

Excavation of Material Study Committee

February 1, 2016 Minutes

Prepared by: Lee Hartmann

These minutes are not verbatim – they are staff’s interpretation of what took place at the meeting. – Open Meeting Law – Section III.

Committee Members in attendance: Brian Wick, Edward Angley, Russ Appleyard, Marc Garrett, Betsy Hall, David Malaguti, Jack Risso and Richard Serkey.

Staff Member: Lee Hartmann

Ms. Hall opened the meeting.

Minutes

Mr. Angley moved to accept the minutes of January 25, 2016. Mr. Risso seconded the motion. The vote was 6-0-1, with Mr. Serkey in abstention.

Ms. Hall welcomed Mr. Peter Conner and Mr. David Peck of the Zoning Board of Appeals to the meeting.

Mr. Conner said that the most difficult issue with gravel removal is whether a ZBA decision stands up in court. Many folks do not understand what the bylaw says and the limits of the ZBA’s authority. The ZBA is sympathetic to the concerns of abutters but it has to enforce the bylaw. The ZBA does hope that some things in the bylaw change. In addition, it is frustrating to deal with the long excavation timelines of many of these permits. It would be helpful if the bylaw included greater setbacks and a maximum allowed cut.

Mr. Peck said he would like to see final side slopes that blend into the environment. He supported decreasing the side slope limitation from 3 to 1 to 4 to 1, knowing that would increase the amount of material that would have to be removed. Safety is also critical. Fencing should be required at the top of high slopes. He also suggested requiring terracing for every 15 or 20 feet in cut height. He thought that commercial gravel removal operations without an end use should be allowed in the Rural Residential Districts. He doesn’t like it when a petitioner proposes to removal gravel under the pretense of some end use such as an ADA walkway. To avoid this issue the Town should make gravel removal allowed by special permit in the Rural Residential District. Gravel is a resource. We have a lot of it in town and it is a necessary commodity for society.

Mr. Malaguti said that the committee is trying to build a better bylaw and asked the guest what they would suggest.

Mr. Conner said that setbacks could be increased especially in residential areas. He also mentioned requiring a five, ten or fifteen cent per cubic yard payment for the maintenance of public roads.

Mr. Hartmann said such payments have to be mutually agreed to and negotiated on a case by case basis. Requiring the payment in a bylaw would constitute an impact fee which is illegal in Massachusetts. He noted that such fees are allowed in 39 other states.

Mr. Wick thanked Mr. Conner and Mr. Peck for attending the meeting.

Mr. Hartmann said that on behalf of the Committee he will send drafts of new language (as they become available) to the Zoning Board of Appeals for comment.

Mr. Serkey noted that setting a maximum number of trips per day is a balancing act. The fewer the trips the longer it will take to complete the project.

Mr. Hartmann said that the existing bylaw has flaws and a revised bylaw needs to be legally defensible. When a permit is denied we should feel confident that the courts will uphold that decision.

Mr. Serkey asked Mr. Peck how a commercial gravel operation meets the intent of the Rural Residential Zone.

Ms. Hall felt that the following Dartmouth's performance guarantee language was good.

In order to receive a permit for the removal of earth minerals and soils, the applicant shall provide a performance guarantee, whether in the form of a bond, a deposit of money or negotiable securities, a letter of credit from a lending institution, or some other form of security that is approved in advance by the Board. The Board shall be listed on said performance guarantee as a party to be notified in the event of any change in the status of the same. 67-9

Calculating Performance Guarantee

Such performance guarantee shall be calculated by the Board as follows:

- (1) The amount of the performance guarantee for a project shall be based upon the permitted removal area(s), with said area being rounded to the nearest one half (1/2) of an acre; and
- (2) The amount per acre shall be established by the Board on a case by case basis, based upon the impact of the removal activities upon the project parcel, the extent of restoration work that will be needed at the conclusion of removal activities in order to meet the restoration requirements of Subsection 67.10.1, and the mitigation of any safety hazards that may arise during such restoration.

Subsection 67.8.2 Release of Performance Guarantee

Performance guarantees can only be released upon completion of restoration as required by Subsection 67.10.1, as determined by a majority vote of the Board at any meeting at which a quorum is present; provided, that when stone reinforced slopes or retaining walls were utilized in constructing the grading of the removal area, any such release additionally shall first require that a professional engineer that has been licensed by the Commonwealth of Massachusetts certify in writing that said slope or wall construction has met the minimum designs standards that were approved for such construction by the Board in issuing the permit.

Any request by the operator for the release of the performance guarantee must be in writing along with supporting documentation; provided, that an operator may request a partial release of the performance guarantee in response to the completion of removal activities at, and subsequent restoration of, only a portion of the removal area(s). In the situation of a partial release, the operator must submit an as-built plan of the removal

area(s) that will remain open in order to demonstrate that the remaining performance guarantee amount is adequate to cover the remaining restoration costs.

Subsection 67.8.3 Continued Validity of Performance Guarantee

For a permit to be valid, a performance guarantee must be provided in the amount that is specified in the permit, must be given in the name of the applicant and made payable to “the Town of Dartmouth Soil Conservation Board”, and must remain valid for twelve (12) months after the conclusion of the term of said permit, including any renewal terms, unless a longer period is required pursuant to Subsection 67.10.1.

Mr. Peck said that gravel removal could be allowed by right with a 200 foot setback and some requirement for maintaining existing vegetation and topography of 40 or 50 percent.

The Committee began discussing possible language.

Mr. Angley suggested the following review process:

- A. Area for outright prohibition?
- B. Possible use limitations
 - a. Gravel removal related to agriculture
 - b. Gravel removal in commercial and industrial areas
- C. Possible exemptions
 - a. 2500 CY
 - b.
- D. Definitions

Mr. Garrett stressed the need for good definitions including soil removal, mulch, off-site removal of material, mining, soil removal and excavation.

Mr. Malaguti supported using a zoning bylaw. A soil board may be a good idea but it will only be as good as the individuals volunteering.

Mr. Garrett supported a general bylaw with a soils board.

Mr. Hartmann noted that with a general bylaw there will be no grandfathering. He also questioned how or if a new committee would be staffed.

The committee agreed to hold its next meeting on Monday, February 8th at 5:30 p.m.

The meeting was adjourned at 7:10 p.m.

Respectfully Submitted,

Lee Hartmann, AICP
Director of Planning & Development

Approved: