

MINUTES
SUDBURY EARTH REMOVAL BOARD
WEDNESDAY, SEPTEMBER 17, 2003

The Board consisted of:

Richard L. Burpee, Acting Chair
Jeffrey P. Klofft, Acting Clerk
Stephen A. Garanin
Melinda M. Berman
Patrick J. Delaney III, Alternate
Thomas W.H. Phelps, Alternate

The meeting was called to order by the Acting Chair, Mr. Burpee.

Establish Earth Removal Board Rules

The Board was in receipt of a draft Rules document prepared by Mr. Delaney. Following review and discussion of the draft, with minor changes, it was on motion unanimously voted to adopt the Sudbury Earth Removal Board Rules as amended. A copy of this document is attached and is made part of the record.

Miscellaneous Business Items

ERB Case: 03-2 – Brian Jadul – 96 Lincoln Lane
ERB Case: 03-3 – Peter Given – 90 Lincoln Lane
Voting members present: Burpee, Klofft, Garanin, Delaney

The Board was in receipt of a letter dated August 29, 2003 from Brian Jadul. In that letter, Mr. Jadul took issue regarding compliance with Condition 14 which requires a report on water quality prior to submission of a performance bond and subsequent earth removal from the property.

It was the consensus of the Board that Condition 14 has not been met and that in previous meetings the Board has explained in detail what is required to fulfill the requirements of that condition. Further, it is the Board's opinion that the only remaining item is certification that the conditions have been met.

The following motion was made and seconded:

MOTION: "To send a letter to Brian Jadul informing him that a majority of the Board does not support his position that Condition 14 has been met, that at previous meetings the Board has explained in detail what is expected to fulfill the requirements of that condition, to note that the only remaining item before the Board is certification that the conditions have been met, and to inform him that the Board has voted to allow a 60-day period for compliance with Condition 14, after which the permit will expire."

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And it was further voted to send a letter to Peter Given informing him that Condition 14 has not been met and to allow a 60-day period for compliance, after which his permit will expire.

VOTED: In favor: 3 (Klofft, Garanin, Delaney) Abstain: Burpee

There being no further business, the meeting was adjourned.

Richard L. Burpee, Acting Chair

Jeffrey P. Klofft, Acting Clerk

Stephen A. Garanin

Melinda M. Berman

Patrick J. Delaney III, Alternate

Thomas W.H. Phelps

RULES OF THE EARTH REMOVAL BOARD
SEPTEMBER 2003

A. Meetings and Hearings

1. Meetings and hearings shall be held at the call of the Chair or Clerk as the need arises. A quorum shall consist of four (4) members.

2. Meetings and hearings shall be conducted by the Chair, or in the event of his or her absence, by the Clerk.

3. First notice of public hearing shall occur not less than 21 days prior to the hearing

4. A Decision of the hearing shall be rendered according to the Earth removal Bylaw. Decisions shall be voted in a meeting which is open to the public. Except in cases of emergency, the Town Clerk shall be notified of said meeting at least 48 hours in advance in accordance with the provisions of M.G.L. 39, Section 23A.

5. A separate application shall be required for each matter requesting an earth removal permit.

Fee schedule:

Initial permit application.....\$100.00
Application for reconsideration of permit denials ...\$100.00

6. Applications for reconsideration of permit denials, or of one or more permit conditions, within two years shall be accepted only by a four fifths majority vote of the Board. The Board shall determine that the application contains specific and material changes in the characteristic of the structure or use that caused the original denial or condition.

7. The Board encourages applicants to submit engineering drawings in C-size format or smaller:

C size = 22X17 inches – 12 copies are required to be submitted
B size = 11X17 inches – 12 copies are required to be submitted
A size = 8 ½ X11 inches – 2 copies are required to be submitted

8. All applications must include plans that show existing and proposed grade, volume of earth to be removed, the removal schedule and a detailed landscaping plan for all slopes that are a subject of the plan.

9. All public hearing materials shall be submitted six (6) days prior to a hearing continuance. Any substantial materials not submitted within that time frame will not be considered for that hearing.

10. Any Board member or Alternate shall disqualify himself/herself in any case which represents a conflict of interest.

B. Conduct of Hearing

1. The Chair shall call the hearing to order.

2. The Clerk shall read the Notice of Public Hearing and the Chair shall determine if all legal requirements have been complied with and the hearing is legally in session.

3. The people attending should be informed of the requirements of the law and what must be proved to substantiate the granting of a permit. Those attending should be informed that the petitioner may request that the Board accept a withdrawal of the application at any time during the individual hearing.

