



Boston, Massachusetts

The foregoing amendments to the zoning by-laws adopted under articles 42 and 43, and the amendments to the general by-laws adopted under articles 40 and 41, all of the warrant for the Westport annual town meeting that first met on April 4, 1995, are approved.

SCOTT HARSHBARGER  
ATTORNEY GENERAL

A handwritten signature in black ink that reads "Jonathan A. Abbott". The signature is written in a cursive style and is positioned above a horizontal line.

Jonathan A. Abbott  
Assistant Attorney General

June 16, 1995



# TOWN OF WESTPORT

Westport, Massachusetts

Tel. (508) 636-1000

816 Main Road  
Westport, MA 02790

Marlene M. Samson  
Town Clerk

Westport, MA 02790

April 11, 1995

The following articles were voted on at the reconvened Annual Town Meeting held on April 6, 1995.

## ARTICLE 40.

To see if the Town will vote to amend Article XI of the Town By-Laws to read as follows: **(Changes highlighted in bold)**

## ARTICLE XI

### SOIL CONSERVATION:

#### ESTABLISHMENT OF SOIL BOARD

- 1101.1 A Soil Conservation Board is hereby established in the Town of Westport for the purpose of regulating the removal of earth minerals from the land within the Town and enforcing the provisions of this By-Law. The Town Conservation Commission shall also serve as the Soil Conservation Board and administer the regulation of this Board. **Note: Please refer to Definitions 1101.15.**

#### SUBDIVISION AND PERMIT APPLICATION REQUIREMENTS

- 1101.2 Except as hereinafter provided, no earth minerals shall be removed from any land within the Town without a written permit from the Board, stating the land to which it applies, issued **after** a public hearing, a notice of which, setting forth the time, place and purpose of said meeting and the land with reference to which application has been made, shall have been published in an English language newspaper published in either Fall River, New Bedford, Dartmouth or Westport and serving the Town of Westport at least four (4) days prior to the date set for such a hearing.
- A. Any person wishing to remove earth minerals from a property or establish a storage or transfer site for earth minerals from a property in the Town shall file a formal application with the Board which application shall include the following specific information and supporting documentation:
1. The location of the proposed excavation, or storage or transfer site.
  2. The legal name and address of the owner of the property.
  3. The legal name and address of petitioner.



4. Names and addresses of all abutting property owners, including those lying directly across any streets.
  5. A plan shall be submitted showing the area to be excavated and the area to be restored. The plan shall show existing contour elevations, at 10-foot intervals, derived from U.S. Geodetic Survey maps, and proposed contour elevations, at 5-foot contour intervals, drawn from the U.S. Geodetic Survey map and signed and notarized by the preparer. The requirement for said plan may be waived by a majority vote of the Board in cases where the total area excavated or to be excavated does not exceed two acres.
  6. A proposed form of performance bond to be issued in an amount not less than \$5,000.00 per acre by permit.
  7. Photographs shall be required, before any permit or renewal will be issued by the Board, of sufficient size to show the area to be excavated for soil removal and the immediate surrounding area.
- B. The applicant for the permit shall notify the abutter or abutters of the property on which the permit is applied for by registered mail at least 3 days prior to the hearing on the permit. Proof of this action shall be delivered to the Board 3 days prior to the hearing.

#### EXEMPTIONS

- 1101.3 A permit shall not be required for the removal of earth minerals in the course of excavation incidental to the construction of a building. A permit shall also not be required for the removal of earth minerals for use upon the same premises or in the ordinary and customary use of land in Westport for a farm, garden, orchard or nursery and purposes incidental thereto except where this removal or transfer of earth minerals exceeds 100 cubic yards and then a permit will be required in accordance with Section 1101.2. The Board may issue a permit without a hearing for such removal for use within the Town of not more than twenty yards of earth minerals for any other purpose which is not commercial.

#### PERMIT CONDITIONS

- 1101.4 In issuing a permit the Board shall impose reasonable conditions, which shall be written upon and shall constitute part of the permit, requiring the restoration of the land within a designated period by grading, levelling or filling and replacing sufficient top soil for planting cover, to the end that no substantial injury to the health, safety, convenience, welfare, beautification, economic status of the district, Town and the inhabitants will be caused by the acts authorized by such permit. Conditions shall in like manner be imposed to provide adequate protection for the neighborhood and the Town from nuisances that may arise in the course of such removal and specifically that the finished grade and contour of the land after the material has been removed shall be such as not to direct the flow of drainage water onto an abutter's property or private or public way. If any removal authorized by paragraph 1102 hereof is carried on in a substantial injury to the welfare of the Town and the Town is not adequately protected by the conditions imposed by the permit, the Board may, without hearing, impose additional



restrictions or revoke said permit. The Board may, and in the case of the removal of any earth minerals for commercial purposes, require a bond with adequate surety or sureties conditional upon the performance of conditions imposed under this paragraph. **The Board will not grant permits for commercial purposes unless proof of variance granted by the Westport Board of Appeals is submitted along with the permit request.** The Board may revoke or suspend a permit if the Conditions are not complied with. **No permit shall be issued for the removal of soil within 5' of the average maximum groundwater elevation, except as provided for by special permit of the Soil Board.**

#### TOP SOIL OR LOAM REMOVAL

- 1101.5 A permit shall not be issued for the removal of top soil except upon condition that a cover of top soil of not less than six inches in depth shall be allowed to remain or shall be replaced; provided, however, that a permit may be granted for the removal of all of the top soil or loam when necessary for or incidental to the construction of a road, or other permanent facility which changes the character or the use of the land; but in such case the Board shall require sworn evidence of good faith in the intent of the applicant to complete such road or other facility, and shall make such evidence part of its records.

