

MINUTES OF THE PUBLIC HEARING CONTINUATION
SUDBURY EARTH REMOVAL BOARD
THURSDAY, APRIL 22, 2003

The Board consisted of:

Richard L. Burpee, Acting Chairman
Stephen A. Garanin, Acting Clerk
Thomas W.H. Phelps, Alternate
Patrick J. Delaney III, Alternate

The public hearing was reconvened by the Acting Chairman Mr. Burpee who reported that Chairman Melinda Berman sent two letters to Eligius Homes expressing the concern of the Board that Eligius in the construction of the three homes had removed an excessive amount of earth without a permit. In response to the two letters, Peter Karassik, Eligius Homes, left a message with the ERB Secretary explaining that there was going to be a meeting with Town Engineer and that Eligius planned to address some of the drainage concerns by working with Town Engineer to address the drainage issues on the street, to do some patchwork around the manholes to and put in a new catch basins. This information was emailed to the ERB members by the Secretary.

Mr. Burpee said the ERB met last Thursday, April 17, 2003, in an Emergency Session to consider whether to issue a cease and desist order in light of the Board's concern about the removal of earth without a permit. However, in light of the response received from Eligius indicating that they intended to address some of the concerns on a somewhat informal basis with Town Engineer, the Board decided to take no action and to continue the investigation to this evening just to try and ascertain whether Eligius was following through on its representation and was going to address these issues.

Mr. Garanin reported that he was out to the site this evening and observed that two storm drains were put in – one in front of 90 Lincoln Lane and one just to the west of 102 Lincoln Lane. He said there is machinery there and it looks like there is going to be additional grading done. There are signs that Eligius has started to do some work. There were wood chips in back behind the retaining wall.

Mr. Phelps said he met with Town Engineer who said Eligius had started working up there. The intent was to finish up before this evening; however, because of the weather, Eligius might not have been able to start the reseeding process. Town Engineer seemed confident that Eligius will work with him. It was Town Engineer's impression that Eligius has taken some remediation action based on pressure from the ERB in the two letters.

Based on the reports, Mr. Burpee proposed the investigation be closed. The Board agreed.

Ms. Euling and Mr. Terzian requested they be allowed to speak.

Mr. Burpee suggested any remarks be brief.

Ms. Euling cautioned the Board to be very careful to follow through with Eligius. She said there must be vegetation on the hill to hold it together.

Mr. Terzian said Eligius took a lot of earth from the site. It doesn't seem unreasonable to require shrubbery with topsoil.

In response to a question from Skip Williams regarding the April 17 meeting, Mr. Burpee said the Board met to consider whether to issue a cease a desist order, and after that meeting, and with input from Town Counsel, decided the best resolution was to allow Eligius to work out the issues with Town Engineer, which appears to have happened. He said no other action has been taken.

Anton Vernooy said Eligius is addressing little concerns which is not the major problem. The major problem is lack of earth and vegetation.

Mr. Phelps said the erosion control should be handled by reseeded. He agreed that follow up is very important and Bill Place will monitor that situation.

A motion was made, seconded and unanimously voted to close this hearing and investigation.

Richard L. Burpee, Acting Chairman

Stephen A. Garanin, Acting Clerk

Thomas W.H. Phelps, Alternate

Patrick J. Delaney III, Alternate

April 15, 2003

Peter T. Karassik
Eligius Homes Company Inc.
329A Boston Post Road
Sudbury, MA 01776

RE: Earth Removal Board Case 03-1
90, 96, 102 Lincoln Lane, Sudbury, MA

Dear Mr. Karassik:

The Earth Removal Board has been made aware of a situation of excessive removal of earth from lots developed by Eligius Homes at 90, 96 and 102 Lincoln Lane. Pursuant to Section 6 of the Earth Removal Bylaws, this Board is hereby issuing this formal letter of reprimand in response to the actions of Eligius Homes Company Inc. in the course of work on the aforesaid lots.

It is the opinion of this Board that Eligius Homes should have requested a permit be issued by the Earth Removal Board prior to the removal of earth from the lots on Lincoln Lane. In a letter dated January 31, 2003, Town Engineer William Place has stated that the calculated amounts of material removed from the lots was as follows: Lot 7, 102 Lincoln Lane: 3,248 cu. yd; Lot 8, 96 Lincoln Lane: 4,033 cu. yd.; Lot 9, 90 Lincoln Lane: 1,068 cu. yd.

The removal of earth from these lots was in excess of that displaced by the homes resulting in unnecessary topographical changes and changes that may be deemed detrimental to the neighborhood. Specifically, this Board is concerned about runoff from the roofs and driveways. Some of this is being collected by a leaching basin at 90 Lincoln Lane. Town Engineer has recommended that in order to prevent further surcharging of this basin, dry wells for the roof runoff and retention basins to the rear of the lots should be installed to provide further recharge.

Additionally, Mr. Place has informed us by way of another letter dated February 13, 2003 that "On several occasions, we requested Mr. Peter Karassik, president of Eligius Homes, to install a drainage system to control the runoff from 90, 96 and 102 to prevent flooding of Lincoln Lane. After several unsuccessful attempts, the Town installed a leach pit at 90 Lincoln Lane." Clearly, the Town should not have incurred the cost of this restoration attempt. Throughout the course of the winter, the Board has been made aware of further erosion to the road that is attributable to the development of the lots at issue.

This Board is requesting that you agree to meet with us, along with the Town Engineer and the Building Inspector, in order to have a good faith discussion about the development process of

these homes, the outstanding issues of drainage and road deterioration and your willingness to work with the Town to ameliorate the situation to the satisfaction of the Town.

We look forward to your immediate response to this letter.

Very truly yours,

Melinda M. Berman
Chairman, Earth Removal Board

cc: Town Counsel
Town Engineer
Building Inspector
Town Clerk

April 15, 2003

Peter T. Karassik
Eligius Homes Company Inc.
329A Boston Post Road
Sudbury, MA 01776

RE: 102 Lincoln Lane, Sudbury, MA

Dear Mr. Karassik:

The Earth Removal Board has been made aware of an ongoing violation of our Bylaws at 102 Lincoln Lane. As you are the owner of this property, we are requesting that you apply for a permit for earth removal from this lot in order to put the property in compliance.

In a letter to this Board dated January 31, 2003, Town Engineer William Place informed us that approximately 3,248 cu. yds. Of material was removed from this lot in the course of the construction of a single family residence on the lot. It is the opinion of this Board that this is an amount of material in excess of the amount that would customarily be displaced by the building, walk, drive, or similar appurtenance (See Article V(A) s.4) This Board is concerned by resulting issues of drainage and road deterioration.

We are aware that there is a signed Purchase and Sale Agreement concerning this property and that the scheduled closing is imminent. Town Counsel has informed the Board that we have the authority to record a cease and desist order at the Registry of Deeds if we felt that it was

necessary to do so. The Board is eager to resolve this matter without detrimental repercussions to any of the parties involved.

We ask that you contact the Board upon receipt of this letter in order to begin a dialog that will result in a satisfactory outcome for the Town, for Eligius Homes, and for the immediate neighborhood.

Very truly yours,

Melinda M. Berman
Chairman, Earth Removal Board

cc: Town Counsel
Town Engineer
Building Inspector
Town Clerk

BRIAN JADUL & PETER GIVEN
90 & 96 Lincoln Lane
ERB 03-2 & 03-3

MINUTES OF THE PUBLIC HEARING
SUDBURY EARTH REMOVAL BOARD
TUESDAY, MARCH 11, 2003
TUESDAY, APRIL 22, 2003

The Board consisted of:

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

Notice of the public hearing was published in the Sudbury Town Crier on February 13 & 20, 2003, posted, mailed and read at this hearing.

The public hearing convened on March 11, 2003 and was continued to April 22, 2003 without any testimony having been taken.

The petitions before the Board are as follows:

Case 03-2 – Brian & Dawnmarie Jadul – to remove approximately 2,936 cubic yards of earth from 96 Lincoln Lane

Case 03-3 – Peter & Annette Given – to remove approximately 2,359 cubic yards of earth from 90 Lincoln Lane

Mr. Burpee, Acting Chairman, read a letter from Town Engineer dated February 13, 2003, which notes the following:

1. The plan submitted by Thomas Land Surveyors shows regrading on 102 Lincoln Lane. An application for earth removal has not been submitted for that property. The plan should be revised accordingly.
2. Trucks should enter and exit the premises through the public portion of Lincoln Lane, not the private portion.
3. Truck route should be Lincoln Road to Concord Road and not via Plympton Road.
4. A depression should be constructed at the rear of the lots to prevent runoff from entering Lincoln Lane, the size of which should be large enough to control one inch of runoff.

BRIAN JADUL & PETER GIVEN
90 & 96 Lincoln Lane
ERB 03-2 & 03-3 Page 2

5. Six inches of loam should be replaced over all exposed slopes to support vegetation. The exposed areas should be stabilized with junipers or other suitable ground cover as determined by the Board.
6. Applicants should be required to post a performance bond in an amount sufficient to cover the cost of removing the material and restoring the area to a condition as determined by the Board.

The Board was also in receipt of an email reply from Town Engineer in response to Mr. Jadul's email question as to whether his plan would negatively impact the aquifer. Town Engineer's response was that he could not think of any; there would be no loss in recharge to groundwater.

Mr. Burpee asked Mr. Jadul to proceed, after which Mr. Given will be asked to make his presentation.

Mr. Jadul asked that this application be viewed as a clean slate and not a continuation of the investigation. He said all the earth that is proposed to be removed is earth that he owns. He would like to make the hill behind the house safer and practical for his family, and more aesthetically pleasing.

With regard to concerns voiced by the neighbors; i.e., the aquifer, wells, and dry wells, Mr. Jadul said he was not adding any impervious areas, or restricting water seepage. In his conversations with Town Engineer, Town Engineer said given the increase in a flat sizeable flat

back yard and the general bowl shape of the hill, what is being proposed may even retain more water and actually help the aquifer. Therefore, there is no effect on the aquifer with this plan and there doesn't seem to be any effect on the water quality.

Mr. Jadul said he hired a licensed civil engineer to draw up the plan to address the neighbors' concerns with regard to erosion. A 2 ½ :1 slope is proposed which means that this slope will be even less steep than previously approved lots in this town. This slope is enough to control erosion. Thomas Land Surveyors also recommended that the hill be mulched. If the hill was to be steeper, Thomas Land Surveyors would have recommended ground cover. Given the slope, mulch will be enough for erosion control.

It was mentioned that there is a conservation walking trail on the ridge. Mr. Jadul said this is false. There is no approved walking trail for any conservation related land within 100 feet of this property. The Conservation Coordinator visited the site back in October 2002 and concluded that nothing was being done within the conservation land's buffer zone.

Many neighbors voiced opinions that the hill is very ugly and unsafe, and something has to be done. Mr. Jadul said he couldn't agree more about the looks of the hill right now.

BRIAN JADUL & PETER GIVEN
90 & 96 Lincoln Lane
ERB 03-2 & 03-3 Page 3

However, he said when the project is finished, it will dramatically improve the safety of this land and the beauty of the ridge as well.

To summarize, Mr. Jadul said there will be no effect to the aquifer, and it could even help the aquifer. Erosion of the hill will be a non issue with the proposed slope. David Terzian asked for a 25 foot buffer from his property line, we're giving him 30 feet. Water runoff will be greatly improved for two reasons; the hill will be less steep and there will be more flat land to trap the water before it even gets to go down into the street. Once the back yard is grass, the runoff will be fully contained. The area will be much safer, more aesthetically pleasing for all, possibly increasing neighborhood property values, and the proposed slope will encourage growth and trees. Therefore the plan is not detrimental to the neighborhood but is actually beneficial to all.

