

**Town of Leicester Planning Board
Meeting Minutes
October 30, 2018**

MEMBERS PRESENT: Jason Grimshaw, Chair; Debra Friedman, Vice-Chair; Sharon Nist, Andrew Kularski.

MEMBERS ABSENT: Robyn Zwicker

IN ATTENDANCE: Michelle Buck, Town Planner.

MEETING TIME: 6:00 PM

AGENDA:

1. 6:00PM **Public Hearing: Zoning Bylaw Amendment**

A. Earth Fill/Removal Bylaw

Jason Grimshaw called the meeting to order at 6:00PM.

Public Hearing, Zoning Bylaw Amendments: Earth Fill/Removal Bylaw

Mr. Grimshaw read the public hearing notice into the record.

Michelle Buck gave a brief overview of the intent of the bylaw. Basically, Leicester's existing bylaw has very limited regulation of fill and removal operations, and the proposed bylaw is intended to provide reasonable regulations of these uses. She briefly reviewed each section of the bylaw (definitions, exemptions, special permit requirements, etc.)

Mr. Grimshaw opened the hearing to public comment.

Attorney Hector Pinera, spoke on behalf of the the Dykas family. He indicated that his client's property, 48 acres on Green Street, is used for agricultural purposes (growing of cow corn and hay) and the intent of potential fill was to fill a ravine for cultivation as the current slope doesn't allow for cultivation of crops. He also raised the following issues/concerns:

- The proposed bylaw doesn't contain a specific exemption for agriculture
- The bylaw was proposed in Executive Session (he questioned the legality and felt it was a violation of the Open Meeting Law)
- Bylaw amendments are required to follow the requirements of MGL, 40A, Section 5 (he questioned the Town's compliance, specifically notice to Farmland Advisory Board)
- The proposed bylaw appears to have been in response to his client's discussions with the Highway Department about potential fill and the Town Administrator's prior experience with Uxbridge related to a fill operation.
- Leicester is a "Right to Farm" Town
- The proposal is very different from the Uxbridge bylaw, which exempts agricultural and forestry activities and sets threshold at 3,000 tons, rather than 1,000 tons
- The proposed fee (\$2/ton) is too high.
- Court case (Richardson North Corporation vs. Town of Uxbridge/Uxbridge Planning Board)

Ms. Buck noted that the Right to Farm bylaw is not related to this issue. It basically states that you can't complain if you move in next to a farm; it's un-related to zoning or state agricultural

exemptions. Also, agricultural uses would be exempt under state law even though it's not specifically stated in the proposal.

Several residents and landowners spoke on the issue, including Perry Dube (265 Pine Street), Lisa Johnson (28 Washburn), Lee Dykas (124 Green Street), Brad Johnson (Cemetery Road), Nick Cassello (21 Boutilier Road), and Shawn Castell (Hammond Street). Comments/questions are summarized as follows:

- Would bylaw apply if owner had multiple contiguous small lots?
- Fees too high, don't want to make it harder for people to use their land. How will the fee be used?
- Threshold should be 3,000 yard
- What time period is used to determine amount of material? That is, would 60 truckloads a year trigger a permit requirement. Permit requirements seem cumbersome.
- Who prepared the bylaw? Was it based on Uxbridge?

Ms. Buck noted that the fee would be used for costs associated with project review and monitoring.

Mr. Genereux clarified that the Bylaw was prepared by Town Counsel [Petrini & Associates]. The bylaw was discussed in Executive Session on 10/11/2018 where the Select Board and Planning Board voted to put the article on the warrant. He and Ms. Buck reviewed the bylaw over a couple days and it was placed on warrant on 10/15/2018. The Planning Board discussed the matter at their meeting of 10/16/2018. He further explained that the Uxbridge bylaw was based on a citizens' petition. This is on the warrant because we don't currently have sufficient regulation of this use.

MOTION: Ms. Friedman moved to recommend approval of the article.

SECOND: Ms. Nist. Discussion: Ms. Friedman noted her primary concern was with the fees. Mr. Kularski spoke in opposition, stating that the bylaw was too rushed, that agriculture should be clearly exempt, the fees are too high, and the limits on fill may be set too low.

VOTE: 2 in favor (Ms. Nist and Ms. Abusalah), 3 opposed (Mr. Grimshaw, Mr. Kularski, and Ms. Friedman). The motion failed, so the recommendation to Town Meeting will be to disapprove the bylaw.

The meeting adjourned at 6:59PM.

Respectfully submitted:
Michelle Buck, Town Planner

Documents related to the meeting:

- Agenda
- Public Hearing Notice
- Draft Fill Bylaw, Article 17 (copied from Special Town Meeting Guide)