the duration of the
- 1388 earth removal. Following completion of earth removal operations, the applicant shall provide a final
- 1389 Close Out or Reclamation Plan as stipulated by the PGA, stamped by a Professional Civil Engineer,
- 1390 along with a report or a statement signed by a geotechnical engineer stating that the geotechnical
- 1391 engineer has inspected the site prior, during and upon completion of earth removal operations and
- 1392 certifying the structural integrity of the site and related slopes as shown on the final plan.

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- 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

1436 removal over 1,000 cubic yards if the lot or site was located in a Rural Residential (RR) or
1437 Neighborhood Residential (NR) zoning district. That requirement was deemed to be too restrictive.
1438 Therefore, any permits granted by the PGA under this bylaw will be at the reasonable discretion of
1439 the PGA, taking into account all of the facts and circumstances of the application, the zoning district
1440 in which the property is located, the intended use or uses of the property, and the amount of earth
1441 the applicant desires to remove.

1442 § 63-9 Site Reclamation or Close Out.

- 1443 A. All debris, stumps, boulders, and similar material shall be removed from the site or disposed of in an
1444 approved location on site. The PGA may, at its sole discretion and where appropriate, require areas
1445 to be reseeded so as to provide a vegetative cover with a minimum of six (6) inches of organic soil
1446 cover that shall be maintained until the area is stabilized. Vegetation not surviving one growing
1447 season shall be replanted by the applicant in accordance with standard US Department of Agriculture
1448 Natural Resources Conservation Service methods in order to prevent erosion. Alternatives to this
1449 method of Site Reclamation or Close Out shall be subject to the approval of the PGA.
- 1450 B. Upon completion of the operation, the land shall be left so that the natural drainage flow exits the
1451 property at the original drainage points or empties into the original drainage channel; and when it
1452 does so, the volume of runoff or flow at any one point is not increased above that which was normal
1453 for that particular point in the absence of the earthwork operation. This shall be documented and
1454 certified by a Professional Civil Engineer upon the Close Out or Reclamation Plan as stipulated by the
1455 PGA.
- 1456 C. All large stones and boulders that protrude above the finished grade shall be removed or buried.
1457 Alternatives to this method of site reclamation or close out shall be subject to approval by the PGA.

1458 § 63-10 Engineering Review Consultant, Bonding & Security and Release.

- 1459 A. Engineering Review Consultant. The PGA, at its sole discretion, may determine that a proposed
1460 project's size, scale, complexity, or potential impact warrants retaining the use of licensed
1461 professional independent consultants in any given respective field. Such consultants shall provide
1462 professional guidance to assist the PGA with the necessary review and analysis needed to make
1463 informed decisions that comply with all relevant laws and regulations regarding complex issues,
1464 including hydrological testing, noise analysis, and other analyses deemed necessary. The PGA shall
1465 select and retain for a reasonable fee such consultants at the expense of the Applicant, in accordance
1466 with the provisions of G.L. c. 44, §53G.
- 1467 B. Bonding & Security. In determining the effect upon the town, the PGA shall require a surety bond,
1468 in a form approved by Town Counsel and issued by a surety licensed by the Commonwealth of
1469 Massachusetts, which shall not expire until all conditions of the permit have been satisfied. The bond
1470 shall be for an amount estimated to meet the conditions of the permit, in the event the earth removal
1471 operations are abandoned, and the Town must take steps to secure the site, and to satisfy the
1472 requirements of §63-9 Site Reclamation or Close Out.
- 1473 C. Release. After completion of work, the applicant shall submit a Close Out or Reclamation Plan as
1474 stipulated by the PGA, prepared by a registered professional engineer, showing grades at the
1475 conclusion of the operation, along with a report by geotechnical engineer certifying that the site and
1476 resulting slopes are stable. The PGA shall release the bond after the submission of the plan and with
1477 a determination that the Permit conditions have been met and when sufficient time has lapsed to
1478 ascertain that vegetation planted has successfully been established and that drainage is satisfactory.

1479 § 63-11 Violations.