Ms. Jadul said they plan to hire a landscape architect to help them come up with a plan for landscaping the back hill.

As a point of order Mr. Phelps said this is a new hearing where the applicants have addressed other issues but haven't yet heard anything from the neighbors. He felt the public statements from the prior applications should be incorporated into this hearing.

The Board agreed as did Mr. Klofft who was in attendance for the first time. He said he had read the backup information provided.

Mr. Phelps also did not feel the Board needed to hear a lot of the same arguments that were heard previously.

Mr. Delaney asked how difficult would it be to have a landscape plan developed since this could be an important part of the Board's consideration.

Mr. Jadul said the hill will be landscaped. However, to hire a landscape architect to come in and look at the area is expensive. Ms. Jadul added that they have to see what they can afford, but it is definitely the next step.

Mr. Delaney said the Board doesn't have to know what will be planted in minute detail. They would like to get a feel for the fact that there is going to be landscaping and approximately where it is.

The proposed slope average was discussed. Mr. Delaney felt the word "average" leaves it open as to what the steepest part would be. He felt this should be addressed in the deliberations.

BRIAN JDUL & PETER GIVEN
90 & 96 Lincoln Lane
ERB 03-2 & 03-3 Page 4

Referring to Town Engineer's letter one of the conditions suggested was that a depression should be constructed at the rear of the lots. Mr. Delaney would suggest that this condition be included should the plan be approved. With regard to Town Engineer's suggestion for 6 inches of loam over all exposed areas, Mr. Delaney was not sure this was enough. He said this also should be discussed during the deliberations. He said it has been his experience that at least that much will be needed.

Mr. Klofft said he would have a problem with mulch simply because mulch breaks down and degrades so quickly that in four years time the hill will be back to the raw subsoil which will be problematic. He said nothing is going to naturalize in the mulch because it cannot hold enough of the nutrients to sustain anything.

Mr. Jadul believed the mulch would be sufficient with the slope as proposed. Further discussion followed on this issue.

Mr. Delaney said the main concern is to satisfy the Board and the neighbors that this earth removal is acceptable, and the secondary consideration is the treatment.

Mr. Garanin said the first plan showed the contours running into 102 Lincoln Lane. He asked if these will be redrawn.

Mr. Jadul said it is not planned to redraw the plan, but there will be no work on 102 Lincoln Lane.

Mr. Garanin said at some point Board is going to need to see that the contour lines are not running into 102 Lincoln Lane.

Mr. Klofft said following the contours on the plan, some of them line up well with 102, Others line up poorly, which if followed, will lead to some fairly steep areas. Some of this can be graded and modified with the arc of the curve, but this should be shown on the plan. He didn't see this as a major redrawing; however, as it stands there are some gaps which get pretty big.

Mr. Given presented his plan which he said follows along the lines of what was presented by Mr. Jadul. He said he never thought there would be such an outcry from the neighbors and he did not think there were grounds to their arguments.

Mr. Burpee asked whether Mr. Given also did not have a landscape plan. Mr. Given said the plan submitted is what was developed collectively between himself and the Jaduls.

BRIAN JADUL & PETER GIVEN
90 & 96 Lincoln Lane
ERB 03-2 & 03-3 Page 5

Mr. Burpee asked whether the intention was to work collectively on developing a landscape plan for any vegetation that may go on the property.

Mr. Given said both he and the Jaduls would develop their own backyards. He said they just basically split the expenses in a common interest for the plan. He has not determined the type of vegetation, if anything, which is going to go on the slope.

Mr. Burpee opened the hearing for public comment requesting brevity and to limit comments to new information or highlight salient points

Mr. Terzian said he didn't object to recontouring the hill, but there should be a landscape plan. He said the landscaping in the Bylaws is supposed to protect the interests of the neighbors. He would hope there would be no more removal; that the applicants be allowed to recontour with some guarantees as to what it will look like.

Further discussion ensued with regard to plantings on top of the hill and the slope.

Karen Pelto said these were new proposals, but not necessarily a clean slate. She felt to even entertain the thought of more earth moving from this site is perpetuating the violation; that the removal of earth that's occurred so far and that which is proposed is well in excess of a reasonable use of these properties. She would prefer to stabilize and reshape what's left. She agreed that the hill is a mess, but it should be fixed, and not create a wholesale change in topography by essentially rearranging the esker. If the current proposal is granted,

approximately 13,500 cubic yards will have left these properties. To her, this indicates it is well in excess of the intent of this Bylaw. The current proposal which is about 5,000 cubic yards translates into 360 trucks. She said while it may result in increased property values, it decreases the quality of life for this particular neighborhood.

Ms. Pelto felt the topography is the issue and is the reason the Bylaw exists – to protect the natural features of the landscape. The resulting topography in the plan is also important because this influences directly the type of plantings that are possible to remedy this site. She agreed that loam, not mulch, should be required; that the neighbors' interests go beyond erosion, they go to vegetation. She would also urge that any vegetation be consistent with the existing vegetation – and not distinct.

As a procedural comment, Ms. Pelto said many of the questions that the Board has asked would likely result in revisions to the plan. As those move forward, she would request that they are constantly available to the public to look at and review.

Mr. Phelps said this Board felt that the developer should have applied for an earth removal permit. This doesn't mean that this Board would not have granted a permit. It could not

BRIAN JADUL & PETER GIVEN
90 & 96 Lincoln Lane
ERB 03-2 & 03-3 Page 6

be said that the land is in violation because the Board didn't rule that it was in violation. It might have been in violation, but Eligius Homes didn't apply for a permit.

Skip Williams said during earlier hearings the residents called for a formal hydrologist study of the area and the effect on the water supply. He wanted to make another request that the town look into the hydrology of this site or at least rule that it is the responsibility of the parties seeking the permit or the town so the residents don't have to go through this expense of a study.

Dennis Mortimer, 85 Lincoln Road asked how long it takes for 360 trucks to remove earth. He said he is the closest house to this earth removal by truck and the trucks have to go right by his house. Also, he said the asphalt at the corner of his lot was completely torn up during the course of the other earth removal and there was trash thrown on the street by the truckers that he had to pick up. He wanted a sense of what the Earth Removal Board's obligation is to monitor these trucks going by. He said he could deal with it for a week, but not longer.

Mr. Phelps said this Board is very concerned about the trucks – as to where and when they go, whether they're covered, etc. This will be addressed during the deliberations.

Mr. Phelps asked Mr. Jadul whether he considered various options or whether he decided the hill had to go because he wanted to put in a swimming pool.

Mr. Jadul said everyone has an opinion on what we should do. He said he wants to plant something in the back and make a back yard. He said this is our land and back yard and felt this plan would not have an environmental impact on the neighbors. He agreed to look into the issues of trucking and hopefully this will be done as soon as possible.

Mr. Klofft felt the contour line as drawn seems to be steeper than is necessary – there are different ways to cut the curve of the line. He asked whether Mr. Jadul considered other plans that would let him move even less soil and which might ameliorate some of the filtration issues that some of the neighbors have as well as some of the potential aesthetic issues, which would achieve what is desired, which is more usable flat land in the yard, but perhaps not quite as extreme as what exists here.

Mr. Jadul described how he arrived at his plan.

Mr. Phelps said the plan looks like someone just drew a circle; no one thought about aesthetics. Right now, he said it looks like a ball park with your neighbor (Given). It doesn't look like anyone really looked at this plan very carefully. He said this Board will be concerned with landscaping and the protection of the land.

