

BRIAN JADUL & PETER GIVEN
90 & 96 Lincoln Lane
ERB 02-1 & 02-2

MINUTES OF THE PUBLIC HEARING
SUDBURY EARTH REMOVAL BOARD
WEDNESDAY, DECEMBER 4, 2002

The Board consisted of:

Melinda M. Berman, Chairman
Richard L. Burpee, Clerk
Thomas W.H. Phelps
Elizabeth A. Taylor
Stephen A. Garanin

Notice was published in the Sudbury Town Crier on November 7 and 14, 2002, posted, mailed and read at this hearing.

Ms. Berman, Chairman, explained that the Earth Removal Board is acting under the authority granted in Title IX, Article V(A) of the Town of Sudbury Bylaws. Those Bylaws provide that a removal permit for removal of soil, loam, sand, gravel, stone or other earth material shall be granted only if the Earth Removal Board shall rule that such removal is not detrimental to the neighborhood.

The petitions before the Board this evening are as follows:

(1) ERB Case 02-1 – that of Brian and Dawnmarie Jadul for a permit to remove approximately 800 cubic yards of sand from 96 Lincoln Lane

(2) ERB Case 02-2 – that of Peter and Annette Given for a permit to remove approximately 500 cubic yards of sand, loam and subsoil from 90 Lincoln Lane.

Mr. Jadul explained that behind his house is a flat piece of land which goes into a hill that plateaus back to his property line. Right now that plateau is roughly 60 feet or so. Mr. Jadul said he proposes to reduce the plateau on the top of the hill from 60 feet down to about 30 feet, basically pushing the hill back.

Mr. Jadul distributed copies of a plan dated December 2, 2002, prepared by Thomas Land Surveyors, which he said showed the existing and proposed contours. The ledge on the bottom left of the plan, shows the existing contours of the slope of the hill which is now at a 2:1 grade. Instead of the hill jutting out towards his house it will be rounded off and made it more of a bowl shape as can be seen from the darker lines on the plan, and the slope will be at a 2 1/2:1 ratio. Mr. Jadul said he was not going near the back of his line or any other lines. The plan also shows the wetlands as well as the buffer zone. He said both he and Peter Given are going in on this project together, the end result of which will be for more flat area for their back yards. He emphasized that the earth removal will not be close to the wetlands or buffer zone.

Mr. Jadul said he envisioned, hopefully next summer, putting in a pool. The space chosen for the pool is ideal and will be far enough away from his well.

Mr. Jadul said he asked his civil engineer about erosion knowing that there are some questions about erosion factors given that the consistency of the hill is pretty clean sand. He said that was why he went with the 2 1/2:1 slope; that his engineer said that there will be no erosion problems with the slope. The slope will be mulched and some it and some groundcover may even be planted. He said there will be no erosion issues on his land or Given's land as a result of this project. He said the hill right now is pretty ugly. By doing this aesthetically, it is going to look a lot nicer and it will be safer.

Peter Given added that this hill here was left by the developer who did not want to go to this expense of additional grading and landscaping which sort of left both back yards shortchanged and with the responsibility of finishing it off.

Ms. Berman asked how far back it was proposed to flatten out the back yard. Mr. Jadul said he believed the top of the hill is going to go back 30 feet or so and the foot of the hill will be going back somewhat less than that. He said he has children and this will be much nicer for them although obviously the issue is whether this is affecting any neighbors.

Mr. Given said since he and Mr. Jadul hadn't heard anything from town departments that this wasn't allowable, it seemed to him that this is emotional resistance from the neighbors.

Mr. Jadul said the hill right behind his house slopes up and almost peaks, then goes down a little bit and plateaus. He said he is going to better that slope and that's where a lot of the sand will come from.

Mr. Berman asked whether Thomas Land Surveyors made the suggestions about possible mulching or groundcover.

Mr. Jadul said he first spoke with his engineer who suggested the slope of the hill as well as the mulch and groundcover. Then he (Jadul) spoke with the Town Engineer and told him of his engineer's suggestions. He said the Town Engineer said those suggestions would be fine with him.

Mr. Garanin asked what the offset to wells for pools was. Mr. Jadul believed it to be 20 feet. He said he wasn't quite ready to do the pool yet, but there should be plenty of space.

Mr. Garanin asked if any trees will be coming down on top of the hill. Mr. Jadul said the trees have come down already.

Ms. Berman asked whether this meant no more trees will be coming down. Mr. Jadul said no permit is required for removing trees. As far as he knew every single tree on the property could be removed if the property owner chose to do so.

From what was said, it was Mr. Phelps' understanding that the Jaduls and Givens are pushing the flat level back, and then grading it up to the top of the hill. The top of the hill is still the top of the hill, because it's pretty much off of both properties. Then, on the other side it drops off.

Mr. Jadul agreed. He said he believed the property after his lot ends at some short point, and the hill goes back down.

Mr. Phelps wanted to be sure he understood correctly that the applicants were not leveling off the high point; that they were just moving it all back and grading up to the high point at the end of their property.

Mr. Jadul said the triangle at the very end of his property is not being touched. The height will remain the same, the wetland will remain the same. Everything will be done within the property lines.

Mr. Burpee asked whether any work was going to be done at 102 Lincoln Lane. He said the plans show a little reconfiguration of that lot. Mr. Jadul said "no"; as one looks at it, it will look contoured.

Ms. Taylor said the plans show the contours continuing beyond the property line.

Mr. Jadul said that lot belongs to Eligius Homes. There will be no work on that property.

Ms. Berman asked whether the estimate of earth removal quantities has changed since the applications were submitted before this plan was done.

Mr. Jadul said it does change the quantities. He said when he filled out the application he had asked the person who was going to be doing the work for a rough estimate on how much would be taken out. Before he spoke with any engineers it was suggested that it would be 800 yards for himself and 500 yards for Mr. Given. Thomas Land Surveyors put on the plan submitted this evening that it would be a total of 5,600 yards.

Ms. Taylor asked what the breakdown was between the two properties. Mr. Jadul said he didn't know the numbers. He added that the person who is doing the work told him that the sand is being brought to Plympton Road.

Mr. Phelps said this Board should have had this plan submitted with the original application. He said the plan needs to be reviewed by the Town Engineer. He also believed that the neighbors who are also present that they should be able to take a look at the plan.

There was a brief recess to allow those neighbors to look at the plan.

Mr. Phelps cautioned that while a lot of comments will come up, the Board is dealing with what exists now and that emotional comments are not appropriate in this forum.

David Tersian 69 Lincoln Road, abutter, pointed out the top of the hill and showed pictures of the area. His issue was that there was a lot of earth that has already left the area. He estimated that amount to be 4,000 cubic yards. After looking at the elevations on the plan submitted this evening, he would estimate that amount to be much greater. He felt the part that was missing in this whole equation is this whole area that's been carved out and which can be seen from the pictures. Mr. Tersian said he is an abutter and is also a professional engineer licensed in Massachusetts and is familiar the calculations. However, he was particularly concerned with regard to the applications for earth removal permits from the homeowners located to the rear of his lot. His concerns are based on the Town of Sudbury's bylaws and the instability of earth to the rear of my property and this concern results from the indiscriminate cutting of trees.

Ms. Berman asked whether Mr. Tersian was referring to Lot 9. Mr. Tersian replied that he was. He said there are no trees there. They've all been cut down as can be seen from the pictures. His first concern is the unnecessary cutting of trees on land bordering the property, the steep slopes cut by the large excavations that have already occurred on 96 Lincoln Lane, and actually on Lot 7, which is the house which is not sold yet. This has been carved out quite drastically. Mr. Tersian would like to see the earth and landscape restored as much as is practical, realizing that already a lot of damage has been done, to its original state.

It concerns Mr. Tersian that the applicants want to take more earth out when so much has been removed so far without permission from the Board or input from the abutters. In addition to the lack of professional attention that was given to the excavation and indiscriminate cutting of trees, it would be beneficial if plans for the remedial work be submitted which provide some details of plantings, etc.

Mr. Tersian quoted from Article 5, Section 6, which states that earth removal permits should be granted only if the Earth Removal Board shall rule that such removal is not detrimental to the neighborhood. He felt it should be noted that the homes in the surrounding neighborhood have largely preserved their natural landscape and sloping hills. All the houses around this area have their hills and slopes. What has already taken place is in stark contrast to the rest of the neighborhood and the neighbors certainly don't any more earth removed than that which was taken away.

In addition, Mr. Tersian said the stability of the recently cut slopes is in question since there has been a huge amount of earth removed at 96 Lincoln Lane and Lot 7 which is another new home. Those slopes have been covered with wood chips and already the wood chips are eroding. He said anyone who walks on that slope will erode it. From the pictures he pointed out the slope with the wood chips.

Ms. Berman asked who this is unsafe for.

Mr. Tersian replied for anyone walking, any children, etc.

Mr. Jadul said that is private property. It is his property.

Mr. Tersian said the wood chips actually prevent groundcover from growing. This site actually borders town property and many people walk this area with their children and pets. To him the angles are still quite steep. He would suggest a buffer of 25 feet and would cite Section 6f of the Earth Removal Bylaw where the proposal should consider the distance of excavation from neighbors, etc.