- 1480 A. As a condition of receiving a permit, the applicant authorizes the PGA and/or its engineering
1481 consultant to: (i) enter on the site to conduct inspections on behalf of the PGA and (ii) inspect the
1482 relevant business records of the operator of the earth removal operation, including the delineation
1483 of the area to be removed. The PGA and/or its engineering consultant shall contact the applicant in
1484 advance to arrange such inspections.
- 1485 B. If a violation of this Bylaw or any condition of a permit is suspected, the PGA shall, at a public meeting
1486 and after notifying the permit-holder and/or the operator of the earth removal operation in writing,
1487 determine whether a violation exists or occurred. The PGA shall take appropriate action, up to and
1488 including issuing a fine, ordering the permit-holder and/or earth removal operator to cure the
1489 violation, imposing additional conditions to safeguard against the violation, or issuing an order to
1490 cease earth removal operations.
- 1491 C. In the case where an emergency cease and desist order requiring immediate cessation of all work on
1492 the property is warranted, the PGA shall designate an agent to serve the order regarding the
1493 violation. The PGA shall hold a public hearing to review the facts and to determine whether a
1494 violation has occurred. If a violation is found, the PGA may revoke, revise, or modify the conditions
1495 or restrictions of the permit.
- 1496 D. If a permit-holder and/or operator of earth removal operation persists in such violation, the PGA
1497 shall, after notifying the permit-holder and/or the operator of the earth removal operation in writing,
1498 seek an imposition of penalties authorized by MGL Chapter 40, Section 21, Paragraph 17, and shall
1499 be subject to a fine of not more than \$50 for the first offense, not more than \$100 for the second
1500 offense and not more than \$200 for any subsequent offense. Each day during any portion of which
1501 such violation is allowed to continue shall be considered a separate offense. This Bylaw may also be
1502 enforced through the non-criminal disposition procedures set forth in MGL c. 40, section 21D and
1503 impose fines up to the amount of \$300.00, as provided in Chapter 1, Article III of the Town's General
1504 Bylaws.
- 1505 E. The PGA may seek injunctive relief to restrain violations or to compel abatement or remediation of
1506 violations.
- 1507 F. If the violator holds a permit issued under this article, the PGA may, after a public meeting and after
1508 notifying the permit-holder and/or the operator of the earth removal operation in writing, either (i)
1509 revoke the permit or (ii) suspend the permit, at which point all operations shall cease until such time
1510 as the necessary measures are taken to assure compliance with this article and a new permit or
1511 reinstatement of existing permit is issued.

1512 § 63-12 Authority to Adopt Rules and Regulations.

1513 The PGA may adopt and periodically amend rules and regulations for the implementation of this article
1514 by majority vote after conducting a public hearing concerning such amendments. The hearing shall be
1515 published by the PGA in a newspaper of general circulation in each of two successive weeks, the first
1516 publication being not less than 14 days before the day of the hearing. Such rules and regulations may set
1517 forth performance standards for earth removal, impose filing and consultant fees, define additional
1518 terms not inconsistent with the article, and establish administrative procedures. Failure by the PGA to
1519 adopt such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to
1520 suspend or invalidate the effect of this article.

1521 § 63-13 Appeal.
 1522 Appeals of the decisions of the PGA shall be conducted in accordance with Massachusetts General Law
 1523 Chapter 249 Section 4, as amended.
 1524 § 63-14 Severability.
 1525 The provisions of this bylaw are severable, and the invalidity of any section, subsection, paragraph, or
 1526 other part of this bylaw shall not affect the validity or effectiveness of the remainder of the bylaw.
 1527 § 63-15 Dissolution of Earth Removal Board.
 1528 Upon adoption of this bylaw by a majority of voters during a town meeting and following approval of this
 1529 bylaw by the Attorney General, the Earth Removal Board shall be dissolved. All current Earth Removal
 1530 Permits shall remain valid and shall transfer under the jurisdiction of the PGA under this amended bylaw.
 1531 Following approval of this bylaw by the Attorney General, all pending and future earth removal issues
 1532 shall be processed according to §63-1 through §63-14.
 1533 Or take any action in relation thereto.
 1534 Submitted by: Select Board
 1535 Recommendations: Select Board recommends approval.
 1536 *Summary: This warrant article replaces the current Earth Removal Bylaw with an improved version that will*
 1537 *ensure greater protections to the health and safety of the public by regulating the removal of earth so as not to*
 1538 *create hazardous conditions, washouts, excessive dust or noise and to protect the natural resources within the Town*
 1539 *of Sterling. This new Earth Removal Bylaw is simpler to understand, eliminates ambiguity and will ultimately*
 1540 *protect the Town, and hence the taxpayers, money from litigation.*

1541 **ARTICLE 48. EARTH REMOVAL/QUARRYING OR MINING - PROTECTIVE BYLAW**

1542 To see if the Town will vote to amend the Protective Bylaws relative to Earth Removal and Quarrying or Mining,
 1543 as wet forth below:

1544 Article 2, Use, Dimensional and Timing Regulations, Section 2.3.1.D. (Table of Principal Uses) to delete the
 1545 following use #7 "Earth removal" and to replace therewith with a new use, #7 "Quarrying or Mining" with no
 1546 alteration of use in the zoning districts; it would remain permitted in the LI zoning district and would not be
 1547 permitted in the RR, NR, C and TC zoning districts. The existing footnote #1 would remain as follows with
 1548 additions shown in **bold/underline** and deletions shown in strikethrough:

1549 2.3 USE REGULATIONS

1550 2.3.2 Table of Principal Uses.

1551 PRINCIPAL USES

DISTRICTS

RR NR C TC LI

1553 **D. INDUSTRIAL, WHOLESALE OR EXTENSIVE USES**

1554 **7. Earth removal Quarrying or Mining**¹

N N N N Y

1555 ¹ See the Earth Removal By-law in the General By-laws.