BRIAN JADUL & PETER GIVEN
90 & 96 Lincoln Lane
ERB 03-2 & 03-3 Page 7

Mr. Jadul said he spoke with Town Counsel as to his rights as a landowner, and was told that as long as there is no detriment to the neighborhood and the work is done within the property lines, he was well within his rights.

Mr. Klofft said in order to do that Mr. Jadul would have to push it around or limit the amount that is removed. He said at some point all property owners give up certain rights in order for the betterment of the community. The Bylaws, including the Earth Removal Bylaw, exist to insure a certain level of continuity. This is Mr. Jadul's land and there are some rights to do something with it; however, when you get to the point of the kind of scope we're talking about, there are bylaws that apply and restrict you in some ways.

Mr. Jadul said that is why he was trying to do everything he could to make sure it's done aesthetically and not be detrimental to the neighborhood.

Mr. Klofft said the situation has to be improved, because it's unsafe and incredibly unpleasing. He felt the plan was more than he was comfortable with at this point – the amount that's going out and how far back. Also, it does raise questions with regard to filtration which may or may not be an issue.

Addressing both applicants, Mr. Burpee said there is a concern as to whether the Board has a final plan without a landscape plan. While he has heard that this will be addressed, he personally felt uncomfortable being asked to approve a plan without knowing what exactly is

intended to be done with the slope if the Board allows removal the earth as requested. Recognizing that this has been a long process, he wanted to know if the Jaduls and Mr. Given wanted the Board to proceed and decide the application without that additional information. He felt it would be a problem if the Board doesn't know exactly what this is going to look like when it's done.

Mr. Jadul asked if groundcover and topsoil could be discussed now. Ms. Jadul asked what specifically did the Board need from them to rule on the applications.

Mr. Burpee said the Board is not comfortable proceeding without having a plan as to what the landscape is going to look like if the application was granted. He was offering the applicants the opportunity to continue this hearing to allow time to come back with a plan showing how this is going to be landscaped if the application is approved.

Mr. Jadul said he could do this now.

Speaking to process, the ZBA Secretary noted that when the Earth Removal Board approves an application, it does so in accordance with a plan and conditions. There is always a condition requiring a performance bond, the amount of which is set by Town Engineer upon review of the plan for the scope of work. In addition, the Board requires an as-built plan,

BRIAN JADUL & PETER GIVEN

90 & 96 Lincoln Lane

ERB 03-2 & 03-3 Page 8

prepared by a registered civil engineer or land surveyor which is submitted at the completion of the project and accompanied by a certification that the work has been completed by design. There doesn't seem to be a plan to start with to get to the point where there can be a certified as-built.

In addition, Mr. Phelps added questioned how Town Engineer could provide a bond estimate without knowing what the scope is.

Mr. Jadul felt the Board could add conditions for ground cover, etc. He felt his plan was sufficient.

Mr. Klofft said the plan shows the contour lines going into 102 Lincoln Lane. This needs to be revised. Thomas Land Surveyors will need to adjust some of the lines slightly to maintain the slope. I don't think it's much work but it should be done properly. He explained it to Jadul on the plan.

Mr. Jadul said he was willing to work with the conditions imposed by the Board. Ms. Jadul expressed her frustration with the amount of time it is taking to go through the process.

Mr. Delaney said the Board has made suggestions. The applicants can choose to accept those suggestions, modify the plan and provide the additional information, or they can stay with

the original plan. However, he said this Board is not comfortable with approving a decision based on what is before them.

He said the Board is looking for a revised topographical plan which does not show earth removal going over to 102 Lincoln Lane, a landscape plan, consideration of whether there is some way to do this and accomplish their objectives by removing less earth, or other alternatives. The revised plan must be done by a registered engineer.

Following further discussion, the Board & Mr. Given agreed to a continuance to May 7, 7:30PM.

Richard L. Burpee, Acting Chairman

Stephen A. Garanin, Acting Clerk

Jeffrey P. Klofft

Thomas W.H. Phelps, Alternate

Patrick J. Delaney III, Alternate