Article 5, Section 5, talks about what is going to be removed. Mr. Tersian said it turns out his estimate was low as he looked at the elevations of the plan submitted this evening. It seems like 4,000 cubic yards has already been removed, which is quite a bit of earth. There's an actual 6,000 cubic yards that could be removed. As far as the Given property, 500 cubic yards obviously is a very low number. As an abutter, Mr. Tersian would first of all want to see that no more earth be removed and at least that some of this be restored back to the state where it was.

Mr. Phelps the original excavation was presumably done by the developer. Referring to Lot 7, he said if there is something that apparently has been done wrong, the developer is the one the Board should be talking with as well.

Mr. Tersian said the excavation was done by both the developer and the homeowners.

Mr. Given said once this was an issue, everything stopped, all the hauling stopped.

Mr. Phelps said he was trying to get into the point of what the developer may have done. All of these lots were cut into.

Ms. Berman asked Mr. Tersian if the property line from the top of the hill to his property line was 30 feet. Mr. Tersian said it was.

Ms. Berman said based on this there is 30 feet at the crest of the hill and the property line. However, no one is sure who moved what dirt.

Mr. Tersian said the Jaduls moved in early October.

Mr. Given said he moved in a year ago July.

Mr. Phelps said it appears Mr. Jadul came in and started moving the dirt.

Mr. Jadul said he wished that before he closed that he had asked Eligius Homes to do this project for us.

Mr. Phelps said if that were the case then the developer should have been the one to come to this Board.

Further discussion followed on who may have removed what earth. Pictures of the area were shown to the Board and audience.

Julia Euling, 55 Lincoln Road, abutter, was present to speak for herself and another abutter, John Waitkunas, 49 Lincoln Road, who was unable to be present this evening. She said as abutters who do feel emotional about what has happened, they are trying to stay within the law in an attempt to resolve the situation.

Ms. Euling said she was involved when the Earth Removal Bylaw was created in 1960 because of another situation which had occurred when a tremendous amount gravel was removed from the other end of the same ridge. She said the facts are the facts, and a certain amount of earth was removed from the property without a permit being granted to either the developer or property owners. She didn't quite understand how this happened because it was very obvious that there was a lot of gravel being trucked out. She said even after the town officials were alerted and the removal was ordered to be stopped by the Building Inspector, she had to speak with a trucker who was still removing earth.

She read a letter dated December 4, 2002 from Mr. Waitkunas who wrote to express his sadness and anger regarding the destruction of what was a beautiful forest on Lincoln Lane. The letter notes Mr. Waitkunas' feeling that the developer and town officials were negligent and responsible both ethically and legally for knowingly violating the Town's Bylaws. He believed that the request for additional earth removal should be denied and the land be restored back within the limits of the law at the developer's expense. This letter was submitted as part of the record.

Ms. Euling said she felt that so much earth has been removed, whether before or after the transfer of the property. It seemed to her that the earth that is there now can be used to repair the hill. She said 2 ½:1 is a very steep slope. She would think the slope should not be so steep, from the homeowners' point of view as well as the rest of the neighborhood. She said there is sand

there and that sand is profitable to the gravel company and the amount of sand that's going out constitutes a mining operation and is happening as a sideline to the development of the property.

Additionally, she said the hill is very valuable to all the residents, not only as a visual barrier between houses, but it is the "sponge" that holds the water for the wells. The neighborhood all has wells and needs this aquifer to maintain the water so the wells will always be full. That hill is extremely important to the wells and for recreation.

Whatever is decided, Ms. Euling said there has to be some guarantees, in the way of a bond or escrow account, to insure any project is completed correctly, with stabilization, since as the trees at the top were taken down, there is nothing to stop the water from eroding the slope.

Karen Pelto, 52 Lincoln Lane, submitted written comments to the Board. She wanted to voice her concerns not only for the amount proposed to be removed but also that which has already been removed. She believed both amounts should be determined. She noted that activities taken within the neighborhood that are subject to local, state or federal authority deserve particular scrutiny, due to the proximity to the Sudbury River which has been designated as a wild and scenic river.

Reading from her written comments, Ms. Pelto noted that the previously taken and proposed earth removal will be detrimental to the neighborhood for the following reasons:

- Loss of vegetated buffer between the expanse of new homes and existing residences
- Compromised integrity of the esker ridge, a natural feature that forms the backbone of Lincoln Lane and abuts Conservation land.
- Exacerbating stormwater runoff volume and loss of groundwater recharge associated with the shift from forest cover to residential lawn and uses. Following development of the lots, the Town of Sudbury installed a new storm drain to mitigate flooding of Lincoln Lane following any rainstorm.

Ms. Pelto requested these applications be denied and that the rear of the property be restored to as much of its original elevation and grade as practical and revegetated with in-kind oak and pine cover.