#### PERMIT LOCATION RESTRICTIONS

- 1101.6 A permit shall not be issued for the removal of earth minerals within 300 feet of a public way or within 250 feet of a private way or within 250 feet of an abutting owner unless the Board finds that such removal will not undermine the way or otherwise endanger the safety of public travel upon it, or impair the convenience and welfare of the public or the amenities of living in the houses upon such way, or injuriously affect the abutting owners.

**No permit shall be issued for the removal of earth minerals within 25 feet plus a sufficient distance to provide a 3 horizontal to 1 vertical foot slope from an abutting owner.**

#### PERMIT EXPIRATION AND RENEWAL REQUIREMENTS

- 1101.7 A permit issued under this by-law shall expire upon completion of the removal of the earth minerals for which it was issued, and in any event upon the expiration of one year from the time it was issued. If at the expiration of said year it appears that the operations for which such permit was issued have been carried on continuously and in good faith but have not been completed and that all conditions presently applicable have been complied with, the permit may be renewed for an additional year without a hearing, provided an application for renewal is made 30 days prior to the expiration date of the permit. The expiration or revocation of the permit shall not affect the obligation of the holder thereof to comply with the conditions attached to the permit, or release him or the surety on his bond from the obligations thereof or require the return of any deposit made by him until such conditions have been complied with.



#### PREVIOUS USAGE

- 1101.8 Whenever the Board shall find that the removal of any earth minerals had previously been undertaken in a particular location and was in continuous operation, at the time when notice of the warrant for the Town meeting at which this By-law was adopted was given, a permit for the further continuance of such operation within the same territorial limits shall be without a hearing; but such permit may be issued subject to conditions in the same manner as other permits.

#### COVERAGE OF SEVERAL LOCATIONS

- 1101.9 If a commercial operator and/or person engaged in the removal of earth minerals within the town and/or storage or transfer site for earth materials from a property in the Town pursuant to permits covering more than one location is found to be in violation of these by-laws or the terms of any such permits with respect to a particular location, and such violations remain uncorrected, the Board may, in its discretion, terminate the renewal of all permits held by such operator or person and/or suspend the renewal of all permits held by such operator or person until such violation is corrected.

#### FEES, TOWN

- 1101.10 The Board shall establish a fee for the issuance of permits under this By-law which shall be no more than sufficient in the opinion of the Board to reimburse the Town for the cost of applying and enforcing this By-Law; and no permit shall be issued until such fee is paid. The fees collected under this paragraph shall, at interval determined by the Board, be paid over to the Town Treasurer.

#### FEES, STATE

- 1101.11 The Conservation Commission may establish reasonable filing fees for the implementation of M.G.L. Chapter 131, Section 40.
- A. Such fee schedules may be implemented after a public hearing, the time, date, and place, subject of which must be published seven (7) days in advance in a newspaper of general circulation; and after publication of the final rate schedules in at least one newspaper of general circulation ten (10) days in advance of the effective date of such schedule.
- B. Prior to the implementation of any filing fees, such fee schedule shall be submitted to and approved by the Board of Selectmen.

#### VIOLATIONS

- 1101.12 If the Board shall find that there has been a violation of this By-Law, the Board shall send by registered mail to the offender a written warning; and if such violation continues, the penalties authorized by Chapter 352 of the Acts of the Massachusetts Legislature of 1951 shall be imposed and the penalty for removing earth minerals in violation of this By-law shall be a fine of fifty (\$50.00) dollars for the first offense after such warning; one hundred (\$100.00) dollars for the second offense; and two hundred (\$200.00) dollars for any subsequent offense. Each day on which the removal of earth minerals takes place shall constitute a separate offense for the person removing the same. If the offender holds a permit issued under the By-law such permit shall be revoked.

### PROTECTION OF PUBLIC HEALTH AND SAFETY

- 1101.13 When the Board finds that any excavation hitherto made for the purpose of removing earth minerals is maintained in such a way as to endanger the public health or safety or to constitute a nuisance, the Board shall request the Board of Health to take steps as are authorized by law to protect the public health and safety, or to cause such nuisance to be abated.

### INSPECTIONS

- 1101.14 The Soil Conservation Board and their officers or agents may, as far as they deem it necessary in carrying out the Soil Conservation By-Laws, enter upon any land in the Town of Westport of anyone holding a soil removal permit, to make examinations and surveys and to place and maintain markers.

### DEFINITIONS

- 1101.15 Definitions - Earth Minerals are defined in this By-law to include all forms of soil without limitation, specifically including but not limited to loam, sand, gravel, clay, humus, peat, hardpan, rock, granite, minerals, ores and fossil fuels, etc

Removal - is defined in this By-law as stripping, digging, excavating or blasting of earth minerals from a lot or parcel of land for the purpose of clearing it away from such lot or parcel of land as well as the actual taking away of such earth minerals.

Applicant - For the purposes of this By-law "applicant" shall be the person or persons making application to remove earth from a property in the Town.

### UNCONSTITUTIONALITY

If any sections of this proposed Soil Conservation By-Laws are declared unconstitutional, the remainder of the law shall stand.

VOTED: Carried

A true copy,

Attest:

*Marlene M. Samson*

Marlene M. Samson  
Town Clerk