1556 Article 5, Definitions, by inserting, in alphabetical order, a new definition for "Quarrying or Mining" and by
 1557 deleting the existing definition of "Earth Removal" as follows with additions shown in bold and deletions shown
 1558 in strikethrough:

559 **Earth Removal** shall mean the removal of clay, gravel, sand, sod, loam, soil, stone or other earth materials
560 as may be permitted pursuant to the By laws of the town of Sterling.

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

566 Article 3, Site Development Requirements, Section 3.3.2, Erosion Control, subsection 3.3.2.2 by inserting at the
567 beginning of the subsection the following new text: "With the exception of where an Earth Removal permit has
568 been issued" shown in bold:

569 **3.3.2.2 With the exception of where an Earth Removal permit has been issued**, any construction which
570 will expose more than 60,000 square feet of bare earth during development through either removal or
571 filling on the same parcel or on contiguous parcels in the same ownership must comply with the
572 following..."

573 Article 6, Administration and Procedures, Section 6.2, Board of Appeals, by deleting subsection 6.2.2.a.4. in its
574 entirety, thereby deleting the current requirement to obtain a use variance from the Board of Appeals for earth
575 removal in the RR and NR zoning districts, shown in strikethrough:

576 ~~4. in RR or NR Districts, no soil shall be removed from the premises except to facilitate grading for a
577 proposed building for which a variance or a building permit has been granted, or to serve an
578 established agricultural operation or an extension thereof. Removal of less than 1000 cubic yards of
579 soil from any premises does not require a variance, nor does removal of soil necessary for building
580 the infrastructure of a Definitive Subdivision Plan approved by the Planning Board. Removal of soil in
581 an amount greater than or equal to 1000 cubic yards does require a variance. (Note: Reference should
582 also be made to the Earth Removal By law of the town of Sterling's General By laws.)~~

583 Or an action in relation thereto.

584 **Passage requires a 2/3rds vote.**

585 Submitted by: Select Board
586 Recommendation: Planning Board recommends approval.
587 Recommendation: Select Board recommends approval.

588 **Summary:** This article revised the bylaw to: provide and treat Quarrying or Mining as a principal use; deletes
589 Earth Removal as a principal use (as it is a site preparation activity); provides a new definition; clarifies an existing
590 section; and, removes a non-applicable section if the new general bylaw is adopted.

1591 **ARTICLE 49. EARTH REMOVAL PROTECTIVE BYLAWS**

1592 To see if the Town will vote to amend the Protective Bylaws, as follows:

1593 Section 2.3.1 Table of Principal Uses, D. Industrial, Wholesale or Extensive Uses, by deleting #7. Earth Removal,
1594 shown in strikethrough:
1595

1596 2.3 USE REGULATIONS
1597 2.3.2 Table of Principal Uses.
1598 PRINCIPAL USES

	DISTRICTS				
	RR	NR	C	TC	LI
1600 <u>D. INDUSTRIAL, WHOLESALE OR EXTENSIVE USES</u>					
1601 <u>7. Earth removal</u>	N	N	N	N	Y

1602 ¹See the Earth Removal By-law in the General By laws.
1603

1604 Article 5. Definitions, by deleting the definition for Earth Removal, shown in strikethrough:

1605 ~~Earth Removal shall mean the removal of clay, gravel, sand, sod, loam, soil, stone or other earth materials~~
1606 ~~as may be permitted pursuant to the By-laws of the town of Sterling.~~
1607

1608 Section 6.2 Board of Appeals, by deleting Section 6.2.2.2.a.4., shown in strikethrough:

1609 ~~4. in RR or NR Districts, no soil shall be removed from the premises except to facilitate grading for a~~
1610 ~~proposed building for which a variance or a building permit has been granted, or to serve an~~
1611 ~~established agricultural operation or an extension thereof. Removal of less than 1000 cubic yards of~~
1612 ~~soil from any premises does not require a variance, nor does removal of soil necessary for building~~
1613 ~~the infrastructure of a Definitive Subdivision Plan approved by the Planning Board. Removal of soil in~~
1614 ~~an amount greater than or equal to 1000 cubic yards does require a variance. (Note: Reference should~~
1615 ~~also be made to the Earth Removal By-law of the town of Sterling's General By laws.)~~

1616 Or take any action in relation thereto.

1617 **Passage requires a 2/3rds vote.**

1618 Submitted by: Zoning Board of Appeals
1619 Recommendation: Planning Board does not recommend approval.
1620 Recommendation: Select Board does not recommend approval.

1621 **Summary:** *The purpose of this article is to remove earth removal from the purview of the Zoning Board of Appeals*
1622 *("ZBA"). Given the requirements of MGL Ch. 40A, §10, it is very unlikely that an applicant seeking earth removal*
1623 *could obtain relief through a variance process, and is more properly addressed through a permitting process*
1624 *controlled by the Select Board and governed by a separate general bylaw.*

1625 ----- **END OF GENERAL & ZONING BYLAWS** -----