Susan Oliveira, 72 Lincoln Lane, abutter, said she, too, was not happy with what has been happening over the years. However, she said the Jadul property looks "pretty tough" right now and if they can do something to make it look better, she was all for that. She was saddened to see what is happening to the character and natural beauty of the surrounding these past few months since that natural beauty is what attracted her to move into this area. However, she was primarily concerned about water and that everyone all has enough water for the wells. She

would also want assurances that trees would be planted to try and restore some of the natural buffer that was lost.

Mr. Berman noted that Ms. Pelto mentioned that since these houses were carved out that there's been continual flooding in the area and the town had to put in a new storm basin.

Ms. Pelto said every time it rains there is flooding in the area of the catch basin coming from the hill.

Mr. Given wanted to rebut some of the comments made. He did not believe either he or Jadul have don't affected the ridge at all. He said the top ridge still remains in its natural state along the backs of both properties, and the abutters. He said they have taken great pains to stay away from it and will stay away from it further if that's what's required.

With regard to this path which has been enjoyed in the past, he assumes it runs through our properties and belongs to us. He said he would certainly allow them to walk through it, but it is their property.

Mr. Given would like to invite the Board members out and take a look at what's going on. He did not think there was a lot of excavating; everyone keeps inflating the amounts. He said we, as homeowners, stopped immediately when we heard that this was a problem with the town. There may have been a truck or two that went back and forth, but they had to restabilize the slope.

To justify what was going on with his neighbor, he said Mr. Jadul bought his house and they both were finishing it together. There was landscaping going on and the landscapers approached both homeowners saying they could can make them a deal they couldn't refuse, saying they could take a lot of the extra fill and leave both homeowners with some grass and extra land. We didn't think there would be an issue.

With regard to the mulch, Mr. Given said when he and his wife moved in they thought the slopes were drastic – the ones that we have. There is some mulch up to Lot 7A and his concern with the developer was that it was going to move and so far it hasn't moved at all. It was Mr. Given's opinion that the pitch has held up.

As to it being a glacial esker, Mr. Given said he and the Jaduls are maintaining that ridge. He did not believe this is stealing anyone's well water. This is on our properties and is something we want to do to our property. He didn't think it was stealing water that might run down the hill because the abutters still have their ridge. He said the water is going to melt and the snow is going to melt.

Mr. Given added that he knew that the Town Engineer will be taking a look at this and will consider the wells, and hopefully they'll consider the ridge in its future state.

Mr. Jadul said he felt like we're debating some common land. He said he moved in two months ago and paid a lot for this property, and does have rights as property owners. The only issue is to make sure that it's not affecting anybody else's property, which he felt both he and Mr. Given have some pains to do and spent a lot of money. The abutters estimated 4,000 has been already removed with another 6,000 to be removed. We paid an engineer to come out and he comes up with 5,600.

Ms. Berman said we'll ask Town Engineer to figure this out, but the number on your plan is 5,600 cubic yards.

Mr. Jadul felt one of the important points which should be determined by Town Engineer is that on the plan the squiggly line all around is ledge, not sand.

Ms. Berman said the Board can ask Town Engineer to go out and use the plan to determine what is where.

Mr. Jadul said he wanted to say he was sorry that the neighbors are all upset about the trees. However, he said he was not sorry he took them down since this is his property and he has the right to take them down.

Ms. Berman said because the Board got this plan which is essential for determining whether the applicants will be able to do what they are asking to do, and didn't see it before this evening, there can't be any decisions made this evening. The Town Engineer has got to review this and the Board needs his input.

Therefore, the Board will have to continue the hearing. However, there may be a procedural issue. Because of the way this was advertised with 96 Lincoln Lane as 800 cubic yards and 90 Lincoln Lane as 500 cubic yards proposed to be removed, there is also the issue of whether the hearing can continue or whether it has to be readvertised, since it the amount is clearly four times greater. She said the Board will need input from Town Counsel.

The Board agreed that the next meeting date will be scheduled for January 14, 2003. Depending upon the advice from Town Counsel as to procedure, the meeting will either be a continuance or a new hearing. The applicants agreed to provide a breakdown of the quantities proposed to be removed for each lot.

Mr. Tersian asked what happens with the amount that has been taken away.

Mr. Phelps said that would be taken up during deliberations.

Mr. Tersian said there is also the issue of the house on Lot 7 which has not yet been sold.

Anton Vermoy, 33 Lincoln Road, abutter, said he lives on the other side of the esker and looks down on the three houses. He said the topography of the area has been changed. It is a mess and needs to be improved and replanted. Mr. Vermoy was against just taking more earth out; he said that will not improve the situation. He also voiced concern for the wells in this area.

The hearing was adjourned to January 14, 2003.

Melinda M. Berman, Chairman

Richard L. Burpee, Clerk

Thomas W.H. Phelps

Elizabeth A. Taylor

Stephen A. Garanin