4. The Board shall hear the petitioner or authorized representative.

5. The Board may hear those in favor and those against each petition.

6. The Board may hear from Associate members of the Board who may be in attendance and wish to speak.

7. Speakers shall address the Chair. The Chair shall keep order and may have an objectionable person removed from the hearing by the Sudbury police.

8. The Chair may hear testimony from non-residents at his or her discretion.

9. The Board may collect information itself which should be introduced as evidence at the hearing if pertinent to the Board's decision.

10. A hearing is public and is opened and closed by the Chair of the Board and not by any motion from the floor.

11. The Chair may administer oaths, summon witnesses, and call for submission of legal briefs and other documents.

C. Deliberation After the Public Hearing is Completed

1. A motion is made and seconded to approve or deny the application. Such motion shall not restrict the scope of discussion except where agreed to by the entire Board.

2. The motion is then discussed by the Board.

3. A vote is taken by the Board, said vote to be recorded as to the number voting in favor and/or opposition to the petition. A simple majority is required to approve an application

4. The Decision may reference the plan submitted by the applicant.

5. Any distances or areas involved in the Decision shall be accurately stated in the Minutes and also in the Notice of Decision.

6. All permits granted by the Board shall expire 60 days after the permit is voted, or within any alternative period as voted by the Board, if any conditions which are identified in the decision as necessary prior to any removal of earth are incomplete.

7. Any permit which has not been substantially exercised shall expire one year after the final decision is voted, or within any alternative period as voted by the Board.

8. All conditions of the permit shall be completed within one year after the start of earth removal or within an alternative period voted by the board. Work left incomplete or condition(s) left unmet after this period shall cause any performance bond to be forfeited to the Town. The Board may employ forfeited funds to restore partially altered landscape as necessary for public safety or to eliminate visual nuisance.

9. The Notice of Decision shall state that any action of the Board is concerned only with the Earth removal Bylaw and the applicant must satisfy other town, state and federal regulations which may apply.

10. Participation in the deliberation of the Board after the completion of the public hearing shall be limited to those persons constituting the Board unless, at the discretion of the Board chair additional clarification or information is required.

11. Other attendees of the hearing may remain in the hall during deliberation, but may not participate unless, at the discretion of the Board chair additional clarification or information is required.

12. Whenever practicable, all deliberations shall terminate no later than 10:30PM.

D. Restrictions the Board May Consider

1. The decision may include conditions which must be completed prior to any removal of earth. These may include, but are not limited to, soil or groundwater studies and tests.
2. The decision may include conditions which control the manner of removal of earth. These may include, but are not limited to, hours of operation, equipment, dust control, erosion control, and timeframe.
3. The decision may include conditions that require activities after the removal of earth including but not limited to landscaping, erosion control and periodic testing of groundwater for contamination.
4. A performance bond shall be required at the discretion of the Board.

E. Minutes and Notices

1. All Board members sitting at a hearing shall sign the Minutes whether they voted for or against a motion.
2. It is the rule of this Board that members sitting at a hearing should make every effort to sign the Minutes within 48 hours after being notified of their completion by the Secretary.
3. The Minutes shall be filed with the Town Clerk, with copies sent to the Planning Board, Building Inspector, Town Engineer, Earth Removal Board and Zoning Board of Appeals members.
4. The Notice of Decision shall be mailed to the applicant.
5. The Notice of Decision shall be mailed postage prepaid to those deemed by the Board to be interested parties

F. Miscellaneous

1. The Board is governed by:
 - A. Bylaws of the Town of Sudbury
 - B. Massachusetts General Law
2. The Board may prepare an Annual Report to be available for printing in the Town Annual Report.

3. These Rules may be brought before the Board at any time for revision, correction or modification by a simple majority vote.

4. One copy of the Board's Rules shall be filed annually with the Town Clerk, one copy given to Town Counsel, Board members, and one copy filed as a record in the Board's file

5. Applications will not be accepted as filed until accompanied by original and proposed contour map prepared by a registered land surveyor, volume of earth to be removed, landscaping plan and proposed method of removal. The Clerk of the Board is deemed as agent to determine whether the application has satisfied the requirements for acceptance.

6. Each member is encouraged to visit the locus of each application prior to the public hearing.

7. The Board shall hold a business meeting as necessary at which meeting the Chair and Clerk for the forthcoming year shall be elected by majority vote of the Board. The Chair and the Clerk shall be members of the Board. Additional business meetings, properly posted, shall be called as needed.

EARTH REMOVAL BOARD
